SCOMM

#23:10

TITLE 29 REVISION

PROPOSAL FOR RECALL
(Formerly AS 29.28.130-250)

October 20, 1980

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

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

29.30.220 Grounds. Grounds for recall are

(1) violation of an ordinance, law, or regulation made applicable to the official by his candidacy for or holding of such elected office,

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

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

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

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

(b) The application shall contain

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

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

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

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

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

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

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

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

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

(3) the statement of the officer sought to be

recalled, if provided,

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

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

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

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

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

29.30.250 Required Signatures. (a) Every petition shall be signed by a number of registered voters residing within the territorial limits of the municipality equal to 25 percent of the number of votes cast in the municipality

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

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

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

(d) The petition pages shall be assembled and filed as a single instrument within 60 days of the date of first issuance of the petition.

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

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

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

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

(The only significant change to the corresponding section of the present law is that the proposed section 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.)

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

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

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

(No significant change.)

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

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

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

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

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

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

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

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

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

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

(The 40 day minimum was added to insure that a petition submitted after the legal notices of the election were published would not complicate the election and that 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.)

29.30.310 Form of Recall Ballot. A recall ballot shall contain:

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

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

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

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

29.30.320 Election Procedure. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election; otherwise, the procedures shall be those applicable to a special municipal election.

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

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

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

29.30.340 Effect. If a majority of those voting on the question vote to recall the officer, the officer's seat shall become vacant immediately upon certification of 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

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

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

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

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

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

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

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

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

WHILE IN JUNEAU
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PHONE 465-3729 OR 3730
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VICE CHAIRMAN, JUDICIARY COMMITTEE
MEMBER, RULES COMMITTEE
MEMBER, SPECIAL COMMITTEE
ON SUBSISTENCE

House of Representatives

August 26, 1980

Mr. Palmer McCarter, Director
Division of Local Government Assistance
Department of Community & Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Sir:

It has come to my attention that the second class cities and unincorporated village governments in the Bristol Bay Region will experience severe problems in meeting the September 20, 1980 deadline for mailing completed State Revenue Sharing applications to qualify for the $25,000 minimum entitlement provided for in the new law revising the State Revenue Sharing Program. It has further come to my attention that applications were only recently mailed to general law municipalities and that applications for traditional governing councils have yet to be mailed.

The September 20th time deadline is further compounded by the problem that many of the villages in our region are currently unaware of the provision in the new law which provides state aid to eligible governments recognized under the Alaska Native Claims Settlement Act. Another very real problem is the frequency of mail delivery service, which is sporatic at best, to many of the villages in the more remote areas.

A lot of work on the part of rural legislators went into FCCHB 192 reforming the State Revenue Sharing Program to include state aid to unincorporated governments and the $25,000 minimum entitlement provision for small rural municipalities with no tax base.

With the September 20th deadline for mailing applications just around the corner, it appears that many local governments that could take advantage of the new State Revenue Sharing program will be unable to do so. I would encourage your department to strongly consider extending the deadline to allow more local governments desperately in need of such monies to have the time to properly complete the application process.

Thank you.

Very sincerely,

Nels A. Anderson Jr.

Nels A. Anderson, Jr.

cc: Senator George Hohman
Rep. Bill Parker
Sen. Arliss Sturgulewski
Governor Hammond
Commissioner Lee McAnerney, CRA
TUNDRA TIMES
TUNDRA DRUMS

OK

copy to Ltr 29 committee

HOME PHONE ADDRESS

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VICE CHAIRMAN, JUDICIARY COMMITTEE
MEMBER, RULES COMMITTEE
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TUNDRA TIMES
TUNDRA DRUMS

OK

copy Tulle 29 committee

P.O. BOX 67 MC GRATH, ALASKA
PHONE (907) 524-3825

August 26, 1980

Arliss Sturgulewski, Senator
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Dear Senator Sturgulewski,

Back at the beginning of the summer, I attended a meeting called by the Division of Community Planning. It was a "loose meeting" in that the agenda was flexible and covered many areas and concerns. Somewhere in the meeting, we touched upon the changes proposed by the Community & Regional Affairs Committees. If I am not mistaken, everyone agreed that the committees were on the right track especially in regards to the establishment of service areas following REAA boundaries.

Well, it seems that those of us living in the "bush" know more about what happens in Juneau than some of the state employees living and working there. For example, the Dept. of Health & Social Services just unveiled a plan whereby the communities of Holy Cross, Anvik, Shageluk and Grayling which are all in the Iditarod Area School District, REAA 11, will now receive there public health nurse services from Bethel. Ms Lois Bergerson decided that those people would be better served from Bethel than McGrath. Was there any local input from those communities? Was any consideration given to the fact that those people are Athabascans and not Yupiks? Did anyone think to explore the logic behind the boundaries of REAA 11? The answer to all three questions is no. However, Ms Bergerson is adamant that the changes will take effect on Sept. 1 irregardless of any protests.

It is my firm hope that when the Legislature convenes in January, that the Community & Regional Affairs Committees will reintroduce the same package of bills.

Sincerely,

Robert S. Juettner
City Administrator

8/29/80 advised Bob of waived hearing to Committee → Jan Cootle – Please copy AS 29 Revised. Committee with ex-officio + Dept HSS + Fran Ulmer

Doyon Building
1st and Hall Streets
Fairbanks, Alaska 99701
Phone (907) 452-8251

August 1, 1980

Ms. Lee McAnerney
Commissioner
Dept. of Community & Regional Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

This letter is in response to your June letter requesting comments on the Title 29 Municipal Government Code Revision authorized under Senate Concurrent Resolution No. 66. As indicated by our prior correspondence, we are greatly interested in this area and wish to submit the following comments to be used in the Title 29 revision project.

