

SCOMM

#23:1:

ISSUES TO BE IDENTIFIED IN A POLICY ADVISORY GROUP REPORT

1. How to provide representation for people living outside municipal boundaries, but within a municipal service area (as when a city extends utility service beyond its boundaries).
2. Should a uniform provision on executive sessions be included in Title 29 delineating specific occasions when it is appropriate to call for an executive session of a municipal governing body?
3. Should there be only two classes of borough -- home rule and general law?
4. Should there be only two classes of city -- home rule and general law?
5. Should villages which are currently unincorporated be recognized as municipal corporations under state law? Should IRA councils be recognized as municipal governing bodies?
6. Should the state or local government be primarily responsible for providing the following services: water system and sewage disposal inspections; subdivision review of on-site sanitation capabilities; sanitation inspections of restaurants, hotels, etc; clean-up of small oil spills; the issuing of oily waste burn permits and surface oiling permits; litter control; vehicular emissions control? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to meet applicable standards to qualify for federal funding and to avoid state liability if the programs are not properly carried out by the local governments?
7. Should the state or local government be primarily responsible for the provision of health services? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to qualify for federal funding?
8. How to insure that local issues are dealt with in the unorganized borough, since the legislature rarely meets as the assembly for the unorganized borough.
9. How to avoid establishing multiple governmental and administrative bodies with duplicate functions in small communities which suffer from a lack of people to fill the positions.
10. Should there be a regionally elected body in the unorganized borough to manage local service programs and to deal with the state?

Technical
Committee
Notes Jan. 6, 9

Test will
do powers
section

29.42.040

29.33.110 change recommended by technical group.
Use Tests - add (c)

29.33.120 - change

Eliminate limit against regulating private utilities
and allow regulation to the extent not regulated
under 42.05

29.45.610. change

29.42.080. change

~~29.45.100~~ - ~~left in~~ leave in except for last two
lines

~~29.42.050 (c)~~ 29.36.270. - change

move 29.39.030

Add new section on liability for dedications

provided as
The assembly
may authorize
a city to levy
and collect
sales and use
taxes on
other sources.

Allow 2nd class city to go home
rule

29.24.010 - reassert original
recommendation.

City which agrees
to become
part of
a service
area under
this section
may not
be taken
out of the
agreement
without
approval from
the service area
on exercise
of power
exercised on
a service area
basis.

(New Section)

29.42 — Dedicated Areas: Municipal Services

Dedication of streets, rights of way, easements or other areas ~~deemed necessary~~ for public use ~~[under land use regulations]~~ ~~enacted by~~ a ~~municipality~~ ~~under this chapter~~ shall not, by itself, be construed to require the municipality to maintain, improve, or provide or otherwise be responsible for municipal services to those areas ~~[until the municipality has acquired the power to provide such services under Chapter 33 of this Title.~~

nor shall that dedication impose any liability of the municipality ~~with respect to~~ ~~liability~~ ~~for~~ the condition of those areas.

~~Does not constitute an accepted~~

~~a municipality, by itself, be construed to create liability for the condition of or for ~~services~~ the maintenance, improvement or for providing other services to those areas.~~

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

Sec. 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of four classes:

- (1) first class boroughs;
- (2) second class boroughs;
- (3) repeal
- (4) first class cities;
- (5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. Section unchanged to:

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

(h) repeal.

(i) repeal.

(j) repeal.

Sec. 29.06.050. TRANSITION. (a) A third class borough existing on the effective date of this act shall continue as a third class borough under the conditions established by law prior to the effective date of this act until it becomes reclassified in accordance with this section.

(b) A third class borough may reclassify as a first or second class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers. If reclassification is approved, a school board shall be elected in conformity with AS 14.12 at the next regular election if it occurs within 90 days of the date of the

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reclassification election, or at a special election within 90 days of the date of the reclassification election. Expiration dates of terms of members elected at a special election must coincide with the date of the regular election. Until a board is elected and qualified, the assembly continues to serve as the board.

EXPLANATION; Third class boroughs are eliminated. A transition section provides that the existing third class borough retain its status until it is reclassified. The option of allowing the assembly to continue to serve as school board of a borough which is reclassified from third to first or second class currently contained in AS 29.06.030(i) has been eliminated, so that if the third class borough changes its classification it must elect a school board. (NOTE: This was prepared as a request of the Policy Group to eliminate third class boroughs. If it is approved upon reconsideration, additional technical drafting changes will be required to eliminate references to third class boroughs in other sections.)

