Newley Elected Officials Handbook

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Maximum Self-Government

- **Alaska Constitution – Article X**
  - The Alaska Constitution establishes the policy of maximum self-government for the people.

- **Alaska Statutes – Title 29**
  - AS Title 29 governs organization and operations of local governments.

Types of Municipalities

- **Home Rule**
  - AS 29.04.010. A home rule municipality is a municipal corporation and political subdivision. It is a city or a borough that has adopted a home rule charter, or it is a unified municipality. A home rule municipality has all legislative powers not prohibited by law or charter.

- **General Law**
  - AS 29.04.020. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.
General Law Municipalities
- Second Class Boroughs (must gain voter approval for authority to exercise non-area wide powers)
- First Class Cities (400+ permanent residents)
- Second Class Cities (25+ permanent residents)

General Law Municipalities
- Title 29 – Governing Authority
- General Powers (AS 29.35.010)
- Borough Mandatory Powers (AS 29.35.150-180)
- Additional Borough Powers (AS 29.35.200-220)
- City Powers (AS 29.35.250-260)
- Acquisition of Additional Powers (AS 29.35.300-340)

Home Rule Boroughs & Cities
- May exercise all legislative powers NOT prohibited by law or charter
- Ruled by Charter – approved by voters
- Governs through local ordinances
- AS 29.10.200 lists limitations on powers of Home Rule Municipalities
The Unorganized Borough

- All areas of the state outside of organized boroughs (AS 29.03.010)
- State Legislature is the governing body (AK Constitution Article X. Section 6)
- There are some organized cities within the unorganized borough.

Who is a Public Official?

- Mayor
- City Council Members
- Borough Assembly Members
- School Board Members
- Municipal Attorney
- Municipal Clerk
- Municipal Treasurer
- Municipal Manager or Administrator

Alaska Statutes 29.20

Mayor (AS 29.20.220-280)

- The executive power of a Municipality is vested in the mayor.
- Specific powers of the mayor vary depending on form of government or by municipal charter.
- The mayor may have veto power.
Governing Body
- Sets policy by:
  - Enacting Ordinances
  - Adopting the annual budget
- May serve as an appeal board
- May serve as liaison to various community and/or state organizations
- Acts as a lobbyist for the community

Members of the Governing Body
- Act as a body, not individually
- Direct the work of officials appointed by the governing body
  - It is key to understand your role with staff!
- Do your homework
- Seek community input

Members of the Governing Body
- Educate yourself on issues and opinions of those you represent
- REMEMBER – You represent the entire community and not just those who voted for you!
Ethical Responsibility

- Public Officials must not act outside the law or beyond their authority
- You are expected to act impartially and without favoritism
- You are expected to work in the best interest of the community
- Follow the Conflict of Interest rules and other rules of procedure

Staff Roles & Responsibilities

- Municipal Attorney
  - Appointed by Mayor, Manager, or governing body (May be a contract attorney)
  - Legal advisor to the council or assembly
  - Legal advisor to the School Board
  - Legal advisor to Manager, department heads, or empowered entities
  - Represents the municipality in civil and criminal proceedings

- Municipal Clerk
  - Generally appointed by the governing body (but not always)
  - Serves as the liaison between the governing body, staff, and the public
  - Serves as the parliamentary advisor to the governing body
  - Administers appeals
Staff Roles & Responsibilities

Municipal Clerk. Responsibilities include:

- Provides notice of all public meetings and keeps a record of its proceedings.
- Publishes notice of ordinances adopted by and actions of the governing body.
- Conducts local elections.
- Maintains the seal of the City or Borough.
- Serves as the Record Manager for the Municipality.
- Serves as Public Information Officer.
- In some communities, serves as the Treasurer.

Staff Roles & Responsibilities

Municipal Manager versus Administrator

- Role varies substantially between Strong Mayor and Manager forms of government. Under a Manager plan, the Manager leads with direction from the governing body.
- In a “strong mayor” municipality, the administrator supports and takes direction from the mayor.
- Appointing authority—Managers are appointed by the governing body but administrators are appointed by the mayor.
- Managers are responsible for hiring most municipal employees.
- Managers are responsible for submitting annual budget to the governing body.
- Managers exercise custody over all real and personal property owned by the municipality.

Staff Roles & Responsibilities

Municipal Treasurer

- May be combined with the Municipal Clerk’s position.
- Responsible for matters pertaining to the maintenance of all the accounts of the municipality.
- Assists in preparing annual budget and monthly financial reports.
Summary

- We are all in this together and must work together to provide services to the communities we represent.

- Know your role, know what is expected of you, and know how your position relates to others within your city or borough.

QUESTIONS?

THANK YOU!
Additional Resources:
- State of Alaska – Dept. of Commerce, Community & Economic Development: Division of Community & Regional Affairs https://www.commerce.alaska.gov/web/dera/
- Alaska Association of Municipal Clerks https://www.alaskaclerks.org/

KACIE PAXTON, MMC, BOROUGH CLERK

Applicable Rules

- State Statutes (Title 29 – OMA, Ethics)
- Code of Ordinances (Rules of Order)
- Special Rules of the Governing Body (policies and procedures)
- Adopted parliamentary authority (Robert’s Rules or Masons)

Basic Statutory Requirements

- All members vote unless required to abstain by the chair
  - (AS 29.20.160(d))
- Meeting must be properly noticed to the public
  - AS 44.62.310
- Public has the right to be heard
  - AS 29.20.020(a)
Public Participation

The purpose of an Assembly or Council meeting is for the Assembly to conduct the people’s business. The public is an important part of the democratic process, and the elected officials need to hear from their constituents. There are certain rules in place to enable the meeting to be run in a manner that serves the best interests of the citizens and resources of the municipality. Certain of those rules are regarding the way that the public is involved in the meeting.

There is a balance between the public’s time to speak, and allowing the governing body to hold its discussion and take action on a given subject.

It is prudent to provide for specific times for the public to be heard during your meetings, such as Citizen Comments at the beginning of the agenda. There are parliamentary provisions if the body wishes to extend those rights to a different time on the agenda.

Alaska Open Meetings Act - the right for the public to be informed and present - AS 44.62.310-312
The right for the public to be heard - AS 29.20.020(a)
Roberts Rules of Order (RONR) 12th Edition—Section 43.10

What is parliamentary procedure?

A system designed to help a group of people to hold a meeting in an organized manner and make decisions effectively and courteously.

It is designed so that the voice of the minority is heard, and the will of the majority is accomplished.

The system keeps the members on track and stay focused.

Who was Robert?
Basics of Robert’s Rules

First Things First

General Meeting Protocol

- Until a motion has been stated by the chair, no proposal may be debated
- The member who made the motion has the right to speak first
- Members address the chair and wait to be recognized
- All remarks must be addressed through the chair/presiding officer
- Each member has the right to participate and to share equally in the discussion
- No member may monopolize the discussion
<table>
<thead>
<tr>
<th>General Meeting Protocol, cont.</th>
</tr>
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| **Members cannot speak more than twice or more than**
 | the allotted time (policy may establish different rule) |
| **Members may not interrupt, except to raise legitimate**
 | points of order |
| **Motives or personalities may not be attacked during**
 | debate |
| **All remarks must be relevant to the subject (germane)** |
| **Members must accept the will of the majority** |

**The Role of the Chair / Presiding Officer**

**MAINTAIN DECORUM**
- Determines who has the right to speak
- Be neutral and allow other members to speak first.
- Impartially permits “pro” and “con” equal time
- Explains/clarifies issues without bias
- Refrains from debate unless passing the gavel

Your Code of Ordinances or State Statutes may establish the rules for participation by the Chair. Some municipalities may allow the Mayor or Presiding Officer to take part in debate and vote on all questions.

**The Role of the Chair, Cont...**

**KEEP MEETING ON TRACK**
- Keeps discussion germane
- Discourage repetition
- Keep it rolling by eliminating side conversations
- State, Restate, and State the Result

The presiding officer sets the tone of a meeting by showing fairness, tact, and good judgment. The public, the members, and to staff.

Fairness, tact, and good judgment must always be exercised by the presiding officer.
Respect the Role of the Chair

Remember all comments are made through the Chair.

It is appropriate to use, “Your Honor…”

If a member disagrees with a ruling of the chair, a point of order can be raised.

(More on that later)

Most members will likely have the opportunity to serve as chair at some point.

• Vice Mayor
• Committees
• Board of Equalization / Board of Adjustment

Processing a Motion

1. A member makes a motion.
2. Another member seconds the motion.
3. The chair states the motion, formally placing it before the assembly.
4. The members debate the motion.
5. The chair puts the question to a vote.
6. The chair announces the results of the vote.

Making a Motion

Seek Recognition from the Chair.

“I move that…”

Be Precise
Only Make Motions You Agree With

The maker of the motion CANNOT speak against the motion.
The maker of the motion CAN vote against the motion.
The debate process may change the maker's mind. This is the democratic process!

Keep language positive and worded in the affirmative.

(Negative) "I move that we not support the national dues increase."
(Positive) "I move that we take a stand in opposition to the national dues increase."

How an item is listed on the agenda can assist a member in properly stating their motion.

Second the Motion

1. A member makes a motion
2. Another member seconds the motion
   • The purpose of this step is to make sure that at least two members want to discuss the issue before the body spends time on it. The member who is the Second does not have to agree with the motion – only believe that it should be discussed and acted on.
   • No second, no debate. If there is no second, then the motion dies for lack of a second. The group then proceeds to the next item on the agenda.
Processing a Motion – The Chair States

After a motion has been made and seconded, the Chair states the motion.

The ownership of the motion has now been transferred from the maker to the body.

In order to withdraw a motion, the chair must ask permission from the body and there must be no objection.

Debate on the Motion

- **Germane**: Debate must be germane (relevant) to the motion.
- **Concise**: Debate should be concise and productive, not repetitive.
- **Courteous**: Opposing comments should be given and received with respect and objectivity.
  - Honor the role of the Chair. All comments are made through the Chair.

Debate, Cont...

- **Debate is limited to the specific motion that is being considered.** In addition, only the specific aspects covered in the motion are open to debate, and not the whole subject.
- **If the motion on the floor is to paint the firehouse green, the debate should focus on discussing the advantages and disadvantages of painting the building green.** Do not wander to other aspects of the building such as replacing the roof, the condition of the lawn, or if the building should be sold or kept a few more years.
Debate, Cont...

Only the members of the body engage in debate. Roberts Rules of Order (RONR) 12th Edition – Section 43.10

Rights to regard to debate are not transferrable. An assembly member cannot yield any expired portion of his time to another member, or to anyone else. RONR has no allowance for the public or anyone outside of the body to participate in debate or discussion during a meeting. There is no proper motion to yield a seat or yield time to a member of the public.

Refer to your Order of Business in Code or Policy for:

- Citizen Comments
- Public Hearings

The public does not have the right to speak during any other portion of the agenda, unless specifically allowed by the Assembly. This could occur one of three ways:

1. Through a ruling of the chair with no objection raised.
2. Through a motion to suspend the rules which requires a 2/3 vote to pass.
3. During a work session when formal rules are relaxed, and with no objection raised.

Call for the Vote on the Motion

- The Chair puts the motion to a vote.
- The chair should restate the motion to remind members what they are voting on.
- The chair (or secretary) should call for votes in favor of and votes against the motion.
- The chair determines if the motion passed or failed and announces the determination to the members by saying “the motion is adopted” or “the motion failed”.
- Move to the next item on the agenda.

Unanimous Consent / General Consent

- May be used for items of little importance or when there appears to be no opposition to a motion.

  “If there is no objection...”

- If one member objects, the chair must go through the full motion process.
The Order of Precedence of Motions

1. Fix time to which to adjourn
2. Adjourn
3. Recess
4. Raise a question of privilege
5. Call for orders of the day
6. Lay on the table
7. Previous question
8. Limit/extend limits of debate
9. Postpone to a time certain
10. Commit or refer
11. Secondary Amendment
12. Primary Amendment
13. Postpone indefinitely
14. Main motion

When any of the motions on this list is the immediately pending motion, any motion above it on the list can be made at that time. The motion below it on this list cannot be made at that time.

The Order of Precedence of Motions

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12. Primary Amendment
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14. Main motion

Every motion that is pending is a step up the rung of the ladder. When it is time to vote on the motion, you must come down the ladder, in reverse order of the steps taken up.

Precedence, Cont.

While discussing the main motion, a member moves to amend the main motion, that proposed amendment is in order because it is #12 on the list, and 12 is higher than 14.

While discussing the amendment, another member moves to make a secondary amendment, in other words, to amend the amendment. Secondary amendment is #11 and higher than #12 on the ladder.
Precedence, Cont.

While we were discussing the secondary amendment (11), another member moves to postpone the motion to the next meeting. The motion to postpone to a certain time is #9 on the ladder; it is above #11 and is therefore in order.

While discussing the postponement (9), another member moves that this motion be referred to a committee…this motion is ruled “out of order”, because commit or refer is #10 on the ladder.

You now have four different motions pending:
- #9 – Postpone to a time certain
- #11 – Secondary Amendment
- #12 – Primary Amendment
- #14 – Main Motion

Every motion that is pending is a step up the rung of the ladder. When it is time to vote on the motion, you must come down the ladder, in reverse order of the steps you took up the ladder.

We must now vote on these four motions in reverse order of how they were made.
- #9 – Postpone to Certain Time
- #11 – Secondary Amendment
- #12 – Primary Amendment
- #14 – Main Motion

In other words, the last motion made is the first one voted on and so on.

So, let’s follow these steps in order:
The Vote and the Ladder

- Vote on the motion to postpone to a certain time.
  - If this motion passes, the main motion and the amendments that are pending will be postponed along with it to the next meeting. At the next meeting, you will have three motions still pending.
  - If the motion to postpone fails, you move down to the next pending motion on the ladder, which is the secondary amendment.
- Vote on the secondary amendment.
  - If the secondary amendment passes, the primary amendment is now changed. If it fails, you move down to the primary amendment as it was originally stated.

The Vote and the Ladder, Cont...

- Vote on the primary amendment.
  - If the vote on the primary amendment passes, the main motion on the floor is now amended. If the primary amendment fails, the main motion on the floor is the original main motion.
- Vote on the main motion.
  - If you skip any of those steps, you violate the rules and fall off the ladder!

You Can Go Back Up the Ladder

- The voting ladder in the precedence of motions is not a one-way ladder. You can move up and down it, and then up and down again before finally processing the main motion and getting off the ladder.

Basic Steps on the Ladder

- The immediately pending motion is the motion that was last stated by the chair.
- The precedence of motions indicates which motions precede other motions during debate.
- Motions that don’t follow the precedence of motions should be called out of order.
- Don’t skip steps on the ladder of motions!
The exception to the ladder voting rule is the Motion to Postpone Indefinitely.

