

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

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(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.23.200(c) except that three of the members are elected for an initial term of one year. (S 3 ch 143 SLA 1978)

**Sec. 29.18.580. Planning and zoning authority.** The general development plan and specific development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough. (S 3 ch 143 SLA 1978)

**Sec. 29.18.590. Transfer of utilities to capital city.** The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee which shall consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them. (S 3 ch 143 SLA 1978)

**Sec. 29.18.600. Definitions.** In §§ 510 — 600 of this chapter, unless the context requires otherwise,

(1) "capital city area" means the area described in § 520 of this chapter;

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

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

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

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan. (§ 3 ch 143 SLA 1978)

**Sec. 29.18.610. Short title.** Sections 510 — 610 of this chapter may be cited as the Capital City Incorporation Act. (§ 3 ch 143 SLA 1978)

## Chapter 23. Municipal Officers and Employees.

### Article 1. Borough Assembly.

**Sec. 29.23.010. General power.** The legislative power of a borough is vested in the assembly. (§ 2 ch 118 SLA 1972)

**Establishment of department and procedures for exercise of areawide power.** — The establishment of a department and of standards and procedures to be used in the exercise of an areawide power is a task for the borough assembly, in which is vested the general legislative power. 1962 Op. Att'y Gen., No. 9.

The borough assembly may set up a board of health as an advisory board and be substantially guided by such a board of health in its exercise of the public health power, as long as the borough assembly is the body finally expressing the public health power. 1962 Op. Att'y Gen., No. 9.

**Lack of a valid legislative body would not prevent the valid incorporation of a municipality.** This conclusion is bolstered by noting that Alaska's newly-enacted Municipal Government Code has completely separated the statutes relating to the incorporation procedure from those relating to the borough's legislative body.

**Borough chairman cannot serve on borough assembly.** — To permit the borough chairman to serve on the borough assembly would constitute a clear violation of this section, and would violate the common law prohibition against holding incompatible offices. 1963 Op. Att'y Gen., No. 27.

**But positions of borough assemblyman and school board representative can be served concurrently.** — A person elected to the positions of borough assemblyman and borough school board could properly exercise the powers, privileges and duties of both offices concurrently. 1963 Op. Att'y Gen., No. 27.

*Jefferson v. State, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (1974).*

The incorporation of a municipality is a process both conceptually and functionally distinct from that of establishing a legislative body for that corporation. *Jefferson v. State, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (1974).*

**Sec. 29.23.020. Composition, apportionment, and reapportionment.**

Repealed by § 21 ch 83 SLA 1979, effective January 1, 1981.

**Cross reference.** — For present provisions covering the subject matter of the repealed section, see AS 29.23.021 and 29.23.025.

**Editor's note.** — The repealed section derived from § 2, ch. 118, SLA 1972; § 12, ch. 118, SLA 1972; § 9, ch. 200, SLA 1972.

Section 26, ch. 83, SLA 1979 provides: "Notwithstanding AS 29.23.010, amended by sec. 4 of ch. 83, SLA 1979, the terms of office of borough assemblymen elected or

appointed to dual borough assembly-city council seats are not affected by the amendment made to AS 29.23.040 in sec. 4 of ch. 83, SLA 1979 until reapportionment of the borough assembly is required or proposed under AS 29.23.020, repealed by sec. 21 1241 of ch. 83, SLA 1979, or is effected as required or proposed under AS 29.23.021 — 29.23.025, added by sec. 4 of ch. 83, SLA 1979."

**Sec. 29.23.021. Assembly composition and apportionment [Effective January 1, 1981].** (a) Assembly composition and apportionment shall be consistent with the equal representation standards of the Constitution of the United States.

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

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

(d) A member of the assembly of a borough may not be elected or appointed by and from the council of a city in the borough. (1 ch 83 SLA 1979; am 10 3, 4 ch 128 SLA 1980)

**Effect of amendment.** — The 1980 amendment, effective January 1, 1981, substituted "the requirements of this section" for "AS 29.23.023" near the end of subsection (b), and added subsection (d).  
**Effective date.** — Section 27, ch. 83, SLA 1979, makes this section effective

January 1, 1981.  
 Statute superseded home-rule enactments. — See *Roderick v. Sullivan*, Sup. Ct. Op. No. 1099 (File No. 2243), 528 P.2d 450 (1974), decided under former AS 29.23.020

**Sec. 29.23.023. Composition and form of representation [Effective January 1, 1981].** (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.23.025(a).

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

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.68.240 - 29.68.410;

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation (R.S. ch. 83 SLA 1979; am. § 5 ch. 128 SLA 1980)

**Effect of amendment.** — The 1980 amendment, effective January 1, 1981, rewrote the section.

**Effective date.** — Section 27, ch. 83, SLA 1979, makes this section effective January 1, 1981.

**Sec. 29.23.025. Assembly recomposition and reapportionment [Effective January 1, 1981].** (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.23.021. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.23.023(b)(2) or (b)(3), the assembly shall submit with the proposition a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.23.021, the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.23.021. At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registered voters who are residents of the borough requests the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.23.021, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.23.021, the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.23.021 by preparing an order of reapportionment and delivering the order to the borough mayor.

(f) Repealed by § 13 ch 128 SLA 1980.

(g) Repealed by § 13 ch 128 SLA 1980. (§ 1 ch 83 SLA 1979; am §§ 6-9, 13 ch 128 SLA 1980)

**Effect of amendment.** — The 1980 amendment, effective January 1, 1981, rewrote subsections (a) — (c) and repealed subsections (f) and (g). The amendment also rewrote subsection (e).

**Effective date.** — Section 27, ch 83, SLA 1979, makes this section effective January 1, 1981.

**Statute superseded home-rule enactments.** — See Roderick v. Sullivan,

Sup. Ct. Op. No. 1089 (File No. 2243), 528 P.2d 450 (1974), decided under former AS 29.23.020.

The legislature intended that all reapportionment ordinances be submitted to the electorate. *Roderick v. Sullivan*, Sup. Ct. Op. No. 1089 (File No. 2243), 528 P.2d 450 (1974), decided under former AS 29.23.020.

**Sec. 29.23.027. Apportionment appeals [Effective January 1, 1981].** (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.23.021 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.23.021, or whether a decision of the borough assembly that the standards of AS 29.23.021 do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.23.025(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.23.025(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.23.021, or if he determines that the decision of the borough assembly that the standards of AS 29.23.021 do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.23.021 and submit the ordinance to the voters.

(d) When the borough assembly has been directed by the commissioner of community and regional affairs to prepare a

reapportionment ordinance under (c) of this section, the borough assembly shall, within two months of its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The borough assembly shall submit an ordinance adopted under this subsection to the voters at a regular election or special election held within 60 days of the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this section an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.23.021 by preparing an order of reapportionment and delivering the order to the borough mayor. (§ 10 ch 128 SLA 1980)

**Effective date.** - Section 14, ch. 128, SLA 1980, makes this section effective January 1, 1981.

**Sec. 29.23.029. Judicial review and relief [Effective January 1, 1981].** (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportionment order issued under AS 29.23.027(e).

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

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

(2) a determination by the borough assembly under AS 29.23.025(c) that the standards of AS 29.23.021 do not require a change in apportionment;

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

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.23.027(e);

(5) a reapportionment ordinance approved by the voters under AS 29.23.027(d); and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.23.027(e). (§ 10 ch 128 SLA 1980)

**Effective date.** - Section 14, ch. 128, SLA 1980, makes this section effective January 1, 1981.

**Sec. 29.23.030. Election and appointment.**

Repealed by § 16 ch 118 SLA 1972.

**From reference.** See Editor's note. **Editor's note.** The repealed section derived from § 2, ch. 118, SLA 1972.

**Sec. 29.23.031. Effective date of apportionment [Effective January 1, 1981].** (a) A change in assembly apportionment or composition under AS 29.23.025 or 29.23.027 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.23.025(a), 29.23.025(e), or 29.23.027(d); or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.23.027(e).

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

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

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

(3) the last day on which the Attorney General of the United States may review a proposed change in the composition or apportionment of the assembly. (§ 10 ch 128 SLA 1980)

**Effective date.** — Section 14, ch 128, SLA 1980, makes this section effective January 1, 1981.

**Sec. 29.23.033. Applicability of apportionment provisions [Effective January 1, 1981].** The provisions of AS 29.23.025 — 29.23.031 do not apply

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

(2) to a home rule borough if the borough, by charter, provides for reapportionment of the borough assembly. (§ 10 ch 128 SLA 1980)

**Effective date.** — Section 14, ch 128, SLA 1980, makes this section effective January 1, 1981.

**Sec. 29.23.040. Regular term of office.** (a) Assemblymen are selected for three-year terms and until their successors are selected and have qualified, unless different terms not exceeding four years are prescribed by borough charter or ordinance. Except when otherwise required by a change of composition or apportionment, if the term of an assemblyman is changed by charter or ordinance, the term of an assemblyman holding office at the time the change takes effect is not affected by that change.

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

(c) This section applies to home rule and general law boroughs. (§ 2 ch 118 SLA 1972; am § 13 ch 118 SLA 1972; am § 4 ch 83 SLA 1979; am § 11 ch 128 SLA 1980)

**Effect of amendments.**

The 1979 amendment rewrote the second sentence of present subsection (a).

The 1980 amendment, effective July 1, 1980, restructured the section into present subsections (a) - (c), added the present second sentence of subsection (a), and substituted "unless a different date is prescribed by borough charter or ordinance" for "the current term of incumbent assemblymen may not be altered under this section" at the end of subsection (b).

**Editor's note.** — Section 26, ch. 83, SLA 1979, provides that the terms of borough assemblymen elected or appointed to dual borough assembly-city council seats are not affected by the amendment made to AS 29.23.040 by sec. 4, ch. 83, SLA 1979 until reapportionment of the assembly is required or proposed under AS 29.23.020 or under AS 29.23.021 -- 29.23.025.

**Sec. 29.23.050. Qualifications.** A resident of the borough is eligible to be an assemblyman if he is a borough voter. An assemblyman who ceases to be a borough voter immediately forfeits his office. An assemblyman elected from or selected to represent a borough area less than the borough area at large who becomes a resident of another area may continue to serve only until the next regular election. The assembly may by ordinance establish residence requirements for assemblymen not exceeding three years.

This section applies to home rule and general law boroughs. (§ 2 ch 118 SLA 1972; am § 14 ch 118 SLA 1972)

**Cross reference.**—See Editor's note to AS 29.18.120.

**Effect of amendment.** — The 1972 amendment rewrote this section

**Sec. 29.23.060. Procedure.** (a) The assembly shall meet at least once every month, unless otherwise provided by ordinance. All meetings shall be public meetings. Special meetings may be held on the call of the chairman, the presiding officer, or one-third of the members, upon not less than 24 hours written or oral notice communicated to each member. In an emergency a special meeting shall be a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at its pleasure, except that in manager plan boroughs the borough mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

**Sec. 29.23.060. Procedure.**

(c) The assembly shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The assembly is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The assembly shall consider a conviction of a member for a felony or misdemeanor described in AS 15.56 as a corrupt practice at its first meeting following the final determination of the conviction. (am § 209 ch 100 SLA 1980)

(d) A majority of the membership authorized by law constitutes a quorum. In the absence of a quorum, any number less than a quorum may recess or adjourn the meeting to a later date. Actions of the assembly are adopted by a majority of the votes authorized on the question. All assemblymen present shall vote unless the assembly for special reasons permits a member to abstain, except no assemblyman may vote on a question in which he has a substantial direct or indirect financial interest.

(e) The final vote on each ordinance, resolution, or substantive motion is a recorded "yes" or "no", except that if the vote is unanimous it is necessary only so to state.

(f) Repealed by § 16 ch 118 SLA 1972.

(g) Repealed by § 16 ch 118 SLA 1972.

(h) Repealed by § 16 ch 118 SLA 1972.

(i) Repealed by § 16 ch 118 SLA 1972.

(j) Repealed by § 16 ch 118 SLA 1972. (§ 2 ch 118 SLA 1972; am § 16 ch 118 SLA 1972)

**Cross reference.**—See Editor's note to AS 29.18.120.

As to abstaining from official action when there is a conflict of interests, see AS 29.23.555.

**Effect of amendments.**

The 1980 amendment, effective January 1, 1981, added the second and third sentences in subsection (c).

**Effect of amendment.**— The 1972 amendment repealed subsections (f), (g), (h), (i) and (j).

**Editor's note.**— AS 15.56 which is mentioned in this section was enacted by ch 100, SLA 1980, but does not go into effect until January 1, 1981.

**Sec. 29.23.070. Departments.** (a) The assembly may establish departments and distribute administrative functions among them.

(b) Each department is administered by a department head. With the consent of the assembly, the borough mayor may serve as

the head of one or more departments or may appoint one person as the head of two or more departments. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.080. Assembly vacancies.** The assembly shall provide by ordinance the manner in which a vacancy in assembly representation occurs. A vacancy is filled by the majority of the remaining assemblymen, who designate a voter and, if the assembly seat vacated is other than an at-large seat, a resident of the borough area to which the seat was apportioned, to serve until the next regular election. However, if under a borough apportionment city councilmen are appointed as assemblymen or elected to dual assembly-council seats, a vacancy in a councilman's seat on the assembly shall be filled by a councilman designated by a majority of the remaining membership of the council to serve until the next regular election. (§ 2 ch 118 SLA 1972; am § 16 ch 118 SLA 1972)

**Cross reference.**—See Editor's note to AS 29.18.120.

**Effect of amendment.**— The 1972 amendment rewrote this section.

**Sec. 29.23.090. Reapportionment.**

**Repealed by § 16 ch 118 SLA 1972.**

**Cross reference.—See Editor's note  
to AS 29.18.120.**

**Editor's note.—The repealed section  
derived from § 2, ch. 118, SLA 1972.**

**Sec. 29.23.100. Borough sections.**

**Repealed by § 16 ch 118 SLA 1972.**

**Cross reference.—See Editor's note  
to AS 29.18.120.**

**Editor's note.—The repealed section  
derived from § 2, ch. 118, SLA 1972.**

## Article 2. Borough Executive and Administrator.

### Sec. 29.23.130. Power generally.

(a) If the borough has not adopted a manager plan, the borough executive and administrative power is vested in an elected borough mayor. If the borough has adopted a manager plan, the administrative power is vested in an appointed manager and the executive power in an elected borough mayor who has the same functions as those of the mayor of a manager-plan city under § 240 of this chapter.

(b) A borough voter is eligible to be borough mayor. The assembly may by ordinance establish residence requirements for candidates for borough mayor not exceeding three years.

(c) The borough mayor's regular term of office is three years and until a successor is elected and has qualified and begins on the first Monday following certification of the mayor's election. The assembly may provide by ordinance for a different term not to exceed four years, except that the current term of an incumbent borough mayor may not be altered.

(d) A borough may adopt or abandon a manager plan at any time, as provided in AS 29.23.410 — 29.23.480. The borough mayor may not veto an ordinance or resolution calling for an election on this question. The manager has all the powers and duties of the borough mayor as chief administrative officer. The borough mayor then serves as borough executive.

(e) A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan may, by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in AS 29.23.130 — 29.23.150 and AS 29.23.450 — 29.23.470. Nothing in this subsection affects the authority of the assembly or council to provide for other dual officeholding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

(f) The assembly, with the concurrence of two-thirds of its members, may remove the borough mayor from office for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The assembly shall consider a conviction of the borough mayor of a felony or misdemeanor described in AS 15.56 as a corrupt practice at its first meeting following the final determination of the conviction.

(am § 1 ch 6 SLA 1975; am § 1 ch 63 SLA 1976; am §§ 5, 6 ch 83 SLA 1979; am § 210 ch 100 SLA 1980)

**Effect of amendments.** — The 1975 amendment added subsection (e).

The 1976 amendment added the second sentence of subsection (d).

The 1979 amendment substituted "certification of the mayor's election" for "his election, which is held the first Tuesday of October, unless a different date of election is provided by ordinance" at the end of the first sentence of subsection (c) and deleted the former fourth sentence of subsection (d), which read: "If the manager plan is adopted, it becomes effective

following certification of the results of the first regular election occurring at least six months after adoption of the plan."

The 1980 amendment, effective June 21, 1980, added subsection (f).

**Editor's note.** — AS 15.56 which is mentioned in this section was enacted by ch 100, SLA 1980, but does not go into effect until January 1, 1981.

**Editor's note.**—Section 20, ch. 118, SLA 1972, provides: "The terms of elected officials who are incumbents on September 10, 1972, are not affected by this Act. Their terms expire as provided before enactment of this Act."

**Borough chairman cannot serve on borough assembly.** — To permit the

borough chairman to serve on the borough assembly would constitute a clear violation of this section, and would violate the common law prohibition against holding incompatible offices 1963 Op. Att'y Gen., No. 27.

**Sec. 29.23.140. Powers and duties of borough administrator.** The borough mayor or manager as the case may be, as the chief administrative officer, is responsible for the proper administration of all borough affairs. The mayor or manager of the borough shall

(1) appoint borough employees and administrative officers, except as provided otherwise in § 360 of this chapter and AS 29.33.050; he may hire necessary administrative assistants and may authorize an appointive administrative officer to appoint, suspend, or remove subordinates in his department;

(2) suspend or remove by written order borough employees and administrative officers, except as provided otherwise in § 360 of this chapter and AS 29.33.050;

(3) supervise enforcement of borough law;

(4) prepare the annual budget and capital improvements program for the assembly;

(5) execute the budget and capital improvement program as adopted;

(6) make monthly reports to the assembly on borough finances and operations;

(7) report to the assembly at the end of each fiscal year on the finances and administrative activities of the borough;

(8) prepare and make available for public distribution an annual report on borough affairs;

(9) serve as borough personnel officer unless the assembly authorizes him to appoint a personnel officer;

(10) direct and supervise the administration of

(A) the functions of all borough officers and employees except as provided otherwise in this title;

(B) the care and custody of all borough buildings and of all real and personal property of the borough, except as provided otherwise by AS 29.33.050;

(C) the construction, maintenance, and operation of all borough roads, bridges, drains, buildings and other public works;

(11) execute other powers or duties specified in this title or lawfully prescribed by the assembly. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.150. Executive absence.** The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.160. Assembly participation.** The borough mayor may take part in the discussion of all matters before the assembly but may not vote. (§ 3 ch 118 SLA 1972)

**Borough chairman cannot serve on borough assembly.** — To permit the borough chairman to serve on the borough assembly would constitute a clear violation of this section, and would violate the common law prohibition against holding incompatible offices 1963 Op. Att'y Gen., No. 27.

**Sec. 29.23.170. Veto.** (a) Except as provided in (b) of this section, the borough mayor may veto any ordinance, resolution, motion or other action of the assembly and may, by veto, strike or reduce items in appropriation ordinances except for school budget items. He shall submit to the assembly at its next regular meeting a written statement advising of his veto and giving his reasons. His veto may be overridden by two-thirds of all the votes to which the assembly is entitled on the question.

(b) The borough mayor may not veto actions of the assembly taken under § 130(d) of this chapter or actions of the board of equalization and the board of adjustment. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.180. Filling a vacancy.** A vacancy in the office of the borough mayor occurring within six months of a regular election shall be filled by the assembly. The person designated shall serve until the next regular election and until a successor is elected and has qualified. If an assemblyman is chosen, he shall resign his assembly seat. If a vacancy occurs more than six months before a regular election, the assembly shall call a special election to fill the unexpired term. (§ 2 ch 118 SLA 1972)

### Article 3. City Council.

**Sec. 29.23.200. Composition, eligibility, election and term.** (a) Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

(b) A city voter is eligible to hold office as a member of the council. The council may by ordinance establish residence requirements for council members not exceeding three years. A council member who ceases to be eligible to be a city voter immediately forfeits that office.

(c) Councilmen are selected for three-year terms and until their successors are elected and have qualified. The regular term of office begins on the first Monday following certification of the election. The council may provide by ordinance for different terms not to exceed four years, except that the current term of incumbent councilmen may not be altered.