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Sec. 29.09.180. ORGANIZATIONAL GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or for a second class city reclassified after January 1, 1981, is entitled to an organizational grant of \$150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organizational grant.

EXPLANATION: This section is being resubmitted as the recommendation of the Technical Group after considering legislation on the matter proposed by Community and Regional Affairs.

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

- (1) not prohibited it by law or charter;
- (2) granted to home rule boroughs.

EXPLANATION: Existing language in (2) is confusing in that the reference to cities may imply a limitation of some sort on the powers of a unified municipality. This is a clearer statement of existing law.

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Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts of interest ordinance which other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest.

EXPLANATION: The second sentence is deleted as redundant. After considering the alternative proposed by the Policy Group, the Technical Group reasserts its original recommendation. It is felt that a person should not vote on a matter in which he has a substantial financial interest and that disclosure of the interest is not adequate protection for the public.

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

(The rest of the section was previously approved by the Policy Group).

EXPLANATION: The Technical Group upon reconsideration recommends that the governing body not be allowed to declare the office of a school board member vacant. Current law allows the members to determine vacancy on the school board.

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Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. The governing body may, by ordinance, establish advisory or quasi-judicial boards and commissions.

EXPLANATION: Upon reconsideration, the Technical Committee would like to limit specific authority to set up boards to exclude administrative boards. In addition, subsection (b) is deleted from the draft which was originally approved by the Policy Group because it is felt that appointment power is adequately included under general separation of powers principles and ought not to be further restricted in an inflexible statute applying to every type of board.

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Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. A member of the governing body may not be appointed manager of the municipality sooner than one year after leaving office except by a vote of three-fourths of the authorized membership of the governing body.

EXPLANATION: Upon reconsideration, it is felt that the prohibition against serving as manager ought not to apply to officials other than members of the legislative body. This change would allow the governing body to appoint a municipal official to the office of manager without the one year or super majority restriction.

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Sec. 29.24.680. PROHIBITIONS. Repeal.

EXPLANATION: (a) and (b) have been approved for repeal by the Policy Group. Upon reconsideration it is felt that the rest of the section should also be repealed. (c) and (d) were adopted for a specific Juneau problem which no longer exists according to Mr. Lee Sharp.

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Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCE. (a)
(12) repeal.

The rest of the section is unchanged.

EXPLANATION: It is felt that (12) should be repealed as redundant because the provision is contained in AS 36.25. (Note: changes to (2), (5), (7), and (8) were previously approved by the Policy Group and the Technical Committee makes no further recommendation with regard to those paragraphs.)

Sec. 29.27.050. CODES OF REGULATION. The governing body may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopted ordinance need be printed after adoption. The governing body shall provide for the adopted code to be made available to the public at no more than cost.

EXPLANATION: The Policy Group previously approved changes made to the last line of this section - "The governing body shall provide for the adopted code to be sold or made available at no charge to the public." It is felt that this would be more flexible in that a municipality would also have the option of collecting a fee which represents only a part of the cost.

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance the governing body may prescribe penalties not to exceed those imposed for a class B misdemeanor and may require mandatory, nonsuspendable imprisonment not to exceed five days.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

EXPLANATION: Technical drafting changes with no substantive impact on the section as previously approved by the Policy Group in (a) and (b). Subsection (c) has been changed from the language previously approved so that a municipality has the option of charging less than full cost.

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Sec. 29.30.030. ELECTION DATES. (a) The governing body shall give at least 20 days notice of a regular or special election.

(b) The date of a regular election is the first Tuesday of each October unless a different date or interval of years is provided by ordinance.

EXPLANATION: Technical changes. The notice requirement is applied to the regular election as well as the special election.

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Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition.

Other subsections as previously approved.

EXPLANATION: The Technical Committee wishes to reassert its first recommendation that no special election be required in the initiative process. In rejecting this suggestion, the Policy Group appears to have felt that the initiative process should be treated the same as the recall and referendum processes, both of which require a special election if a regular election is not held within a given time period. The Technical committee feels that the initiative process, seeking to establish new law, is not as much of an emergency situation as the recall of an official or the repeal of an unpopular law, and therefore that the expense and inconvenience of holding a special election on an initiative ought not to be placed on municipalities.