RECOGNITION OF TRADITIONAL GOVERNMENTS

Local government in rural Alaska is extremely complex. This complexity is primarily due to the vast number of board, commissions, municipal corporations, ANCSA Native Village corporations, town site trusts, recognized entities for municipal trust lands, IRA councils, traditional councils, etc. For sometime TCC has been in favor of local government simplification. The problems of local government should not be addressed through the creation of new boards, commissions, corporate bodies, or new forms of municipal government. Rather, rural local government should be reorganized to utilize existing bodies and enhance those bodies. The introduction of new and novel forms of government may only lead to confusion as rural residents attempt to deal with their local governmental matters.

In connection with this policy of local government simplification, we believe it is important to fulfill the constitutional guarantee that the legislature shall provide for performance of services that it deems necessary or advisible in the unorganized borough and allow for maximum local participation and responsibility. This policy is substantially analogous to the federal policy of self-determination.

To meet these two basic policies, we feel it is necessary that the state of Alaska recognize the traditional governments which currently operate in Alaska. Such recognition will do several things. First, it will allow for the coordination of the funds currently available to local communities from sources other than the state, i.e., BIA, HUD, various CETA programs, etc.

To some degree this issue has already been addressed in the recognition of traditional governments for revenue sharing purposes. We feel, however, that more cooperation is needed between the state and these traditional governmental forms to fully realize maximum local participation and responsibility. To implement this, we favor such legislation as S.B. 565 introduced last session.

By extending such recognition to existing village and community organizations, we believe that rural government will be substantially enhanced. The recognition of such existing bodies will obviate the necessity for the specialized advisory committees, specialized service areas and boards and substantially contribute to local government simplification in the currently unorganized areas of rural Alaska. In addition, such recognition will fulfill the constitutional guarantee of maximum local participation and responsibility.

DECENTRALIZATION OF STATE SERVICES

It is sometimes difficult even for Alaskans to fully comprehend the geographical immenseness of Alaska. An appreciation of the sheer size of Alaska cannot be achieved through casual reference to a map. A full appreciation of Alaska's geographical size can only be appreciated by traversing this great land through conventional transportation systems. To the rural resident, this means being dependent on urban based state service personnel located at various sites throughout the state. Seldom is it possible for the rural resident to contact a state agency locally or even make a single phone call to a single urban government office to solve any problem. The urban Alaskan faces a similar problem in having to rely on state personnel based in other urban centers.

In both the rural and urban contexts, the root problem is the economy of scale. It is simply not economically feasible to establish free standing state agencies at the local level. The administrative cost to establish such programs would be enormous, but the need for decentralized state services is evident. State services should be available in the areas of need. State services should be available at a local level in all localities of the state to the extent that this is feasible. This problem can only be solved through the cooperation of local and state governments to provide maximum local services. This cooperation can be achieved by allowing the local governments to contract for the providing of state services. Basically, this will allow the merger of local and state program administration and allow a maximum amount of direct state financing directed toward program operations. Additionally, it is perceived that such cooperation would make the operation of state programs more responsive to local needs and desires.

It should be remembered, however, that the legislature under this theory will retain ultimate policy decision-making authority. It is only the administration of state and local programs which will be affected. Additionally, it should be recognized that not all state programs can be effectively decentralized, nor is it desirable that all state programs be decentralized. Rather, it is important that those state programs which are technically capable of being decentralized and for which there is a stated need and desire for local program operation shbuld be decentralized through contracting.

LOCAL GOVERNMENT CONSORTIUMS

During the last legislature, several bills were produced out of the interim work of the Senate and House Community and Regional Affairs Joint Local Government Study of 1979. These bills recognized the need for coordinated regional planning.

Last February, TCC submitted comments on this legislation. At that time, we stated that existing local governments should be used as much as possible and that regional concerns can best be addressed through consortiums of existing governments.

Consortiums are advisable for a number of reasons. First, they would be entirely voluntary. The committee hearings fairly indicated strong opposition to "mandatory" regional organization. Second, consortiums could easily coordinate existing programs allowing for current program and plan continuity. Third, a consortium would not create a new independent regional entity and, thus, it would be possible to avoid the type of intergovernmental conflicts which characteristically exist between boroughs and included cities. Finally, the consortium would be governed by a flexible agreement between communities. Such agreements could be flexible enough to address unique regional variations found within each area. In addition, a community's participation would be voluntary, and, therefore, presumably supported by the local community.

The arrangements which we propose are currently authorized under Article X, §13 of the Alaska Constitution which allows local governments to enter into compacts for the joint administration of functions and powers. What is needed is clarification of the permissible scope and impact of these agreements, and new legislation which would allow such consortiums to jointly exercise authority outside of their existing local boundaries.

Conceivably, these consortiums would do three things. First, they would provide for coordinated administration of local governments. By splitting costs and sharing staff, the consortiums could provide a higher quality of service at a reduced cost, where the fragmented governments that now exist cannot operate. Second, the consortiums could address regional concerns, provide a forum for expressing those concerns, and advise state agencies on regional needs and desires.

Third, they would jointly exercise those powers which they agree to jointly exercise outside their current respective boundaries, or within existing boundaries, upon consent of the respective municipal governments.

STATE SUPPORT OF LOCAL AUTHORITY

There are a number of disincentives to a rural municipal government which wishes to exercise its municipal authority. For example, a rural community which passes an ordinance, may not be able to enforce it. If a city attempts to enforce its ordinances, it is subject to substantial liability under current tort law. Where a civil plaintiff or criminal defendant often have free legal assistance available, a city has severely limited funding available to enforce its ordinances or defend against civil complaints. If a city looses a civil suit, the resulting judgment could bankrupt the city or substantially incumber future revenues. In this atmosphere, it is impossible to expect a responsible city official to fully exercise the local government functions.