(am § 2 ch 63 SLA 1976; am § 7 ch 83 SLA 1979)

*Effect of amendments.* — The 1976 amendment, in subsection (b), substituted "office as a member of the council" for "the office of councilman" at the end of the first sentence, added the present second sentence, and substituted "that office" for "his office" at the end of the third sentence.

The 1979 amendment, effective June 2, 1979, in subsection (c), substituted "Councilmen are selected" for "An election

is held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, to choose councilmen" at the beginning of the first sentence and inserted "certification of" in the second sentence.

**Sec. 29.23.210. Procedure.** (a) The council shall meet at least once every month, unless otherwise provided by ordinance. Special meetings may be held on the call of the mayor or two councilmen upon not less than 24 hours written or oral notice communicated to each member. In an emergency, a special meeting called on less than 24 hours notice is a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be made either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider that conviction during its first meeting following final determination of the conviction.  
(am § 8 ch 83 SLA 1979; am § 211 ch 100 SLA 1980)

(c) Four councilmen constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

(d) The final vote on each ordinance, resolution, or substantive motion is a recorded roll call vote. All councilmen present shall vote unless the council, for special reasons, permits a member to abstain. (§ 2 ch 118 SLA 1972)

**Votes must be recorded.** To the extent that no vote is recorded in the minutes of the city council, there is a failure to comply with this section. *Carr v. City of Anchorage*, 17 Alaska 116, 243 F.2d 482 (9th Cir. 1957).

**But requirement does not affect liability of city on fully performed oral contract.** — While it is true that the recording of votes under this sec-

tion serves a useful purpose, the requirement of the recording is no more designed to protect the public than to protect the party dealing with the public. It has no effect on the substance of a contract, and a municipality is as subject to liability where it has benefited from a fully performed oral contract as would be a natural person. *Carr v. City of Anchorage*, 17

Alaska 116, 243 F.2d 482 (9th Cir. 1957).

**T's vote.** — See *In re Kays*, 11 Alaska 556 (1948).

**Certain powers must be exercised by ordinance.**—Although this section gives the council power to exercise its powers by ordinance or by resolution, exercise of powers by ordinance is probably necessary in some cases. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

**Cross reference.** — As to abstaining from official action when there is a conflict of interests, see AS 29.23.555.

**Effect of amendment.** The 1979 amendment added the third, fourth and fifth sentences of subsection (a).

The 1980 amendment, effective June 21, 1980, added the second and third sentences in subsection (b).

**But resolution may authorize contract.**—Authority to the appropriate officers to enter into a contract may properly be given by resolution. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

**ALR and C.J.S. reference.** — Deadlocks in governmental body, 40 ALR 808.

**Parol evidence as to proceedings of council**, 98 ALR 1229.

62 C.J.S. Municipal Corporations §§ 391, 399.

As the rest of the section was not affected by the amendment, it is not set out.

**Editor's note.** — AS 15.56 which is mentioned in this section was enacted by ch. 100, SLA 1980, but does not go into effect until January 1, 1981.

**Sec. 29.23.220. Filling a vacancy.** If a vacancy occurs in the council, the council by vote of a majority of its remaining members shall designate a person to fill the vacancy until the next regular election, and until a successor is elected and has qualified. (§ 2 ch 118 SLA 1972)

**C.J.S. reference.**— 62 C.J.S. Municipal Corporations § 390.

#### Article I. City Executive and Administrator.

**Sec. 29.23.240. Mayor.** Each city has a mayor as executive who shall preside at council meetings, act as ceremonial head of the city, and sign documents on the city's behalf upon council authorization. In cities which have not adopted a manager plan, the mayor is responsible for the duties listed in § 290 of this chapter. (§ 2 ch 118 SLA 1972)

Development of municipal law as to office of mayor of municipal corporation. — See *Reherd v. Manders*, 11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946).

Mandamus lies to compel performance of ministerial duty of mayor. — Neither reason nor the best authority supports the view that because the mayor of a city holds an office in which some of his duties are executive or administrative, and thus discretionary, he may not be compelled by writ of mandamus to perform a duty of his office that is ministerial, or substantially so, and as to which any pretended exercise of discretion would be in legal essence arbitrary and wrongful and thus unlawful. *Reherd v. Manders*, 11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946).

11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946)

Since mayor may not direct officers contrary to council's will. — The mayor is without power to direct the actions of the city officers contrary to the lawfully expressed will of the council, which has the superior au-

Such as signing salary warrant authorized by council. — Mandamus will lie to compel a mayor to sign the warrant prepared and issued pursuant to the mandate of the city council for the payment of the petitioner's salary as city engineer. *Reherd v. Manders*, 11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946).

Where the common council has "resolved" that the petitioner should be paid his salary for a certain period, the plainest and most logical construction of the law would indicate that it is the duty of the mayor to enforce that "resolve" of the city council by signing the warrant for the payment of the petitioner's salary, unless there is a reason convincing and virtually unassailable to justify a refusal. *Reherd v. Manders*,

11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946)

And it is only the city council which can enact ordinances and resolve. *Reherd v. Manders*, 11 Alaska 48, 66 F. Supp. 520 (D. Alas. 1946).

**Sec. 29.23.250. Election and term of mayor.** (a) A voter of a home rule or general law city is eligible to hold the office of mayor, except that a home rule city may prescribe additional residency requirements by charter. The council, for all other cities, may by ordinance establish residence requirements for candidates for mayor not exceeding three years.

(b) The mayor of a first class city is elected at large for a term of three years and until a successor is elected and has qualified. The council may provide by ordinance for a different term not to exceed four years, except that the current term of an incumbent mayor may not be altered.

(c) The mayor of a second class city is elected by and from the council for a term of one year and until a successor is elected and has qualified.

(d) The mayor's regular term begins on the first Monday following certification of the mayor's election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

(am § 3ch 63 SLA 1976, am §§ 9, 10 ch 83 SLA 1979)

**Effect of amendments.** — The 1976 amendment added the second sentence of subsection (a).

The 1979 amendment, effective June 2, 1979, substituted "of one year and until a successor is elected and has qualified" for "equal in length to a councilman's term" at the end of subsection (c), and in subsection (d), substituted "certification of the mayor's election" for "his election, which is

held on the first Tuesday of October, unless a different date of election is provided by ordinance" in the first sentence and "certification of the regular election" for "the regular election date" in the second sentence.

**Sec. 29.23.255. Removal from office.** The council may, with concurrence of two-thirds of its members, remove the mayor from office for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider the conviction during its first meeting following final determination of the conviction. (S 212 ch 100 SLA 1980)

**Effective date.** — Section 238, ch. 100, SLA 1980, makes this section effective June 21, 1980, in accordance with AS 01.10.070(c).

**Editor's note.** — AS 15.56 which is mentioned in this section was enacted by ch. 100, SLA 1980, but does not go into effect until January 1, 1981.

**Sec. 29.23.260. Mayor's vote.** (a) The mayor of a first class city is not a council member and may vote only in the case of a tie.

(b) The mayor of a second class city is a council member and may vote on all matters. (S 2 ch 118 SLA 1972)

**Tie allowing mayor to vote.** See In re Kave, 11 Alaska 556 (1940).

**Sec. 29.23.270. Veto.** (a) The mayor of a first class city may veto any ordinance, resolution, motion, or other action of the council and may, by veto, strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items. He shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons. A veto is overridden by the vote of two thirds of the authorized membership of the council.

(b) The mayor of a second class city has no veto power. (S 2 ch 118 SLA 1972)

**ALR reference.** — Passing bill over veto 2 ALR 1593.

**Sec. 29.23.280. Filling a vacancy.** (a) In a first class city, a vacancy in the office of mayor occurring within six months of a regular election shall be filled by the council. The person designated shall serve until the next regular election and until a successor is elected and has qualified. If a councilman is chosen, he shall resign his council seat. If a vacancy occurs more than six months before a regular election, the council shall call a special election to fill the unexpired term.

(b) In a second class city, a vacancy in the office of mayor is filled by and from the council. (S 2 ch 118 SLA 1972)

**Sec. 29.23.290. Powers and duties of city manager.** If the city has a manager, he is the chief administrative officer. The manager shall

(1) appoint city employees and administrative officers, except as provided otherwise in § 360 of this chapter and AS 14.14.065; he may hire necessary administrative assistants and may authorize an appointive administrative officer to appoint, suspend, or remove subordinates in his department;

(2) suspend or remove by written order city employees and administrative officers, except as provided otherwise in § 360 of this chapter and AS 14.14.065;

(3) supervise enforcement of city law;

(4) prepare the annual budget and capital improvement program for the council;

- (5) execute the budget and capital program as adopted;
- (6) make monthly financial reports to the council on city finances and operations;
- (7) report to the council at the end of each fiscal year on the finances and administrative activities of the city;
- (8) prepare and make available for public distribution an annual report on city affairs;
- (9) serve as city personnel officer unless the council authorizes him to appoint a personnel officer;
- (10) execute other powers and duties specified in this title or lawfully prescribed by the council. (§ 2 ch 118 SLA 1972; am §§ 3, 4 ch 147 SLA 1972)

**Effect of amendment.** — The 1972 amendment, effective September 10, 1972, substituted "AN 29.23.060" in paragraph (1), and substituted "AN 14.14.065" for "AN 11.11.065" for "AN 29.23.060" in paragraph (2)

### Article 5. School Boards.

**Sec. 29.23.310. Election.** Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished as provided by § 100 of this chapter. (§ 2 ch 118 SLA 1972)

**Editor's note.**—Section 29, ch. 118, SLA 1972, provides: "The terms of elected officials who are incumbents on September 10, 1972, are not affected by this Act. Their terms expire as provided before enactment of this Act."

### Article 6. Utility Boards.

**Sec. 29.23.340. Utility boards.** (a) The assembly or council of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

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

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

- (d) Unless otherwise provided by ordinance, the board shall
- (1) choose its chairman and secretary;
  - (2) appoint the manager of the public utility for a term not longer than five years and set his salary;
  - (3) formulate and enforce the general rules and policies of the utility. (§ 2 ch 118 SLA 1972)

Am. Jur., ALR and C.J.S. references. — 38 Am. Jur., Municipal Corporations, §§ 559 to 570; 43 Am. Jur.,

Public Utilities and Services, §§ 10, 11, 86, 195.  
Public utility acts as applicable to

municipal corporations owning or operating waterworks, 10 ALR 1432; 18 ALR 946.

Constitutionality of statute or ordinance for protection of water supply, 72 ALR 673.

Power of municipal corporation to sell equipment to consumers as adjunct to utility service furnished, 108 ALR 1454.

62 C.J.S. Municipal Corporations § 699.

### Article 7. Other Officers and Employees.

**Sec. 29.23.360. Appointment of officers.** The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrator or by the assembly or council, as determined by ordinance. Officers serve at the pleasure of the appointing authority, subject to ordinance. Appointments by the chief administrator are subject to confirmation by the governing body. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.370. Municipal attorney.** The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed. (§ 2 ch 118 SLA 1972)

ALR and C.J.S. references. — Attorney's authority to compromise suit for municipality, 66 ALR 119; 30 ALR2d 944.

Attorney's compensation for services in matters involving municipalities, 143 ALR 829; 64 ALR2d 13.  
62 C.J.S. Municipal Corporations § 695.

**Sec. 29.23.380. Municipal clerk.** (a) The municipal clerk shall

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

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

faithful performance of his duties as clerk-treasurer. (§ 2 ch 118 SLA 1972)

*No liability for unintentional error in performing discretionary duty.* — When a public officer is charged with duties which call for an exercise of his judgment and discretion, he is not liable for an erroneous performance, unless he has been guilty

of willful, wrong, malice, or corruption. *Churchill v. McKay*, 17 Alaska 623, 163 P. Supp. 339 (D. Alaska 1968).

*C.J.S. reference.*—62 C.J.S. Municipal Corporations § 609.

**Sec. 29.23.390. Municipal treasurer.** (a) The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs. (§ 2 ch 118 SLA 1972)

*C.J.S. reference.*—62 C.J.S. Municipal Corporations §§ 607, 1000.

**Sec. 29.23.395. Intent of §§ 397—401.** It is the intent of §§ 397—401 of this chapter to provide an opportunity for the young people of Alaska to become involved in the institutions and processes of local government comparable to that embodied in legislation under consideration at the First Session of the Seventh Legislature providing for participation in the executive branch of state government. (§ 18 ch 118 SLA 1972)

*Revisor's note (1972).*—The legislation referred to in AN 29.23.395 became ch. 121, SLA 1972, codified as AN 11.19.777—11.19.787.

A provision virtually identical to AN 29.23.395 appears in § 1, ch. 10, SLA 1972. Provisions comparable to AN

29.23.397—29.23.401 were enacted in §§ 2 and 3, ch. 10, SLA 1972 (effective May 1, 1972), and repealed in § 1, ch. 118, SLA 1972 (the municipal code revision). See AN 11.14.250—11.14.310 for provisions on young people involved in school governance.

**Sec. 29.23.397. Commission.** (a) The governing body of a municipality may by ordinance establish a commission on the involvement of young people in local government.

(b) The commission may consist of not more than nine members, drawn from fields of public affairs, education, the sciences, the professions, other fields of private endeavor, from the state or local service, and three additional members from the 17-22 age group, and shall include women and representatives of minority groups. The members shall be appointed by the governing body in the manner prescribed by ordinance without regard to political affiliation and shall serve at the pleasure of that body. One member shall be designated by the governing body as chairman of the commission.

(c) Members of the commission serve without compensation but are entitled to per diem and travel expenses as may be authorized by ordinance.

(d) The commission shall establish procedures to enable it to recommend annually to the governing body a group of promising young men and women from whom the governing body may select interns and youth voting members of municipal boards and commissions. The commission, in establishing these procedures, shall enlist the aid of municipal residents who are actively interested in working with young people. Following adoption of the procedures, the commission shall accept applications from persons and nominations for consideration, and shall interview all applicants or nominees.

(e) Recommendations of the commission shall be limited to young people who

(1) have a capacity, desire, interest, ability and potential for leadership and service to the community and to the state;

(2) will have attained the age of 17 but not the age of 22 before the beginning of their service.

(f) Annually, the commission shall evaluate the program and shall submit a written report to the governing body. (§ 18 ch 118 SLA 1972)

**Sec. 29.23.399. Interns.** An intern may be appointed to serve on the staff of the governing body or the municipal administration for a period of time prescribed by the governing body, with a maximum of one year. He may be assigned responsibilities in any office, department or agency of the municipality. Service will begin at a time prescribed by the governing body. Interns shall be appointed without regard to political affiliation. Salaries shall be individually established by the governing body on the basis of prior experience and the responsibilities of the position to which the intern is assigned. (§ 18 ch 118 SLA 1972)

**Sec. 29.23.401. Appointment to municipal boards and commissions.** (a) Notwithstanding AS 39.05.100 or a provision of law relating to age, the municipal appointing authority for a municipal board or commission may appoint a 17-21 year old municipal resident to the board or commission if recommended by the commission, established in § 397 of this chapter.

(b) A young person recommended by the commission may be appointed to a municipal board or commission having special qualifications for membership if the proposed nominee, except for his age, meets the required qualifications set by law.

(c) An individual appointed to a municipal board or commission under this section is entitled to the rights, privileges and responsibilities of other members, and his appointment is subject to confirmation by the governing body when required by law.

(d) No additional seat on a municipal board or commission is created by virtue of §§ 395—401 of this chapter. (§ 18 ch 118 SLA 1972)

### **Article 8. Adoption or Repeal of Manager Plan.**

**Sec. 29.23.410. Application.** A municipality may adopt a manager plan of government. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.420. Petition.** Adoption of a manager plan may be initiated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council. The petition must be signed by a number of municipal voters equal to the following per cent of the votes cast at the preceding regular election:

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

(2) 15 per cent when the municipality has 7,500 persons or more. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.430. Election.** Upon receipt of the petition or upon its motion, the assembly or council shall provide by ordinance or resolution for a vote on the question at the next regular or special election. Notice of the election shall be published at least 30 days before the election. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.440. Adoption.** (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972; am § 11 ch 83 SLA 1979)

**Effect of amendment.**

The 1979 amendment, effective June 2, 1979, inserted "within 60 days" in subsection (a).

**Sec. 29.23.450. Appointment.** The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership,

the assembly or council may at any time appoint one of its members or other elected municipal officials as manager. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.460. Term.** Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.470. Appointment of temporary or new manager.** In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office becomes vacant, the assembly or council shall appoint a new manager. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.480. Repeal.** A municipality may repeal the manager plan in the same manner used for its adoption. At its first meeting after repeal, the assembly or council shall enact provisions for the reorganization of the municipal executive and chief administrator. (§ 2 ch 118 SLA 1972)

#### **Article 9. Miscellaneous Provisions.**

**Sec. 29.23.500. Oaths of office.** Municipal officers, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk. (§ 2 ch 118 SLA 1972)

*Am. Jur. reference.* — 72 Am. Jur., Public Officers, § 121.

**Sec. 29.23.510. Combining offices.** The assembly or council may combine two or more appointive or administrative offices. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.520. Bonding.** The administrator and the other municipal officers or employees which the assembly or council may designate shall give bond in the amount and with the surety prescribed by the assembly or council. Premiums on bonds are paid by the municipality. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.530. Salaries of elected officers.** The assembly or council shall fix by ordinance the salaries of elected officers. The salary of the mayor may not be reduced during his term of office. An elected officer may not receive any other compensation for service to the municipality. Per diem payments or reimbursements for expenses are not compensation under this section. (§ 2 ch 118 SLA 1972; am § 1 ch 43 SLA 1979)

**Effect of amendment.** The 1979 amendment substituted "shall fix" for "may fix" in the first sentence, deleted "before they are elected" from the end of

the first sentence, and rewrote the second sentence, which formerly read "Salaries may not be changed during a term of office."

**ALR and C.J.S. references.—Effect of illegality of appointment or compensation, 7 ALR 1682.**

**Mandamus to compel appropriation for payment of salaries of public officers, 81 ALR 1253.**

**Actions for compensation by de facto officers, 93 ALR 258.**

**62 C.J.S. Municipal Corporations §§ 522, 541.**

**Sec. 29.23.540. Prohibitions.** (a) No person may be appointed to or removed from municipal office or in any way favored or discriminated against with respect to a municipal position because of his race, color, sex, creed, national origin or, unless otherwise contrary to law, because of his political opinions or affiliations.

(b) This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed. Provisions of this section do not apply to term of office in effect on August 21, 1976.

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

(am § 1 ch 93 SLA 1976)

**Effect of amendment.** The 1976 amendment added subsection (c) and (d).

**Sec. 29.23.550. Personnel system.** All appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.555. Conflict of interests.** Each home rule and general law municipality shall adopt a conflict-of-interests ordinance which, other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest. If a home rule or general law municipality fails to adopt such a conflict-of-interests ordinance within 90 days from September 10, 1972, the conflict-of-interests provision of this section is automatically applicable to and binding upon that municipality. (§ 1 ch 147 SLA 1972)

**Effective date.—Section 11, ch. 147, SLA 1972, provides that this Act takes effect September 10, 1972.**

**Sec. 29.23.560. Reports.** (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

- (1) maps and descriptions of all annexed or excluded territory;
- (2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;
- (3) tax assessment and tax levy figures as requested;
- (4) Repealed by § 37 ch 127 SLA 1974.
- (5) a copy of the current annual budget of the municipality;
- (6) a summary of the optional property tax exemptions authorized in the municipality, together with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.88 and state aid for miscellaneous municipal services under AS 29.89. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972; am § 37 ch 127 SLA 1974; am §§ 6 — 7 ch 155 SLA 1980)

**Effect of amendments.**

The 1974 amendment repealed paragraph (4) of subsection (a).