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Sec. 29.30.300. ELECTION NOTICE. At least 20 days notice of an election to recall an official shall be given notwithstanding an ordinance or charter provision to the contrary.

EXPLANATION: It is felt that since a recall must be done at a regular or special election, procedural requirements dealing with election apply so most of this section is eliminated as redundant. The notice provision is necessary to bind home rule municipalities.

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Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body his office becomes vacant and is filled in accordance with AS 29.24.175.

(b) Notwithstanding subsection (a), if all members of the governing body are recalled, the governor shall appoint three qualified persons to the governing body. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 29.24.175.

(c) If all officials are recalled from a school board the governor shall appoint three qualified persons to the school board. The appointees shall appoint additional members to fill remaining vacancies.

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

(e) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held not more than 60 days from the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election.

(f) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: Redrafted at the request of the Policy Group. This would provide that vacancies in a governing body resulting from recall would be filled as any other vacancy, unless all members of the body are recalled, in which case the governor shall appoint members so that local government can continue to function. If all members of a school board are recalled, the governor would have the same power of appointment to that board.

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Sec. 29.42.150. DELEGATIONS. The assembly may by ordinance authorize the planning commission and the platting authority to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the planning commission or platting authority, to other boards or commissions or to a hearing officer designated by the planning commission or platting authority.

EXPLANATION: The Technical Committee originally recommended repeal of this section. Upon reconsideration, it is recommended that it be retained in a slightly redrafted form to insure that there is no question that hearing officers may be used by the planning commission and platting authority to hear individual cases.

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Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects areawide sales or use taxes may levy sales or use taxes on all sources taxed by the borough in the manner provided for boroughs, except that the assembly may by ordinance authorize a city to levy and collect sales or use taxes on other sources.

(1 A city within a borough which does not levy and collect areawide sales or use taxes may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal.

EXPLANATION: Subsection (a) is altered to allow a city to levy taxes on other sources if authorized by a borough. It is felt that borough authorization should be required since the borough does the collecting and would experience added administrative difficulties if the city and borough tax differ. Subsection (b) contains the material formerly in AS 29.45.620.

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Sec. 29.33.200. MUNICIPAL PROPERTIES. (Section as previously approved by the Policy Group with the following new subsection:)

(g) Dedication of streets, rights of way, easements or other areas for public use shall not be construed to require the municipality to maintain, improve or provide for municipal services in the area dedicated and the dedication shall not impose any liability on the municipality for the condition of the area dedicated.

EXPLANATION: Since the municipality may be the recipient of land deeded over by a private person without the municipality's approval, it is felt that the municipality should not be liable for the condition of property just as the result of dedication. This would not affect the liability of a municipality for the condition of land which it undertakes to improve or maintain.

**Municipality
of
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GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

January 7, 1981

TO: Title 29 Policy Committee Members

Re: Proposed Draft on Municipal Powers & Duties

Attached please find a proposed draft of a new Title 29 chapter on Municipal Powers and Duties. This draft was prepared and reviewed by the Technical Committee in response to numerous complaints that the present law on this subject is extremely confusing and overly restrictive for municipal governments. The proposed draft attempts to consolidate in one place all provisions dealing with the powers of various classes of local government, including all provisions for the assumption of new municipal powers.

Since this work represents a major reorganization of the present statutes, a section by section comparison of old and new provisions will be difficult. For reference, the proposed material would replace the following provisions in present law:

AS 29.33.010 - .050
AS 29.33.250 - .290
AS 29.38.010 - .050
AS 29.41.010 - .020
AS 29.43.010 - .110
AS 29.48.010 - .110
AS 29.48.190; .210; .220; .270;
AS 29.48.310 - .330

Hopefully, you will find the proposed organization a bit easier to follow and understand than the rather confusing collection of present statutes listed above.

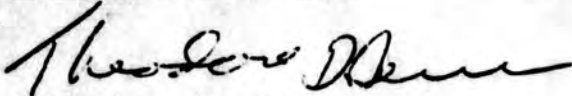
Aside from reorganization, the primary change in the proposed draft is to eliminate the "laundry list" approach to describing permissible municipal powers. The proposed statutes would identify those powers that can be exercised by the assembly or council for various classes of governments and would then allow exercise of any other general law power provided such powers are assumed by vote of the people or transferred as required under present law.