It is important that the state assist rural municipal government if it is to succeed. Many of the problems can be addressed in Title 29 itself. For example, municipal liability can be reduced to acceptable levels by enactment of a rule raising the standard of municipal tort liability for only those official acts involving "wanton and willful" conduct rather than mere negligence alone. Municipal ordinances and regulations can be assimilated into state law to allow state prosecution of local violations. Such assimilation could be dependent upon compliance with a model municipal code enacted by regulation or dependent on approval of the attorney general's office or Department of Community and Regional Affairs. Communities enacting nonapproved regulations and ordinances, however, should still be able to enforce them in the conventional manner.

Initially, such a system seems expensive to implement. It should be noted, however, that the state is expanding its criminal justice presence in rural Alaska. The proposed Bush Justice Corrections Plan would provide the basic infrastructure required by the above model. In light of these developments, the above model is a minor addition to the planned infrastructure.

IMPLEMENTATION OF LOCAL INPUT

Often local governments and state agencies are not coordinated. Most notably, state land disposals have often conflicted with local land use/development plans. State law generally favors local control or at least local input in the organized areas of the state. In the unorganized areas of the state, however, the state agencies seem to dominate. This exists in spite of the constitutional promise of maximized local participation. We, therefore, propose that some mechanism be inserted into law to provide for fuller local participation.

Three alternatives exist. First, an administrative restraint may be placed on agencies' actions. Specifiically, a community or consortium must agree to agency actions/plans affecting the community or consortium. In the absence of such consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires such agency action/plan.

A second alternative would be a planning restraint on the agencies. The communities or consortiums would produce regional plans with which the agencies must comply. Without compliance, the agencies would have to get a waiver from the community or consortium or proceed through a local neutral hearing.

Third, a political mechanism could be established. State law could require agencies to have local plans/actions approved by a local hearing officer at a local hearing. This would allow affected communities and consortiums an opportunity to provide input and hopefully influence agency actions in their areas.

We hope that you find the above comments useful, and that these concerns find their way into the planned Title 29 revisions. We will be glad to respond to any questions regarding the above proposals and plan to augment these comments as needed.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. Williams

William C. "Spud" Williams
President

WCW/4877m
113a11

Official Business

House of Representatives

Committee on

Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

June 12, 1980

TO: Mr. Billy Barrier
FROM: Marjorie Gorsuch
RE: FCCSHB947

Being aware that you will be involved in the revision of Title 29, as per the requirements of CSSCR66 which directs the Alaska Legislative Council to review the Municipal Government statutes, I want to call your attention to an area of law, enacted by the Eleventh Legislature as FCCSHB947, which you will want to address during the course of your revision. In the haste of the last days of legislative activity, the following omissions went unnoticed when the Free Conference version of the bill was adopted.

Section 9 AS 29.23.025 (e) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?

In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.

Both the draftsman, Jack Chenoweth, and Ginny Chitwood of the Municipal League which will be involved in the revision of Title 29 are familiar with the problems in the Free Conference law and would be able to answer any questions.

Elsie O'Brien (Houston city clerk) to Arliss Sturgulewski

(1) AS 29.28.190, recall provisions --

Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain

(2) AS 29.63.090 -- service areas within boroughs

The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.

General observation with respect to Title 29 -- would like greater information within the text of the ~~statute~~ volume. (This is probably not possible because of the strict format relating to what may be annotated. However, perhaps CRA Department should receive an amount so that each year, for small cities, a loose-leaf form of Title 29 may be prepared or updated which carries changes in law, applicable commentary, case decisions, AG opinion texts, etc. supplied by the Dept on a quarterly basis. -- The cities could reimburse for the service, or for a portion of it.)

8/7 JC

P.O. Box 163
ST. MARY'S, ALASKA 99658

July 29, 1980

Department of Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

Re: Recommendations for changes in Title 29
To Title 29 Policy Committee

Gentlemen:

At the request of Mayor Paukan I am submitting the following comments on some of the provisions of Title 29 that the City would like to see changed. The provisions I have commented upon are those that have proved somewhat troublesome during my duration as City Manager. There are no doubt many other provisions that require change.

29.23.570 VACANCIES: This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570

29.23.070 and 29.43.040 PLANNING, PLATTING AND ZONING The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

29.48.190 BUDGET AND CAPITAL PROGRAM Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except though lengthy procedures to amend the budget. The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the orignial appropriation.

29.48.220 POST AUDIT The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million

29.48.260 MUNICIPAL PROPERTIES I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's. First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak english from participating in auctions. The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

I can see no reason for subjecting leases of City land to the same requirements that attach to sales of city land. This unduly restricts the City's ability to make land available for new businesses.

It is not clear whether the exception developed in subsection (e) is free from the requirements of prior appraisal and public auction or sealed bid.

29.68.010 LOCAL BOUNDARY COMMISSION The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative session has begun. The delay in time between the decision of the Local Boundary Comm'n. and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

I am delighted to see the efforts to review Title 29. I hope it produces some beneficial results. I trust these comments will prove helpful.

Sincerely,

CITY OF ST. MARY'S

Timothy E. Troll
City Manager

AREAS OF AS 29 (MUNICIPAL CODE) REQUIRING ATTENTION

DICTATED 7/29/80 BUT NOT READ

BY GERALD L. SHARP

The use of the word election throughout the code should be examined with the eye to eliminating all those references to "general" election where it was meant to refer to a municipal election. Where a state general election was meant, the word "state" should be added.