The 1980 amendment inserted "and tax levy" in paragraph (3) of subsection (a), added paragraphs (5) and (6) of subsection (a), and rewrote subsection (b). Section 17 of the 1980 amendatory act provides that §§ 1-12 of the act [including this amendment] take effect on the first day of the fiscal year for which \$33,400,000 or more is appropriated and allowed by the governor for distribution to municipalities and other recipients under the provisions of §§ 1-12 of this act or on July 1, 1983, whichever is earlier. A total of \$33,500,000 was appropriated for the program for the fiscal year beginning July 1, 1980. The appropriations were made in §§ 51 and 52, ch. 120, SLA 1980, and § 6, ch. 166, SLA 1980.

**Editor's note.** — Section 12, ch. 156, SLA 1980, effective on the first day of the fiscal year for which \$31,400,000 or more is appropriated and allowed by the governor for distribution to municipalities and other recipients under the provisions of §§ 1 — 12 of this act, or on July 1,

1983, whichever is earlier, provides: "(a) Notwithstanding other provisions of secs. 1 — 11 of this act, (1) a municipality may not receive less than \$25,000 plus an area cost-of-living differential during the first fiscal year in which this act is effective, and (2) a municipality which would receive under AS 29.88, added by sec. 2 of this act, less than 125 percent of the amount which it received for the last fiscal year under AS 43.18.010 — 43.18.045, repealed by sec. 11 of this act, in, for each of the first five fiscal years during which secs. 1 — 10 of this act are effective, entitled to receive an amount equal to 125 percent of the amount which it received for the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045 in accordance with those provisions. (b) For the first five fiscal years during which secs. 1 — 10 of this act are effective, in order to pay the amounts required by (a) of this section, the allocations made by the Department of Community and Regional Affairs to the accounts established in AS 29.88.015, AS 29.89.040, and AS 29.89.020 shall be prorated by an amount which reduces the

allocation to each account in equal proportion, and the prorated amounts shall be allocated to those accounts. (c) For the first five fiscal years during which secs. 1 — 10 of this act are effective, payment of an entitlement to a borough under AS 29.88 may be made to a borough only if the borough assembly agrees to allocate to each borough service area in the borough at least the amount of money that the service area received during the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045, in accordance with those provisions."

**Legislative history report.** For report on ch. 127, SLA 1974 (84 S.H.B. 417) on 80, see 1974 House Journal, p. 677.

**Sec. 29.23.370. Vacancies.** An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

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

(2) is physically absent from the municipality for a 90-day period, unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

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

(5) is removed from office;

(6) misses three consecutive regular meetings unless excused; or

(7) is convicted of a felony or of an offense involving a violation of his oath of office. (§ 2 ch 118 SLA 1972)

**Acceptance of resignation of councilman.** — As principles of common law: (1) An office holder cannot at his own will, without respect to the public convenience and public interest, cast aside his responsibilities and duties; (2) resignation of office is not complete until accepted by lawful authority or until the incumbent is relieved by the qualification of his successor. *Town of Nome v. Rice*, 3 Alaska 602 (1908).

Assuming the council has the power to accept the resignation of a councilman, it would still be necessary, in order to complete the resignation,

that the corporation, by its agents, the council, should manifest its acceptance, either by a formal declaration to that effect, or by the appointment of a successor. *Town of Nome v. Rice*, 3 Alaska 602 (1908).

**ALR and C.J.S. references.** Implied power to remove from office, 91 ALR 1097.

Power of courts or judges as to removal from office, 118 ALR 170.

Validity of statutes fixing term of office but providing for removal without cause, 119 ALR 1437.

62 C.J.S. Municipal Corporations §§ 474, 491, 505, 551.

**Sec. 29.23.540. Meetings public.** Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

## Chapter 28. Elections.

### Article 1. Regular and Special Elections.

**Sec. 29.28.010. Administration.** (a) The borough assembly or city council shall prescribe the general rules for conducting municipal elections and appoint at least three judges for each polling place. The municipality may not alter voter qualification requirements of this title.

(b) This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

**Legislative grant of power to regulate elections.** The legislature has, by this section, conferred on cities the power to make suitable provision for municipal and other elections. *United States v. Bowden*, 11 Alaska 503, 166 F.2d 701 (9th Cir. 1948).

**Council can act by ordinance only.** — The council can only provide for calling elections, appointing election officers, canvassing the returns, and

declaring the result by ordinances, either general or special. *Hales v. Mayor & Council*, 1 Alaska 208 (1901).

And action of a mayor in calling an election without the sanction of any ordinance is void. *Hales v. Mayor & Council*, 1 Alaska 208 (1901).

**Preregistration as condition to voting.** — This section does not authorize a borough to provide, as a condition to voting, a preregistration requirement. 1965 Op. Att'y Gen., No. 9.

**Sec. 29.28.015. Nominations.** (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city. (§ 2 ch 118 SLA 1972)

**Intent.** The intention of this section is to provide for the preparation of the ballot with the printed names of candidates. 1961 Op. Att'y Gen., No. 30.

**This section does not prohibit write-in votes** and a qualified person receiving a sufficient number of votes is elected whether his name is printed on the ballot or not. 1963 Op. Att'y Gen., No. 30.

**As this would limit right to cast ballot.** To hold that the requirement of a declaration of candidacy handwritten in votes would interpret it as a limitation on the voters' rights to cast their ballot for whomever they choose. Such an interpretation would raise serious constitutional questions. 1963 Op. Att'y Gen., No. 30.

**Sec. 29.28.020. Election dates.** (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days notice. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.030. Voter qualification.** A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

**Constitutionality.** The federal constitution does not permit a state to restrict to real property taxpayers the vote in elections to approve the issuance of general obligation bonds. *City of Phoenix v. Kolodziejki*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523, 38 U.S.L.W. 4596 (1970).

The provisions of a state constitution and statutes which exclude non-property owners from elections for the approval of the issuance of general obligation bonds violate the Equal Protection Clause of the United States Constitution. *City of Phoenix v. Kolodziejki*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523, 38 U.S.L.W. 4596 (1970).

The decision in the above case will apply only to authorizations for gen-

eral obligation bonds which are not due as of June 23, 1970, the date of that decision. In the case of states authorizing challenges to bond elections within a definite period, all elections held prior to the date of that decision will not be affected by the decision unless a challenge on the grounds sustained by the decision has been, or is brought within the period specified by state law. *City of Phoenix v. Kolodziejki*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523, 38 U.S.L.W. 4596 (1970).

**Preregistration as condition to voting.** — A first or second class borough has no authority to require that voters preregister as a condition to voting in a borough election. 1975 Op. Att'y Gen., No. 9.

**Sec. 29.28.040. Majority elections.** If in a municipal election no candidate receives in excess of 40 per cent of the votes cast for his respective office, the assembly or council shall hold a runoff election within two weeks from the date of certification of the election between the two candidates receiving the greatest number of votes for the office. Notice of a runoff election shall be published at least five days before the election. The assembly or council may by ordinance require a majority vote for election of officials. A runoff election or other means of obtaining a majority may be used. (§ 2 ch 118 SLA 1972)

**Editor's note.** Section 3, ch. 118, SLA 1972, provides: "A right or liability of a home rule or general law city or borough existing on September 10, 1972, is not affected by the enactment of this Act. Except for those provisions of ordinances in conflict with the provisions of AS 29.28.040, existing ordinances remain in force and effect

for a period of 180 days from September 10, 1972, unless earlier superseded, in order to permit amendment of the ordinances to comply with the provisions of this Act. On September 10, 1972, the provisions of AS 29.28.040 supersede any conflicting provisions of ordinances of general law cities and boroughs."

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

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

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

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

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

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.23.060(c), of a member of a city council under AS 29.23.210(b), of a borough mayor under AS 29.23.130(f), or of a city mayor under AS 29.23.255 is final and is not subject to judicial review. (am § 213 ch 100 SLA 1980)

**Effect of amendments.** — The 1980 amendment, effective June 21, 1980, added subsection (f).

## **Article 2. Initiative and Referendum.**

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

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

**Liberal construction of constitutional and statutory provisions.** — In matters of initiative and referendum, the people are exercising a power reserved to them by the constitution and laws of the state, and the constitutional and statutory provisions under which they proceed should be liberally construed. *Municipality of Anchorage v. Frohne*, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3104), 568 P.2d 3 (1977).

**Subject of initiative must be within powers of legislative body.** The subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact. *Municipality of Anchorage v. Frohne*, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3104), 568 P.2d 3 (1977).

**The power of both initiative and**

**referendum is restricted to legislative ordinances, and does not extend to administrative measures.** *Wolf v. Alaska State Housing Auth.*, Sup. Ct. Op. No. 937 (File No. 1708), 514 P.2d 233 (1973).

**Express exemption from initiative and referendum.** This section expressly exempts "local or special legislation" from both the initiative and the referendum. *Wolf v. Alaska State Housing Auth.*, Sup. Ct. Op. No. 937 (File No. 1708), 514 P.2d 233 (1973).

**Ordinance subject to popular review is subject to popular initiative.** If the subject matter of an ordinance were properly subject to popular review, then it also would be a proper subject for popular initiative. *Wolf v. Alaska State Housing Auth.*, Sup. Ct. Op. No. 937 (File No. 1708), 514 P.2d 233 (1973).

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

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

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

**Sec. 29.28.070. Required signatures.** (a) The necessary signatures on a petition shall be secured within 90 days from the date of the first circulation of the petition. The petition shall be signed in ink or indelible pencil.

(b) Every petition for either the initiative or referendum in the government of a municipality shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities or to a service area, by a number of qualified voters residing within the area outside cities or within the service area, as the case may be, equal to the following per cent of the total number of votes cast at the last general election in the city or borough or borough area concerned, or special election called for the purpose of electing city or borough officers:

(1) 25 per cent, when a city or borough has fewer than 7,500 persons, or

(2) 15 per cent, when a city or borough has 7,500 persons or more.

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

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

(e) A petition signer may withdraw his signature upon written application to the clerk within seven days after the petition has been filed with the clerk. (§ 2 ch 118 SLA 1972)

**Ordinance conflicting with city charter.** — An ordinance which required the signatures of 25 per cent of the total number of voters on the referendum petition before a referendum election could be held conflicted with the city charter

where the charter incorporated state provisions on referendum in city elections. *Area Dispatch, Inc. v. City of Anchorage*, Sup. Ct. Op. No. 1231 (File No. 2624), 544 P.2d 1024 (1976).

**Sec. 29.28.073. Sufficiency of petition.** (a) Within 10 days from the filing date, the municipal clerk shall certify on the petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be amended or supplemented within 10 days after the date on which the petition is rejected as insufficient.

(c) Within 10 days after supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record. (§ 2 ch 118 SLA 1972)

*Stated in Municipality of Anchorage v. Frohne*, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3104), 568 P.2d 3 (1977).

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

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

**Sec. 29.28.080. Presentation of initiative.** (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council and not otherwise restricted by § 60 of this chapter, the clerk shall present it to the assembly or council at its next meeting after certification. The assembly or council may reject the petition if the subject matter of the initiative or referendum is within the restrictions of § 60 of this chapter.

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

(c) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared.

(d) The assembly or council may at any time not less than 10 days from the date of election adopt an ordinance or resolution to implement the petition. In that event an election shall not be held. (§ 2 ch 118 SLA 1972)

*Quoted in Municipality of Anchorage v. Frohne*, Sup. Ct. Op. No. 1477 (File Nos. 3050, 3104), 568 P.2d 3 (1977).

**Sec. 29.28.090. Presentation of referendum.** (a) When a petition seeks a referendum vote on an ordinance or resolution, the clerk shall submit the ordinance to the voters of the municipality at the next regular or special election. If no regular or special election occurs within 75 days of the filing of a sufficient petition with the clerk, the assembly or council shall hold a special election within 75 days of filing.

(b) If a sufficient petition for referendum is filed within 30 days after final passage of the ordinance, or before the effective date of the ordinance, the ordinance against which the petition is filed

shall be suspended pending the referendum on the ordinance. During the period of suspension the assembly or council may not enact an ordinance substantially similar to the suspended ordinance but may repeal the suspended ordinance.

(c) If a majority of those voting favor the referendum legislation, it remains in effect. If a majority rejects the legislation, it is repealed. A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in §§ 60—110 of this chapter. (§ 2 ch 118 SLA 1972; am § 10 ch 147 SLA 1972)

*Effect of amendment.* - The 1972 1972, inserted "assembly or" in the amendment, effective September 10, last sentence of subsection (b).

**Sec. 29.28.110. Effect.** (a) The assembly or council may not, within two years, act in any way to modify or negate the effect of a successful initiative or referendum. If an ordinance against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum, the council or assembly may not enact substantially similar legislation for a period of one year after repeal.

(b) An unsuccessful initiative or referendum precludes the filing of a new petition for the same purpose sooner than six months after voter disapproval of the initiative or referendum. (§ 2 ch 118 SLA 1972)

### **Article 3. Recall.**

**Sec. 29.28.130. Recall.** An elected official of a home rule or general law municipality may be recalled by the voters after he has served six months in office. (§ 2 ch 118 SLA 1972)

*Section applies to city school board member.*—A member of a city school board is an elected public official of an incorporated municipality, within the meaning of this section, to the

same extent as a city councilman, and thus is subject to the recall provisions contained in this section. *Wur v. Stockton*, Sup. Ct. Op. No. 15 (File No. 7), 355 P.2d 395 (1960)

**Sec. 29.28.140. Grounds.** Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.150. Petition.** (a) A petition seeking recall of one or more municipal officials is filed with the municipal clerk. The petition shall contain

(1) the signatures and resident addresses of a number of voters as prescribed in § 70(b) of this chapter for initiative and referendum;

(2) the date each voter signed the petition; and

(3) a statement of the grounds of the recall stated with particularity as to specific instances.

(b) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.160. Examination for sufficiency.** The municipal clerk shall review the petition for content and signatures and shall certify on the petition within 10 days of the filing date whether it is accepted or rejected. Until the petition is accepted, a petition signer may withdraw his signature upon written application to the clerk. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.170. Supplemental petition.** (a) If the petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection. If the petition is insufficient for any other reason, it shall be rejected and filed as a public record.

(b) Within 10 days after supplementary filing, the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.180. New petition.** Failure to secure sufficient signatures does not preclude the filing of a new recall petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.190. Submission.** If a recall petition is sufficient, the clerk shall immediately submit it to the assembly or council. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.200. Election.** (a) If a regular election occurs within 75 days of the submission, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days of submission.

(c) If a vacancy occurs in the office after a recall petition is filed, the petition shall not be submitted to the voters. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.210. Form of recall ballots.** A recall ballot contains:

- (1) the grounds as stated 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;
- (3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [  ] No [  ]". (§ 2 ch 118 SLA 1972)

**Sec. 29.28.220. Election procedure.** Procedures for conducting a recall election are those of a regular election. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.230. Majority required.** A majority vote on the question is required to recall an officer. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.240. Effect.** If an incumbent is not recalled at the recall election, a petition to recall the same incumbent may not be filed sooner than six months after the recall election. (§ 2 ch 118 SLA 1972)

**Sec. 29.28.250. Election of successor.** 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 10 but not more than 45 days from the date of the recall election. However, if a regular or special election occurs within 75 days of the recall election, 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. (§ 2 ch 118 SLA 1972)

## Chapter 33. Areawide Borough Powers and Duties.

### Article 1. Scope.

#### Section

#### 10. Scope of areawide powers

**Sec. 29.33.010. Scope of areawide powers.** (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough. (S 2 ch 118 SLA 1972; am S 6 ch 93 SLA 1977; am S 12 ch 89 SLA 1979)

**Effect of amendments.** — The 1977 amendment substituted "First and second class boroughs" for "Boroughs" at the beginning of subsection (a).

The 1979 amendment deleted "conferred in, or assumed by means of AR 29.33.250

— 29.33.290" following "areawide power" in subsection (b).

Cited in *Jefferson v. State*, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (1974).

**Borough may not regulate sale and use of fireworks.** — A borough's acquisition of the areawide health function

does not give it authority to regulate the sale and use of fireworks. 1968 Op. Atty. Gen., No. 12

### Article 2. Assessment and Collection of Taxes.

**Sec. 29.33.030. Assessment and collection.** Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 53 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city. (S 2 ch 118 SLA 1972)

**Limitation on use of real property tax liens.** — If the legislature had intended to grant municipalities the authority to impose real property sales tax liens, it would have at least provided that

they could collect the sales tax "as provided in" or "by the method set forth in" ch. 53, not "subject to" ch. 53. In contrast, this statute is a limitation on the use of real property tax liens, not an extension of them. *Fourbanks N. West Borough v. Howard*, Sup. Ct. Op. No. 2016 (File No. 6575), 528 P.2d 32 (1975).

## Article 3. Education.

### Section

#### 50. Education

**Sec. 29.33.050. Education.** Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located. (2 ch 118 SLA 1972, am 1 3 ch 32 SLA 1973; am 1 6 ch 72 SLA 1974; am 1 6 ch 13 SLA 1975; am 1 34 ch 124 SLA 1975)

**Effect of amendments.** — The 1973 amendment added the present second sentence.

The 1974 amendment substituted "military mission" for "military reservation status" and "or" for "and, thereafter" in the second sentence and added the third and fourth sentences.

The first 1975 amendment deleted "with the consent of the borough school district board" from the end of the third sentence and substituted "or" for "and" following "terminates" in the fourth sentence.

The second 1975 amendment deleted "with the consent of the borough school district board" from the end of the third sentence and substituted "or" for "and" following "terminates" and "a regional educational attendance area" in "the state-operated schools" in the fourth sentence.

**Editor's note.** — Section 7, ch 22, SLA 1973, provides: "Notwithstanding provisions of this act, all agreements between organized boroughs and the Department of Education for the operation of schools on military reservations that were made before April 1, 1973 remain in force."

Section 9, ch 72, SLA 1974, provides: "The term of office of a member of the Board of Directors for State-Operated Schools who is a resident of a military reservation whose schools are operated by a city or borough school district in accordance with a contract entered into under AS 14.14.110 by direction of the Department of Education shall be terminated on the effective date of the contract."

Section 10, ch 22, SLA 1974 provides: "When one town schools are operated by a city or borough school district by contract, the term of office of those members of the one town schools school board that would expire during the transitional period shall be extended until the next regular municipal election provided for by AS 14.14.170(b), as amended by sec 4 of the Act." Subsection (b) of AS 14.14.170 was repealed by 1 5, ch 13, SLA 1975 and deleted by 1 7, ch 124, SLA 1975.

Section 8, ch 13, SLA 1975, makes ch 72, SLA 1974 in accordance with AN 0110070(c).

**Legislative history report.** — For report on ch 72, SLA 1974 (HCS CSSM 122 (Finance)) am 11, see 1974 House Journal p 319.

**District of implied powers regarding education.** — Boroughs possess implied powers with regard to education to the extent that they are clearly necessary to the borough's exercise of its express powers in the regard. *Green v Kenai Peninsula Borough*, Sup Ct Op No 1169 (File No 2016), 526 P 2d 1221 (1975).

**Borough was not acting as an agent of the state in furnishing transportation of pupils.** *Kenai Peninsula Borough v State*, Sup Ct Op No 1124 (File No 2092), 522 P 2d 1019 (1975).

While the state did supervise the school transportation service insofar as it related

to the funding provided by it and also had certain regulations in effect pertaining to the overall safety of the transportation system, the actual control of the transportation service was undertaken by the borough which, on its own behalf, entered into the contract with a school bus owner to furnish transportation service for specified routes. *Kenai Peninsula Borough v State*, Sup Ct Op No 1124 (File No 2092), 522 P 2d 1019 (1975).

**Applied in Area Pipe Lane Co v North Slope Borough**, Superior Court, 1st Jud Dist, C.A. No 73-336 and C.A. Nos 73-294 to 73-306 (1973).

## Article 4. Planning, Platting and Zoning.

**Sec. 29.33.070. Planning, platting and zoning.** (a) First and second class boroughs shall provide for planning, platting and zoning on an areawide basis.