Given the short time before the January 17 Policy meeting, Tam Cook and I agreed to mail the proposed draft to the Policy Committee members so that there would be a chance to review it prior to the Juneau meeting. There is certainly no pride of authorship on my part, and your comments and criticisms will be most welcome.

If you have questions on the proposed draft prior to the January 17 meeting, please feel free to contact me at 264-4236, and I will do my best to answer them.

Sincerely yours,

DEPARTMENT OF LAW



Theodore D. Berns
Municipal Attorney

TDB:gml
Attachments
cc: Tam Cook

Prepared by: Theodore D. Berns
Title 29 Technical Committee
January 2, 1981

CHAPTER 33. MUNICIPAL POWERS AND DUTIES

(CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

Article 1. GENERAL POWERS

Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS.

Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

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

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

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

(6) to sue and be sued;

(7) to levy taxes and special assessments and to impose liens for the enforcement thereof;

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

(9) to acquire, manage, control, use and dispose of real and personal property, and interests in such property whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

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

(13) to regulate the operation and use of its public rights of way, public facilities and services.

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISDICTION. (a) A municipality may, to the extent otherwise authorized or permitted by law, provide parks, roads (including ice roads), trails, playgrounds, solid and septic waste disposal, wharves, harbors and other marine facilities, emergency medical services, cemeteries, airports, transportation systems and utility services outside its boundaries, and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

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

Sec. 29.33.030 (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside cities in the borough.

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

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

Sec. 29.33.050. FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges and may grant permits for use of streets and other public places.

(b) No exclusive franchise is valid until it has been ratified by a majority of the qualified voters voting on the question at a regular or special municipal election.

Sec. 29.33.060. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a utility to the extent that the utility is not regulated under AS 42.05, provided that interest must be paid on any deposit required by the utility. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return in invested capital.

Sec. 29.33.070. MUNICIPAL PROPERTY.

The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land of the municipality. Each disposal of land or an interest in land shall be by ordinance unless the assembly or council finds by resolution that the land or interest in land is without substantial value to the municipality.

Sec. 29.33.080. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

(b) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

Sec. 29.33.090. (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes and levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified municipalities.

Sec. 29.33.100. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of

the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33.110. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS.

(a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

(b) No city may exercise an areawide power once that power is being exercised by a borough.

Sec. 29.33.120. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.33.130. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess and collect property, sales and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

Sec. 29.33.140. LAND USE REGULATION.

First and second class boroughs shall provide for land use regulation in accordance with AS 29.42. _____

Article 3. ADDITIONAL CITY AND BOROUGH POWERS

Sec. 29.33.150. FIRST CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .140, a first class borough in the areas outside cities, may exercise any power not otherwise prohibited by law.

(b) A first class borough may, by ordinance, exercise the following powers on an areawide basis:

1. Providing transportation systems
2. Water pollution control
3. Air pollution control as provided in AS 46.03.140-.240
4. Licensing of day care facilities
5. Regulation of animals

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise any other power not otherwise prohibited by law provided that such power has been transferred by a city and approved by the borough

assembly or has been acquired pursuant to sec. .190 of this chapter.

Sec. 29.33.160. SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .150, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers:

1. Providing transportation systems
2. Regulation of fireworks
3. Regulation of animals
4. Regulation of drivers and motor vehicles, including snow vehicles and off highway vehicles, to the extent allowed under AS 28.01.010.
5. Provision of garbage and solid waste collection and disposal.
6. Air pollution control as provided in AS 46.03.140-.240
7. Water pollution control
8. Participation in federal or state loan programs for housing rehabilitation and improvement for energy conservation.
9. Economic development programs and activities.

(b) A second class borough may, by ordinance, exercise the following powers on an areawide basis:

1. Providing transportation systems
2. Regulation of animals

3. Air pollution control as provided in AS 46.03.140-240
4. Water pollution control
5. Licensing of day care facilities

(c) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis or in the area outside cities, exercise any other power and may provide other services or facilities not otherwise prohibited by law on an areawide basis provided that such power has been transferred by a city and approved by the borough assembly for exercise within the city or has been acquired by election under Sec. .190 of this chapter, or in the area outside cities, provided it has been acquired by election under Sec. .190.

Sec. 29.33.170. CITIES WITHIN ORGANIZED BOROUGHES. (a) In addition to the power conferred under Sec. .010, a first or second class city within an organized borough may exercise any power not otherwise prohibited by law. In accordance with Sec. .110, a city may not exercise a power once that power is being exercised by a borough.