AS 29.08.010, 29.13.010 and 100, and 29.78.010(1)(2)(8)

A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020

An interpretive guide should be provided for the court so that it does not seize upon this section to revive Dillon's Rule.

AS 29.13.100

The effect of the phrase "acting otherwise than as provided" should be examined to determine whether this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.130

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

AS 29.[illegible].180

Organizational grants under this section appear to be inadequate.

AS 29.18.330

The resident training and hire preference should be examined for constitutionality.

AS 29.23.060(a)

This section implies that there may be no special meetings if any member is not notified.

AS 29.23.060(d)

Some consideration should be given to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

AS 29.23.070

This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.080

This section should be checked to determine whether it tracts with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.040 et. seq.

The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly memebers should be uniform as between a city and a borough.

AS 29.23.210

Does this require four votes on a procedural motion? This language should parallel the similar provisions for

boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions.

AS 29.23.310

Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)

Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360

My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

AS 29.23.370

I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps, there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to serve two different masters, the legislative body, and the chief administrator.

AS 29.23.395 through .401

This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470

I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480

I suggest that the adoption of an ordinance at the very next meeting after the repeal of a manager plan is expecting

too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540

The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school boards budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. (Sour grapes on my part, perhaps.) Also, it appears that this section would permit a person working in the grants section of the Department of Community and Regional Affairs to serve on an assembly or a council.

AS 29.28.015

I question why the mayor in a manager type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030

It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the state of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.080(a)

This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.110

This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

This section should be clarified to indicate whether a re-elected official may be recalled within six months within of his second election.

AS 29.28.140

This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting. They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.150

Some thought should be given to clarifying this section to require that the name of each elected official appear on a separate petition and not be on the same petition with any other elected official. The statement of the grounds should also be limited to 200 words.

AS 29.28.160

Either the clerk or the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170

I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60. If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be given an additional ten days for their sloppiness or inadequate performance.

AS 29.28.200(c)

If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name

[illegible] recall ballot. [illegible] appointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?

AS 29.28.210

If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250

What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS 29.33.010

Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in its Lafayette decision.

AS 29.33.050

While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read "and shall establish, maintain, and operate."

AS 29.33.080(e)

Consideration should also be given here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.085(b)

The requirement that the commission present new recommendations on a comprehensive plan every two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it does not appear that there is any

pursuant to a comprehensive plan which has not been reviewed for more than two years. Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.110(b)(1)

I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works. The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)

It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance," or "variances from the terms of the zoning ordinance," or "requests....".

AS 29.33.120

It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)

I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150

It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

AS 29.33.150(b) and AS 29.33.160(c)

These sections need to be revised out of the code.

AS 29.33.190

This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.200

This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240

I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vest in a municipality upon vacation.

AS 29.41.010

Perhaps the idea of third class boroughs should be re-examined.

AS 29.48.010

I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I

should be a catch-all grant clause. Also, [illegible] should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.030

This may be the appropriate section to deal with the Lafayette antitrust problems. Under subsection (b), someone to check to determine whether the reference to the Alaska Transportation Commission makes sense in the light of SB 577 (sorry, I do not have the bill with me as I dictate this).

AS 29.48.033

Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

AS 29.48.050

I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.070, .080, and .090

The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly be adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)

Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110

AS 29 48.110 should be changed to make it clear that a

municipality may establish more than a [illegible] district.

AS 29.48.160(b)

If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.190(b)

This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and be for a capital improvement.

AS 29.48.200

The fine limitation and the imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

AS 29.48.210

This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide basis.

AS 29.48.250

Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260

I believe the exemption which is set forth in (d) should be expanded to incompass any land which the municipality disposes of.

AS 29.48.270(b)(c)

These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

AS 29.48.310, 320, and 330

Although these three sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights Card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.010

Again the problem of how this is to apply to unified units of government; also, this section should be changed to permit the use of areawide revenues on a non-areawide basis.

AS 29.53.020(a)(1)

Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

AS 29.53.020(a)(3)

A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps, hospital, which are used in this section. Also, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt; for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.030

This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.060

Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.135

This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to the exempt use.

AS 29.53.150

A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

AS 29.53.180

This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415 and .440

Something needs to be added to these sections to take care of the problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.73.020

This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

29.08

Although an attempt has been made in this Chapter to classify the various kinds of Alaskan municipalities, more recent amendments to Title 29 and unification of several cities and boroughs have resulted in confusion over definitions of "cities", "boroughs", and "municipalities". It is not clear, for instance, whether the unified Municipality of Anchorage is a city, a borough, or unified municipality or all three forms of government within existing provisions of AS 29.

29.13.100

The Code should contain a uniform system for designating statutes that expressly apply to home rule municipalities and all such statutes should be consistently cross referenced.

29.23.050

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

29.23.060(d)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

29.23.080

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

29.23.130(B)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

29.23.150 and AS 29.23.470

Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

29.23.170

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto. For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

The three year residency requirement here is probably invalid.

29.23.210

As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

29.23.250

Another probably invalid three year residency requirement.

29.23.270

This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

29.23.555

This section has been superceded by AS 39.50.

29.28.070(b)

Reference to "last general election" in this subsection is unclear; considerable confusion has existed in the past over whether the term refers to the last state or municipal election.

29.28.130 et seq

Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

29.33.070--245

Serious thought should be given to the purpose of the planning, platting and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

29.33.190

This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which has not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53 .310 allows persons holding security interest in illegally subdivided lands

29.33.070

It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

29.33

The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restrictive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

29.33.250

Presumably the transfer required is one from all cities exercising the power rather than from a city.

29.33 and 29.38

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities)?

29.48.030(b) AS 29.48.035(b) and (c)

These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code.

Moreover, AS 29.48.030 and .35, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very lease confusing and perhaps unnecessary.