- The purpose of the motion to postpone indefinitely is to kill the motion that is pending.
- If the motion to postpone indefinitely passes, the main motion is thus killed and there does not need to be a vote on the main motion. You do not come down the final rung of the ladder, and you do not vote on the main motion.

**Main Motion**

- **Original Main Motion.**
  - Introduces a substantive question as a new subject
  - Object: Bring business before the board
  - Form: I move that...or I move to.....

**Rules:**
- Needs a second.
- Is Debatable.
- Is amendable.
- Needs a majority vote.
- Can be reconsidered

**Types of Motions**

- Main
- Privileged
- Subsidiary
- Incidental
- Bring Back
### Privileged Motions

Privileged motions are a class of motions that are important enough to warrant interrupting all other motions. Because they are urgent issues, debate on them is not allowed.

- Fix the time to which to adjourn
- Adjourn
- Recess
- Questions of privilege
- Call for orders of the day

### Privileged Motions - Recess

- **Recess**
  - Needs a second
  - Is not debatable
  - Is not amendable
  - Needs a majority vote

A recess is a brief intermission taken by the council/assembly. **Exception:** If the agenda for the meeting has a recess scheduled, or there is no objection, the presiding officer can call for that recess without requiring a motion.

### Privileged Motions - Adjourn

- **Adjourn** - Closes the meeting.
  - Needs a second
  - Is not debatable
  - Is not amendable
  - Needs a majority vote

**Exception:** If the business on the agenda is concluded, the presiding officer may ask if there is any other business to come before the group. If there is none, then the presiding officer may simply say “Since there is no other business, the meeting is adjourned.”
**Privileged Motions – Question of Privilege**

- **Question of Privilege**
  - Used when there is a matter, either affecting the entire assembly or an individual in the assembly, that is so urgent that it must interrupt business and be taken care of right away.
  - Example: There is an emergency and a member must be immediately excused from the meeting (personal).
  - Or, a member points out there is a noise issue which is preventing the members from hearing what is going on at the meeting.

- **Can interrupt the speaker, if deemed appropriate to do so.**
- **Is ruled on by the Chair.**

Member: I rise to a question of privilege.
Chair: State your question of privilege.
Member: (e.g. noise preventing from hearing, temperature of room)
Chair: (Chair resolves the question)

**Privileged Motions – Orders of the Day**

- **Call for Orders of the Day**
  - The call for orders of the day is used when the agenda or program is not being followed. This motion requires (demands) that the presiding officer follow the established agenda. (Get the meeting back on track)
  - If the orders are going to be followed, it takes only one member to make this motion and no vote is needed
  - If the group is going to deviate from the established agenda, a vote is needed. It takes a two thirds vote in the negative to deviate from the established agenda.
Subsidiary Motions

- Lay on the table
- Previous Question
- Limit or extend limits of debate
- Postpone to a certain time
- Commit or refer
- Amend
- Postpone indefinitely

Subsidiary motions aid the body in treating or disposing of a main motion.

Subsidiary Motions – Lay on the Table

- Designed for unexpected urgent situations. It is also designed for setting something aside when you do not know when it will be time to bring it back again.
- Needs a second
- Is NOT debatable
- Is NOT amendable
- Needs a majority vote
- To bring the tabled motion back before the group a member must make the motion to “take from the table” by the end of the next regularly scheduled meeting.

This motion clearly wins the award for the most overused and abused of all of the motions.

It is too often used to kill a motion. It is also improperly used to postpone a motion to the next meeting.

Subsidiary Motions – Difference Between “Lay on the Table” and “Postpone”

- If you want to kill a motion, you should use the motion to postpone indefinitely.
  - Why? Because the motion to lay on the table is NOT debatable, therefore you can’t talk about it or amend it before you vote on it. Those are two things you would want to do before killing an idea; if you don’t you run the risk of violating the rights of the members.
- If you want to put something off until the next meeting, the proper motion is to postpone to a certain time.
  - The difference? Lay on the table is not debatable, is not amendable (so you can’t set a time and date for when to address it again) and when you do bring it back up it needs a motion to “take from the table” to accomplish that.
Previous Question
- Used to stop debate on a motion and any subsidiary motions.

The motion must be seconded, no debate is allowed, and a two-thirds vote is needed.
This is the second most overused and abused of all of the motions.
It is often misused to call it out, as a command, and intimidate the presiding officer into stopping debate without a vote.

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Script:
- Member: I move the previous question
- Chair: Is there a second?
- Member: I second the motion
- Chair: The previous question is moved and seconded, this is not a debatable motion and takes a two-thirds vote. If you want to close debate, vote in favor of the motion. If you want debate to continue, vote against the motion.

---

Postpone to a Certain Time (Postpone Definitely)

- Allows for more information to be gathered before making a decision.
- The time set to postpone is limited to the current meeting, and up until the close of the next regularly scheduled meeting
- Needs a second
- Is debatable
- Is amendable
- Needs a majority vote

The item will come back on the agenda at the next regular meeting as "Unfinished Business", with the main motion still on the floor. At that time, the Chair will read the motion pending prior to postponement and discussion will resume.

Check your rules of procedure for the time allowed for postponement.
Subsidiary Motions – Commit or Refer

- This motion sends the main motion to a smaller group (a committee) for further examination and refinement before the body votes on it. Be specific.
- Item comes back to the members under “Unfinished Business” along with the committee report. Chair should read main motion which was made prior to sending to committee and discussion resumes.

Subsidiary Motions - Amendments

Primary Amendment – amends the main motion, must be germane to the main motion.

Secondary Amendment – amends the primary amendment, must be germane to the primary amendment.

There is a limit on the number of amendments that can be pending. There can be only one main motion, one primary amendment, and one secondary amendment pending at a time.

After a primary amendment has been voted on, if it passed, it becomes a part of the motion it was amending. At this point a new primary amendment could be offered. Same is true for a secondary amendment.

Subsidiary Motions – Amendments, cont.

Although the amendment must be germane, it does not have to maintain the intent for example:

The motion on the floor: “I move that we censure our president.”

Amendment: I move to amend the motion by striking the word “censure” and inserting the word “thank” so that the motion will read “I move that we thank our president.”
An amendment to a motion can take three forms:

**Insert or add.** This involves inserting or adding words or paragraphs.

**Strike out.** This involves cutting words or paragraphs.

**Strike and insert.** This involves substituting a word, paragraph, or the entire text with new text.

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**Limited number.** To avoid confusion there is a limit on the number of amendments that can be pending. There can be only one main motion, one primary amendment, and one secondary amendment pending at a time.

*Primary amendment amends the pending main motion.*

*Secondary amendment can only amend the primary amendment.*

*Remember that after a primary amendment has been voted on, if it passed, it becomes a part of the motion it was amending. At this point a new primary amendment could be offered. Same is true for a secondary amendment.*

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**Script: Motion to Amend**

Member: I move to amend "Motion A" by (inserting; striking out; striking out and inserting; or substituting) as follows: ____________________.

Chair: Is there a second to the motion?

Member: I second the motion.

Chair: (Restates the amendment.) Is there any discussion?

Chair: Calls for the vote.

(If the motion to amend failed, read the main motion as originally stated before continuing discussion. This avoids confusion.)
**Subsidiary Motions – Postpone Indefinitely**

- **Used to “kill” a motion with a definitive motion and vote.**
- **A member who is opposed to a motion cannot make the main motion, but may make a motion to postpone the motion indefinitely.**
- **Makes the body aware of the intent to kill the main motion without having to vote on the main motion.**
- **Exception to “motion ladder”.**
  - If the motion to postpone indefinitely passes, you do not take the final step down the motion ladder. You do not vote on the main motion.

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**Subsidiary Motions**

- Subsidiary motions are made when a main motion is already on the floor.
- The motion to “lay on the table” is like 911 – use it only for emergencies!
- You can use the motion to postpone indefinitely to kill a main motion without voting on it.

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**Incidental Motions**

- Point of Order
- Appeal from the Decision of the Chair (Appeal)
- Suspend the Rules
- Division
  - Division of the motion
  - Division of the assembly
- Requests and Inquiries
  - Parliamentary Inquiry
  - Point of Information
  - Withdrawal of a Motion

Incidental motions usually relate to matters of the business meeting other than directly to the main motion. They may be offered at any time when they are needed.
Point of Order and Appeal

Point of Order
- Requests that the rules be followed
- May interrupt speaker, No second needed, Not debatable
- Ruled by Chair

Appeal from the Decision of the Chair
- Challenges a ruling of the chair
- Requires a second
- Question becomes, “Shall the ruling of the chair be upheld?”
- Majority vote needed

Point of Order and Appeal, cont.

Appeal from the Decision of the Chair
Any member who disagrees with the ruling of the Chair may move to appeal the decision of the Chair. If the appeal is seconded, the Chair must state the question on it, explain the exact Parliamentary question at issue, allow for debate and put the question to a vote.

Incidental Motions – Suspend the Rules
- The motion to suspend the rules is used when the group wishes to do something that cannot be done without violating its own rules. But even with this motion, the group cannot violate its constitution, bylaws, or fundamental principles of parliamentary law.
- Rules that relate to business procedures and to priority of business can be suspended. In addition, rules that are your standing rules or policies and procedures can be suspended.
- Needs a second
- Is not debatable
- Is not amendable
- Majority vote
Sometimes one motion includes multiple ideas. For example the question of purchasing uniforms and nets for the butterfly club. You may not have a problem with nets, but think a uniform is a little ridiculous, you can use the division of the question to split them up.

To divide the motion a member should say “I move to divide the question” and then state exactly how he or she wants it divided. This motion takes a majority vote, but is usually handled by general consent if no objection.

If there is an objection, it must be processed as a motion
- Needs a second
- Is not debatable
- Only amendable as to how the motion is divided
- Needs a majority vote
- If the question is divided, each section is treated as a separate motion as already been made. So, you discuss one, vote on it, and then go to the next one.

Incidental Motions – Division of the Question, cont...

- Script: Division of the Question
  - Member: I move that the motion be divided and we consider each of the three recommendations separately.
  - Chair: It is moved that we divide the question and consider each of the three recommendations separately. Is there any objection to dividing the question? Hearing no objection, the motion before you at this time is Recommendation 1. Is there any discussion on Recommendation 1?
Incidental Motions – Requests and Inquiries

- Parliamentary Inquiry. A question directed to the presiding officer or clerk concerning parliamentary law or the organization’s rules as they apply to the business at hand.
- Point of Information. A non-parliamentary question about the business at hand.
- Withdrawal of a Motion. A request by the maker of the motion to remove the motion from consideration. (After the motion has been stated by the presiding officer, it belongs to the council/assembly and the council/assembly’s permission is needed to withdraw the motion. This can be by consent.)

Bring Back Motions

- Rescind
- Amend Something Previously Adopted
- Take from the Table
- Reconsider

The bring back motions are used to bring back a motion that has already been before the body, just in case once wasn’t enough.

Bring Back Motions

- A motion that was laid on the table can only be taken from the table during the remainder of the meeting at which it was laid on the table or before the conclusion of the next regularly scheduled meeting. The motion to take from the table can be made by any member, and it requires a majority vote to pass
  - Rules:
    - Needs a second
    - Is NOT debatable
    - Is NOT amendable
    - Needs a majority vote
    - May be made during the Unfinished or New Business portion of the agenda.
This motion wins the award for the “most challenging”!

The effect of the adoption of this motion is to erase the original vote on the motion and put the assembly in exactly the place it was in right before the vote occurred. If the motion to reconsider passes, the motion is put back on the floor, as if the original vote had not occurred, and discussion continues.

The motion to reconsider can be made only by a member who voted on the prevailing side. So, if the motion passed, you had to have voted “yes” on it to move to reconsider it; if the motion failed, you had to have voted “no” to move to reconsider it.

The motion to reconsider can be made only on the day that the original motion was made.

However, this motion can be made at one time and processed (or called up) at another time. So even if you can’t process the motion for whatever reason, such as time constraints, you can still make the motion and then call it up to discuss at a later time.

What can’t be reconsidered:

- A vote after something has been done as a result of that vote and it is too late to undo it.
- An action in the nature of a contract, once the other party in the contract has been informed. The contract has been signed or verbally assented to.
- A resignation that has been acted upon.
- An election to or expulsion from membership, if the person was present or has already been notified.
- Many types of motions cannot be reconsidered.

Rules for Motion to Reconsider:

- Can only be made by a person who voted on the prevailing side.
- Requires a second (anyone can second the motion)
- Is debatable only if the motion being reconsidered was debatable.
- Is NOT amendable.
- Needs a majority vote.
- Can be moved only on the same or the next succeeding day after the original vote was taken.
Questions?

Kacie Paxton, MMC, Borough Clerk
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Resources
• The Complete Idiot’s Guide to Robert’s Rules; Nancy Sylvester, PRP, CPP-T
So now you’re a public official…

Now What?

• Held to a higher standard of public trust and integrity
• Lead by example
• You’re spending the public’s money
• You’re here to represent the public’s best interest; not your own
• What have I gotten myself into…!??

Hold each other accountable!

• You are responsible for holding your fellow public officials accountable.

Or the voters may do it for you…
Ethical Obligations are Driven by Two Primary Sources

**STATE LAW**
- Title 29 – Conflicts of Interest and Public Meetings
  - AS 29.20.010 – Conflicts of Interest
  - AS 29.20.600 – Oaths of Office

**MUNICIPAL CODE**
- Example: City Code Chapter 2.36, Code of Ethics
  - City Code 2.36.060, General standards of Ethical Conduct
  - City Code 2.36.070-090, Conflict of Interest provisions

**AS 29.20.600 - Oaths of Office**
- "Before taking office a municipal official shall affirm in writing that the duties of the office will be honestly, faithfully, and impartially performed by the official."

**AS 29.20.010 - Conflicts of Interest**
- (a) Each municipality shall adopt a conflict of interest ordinance that provides that
  - (1) a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;
  - (2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;
  - (3) the decision of the presiding officer may be overridden by the majority vote of the governing body; and
  - (4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.
Alaska Supreme Court Weighs In:

- Under common law, “the focus...[is] on the relationship between the public official's financial interest and the possible result of the official's action, regardless of the official's intent.”


Know and Follow Your Municipal Code.

- Hold yourself to a higher standard.

- Your constituents’ perception of an ethics violation or a conflict of interest can be as damaging as the existence of an actual ethics violation or conflict of interest.

DO I HAVE A CONFLICT OF INTEREST??

*IT'S A VERY COMPLICATED SITUATION*

*YOU KNOW A LOTTAIN A LOTTA OUTS, A LOTTA WHAT-HAVE-YOBS.*
If you think you may have a conflict, say something!