(b) The assembly by ordinance may

(1) designate the council of a city within the borough as a board of adjustment within the city;

(2) delegate other planning and zoning powers conferred by this chapter to a city within the borough;

(3) revoke or modify any part or all of the powers delegated under this subsection. (§ 2 ch 118 SLA 1972; am § 1 ch 17 SLA 1977; am § 7 ch 93 SLA 1977; am § 13 ch 83 SLA 1979)

**Effect of amendments.** — The first 1977 amendment, in subsection (b) deleted "If a city within a borough is located more than 25 miles from a boundary of the borough seat" from the beginning of the introductory language and substituted "a city within the borough" for "the city" in paragraph (1).

The second 1977 amendment substituted "first and second class boroughs" for "boroughs" at the beginning of subsection (a).

The 1979 amendment, in subsection (b), substituted "powers conferred by this chapter to a city within the borough" for "administrative and enforcement responsibilities to the city, provided that borough jurisdiction is not impaired" in paragraph (2) and "revoke or modify any part or all of the powers" for "withdraw powers" in paragraph (3).

Cited in *Moore v. State*, Sup. Ct. Op. No. 1281 (File No. 1961, 1967, 1968 P.2d 8 (1976)).

**Sec. 29.33.080. Planning commission.** (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one-, two- and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid or directed by the assembly.

(b) The commission shall prepare and recommend to the assembly

(1) a comprehensive plan consisting of maps and related texts for the systematic development of the borough;

(2) a zoning ordinance to complement the plan;

(3) a subdivision ordinance;

(4) the official map of the borough;

(5) modifications to the elements specified in (1)–(4) of this section.

(c) The commission shall publish notice of and hold at least one hearing before submitting its recommendations under (b) of this section to the assembly.

- (d) The commission shall
- (1) act as the platting board;
  - (2) act upon requests for variances;
  - (3) act upon requests for conditional uses.

(e) Subject to § 245 of this chapter, no platting request, variance or conditional use may be granted except upon an affirmative vote of a majority of the commission.

(f) The commission shall designate its presiding officer and shall meet as frequently as is necessary. The commission shall establish, subject to approval by the assembly, rules and regulations for the conduct of its meetings. Meetings shall be public and minutes shall be kept. Minutes and records shall be filed with the municipal clerk and retained as public records. (§ 2 ch 118 SLA 1972)

(g) Exceptions may be granted to building, housing and related codes by the planning commission when an applicant for an exception demonstrates that the exception will result in increased energy efficiency, unless the planning commission determines that the exception would endanger the health or safety of the public. (am § 3 ch 83 SLA 1980)

Effect of amendment. — The 1980 amendment, effective June 13, 1980, added subsection (g).

C.J.S. reference.—62 C.J.S. Municipal Corporations § 227.

C.J.S. reference.—62 C.J.S. Municipal Corporations § 227.

**Sec. 29.33.085. Comprehensive plan.** (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

(b) The assembly shall adopt a comprehensive plan based upon the recommendations of the planning commission. The assembly may modify the plan, provided that it first obtains the recommendations of the planning commission. The planning commission shall undertake an overall review of the plan at least once every two years and shall present recommendations based on the review to the assembly. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.090. Zoning.** (a) In accordance with the comprehensive plan, the assembly shall regulate and restrict the use of land and improvements by districts or contract zoning to permit specific uses provided for in the contract. Regulations shall be uniform for each class or kind of building, structure, land or water area within each district, but the regulations may differ among districts and exceptions may be made in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments. In this section, "contract zoning" means a zoning reclassification to a less restricted use when the owner of the rezoned property, either through an agreement with the assembly or a covenant in favor of the borough, places restrictions on the use of the land beyond the zoning requirements generally attaching to the new district in which the property has been placed. The assembly shall hold a public hearing on the proposed contract zoning.

(b) Zoning regulations adopted under (a) of this section may include, but are not limited to, restriction of

- (1) land use;
- (2) building location and use;
- (3) the height and size of structures;
- (4) the number of stories in buildings;
- (5) the percentage of lot which may be covered;
- (6) the size of open spaces;
- (7) population density and distribution.

(c) Zoning regulations are designed to

- (1) provide for orderly development;
- (2) lessen street congestion;
- (3) promote fire safety and public order;
- (4) protect the public health and general welfare;
- (5) prevent overcrowding;
- (6) stimulate systematic development of transportation, water, sewer, school, park and other public facilities;
- (7) encourage efficiency in the use of energy and the substitution of energy from renewable sources for energy from fossil fuels.

(d) Repealed by § 45 ch 85 SLA 1979.

(e) A zoning ordinance adopted or amended under (a) of this section may not preclude an activity authorized under a license or permit issued under AS 04 if the activity was licensed or permitted by the Alcoholic Beverage Control Board before the adoption of the zoning ordinance or zoning ordinance amendment.

(am § 1 ch 104 SLA 1974; am § 3 ch 142 SLA 1977; am § 45 ch 85 SLA 1979; am § 4 ch 83 SLA 1980; am § 9 ch 131 SLA 1980)

**Effect of amendments.** — The 1974 amendment added "or contract zoning to permit specific uses provided for in the contract" to the end of the first sentence of subsection (a) and added the third and fourth sentences of that subsection.

The 1977 amendment added subsection (d).

The 1979 amendment repealed former subsection (d), which read: "The assembly shall regulate and restrict the use of state land within the borough which is vacant, unappropriated and unreserved and which is found suitable for classification and

disposal for the homestead entry under AS 38.06.010. Compliance with the provisions of this subsection is a prerequisite to issuance of the homestead entry permits for land within the borough."

The first 1980 amendment, effective June 13, 1980, added paragraph (7) in subsection (c).

The second 1980 amendment, effective July 1, 1980, added subsection (e).

As the rest of the section was not affected by the amendments, it is not set out.

The term "land" as used in this section comprehends vacant land. *City of Anchorage v. Paulk*, 14 Alaska 392, 113 P. Supp. 698 (D. Alaska, 1953).

**Am. Jur., ALR and C.J.S. references.** — 37 Am. Jur., Municipal Corporations, § 66 et seq.; 58 Am. Jur., Zoning, § 1 et seq.

**Constitutionality of zoning based on size of commercial or industrial enterprises or units,** 7 ALR2d 1007.

**Exclusion from municipality of industrial activity that is inconsistent with residential character,** 9 ALR2d 643.

**Zoning regulations applicable to tourist or trailer camps, motor courts or motels,** 22 ALR2d 708

**Zoning regulations as applied to schools, colleges, universities, etc.,** 36 ALR2d 653.

**Validity of zoning regulation prohibiting residential use of industrial district,** 38 ALR2d 1141.

**Spot zoning to permit neighborhood shopping centers,** 61 ALR2d 298.

**Zoning regulations as to business of selling motor vehicles,** 57 ALR2d 1295.

**Applicability of zoning regulations to governmental projects or activities,** 61 ALR2d 970.

**62 C.J.S. Municipal Corporations § 224.**

**Sec. 29.33.110. Board of adjustment.** (a) The assembly is the board of adjustment but may delegate by resolution or ordinance part or all of its functions to a city within the borough for the area within city boundaries in accordance with AS 29.33.070(b)(1), in addition to making delegations as provided for an assembly under AS 29.33.245. Meetings of the borough board are held at the call of the presiding officer and of the city board by the mayor. The presiding officer or mayor may administer oaths and compel attendance of witnesses. Meetings and hearings of the board shall be open to the public and the board shall keep minutes of its proceedings as a public record. (am § 14 ch 83 SLA 1979)

(b) The board of adjustment shall hear and decide

(1) appeals regarding alleged errors in enforcement of zoning ordinances and building codes;

(2) appeals from the decisions of the planning commission on requests for conditional uses;

(3) appeals from the decisions of the planning commission on requests for variances from the terms of the zoning ordinance which are not contrary to the public interest, when a literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the same district.

(c) A variance shall not be granted because of special conditions caused by actions of the person seeking relief or for reasons of pecuniary hardship or inconvenience. A variance shall not be granted which will permit a land use in a district in which that use is prohibited. (§ 2 ch 118 SLA 1972)

**Effect of amendment.** -- The 1979 amendment rewrote subsection (a).

Stated in *City of Anchorage v. McCabe*,  
Sup. Ct. Op. No. 1490 (File No. 2737), 668  
P.2d 988 (1977).

**Sec. 29.33.120. Adjustment procedure.** An interested party, including but not limited to a borough or city official, may file with the board of adjustment an appeal specifying his objections. Copies are filed with the administrative officer involved and with the borough clerk within the time required by the zoning ordinance. The officer shall provide the board with all pertinent records, including his written decision. An appeal to the board stays enforcement proceedings unless the board or a court issues an enforcement order based on a certificate of imminent peril to life or property made by the enforcement officer. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.130. Judicial review.** (a) The assembly shall provide by ordinance for appeals from the board of adjustment to the superior court.

(b) A municipal officer, a taxpayer, or a person, jointly or severally aggrieved, may appeal an action of the board to the superior court by filing with the borough clerk within the time fixed by ordinance, a notice of appeal specifying grounds. When the notice

of appeal is filed, the board shall at once transmit to the superior court clerk copies of all the papers constituting the record in the case.

(c) An appeal from the board of adjustment stays enforcement proceedings unless the court issues an enforcement order based on a certificate of imminent peril to life or property made by the board.

(d) The appeal is heard upon the record by the superior court, and the court may reverse or affirm, wholly or partly, the decision appealed from.

(e) Issues in proceedings under this section have preference over all other civil actions and proceedings. An appeal lies from the decision of the superior court as in other civil cases. (§ 2 ch 118 SLA 1972)

**Legislative intent as to trial de novo.**—Legislative enactments subsequent to statehood and a procedural rule adopted by this court (Civ. R. 107 (a)) after creation of the state judicial system, show an obvious intent that where appeals are taken from administrative agencies or magistrate courts there shall not be a trial de novo unless the superior court requires it. This procedure simplifies and expedites the handling of appeals. *Keiner v. City of Anchorage, Sup. Ct. Op.*

No. 126 (File No. 240), 378 P.2d 406 (1963).

**The findings of the board of adjustment should not be reversed** in the light of the whole record they are supported by substantial evidence, i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Keiner v. City of Anchorage, Sup. Ct. Op.* No. 126 (File No. 240), 378 P.2d 406 (1963).

**The Administrative Procedure Act (AS 11.62) does not control an appeal from a decision of the board of adjustment.** *Galt v. Stanton, Sup. Ct. Op.* No. 1805 (File No. 3520), 591 P.2d 960 (1979).

**Priority of appellate court's viewing property involved.**—Under subsection (a) of this section and *Keiner v. City of Anchorage, Sup. Ct. Op.* No. 126 (File No. 240), 378 P.2d 406 (1963), the appeal must be heard only upon the record. Accordingly, it would be error for the appellate court to base its decision partially upon its personal view of the property involved. If, however, the judge believed that a proper understanding of the record, as opposed to an independent evaluation of the facts, required a view of the premises, it would be proper to make such a view, provided that counsel were advised and offered the opportunity to be present. *Galt v. Stanton, Sup. Ct. Op.* No. 1805 (File No. 3520), 591 P.2d 960 (1979).

**The findings of the board, etc.**

In accord with original. See *Galt v. Stanton, Sup. Ct. Op.* No. 1805 (File No. 3520), 591 P.2d 960 (1979).

**When substantial evidence exists.**—Substantial evidence exists if there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Galt v. Stanton, Sup. Ct. Op.* No. 1805 (File No. 3520), 591 P.2d 960 (1979).

There was substantial evidence upon which the city council, sitting as a zoning board of adjustment, made its decision concerning access to a medical planned unit development, i.e., one way access would be allowed for regular traffic and two way access for emergency vehicles, and there was also a rational basis for the selection of the particular alternative chosen. *Galt v. Stanton, Sup. Ct. Op.* No. 1805 (File No. 3520), 591 P.2d 960 (1979).

Quoted in *City of Anchorage v. McCabe, Sup. Ct. Op.* No. 1490 (File No. 2757), 568 P.2d 996 (1977).

**Sec. 29.33.150. Platting jurisdiction and power.** (a) The planning commission acting as the platting board has jurisdiction over platting and shall adopt and publish rules and regulations to implement this power. Jurisdiction includes, but is not limited to, the control of

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

(2) dimensions of lots or tracts;

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

(b) The regulations adopted under (a) of this section apply to subdivision plats of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board. The platting board may not disapprove the subdivision plat on the basis of regulations which require capital improvements on or to state land included in the subdivision plat. Regulations adopted after the platting board is notified by the commissioner of natural resources of a proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not apply to the state land in the proposed sale.

(c) The platting board must approve and sign the subdivision plat within 60 days of its receipt from the commissioner of natural resources unless the platting board

(1) determines that the plat does not comply with subdivision regulations other than those requiring capital improvements to state land; and

(2) notifies the commissioner of each determination of noncompliance within the 60-day period established in this subsection.

(d) The commissioner of natural resources may withdraw the subdivision plat and amend it in response to the determination of noncompliance by the platting board under (c) of this section. The platting board shall respond within 30 days to the amendment or response from the commissioner of natural resources.

(e) Notwithstanding any other provision of law, the provisions of (h) - (f) of this section apply to all disposals of land under AS 38.05 and AS 38.08.

(f) Nothing in this section relieves the Department of Natural Resources of its obligation to provide legal access to the subdivision.

(g) As used in this section, "capital improvements" includes but is not limited to access roads, other physical improvements, and their design and engineering. (2 ch. 118 SLA 1972; am & 6 ch. 85 SLA 1979; am §§ 2, 3 ch. 113 SLA 1981)

**Effect of amendment.** — The 1979 amendment, effective July 1, 1979, added subsection (h).

The delegated authority of the city council acting as a board of adjustment to

choose between alternative plans is to be found in the section *Galt v. Stanton*, Sup. Ct. Op. No. 1985 (File No. 85-209, 201 P.2d 922) (1979).

**Sec. 29.33.160. Procedure.** (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the

board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020. (2 ch. 118 SLA 1972)

(c) If a municipality has adopted a subdivision ordinance which requires the submission of a preliminary or sketch subdivision plat during the platting procedure, the commissioner of natural resources shall, not later than 60 days before filing a final subdivision plat which contains land to be disposed of to individuals under AS 38.05 or AS 38.08, file a preliminary subdivision plat with the platting authority of the municipality.  
(am § 7 ch 85 SLA 1979)

*Effect of amendment.* — The 1979 amendment, effective July 1, 1979, added subsection (c).

**Sec. 29.33.170. Waiver in certain cases.** (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that

- (1) each tract or parcel of land will have adequate access to a public highway or street;
- (2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;
- (3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;
- (4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of §§ 29.33.150—29.33.240 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.  
(§ 2 ch 118 SLA 1972)

**Sec. 29.33.180. Information required.** A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.190. Penalties.** (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500 for each lot or parcel transferred, sold, or included in a contract to be sold. The borough may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than \$500. (§ 2 ch 118 SLA 1972; am § 15 ch 83 SLA 1979)

*Effect of amendment.* — The 1979 amendment, effective June 2, 1979, substituted "borough" for "platting board" in the second sentence of subsection (a).

**Sec. 29.33.200. Alteration of replat petition.** No recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the alteration or replat or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.210. Notice of hearing.** The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a copy of the notice to each affected property owner not signing the petition. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.220. Hearing and determination.** At the hearing the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30 day period, the consent of the city or borough shall be considered to have been given to the vacation. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.230. Recording.** If the alteration or replat is approved, the revised plat must be recorded by the platting board and is thereafter the lawful plat. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.240. Title to vacated area.** (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the

city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

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

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city. (§ 2 ch 118 SLA 1972; am § 5 ch 118 SLA 1972)

**Effect of amendment.** — The 1972 amendment added subsection (c).

**Sec. 29.33.245. Delegations.** The assembly may by ordinance authorize the planning commission, the platting board and the board of adjustment to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the commission or board, to other boards or commissions, or to a hearing officer designated by the commission or board. The assembly shall prescribe procedures for hearings and appeals. The commission or board shall hear and decide appeals de novo. (§ 2 ch 118 SLA 1972)

#### Article 5. Additional Areawide Powers.

**Sec. 29.33.250. Additional areawide powers.** First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.48.030 and 29.48.035(b). (§ 2 ch 118 SLA 1972)

**Borough voters may use an initiative to acquire an areawide power for** the borough which cities refuse to transfer. 1965 Op. Att'y Gen., No. 6.

**Power of borough given areawide health powers.** — If a borough were given areawide public health powers, the borough assembly would have the power under the law to contract with any city for the furnishing of additional health services. 1962 Op. Att'y Gen., No. 9.  
Should not be referred to in the incorporation petition. — See 1962 Op. Att'y Gen., No. 9.

**Sec. 29.33.260. Transfer by city.** (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.270. Petition for power.** An election on the question of adding an areawide power may be initiated in two ways:

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

(2) the assembly may propose the acquisition of the power. (§ 2 ch 118 SLA 1972)

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

**Sec. 29.33.280. Investigation.** The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public. (§ 2 ch 118 SLA 1972)

**Sec. 29.33.290. Election.** (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities. (§ 2 ch 118 SLA 1972; am. § 9 ch 200 SLA 1972)

**Effect of amendment.** The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the first sentence of subsection (c).

## Chapter 38. Borough Powers and Duties in the Area Outside Cities.

**Sec. 29.38.010. First class borough.** The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power. (§ 2 ch 118 SLA 1972)

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

Powers not to exceed those of comparable agencies in first class cities. — Broad public health provisions pro-

posed in an incorporation petition would be contrary to this section, since the borough board of health would possess more power than is possessed by comparable agencies in first class cities. 1962 Op. Att'y Gen., No. 9.

**Sec. 29.38.020. Second class borough.** The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.48.020, or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power. (§ 2 ch 118 SLA 1972)

**Cross reference.** — As to applicability of this chapter to the housing and urban

renewal and redevelopment powers granted to municipalities wholly or partially within a disaster area, see AS 29.48.270(c).

Powers granted in violation of section — Broad powers given to a

borough board of health in a proposed incorporation petition would

violate this section where such petition provided that health services should be administered not by the borough assembly but by the board of health which was to be appointed

by the borough assembly, but otherwise to operate autonomously in making rules and regulations with the force of law. 1962 Op. Att'y Gen., No. 9.

**Sec. 29.38.030. Additional powers.** The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

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

(2) the assembly may place the question on the ballot. (§ 2 ch 118 SLA 1972)

**Sec. 29.38.040. Investigation.** The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public. (§ 2 ch 118 SLA 1972)

**Sec. 29.38.050. Election.** (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

**Effect of amendment.** — The 1972 amendment, effective July 1, 1972, substituted "Department of Community and Regional Affairs" for "Local Affairs Agency" in the first sentence of subsection (c).

## Chapter 41. Powers of Third Class Boroughs.

**Sec. 29.41.010. Powers of third class boroughs.** (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.33.070 — 29.33.245 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

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

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

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.58.150 — 29.58.340.

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located. (1972 ch 118 SLA 1972; am § 4 ch 32 SLA 1973; am § 7 ch 72 SLA 1974; am § 7 ch 13 SLA 1975; am § 35 ch 124 SLA 1976; am §§ 1, 2 ch 90 SLA 1977)

**Cross reference.** As to agreements between organized boroughs and the Department of Education for the operation of schools on military reservations that were made before April 3, 1973, see related note under AS 29.33.070.

**Effect of amendments.** The 1973 amendment added the present third sentence in subsection (d) as it existed prior to the 1977 amendment.

The 1974 amendment, in subsection (a) as it existed prior to the 1977 amendment, substituted "military mission" for "military reservation status" and "or" for "and, thereafter" in the third sentence and added the fourth and fifth sentences.

The first 1975 amendment, in subsection (a) as it existed prior to the 1977 amendment, deleted "with the consent of the borough school district board" from the end of the fourth sentence and substituted "or" for "and" following "terminates" in the fifth sentence.

The second 1975 amendment, in subsection (a) as it existed prior to the

1977 amendment, deleted "with the consent of the borough school district board" from the end of the fourth sentence and substituted "or" for "and" following "terminates" and "a regional educational attendance area" for "the state-operated schools" in the fifth sentence.