Reference to powers granted to second class boroughs to construct and maintain Local Service Roads and Trails under AS 19.30.251 should be made in this section.

Reference to the power granted to local governments to regulate use of public streets, alleys and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

29.48.030(a)(12)

The term transportation "system" used in this section should be defined.

29.48.260

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of lanc offered for sale and the date upon which such valuations must be based. Moreover,

29.58.135

The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

29.53

Should be amended to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years. An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

29.63.090

The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

8.60.050-100

Regulation of junk yards in this section should be cross-referenced to those sections of Title 29. relating to areawide planning, platting and zoning powers.

9.25.110-120

It is unclear whether public records statutes apply at all to municipal government. If it is the intention of the Legislature to apply the public records laws of AS 9.25.110-120 to cities and boroughs, then those sections should be amended accordingly with an appropriate cross references to Title 29.

SUGGESTED CHANGES TO TITLE 29

From Elsie O'Brien (Houston City Clerk)

1. **AS 29.28.190, recall provisions:**
   Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.

2. **AS 29.63.090, service areas within boroughs:**
   The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.

3. General observation: would like greater information within the text of the volume. (This may not be possible because of the strict format relating to what may be annotated. However, perhaps CRA should receive an amount so that each year for small cities a loose-leaf form of Title 29 may be prepared to update which carries changes in law, applicable commentary, case decisions, AG opinions, etc., supplied by the Dept. on a quarterly basis.)

From Senator Robert H. Ziegler, Sr.

1. I don't much like AS 29.53.080. What privately contracting parties sell or pay for property need not necessarily reflect f.m.v. Alaskan assessors are supposed to assess at 100% of true value. Ergo, if they can examine and inspect properties, why can't they appraise without involving the records of the buyer/seller? (I've lost this argument before!)

From Jack Chenoweth (Staff Counsel, Legislative Affairs)

1. Give some thought to inclusion of a provision somewhere by which a state officer -- governor, CRA commissioner or what have you -- enjoys authority to appoint municipal voters to fill elected city or borough offices when the number of incumbent members of city council council or borough assembly drops below the number required by law or charter to produce a quorum. For example, if the 5 members of the Juneau assembly are recalled, it may be that the four remaining cannot function as an assembly even to the point of filling a vacancy or calling for an election to fill the vacancy. Other quirks in charter provisions could operate to preclude councils or assemblies from operating if there are "mass" resignations or wholesale removals.

1. Section 9 AS 29.23.025 (e) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?

2. In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.

From Clara M. Eccles (Anchorage)

1. I'm interested in SB 154 "Extending property tax exemption to include disabled veterans of any age." (Note: SB 154 did not pass last regular session.)

From Bruce Aronson (Ombudsman's Office)

1. AS 29.28.130 is unclear as to whether an official may be subject to recall within 6 months of being re-elected. It would seem that the original intent of this section was to protect rookies rather than encumbants. Recommendation: all officials may be recalled after 6 months have been served in office. The 6 month grace period would not apply if a person is re-elected to the same office.

2. The grounds for recall listed in AS 29.28.140 are too narrow in scope. Since the grounds stated in recall petitions need not be proven, people are forced to name one of the three listed grounds even when the real reason behind the petition bears little relation to it.

3. AS 29.28.150 should be changed so that it is clear that a recall petition can seek to recall only one named official. A separate petition should be filed for each offical sought to be recalled. A petition should be required to contain the mailing address of each person who signs it.

4. AS 29.28.180 should be changed so that a new petition may not be filed sooner than 6 months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

5. There has been a fear that once a sufficient petition has been submitted and accepted, members of the council could resign and be re-appointed to the council. The statutes should preclude this possibility.

6. The statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition, not on the state election.

7. It is unclear whether a person recalled is removed from his office at once after the election has been certified, without any transition period. Some sort of transition period should be provided by statute to allow a government to continue to operate when a majority has been recalled from office.

8. Eliminate third class boroughs. There is no need for them now that REAAs have been established. If a borough is organized, it should assume minimal responsibilities, such as land use planning.

9. There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what types of enforcement services a city must provide. This will never be done voluntarily on a local level because the state currently provides free police services. A statute should identify the types of local problems which the state troopers will not pursue, such as dog control.

10. There is a problem with local control of service areas. Community councils are getting direct support form the state and this creates mini-municipalities within the municipality which sets up the service area. The resulting overlapping jurisdiction causes confusion as to policy and citizens cannot determine who to deal with regarding particular problems. The councils should be advisory only by statute and money from the state ought to be appropriated for the city, not the council.

11. Statutes should be clarified and strengthened regarding the annexation process. Cities ought not to be able to annex territory without providing services to the annexed area and people living outside cities who are receiving services ought to help pay for them.

From Palmer McCarter (C & RA)

1. Clarify whether "health and hospital power" is one or two separate local powers.

2. Adopt uniform definitions of "municipality," "borough," and use the terms consistently throughout the title.

3. Clarify the use of the terms "general" and "regular" election. Use the term "general" election to refer to state, not local elections.

The following items as pertain to Title 29 were included in the preliminary draft of the Alaska Municipal League 1981 policy statement as agreed upon by the AML Legislative Committee at their meeting in Palmer, August 21 & 22, 1980.

Final action on the 1981 policy statement will be taken by the delegates of the Alaska Municipal League conference when it convenes its business meeting in Fairbanks on November 15, 1980.

PART I - TAXATION AND FINANCE

E. Funding the Newly Organized Municipalities.

1. The League requests the enactment of legislation to provide adequate block grants to assist in the formation of new municipalities.