Sec. 29.33.180. CITIES OUTSIDE ORGANIZED BOROUGHES. (a) Cities outside an organized borough may exercise any power not otherwise prohibited by law.

(b) Cities outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs.

Cities may, by ordinance, establish, alter and abolish differential tax zones for property taxes for services not provided in the entire city or provided at a different level than provided generally within the city.

(c) Home rule and first class cities outside an organized borough shall constitute city school districts and shall establish, operate and maintain a system of public schools as provided by AS 29.36.040 for boroughs.

(d) Home rule and first class cities outside an organized borough shall, and second class cities outside an organized borough may, provide for land use regulation as provided by AS 29.42.010-.245 for boroughs.

Sec. 29.33.190. ACQUISITION OF ADDITIONAL POWERS. (a) A borough acquires additional powers by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities the election shall be held in the area outside cities only.

(b) An election under this section may be initiated by a petition signed by a number of voters equal to 15% of the number of votes cast at the preceding regular election in the area in which the election is to be held or by the assembly. A petition under this section shall be filed with the borough clerk who shall certify to the assembly whether the petition contains sufficient signatures. Upon certification, the assembly shall, at the next regular meeting, order an election on the question to be held

within 60 days of the order. If more than one power, service or facility is proposed, each shall appear separately on the ballot.

(c) In the case of acquisition of additional areawide borough powers, the borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the

bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.200. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.210. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.220. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title area illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

Prepared by: Theodore D. Berns
Title 29 Technical Committee
January 2, 1981

CHAPTER 33. MUNICIPAL POWERS AND DUTIES

(CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

Article 1. GENERAL POWERS

Same

Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS.

Municipalities have the following general powers, subject to other provisions of law:

- (1) *(D) regulate the operation and use of public rights-of-way, public facilities and services;*
to establish and prescribe the functions of municipal departments, offices or agencies;
- (2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;
- (3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;
- (4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;
- (5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;
- (6) to sue and be sued;
- (7) to levy taxes and special assessments and to impose liens for the enforcement thereof;
- (8) to enforce ordinances and to prescribe penalties for violations;
- (9) to acquire, manage, control, use and dispose of real and personal property, whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];
- (10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

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

Sec. 29.33.020. ^{Use our language no change} (Sec. 29.48.037.) EXTRATERRITORIAL JURISDICTION. (a) A municipality may, to the extent otherwise authorized or permitted by law, provide parks, roads (including ice roads), trails, playgrounds, solid and septic waste disposal, wharves, harbors and other marine facilities, emergency medical services, cemeteries, airports, transportation systems and utility services outside its boundaries, and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

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

^{No change} Sec. 29.33.030 (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

^{changed} Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside cities in the borough.

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

(c) Powers granted by this section must be initiated within a period of not more than five years from the date of

declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

Sec. 29.33. ^{Repeal} (Sec. 29.48.033.) GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance, award contracts for collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier

or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

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

Sec. 29.33. . FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges. *and may grant permits for the use of streets and other public places.* (b) No exclusive franchise is valid until it has been ratified by a majority of the qualified voters voting on the question at a regular or special municipal election.

(c) repeal
Sec. 29.33. . (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a ~~municipally owned utility~~ *to the extent* not regulated under AS 42.05 ~~and may regulate and provide what is a reasonable deposit for meters and security for service to be given,~~ provided that interest is paid on ~~the~~ *any* deposit. *required,* All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return in invested capital.

Sec. 29.33. . MUNICIPAL PROPERTY.

Use Allans
The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land of the municipality. Each disposal of land or an interest in land shall be by ordinance unless the assembly or council finds by resolution that the land or interest in land is without substantial value to the municipality.

(Same) Sec. 29.33. . (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

(b) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

~~Sec. 29.33.~~ ^{Repeal} Sec. 29.33. (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues ^{received through taxes} ~~levied and collected~~ on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes and levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified municipalities.

^{Same} Sec. 29.33.230. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS.

(a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

(b) No city may exercise an areawide power once that power is being exercised by a borough.

Sec. 29.33. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the

borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.33.. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess and collect property, sales and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

Sec. 29.33.. LAND USE REGULATION.