The 1977 amendment rewrote subsections (a) and (b) and added subsection (d).

Legislative history report. -- For report on ch. 72, S.L.A. 1974 (H.C.S.S.B. 122 [Finance] am II), see 1974 House Journal, p. 519.

**Sec. 29.41.020. Assembly to serve as school board.** The borough assembly is the borough school board for third class boroughs. The borough executive is the presiding officer of the borough assembly and president of the school board. The borough executive has all powers of a borough executive except for the veto power. (§ 2 ch 118 S.L.A. 1972; am § 30 ch 94 S.L.A. 1980)

**Effect of amendment.** -- The 1980 amendment deleted the former second sentence, which read "Where applicable,

weighted voting shall apply to board decisions."

## Chapter 43. Powers of Cities Outside Boroughs.

**Sec. 29.43.010. Additional powers.** In addition to the powers granted by ch. 48 of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated. (§ 2 ch 118 S.L.A. 1972)

**Sec. 29.43.020. Assessment and tax collecting.** Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 53 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 53 of this title for boroughs. (§ 2 ch 118 S.L.A. 1972)

**Sec. 29.43.030. Education.** Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.33.050 for boroughs. (§ 2 ch 118 S.L.A. 1972)

**Sec. 29.43.040. Planning and zoning.** (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may, provide for planning, platting and zoning, as provided by AS 29.33.070 — 29.33.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may, provide for planning, platting and zoning, as provided by AS 29.33.070 — 29.33.245 for boroughs. (§ 2 ch 118 S.L.A. 1972; am 90 R, 9 ch 93 S.L.A. 1977)

*Effect of amendment.* — The 1977 "class" preceding "boroughs" in two places amendment inserted "first and second" in substitution (a) and added "substitution (b)"

**Sec. 29.43.100. Extension of curfew outside cities.** The provisions of a curfew ordinance enacted by a city of any class concerning minors shall be imposed in the total area within 20 miles of the limits of that city. If a given area lies within 20 miles of two or more cities with conflicting curfew ordinances, the provisions of the curfew ordinance of the city having the largest population prevails as to the overlapping area. (1 ch 86 S.L.A. 1962, am 0 22 ch 166 S.L.A. 1978)

*Revisor's note.* This section derives from AS 11 60 250 and was renumbered by the revisor of statutes pursuant to § 22, ch. 166, S.L.A. 1978 (revision of the criminal code).

In the process of removing this section

from Title 11 (criminal code) to Title 29 (municipal code), the words "or village" following the word "city" have been eliminated. The classification of municipalities in the municipal code no longer includes villages. See AS 29.08

**Sec. 29.43.108. Enforcement of curfews.** (a) The municipal peace officers shall enforce the provisions of the ordinance inside the city limits. Under AS 29.43.100 — 29.43.110 the state peace officers shall enforce the provisions of the ordinance in the area outside the city limits.

(b) In an area where state peace officers are not available, the municipal peace officer may enforce the provisions of the ordinance in the area outside the city limits if the enforcement responsibilities are delegated by contract between the state and the municipality. (3 ch 86 S.L.A. 1962; am § 22 ch 166 S.L.A. 1978)

*Reviser's note.* — This section derives from AS 11 08 240 and was renumbered by the revision of statutes pursuant to § 22, ch. 166, S.L.A. 1978 (revision of the criminal code).

**Sec. 29.43.110. Penalty for violation of curfew.** The penalty for violation of AS 29.43.100 — 29.43.110 is as prescribed by the curfew ordinance of the city, and a fine no paid shall be paid to the city when the violation takes place in the city. (Otherwise the fine shall be paid to the state. However, the penalty shall not exceed a fine of \$300, or imprisonment for 30 days, or both. (3 ch 86 S.L.A. 1962; am § 22 ch 166 S.L.A. 1978)

*Reviser's note.* — This section derives from AS 11 08 270 and was renumbered by the revision of statutes pursuant to § 22, ch. 166, S.L.A. 1978 (revision of the criminal code).

# Chapter 48. Powers Applicable to All Municipalities.

## Article 1. General Powers.

**Sec. 29.18.010. General powers.** Municipalities have the following general powers, subject to other provisions of law:

- (1) to establish and prescribe the functions of municipal departments, offices or agencies;
- (2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;
- (3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;
- (4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;
- (5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;
- (6) to sue and be sued;
- (7) to levy taxes and special assessments;
- (8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property for a purpose authorized under this title, federal law, or other law, or in accordance with such law, and irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a council via a borough to expand, for any purpose authorized by law, money received from the disposal of land in a reserve area created under AS 29.61.030, 1. (Am. 6 March 1979 S.L.A. 1979)

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

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

(12) to borrow money and issue evidences of indebtedness. (1 Feb 1981 S.L.A. 1972)

The rule of strict construction does not apply to the power granted by the corporation to carry into effect purpose requests or plainly granted

may granted the municipal corporation has the power to exercise such power in any reasonable way it may

**Effect of amendment.** The 1979 amendments effective July 1, 1979 added the language regarding "the power included" to the end of paragraph (9)

**Strict construction under paragraph (9) consistent with liberal construction requirements.** - The liberal grant of taxing authority under paragraph (4) limited only to other provisions of law is consistent with the general nature of this title

*Former v. City of Juneau, 9 Alaska 175 (1927)*

And power may be exercised in any reasonable way. The power to

*Id. Former v. City of Juneau, 9 Alaska 175 (1927)*

*Applied in Lobb v. City of Dillingham, Sup. Ct. Op. No. 2007 (File No. 2001, 512 P.2d 32 (1974))*

art. 2, § 1, which requires that a "liberal construction shall be given to the powers of local government units." *Lobb v. City of Dillingham, Sup. Ct. Op. No. 1725 (File No. 1985, 66 P.2d 1115 (1974))* See also A.S. 29.60.100 - 29.60.120 as to liberal construction and liberal local power

There is no general prohibition against the municipal and state laws. *Lobb v. Dillingham, Sup. Ct. Op. No. 1725 (File No. 1985, 66 P.2d 1115 (1974))*

**Sec. 29.48.020. Second class borough powers outside cities.** A second class borough may, in the area outside cities,

- (1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;
- (2) provide for the licensing, impounding, and disposition of animals;
- (3) regulate the licensing and operation of motor vehicles and operators;
- (4) regulate snow vehicles as provided in AS 05.30.070;
- (5) provide for garbage and solid waste collection and disposal subject to § 33 of this chapter;
- (6) provide for water pollution control.
- (7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.
- (8) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 - 19.30.251.
- (9) establish an emergency communications center under AS 29.73.080. (§ 2 ch 118 SLA 1972; am § 5 ch 83 SLA 1980; am § 12 ch 38 SLA 1981; am § 1 ch 107 SLA 1981)

**Effect of amendment.** - The 1980 amendment, effective June 13, 1980, added paragraph (7).

## **Article 2. Facilities, Services and Regulation.**

**Sec. 29.48.030. Municipal facilities and services.** (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

- (1) streets and sidewalks;
  - (2) sewers and sewage treatment facilities;
  - (3) harbors, wharves, and other marine facilities;
  - (4) watercourse and flood control facilities;
  - (5) health services and hospital facilities;
  - (6) cemeteries;
  - (7) police protection and jail facilities;
  - (8) cold storage plants;
  - (9) telephone systems;
  - (10) light, power and heat;
  - (11) water;
  - (12) transportation systems;
  - (13) community centers;
  - (14) libraries, visual or performing arts centers, or museums;
  - (15) recreation facilities;
  - (16) airport and aviation facilities;
  - (17) garbage and solid-waste collection and disposal service and facilities subject to § 33 of this chapter;
  - (18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;
  - (19) parking and parking facilities;
  - (20) housing and urban renewal, rehabilitation and development;
  - (21) preservation, maintenance and protection of historic sites, buildings and monuments;
  - (22) consumer protection;
  - (23) emergency medical services and facilities.
- (am § 3 ch 215 SLA 1977; am § 4 ch 78 SLA 1978; am § 5 ch 62 SLA 1979)

(b) First and second class boroughs may exercise the powers conferred by (a) of this section or § 33(a) of this chapter only after they have been assumed in the manner required under AS 29.33.250—29.33.290 for areawide exercise or in the manner required under AS 29.38.010—29.38.050 for exercise in the borough area outside cities, or are conferred by § 20 of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a) (12) of this section, exercise of the powers areawide or in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. With respect only to boroughs which on September 10, 1972 are not exercising powers conferred under (a) (12) of this section on an areawide basis, objection which a city may raise to areawide exercise of the powers by a borough shall be reviewed by the Alaska Transportation Commission. The commission shall decide whether exercise of the powers exclusively by the borough areawide is to be approved as in the public interest under the particular facts and circumstances at issue. (§ 2 ch 118 SLA 1972)

**Cross reference.** — As to emergency medical services, see AS 18.06

**Effect of amendments.** — The 1975 amendment added "not in conflict with AS 18.70.075, but not limited to AS 18.70.075" to the end of paragraph (18) of subsection (a).

The 1978 amendment added paragraph (20) to subsection (a).

The 1979 amendment added "visual or performing arts centers, or museums" to the end of paragraph (14)

Cited in *Gives v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1168 (File No. 2016), 506 P.2d 1221 (1975)

The rule of strict construction does not apply to the mode adopted by the corporation to carry into effect powers expressly or plainly granted. *Femmer v. City of Juneau*, 9 Alaska 175 (1937)

And power may be exercised in any reasonable way. The power being granted, the municipal corporation has the power to exercise such power in any reasonable way it sees fit. *Femmer v. City of Juneau*, 9 Alaska 175 (1937).

Unlawful expenditure may be enjoined. — Equity, in a proper case, could grant relief by restraining a city from the unlawful expenditure of funds in the performance of a contractual obligation. *Femmer v. City of Juneau*, 9 Alaska 316, 97 F.2d 660 (9th Cir. 1938)

A city has no authority to conduct a drugstore, as this article sets out the several powers granted by the legislature to municipal corporations, and nowhere therein is such an institution as a drugstore provided for. *Cochran v. City of Nome*, 10 Alaska 125 (1944).

Municipality must maintain sidewalks. — The municipal laws of Alaska give the municipality, or rather its officers, the power to maintain sidewalks and the consequent duty to exercise this power. *Krause v. Town of Juneau*, 2 Alaska 633 (1906)

Signer of petition to widen street not estopped to question council's jurisdiction. — While one signing a petition to the common council to widen and extend a street is estopped from questioning any irregularities in the acts of the common council in carrying out the purposes of such petition, yet he is not estopped from questioning the jurisdiction of the common council, for all his name to the petition indicates is that he is willing to be bound, providing the law is followed and a majority of the owners in value sign the same petition. *Town of Ketchikan v. Zimmerman*, 4 Alaska 336 (1911)

Section confers power to acquire and operate city dock. — Under this section a city has the right to purchase, construct or otherwise acquire or establish a public wharf, or "city

dock," and to expend such funds as were necessary for that purpose from the general funds of the city, and under the same provision the city had the authority necessary to maintain and operate said city dock for the use of the city and public, provided it did so from the revenue collected for services rendered by such utility from the customers or users thereof. *Femmer v. City of Juneau, 9 Alaska 175 (1937)*.

Such power includes powers necessarily implied. — It was undoubtedly the intention of the legislature, when it passed this section, authorizing municipalities in Alaska to purchase, construct, or otherwise acquire, establish and operate public wharves, for the use of the city and public, to confer on the towns of the state all the powers necessary to enable them so to do, under the express powers so granted and those necessarily implied from the grant so conferred. *Femmer v. City of Juneau, 9 Alaska 175 (1937)*.

Such as power to execute contracts. — Incident to a power expressly granted to purchase, construct, or otherwise acquire, establish, and operate public wharves is the power to make such contracts as are necessary to its effective exercise. *Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938)*.

And provide for their arbitration. — Having a right to contract incident to the power to operate a public wharf a city had power to provide for arbitration of contracts thus entered into. *Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938)*.

But city may not grant exclusive user of wharf. — In the exercise of a power to establish and operate a public wharf, a municipality would not be warranted in divesting itself of control or in granting away an exclusive user thereof. A contract having such a result would be illegal and void. *Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938)*.

It may grant conditional priority to use wharf. — Where a city-owned wharf had commenced to rot away and extensive repairs were required to place it in a proper condition to be used, in such circumstances it could not be said that a contract, the

substance of which was that the city, in return for a guarantee of a steady and substantial patronage of a wharf, obligated itself to make certain repairs to the wharf and to give a shipping company a conditional priority in the right to land its vessels at and use the wharf, was not one reasonably necessary to enable it to exercise its powers to "establish and operate" a public wharf. *Femmer v. City of Juneau, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938)*.

And lease wharf privileges if it retains control. — It is not to be understood that it is not within the power of a town to lease wharf privileges to furnish to the traveling public a convenient and economical landing place, but there cannot lawfully be what in effect is an abandonment by the town of the right to control and regulate. *Juneau Ferry & Navigation Co. v. Morgan, 236 F. 204 (9th Cir. 1916)*.

Power to construct wharves imposes corresponding duty. — Power to provide for the location, construction, and maintenance of the necessary wharves imposes upon the council a public duty, as well as the power to perform it. When it shall appear necessary to the council to provide these useful aids to commerce, it becomes their official duty to locate and determine where the wharf shall be built, to construct or build it, and thereafter to maintain it and keep it in repair. *Conrad v. Miller, 2 Alaska 433 (1905)*.

Section assumes city will acquire right of occupancy before building wharf. — This section assumes that a city will acquire the rights of occupancy necessary to construct wharves, as a preliminary to their construction. *Berger v. Ohlson, 10 Alaska 84, 120 F.2d 56 (9th Cir. 1941)*.

It does not authorize city to build dock on federal land. — Manifestly this section would not authorize a city to build and maintain a wharf in a reserve already set apart by the federal government for the use of its railroad. *Berger v. Ohlson, 10 Alaska 84, 120 F.2d 56 (9th Cir. 1941)*.

And dock built on federal land belongs to United States. — A city dock built upon land belonging to the United States must in legal contem-

plation have become a part of it in the absence of special circumstances leading to a contrary conclusion where no specific authority for the erection of the wharf as property of the city can be found. *Berger v. Ohlson*, 10 Alaska 84, 120 F.2d 56 (9th Cir. 1941).

At best the public of the city of Anchorage had a mere license to use a city dock built and maintained within the Alaska railroad terminal reserve, and the United States had a right to terminate the use of the dock. *Berger v. Ohlson*, 10 Alaska 84, 120 F.2d 56 (9th Cir. 1941).

City may stipulate rates will not be changed.—Having the power to grant to a shipping company a right of user of a wharf, and having the power to fix charges for such user, the city ipso facto had the power to stipulate that during the duration of the contract the charge would remain constant. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Franchise to collect wharfage not authorized. A power given by the legislature to a common council of a town to locate, construct, and maintain wharves does not authorize the council to grant a franchise to private persons to perform the acts and charge tolls for the use of the wharf. The council cannot delegate to others, surrender, or renounce its official duty. *Conradt v. Miller*, 2 Alaska 433 (1905).

Funds from operation of dock should be segregated. — For a city to deposit the earnings of its dock in its general fund and draw from the general funds, as necessary, funds to pay for operation and maintenance of the dock, while probably not illegal, is bad bookkeeping to say the least. The earnings of the city dock should be segregated and kept in a separate account and the costs of operation and maintenance paid therefrom. *Femmer v. City of Juneau*, 9 Alaska 175 (1937).

Only operating expenses, not capital expenditures, must be paid from revenues. — Where undisputed testimony showed that at the time an outlay was made by a city to put its dock in usable condition, the dock "had commenced to rot away" and could only be saved by making the

repairs contracted to be made, there was room for strong argument to the effect that the expenses were in reality capital expenditures necessary in order to "establish" a wharf, rather than being expenses of "operation or maintenance," which last alone are required by this section to be paid "from the revenue collected for service rendered." *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

Municipality may buy land and divert stream beyond its limits.—Since the law gives municipalities the express right to provide for the location and construction of sewers, aqueducts, and watercourses and to widen, straighten, strengthen or change the channels of streams and watercourses, such a grant of power would be idle if the city could not purchase ground outside of the incorporated limits and divert a stream beyond its limits and prevent it from reaching the incorporated limits, if such a course should be deemed advisable, rather than to confine its activities to the city limits proper. *Town of Seward v. Margules*, 9 Alaska 351 (1938).

The city may exercise implied authority in police control where the exigencies of municipal life seem to require more rigid regulation than is required in the state at large. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916).

Power to provide for utilities authorizes binding grant of franchise. — Power granted to a municipality to provide for water supply and lights undoubtedly carries with it the power to grant a franchise to an electric light company for a limited period of time to use the municipal streets for poles and wires and the transmission of electricity, and the franchise, if accepted, becomes binding upon both the city and the company, not to be revoked or repealed, unless the power to repeal has been clearly and unmistakably reserved. *Alaska Elec. Light & Power Co. v. City of Juneau*, 294 F. 864 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924).