F. Funding the Study and Formation of New Municipalities

1. The League requests the enactment of legislation to provide adequate block grants to assist in the implementation of newly organized municipalities.

PART II - EDUCATION

B. Assembly/Council-School Board Relationships

1. The League supports legislation to clarify assembly/council-school board relationships and opposes legislation which would diminish assembly/council authority in education matters.

PART IV - LAND USE

A. Local Options

1. The League feels strongly that laws pertaining to the powers of local planning and zoning must allow for the greatest flexibility at the local level.

E. Coastal Management

1. The League supports continued and maximum local control in the development and management of the coastal policies, coastal planning and implementation of coastal policies.

2. The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt said "extra-territorial" planning as part of the Alaska Coastal Management Program until such time as a resource district plan is adopted.

3. The League urges the state agencies to abide by a municipality's interpretation of coastal management standards from the time of conceptual approval by the municipality until fiscal approval by the Legislature.

F. Subdivisions

1. Subdivision of land is a major factor in community development, creating patterns which have long lasting effects. Although present legislation clearly recognizes the need for regulation of subdivision, means of enforcement are inadequate. The League supports legislation which would require proof of approval by local authorities prior to the filing of an instrument affecting the boundaries of land and prior to any judicial partition of real property.

2. The League supports legislation which would require legal access to all state land disposals; and that, except for state subdivisions in remote areas or for dispersed entry, local subdivision improvement requirements be honored by the state by either installing such improvements or by acquiescing in the formation of service areas and local improvement districts containing such property and honoring the obligation to pay LID assessments on such property while it is in state ownership.

3. The League supports the concept of an Enterprise Fund as a means for the state to provide required improvements in state land disposals.

PART V - TRANSPORTATION, DOCKS AND PORTS

11. Port Authorities: Insufficient mechanisms exist under Alaska law to create joint port authorities, free port of entries and trade zones. Therefore, the League supports legislation to expand the powers of home rule and general law municipalities to create, finance and operate port facilities and ancillary authorities to enhance commerce within the State of Alaska.

PART VII - MUNICIPAL ELECTIONS

A. Majority Elections

1. The League strongly supports legislation which would permit a municipality, with voter ratification, to opt out of the 40% plurality requirement for election to office and which would clarify the 40% rule for municipalities that continue to use it.

G. Qualifications for Elective Office

1. The League supports legislation that would include provisions in Title 29 for municipalities to set qualifications for all elected municipal officials and to delete that section in Title 14 relating to municipal school board member qualifications.

2. The League supports legislation that would amend Title 29 to include reference to the requirements of AS 15.13 and AS 39.50 pertaining to qualifications of candidates.

H. Title 29 Revisions

1. The League supports legislation which would clarify AS 29.28.070(b) to specify that signature requirements for petitions be based upon the last regular election held just preceeding the date of first circulation of the petition.

2. The League supports legislation amending AS 29.28.070 to provide that the number of signatures required to initiate a petition for referendum, initiative or recall be 30% of the number of voters voting in the last regular election regardless of population of the municipality.

3. The League supports revision of the reapportionment provisions of Title 29 for clarification, simplification, flexibility and autonomy at the local level.

PART VIII - LOCAL GOVERNMENT POWERS

A. Local Autonomy

5. The League supports the community council concept and also supports legislation which would require that the local governing body be the management unit for local community councils. The local governing body should be both the requester and receiver of state funds that will be used to fund community councils.

C. Third Class Borough

1. The League supports elimination of language from Alaska Statutes which would allow for the future creation of third class boroughs. Any existing third class borough would be allowed to continue in existence until such time as it reclassifies. The League believes that a third class borough, as currently defined in statute, does not meet standards for a general purpose local government.

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Judith Slajer, Borough Manager*

FROM: Kathryn Carssow, Planning Director

DATE: August 14, 1980

RE: A.S. 29.63.090, Service Area

As we discussed, Judi pointed out a problem in the following excerpt from A.S. 29.63.090:

> ...the exercise of the powers must be approved by a majority of the qualified voters residing within the service area...

This doesn't correspond with A.S. 29.63.015, outlining procedures for special assessments, where the borough notifies the legal owner of record of real property of the proposed assessment, and where, if the bearers of 50% of the assessment protest, the process stops. These two sections are too interdependent for such a discrepancy.

The wording under service areas is unclear. Who has the right to vote: the renter residing on the property in the proposed service area or the absent property owner, who will bear the assessment? I'd guess the legislature envisioned the property owner residing on the lot; your point about the absentee land owner living in Florida is well taken. Moving owners onto their property in trailers long enough to hold an election is equally absurd. More research is needed to find clear and equable wording, but as a start I suggest the following for discussion:

> ...the exercise of powers must be approved by a majority of the qualified voters <u>who are legal owners of real property</u> within the service area...

*(Judi: Please note your comments.)

Russ - I feel that making this just real property owners is very limiting - would approach the problem from a petition standpoint - i.e., if there is a number of residents that has problems also

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7200
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

July 31, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 N. Franklin Street
Juneau, Alaska 99801

Re: Title 29 Review

Dear Ginny:

In furtherance of our telephone conference this date, please find enclosed herewith a preliminary list of matters the Ketchikan Gateway Borough and staff would appreciate being considered regarding the proposed Title 29 review. As I also mentioned, we would expect further submissions by staff as soon as possible as their concerns are developed.

If we can submit any further information regarding these points, please do not hesitate to so advise.

Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: Borough Manager
City Manager

Amend to include "harbors" as type of facility municipality may own or operate outside its boundaries.

Comments: The City of Ketchikan currently leases from State and operates several boat harbors outside the boundaries of the City.