• The worst thing you can do is do nothing.

• Talk to staff, mayor, attorney, or someone in advance to determine whether a conflict exists.

• Despite advice you may receive from other sources, your municipal governing body retains authority to determine whether a conflict exists.

Figuring Out If You Have a Conflict of Interest.

• Do you have competing interests?
  ▪ Personal?
  ▪ Familial?
  ▪ Financial?
• Do you feel conflicted?
What if I Have a Conflict? - Step 1

• **Put it on the record.**

“Madame Chair, members of the Council, I believe I have a conflict of interest in the Council’s consideration of Resolution 2019-34 because my brother is the owner of the company being considered for the road maintenance contract.”

What if I Have a Conflict? - Step 2

• **Do not** participate in the matter being considered.
• **Do not** influence the discussion.
• **Do not** attempt to directly or indirectly influence the municipal body or an individual’s consideration of the matter.

What if I Have a Conflict? - Step 3

No, really. **DO NOT** vote on any matter where you have a conflict.
Conflict of Interest: Voting.

City Code 2.36.090

• A. The mayor shall declare to the council any substantial financial interest he has in an official action.

• B. A member of the council or other city board or commission shall declare any substantial financial interest the member or a member of their immediate family has in an official action and ask to be excused from a vote on the matter.

COI: Voting (cont).

• C. The presiding officer shall rule on a request by a member of a city body to be excused from a vote.

• D. The decision of the presiding officer on a request by a member of a city body to be excused from a vote may be overridden by the majority vote of the body’s membership.

Conflicts of Interest:
Additional Provision Options

Can your municipality have its cake AND eat it, too?
• Your municipality can define what “substantial financial interest” means.

• **City Code 236.030:** “Substantial financial interest” means a **financial interest that is of a magnitude that it would be the primary reason for a person’s act to benefit himself or herself or a member of his or her immediate family**. A substantial financial interest does not include a financial interest of a type that is generally possessed by the public or by a large class of persons to which the public official belongs.

**COI: Additional Provision Options**

(continued)

• “Substantial Financial Interest” means “a direct or indirect pecuniary or material benefit, privilege, interest, or contractual relationship accruing as a result of the City’s consideration of a matter.”

• Define “financial interest.”

**COI: Additional Provision Options**

(continued)

• Consider defining “financial interest” to include any pecuniary interest:
  
  a. Of a member of an official’s immediate family or employer.
  
  b. In an entity in which an official or a member of the official’s immediate family has an ownership interest, or is a director, officer, or employee.
A determination that a public official has a substantial financial interest in a matter shall be considered on a case-by-case basis evaluating these factors:

- a. Whether the financial interest is a substantial part of the matter under consideration.
- b. Whether the financial interest directly and substantially varies with the outcome of the matter under consideration.
- c. Whether the financial interest is monetarily significant.
- d. Whether the financial interest is beyond the type typically possessed by the public at large or a large class of persons to which the city officer belongs.

Substantial financial interest does not include:

- a. A financial interest of such limited magnitude that it would not influence an average, reasonable person.
- b. A financial interest in which the outcome of a decision would have only an insignificant or conjectural effect.
- c. A financial interest which is obtained through a competitive process.

Should the conflicted city council member get to participate in discussions?

Should the conflicted city council member get to remain seated with the other members during the discussion?
Conflict of Interest: DUAL OFFICES?

- Generally, dual-office holding is prohibited by basic principles of municipal law.
- **EXAMPLE**: A City of North Pole charter provision prohibiting dual-office holding, and requiring the removal of a city employee (police officer) when that employee was elected to the city council, was valid and constitutional.
- **CHECK YOUR CODE** to see if it prohibits you from holding dual offices.

Conflict of Interest: NEPOTISM?

- Nepotism is generally defined as an official granting favors to family members, specifically - jobs.
  - **Example**: a Mayor hires their child to be the Mayor’s Chief of Staff, and hires their spouse to be the Director of Government Affairs.
- Alaska law prohibits legislators and executive branch employees from engaging in nepotism.
  - AS 24.60.090; AS 39.90.020
  - What about your municipal code???
COI: Nepotism (cont.)

- Nepotism or the appearance thereof can be a tricky issue in Alaska.
  - Alaska law doesn’t directly address the issue of nepotism in municipal government.
  - Many of our Alaskan municipal communities are small, rural, and isolated.
  - Our work may require us to work alongside immediate and distant family members in order to complete our official duties.
- **CHECK YOUR MUNICIPAL CODE** to see if it addresses nepotism.

Conflict of Interest: Commercial Activity.

COI: Commercial Activity (cont.)

**City Code Example 2.36.070. Public officials should not:**
- A. Use city property or equipment for non-city purposes unless that use is available to the general public on the same terms;
- B. Use city property, equipment, or staff to conduct campaign activity unless that use is available to the general public on the same terms;
- C. Use information within the public official’s knowledge or purview to advance the personal interest of the public official or the official’s immediate family;
- D. Accept any form of gift, loan or gratuity in exchange for the performance of the public official’s duties;
COI: Commercial Activity (cont.)

E. Engage in business with the city, or be a party to the purchase of goods or services for the use of the city from any person or organization in which the public official or a member of the official's immediate family has a substantial financial interest, unless the financial interest is first disclosed, and the transaction or purchase is approved in advance by the city council or secured through competitive bidding;

F. Take any action to influence the city's solicitation of any bid or proposal from a person or organization in which the public official or a member of the official's immediate family has a substantial financial interest.

COI: Commercial Activity (cont.)

H. Represent, advise or assist a person or organization for pay or other benefit to the public official in any matter involving the public official's public duty.
Brecksville councilman under Ohio ethics investigation on police station contract

- Brecksville City Councilman Jack Petsche is now facing an Ohio ethics investigation after his company, USA Roofing, was awarded and performed on a $150,000 roofing contract on the city's new police station.
- Petsche did not adequately disclose to city leaders that his company was awarded the contract and may now face criminal charges for potentially violating state ethics law and the city charter.

D.C. lawmaker Jack Evans fined $20,000 in ethics case involving outside work

- D.C. Council member Jack Evans has been fined $20,000 by the city’s ethics agency for using government resources and touting his influence as an elected official while soliciting employment from local law firms.
- Evans's contact with the law firms violated rules that prohibit the use of government resources for personal reasons and using the prestige of office for private gain.

Bronx Councilman King Faces Second Ethics Investigation

- King accused of:
  - Misusing City funds and letting wife work on council business.
  - Sexual harassment.
  - Previously disciplined for similar behavior.
Conflicts of Interest: Gifts, Loans and Travel.

COI: Gifts, Loans, and Travel (cont.)

City Code 2.38.080.

A. Public officials of the city shall not request or receive a gift, loan or trip, personally or for the official's immediate family members, if:

1. That gift, loan or trip would tend to influence the public official in the discharge of his or her official duties; or
2. The public official may be involved in any official action directly affecting the donor or lender.

COI: Gifts, Loans and travel (cont.)

- Travel, subject to the following restrictions:
  - a. All travel accepted must be for furtherance of a valid public purpose, and
  - b. All travel accepted must be approved in advance by the mayor in consultation respectively with the city council.
Unique Ethics Issues Triggered by Travel

- Whenever and wherever you travel, you are a representative of your community and of your municipal government.
- Travel should not be treated like a vacation.
- Do not extend your trip at the municipality’s expense.
- If your municipal code permits you to consume alcohol while traveling, consume responsibly!

Permissible Travel or Ethics Violation?

Treasury secretary’s wife boasts of travel on government plane, touts Hermes and Valentino fashion

By Damar Paleta
June 25, 2017
Permissible Travel and/or Gifts, or Ethics Violation?

North Slope Borough mayor’s office dispersed over $800K in gifts, violated donation policy

Updated September 28, 2016
Published August 5, 2015

North Slope Borough Mayor Charlotte Bronson's office has dispensed more than $800,000 in donations to local organizations, sports teams, and individuals since the borough office in 2011, according to borough documents.

The documents cover only one borough account from which donations were made. Still, they include more than $50,000 for private club basketball teams not associated with public high school sports. Over $100,000 went to a team that never existed for borough last year.

Permissible Gifts or Ethics Violation?
Open Meetings Act

Presented By:
Jill S. Dolan, Borough Attorney,
Fairbanks North Star Borough
Michael Gatti, Jermain, Dunnagan & Owens, P.C.
November 30, 2022

Policies/Goals of OMA

- Maximize informed and principled decision-making
- Better decisions are made through public scrutiny
- The right to open meetings should be liberally construed
- Conservative approach to exceptions and executive sessions

Recall

- Allegations of OMA violations are a sufficient basis for a recall petition.
  - School board members allegedly participated in an executive session in which employees were discussed without being given notice or options to make the discussion public.
  - Three board members violated the OMA by not identifying the specific subject of executive session.
  - Posts and “likes” by four council members (a quorum) on a closed Facebook page sufficient to recall three of those members
Basic Formula

- Subject + Members = Public + Notice
- Subject: within body’s authority or duties; includes all steps of deliberative process including inquiry and discussion
- Members = more than three or majority (includes committees)
- Public = everyone can attend
- Notice = date, time, and place, by print or broadcast media and posted at principal office

Timing and Notice of Subject

- Timing depends on the circumstance.
  - Complex, important vs pro forma/ministerial
  - Follow any specific rules you have adopted
- Reasonable Notice
  - Includes the subject with some “specificity and clarity”
  - Be consistent (not “varied and confusing”)
    - Ask: does it encourage/deter citizen participation?

Exceptions

- Certain meetings are not included
  - Employee meetings
  - Managerial meetings of service area boards
  - Attendance at member organizations
  - Quasi-Judicial bodies in deliberations only
- Emergency Meetings
  - Give as much notice as possible. Is it actually an emergency?
Social media, texting, blogs

- A meeting can include "one-on-one conversations" between elected officials about "substantive" issues that have the effect of circumventing the Open Meetings Act, regardless of whether a quorum was present at any given time.
- A court may treat Facebook messages, text messages, tweets, or similar conversational technologies the same as emails.

Executive Sessions

- NOT a secret meeting
  - Still needs public notice, maybe individual notice
  - Requires a specific motion and vote
- Statutory exceptions
  - Adverse effect on finances
  - Prejudice reputation/character
  - Matters required to be confidential by law
  - Consideration of government records that are confidential by law
  - Attorney client communications
- Who can come? Do we record them?

Executive Sessions

- What must the motion include?
  - "clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private"
  - It is more than citing the relevant section of the OMA
  - Example:
    - Move to go into executive session with the risk manager and borough attorney to discuss matters within the attorney client privilege, to include evaluation of a settlement offer and discussion and direction on litigation strategy.
Discussion of Common Scenarios and Questions

Who counts?

Who is a member of your body?

- Elected but not sworn?
- Mayor/Manager voting members?

Scenario

Bob applies for a rezone the assembly/council will hear next week. Bob invites you to his property to take a tour and review his development plans. You arrive, and a small group (including 3 other members) is gathered.
What do you do?

1. You head back to your car.
2. You stay because they are only talking about his development plans if the rezone passes.
3. You politely tell Bob you have to leave and request he call you later with details of what everyone said.

Choice 2 - Violation

Brookwood Area Homeowners Association v Municipality of Anchorage.

Informal meeting of assembly members at a developer’s office for a discussion of a proposed development when a rezone was scheduled a week later was subject to OMA.

Choice 3 - Violation

A member of the public can effectuate a serial meeting.

Be aware of telephone polling and email communications.


**Scenario**

You attend a properly noticed meeting. On the agenda is an item that you have emailed other members about and went to a site visit on. You are wondering whether you should tell anyone about the emails or your meeting(s) that may have been improper.

**What do you do?**

1. You stay quiet, so as not to taint this meeting too.
2. You bring a copy of the email, read it into the record, and describe your site visit.
3. You tell the clerk the body can no longer act on the rezone because you messed up.

**Violation**

Ok, I messed up. Can I get a do-over?

Voidable.
Conduct a substantial and public reconsideration.
Get to point of derailment and resume from there.
Scenario
At the end of the meeting agenda, there is an opportunity for mayor and assembly/council member comments. The mayor gives a 20 minute report on changes that should happen to your code to prevent contentious rezones.

What do you do?
1. You ask questions, and so do two other members.
2. You call a point of order, and ask that this be placed on the next agenda.
3. You suggest the agenda be amended to include the item so the discussion can continue.

Choice 1 – Violation
Remember—you have to give notice of the specific subject matter. You can not add items to the agenda by calling them mayor or staff briefings.
**Choice 2 – Correct Choice**

Put it on the next agenda. Brief updates are ok, but long reports should be noticed as should discussions with the body.

---

**Choice 3 – Violation/Correction**

Remember—you have to give notice of the specific subject matter. You cannot add items to the agenda at the same meeting.

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**Scenario**

The mayor of your municipality confesses she was paid by a developer to advocate for his rezone. You file an ethics complaint, and the Ethics Board (which is the assembly in this case) convenes a meeting.
What happens next?

1. **The clerk provides the mayor notice of the meeting.**

2. **The meeting notice is kept secret until after it is done, to protect the mayor's privacy.**

3. **The clerk publishes notice of the meeting in the paper, and provides personal notice to the mayor.**

Choice 3

The notice requirements for a meeting apply to the Board. Individual notice may be required in certain cases.

- Termination of a property right (employment or contract)
- Quasi-judicial hearings.
- Executive sessions held for the purpose of protecting someone's reputation or character.

Scenario

After a properly noticed hearing, the Board decides it needs to convene in executive session to discuss the ethics allegations regarding the mayor before rendering a decision.
What happens next?

1. The Board asks those in attendance to leave, and goes off record to talk more.
2. The Board makes a motion to convene in executive session for the purpose of discussing matters that could prejudice the reputation of the mayor, and passes it over the mayor's objection (she wants this to be in public to clear her name).
3. The Board asks the mayor if she wishes a public consideration, and honors her decision when she says yes.

Choice 1 - Violation/Correction

Hold up! You are discussing a specific individual. Have you provided the mayor an opportunity to have public consideration of the allegations?

(note that executive sessions do not need to specifically noticed on an agenda)

Choice 2 - Violation

Good job on making a motion before going into executive session, but the person that is the subject of the discussion has the opportunity to request a public consideration.

The Board, however, does not have to deliberate in front of the person. There is an exception in the OMA for deliberations of quasi-judicial bodies, solely when making a decision.
Scenario
Your assembly/council decides everyone needs to go to NEO training at AML.

What happens next?
1. The entire body can attend and does not need to notice a meeting (no business can be discussed).
2. The entire body can attend, provided you run an ad in the paper.
3. The entire body can attend, and if it runs an ad, can discuss municipal business.