A city has the right to own and operate an electrical distribution system. *Homer Elec. Ass'n v. City of Kenai*, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 235 (1967); *Chugach*

**Elec. Ass'n v. City of Anchorage, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).**

**And it may grant exclusive right to occupy portions of streets for pipes or electric power poles.—A state legislature may grant exclusive rights to occupy certain portions of certain streets for the purpose of putting down pipes for gas or for putting poles up upon which electric wires may be strung or hung, and for putting pipes down for the conduct of water that may be used for fire and domestic purposes; and a city may do what the state could do, or the city council may by its action do what the state could do, if the state has granted such exclusive right and such power and authority to the city and the city council. Ketchikan Co. v. Citizens' Co., 2 Alaska 120 (1903).**

**It cannot be doubted that incorporated towns in Alaska have all of the usual powers of control over their streets, including the right to grant franchises for lighting, water supply, etc., and to fix the terms thereof, and regulate the conduct of such utilities. Town of Seward v. Seward Water & Power Co., 5 Alaska 52 (1914).**

**Am. Jur., ALR and C.J.S. references.— 37 Am. Jur., Municipal Corporations, §§ 111 to 138, 276 to 318, 38 Am. Jur., Municipal Corporations, §§**

**559 to 570, 43 Am. Jur., Public Utilities and Services, §§ 10, 11, 86, 105, 56 Am. Jur., Waters, § 95 et seq.**

**Power of municipality to assume the duty of providing and maintaining railroad crossings, 1 ALR 316.**

**Public utility acts as applicable to municipal corporations owning or operating waterworks, 10 ALR 1432, 18 ALR 946.**

**Ordinance relating to location of hospital, sanitarium, etc., 17 ALR 524.**

**Power of legislature over use of park, 18 ALR 1266; 63 ALR 492; 144 ALR 509.**

**Implied power to provide hospital, 25 ALR 613.**

**Constitutionality of statute or ordinance for protection of water supply, 72 ALR 673.**

**Power of municipal corporation to sell equipment to consumers as adjunct to utility service furnished, 108 ALR 1454.**

**Establishment and maintenance of municipal waterworks as "necessary expense" within exception in constitutional or statutory provision limiting amount of municipal indebtedness, 113 ALR 1210.**

**62 C.J.S. Municipal Corporations §§ 293, 651, 699, 64 C.J.S. Municipal Corporations §§ 1693, 1696, 1808.**

**Sec. 29.18.033. Garbage and solid waste services. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and dispose of their garbage and solid wastes as provided in the ordinance; award contracts for collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.**

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

(c) Repealed by § 6 ch 76 SLA 1973.  
(am §§ 5, 6 ch 76 SLA 1973)

(d) This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

Am. Jur. and C.J.S. references.—37  
Am. Jur., Municipal Corporations, §  
46 et seq

62 C.J.S. Municipal Corporations §  
279, 657.

**Effect of amendment.** — The 1973 amendment rewrote subsection (b) and repealed subsection (c).

**Definition of collect.** — Collect is defined as the "bringing together into one body or place." *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Definition of disposal.** — Disposal means the act of passing over the control of solid waste to the operators of a disposal site. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Dumpsters are garbage containers.** — Drop boxes and dumpsters, which are used as intermediate disposal facilities, are garbage and refuse containers. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**And are not equivalent of final landfill sites.** — Interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely violate the requirement of subsection (b) of this section and AS 42.05.221(f) that certificate holders be compensated for their interests. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Operation of garbage disposal sites does not constitute a utility service;** it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Sec. 29.48.035. Regulatory powers.** (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

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

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

(3) vehicle parking not inconsistent with AS 28.01.010;

(4) transportation fares;

- (5) licensing, impounding and disposition of animals;
- (6) selling of goods;
- (7) selling of food;
- (8) abandoned property;
- (9) dangerous and disorderly conduct;
- (10) alcoholic beverages as provided by AS 04.15.070;
- (11) recreational devices as provided by AS 05.20.100;
- (12) control of insects and rodents;
- (13) offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(14) building, housing and related codes, which may be provided by cities within cities or, in the manner required in (b) or (c) of this section, by first or second class boroughs in the borough area outside cities or areawide, subject to the following:

(A) exceptions to requirements of the codes may be made in the codes among other reasons, in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments;

(B) codes may not be used to prohibit or restrict the development or use of solar or wind energy unless the assembly or council finds that the development or use of solar or wind energy would endanger the health or safety of the public;

- (15) condemnation and abatement of public nuisances and hazards;
- (16) garbage and solid-waste collection and disposal;
- (17) water pollution control;
- (18) air pollution control as provided in AS 46.03.140 — 46.03.240;
- (19) other powers and functions affecting the general health, safety, well-being and welfare of its inhabitants;
- (20) licensing of day care facilities.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.33.250 — 29.33.290 for areawide exercise or in the manner required under AS 29.38.010 — 29.38.050 for exercise in the borough area outside cities or are conferred by § 20 of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

(am § 44 ch 53 SLA 1973; am §§ 2—4 ch 91 SLA 1974; am § 18 ch 241 SLA 1976; am §§ 4, 5 ch 253 SLA 1976; am § 6 ch 83 SLA 1980)

(c) The provisions of (b) of this section notwithstanding, boroughs which on September 10, 1972 are exercising building, housing or related code powers, except as those code powers relate to flood control, on an areawide basis or in the borough area outside cities shall, subject to acquisition of the powers on an areawide basis by transfer or election as provided in (b) of this section, exercise the powers in the borough area outside cities and, upon agreement of the city and borough, within any city, home rule or otherwise, in which the powers are being exercised on September 10, 1972; if the city does not agree to continued borough exercise of the powers within the city, the city shall exercise the powers within the city. (§ 2 ch 118 SLA 1972)

**City may not require all businesses to secure licenses.**—Because some occupations so intimately influence the welfare of the public as to require

regulation, it does not follow that all of them can be required to secure a license for their existence. *City of Anchorage v. Brady's Floor Covering*, 13 Alaska 741, 105 F. Supp. 717 (D. Ala. 1952).

**Or to pay license fees.**—A municipal corporation exercises only delegated powers, and has no inherent power to levy a tax by way of license or otherwise, or to exact a license fee for conducting any business or occupation. *City of Anchorage v. Brady's Floor Covering*, 13 Alaska 741, 105 F. Supp. 717 (D. Ala. 1952).

**Only businesses affected with public interest may be regulated.**—As a regulatory license, authority for which is implied under the police power, it is necessary to find that an ordinance concerns trades, professions, businesses or privileges affected with a public interest which the city has the power to regulate. *City of Anchorage v. Brady's Floor Covering*, 13 Alaska 741, 105 F. Supp. 717 (D. Ala. 1952).

**And there must be a reasonable relation between the license fee and the cost of regulation by the city.** *City of Anchorage v. Brady's Floor Covering*, 13 Alaska 741, 105 F. Supp. 717 (D. Ala. 1952).

**When an ordinance licensing an occupation is authorized only in support of police supervision, the expense of such supervision determines the amount of the charge.** *Town of Ketchikan v. Greenwood*, 6 Alaska 396 (1915).

**License ordinance does not impose tax.**—An ordinance of a city requiring every owner of a motor vehicle being operated or driven upon the public streets of the city to first secure a license for such vehicle, the amount of such license being fixed at eight dollars per annum does not levy a tax but is a license required for the use of its streets, enacted under the police powers granted to it by the legislature. *Hoff v. City of Ketchikan*, 10 Alaska 220 (1942).

**Fee may be based on cost of policing and injury to highways.**—The reasonableness of a license fee on motor vehicles as a police regulation generally depends on the cost of registering, supervising and keeping in control such vehicles, the density of population, conditions of public travel, etc.; and the fee or tax may be based not only on the amount necessary for policing such vehicles but also upon the injury caused by them to the public highways. *Hoff v. City of Ketchikan*, 10 Alaska 220 (1942).

**Amount of fee is matter of legislative discretion.**—Subject to the constitutional limitations, the determination of the amount or reasonableness of a license tax, whether imposed for the purpose of regulation or for revenue, ordinarily rests with the discretion of the legislative power in the state or municipality imposing the license or tax, and the exercise of such discretion will not be interfered with by the courts, unless it is clearly apparent that there has been an abuse

of discretion and that the fee or tax is arbitrary, unreasonable, oppressive or prohibitive. *Hoff v. City of Ketchikan*, 10 Alaska 220 (1942).

**Rules governing consideration of reasonableness of fee.** — The rule as applied to the interpretation of statutes, which includes municipal ordinances, is: The amount of the fee which may be levied under the police power is limited to that necessary to the administration of the law; or, as sometimes expressed, the amount must not be disproportionate to the cost of issuing a license for the regulation of the business to which it applies. The amount of the fee rests, to a certain extent, in the sound discretion of the legislature, which takes into consideration all the circumstances and necessities of the case. It will be presumed that the amount of the fee is reasonable unless the contrary appears upon the face of the law itself, or is established by proper evidence. The fact that revenue is incidentally derived does not invalidate the law as a police regulation, if such revenue is not so disproportionate as to make the fee charged unreasonable. *Hoff v. City of Ketchikan*, 10 Alaska 220 (1942).

**Amount held reasonable.** — Where an ordinance required every owner of a motor vehicle being operated or driven upon the public streets of the city to first secure a license for such vehicle, the amount of such license being fixed at eight dollars per annum, the amount was not unreasonable, as it appeared upon the face of the ordinance itself, and no evidence was offered as to its unreasonableness. *Hoff v. City of Ketchikan*, 10 Alaska 220 (1942).

**License may be imposed on nonresident.** — Where plaintiff regularly drove his automobile, which, during his hours of employment he customarily parked on the streets of Ketchikan in the vicinity of the mill, and his family likewise used the automobile within the city limits for purposes of pleasure and to shop, the plaintiff, although a nonresident of the city, was continually using its streets and was subject to the payment of a license. *Hoff v. City of Ketchikan*, 10 Alaska 220 (1942).

**If nonresident continually uses streets of city.** — The mere fact that the owner or operator of vehicles lives beyond the corporate limits does not prevent the municipality from requiring a license and imposing a license tax on his vehicles used in carrying on a business or occupation within the municipality, or in otherwise continually using the streets of the municipality, but such a license or tax cannot be imposed on vehicles of nonresidents where business or pleasure casually or occasionally carries them into the city. *Hoff v. City of Ketchikan*, 10 Alaska 220 (1942).

The term "use," in an ordinance regulating the use of the streets of a city by persons who use vehicles thereon and requiring the payment of certain license fees therefor, has reference to a continued or repeated practice and includes nonresidents as well as residents. *Hoff v. City of Ketchikan*, 10 Alaska 220 (1942).

**City may regulate traffic on federal bridge.** When there are no federal laws or regulations governing traffic on a bridge built and maintained by the federal government, it is in complete accord with the general plan of the state government that a municipality should pass such laws relative to traffic within its boundaries. *Vogler v. Grimmann*, 12 Alaska 19, 78 F. Supp. 575 (D. Alas. 1948).

**Council has unlimited discretion in licensing vehicles for hire.** — This section does not set forth any rules or regulations under which a person is entitled to a license from the city council for the use for hire of a motor vehicle. It simply leaves it to the unbridled discretion of the town council to refuse or grant an application for such a license. *Town of Fairbanks v. Maloo*, 11 Alaska 476 (1948).

**And in approving changes of business locations.** This section fails to lay down any regulations as to when a person shall be entitled to have his application for change of business location approved by the town council. The granting or refusal of such a change is left to the unrestricted discretion of the city council. *Town of Fairbanks v. Maloo*, 11 Alaska 476 (1948).

Section does not authorize city tax on trade, profession or business. A tax imposed by city ordinance on the conduct of any trade, profession, business or privilege cannot be upheld as a general exercise of the police power under this section. *City of Anchorage v. Brady's Floor Covering*, 13 Alaska 741, 106 F. Supp. 717 (D. Alas. 1952).

**But city has general police power.** — While the council has not the power to tax businesses or occupations, yet it has the general police power usually conferred upon municipalities. *Town of Ketchikan v. Greenbaum*, 5 Alaska 396 (1915).

An ordinance taxing occupations or businesses cannot be upheld as an exercise of the taxing power, and must derive its validity, if any, from the "police power." *Town of Ketchikan v. Greenbaum*, 5 Alaska 396 (1915).

**Power to license does not include power to prohibit by excessive fee.** — Under a power given to license and regulate, an ordinance cannot practically prohibit the business by requiring an excessive license fee. *Town of Valdez v. Bell*, 6 Alaska 109 (1918).

**And excessive fee is invalid.** — An ordinance imposing on itinerant merchants a license fee of \$100 a month is unreasonable, excessive and prohibitive, and hence, invalid. *Town of Valdez v. Bell*, 6 Alaska 109 (1918).

**License fees held excessive.** — See *Town of Ketchikan v. Greenbaum*, 5 Alaska 396 (1915); *Town of Valdez v. Bell*, 6 Alaska 109 (1918).

**Additional liquor license may menace health and safety.** — With 12 liquor establishments in the vicinity of the place chosen by applicant for the exercise of his license, it could easily be that additional stores in that vicinity would be for the good of the people of the city and would be a menace to their health and safety under the terms of this section, so that council was authorized in not passing a resolution approving his application. *In re Kaye*, 11 Alaska 556 (1948).

**Landing and take-offs of airplanes may be prohibited as endangering public safety.** — Town had a right to prohibit the use of its property for landing and take-offs of airplanes inasmuch as that was greatly endangering the public safety. *Kaltenbach v. Town of Fairbanks*, 13 Alaska 582, 183 F. Supp. 319 (D. Alas. 1962), aff'd, 11 Alaska 608, 211 F.2d 81 (1948), cert. denied, 15 Alaska 372, 318 F.2d 627, 75 A.C. 208, 50 L. Ed. 657 (1954).

**AIR and C.J.S. references.** — Conflict between statutes and local regulations as to automobiles, 21 A.I.R. 1186; 61 A.I.R. 993; 147 A.I.R. 522.

Public regulation of dry cleaning and dyeing establishments, 49 A.I.R. 110; 128 A.I.R. 678.

Municipal regulation of sale of poisons, drugs or medicines, 54 A.I.R. 735.

Validity of ordinance prohibiting or regulating solicitation of patronage for hotels, roominghouses, etc., 121 ALR 75.

Use beyond municipal limits of municipal equipment for extinguishment of fires, 122 A.I.R. 1158.

Power to require closing of place of amusement or public assembly because of fire hazard, 110 A.I.R. 1048.

62 C.J.S. Municipal Corporations §§ 132, 218, 307, 509.

**Effect of amendments.** — In 1971 amendment substituted "46.03.100 46.03.240" for "18.01" in paragraph (1) of subsection (a).

The 1974 amendment, in subsection (a), inserted "vehicle and pedestrian traffic," "other highway vehicles," and "not inconsistent with AS 28.01.010" in paragraph (1), added "not inconsistent with AS 28.01.010" to the end of paragraph (2), and substituted "not inconsistent with AS 28.01.010" for "and traffic" in paragraph (3).

The first 1976 amendment, in paragraph (1) of subsection (a), deleted "and" preceding "pedestrian," inserted "and other" preceding "traffic," and substituted "and off-highway" for "other highway."

The second 1976 amendment added paragraph (2) of subsection (a) and inserted references to that paragraph in two places in the second sentence of subsection (b).

The 1980 amendment, effective June 13 1980, substituted "subject to the following" for a "following" outside cities or areas" at the end of the present introductory paragraph in paragraph (1); and added subparagraphs (A) and (B) in paragraph (1).

As the rest of the section was not affected by the amendments, it is not set out.

**Dillon's note.** — AS 46.03.240, referred to in paragraph (1) of subsection (a), was repealed by S 19 ch 220 SLA 1976.

**Legislative history report.** — For report on ch 53, SLA 1973 (CR111 282), see 1973 House Journal, pp 793, 805.

**Ordinance regulating massage parlors and physical culture studios now within the statutory purview of the Municipality of Anchorage.** H. Res. of Municipality of Anchorage, Sup. Ct. Op. No. 206 (File No. 628), 511 P.2d 31 (1960).

**Applied in *Crowe v. Anchorage*,** Sup. Ct. Op. No. 1879 (File No. 359), 515 P.2d 28 (1974).

**Sec. 29.18.037. Extraterritorial jurisdiction.** (a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries and airports outside its boundaries, subject to AS 29.33.010, and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality. (am § 2 ch 100 SLA 1975; am § 5 ch 78 SLA 1978)

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities. (§ 2 ch 118 SLA 1972)

Section inapplicable to streets connecting different portions of city. This section merely provides for the building of roads and trails outside of town limits, and has no reference to the building of streets connecting two different portions of the town or city. *Town of Ketchikan v. Zimmerman*, 4 Alaska 336 (1911).

Power granted does not deprive city of other powers.—There is no

reason that the grant to the council of power to extend roads and trails from its limits to certain points without its limits in any manner deprives the council of any of the implied or necessary powers which it would enjoy, in the absence of any such express grant in the charter. *Town of Ketchikan v. Zimmerman*, 4 Alaska 336 (1911).

Cross reference. — A "emergency medical services, see AS 29.18.037.

Effect of amendment. — The 1975 amendment inserted "including ice roads" in the first sentence of subsection (a).

The 1978 amendment inserted

"emergency medical services" in the first sentence of subsection (a).

**Sec. 29.18.010. Municipally-owned utilities.** A municipality owning or operating utilities may extend service to adjacent areas outside its municipal limits. For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary real property interests in real property outside its limits. This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

A city is authorized to sell and distribute electrical energy to adjacent districts, areas, or localities located within a reasonable distance from the

limits of the city. *Chugach Elec. Ass'n v. City of Anchorage*, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

But city is not permitted to extend system beyond settled area.—It was never intended by the use of the term "adjacent" in this section to permit a municipality to leapfrog a settled area, particularly where such area is, from all appearances, a part of the metropolitan area, and extend its distribution system into the territory beyond. *Chugach Elec. Ass'n v. City of Anchorage*, 13 Alaska 747, 106 F. Supp. 6 (D. Ala. 1952).

Although city may extend system to noncontiguous area beyond unsettled area.—Under this section a municipality is authorized to extend its distribution system into any noncontiguous area within a reasonable distance of its corporate limits, provided that the intervening territory is unsettled and uninhabited or virtually so. *Chugach Elec. Ass'n v. City of Anchorage*, 13 Alaska 747, 106 F. Supp. 6 (D. Ala. 1952).

Purchasing land beyond limits to divert stream from reaching city.—

Since AS 29.10.117 (now AS 29.48.030) gives municipalities the express right to provide for the location and construction of sewers, aqueducts, and watercourses and widen, straighten, strengthen or change the channels of streams and watercourses, such a grant of power would be idle if the city could not purchase ground outside of the incorporated limits and divert a stream beyond its limits and prevent it from reaching the incorporated limits, if such a course should be deemed advisable, rather than to confine its activities to the city limits proper. *Town of Seward v. Margules*, 9 Alaska 354 (1938).

If authority has not been expressly given by this section for a city to purchase land outside of the incorporated limits and to divert a stream beyond its limits and prevent it from reaching the incorporated limits, such authority is necessarily implied. *Town of Seward v. Margules*, 9 Alaska 354 (1938).

**Sec. 29.48.050. Franchises and permits.** (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 per cent of the votes cast are in favor of the franchise. At least 30 days' notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission. (§ 2 ch. 118 S.L.A. 1972)

Holder of franchise may enjoin competition under later franchise. — There appears to be substantial authority for the proposition that the holder of a nonexclusive public utility franchise who is first in the field may enjoin the second and later holder of a franchise who threatens competition which seriously or unnecessarily interferes with the first holder's property or operations. *Hurton v. Matanuska Valley Lines*, 17 Alaska 208, 244 P.2d 617 (9th Cir. 1957).

City does not have right to impose revenue tax on public utility using street. — While the common council of a municipality would have the right upon granting a franchise to a corporation to supply water to the town, to impose such terms as might be agreed upon, or as might be reasonable, and would have the further right in the exercise of its police power to compel the service corporation to keep its poles, tracks, pipes, or other equipment in a safe and proper condition, it has no right to impose a tax for revenue purposes except such as it is expressly authorized to levy and collect by the legislative power creating it. *Town of Seward v. Seward Water & Power Co.*, 5 Alaska 52 (1914).

Am. Jur., ALR and C.J.S. references. — 37 Am. Jur., Municipal Corporations, § 46 et seq.

Power to provide for utilities authorizes binding grant of franchise. — Power granted to a municipality to provide for water supply and lights unconditionally carries with it the power to grant a franchise to an electric light company for a limited period of time to use the municipal streets for poles and wires and the transmission of electricity, and the franchise, if accepted, becomes binding upon both the city and the company, not to be revoked or repealed, unless the power to repeal has been clearly and unmistakably reserved. *Alaska Elec. Light & Power Co. v. City of Juneau*, 291 F. 261 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924).

Meaning of "franchise". While the grant of a right to use a public street, being a privilege conferred by public authority, may be a "franchise" within the broad and general meaning of that word, it is not a "franchise" within the meaning of this section. As there used, the word is limited to include only privileges granted to a private person to construct and maintain public services. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 619 (9th Cir. 1938).

This section draws a distinction between franchises and permits to use. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 619 (1938).

Motive of council passing ordinance as to franchise as affecting validity thereof, 32 ALR 1525.

Forfeiture of street railway franchise for breach of condition, 34 ALR 1420.

61 C.J.S. Municipal Corporations § 1726.

Permits need not be given by separate ordinances. — This section requires only that permission to use may be given under, that is, in accordance with, "rules and regulations" established by ordinance, not that each separate permit must be the subject of an ordinance. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 619 (1938).

But franchises must be approved by electorate. — Both in the case of the grant of a franchise to construct and maintain public utilities and in the case of a sale, lease, exchange or similar disposal of public property, approval of the electorate is necessary to validate the transaction. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 619 (1938).

Franchise may not be revoked unless right expressly reserved. — Power

granted to a municipality to provide for water supply and lights unconditionally carries with it the power to grant a franchise to an electric light company for a limited period of time to use the municipal streets for poles and wires and the transmission of electricity, and the franchise, if accepted, becomes binding upon both the city and the company, not to be revoked or repealed, unless the power to repeal has been clearly and unmistakably reserved. *Alaska Elec. Light & Power Co. v. City of Juneau*, 291 F. 261 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 69 L. Ed. 462 (1924).

A certificate of public convenience and necessity does not grant a monopoly, in relation to a city's electrical utility system, to furnish electrical energy throughout the service areas which have been allotted the such *Flax Ann's v. City of Anchorage*, Sup. Ct. Op. No. 407 (File No. 765, 766), 150 P.2d 1001 (1967).