2. AS 29.53.135 - Board of Equalization:

Amend to clarify authority of assembly to appoint a board composed of not less than three (3) persons who may be (a) members of the assembly, (b) private individuals with certain experience, or (c) combination of (a) and (b). [See attorney Tesche memorandum, page 3]

3. Interest Rate:

The legal rate of interest now provided for in various tax enforcement provisions is eight (8%) percent.[1] Consideration should be given as to whether this rate should be increased. Also, interest rate on special assessments [AS 29.60.060(a)] is linked to the interest on real property taxes.

4. AS 40.15.030; AS 40.15.050 - Dedication of Streets, Alleys and Thoroughfares:

Add language to specifically provide that although second class borough may, as the platting authority, require, as a condition of approval of a subdivision of property, the dedication of rights-of-way and easements, and the installation of roads, sewers, and other utilities and improvements, and the dedication of such rights-of-way and improvements to the public, that the borough does not by such action become liable or responsible for any maintainance, operation, or inspection thereof, or for injuries to any person using the improvements (i.e., child drowns in drainage culvert not covered, cleaned, inspected, or maintained).

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[1] See: AS 29.53.180(a)(1), (a)(2), and (c)
AS 29.53.375
AS 29.53.390
AS 29.53.415(d) (sales tax)

Comments: Since a second class borough does not have road or other maintenance powers, but via the planning commission is the agency that requires and approves, incident to its platting authority, the design, construction and installation of subdivision improvements, which by AS 40.15.030 - AS 40.15.050 are "deemed to have been dedicated to public use," a question regarding ownership and duty to inspect and repair the facilities arises (See 9.65.070 - [immunity applies only "when the municipality is neither the owner nor lessee of the property involved"]). State law has addressed certain aspects of the matter in AS 38.08.090.

7. Implementation of Grants:

Amend AS 37.05.315 [HB 578] to require the State Department of Community and Regional Affairs to receive, administer, and implement any State grants which a municipality does not have the power to administer and implement (such as those appropriated by Ch. 50 SLA 80 as is now the procedure regarding grants to unincorporated communities where there is no incorporated entity qualified to receive the grant (AS 37.05.315(h)(3)). Also amend AS 37.05.315(c) to not impose covenant requirements on municipality with no power to operate and maintain the facility.

6. AS 29.33 - Planning, Platting and Zoning:

(a) AS 29.33.085 - Comprehensive Plan: Amend section to require comprehensive plan review every five (5) years rather than every two (2) years.

Comments: See paragraph (1) of Planning Director's memorandum dated July 22, 1980.

(b) AS 29.33.090 - Zoning: Expand on enabling language to assure borough is not restricted in forms of zoning permitted.

Comments: See paragraph (2) of Planning Director's memorandum dated July 22, 1980.

(c) AS 29.33.150 - Platting Jurisdiction and Power: Amend subsection (b) to delete the following language in brackets and adds the underlined language to clarify the responsibility of State to comply with design and other requirements and only exempts State from actual construction requirements:

"(b) The regulations adopted under (a) of this section apply to subdivision plat of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board, except that the platting board [may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat] must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land."

Comments: See paragraph (3) of Planning Director's memorandum dated July 22, 1980.

(d) AS 29.33.200 - Alteration of Replat: Amend or add a new section to allow for approval and recording of plats for minor boundary adjustments without going through formal planning commission hearings where no new lots are created, and no new dedications of roads or other rights-of-way are involved.

Comments: See paragraph (4) of Planning Director's memorandum dated July 22, 1980.

(e) AS 9.55.275: Add language to recognize that a change in boundary pursuant to AS 09.55.275 may result in a substandard size lot, and that compliance with normal subdivision requirements is not required with waiver by assembly permitted.

Comments: Cities or other public agencies frequently acquire in fee narrow strips or areas for road widening, sewer, park or other facilities which are very small in size (i.e., pump station for sewer system 25 x 25 etc.) and the public agency may in fact be prohibited from acquiring excess area not actually required for the public improvement. Such acquisitions frequently result in a change of boundary within the provisions of AS 09.55.275 and planning commission approval of a preliminary plat and also a final plat, is required.

(f) State Filing of Acquisitions. Filing of a plat with the local planning authority should be required if State acquires easements or rights-of-way across platted parcels.

Comments: See paragraph (4) of Planning Director's memorandum dated July 22, 1980, addressing need for filing with the local planning authority.

(g) AS 29.33.170 - Waiver of Subdivision Requirements: Amend section to make waiver permissive and clarify access which must be found to exist before platting authority may waive plat approval and recording requirements.

Comments: See paragraph (5) of Planning Director's memorandum dated July 22, 1980.

7. AS 29.53 - Corrections, Cancellations, Refunds and Transfers of Taxes. Add sections to provide procedures for correction of tax roll, refund or cancellation of taxes after confirmation and certification of final tax roll when required to correct clerical or mathematical errors, assessment of non-existent property, errors in legal description, or other administrative problems. AS 29.53.390 does not accommodate the foregoing.

Comments: The Borough assessor advises the State assessor, with assistance and input from local assessors, will be making suggestions and proposals regarding the above.

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Judith Slajer, Borough Manager

FROM: Kathryn Carssow, Planning Director

DATE: July 22, 1980

RE: Title 29 Revisions

Last week, Bill, Jim, and I met to discuss improvements to Title 29; following are our recommendations --- add, (delete):

1. Section 29.33.085. Comprehensive plan. (b)...The planning commission shall undertake an overall review of the plan at least once every (two) five years.

   To do justice to the time and money invested to develop the original policies, an overall review of the comprehensive plan every two years is impossible for a small department like ours with other major projects. We prefer revision every five years to allow us time to detect and incorporate changes in economic, population, and land use trends and to undertake other major planning efforts without increasing our existing staff.