Choice 2 - Acceptable
This is an acceptable answer, but you do not need to publish notice if you are attending meetings of a membership organization.

Choice 3
Notice of a meeting that the public will have no opportunity to attend is not going to save you. Be aware that if it is a paid event or attendance is otherwise restricted it will not be deemed a public meeting.
Social media best practices

- Post a disclaimer on your personal account identifying the account’s purpose and stating that opinions expressed on it are your own and do not purport to reflect the opinions or views of the municipality;
- Limit the account to personal use;
- Understand and use privacy settings to manage the account;
- Have a plan in place for responding to or forwarding municipal-related comments to the municipality;
- As a part of this plan, understand how to preserve information on the account. For example, Facebook has a “Download Your Information” tool that can retrieve prior messages and an “Access Your Information” tool that can retrieve prior posts.

Social media “don’ts”

- Don’t use personal accounts to discuss substantive issues of municipal business with other elected officials;
- Don’t write posts on personal accounts that could be interpreted as “within the scope of employment” or that address municipal business;
- Don’t connect to private accounts from an official municipal account;
- Don’t use municipal devices to maintain or access your private account;
- Be wary of groups and commenting on pages

Q&A

- Please type your questions in the chat bar and we will get to as many as we can.
- We cannot provide legal advice on any specific matter.
Ex Parte Communications and the Quasi-Judicial Role
An overview for newly elected officials

Presented by:
Jill S. Dolan, Borough Attorney, Fairbanks North Star Borough
Michael Gatti, Jermain, Dunnigan & Owens, P.C.-November 10, 2022

Substance of the Ex Parte Prohibition
“One sided”

Contacts between one party and a decision-maker outside the presence of another party to the matter when a matter is pending

Our goals today
- What it means
- Why we have this rule
- How to recognize when it applies
- What to do when contact happens
“Quasi-Judicial”

- Decisions that have direct effects on the rights of an individual person
- Applies existing law rather than makes new law
- Requires a finding that from all of the evidence presented, the required standards have been met

Who are the players?

- Applicant
- Interested persons (the public, neighbors, members of other government agencies)
- Staff
- Board or city council members

Examples of QJ functions

- Boards of Adjustment (appeals)
- Board of Equalization
- Platting Board
- Certain procurement matters (suspension, debarment)
- Conditional use, variances, grandfather rights (land use) but not rezones
Legislative

- General policy or rights of individuals in the abstract
- Making new laws
- Funding decisions
- Taxpayers as a group (mill levy)
- Zoning, comprehensive plan
- Vacation of streets, rights of way

What are ex parte contacts

- Can be oral or written communications

- Rule of thumb: If you didn’t find out the information while you were “on the record” in a meeting, it is likely an ex parte communication.

Procedural Due Process Rights

- Right to an impartial decision-maker

- Right to know what information the decision-maker is using to make a determination
Rationale

- Even playing field
- Unfair to take evidence from only one side at a hearing, also unfair to permit any side to present evidence to the decision makers in private
- Do not want one side influencing a vote outside the public forum

When is a matter “pending”?

- An application has been filed
- A matter appears on your agenda

  Beware:
  - Impending matters
    - Example: you speak to someone on Monday and they file an application the following day
  - Appeals
    - Example: a court remands a decision to you for re-hearing but you’ve spoken to one of the parties

What if….

- You get a phone call or email?
- You run into someone on the street?
- You are at a meeting and the matter comes up for discussion?
- You conduct a site visit and the applicant or a neighbor is there?
- You hear a discussion on a radio program or read an editorial in the newspaper?
General Rules

► AVOID the contact
► If you accidentally have an ex parte contact, DISCLOSE it on the record at the beginning of the meeting
► Discuss WHAT was related to you
► State whether you believe it has impacted your opinion or view of the matter and whether you can still be UNBIASED

What do you need to disclose?

► At a minimum, the substance of the outside contact and the identity of the person making the contact.
► If it is in written form, make the actual email, letter, photograph, facsimile, etc. a part of the record.

Example #1

You and your wife are at dinner with friends, Jack and Diane. One of them discusses a problem with the road in front of their home. The following week, at your municipal meeting, the same road is up for discussion as part of a permit application. Jack and Diane are there to testify but are not the applicant.
What do you do?

A) Say nothing and pretend you don’t know them so you look fair.
B) Wave hello, and nod vigorously in agreement when they testify.
C) Disclose the contact, and explain to the body if you can remain unbiased.

What should I say when I disclose this?

“Mr. Chair, before we hear this matter I need to disclose an ex parte contact. Last week, Jack and Diane told me about a problem with this road. They said it is too narrow to handle any additional traffic. I did not know about this application at the time. I believe that despite this information, I can listen to all the evidence and this information has not impacted my ability to be impartial here tonight.”
Is your answer the same if:

1. Jack and Diane are not present at the meeting?

YES.

You still have information the other decision-makers do not have and it may appear it could influence your decision.

Is your answer the same if:

2. Jack and Diane are the applicant?
Is your answer the same if:

3. You did not hear about the road from Jack and Diane, but you regularly visit Jack and Diane’s home and have personal opinions about their road conditions?

Example #2

You are at home eating dinner before your municipal meeting. Your phone rings, and as soon as you answer Tommy Tutone begins telling you why a permit application on that night’s agenda should be denied.

What should you do?

You politely disconnect the call without offering an opinion on the matter.
Was this an ex parte contact?

YES. Even though you did not respond and terminated the call, Tommy provided information to you. Disclose the contact on the record with as much information as you received.

Your answer should be the same even if you did not answer and Tommy left a voicemail that you listened to; your assistant took a message that was relayed to you; or, you received an email message that you read but did not respond to.

Have a response ready

--Apologize for not being able to discuss the matter
--Provide information as to the appropriate time and place for Tommy to be heard
--Tell Tommy you will listen to what he has to say when you are on the record
Have a response ready

“Tommy, I’m sorry I can’t talk to you about that permit. It’s on Tuesday’s agenda. You can submit written comments to the clerk’s office or come testify in person on Tuesday. I will be at Tuesday meeting and will listen to what you have to say then.”

Example #3

Your city council meets on Tuesday night. After hearing a permit application regarding a school and evidence from the applicant, it is determined that a decision cannot be reached without comment from the school board. The council postpones its decision in order to provide the school board a chance to comment on the proposal.

In a formal letter, the school board submits written comments before your next meeting. Without reading the comments into the record or disclosing it to the applicant, the council votes to deny the application.

Has there been a violation?
YES!

Remember all evidence received must be made a part of the record and the applicant should be given an opportunity to respond to any evidence upon which you base your decision.

What if the letter had been made a part of the record and the applicant had been given a chance to respond?

Example #4

You are hearing a permit application and realize the property involved is near your workplace. You drive by it daily. As the applicant is describing the property as being on a quiet street with little traffic, you believe he is giving inaccurate information to the council. During deliberations, you state: “I plan to vote no because I drive this street every day and almost always get stuck in a traffic jam.”
EX PARTE???

But no one told me anything!

Consider this…

▶ Is it information obtained outside a public meeting?
▶ Has it been determined that you can be fair and impartial despite this knowledge?
▶ Did you give the applicant a chance to address your observations?
▶ Are you basing your decision on information that was not available to your fellow council members?

It would have been different if you had traveled on the street for a site visit, disclosed this up front in the meeting, and explained what you observed while you were there.
Tips

- Be familiar with your upcoming agendas.
- As soon as you sense that you are about to be in an ex parte situation, stop the person from discussing it and tell them how they can be heard on the issue.
- Avoid putting personal mailing addresses on websites; instead, have your mail routed through your clerk’s office.
- Note on agendas if an item is quasi-judicial.

Questions?

Always remember to check with your local attorney if you think you have been involved in an ex parte contact or if you are not sure if it is a quasi-judicial proceeding to which these rules apply.
QUASI-JUDICIAL ACTIVITY
AND
EX PARTE CONTACTS

ALASKA MUNICIPAL LEAGUE
November 30, 2022

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ADMINISTRATION OF POWERS

I. Legislative and Administrative Power.

Local governing bodies are generally vested with a admixture of both legislative and administrative powers.

The test of what is a legislative and what is an administrative proposition, with respect to the initiative or referendum, has further been said to be whether the proposition is one to make a new law or to execute law already in existence. The power to be exercised is legislative in its nature if it prescribes a new policy or plans; whereas, it is administrative in nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it.


1. An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.

2. Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative.

3. Decisions which require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of a policy.


The Alaska Supreme Court in 1985 described the different roles of governing bodies as follows:

*Seattle Building* is one of a line of cases, all or almost all of which limit the use of municipal initiatives, in which the courts attempt to draw a line between laws and administrative acts. The cases usually involve municipalities because, unlike state governments in which the three great
powers are separated, local governing bodies are generally vested with an admixture of both legislative and administrative powers. City councils, county commissioners, and borough assemblies not only enact laws but they also administer them to a very great extent and they also sit as boards of review, exercising quasi-judicial powers at times and making fundamental executive policy at other times. Where the city or county voters seek to exercise these latter kinds of powers through the initiative, so the theory goes, they exceed the law making power vested in them under initiative provisions. *Yute Air Alaska, Inc., et al. v. McAlpine*, 698 P.2d 1173, 1175 (Alaska 1985).

II. The Alaska Supreme Court's Test for Determining the Existence of Quasi-Judicial Activity.

A. *Black's Law Dictionary* defines quasi-judicial as "of, relating to, or involving an executive or administrative official's adjudicative acts. Quasi-judicial acts, which are valid if there is no abuse of discretion, often determine the fundamental rights of citizens. They are subject to review by courts." (*Black's Law Dictionary* (8th ed. 2004)).

B. The court found that "as a general matter, [w]henever an entity which normally acts as a legislative body applies general policy to particular persons in their private capacities, instead of passing on a general policy or the rights of individuals in the abstract; it is functioning in a quasi-judicial capacity." *Cabana v. Kenai Peninsula Borough*, 21 P.3d 833, 836 (Alaska, 2001).

The test for determining when an entity is acting as an administrative agency is functional. Whenever an entity which normally acts as a legislative body applies policy to particular persons in their private capacities, instead of passing on a general policy or the rights of individuals in the abstract, it is functioning as an administrative agency within the meaning of Alaska Rule App. P. 602(a)(2), *Kollodge v. State*, 757 P.2d 1028, 1034 (Alaska 1988).

The foregoing test can be difficult to administer. An example of this problem is expressed in *Property Owners Association of the Highland Subdivision v. the City of Ketchikan*, 781 P.2d 567 (Alaska 1989). This case involved a challenge to the local improvement district for subdivision improvements including road, water, sewer, telephone, and power line installation.
One of the important questions in the case was whether certain actions of the council were legislative or adjudicatory. The court provided a good analysis of the distinction between these two concepts.

The question whether a governmental action is "legislative" or "adjudicatory" implicates important due process considerations. Where an act is deemed to be legislative, trial-type procedures need not be afforded to affected members of the public. The contrary is true where an act is deemed to be "adjudicatory." See 2 K. Davis, Administrative Law Treatise § 12:1, at 406-09 (2d ed. 1979) (citing Londoner v. City of Denver, 210 U.S. 373, 386, 28 S.Ct. 708, 714, 52 L.Ed. 1103 (1908); Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 444-45, 36 S.Ct. 141, 142, 60 L.Ed. 372 (1915) (where tax applicable to more than a few people individual input at hearing not required by due process). See, generally, United States v. Florida E.C. Ry., 410 U.S. 224, 244-45, 93 S.Ct. 810, 820-21, 35 L.Ed.2d 223 (1973) (discussing Londoner and Bi-Metallic).

Assessment proceedings which affect individual taxpayers, rather than taxpayers as a group, and which involve the ascertainment of facts material to those individuals are "adjudicatory." The requirement that an individual specifically targeted by a taxing authority be afforded a hearing has been interpreted to entitle the taxed party to trial-type procedures where disputed material facts must be ascertained. 2 K. Davis, supra p. 9, § 12:1, at 407.

Compare Londoner, 210 U.S. 373, 385-86, 28 S.Ct. 708, 713-14 (due process requires hearing where municipal tax is on particular property) with Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 444-45, 36 S.Ct. 141, 142, 60 L.Ed. 372 (1915) (where tax applicable to more than a few people individual input at hearing not required by due process). See Greene v. McElroy, 360 U.S. 474, 496-97, 79 S.Ct. 1400, 1413-14, 3 L.Ed.2d 1377 (1959) (where government action seriously invades individual interest and requires findings of fact, trial-type procedures are required).
A more difficult question is whether the Council's decision to charge the taxpayers for delays caused by work allegedly benefitting only the city was "legislative" or "adjudicative." The Council based its decision to charge the taxpayers for these delays on testimony that the work which caused the delays benefitted the taxpayers as well as the city.

We believe that this was a legislative decision because the decision affected a large development and a group of similarly situated taxpayers. To hold otherwise would encroach upon and make too cumbersome the legislative policy-making function.

In a legislative assessment proceeding, due process requires notice and an opportunity to be heard, both of which were provided to the affected owners in this case. See, e.g., Hinz v. City of Phoenix, 118 Ariz. 161, 575 P.2d 360, 363 (App. 1978); South Ferry S1. Project v. City of Schenectady, 72 Misc.2d 134, 338 N.Y.S.2d 730, 733-34 (Sup.Ct. 1972); Tramel v. City of Dallas, 560 S.W.2d 426, 429-30 (Tex.Civ.App. 1977). Because the lot owners received all the process due, we conclude that the superior court did not abuse its discretion in refusing to conduct a trial de novo. See State v. Lundgren Pac. Constr. Co., 603 P.2d 889, 895-96 (Alaska 1979); see also Alaska Appellate Rule 609. Property Owners Association of the Highland Subdivision v. the City of Ketchikan, 781 P.2d 567, 572 (Alaska 1989).


1. Board of Adjustment.
2. Board of Equalization.
3. Election contests.
4. Platting Board.
7. Some permits such as conditional uses, variances, waivers.
8. Board of Zoning Examiners.

9. Appeals of administrative decisions.

AS 29.40.050 requires a municipality to establish a board of adjustment; AS 29.45.200 requires a municipality to establish a board of equalization. Municipal charters and ordinances may contain additional authorization for the establishment of quasi-judicial entities.

AS 29.40.070 vests the power of vacation of land in local governing bodies. This is in keeping with the typical approach employed in other jurisdictions. "As previously noted, the power to vacate streets is often vested exclusively in the common council, or the governing legislative body, and in such case the court cannot entertain an original proceeding for that purpose, since the vacation of streets is regarded as a legislative rather than a judicial function." McQuillan Mun. Corp. § 30.196.