A certificate of public convenience and necessity does not grant a monopoly to a privately owned and operated utility under the Alaska Public Service Commission Act (AS 42.05) *Chugach Elec. Ann's v. City of Anchorage*, Sup. Ct. Op. No. 407 (File No. 765, 766), 150 P.2d 1001 (1967).

**Sec. 29.48.080. Public utilities rates.** The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital. (§ 2 ch 118 SLA 1972; am § 1 ch 136 SLA 1980)

This section was intended to refer, not only to franchises thereafter to be granted, but to franchises then in existence. *Alaska Elec. Light & Power Co. v. City of Juneau*, 29 F. 861 (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 29 L. Ed. 462 (1924); *Town of Corlova v. Alaska Pub. Util.*, 9 Alaska 196 (1937).

**City may not contract away power to fix rates of utilities.**—A city may not contract away its power to fix, and from time to time change, the rates to be charged by private organizations engaged in furnishing public services. Such action is prohibited by this section and by AS 29.10.147 and 29.10.150 (now 29.48.070 and 29.48.080). *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

**Not may contract as to rates for its own services.** This section and AS 29.10.147 and 29.10.150 (now 29.48.070 and 29.48.080) have no effect upon the power of a city to fix contractually the rates to be charged a user of a municipally owned public utility. *Femmer v. City of Juneau*, 9 Alaska 315, 97 F.2d 649 (9th Cir. 1938).

**Rates may not be irrevocably fixed.**—There is not necessarily included in the power of a municipality to pro-

vide lights for a city, the power to enter into a binding contract whereby the rates to be charged by a public utility corporation shall be irrevocably fixed. *Alaska Elec. Light & Power Co. v. City of Juneau*, 29 F. 861, (9th Cir.), cert. denied, 266 U.S. 601, 45 S. Ct. 90, 29 L. Ed. 462 (1924).

All the operator of a public utility is entitled to is a reasonable return on his net capital investment, represented by property actually used and useful in the public service, and then only provided that his operation is efficient and economical. *Pichotta v. City of Skagway*, 12 Alaska 42, 78 F. Supp. 999 (D. Alaska, 1949).

**But rates fixed too low are confiscation of property.**—Where the rates prescribed are not sufficient to meet operating expenses, there is not merely an incidental diminution in the value of plaintiff's property, such as would be unavailing upon any exercise of the police power to fix rates which diminished income, but a confiscation in the constitutional sense, and the enforcement of the ordinance should be enjoined, without prejudice, however, to the right of the city to take such further proceedings as it may deem necessary in connection with the amendment of its ordinance.

**Effect of amendment.**—The 1980 amendment, effective July 1, 1980, substituted "municipally owned utility" for "public service corporation, corporation, or individual" following "inhabitant by a" near the middle of the first sentence, and substituted "is" for "he" preceding "paid on the deposit" near the end of the first sentence.

The fact that an entity was subject to the commission's jurisdiction while another entity was not may not be regarded as a factor in the first entity's favor. *City of Fairbanks v. Alaska Pub. Util. Commission & West Commercial, Inc.*, Sup. Ct. Op. No. 2079 (File No. 2077), 611 P.2d 493 (1980).

*Pickett v. City of Nagsway*, 12 Alaska 42, 78 P. Supp. 999 (D. Ala. 1948).

**Meaning of "invested capital."** — "Invested capital," as used in this section, means the initial investment, regardless of subsequent changes in ownership, plus capital additions and minus accrued depreciation. *Pickett v. City of Nagsway*, 12 Alaska 42, 78 P. Supp. 999 (D. Ala. 1948).

The term "invested capital" should not be construed to mean fair value, nor is the utility entitled to the benefit of any appreciation in value, nor should the term be construed to mean that which is paid for a utility by the last purchaser.

*Pickett v. City of Nagsway*, 12 Alaska 42, 78 P. Supp. 999 (D. Ala. 1948).

Fact investment was made before section was adopted is irrelevant. In determining the reasonableness of a rate law fixed by a city under this section, the circumstance that the investment was made or not incurred before this section, authorizing legislation, went into effect in 1923, would seem to be wholly irrelevant. *Pickett v. City of Nagsway*, 12 Alaska 42, 78 P. Supp. 999 (D. Ala. 1948).

C.J.S. references. — 62 C.J.S. Municipal Corporations § 297; 61 C.J.S. Municipal Corporations § 979.

**Sec. 29.04.070. Hearing for regulation of utilities rates.** If the assembly or council considers it advisable to regulate, change, or fix the rates to be charged by a public service corporation, association or individual not regulated under AS § 2.05, it shall order a hearing to be held before the governing body at a time and place specified. Notice of the hearing shall be given by at least one publication in a newspaper of general circulation distributed within the municipality or, if no newspaper of general circulation is distributed within the municipality, notice shall be given by posting a notice in three public places within the city or through news outside cities receiving the utilities services and by serving written notice upon the corporations, associations and individuals whose rates are to be regulated, fixed, or changed in the same manner that summonses are served. The notices shall be published or posted and served at least 15 days before the hearing. (§ 2 ch 110 SLA 1972)

Am. Jur. and A.L.R. references. — 61 Regulation of municipal utility Am. Jur. Public Utilities, §§ 96, 99. 62 A.L.R. 447, 171 A.L.R. 91.

**Sec. 29.04.080. Right to participate and compel testimony.** At a hearing held under § 70 of this chapter, all public service corporations, associations, or individuals affected by or interested in the matters to be heard may be present and may be represented by counsel. The municipality and all interested parties may produce witnesses and examine them and introduce evidence to prove or disprove the facts in issue or matters to be established or inquired into at the hearing. All parties may compel the attendance of witnesses, and subpoenas requiring attendance shall be issued by the municipal clerk under his hand and the seal of the municipality. Subpoenas duces tecum requiring the production of books and papers shall be issued in like manner upon request. If a person fails to obey a subpoena, the party at whose request the subpoena



**Sec. 29.48.10a. Creation of historical district commissions.** The governing body of a general law or home rule municipality may establish a historical district commission or designate the planning and zoning commission or itself to serve as the historical district commission. (S 2 ch 139 SLA 1977)

*Cross reference.* - As to the duty of municipalities, see the Historic Sites Advisory Committee to Alaska, p. 41, to protect those which coincide with local historical district commissions regarding establishment of historical districts, see AS 41.35.100 (c) *Editor's note.* - Section 1 of the 1978 SLA 1977, provides: "NOTHING in the intent of the Legislature to take on

**Sec. 29.48.110. Establishment of historical districts.** (a) In addition to existing municipal authority providing for the preservation, protection, and maintenance of historic sites, the local historical district commission established under AS 29.48.10a, in consultation with the Historic Sites Advisory Committee within the Department of Natural Resources, may establish a historical district within the boundaries of the municipality.

(b) A historical district shall be a reasonably compact area of historical significance in which two or more structures important in state or national history, and related by physical proximity or historical association, are located for purposes of this section. "Structures important in state or national history" means properties recommended by historical district commissions, which are listed in the National Register of Historic Places or are characteristic of the Russian-American period before October 18, 1917, the early territorial period before 1930, or early Native heritage, reflecting the indigenous characteristics of Native culture in Alaska. Upon recommendation of the governing body of a general law or home rule municipality and the Historic Sites Advisory Committee, the Department of Natural Resources may by regulation formulate additional criteria for the establishment of historical districts not inconsistent with this subsection.

(c) The establishment of a historical district under this section shall be consistent with any applicable comprehensive plan for the municipality. (S 2 ch 139 SLA 1977)

**Cross references.** — As to the duty of the Historic Sites Advisory Committee to consult with local historical district commissions regarding the establishment of historical districts and to recommend, if appropriate, the formulation of additional criteria for the designation of historical districts under subsection (b) of this section, see AS 61.25.180 (b).

As to the historical district revolving loan fund, see AS 45.98.010 et seq.

**Editor's note.** — Section 1, ch. 139, SLA 1977, provides: "INTENT It is the intent of the legislature to foster an awareness of the need to preserve our historic past; to protect those visible aspects of our invaluable heritage so that present and future generations may continue to be enriched by the originality and strength of Alaska's architectural and cultural legacies."

**Article 3. Municipal Enactments.**

**Sec. 20.48.130. Acts required to be by ordinance.** (a) In addition to other actions which this title requires to be by ordinance, the assembly or council of a municipality shall use ordinances to

- (1) establish, alter or abolish municipal departments;
- (2) fix the compensation of members of the assembly or council;
- (3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;
- (4) provide for the levying of taxes;
- (5) make appropriations and supplemental appropriations or transfer appropriations;
- (6) grant, renew, or extend a franchise;
- (7) regulate the rate charged by a public utility;
- (8) adopt, modify or repeal the comprehensive plan, zoning and subdivision ordinances, building and housing codes, and the official map;
- (9) approve the transfer of a power to a borough from a city;
- (10) designate the borough seat;
- (11) provide for the retention or sale of tax foreclosed property;
- (12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the assembly or council to use ordinances in exercising certain of its powers. (1) 2 ch 118 SLA 1972, am 1 8 ch 49 SLA 1977, am 1 3 ch 91 SLA 1978;

**Effect of amendments.** The 1977 amendment added paragraph (11) of subsection (a).

The 1978 amendment added paragraph (12) of subsection (a).

Section not designated applicable to home rule municipalities under AS 20.11.080. This section which requires

municipalities to perform certain actions by ordinance including the making of appropriations, is not one of the provisions designated applicable to home rule municipalities in AS 20.11.080. Municipalities of Anchorage's Finance Dept. 6-1-78, Ch. 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 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2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 2895, 2896, 2897, 2898, 2899, 2900, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 2943, 2944, 2945, 2946, 2947, 2948, 2949, 2950, 2951, 2952, 2953, 2954, 2955, 2956, 2957, 2958, 2959, 2960, 2961, 2962, 2963, 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3296, 3297, 3298, 3299, 3300, 3301, 3302, 3303, 3304, 3305, 3306, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317, 3318, 3319, 3320, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329, 3330, 3331, 3332, 3333, 3334, 3335, 3336, 3337, 3338, 3339, 3340, 3341, 3342, 3343, 3344, 3345, 3346, 3347, 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357, 3358, 3359, 3360, 3361, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3372, 3373, 3374, 3375, 3376, 3377, 3378, 3379, 3380, 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391, 3392, 3393, 3394, 3395, 3396, 3397, 3398, 3399, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427, 3428, 3429, 3430, 3431, 3432, 3433, 3434, 3435, 3436, 3437, 3438, 3439, 3440, 3441, 3442, 3443, 3444, 3445, 3446, 3447, 3448, 3449, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, 3458, 3459, 3460, 3461, 3462, 3463, 3464, 3465, 3466, 3467, 3468, 3469, 3470, 3471, 3472, 3473, 3474, 3475, 3476, 3477, 3478, 3479, 3480, 3481, 3482, 3483, 3484, 3485, 3486, 3487, 3488, 3489, 3490, 3491, 3492, 3493, 3494, 3495, 3496, 3497, 3498, 3499, 3500, 3501, 3502, 3503, 3504, 3505, 3506, 3507, 3508, 3509, 3510, 3511, 3512, 3513, 3514, 3515, 3516, 3517, 3518, 3519, 3520, 3521, 3522, 3523, 3524, 3525, 3526, 3527, 3528, 3529, 3530, 3531, 3532, 3533, 3534, 3535, 3536, 3537, 3538, 3539, 3540, 3541, 3542, 3543, 3544, 3545, 3546, 3547, 3548, 3549, 3550, 3551, 3552, 3553, 3554, 3555, 3556, 3557, 3558, 3559, 3560, 3561, 3562, 3563, 3564, 3565, 3566, 3567, 3568, 3569, 3570, 3571, 3572, 3573, 3574, 3575, 3576, 3577, 3578, 3579, 3580, 3581, 3582, 3583, 3584, 3585, 3586, 3587, 3588, 3589, 3590, 3591, 3592, 3593, 3594, 3595, 3596, 3597, 3598, 3599, 3600, 3601, 3602, 3603, 3604, 3605, 3606, 3607, 3608, 3609, 3610, 3611, 3612, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 3625, 3626, 3627, 3628, 3629, 3630, 3631, 3632, 3633, 3634, 3635, 3636, 3637, 3638, 3639, 3640, 3641, 3642, 3643, 3644, 3645, 3646, 3647, 3648, 3649, 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, 3672, 3673, 3674, 3675, 3676, 3677, 3678, 3679, 3680, 3681, 3682, 3683, 3684, 3685, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 3694, 3695, 3696, 3697, 3698, 3699, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3708, 3709, 3710, 3711, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3719, 3720, 3721, 3722, 3723, 3724, 3725, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3733, 3734, 3735, 3736, 3737, 3738, 3739, 3740, 3741, 3742, 3743, 3744, 3745, 3746, 3747, 3748, 3749, 3750, 3751, 3752, 3753, 3754, 3755, 3756, 3757, 3758, 3759, 3760, 3761, 3762, 3763, 3764, 3765, 3766, 3767, 3768, 3769, 3770, 3771, 3772, 3773, 3774, 3775, 3776, 3777, 3778, 3779, 3780, 3781, 3782, 3783, 3784, 3785, 3786, 3787, 3788, 3789, 3790, 3791, 3792, 3793, 3794, 3795, 3796, 3797, 3798, 3799, 3800, 3801, 3802, 3803, 3804, 3805, 3806, 3807, 3808, 3809, 3810, 3811, 3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 3820, 3821, 3822, 3823, 3824, 3825, 3826, 3827, 3828, 3829, 3830, 3831, 3832, 3833, 3834, 3835, 3836, 3837, 3838, 3839, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 3847, 3848, 3849, 3850, 3851, 3852, 3853, 38

When a municipal charter is silent as to the mode of decision on a matter committed to the legislative body, ordinance procedures are not ordinarily required. *Municipality of Anchorage v. Frohne*, Sup. Ct. Op. No. 1477 (File No. 3070, 3104), 568 P.2d 3 (1977).

No expenditures other than by appropriation ordinance. -- This section and 29.18.100(c) prohibit second class and general law municipalities from authorizing expenditures except by appropriation ordinance. *Municipality of Anchorage v. Frohne*, Sup. Ct. Op. No. 1477 (File No. 3070, 3104), 568 P.2d 3 (1977).

Borough department illegally established. Where a proposed incorporation petition provided that public health services would be administered not by the borough assembly but by a board of health which was to be appointed by the borough assembly, but otherwise to operate independently in making rules and regulations with the force of law, such rules and regulations would be illegal ordinances since they would be promulgated by the board of health rather than by the borough assembly. The board of health would constitute a borough department illegally established by the incorporation petition, and not by ordinance 1962 Op. Atty Gen., No. 9.

Revision's note (1972). In 1972, S.L.A. 1972, AN 29.18.100(c) read in part " . . . other penalty for establishing rules . . ." To make sense and to conform to former AN 07.20.060 (1963) and earlier versions of the Municipal Code revision, this typographical error has been corrected to read " . . . other penalty, or establish rules . . ."

Taxes must be levied by ordinance. The borough assembly may levy taxes only by means of an ordinance enacted under the terms of this section 1963 Op. Atty Gen., No. 26.

**Sec. 29.18.110. Form of ordinance.** Ordinances are introduced in writing in the form required by 1. assembly or council (S 2 ch 118 S.L.A 1972)

**Sec. 29.18.120. Ordinance procedure.** (a) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance and its amendments is published together with a notice of time and place for public hearing. The hearing takes place on publication by at least five days. Copies of the ordinance must be available to all persons present at the ordinance must be read in full. The assembly or council shall hear all interested persons wishing to be heard. After the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment. The assembly or council shall print and make available copies of adopted ordinances.

(b) Ordinances take effect upon adoption or at a later date specified in the ordinance. (S 2 ch 118 S.L.A 1972)

Borough ordinances may not be passed by borough board of health.

Where a proposed incorporation petition provided that public health services should be administered not by the borough assembly but by a board of health which was to be appointed by the borough assembly, but otherwise to operate autonomously in making rules and regulations with the force of law, such rules and regulations would be illegal ordinances since they would be promulgated by

the board of health rather than by the borough assembly 1962 Op. Att'y Gen., No. 9.

Which should be an advisory board.

A borough assembly may set up a board of health as an advisory board and be substantially guided by such a board of health in its exercise of the public health power, as long as the borough assembly is the body finally expressing the public health power 1962 Op. Att'y Gen., No. 9.

An ordinance may be amended after public hearing without the necessity of a new hearing. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 544 P.2d 1115 (1976).

Only those changes to an ordinance which are so substantial as to change its basic character require that the public hearing process be repeated. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 544 P.2d 1115 (1976).

Where a public hearing on an ordinance

took place, and subsequently the ordinance was amended but the amendments fell squarely within the descriptive summary published in the newspaper as notice of the previous public hearing, no additional hearing was required and failure to publish notice properly concerning a second hearing was legally irrelevant. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 544 P.2d 1115 (1976).

**Sec. 29.08.160. Emergency ordinances.** (a) To meet a public emergency the assembly or council may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The assembly must print and make available copies of adopted emergency ordinances.

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

(c) Emergency ordinances are effective for 60 days. (§ 2 ch 118 SLA 1972)

**Sec. 29.08.170. Codes of regulations.** The assembly or council may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The assembly or council shall provide for the adopted code to be sold to the public. (§ 2 ch 118 SLA 1972)

**Sec. 29.48.180. Codification.** (a) Each ordinance after adoption shall be codified.

(b) Within three years after incorporation of the municipality, the municipal executive, with the advice and assistance of a legal advisor, shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

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

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

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

(am 44 16, 17 ch 83 SLA 1979)

(d) This section applies to general law and home rule municipalities. (§ 2 ch 118 SLA 1972)

*Reviser's note (1972).*—For specific discussion of AS 29.48.180, see 1972 House Journal, p. 1725, or 1972 Senate Journal Supp. No. 2, p. 8.

*Minimum codification requirements.*—To meet the minimum codification requirements of this section municipal ordinances should be logically arranged under a logical and systematic set of chapters and subchapters.

*Effect of amendment.*—The 1979 amendment, deleted "and resolution" following "ordinance" in subsection (a) and in paragraph (2) of subsection (c), inserted "which establishes a rule of conduct or behavior and which is" and substituted "law enacted and kept current" for "positive law promulgated by the council and kept current by the city."

**Sec. 29.48.185. Resolutions.** The assembly or council shall provide for the maintenance of a permanent file of resolutions that have been adopted. (S 10 ch 83 SLA 1979)

There should be a table of contents, an index, and a system of cross-referencing. The code, to be useful, must have a current supplement which indicates all additions, amendments, and repeals. Periodically the additions and changes noted in the supplement should be incorporated into the main body of the code. These are minimum requirements. Nothing prevents a municipality from developing a more elaborate and sophisticated code. 1966 Op. Att'y Gen., No. 6.  
*Binding.*—Any convenient method of binding, including an ordinary loose-leaf binder, would be acceptable. 1966 Op. Att'y Gen., No. 6.

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

(b) A bond, contract, lease, or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be made or approved by ordinance adopted by a majority of the votes authorized on the question.

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

(b) Nothing in this section is intended to prevent the authorizing of payment or making of contracts for capital improvement to be financed wholly or partly by the issuance of bonds. (S 2 ch 118 S.L.A. 1972)

No expenditures other than by appropriation ordinance. Alaska Statute 29.48.190 and sections listed therein prohibit several state and general law municipalities from authorizing

expenditures except by appropriation ordinance. Municipality of Anchorage v. Federal Sup. Ct. No. 1077 (Oct. Nov. 1968) 319A, 568 P.2d 3 (1977)

**Sec. 29.48.200. Penalties.** For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed a fine of \$500 or imprisonment for 30 days, or both. However, the punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost. (S 2 ch 118 S.L.A. 1972, am. S 19 ch 83 S.L.A. 1979)

The basic purpose of this section is to make it possible for members of the public (1) to determine the current state of municipal law on any matter and (2) to be given reasonable opportunity of determining the content of ordinances carrying penal law prior to their effective date 1968 (Sp. Att'y Gen. No. 2).