2. Section 29.33.090. Zoning. We intend to do additional research on this section. Our concern is that performance zoning may not be allowed under this section.
   AS 29.33.090 states in part "The assembly shall regulate... use of land...by districts or contract zoning." Contract zoning being a hybrid of a district (Euclidean) type zoning. Many performance systems do not employ districting as a control element. Therefore present state law may not include enabling language for other than land use controls based on traditional Euclidean zoning.

3. Section 29.33.150. Platting jurisdiction and power. (b)...the platting board (may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat) must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land.

Of course we prefer to see this section deleted altogether, but clarification along these lines will be an improvement.

4. Section 29.33.200. Alteration of replat petition. See attached memo from Jim re: feasibility of shortened plat procedure.

   This section needs language to distinguish plat alterations from subdivisions.

   Also, AS 09.55.275 requires plat approval for parcels condemned for public purposes - e.g. city condemnation of the Wingren property for the sewer pump station - but AS 29.33 does not have corresponding language speaking to approval of substandard parcels for public purposes. See Attachment 2.

   See Attachment 3 for Bill's explanation of problems resulting from condemnations for state right-of-ways.

5. Section 29.33.170. Waiver in certain cases. (a) The platting authority (shall) may...

   (1) each tract or parcel of land will be located on or have (adequate access to a) developed road access to a public highway or street;...

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

   For purposes of maintaining accurate platting records Section 29.33.170 should be deleted entirely; as a minimum, we recommend the above clarifications. The first is intended to define "adequate access." The second deletes the reference to projected development; for all practical purposes it's a meaningless criteria.

MT

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Judith Slajer, Borough Manager

THRU: Kathryn Carssow, Planning Director

FROM: Jim Rapp, Zoning Administrator

DATE: January 15, 1980

RE: Feasibility of Shortened Plat Procedure

At the January 14, 1980 workshop on the proposed new subdivision ordinance considerable discussion centered on the possibility of shortened plat procedures for "minor" subdivisions. A minor subdivision is basically one that does not involve the creation of additional lots or new streets. An example would be, two neighbors wishing to swap a 10' wide strip of land along their common side lot line in order to correct a house siting error. Proposed Section 55.10.045 (attached) provides a mechanism for such a shortened procedure.

This proposed section, as presented to the Borough Assembly, calls for a one step approval by the Platting Board, as opposed to the usual two step approval. As originally recommended by the Planning Commission in their review of the new ordinance, this provision was made an entirely administrative responsibility. Provided the limitations of Section 55.10.045 were honored, the designated planning official would approve the plat, obtain necessary signatures (Borough Manager, Planning Commission Chairperson, etc.) and see to its recording. However, the Municipal Attorney, in reviewing the Planning Commission's recommendations, found that Alaska Statutes Title 29 and Title 40 mandated approval by the full Platting Board in all cases.

Alaska Statute 29.33.200 sets out a replat alteration procedure that states that the petition shall be filed for approval by the Platting Board. This is reinforced by Alaska Statute 40.15, Dedications and Subdivisions, which calls for platting authority action in several instances. Alaska Statute 29.33.200 is the only vehicle suggesting the application of a minor subdivision procedure and unfortunately perhaps does not accomodate the greatest possible shortening of the process.

Administrative approval of short plats is a practice widely used in other areas and has several advantages, such as reduced processing times and costs. In order to protect neighboring properties, I would suggest that public notices be sent out for short plats with a five day response limitation. If any significant problems come to light as a result, an administrative decision would be made to present the plat to the full Board. Amendments to Alaska Statute 29 would be necessary for Ketchikan to adopt such a policy. Section 55.10.045 of the revised subdivision ordinance is the most expeditious route available at present. If a change in state law is desired, I suggest the Assembly refer the matter to legal and planning staff for preparation of language addressing the necessary changes and subsequent discussion of this issue with our state legislators.

wr

Attachment 1

City is submitting this plan as a matter of form. The statute requiring the plat is AS 09.55.275, quoted here in full:

> "Replat approval. No agency of the state or municipality may acquire property located within a municipality exercising the powers conferred by AS 29.33.150 - 29.33.245 which results in a boundary change unless the agency or municipality first obtains from the municipal platting authority preliminary approval of a replat showing clearly the location of the proposed public streets, easements, rights-of-way, and other taking of private property. Final approval of replat shall be similarly obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners."

Attachment: Site Plan

TO: Kathy Carrsow, Planning Director

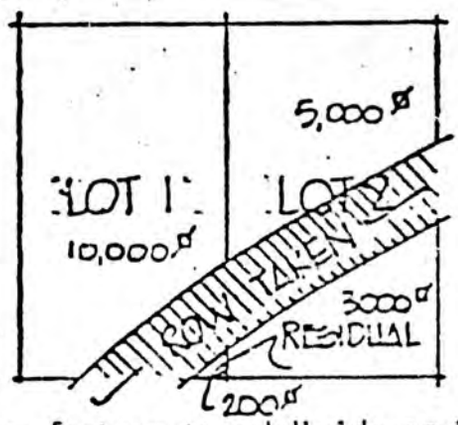
FROM: Bill Jones, Associate Planner

DATE: July 17, 1980

RE: Title 29

In reviewing Title 29 I was not able to identify any specific section which would apply to the State of Alaska "taking" land for rights-of-way without the benefit of a replat. My concern is that these defacto subdivisions often become obstacles to proper land development.

The following sketch illustrates the problem and I have included questions that "local planners" are often asked about results they were powerless to affect.



Can I use the square footage to subdivide or increase density ?

Can I put a culvert under the road and use it for a drainfield ?

Can I sell it to someone else ?

Just what can I do with it ?