IV. Ex Parte Contacts.

A. Black Law's Dictionary describes "ex parte" as "on one side only; by or one party; done for, on behalf of, or on the application of one party only." (Black's Law Dictionary (8th ed. 2004).

The State of Alaska Hearing Officer's Manual (5th ed., August 2002, State of Alaska/Department of Law), while not applicable to municipalities, is useful for guidance for a quasi-judicial board or commission to follow in the absence of a procedural rule applicable to the board or commission. It states:

E. Ex Parte Communications

"Ex parte communication" means a contact between the decision-maker and a party, or other individual on behalf of that party, regarding the merits of a matter under adjudication made without notice and opportunity for all parties to participate. The prohibition is discussed in AS 44.62.630. Department of Revenue hearing officers should follow the rules concerning ex parte communications set out in 15 AAC 05.030(d). The purposes of the prohibition are to ensure that

39 This prohibition applies to the agency's final decision-maker as well as to the hearing officer.
↑ no person has a special influence over, or opportunity to persuade, a decision-maker;

↑ all parties to a proceeding have an opportunity to rebut any facts considered by the decision-maker; and

↑ all facts considered by the decision-maker are on the record.

The hearing officer must not directly or indirectly receive oral information relating to the merits of the case from any person, including agency personnel, without giving all parties the opportunity to be present - either in person or telephonically - and the opportunity to respond.40

The hearing officer should not receive written information without ensuring that it is copied to the other parties and made part of the record. Whenever the hearing officer wishes to communicate with the parties outside of a conference or hearing, the communications should be written and sent to all parties.

The hearing officer should avoid being in the hearing room or having other contacts with only one party in order to avoid the appearance that the merits were discussed on that occasion. Additionally, the hearing officer should avoid ex parte communications even after the proposed decision is made, based on the possibility of a remand from the agency or a reviewing court.

Ex parte communications do not automatically void an agency decision but instead render the decision voidable.41 It is often possible to cure an ex parte communication. The hearing officer should immediately

1. make a record of what was communicated;

40 AS 44.62.630; see Louisiana Pacific Corp. v. Koons, 816 P.2d 1379, 1382-83 (Alaska 1991) (ex parte conversation with a witness).

2. disclose the communication to the other parties, giving them an opportunity to respond;

3. give the parties an opportunity to lodge a challenge against the hearing officer; and

4. take the opportunity to remind the parties of the rule against ex parte communications.

A party represented by counsel who attempts to contact the hearing officer directly should be immediately advised to contact counsel and have the counsel make the contact. The hearing officer should also advise the party's counsel and the opposing parties' counsel of the attempted contact.

B. Ex parte contacts are prohibited. Generally, the common law, statutes, a charter or ordinance will prohibit ex parte contacts. Sometimes this prohibition is contained in a conflict of interest or ethics code, but other times there are specific provisions contained in the planning and zoning code or in the code establishing a quasi-judicial board. One example of this approach is found in Anchorage Municipal Code 21.10.010(c).

C. Ex parte contacts implicate due process and the appearance of fairness doctrine.

D. Canon 3 Code of Judicial Conduct is not binding on municipalities but could be looked to for guidance.

E. An ex parte contact can be found in the form of:

1. a visual observation (site visits);

2. a verbal conversation;

3. written correspondence, including e-mail; and

4. evidence submitted to the tribunal that has not been presented to the opposing party.
In Golden Country Estates Preservation Group, Inc. v. Fairbanks North Star Borough, Opinion No. 6651 – February 10, 2012, the court held a site visit was a meeting.

F. In an unpublished opinion, Stout v. Animal Control Appeals Board, WL 10515511 (Alaska 1990) an applicant sought renewal of its license to run a dog musher's kennel in accordance with the requirements of the Anchorage Municipal Code. The hearing officer found the kennel to be a nuisance. The owner of the kennel subsequently appealed to the Animal Control Appeals Board which issued the notice of hearing including language that specified that "the board's review will not involve the acceptance of any new testimony, exhibits or comments." Nevertheless, counsel for the kennel, without serving the opposing party, submitted written arguments, supportive letters from neighbors, a letter from a veterinarian, and other evidence. The Board reversed the earlier decision and granted renewal of the kennel mushing facility license. On appeal to the superior court, the Board's decision was upheld and was subsequently appealed to the Alaska Supreme Court, which found that the Board had violated its own procedures, because it had relied upon the ex parte information to some extent, and because the evidence had been submitted ex parte. The court reversed and remanded the case for further proceedings and found that:

Given the foregoing, we hold that the Board's ex parte receipt of the disputed evidence violated the due process rights guaranteed Stout by Article I, Section 7 of the Alaska Constitution. A fundamental requirement of due process is that the parties should be afforded an opportunity to meet and rebut the evidence relied upon by the administrative agency in making its determination. K & L Distributors v. Murkowski, 486 P.2d 351, 357 (Alaska 1971) ("[W]e will review to assure that the trier of fact was an impartial tribunal, [and] that no findings were made except on due notice and opportunity to be heard. . . ."). In City of Homer v. Campbell, 719 P.2d 683, 685 (Alaska 1986) we wrote:

In Nichols v. Eckert, 504 P.2d 1359, 1364 (Alaska 1973) we held that when the principles of due process attach there is a certain level of procedural fairness that must be accorded to an affected party. This "fairness can rarely be obtained by secret, one-sided determinations of facts decisive of rights." Fuentes v. Shevin, 407 U.S. at 81, 92 S.Ct. at 1994, 32 L.Ed.2d at 570, quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170-72, 71 S.Ct 624,
647-49, 95 L.Ed. 817, 853-54 (1951) (Frankfurter, J., concurring).

In short, the Board's ex parte receipt of additional evidence offended basic requirements of due process and denied Stout a fair and impartial hearing. Stout was never accorded the opportunity to cross-examine Dr. Wagnon or any of the neighbors who gave additional evidence by any other means. We cannot hold that a due process deprivation of this magnitude is harmless error. Stout v. Animal Control Appeals Board, WL 10515511 (Alaska 1990). See also State v. Lundgren Pac. Const. Co., Inc., 603 P.2d 889 (Alaska 1979).

G. McQuillan Mun. Corp. § 25.262.50 discusses ex parte communications. In the interests of both fairness and the appearance of impartiality, board members ought to avoid ex parte communications with interested parties. Nevertheless, ex parte communications are not necessarily fatal to a board's determination where the communication was put in the record and interested parties had an opportunity to rebut the substance of the communications. However when ex parte contacts are present in the context of quasi-judicial zoning decision, such as variances and special use permits, courts will be more receptive to challenges to decisions on grounds of zoning bias. Facts learned through an ex parte communication which are not made part of the record cannot be relied upon by the board in making its decision.

Some courts are more tolerant of ex parte communications, even when they are not made part of the record. Generally speaking, prejudgment statements by a decision-maker are not fatal to the viability of the zoning determination as long as the statement does not preclude the finding that the decision-maker maintained an open mind and continued to listen to all the evidence presented before making the final decision.

V. Exception - Rule Of Necessity.

The rule of necessity may provide an exception to the disqualification of an administrative quasi-judicial board member in receipt of ex parte communications.

Under the rule of necessity a judge is not disqualified to try a case because of his personal interest in the matter at issue if there is no other judge available to hear and decide the case." Atkins v. United States, 556 F.2d at 1036. To hold otherwise "would result in a denial of a litigant's constitutional right to have a question, properly presented to such court, adjudicated." State ex rel. Mitchell v. Sage Stores Co., 157 Kan. 622, 143
P.2d 652, 656 (Kan. 1943) (quoted with approval in United States v. Will, 449 U.S. at 214, 101 S.Ct. at 480, 66 L.Ed.2d at 405). The rule of necessity is applied in cases where "[t]o disqualify one would disqualify all. . ." Olson v. Cory, 164 Cal.Rptr. at 220, 609 P.2d at 994. That being the situation here, we conclude that this case is a proper one in which to invoke the rule. Hudson v. Johnstone, 660 P.2d 1180, 1183 (Alaska 1983).

Am Jur. describes the rule of necessity as follows:

Due process considerations do not require a biased administrative agency to forego making a decision which no other entity is authorized to make. Under such circumstances, the so-called "rule of necessity" permits an adjudicative body to proceed in spite of its possible bias or self-interest. The "rule of necessity" not only allows, but requires a decision maker to act in a proceeding, when he or she would otherwise be disqualified, if jurisdiction is exclusive and no provision exists for substitution. The rule of necessity applies only in situations where the sole adjudicatory body would be precluded from carrying out its function because of disqualifications. It is not implicated where recusals based on bias do not deprive the administrative body of a quorum. An officer, otherwise disqualified, may still act, if his or her failure to act would necessarily result in a failure of justice. The rule of necessity operates on the principle that a biased judge is better than no judge at all.

If there is anyone else who can act in the place of the disqualified person or persons, or if a board or commission may act in the absence of the disqualified person or persons, the doctrine of necessity does not apply.

There are ways of relieving the injustice of permitting a biased administrative decision. Whenever the rule of necessity is invoked and the administrative decision is reviewable, the reviewing court, without altering the law about scope of review, may and probably should review with special intensity. It makes no sense to show the extreme deference of viewing the evidence in the light most favorable to an administrative body which is not completely impartial. This does not mean that the court should undertake a de novo review. The court’s standard of review should be deferential, but it should also compensate for the possibility that bias may have tainted the agency’s exercise of its expertise. Accordingly, the decision of a biased administrative agency acting under the rule of
necessity should be upheld if the evidence presented at the administrative hearing would have entitled an objective decision maker to reach the same conclusion. 2 Am Jur. 2d Administrative Law §40.

VI.  **Ex Parte Communications Are Prohibited.**

A. Look to Constitution, common law, statute, ordinance, and regulation when a quasi-judicial proceeding is underway for guidance.

B. Procedural due process and the appearance of fairness may be implicated by an *ex parte* contact.

VII. **Not All Administrative Activities Of A Local Governing Body Are Quasi-Judicial.**

A. Questions have been raised about whether a governing body considering approval of a liquor license application acts in a quasi-judicial capacity.


VIII. **Issues Associated With Governing Bodies Acting In A Quasi-Judicial Capacity.**

A. Issues of lay persons applying complex procedural mechanisms and complex interpretations of law.

B. The development of inadequate findings of fact and conclusions.

C. Tension arising between an elected official's role as a legislative official and deliberating in a quasi-judicial capacity.

D. Deviation from the public record results in a second fact-gathering session without proper notice in clear violation of due process.
E. Lack of understanding of the need for impartiality and its connection to procedural due process.

F. Elected officials sitting in a quasi-judicial capacity may increase the danger of pre judgment of the issues or partiality. Fairness requires an impartial decision-maker where everyone is heard and judgment is reserved until all the evidence has been presented.

G. Is a local governing body held to a standard of judicial disinterestedness when acting in a quasi-judicial capacity?


IX. **Timely Challenge.**

A challenge to a proceeding based on an *ex parte* communication should be timely, on the record, and substantiated with relevant evidence.

X. **Sanctions.**

A. Ethics violation (elected or appointed).
   1. Civil reprimand.
   2. Civil monetary penalty.
   3. Criminal penalty (jail).
   4. Criminal monetary penalty.

B. Governing body censure.

C. Governing body declaration of vacancy pursuant to AS 29.20.280(a)(5) (elected official).

D. Recall (if an elected official).

E. Charter or ordinance removal process.
F. Loss of credibility and integrity.

G. Voidability of action.

XI. Remedies.

A. On the record disclosure of *ex parte* communication.

B. Reversal and remand.

C. Recusal of member or members in receipt of the *ex parte* communication.

D. Remedies may be based upon whether the *ex parte* contact was with the proponents of change or their agents or relatively disinterested persons where the contacts only amounted to an investigation of the merits or demerits of the matter. Or whether the contacts were made a matter of record during the quasi-judicial hearings so that all parties to the hearing had an opportunity to respond.

E. Trial *de-novo* in superior court if administrative proceeding did not afford due process.

F. Attorney Fees. There may also be eligibility for limited attorney fees if the matter meets the test subsequent to an administrative appeal to the superior court. See Alaska R. App. P. 508(e).

XII. Approaches.

A. Educate hearing officers and quasi-judicial boards.

B. Remove the governing body from the process. (*Balough.*)

C. Establish separate quasi-judicial boards to hear certain appeals, *e.g.* land use.

D. Have certain appeals go directly to superior court.
Title 29 - Jeopardy

Eli Jacobson, Local Government Specialist 3
Jed Cox, Local Government Specialist 3
December 5, 2022

Welcome to Title 29!

• What is it?
• How to use it?
• Things to know
What is it?

- Alaska Statutes
  - Laws enacted by the state legislature
  - Consist of 47 Titles
  - 12 bound volumes updated every legislative session
  - Title 29 covers municipal governments

How to Use it

- Table of Contents
- Citation
- Subject Index

Table of Contents

**Question:**
What are the powers and duties of a mayor?

**Answer:**
AS Sec. 29.20.250. Powers and duties of mayor.
Question: What is the section title of the following citation: AS 29.20.380

Answer: Municipal Clerk

Question: What municipal acts are required by ordinance?

Answer: AS 29.25.010
Chapter 03 The Unorganized Borough
Chapter 04 Classification of Municipalities
Chapter 05 Incorporation
Chapter 06 Alteration of Municipalities
Chapter 07 Home Rule Municipalities
Chapter 20 Municipal Officers & Employees
Chapter 25 Municipal Enactment
Chapter 26 Elections
Chapter 35 Municipal Powers and Duties
Chapter 40 Planning, Platting, & Land Use Regulations
Chapter 45 Municipal Taxation
Chapter 46 Municipal Assessment
Chapter 47 Municipal Debt
Chapter 50 State Programs
Chapter 51 General Grant Land
Chapter 55 General Provisions

Things to Know!

- Municipality?
- Home rule or general law?
  "This section applies to home rule and general law municipalities"
- Classification?
- Manager or council-mayor?
- Inside or outside of an organized borough?
  "The government of the city shall be that commonly known as the council-manager form. The city is a general law first class city under the laws of the state."

Quiz Questions

(1) Can the governing body combine the office of Municipal Clerk with that of Treasurer?

(2) Is notary public an official duty of the Municipal Clerk?

(3) Can the Municipal Clerk serve as an absentee voting official?
(1) Yes
AS Sec. 29.20.380(b)
“The governing body may combine the office of clerk with that of treasurer ...”

(2) No
Although the clerk often serves as the notary public, it is not a requirement under Title 29.

(3) Yes
AS 29.20.380(c)
“The municipal clerk may act as an absentee voting official under AS Sec. 15.20.045(c) for the limited ...”

Questions?