"Made available". That ordinance must be "made available" to the public, means that copies of ordinance must be available for distribution to the public upon request 1968 (Sp. Att'y Gen. No. 2).

Complete sets of such need not be made available at reasonable price. While it would be desirable that all municipalities make complete sets of their codes available to the public at a reasonable price, this is not required by the statute 1968 (Sp. Att'y Gen. No. 2).

This section authorizes punishment for failure to list taxable property.

A city has the power to enact an ordinance requiring a taxpayer to file a statement under oath listing all personal property at its just and fair value, and this section provides the authority to prescribe its punishment, including fine and imprisonment. City of Anchorage v. Campbell, 33 Alaska 749, 145 F. Supp. 607 (D. Alaska 1963).

An act may be made a penal offense under both state statute and municipal ordinance. Council v. Whelan, 230 F. 93 (9th Cir. 1916).

Ordinance may impose penalties on class of persons. While an ordinance, which makes an act done by one person and imposes upon another as penalty for a like act done under like circumstances, cannot be considered a penal statute for the reason that it is imposed and unreasonable, the same

cannot be said of discrimination by municipal authority against a whole class of persons who are lawfully regarded as proper subjects for police

regulation, such as persons without occupation or visible means of support. *Gibson v. Wheeler*, 230 F. 91 (9th Cir. 1916).

Effect of amendment. The 1969 amendment effective June 2, 1970, in the second sentence, deleted an ordinance to "void and" preceding "except" and added "at that" to the end of the sentence.

**Sec. 29.46.210. Expenditure of borough revenues.** Borough revenues levied and collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Revenues levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. (§ 2 ch 118 SLA 1972)

**Sec. 29.46.220. Post audit.** The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)

#### Article 1. Miscellaneous Provisions.

**Sec. 29.46.230. Centralized purchasing.** The assembly or council may provide for centralized purchasing, storage and distribution of supplies, material and equipment for the municipality and its departments. (§ 2 ch 118 SLA 1972)

**Sec. 29.46.240. Municipal properties.** (a) A municipality may acquire and hold real and personal property or interest in property and may sell, lease or otherwise dispose of property no longer required for municipal purposes.

(b) Notwithstanding the provisions of (c) of this section, a municipality may sell, lease, donate or exchange with the United States, the state, or a political subdivision real estate or other property, or interest in property, when in the judgment of the assembly or council it is advantageous to the municipality to do so.

(c) The assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require: (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, as provided within that

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

(d) The assembly or council may by ordinance establish a formal procedure for acquisition from the state of land or rights in land and the disposal of the land or rights in land, in which event the provisions of (c) of this section do not apply.

(e) A municipality, in order to make sites available for beneficial new industries, may acquire and hold real property, either inside or outside the corporate limits, and may sell, lease or dispose of it to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality. (§ 2 ch 118 S.A. 1972)

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

(am & l ch 116 S.A. 1975)

**Effect of amendment.** The 1975 amendment, effective June 15, 1975, added subsection (f).

**Subsection (a) authorizes extra territorial activity of a municipality for specified purposes.** *Lobby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 2061), 612 P.2d 33 (1980).

**Subsection (a) authorizes a municipality to acquire land for a private, not a public, purpose, when the purpose is "to make sites available for beneficial new industries."** *Lobby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 2061), 612 P.2d 33 (1980).

**Not every new enterprise comes within this section, for this section defines "beneficial new industry."** *Lobby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 2061), 612 P.2d 33 (1980).

Granting right to use wharf is not disposition of property. — The grant of a right to use a public wharf did not effect a sale, lease, exchange or other disposition of property within the meaning of this section. *Femmer v. City of Juneau*, 9 Alaska 316, 97 P.2d 649 (9th Cir. 1938).

But granting right-of-way is. — If a valid right-of-way, in writing, and executed by proper and authorized parties had been given an individual, the right-of-way would be invalid inasmuch as a right-of-way is property. It would be the sale of property, which must be ratified by a majority of qualified voters voting at a general or special election, or otherwise, at which the question of ratification of such sale is duly submitted, as required by this section. *Seltenreich v. Town of Fairbanks*, 13 Alaska 424, 100 F. Supp. 296 (D. Ala. 1951).

No ratification of sale by voters required if property not held for public use. — No ratification of sale of lands and the execution of the deed is required by this section as to land which had not been acquired or held for any public use or devoted thereto. *Seltenreich v. Town of Fairbanks*, 13 Alaska 562, 103 F. Supp. 319 (D. Ala. 1952).

Cities may accept gifts by will or deed in trust for public purposes. — Municipal corporations have the capacity and power to take and hold real and personal property, by devise, bequest, or deed of gift in trust for the purposes of a public nature, including uses germane to the objects of the corporation, although the object may be one which the municipality could not carry out at public expense. *Cochran v. City of Nome*, 10 Alaska 425 (1944).

And may abandon property. — This section would be authority for a city council to abandon property inasmuch as an abandonment is a lesser included power than the power to sell for which this section specifically provides. *Seltenreich v. Town of Fairbanks*, 13 Alaska 424, 100 F. Supp. 296 (D. Ala. 1951).

Or sell or lease sites to operators of new industries. — The common council has authority to sell, lease, or dispose of available sites upon such terms as may be deemed by it advantageous to the civic welfare of the municipality, to such persons as will agree to install, maintain, and operate thereon new industries. *Seltenreich v. Town of Fairbanks*, 13 Alaska 562, 103 F. Supp. 319 (D. Ala. 1952).

The term "new industry" contemplates a newly organized enterprise, which may or may not be a new type of business. *Libby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

If council judges such disposition advantageous. — The common council can sell, lease, or otherwise dispose of land by making such land available as sites for new housing industries, but it would be necessary for the common council to find that the sale of such sites would benefit the civic welfare of the municipality and that the terms of such sale or sales were deemed by the common council to be advantageous to the civic welfare of the municipality. *Seltenreich v. Town of Fairbanks*, 13 Alaska 562, 103 F. Supp. 319 (D. Ala. 1952).

And voters need not ratify council's action. — There is no requirement in subsection (e) of this section for a ratification by the voters of the action of the common council as to the sale, lease or disposition of available sites for the installation and operation of new industries. *Seltenreich v. Town of Fairbanks*, 13 Alaska 562, 103 F. Supp. 319 (D. Ala. 1952).

A power of judgment is vested in council. — Implicit in the language of subdivision (e) of this section is that the power of judgment is intended to be vested in the city council. *Seltenreich v. Town of Fairbanks*, 14 Alaska 564, 211 P.2d 83 (9th Cir. 1954).

The exercise of the council's judgment need not be coincidental with the sale or other disposal of the property. *Seltenreich v. Town of Fairbanks*, 14 Alaska 564, 211 P.2d 83 (9th Cir. 1954).

Grantees must agree to operate new industry. — An agreement on the part of grantees in the deed or lease to install, maintain and operate new industries would be necessary to comply with this section. *Seltenreich v. Town of Fairbanks*, 13 Alaska 562, 103 F. Supp. 319 (D. Ala. 1952).

"Industry" is defined as follows: The result of operations whereby man changes and makes fit for his use materials which were unworkable in their natural state. *Seltenreich v. Town of Fairbanks*, 13 Alaska 562, 103 F. Supp. 319 (D. Ala. 1952).

Industry is any department or branch of art, occupation or business, especially one which employs much labor and capital and is a distinct branch of trade, as the sugar industry. *Seltenreich v. Town of Fairbanks*, 13 Alaska 562, 103 F. Supp. 319 (D. Ala. 1952).

The term "new industry," as used in subsection (e) of this section, refers to any newly organized business that is not a mere expansion or continuation of a business that has previously operated in the municipality. *Libby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

Operation of a cold storage plant by a company was both a new enterprise and a new type of business, and it was apparently beneficial to the community. Therefore it was a "beneficial new industry" within the meaning of subsection (e) of this section. *Libby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

Subsection (e) does not establish an exemption from the bid requirements of subsection (c). *Libby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

Since the legislature demonstrated its awareness of subsection (c) of this section by explicitly exempting some types of transactions from its requirements, the supreme court concluded that the

legislature intended not to exempt transactions under subdivisions (a) and (b) of this section, which contain no explicit exemption, from its requirements. *Libby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

Subsection (e) of this section merely sets forth a purpose for which municipalities are authorized to acquire and hold property; it does not effect the applicability of procedural requirements imposed by other parts of the statute. *Libby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

Provision of an ordinance which purported to exempt leases for new industry sites from the ratification requirement conflicted directly with the requirements of subsection (e) of this section and was invalid. *Libby v. City of Dillingham*, Sup. Ct. Op. No. 2097 (File No. 3861), 612 P.2d 33 (1980).

"Trade" is defined as "commercial enterprises," and "industries" as that branch of trade employing capital and labor. *Seltenreich v. Town of Fairbanks*, 13 Alaska 682, 103 F. Supp. 319 (D. Alaska, 1952).

The power to lease corporate property held by a municipality for public use cannot ordinarily be wholly or partly diverted to a possession or use exclusively private without specific legislative authority, and a town cannot lease a part of a public dock to a private concern, nor can a city which has condemned private property for use as a wharf lease it unconditionally for a term of years to be used in the prosecution of private business and for private gain. *Juneau Ferry & Navigation Co. v. Morgan*, 236 F. 204 (9th Cir. 1916).

A general obligation bond issue for the purpose of encouraging industrial development within a municipality was held valid in *Wright v. City of Palmer*, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

**Construction of hospital and lease thereof to sectarian order.**—Where a hospital is constructed and a lease made by a city to a sectarian order of the Catholic faith in order to provide for the care of the sick, without regard to race, color or creed, and

thus accomplish a valid public purpose there is nothing in this arrangement from which it can be inferred that a tax-established, public institution is to be utilized to aid a religious group to spread its faith or to interfere with the religious beliefs of others. The city's action was not designed, nor does it have the effect by its nature, of promoting or giving a preferred position to whatever religious beliefs the individual members of the corporation might have. The fact that specific sectarian beliefs may be entertained by those persons does not bar the city from achieving its valid secular goal of caring for the sick. *Ivan v. City of Ketchikan*, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

**Not limited by this section.**—Subsection (a) of this section, which authorizes municipalities to lease property, is not relevant where the powers of a home rule city are being considered. This section is not the source of the city's power to lease its hospital. Therefore, the portion of this section which requires a finding that property to be leased is not required for municipal purposes is not a limitation on the power of a home rule city to lease its hospital. *Ivan v. City of Ketchikan*, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

A city has no authority to conduct a drugstore, as this article sets out the several powers granted by the legislature to municipal corporations, and nowhere therein is such an institution as a drugstore provided for. *Johnson v. City of Nome*, 16 Alaska 425 (1944).

The burden of proof is upon the plaintiffs in an action to enjoin a city from abandoning property. *Seltenreich v. Town of Fairbanks*, 13 Alaska 682, 103 F. Supp. 319 (D. Alaska, 1951).

**Sec. 29.18.270. Emergency disaster powers.** (a) A municipality which is wholly or partially within an area which is declared by the President to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.33.260.

(c) AS 29.28.020—29.28.060 are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President, but these powers may be extended for an additional period of not more than three years (12th HRS.A 1972)

## Article 5. Construction of Powers.

**Sec. 29.48.310. General construction.** A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title. (§ 2 ch 118 S.L.A 1972)

The broad grant of taxing authority under AS 29.48.010(7), limited only by other provisions of law, is consistent with a liberal construction of the powers of local government. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1725 (File No. 2365), 564 P.2d 1115 (1978).

There is no general prohibition

against like municipal and state taxes. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1725 (File No. 2365), 564 P.2d 1115 (1978).

Quoted in *Fairbanks N. Star Borough v. Howard*, Sup. Ct. Op. No. 2036 (File No. 4575), 608 P.2d 22 (1980).

**Sec. 29.48.320. Extent of powers.** Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the subject or purpose of all powers and functions conferred in this title. (§ 2 ch 118 S.L.A 1972)

The city may exercise implied authority in police control where the exigencies of municipal life seem to require more rigid regulation than is

expressed in the state at large. *Quinn v. Wheeler*, 230 P. 2d 194 (Ala. Civ. 1914).

The broad grant of taxing authority under AS 29.48.010(7), limited only by other provisions of law, is consistent with a liberal construction of the powers of local government. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1725 (File No. 2365), 564 P.2d 1115 (1978).

There is no general prohibition

against like municipal and state taxes. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1725 (File No. 2365), 564 P.2d 1115 (1978).

A real property lien is beyond the scope of what may be "necessarily or fairly implied in or incident to" the authority to collect a sales tax. *Fairbanks N. Star Borough v. Howard*, Sup. Ct. Op. No. 2036 (File No. 4575), 608 P.2d 22 (1980).

**Sec. 29.48.330. Enumeration of powers.** Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the subject and not a limitation on or exclusion from the exercise of the power or function (§ 2 ch 118 S.L.A 1972)

The broad grant of taxing authority under AS 29.48.010(7), limited only by other provisions of law, is consistent with a liberal construction of the powers of local government. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1725 (File No. 2365), 564 P.2d 1115 (1978).

There is no general prohibition against like municipal and state taxes. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1725 (File No. 2365), 564 P.2d 1115 (1978).

## Chapter 53. Municipal Assessment and Taxation.

### Article 1. Municipal Property Tax.

#### Sec. 29.53.010. General property tax.

Sec. 29.53.010. General property tax. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter. (§ 2 ch 118 S.L.A 1972)

Taxation of personal property of Town of Fairbanks v. Independent resident located outside city. — See *Mont Min.*, 4 Alaska 167 (1910).

The North Slope Borough is a viable legal entity with powers to tax as provided to boroughs by this section. *See* *Superior Court, 4th Jud. Dist., C.A. No. 73-226 and C.A. No. 73-294 to 73-296 (1973).* *See* *Pipe Line Co. v. North Slope Borough*

Sec. 29.53.020. Required exemptions. (a) The following property is exempt from general taxation:

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

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

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

(4) property of a merchant seaman or a member of the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

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

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

(8) inventories located within a foreign trade zone established under AS 45.77 b, 2, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce;

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

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

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

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

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

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

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

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.540 — 44.62.570.

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

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss results from an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under AS 29.51.025(a).

(h) Except as provided in (g) of this section, nothing in (e) — (g) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.51.025(a).

(i) In (e)--(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes. (§ 2 ch 118 SLA 1972)

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

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

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

(am 44 1, 2 ch 60 SLA 1973; am 4 1 ch 65 SLA 1975; am 4 1 ch 191 SLA 1976; am 4 1 ch 217 SLA 1976; am 44 1, 2 ch 229 SLA 1976; am 4 1 ch 97 SLA 1977; am 44 2, 3 ch 45 SLA 1980; am 4 2 ch 95 SLA 1980)

**History of section.** — See *City of Anchorage v. Chugach Elec. Ass'n*, 17 Alaska 481, 252 P.2d 412 (9th Cir. 1956).

This section was enacted pursuant to Alaska Const., art. IX, § 4. *Harrison v. North Pac. Union Conference Ass'n of Seventh Day Adventists*, Sup. Ct. Op. No. 201 (File No. 1060), 142 P.2d 432 (1960).

**Intent of constitutional convention.** — The constitutional convention intended that only so much of the property used for religious purposes as

was being used to produce income should be taxable, that such other parts should be exempt, and that a distinction between taxable and non-taxable parts should be made. 1962 Op. Att'y Gen., No. 14.

**Purpose.** — The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions, the motivation for their establishment to largely prevail. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1282), 490 P.2d 1226 (1971).

**Strict construction.** — Provisions exempting property from ad valorem taxation must be strictly construed against the property holder and in favor of the taxing authority. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1282), 490 P.2d 1226 (1971).

The power of deciding what types of education are to be publicly supported, either under the School Foundation Act or by tax exemption, is vested with the legislature. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1282), 490 P.2d 1226 (1971).

Alaska Const., art. IX, § 4, directs the legislature to define the educational exemption and confers to the exercise of that responsibility. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1282), 490 P.2d 1226 (1971).

The phrase "educational purposes" as used in Alaska Const., art. IX, § 4, and subsection (a) of this section includes systematic instruction in any and all branches of learning from which a substantial public benefit is derived. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1282), 490 P.2d 1226 (1971).

This section in no way delimits the term "educational purposes," and there is no justification for the supreme court to give to that term anything other than its ordinary meaning. That restrictive definition is a legislative concern which especially appears at a time when there is increasing desire for specialized practical education, a proliferation of new kinds of educational institutions, and rapidly changing concepts of mass education. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

The minutes of the constitutional convention reveal no indication of what was intended to constitute an "educational" purpose, the drafters stating merely that they intended to adopt a "standard" state exemption. Nor has the legislature defined the term as it has done with regard to "religious purposes." *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

When exemption attaches.—Under this section, once it is determined that the institution involved is non-profit in character and that the property is exclusively used for educational purposes, the exemption attaches. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

The Apprenticeship and Manpower Training Trust Fund is entitled to an exemption from real property taxation by the Greater Anchorage Area Borough (GAAB) on the ground that its property is "used exclusively for nonprofit educational purposes" within the meaning of subsection (a) of this section. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

The general public is clearly benefited both by the increased opportunity for Alaskans to obtain vocational training not otherwise available, and by the increased quality of service from a skilled trade. *McKee v. Evans*, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

"Charity" and "charitable purposes".—Neither in Alaska's Constitution nor in its general laws are the terms "charity" or "charitable purposes" defined in such circumstances, resort to the common law definition of these terms is appropriate. *Matanuska-Susitna Borough v. King's Lake Camp*, Sup. Ct. Op. No. 472 (File No. 857), 439 P.2d 441 (1968).

It is quite clear that what is done out of good will and a desire to add to the improvement of the moral, mental and physical welfare of the public generally comes within the meaning of the word "charity." *Matanuska-Susitna Borough v. King's Lake Camp*, Sup. Ct. Op. No. 472 (File No. 857), 439 P.2d 441 (1968).

Rentals or income not derived as result of dominant profit motive.—If it appears that rentals or income are not derived as a result of a dominant profit motive on the charity's part, but are incidental to and reasonably necessary for the accomplishment of its charitable purposes, then such rentals or income are not within the ambit of subsection (c)'s limitation upon properties which qualify for a charitable exemption. *Matanuska-Susitna Borough v. King's Lake Camp*, Sup. Ct. Op. No. 472 (File No. 857), 439 P.2d 441 (1968).

Property of a charitable institution is not deprived of its exempt character by virtue of its being productive of some rents or income so long as the property was reasonably necessary for carrying the primary purposes of its charitable corporation owner, and so long as the money derived was incidental. *Sisters of Charity v. Greater Anchorage Area Borough*, 8 Ala. L.J. No. 11, p. 272 (Sept., 1970).

Religious property is exempt from taxation.—All religious property in the state not used for business, rent or profit, is exempt from taxation. 1962 Op. Att'y Gen., No. 15.

But property of a religious organization used for the production of income is taxable. 1962 Op. Att'y Gen., No. 15.

Even in the latter situation, however, a proration must be made with regard to the property involved, between those portions being used for business, rent or profit, and those with no such use. 1962 Op. Att'y Gen., No. 15.

The fact that a segment of religious property is used for business, rent or profit, will not result in the taxation of the whole. 1962 Op. Att'y Gen., No. 15.

The words "the residence of the pastor," etc., imply that only those residences may qualify that have some direct relationship to a structure used primarily as a house of worship. *Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists*, Sup. Ct. Op. No. 591 (File No. 1060), 462 P.2d 432 (1969).

The parsonage of an assistant or lay pastor is exempt from an ad valorem tax under the broadened tax exemption provisions of Alaska Const., art. IX, § 4, and this section. *Evangelical Covenant Church of America v. City of Nome*, Sup. Ct. Op. No. 243 (File No. 457), 394 P.2d 882 (1964).

Residences of church administrators and teachers do not qualify for property tax exemption. *Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists*, Sup. Ct. Op. No. 591 (File No. 1060), 462 P.2d 432 (1969).