First and second class boroughs shall provide for land use regulation in accordance with AS 29.42._____.

Article 3. ADDITIONAL CITY AND BOROUGH POWERS

Sec. 29.33.. FIRST CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 and _____, a first class borough in the areas outside cities, may exercise any power ~~and may provide any service or facility~~ not otherwise prohibited by law.

(b) A first class borough may, by ordinance, exercise the following powers ~~and provide the following services~~ on an areawide basis:

1. ^{providing} Transportation ^{systems} ~~services~~
2. Water pollution control
3. Air pollution control as provided in AS 46.03.140-.240
4. Licensing of day care facilities ^{regulation of animals}
5. ~~Licensing impounding and disposition of animals~~

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise any other power ~~and may provide any other service or facilities~~ not otherwise prohibited by law provided that ^{the} such power, ~~service~~

7
allow a
first class borg

~~or facility~~ has been transferred by a city and approved by the borough assembly or has been acquired pursuant to sec. _____.

Sec. 29.33. SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 and _____, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers ~~and may provide the following services:~~

1. ^{providing} ~~Transportation services~~ ^{systems}
2. Regulation of fireworks
3. Regulation of animals
4. Regulation of drivers and motor vehicles, including snow vehicles and off highway vehicles, to the extent allowed under AS 28.01.010.
5. Provision of garbage and solid waste collection and disposal.
6. Air and water pollution control (use 2 & 3 of boroughs)
7. Participation in federal or state loan programs for housing rehabilitation and improvement for energy conservation.
8. Economic development programs and activities.

(b) A second class borough may, by ordinance, exercise the following powers ~~and provide the following services or facilities~~ on an areawide basis:

1. Transportation services
2. Regulation of animals
3. Air and water pollution control
4. Licensing of day care facilities

(c) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis or in the area outside cities, exercise any other power ~~and may provide other services or facilities~~ not otherwise prohibited by law provided that such power, ~~service or facility~~ has been transferred by a city and approved by the borough assembly for exercise within the city or ~~has been by~~ ^{election} under Sec. _____.

Redraft so areawide applies only to powers

on an areawide basis

(on a nonareawide basis provided the power)

Allows substantial assumption of powers over what is now allowed.

Sec. 29.33. CITIES WITHIN ORGANIZED BOROUGHS. (a) A first or second class city within an organized borough may exercise any power and may provide any service or facility not otherwise prohibited by law. In accordance with Sec. _____ a city may not exercise a power once that power is being exercised by a borough.

Sec. 29.33. CITIES OUTSIDE ORGANIZED BOROUGHS. (a) *In addition no powers conveyed by 29.33.010* Cities outside an organized borough may exercise any power and may provide any service or facility not otherwise prohibited by law.

(b) Cities outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs. Cities may, by ordinance, establish, alter and abolish differential tax zones for property taxes for services not provided in the entire city or provided at a different level than provided generally within the city.

(c) Home rule and first class cities outside an organized borough shall constitute city school districts and shall establish, operate and maintain a system of public schools as provided by AS 29.36.040 for boroughs. *2nd class cities shall not be school districts*

(d) Home rule and first class cities outside an organized borough shall, and second class cities outside an organized borough may, provide for land use regulation as provided by AS 29.42.010-.245 for boroughs.

Sec. 29.33. ACQUISITION OF ADDITIONAL POWERS. (a) A ~~city or~~ borough ^{acquires} may ~~acquire~~ additional powers, ~~services or facilities~~ as provided by sec. _____ by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities ~~or within a city~~ the election shall be held in the area outside cities ^{only} ~~or within the city~~.

(b) An election under this section may be initiated by ^{the assembly or} ~~by~~ a petition signed by a number of voters equal to 15% of the number of votes cast at the preceding regular election in the area in

which the election is to be held ~~or by an ordinance adopted by the assembly or council~~. A petition under this section shall be filed with the borough ~~or city~~ clerk who shall certify to the assembly ~~or council~~ whether the petition contains sufficient signatures. Upon certification, the assembly ~~or council~~ shall, at the next regular meeting, order an election on the question to be held within 60 days of the order. If more than one power, service or facility is proposed, each shall appear separately on the ballot.

Same (c) In the case of acquisition of additional areawide borough powers, the borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties

and other matters related to acquisition of the areawide powers.
This subsection applies to home rule and general law cities.

*No
change*

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title area illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.