Title 29 Jeopardy

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Incorporation $100

Areas of the state that are not within the boundaries of an organized borough are called what?

Answer

What is: The Unorganized Borough

Powers $100

Where does Title 29 discuss a municipality having the power to sue and be sued?

Answer
Powers $100

Where does Title 29 discuss a municipality having the power to sue and be sued?

What is: Title 29.35.010. General Powers (14)

Taxes $100

Where does Title 29 discuss a municipality having the power to levy a tax or special assessment, and impose a lien for its enforcement?

Answer

Taxes $100

Where does Title 29 discuss a municipality having the power to levy a tax or special assessment, and impose a lien for its enforcement?

What is: Title 29.25.010. General Powers (6)
Officers $100

Where does Title 29 show how to fill a vacancy on the governing body council/assembly?

Answer: What is 29.20.180 Filling a Vacancy

Incorporation $200

What are the classes of General Law

Answer
Incorporation $200

What are the classes of General Law?
Answer: Title 29.04.030 What is:
General law municipalities are of five classes: (1) first class boroughs; (2) second class boroughs; (3) third class boroughs; (4) first class cities; (5) second class cities.

Incorporation $300

Where does one find how to create a city?
Answer: What is Title 29.05.060 Petition
Incorporation $400

How many hearings does the Local Boundary Commission in an area proposed to be incorporated?

Answer: What is – At least one – 29.05.090

Powers $200

What is a “power”?

Answer
What is a “power”?

Answer In AS 29.35.200-29.25.350, “power” means the provision of a public facility or service, or the exercise of a regulatory power.

What powers does a city inside a borough have?

Answer What is: A city inside a borough may exercise any power not otherwise prohibited by law (AS 29.35.250 (a)).
Powers $400

Where would one find mandatory areawide powers?

Answer

What is: Title 29 Chapter 35 Article 2 Mandatory Areawide Powers (AS 29.35.150 – 180).

Taxes $200

Where does one find required exemptions?

Answer
Where does one find required exemptions?

**Answer** What is: 29.45.030

Can a municipality levy a flat tax on personal property?

**Answer** What is – yes, described by 29.45.055 Levy of flat tax on personal property
Taxes $400

Who can inspect municipal tax records dealing with assessment, valuation, or taxation?

Answer

Officers $200

How often is the governing body supposed to meet?

Answer
How often is the governing body supposed to meet?

**Answer** what is – at least one regular meeting per month unless otherwise provided for by ordinance AS 29.20.160(b)

Where does a vacancy in the office of a second class city get filled from?

**Answer**

Where does a vacancy in the office of a second class city get filled from?

**Answer** what is: The vacancy is filled by and from the council 29.20.280(c)
Officers $400

Can the offices of clerk and treasurer be combined?

Answer: What is: yes the office of clerk and treasurer may be combined 29.20.380(b)
Where are the rules that apply to local government in Alaska?

- Article X of the Alaska Constitution
- Title 29 Municipal Government

... but wait — there’s more!

- How many times does “political subdivision” appear outside of title 29? 400+ times
- How many times does “municipality” appear outside of title 29? 970+ times
1998: Harassing liens

→ SB 195

(9) "lien" means

It's a common law lien on property

(i) only if the lien was consented to by the owner of the property affected, or

(ii) if not consented to by the owner of the property affected as provided in (ii) of this subparagraph, only when the lien is assessed by a specific order authorising the recording of filing of the lien issued by a court of competent jurisdiction recognized under state or federal law, which order shall be recorded as filed with the lien

1. INTRODUCTION

Boroughs are statutorily authorized to provide and charge residents for garbage collection services. The primary issue to the appeal is whether boroughs have the implied or incidental authority to record a real property lien for non-payment of garbage-collection fees. We conclude they do not have that authority.
Things Local Government May Not Do (or only w/Restrictions)

**Finance**
- Borrowing (Alaska Const. art. IX)
- Taxation (AS 29.45)
- Tax Limit (AS 29.45.090)
- Net Income Tax (AS 43.20.290)
- Certain Alcohol Taxes (AS 04.21.010)

**Exercise of Other Powers**
- Eminent domain (AS 29.35.030; AS 34.17.010 (conservation easements))
- Regulate Utilities (AS 42.05.641)
- Participate in Games of Chance (AS 05.15.180)

**Policy areas**
- Traffic laws (AS 28.01.010)
- Abandoned vehicles (AS 28.11)
- Derelict vessels (AS 30.30.055)
- Criminal Laws (AS 29.25.070)
- Insurance (AS 21.03.060)
- Health care transparency (AS 18.23.400)
- Name Geographic Features (AS 41.35.350)
- Guns and Knives (AS 29.35.144)
- Massage Therapists (AS 29.35.147)
- Pawn Brokers (AS 08.76.460)
- TNCs (Uber, Lyft) (AS 29.35.148)
The Constitution of the State of Alaska

§ 9. Local Debts

No debt shall be contracted by any political subdivision of the State, unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question.

§ 10. Interim Borrowing

The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.

§ 11. Exceptions

The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the sole security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be paid from special assessments on the benefited property, nor do they apply to standing indebtedness of the State or its political subdivisions.
After considering the language of the statute, its legislative history and underlying policies, we conclude that AS 29.45.090 is inapplicable to sales taxes.

Keane v. Local Boundary Comm'n, 893 P.2d 1239, 1247 (Alaska 1995)

AS 29.45.100. No limitations on taxes to pay bonds

The limitations provided for in AS 29.45.090 - 29.45.099 do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.
§ 29.35.148. Regulation of transportation network companies or drivers.

(a) The authority to regulate transportation network companies and transportation network company drivers is reserved to the state, and, except as specifically provided by statute, a municipality may not enact or enforce an ordinance regulating transportation network companies or transportation network company drivers.

Things Local Government May Not Do (or only w/Restrictions)

State interest? Uniformity? Juneau Knows Better?
Things Local Government Must Do

• School District; Required Local Contrib. (AS 14.12.100)
• Open Meetings (AS 44.62.310; AS 29.20.020)
• Public Meetings (AS 29.20.020)

Title 44, State Government

Chapter 62. Administrative Procedure Act (Refs & Annos)

Article 6. Open Meetings of Governmental Bodies

§ 44.62.310. Government meetings public

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at reasonable locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

Title 29, Municipal Government (Refs & Annos)

Chapter 2. Municipal Officers and Employees

Article 1. Conflict of Interest and Public Meetings

§ 29.20.020. Meetings public

(a) Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The governing body shall provide reasonable opportunity for the public to be heard at regular and special meetings.

(b) This section applies to home rule and general law municipalities.
Things Local Government Must Do

- School District; Required Local Contrib. (AS 14.12.100)
- Open Meetings (AS 44.62.310; AS 29.20.020)
- Public Meetings (AS 29.20.020)
- Conflict of interest (AS 29.20.010)
- Prohibit Discrimination (AS 29.20.630)
- Public contracting; “Little Davis Bacon” (AS 36.05.010)

§ 36.05.010. Wage rates on public construction

A contractor or subcontractor who performs work on a public construction contract in the state shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. The current prevailing rate of wages is the rate that was at the time of determination of prevailing rate of wages issued by the Department of Labor and Workforce Development at least 10 days before the final date for submission of bids for the contract. The rate shall remain in effect for the life of the contract or for 24 calendar months, whichever is shorter. At the end of the initial 24-month period, if new wage determinations have been issued by the department, the latest wage determination shall become effective for the next 24-month period or until the contract is completed, whichever occurs first. This process shall be repeated until the contract is completed.

This chapter applies only to a public construction contract that exceeds $25,000.

(3) “public construction” or “public works” means the on site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways, or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board.

Things Local Government Must Do

- School District; Required Local Contrib. (AS 14.12.100)
- Open Meetings (AS 44.62.310; AS 29.20.020)
- Public Meetings (AS 29.20.020)
- Conflict of interest (AS 29.20.010)
- Prohibit Discrimination (AS 29.20.630)
- Public contracting; “Little Davis Bacon” (AS 36.05.010)
- Public Official Financial Disclosure (AS 39.50.020)
Things Local Government Must Do

- School District; Required Local Contrib. (AS 14.12.100)
- Open Meetings (AS 44.62.310; AS 29.20.020)
- Public Meetings (AS 29.20.020)
- Conflict of interest (AS 29.20.010)
- Prohibit Discrimination (AS 29.20.630)
- Public contracting: “Little Davis Bacon” (AS 36.05.010)
- Public Official Financial Disclosure (AS 39.50.020)
- Recall (AS 29.26.250)


§ 15.45.310. Grounds for recall.

The grounds for recall are: (1) lack of fitness; (2) incompetence; (3) neglect of duties; or (4) corruption.
Things Local Government Must Do

- School District: Required Local Contrib. (AS 14.12.100)
- Open Meetings (AS 44.62.310; AS 29.20.020)
- Public Meetings (AS 29.20.020)
- Conflict of interest (AS 29.20.010)
- Prohibit Discrimination (AS 29.20.630)
- Public contracting: “Little Davis Bacon” (AS 36.05.030)
- Recall (AS 29.26.250)
- Employees to Access Personnel Records (AS 23.10.430)
- Intrastate Mutual Aid (AS 26.33.500)
- Tax Exemption: Non-Profit and Housing (Art. IX, 4; AS 29.45.030)
The Constitution of the State of Alaska

Article IX – Finance and Taxation

§ 4. Exemptions

The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

§ 29.45.030. Required exemptions

(a) The following property is exempt from general taxation:

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

(b) In (a) of this section, "property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of an educator in a private religious or parochial school or a bishop, pastor, priest, rabbi, minister, or religious order of a recognized religious organization; for purposes of this paragraph, "minister" means an individual who is
   (A) ordained, commissioned, or licensed as a minister according to standards of the religious organization for its ministers; and
   (B) employed by the religious organization to carry out a ministry of that religious organization;

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

(3) lots required by local ordinance for parking near a structure defined in (2) of this subsection.
**Things Local Government May Do**

- Sue for Antitrust violations (AS 45.50.576)
- Apply for a Foreign Trade Zone (AS 45.77.020)
- Approve Nuclear Facilities (AS 18.45.025)
- Public Records Storage (AS 40.21.090)
- Reserve Water Rights (AS 46.15.145)
- Cooperative Management of Lands and Recreational Rivers (AS 38.05.027; AS 41.23.480)
- Protest or Condition Alcohol License (AS 04.11.380)
- Influence Ballot Measures (AS 15.13.145)
- Opt-out of APOC (AS 15.13.030)
- Optional Tax Exemptions (AS 29.45.020; AS 29.45.049)
- C-PACE (AS 29.55 art. 2)

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**Title 40. Public Records and Recorders**

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>§ 40.21.090. <strong>Transfer of public records of political subdivision to department</strong></td>
</tr>
</tbody>
</table>

The governing body of a political subdivision of the state may authorize the transfer to the department of records that have legal, administrative, or historical value but are not required for the transaction of current business. The officer of the political subdivision having custody of the records shall prepare a list describing the records transferred in sufficient detail to identify them. Copies of the list shall be filed with the department and with the public corporation or political subdivision transferring the records. The department shall acknowledge receipt of the list. Listed records approved by the department for transfer may be transferred to a records center designated by the department. The records center shall transfer any permanent records to the archives. Records transferred remain the property of the political subdivision. The department is the legal custodian of records in its possession.
Things Local Government May Do

- Sue for Antitrust violations (AS 45.50.576)
- Apply for a Foreign Trade Zone (AS 45.77.020)
- Approve Nuclear Facilities (AS 18.45.025)
- Public Records Storage (AS 40.21.090)
- Reserve Water Rights (AS 46.15.145)
- Cooperative Management of Lands and Recreational Rivers (AS 38.05.027; AS 41.23.480)
- Opt-out of APOC (AS 15.13.030)
- Optional Tax Exemptions (AS 29.45.020; AS 29.45.049)
- C-PACE (AS 29.55 art. 2)

§ 46.15.145. Reservation of water

(a) The state, an agency of the state, an agency of the United States, or a person may apply to the commissioner to reserve sufficient water to maintain a specified in-stream flow or level of water at a specified point on a stream or body of water, or in a specified part of a stream, throughout a year or for specified times, for

1. Protection of fish and wildlife habitat, migration, and propagation;
2. Recreation and park purposes;
3. Navigation and transportation purposes; and
4. Sanitary and water quality purposes.
Things Local Government May Do

- Sue for Antitrust violations (AS 45.50.576)
- Apply for a Foreign Trade Zone (AS 45.77.020)
- Approve Nuclear Facilities (AS 18.45.025)
- Reserve Water Rights (AS 46.15.145)
- Cooperative Management of Lands and Recreational Rivers (AS 38.05.027, AS 41.23.480)
- Protest or Condition Alcohol License (AS 04.11.380)
- Public Records Storage (AS 40.21.090)
- Reserve Water Rights (AS 46.15.145)
- Coordinating Management of Lands and Recreational Rivers (AS 38.05.027, AS 41.23.480)
- Protest or Condition Alcohol License (AS 04.11.380)
- Public Records Storage (AS 40.21.090)
Things Local Government May Do

- Sue for Antitrust violations (AS 45.50.576)
- Apply for a Foreign Trade Zone (AS 45.77.020)
- Approve Nuclear Facilities (AS 18.45.025)
- Reserve Water Rights (AS 46.15.145)
- Cooperative Management of Lands and Recreational Rivers (AS 38.05.027, AS 41.23.480)
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Things Local Government May Do

- Sue for Antitrust violations (AS 45.50.576)
- Apply for a Foreign Trade Zone (AS 45.77.020)
- Approve Nuclear Facilities (AS 18.45.025)
- Reserve Water Rights (AS 46.15.145)
- Cooperative Management of Lands and Recreational Rivers (AS 38.05.027, AS 41.23.480)
- Protest or Condition Alcohol License (AS 04.11.380)
- Influence Ballot Measures (AS 15.13.145)
- Opt-out of APOC (AS 15.13.030)
- Optional Tax Exemptions/Credits (AS 29.45.020; AS 29.45.046-049)

§ 29.45.050. Optional exemptions and exclusions

(f) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land, or to new maintenance, repair, or renovation of an existing structure, and if the alteration, maintenance, repair, or renovation, when complete, enhances the exterior appearance or aesthetic quality of the land or structure. An exemption may not be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use in the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed, or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to a single-family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed, or from the date of approval of an application for the exemption by the local assessor, whichever is later.

§ 29.45.059. Optional exemptions and exclusions

(b) A municipality may by ordinance classify and exempt from taxation:

(1) a residential renewable energy system that is used to develop means of energy production using energy sources other than fossil or nuclear fuel, including windmills and water and solar energy devices located in the municipality.

§ 29.45.049. Energy efficient construction tax credit

A municipality may by ordinance provide for a single or multiple year energy efficient construction tax credit to offset a portion of the property taxes due on real property improvements made during the immediately preceding tax year before the municipality’s initial approval of the tax credit, including energy efficient new construction, renovations, remakes, and removations. The municipality shall establish eligibility criteria for the credit in the ordinance adopted under this section.
Things Local Government May Do

- Sue for Antitrust violations (AS 45.50.576)
- Apply for a Foreign Trade Zone (AS 45.77.020)
- Approve Nuclear Facilities (AS 18.45.025)
- Public Records Storage (AS 40.21.090)
- Reserve Water Rights (AS 46.15.145)
- Cooperative Management of Lands and Recreational Rivers (AS 38.05.027; AS 41.23.480)
- Protest or Condition Alcohol License (AS 04.11.380)
- Influence Ballot Measures (AS 15.13.145)
- Opt-out of APOC (AS 15.18.030)
- Optional Tax Exemptions (AS 29.45.020; AS 29.45.049)
- C-PACE (AS 29.55 art. 2)
Tricks?

- PERS Post-2008

  8% Interest on Tax Refunds (AS 29.45.500)
Alaska Municipal League
Resolution #2026-17

Supporting Amendments to AS 29.45.500 to Require Municipalities to Pay Reasonable Interest on Tax Refunds.

WHEREAS, Alaska Statute 29.45.500 requires municipalities to pay interest on certain taxes it refunds to taxpayers; and

WHEREAS, the statute presently requires municipalities to pay interest fixed at 8%; and

WHEREAS, 8% is not presently a market interest rate, and is grossly excessive to fairly compensate taxpayers for the lost time-value of money; and

WHEREAS, in recognition of the fact that market interest rates fluctuate, the Alaska State Legislature has in other circumstances, such as for prejudgment interest awarded in lawsuits under AS 09.36.075, and interest rates to the "Federal Reserve District discount rate in effect on January 2 of the year"; and

WHEREAS, interest required to be paid by municipalities to taxpayers should likewise be tied to a market index; and

WHEREAS, municipalities should not be required to pay non-market interest rates when refunding taxes it receives from taxpayers due to an error of the taxpayers (and not of the municipality).

Thank you!

William D. Falsey
Senior Counsel
bfalsey@huthreynolds.com
Others
• Contract requirements where state funds used
• Preference for AK Recycled products
• Slum Clearance
• Bond Bank
• Joint Insurance
Responsible Tax Policy

Local Government in Alaska

- Constitution of the State of Alaska
  - Article 10 § 1
    - "Maximum local self government"
  - Current local governments:
    - 19 Boroughs, 146 Cities
WHAT TAXES PROVIDE

Public Safety  Public Works  Schools

A MEANS FOR LOCAL GOVERNMENT TO PAY FOR PUBLIC SERVICES

"Government is simply the name we give to the things we choose to do together"

Tax revenue allows the community to meet the needs of both residents and business

- Public services support and encourage commerce.
- Public safety protects investments and reduces operating costs.
- Schools attract and retain residents.
- Roads and transportation support commerce.

What is Public Policy & Tax Policy?

- Public policy: What do you* want to do?
- Tax policy: How are you* going to pay for it?

*subject to terms and conditions
How Does Your Tax Policy Affect the General Public?

- Your tax policy may well dictate what people can or cannot afford to do with their money. In other words, your tax policy may change their spending habits!

- Income effect: Increasing taxes makes people poorer, less able to buy things.
- Substitution effect: Taxing alcohol makes people less likely to buy alcohol.
  - Important nuance: How much less likely?

Tax Policy Considerations

- Who pays the tax?
- Who is exempt from taxation?
- Reliability of tax revenue?
- Cost of collecting the tax?
- Impact of tax on individuals and businesses?

Who Pays the Tax?

- Don't tax me, don't tax thee, tax the guy behind the tree.
Who Pays the Tax - Basics

- **Property Tax**
  - Paid by property owners, based on the value of the property.
  - Exemptions shift tax to remaining property owners.
  - Exemption of personal property shifts tax to real property owners.

- **Sales and Use Tax**
  - Retail level sales paid by the buyer, based on price.

- **Excise Tax**
  - Wholesale level sales, paid by seller, based on number of units sold.

Who Pays the Tax - Advanced

**Tax Incidence Analysis!**

- **Property Tax**
  - Paid by property owners, **renters, and customers**, based on the value of the property.
  - Exemptions shift tax to remaining property owners.
  - Exemption of personal property shifts tax to real property owners.

- **Sales and Use Tax**
  - Retail level sales paid by the buyer **and seller**, based on price.

- **Excise tax**
  - Wholesale level sales, paid by seller **and customers**, based on number of units sold.

Reliability of Tax Revenue

- **Property Tax**
  - Buoyant tax adjustable based on tax rate.

- **Sales Tax**
  - May change based on economy dependent on amount of actual sales each year.

- **Excise Tax**
  - May change based on economy and quantity or price of goods sold each year.
Cost of Tax Administration

• Property Tax
  - Most expensive tax to administer (property records).
  - Sales price disclosure might make it cheaper
  - 1% to 2% of tax revenue typical

• Sales Tax
  - Economy from central administration.
  - Need for auditing

• Excise Tax
  - Severance tax records
  - Audit for fair and correct tax administration

Budgets and Taxes
How They Work

• Budget: A statement of estimated revenues and expenses for a specified period of time, typically one year.

Budgets and Taxes (Cont.)

• Balanced Budget – A budget in which revenues equals or exceeds expenditures.

• Capital Budget – A budget of expenditure for the acquisition of long-term assets (such as buildings & equipment) showing planned expenditures and revenue sources.

• Revenue sources include all taxes, sales, property, excise, other fees and other income (such as games of chance, parking fines, building permits, etc.) to the municipality.
Tax Revenue Collected by Local Governments in 2017

<table>
<thead>
<tr>
<th>Tax type</th>
<th>Boroughs</th>
<th>Cities</th>
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</thead>
<tbody>
<tr>
<td>Sales</td>
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<td>113</td>
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<tr>
<td>Special</td>
<td>17</td>
<td>49</td>
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<td>Property</td>
<td>15</td>
<td>21</td>
</tr>
<tr>
<td>NONE</td>
<td>0</td>
<td>22</td>
</tr>
</tbody>
</table>

Property taxes make up over 79% of all local tax revenue for local governments.

Tax Alternatives

A wide variety of revenue alternatives are available for consideration by municipalities:

- Sales Tax
- Excise Tax
- Property Tax
- Motor Vehicle Registration Tax
- Bed Tax
- Fuel Transfer Tax (some restrictions apply; should be called the "Fuel Sale Transfer Tax")
- Marijuana Tax

For a more detailed look at revenue alternatives, the Division of Community & Regional Affairs does conduct a Revenue Alternative workshop.
Sales Taxes

- Allowed by AS 29.45.650-.710.
- Does not apply to food stamps.
- Does not apply to storage, use, services, etc. of "orbital space facilities".
- Does not apply to "refined fuels" unless transfer is in connection to a sale.
- Does not apply to wholesale sales or transfers of refined fuels.
- Does not apply to a construction contract or sub-contract on a state construction project.
- A city or borough may provide for a real or personal property lien for non-payment of sales taxes.

Sales Tax (Cont.)

- No longer a statutory limit on amount of sales tax.
- May have seasonal sales taxes (higher rate during summer vs. lower rate in winter).
- May be multi-dimensional – higher bed tax rate, tobacco tax rate, etc., than a general sales tax rate.
- Alcohol tax does not have to match "general sales tax" rate (but you do have to have a sales tax of some kind).
- Exemptions may be granted by local ordinance.
- Must hold a vote in order to institute or increase a sales tax.

What is a tax exemption?
An exemption is a forgiveness of taxes. It does not do away with the need for the revenue. Imagine you’re at a birthday dinner and the table collectively decides to cover not just the birthday boy’s check, but his girlfriend’s, too.

I don’t want to pay!!

But I don’t want to have to pay your taxes too!

For Example

Let’s say we need $10,000 of property tax revenue from this town with five houses.

\[
\frac{10,000}{1,550,000} = 6.45 \text{ mills}
\]

<table>
<thead>
<tr>
<th>Values</th>
<th>Tax (6.45)</th>
<th>New Val</th>
</tr>
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<tbody>
<tr>
<td>$150,000</td>
<td>$968</td>
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</tr>
<tr>
<td>$1,550,000</td>
<td>$10,000</td>
<td>$1,550,000</td>
</tr>
</tbody>
</table>

For Example

Now let’s give people a residential exemption of $50,000. We still need our $10,000 of revenue – but we have a smaller base to tax now.

\[
\frac{10,000}{1,300,000} = 7.7 \text{ mills}
\]

<table>
<thead>
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<th>Values</th>
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<th>Tax (7.7)</th>
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<td>$1,550,000</td>
<td>$10,000</td>
<td>$1,300,000</td>
<td>$10,000</td>
</tr>
</tbody>
</table>
For Example

- Some helped, some hurt.
- The person with the $400,000 house got $50,000 exempted, but still saw taxes increase!
- Don’t look at exemptions as tax reductions: look at them as redistributions of burden.

<table>
<thead>
<tr>
<th>Values</th>
<th>Tax (6.45)</th>
<th>New value</th>
<th>Tax (7.7)</th>
<th>Change in taxes</th>
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<td>$10,000</td>
<td>$1,300,000</td>
<td>$10,000</td>
<td></td>
</tr>
</tbody>
</table>

Exemptions (Cont.)

- Sales taxes — Other than what has been discussed, other exemptions are totally up to local discretion (be careful of other state and federal laws though).

- Property taxes — Two types of exemptions.
  - Mandatory — Specific exemptions required by law.
  - Optional — List of exemptions municipality may authorize by local ordinances; some require voter approval.

Structure of Property Tax in Alaska

- You don’t have to have a property tax...
- But if you do...
  - Mandatory — Specific exemptions required by AS 29.45.030
  - Optional — List of exemptions municipality MAY authorize by local ordinances; some require voter approval; AS 29.45.050
Structure of Property Tax in Alaska

- Why not let municipalities do whatever they want with a property tax?
- Dynamics of exemptions are asymmetrical, for one thing
- $200,000 property tax-payer could hire lawyer, lobbyists to try and get exemption
- Would cost me less than a dollar on my property tax bill, not worth the gas to go down to the Assembly meeting to oppose it
- Before you know it, your tax base is Swiss cheese

Required Property Tax Exemptions
AS 29.45.030

- Municipal, state property
- Property Used EXCLUSIVELY for Non-Profit:
  - Religious purposes
  - Charitable purposes
  - Cemetery purposes
  - Hospital purposes
  - Educational purposes
- Homes of Senior Citizens and Disabled Veterans – up to $150,000
Required Property Tax Exemptions (Cont.)

- Household furniture and personal items.
- Money on deposit.
- ANCSA property (Alaska Native Claims Settlement Act).
  - Unless developed or leased to third parties.
- Natural resources in place.
- Residences of ministers, priests, etc.
- Residences of teachers of a parochial school if owned by the religious organization.

Optional Property Tax Exemptions

AS 29.45.050

- Up to $75K residential exemption
- Historic sites & monuments
- All of or any category of personal property
- Profit of a non-profit organization used for community purposes
- The value that exceeds $150,000 of assessed value of homes of senior citizens & disabled veterans’ homes.
- Certain economic development property
- Certain “deteriorated” property; so, designated by the governing body

The Property Tax: Cons

- Property taxes are an allocation of the cost of public services allocated based on the value of the property owned.
- Property taxes are based upon the principle that property is a measurement of wealth and that measurement is used for the basis of the tax.
- Consequently, property taxes are levied without regard to ability to pay.
- The property tax in Alaska is generally a tax on the market value of tangible assets, which is not related to the income of the property owner.
The Property Tax: Pros

- Stable source of revenue.
  - Property value can go up or down and still generate the same amount of revenue.
  - With COVID, property values have gone up...unlike sales tax.
- Property tax systems are generally more open and visible than administrative systems for other taxes.
  - Based on public records and recorded title.
- Offers an appeal system unlike most other tax systems.
- Taxes secured by property; therefore, taxes are difficult to evade.

Property data collected can be used for more than taxes: for example, public safety, and disaster recovery.

Requirements For a Fair & Equitable Property Tax

- Accurate descriptions of property
- Market Data (disclosed sales prices)
- Assessment System
Conclusion:

- As a local elected official, it is your job to set local tax policy or decide not to and attempt to find other ways to pay for services.
- There are several revenue alternatives (taxes) available.
- But the fact remains that you need to make a choice, not an easy one, but one made based upon the economics of your municipality and the ability of your constituents to pay for the services they want.
- While it would be nice to have someone else pay for all our services, the fact is, they won't! But we must pay for them, somehow, and you are one of those who are in charge of finding a way!
Today is about Buckets!

TODAY’S TOPICS:

➢ Budgeting Basics
➢ Fund Accounting
➢ Buckets make it simple
“Budgeting” is old hat!

This will be nothing new to you. It will only be more formalized and there will be more than one budget to deal with. Trust me, relax about the budget!!

“Budgeting” is old hat!

BUDGET PIECES: (An Accountant’s Approach)

Income Statement’s Pieces
1. We guess what the total revenues & expenses will be over the next year.

Balance Sheet’s Pieces
2. We guess what the changes will be to our assets & liabilities (cash, receivables, equipment, capital projects, liabilities, debt, and our equity (fund balance))

THE BUDGET

Budget Questions We Can Ask Using An Income Statement:
1. We need to spend: how much money (expenses), & on what?
2. We need how much money (revenues), & from where?

Revenues:
Sales Tax
Property Tax
Grants
User Fees
Fund Balance
Etc...

Results of Operations/Fund Balance

Expenses:
Labor
Labor Burden
Debt Service
Operating Expenses
General & Admin

($ left, maybe?)

Measured Over Time (An Operating Cycle) Usually One Year.
THE BUDGET DOCUMENT: Your Friend

SOME TECHNICAL DEFINITIONS:

A budget is a plan of financial operations which provides a basis for the planning, controlling and evaluating of governmental activities.

A budget establishes the critical link between a government’s policies and programs and its fiscal capacity.

Budgets are created to establish a basis for measuring future performance, to resolve competing demands, and to identify changes in revenue or spending policies needed to guarantee both short-term and long-term fiscal health.

But, budgets involve uncertainty. Budgets, remember, are prospective; they consist of more or less cautious estimates of future revenue streams and spending demands.

No budget, however meticulously developed, can predict the future perfectly. They are going to be wrong, and, they might need adjusting. DON’T BE SURPRISED, rather, EMBRACE BUDGET AMENDMENTS!!!!!!

ESSENCE OF BUDGETING

RULES FOR CASH:
1) Find it before you spend it.
2) Don’t spend it till you find it.

THE BUDGET:
Provides for and confirms the awareness of and the authorization by the governing body for a project, function, or obligation.

Driving Forces:
➢ Mandated
➢ A Political Issue
➢ Ongoing R&M of P&E
➢ Life & Safety Issue
➢ Demands of Growth
➢ Community Issues
➢ Basic Program or Service

1) Identify Needed Projects, Functions, or Obligations
2) Identify Revenue Source For The Labor, Eqp, Matl, or Obligation
3) Get The Project, Function, or Obligation Into The BUDGET
4) Success Likely

THE REAL OBVIOUS BASICS

1) Learn The Process
2) Identify The Players
3) Understand The Document
4) Discover The Needs
5) Compare Needs
6) Ask Questions
Governments and Business – They’re Different

We find a product or service to sell to generate revenues. We work to keep our expenses as low as possible so that when the reporting period is over our revenues are greater than expenses. We “want a profit” to use for our own purposes and therefore we seek to “generate revenues”.

1) Profit is the motive.
2) Method is to provide a good or service to “generate the revenues.”
3) The evil that goes along with generating the revenues are the expenses.

PRIVATE ENTERPRISE

A municipal government is charged (often mandated) with providing a program or service (law requires, voters want). In order to do so, it “must collect” revenues.

1) Providing the program or service is the motive. Profit isn’t the motive.
2) Generally, we determine what the necessary program costs are, then “collect the revenues” to cover the costs.
3) The evil that goes along with providing the program or service is collecting the revenues to pay for it.

First comes the law, the power to appropriate (the authority to expend for a given purpose) then comes the need to collect the revenues necessary to cover the appropriation!
YOU CAN EASILY GET LOST IN GOVERNMENT FUND ACCOUNTING!

TO REALLY UNDERSTAND BUDGETING & FUND ACCOUNTING, WE NEED TO TALK ABOUT THE CROOKS!

CORRUPTION LEADS TO FUND ACCOUNTING!

Financial corruption in governments in early 20th century
Most resources were from taxes - like today
Public said "Enough" and revolted. Demanded better accounting and financial reporting practices
Improvements included segregation of financial resources to ensure funds were spent as intended – BUCKETS
Efficient and effective management systems allow buckets to be maintained in FUNDS in the accounting system.
FUND ACCOUNTING: REQUIRED/DEFINED!

For accounting purposes, a state or local government is not treated as a single, integral entity. Instead, a government is viewed as a collection of smaller, separate accounting entities known as "funds." Funds are not cash in governmental accounting.

GASB's Codification, Section 1300, defines a fund as:

A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities (fund balances) or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

BUCKET CHOICES!

3 Categories/11 Types:

1) Five Governmental Fund Types (Have a "fund balance"):
   1) General fund (1 only per govt)
   2) Special revenue funds
   3) Debt service funds
   4) Capital projects funds
   5) Permanent funds

   (Referred to as "expendable.") Typically used to account for most of a government's operations.

2) Two Proprietary Fund Types (Typically operated like private businesses (Have "Net Assets"):)
   1) Enterprise funds
   2) Internal service funds

3) Four Fiduciary Fund Types
   1) Pension, Investment, and Private-purpose trust funds
   2) Agency funds

Note: The type of activity reported in a fund, its goal or measurement focus will determine the fund type to use.

HAINES BOROUGH
BALANCE SHEETS - GOVERNMENTAL FUNDS

June 30, 2019

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**Fund Balances**

**Fund Balances**
Have (generally) one bucket with:
1 each: Balance Sheet
1 each: Income Statement
1 each: Equity Section
1 each: Check Book
1 each: Set of Accounting Rules
1 each: Owner that makes decisions

Most municipal governments

And each pot can have different "rules" (purposes)

Remember the choices!

3 categories/11 types:
1) Five governmental fund types (have a "fund balance":)
   1) General fund (1 only per govt)
   2) Special revenue funds
   3) Debt service funds
   4) Capital projects funds
   5) Permanent funds
   (referred to as "expendable" typically used to account for most of a government's operations)
2) Two proprietary fund types (typically operated like private businesses: (have "net assets"):
   1) Enterprise funds
   2) Internal service funds
3) Four fiduciary fund types:
   1) Pension, investment, and private-purpose trust funds
   2) Agency funds

Note: The type of activity reported in a fund, its goal or measurement focus will determine the fund type to use.
We identify the type of bucket needed for each activity/program/service based upon its operational characteristics.

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**General Fund**
- Debt Service Fund
- Special Revenue Funds
- Water
- Sewer
- Elec.
- Harbor

**Enterprise Funds**
- Capital Projects Funds

**Special Revenue Funds**
- Capital Projects Funds
- Water
- Sewer
- Elec.
- Harbor

---

**We put guards around every pot, with its own set of rules**

- **Outside Rule(s)** (GAAP, Federal, State, etc.)
- **Encumbrance** ($ can't be used twice)

---

**Charters & the Buckets**

- **Areawide Powers**
  - Public Schools
  - Assessing & Tax Collections
  - Planning, Platting, Land Use
  - Transportation
  - Parks & Recreation
  - Library
  - Animal Control
  - Air Pollution

- **Non-Area Wide Powers**
  - Economic Development
  - Emergency Services
  - Ski Area
  - Specific Taxes
SLICING THE BUDGET

1st, we slice the budget and appropriate at the "fund level." The "bucket level" is the self-balancing set of accounts level. The "power & revenues" stay together. Buckets aren't mixed.

2nd, we re-slice the same budget and appropriate at the "department level." This is the administrative authorization level. Several buckets and powers could be under the control, "signature authority" of one person, under one department.
<table>
<thead>
<tr>
<th>Tax Revenue</th>
<th>Property</th>
<th>$2,632,245</th>
<th>-$</th>
<th>375,589</th>
<th>$</th>
<th>14,228</th>
<th>$3,022,062</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales</td>
<td>1,784,411</td>
<td>$</td>
<td>981,842</td>
<td>-</td>
<td>954,998</td>
<td>3,721,251</td>
<td></td>
</tr>
<tr>
<td>Intergovernmental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal grants and contracts</td>
<td>296,840</td>
<td>-</td>
<td>130,990</td>
<td>-</td>
<td>2,264</td>
<td>430,094</td>
<td></td>
</tr>
<tr>
<td>Federal payments in lieu of taxes</td>
<td>426,976</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>426,976</td>
<td></td>
</tr>
<tr>
<td>State grants and contracts</td>
<td>1,214,258</td>
<td>-</td>
<td>904,190</td>
<td>65,363</td>
<td>174,489</td>
<td>46,011</td>
<td>2,404,311</td>
</tr>
<tr>
<td>Rentals, Service and admission fees</td>
<td>139,906</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1,950</td>
<td>141,856</td>
</tr>
<tr>
<td>Licenses and permits</td>
<td>34,358</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>34,358</td>
</tr>
<tr>
<td>Investment earnings</td>
<td>308,098</td>
<td>601,899</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>909,997</td>
</tr>
<tr>
<td>Contributions and other</td>
<td>65,385</td>
<td>-</td>
<td>106,160</td>
<td>-</td>
<td>875</td>
<td>172,420</td>
<td></td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td><strong>6,902,477</strong></td>
<td><strong>601,899</strong></td>
<td><strong>1,279,779</strong></td>
<td><strong>1,284,355</strong></td>
<td><strong>174,489</strong></td>
<td><strong>1,020,326</strong></td>
<td><strong>11,263,325</strong></td>
</tr>
</tbody>
</table>

| Expenditures | Current | | | | | |
|--------------|---------|---|---|---|---|---|---|
| General government | 822,555 | 23,885 | - | - | - | 20,987 | 867,427 |
| Public safety | 1,674,685 | - | - | - | - | 247,901 | 1,922,586 |
| Public works and streets | 877,630 | - | - | - | - | 75,398 | 953,028 |
| Economic development | - | - | - | - | - | 448,004 | 448,004 |
| Education | 1,819,927 | - | - | - | - | - | 1,819,927 |
| Port development | - | - | - | - | 144,482 | - | 144,482 |
| Culture, recreation, and library | 1,143,826 | - | - | - | - | - | 1,143,826 |
| Debt service | | | | | | |
| Principal | - | - | 870,000 | - | - | 7,259 | 877,259 |
| Interest | - | - | 421,700 | - | - | 6,889 | 428,589 |
| Capital outlay | - | - | - | 1,345,799 | - | - | 1,345,799 |
| **Total Expenditures** | **6,338,623** | **23,885** | **1,291,700** | **1,345,799** | **144,482** | **806,438** | **9,950,927** |

| Excess (Deficiency) of Revenues Over (Under) Expenditures | 563,854 | 578,014 | -11,921 | -61,444 | 30,007 | 213,888 | 1,312,398 |

| Other Financing Sources (Uses) | | | | | | |
| Transfers in | 554,280 | 3,879 | - | 565,539 | - | - | 1,123,698 |
| Transfers out | -626,345 | -304,000 | - | -250,059 | -30,007 | -136,683 | -1,347,094 |
| Sale of capital assets | - | - | - | - | - | 24,866 | 24,866 |
| **Total Other Financing Sources (Uses)** | -72,065 | -300,121 | - | -315,480 | -30,007 | -111,817 | -198,530 |

| Net Change in Fund Balances | 491,789 | 277,893 | -11,921 | 254,036 | - | 102,071 | 1,113,868 |

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**WHAT IT TAKES TO UNDERSTAND IT**

➢ There's no magic.
➢ There's only time and effort.
➢ There's simply, a learning process.
➢ Finally, Governmental Accounting is complex.

---

**THE TEST QUESTION:**

What are your municipality's budgeting and finances really all about?
THE ANSWER:

Revenues In

Why?
With Fund Accounting & A System of Controls
To Prevent Bad Behavior

And: we budget one bucket at a time!

S

Expenditures/appropriations out via "adopted" budgets.

Thank you.

max@mertzcpa.com; 907-957-7131
Lobbying Effectively: **LOBBYING**

- Definition: “Influencing legislative or administrative action” means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying any legislative or administrative action.
- Definition: “Communicating directly” means to speak with a legislator, legislative employee, or public official.
- Lobbying is part of your job.
- You are allowed to lobby.

Local Government Legislative Priorities / Resolutions

AML can help.
Lobbying Effectively: LOBBYING

• Lobbyists are regulated by Alaska Public Offices Commission (APOC)
• Questions:
  • Call Juneau Office 907-465-4864
  • https://doa.alaska.gov/apoc/

Lobbying Effectively: RESOURCES

• AML: legislative tracker, weekly calendar, website
• The Alaska State Legislative Website: BASIS
  (Bill Action and Status Information System) www.akleg.gov
• Office of Management & Budget
• Legislative Finance Division
• Community & Regional Affairs (DCRA)
• Publications:
  • Alaska Legislative Directory
  • Directory of State Officials
  • A Layman’s Guide to the Budget Process
  • The Legislative Process in Alaska
  • Steps in Passage of a Bill

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Lobbying Effectively: **PEOPLE**

- People: Legislators and staff
- Do you know your legislator?
  - The importance of local government officials
  - Meet with them before January session
- Get to know staff
- Executive Branch
  - Need support of Governor and agencies
  - Aim to get into the Governor's Budget
  - Separate budget process in Summer and Fall
Lobbying Effectively: **ORGANIZATION & PROCESS**

- Each House organized by Majority and Minority
  - Senate 2023 (20 Members: 17 Majority, 3 Minority)
  - House 2023 – NOT YET organized (40 Members: 21 Republican, 13 Democratic, 6 Independent)... evenly split ideologically

**Majority Organization Holds Power:**
- Leadership & Committee Chairs
- Set Agenda
- Size of budget
- Which bills pass
- Governor
- Bills sponsored by Majority members move

---

**SENATE Majority Caucus**

- 8 Republican
  - Bert Stedman – Co.Ch. Fin.
  - Jesse Kiehl – Maj. Leader
  - James Kaufman
  - Kelly Merrick
  - David Wilson
  - Dick Bishop – Maj. Whip
- 9 Democratic
  - Jesse Kiehl

**Minority (3 Republican)**

- Shelley Hughes
- Robb Myers
- Mike Shower

---

**House Organization – Caucus TBD**

- 21 Republican
  - Jamie Allard
  - Ben Carpenter
  - Julie Cordy
  - Mike Cronk
  - David Eastman*
  - Craig Johnson
  - DeLena Johnson
  - Kevin McCabe
  - Tom McKay*
  - Mike Prax
  - George Rauscher
  - Justin Ruffridge
  - Dan Saddler
  - Laddie Shaw
  - Will Stapp
  - Louise Stutes
  - Jesse Summer
  - Cathy Tilton
  - Sarah Vance
  - Starrig Wright
  - Frank Tornatore

- 13 Democratic
  - Jennie Armstrong*
  - Ashley Carroll
  - Macsrn Dibert
  - Zack Fields
  - Nenad Foster
  - Andrew Gray
  - Lorrie Grosh
  - Tara Hannan
  - Andy Josephson
  - CJ McCormick
  - Donna Means
  - Genevieve Mine
  - Andy Stony

- 6 Independent
  - Dan Ortiz
  - Joash Peckstak
  - Calvin Schnage

---
Lobbying Effectively: **ORGANIZATION & PROCESS**

- Each House organized by Majority and Minority
  - **Senate 2023** (20 Members: 17 Majority, 3 Minority)
  - **House 2023** – NOT YET organized (40 Members: 21 Republican, 13 Democratic, 6 Independent... evenly split ideologically)
- Majority Organization Holds Power:
  - Leadership & Committee Chairs
  - Set Agenda
  - Size of budget
  - Which bills pass
  - Governor
  - Bills sponsored by Majority members move

Lobbying Effectively: **PROCESS: COMMITTEES**

- Committees are an essential part of the legislative process:
  - Oversight, gather testimony, consider appointees, amend/advance/hold bills
  - Committee hearings include introduction and sponsor statement, and invited and public testimony.
  - Bills can be amended in committee and on the Floor.
- Standing Committees:
  - FIN, EDU, H&SS, JUD, L&C, C&RA, RES, STA, etc.

Lobbying Effectively: **PROCESS: BUDGET**

Photo: Senate Finance Committee Room
(Alaska Legislative)
Lobbying Effectively: **LOCAL / STATE INTERSECTIONS**

- Education: Base Student Allocation (BSA)
- Community Assistance (“Revenue Sharing”)
- School Bond Debt Reimbursement
- Power Cost Equalization (PCE)
- Public Safety: Troopers, VPSOs, community jail.
- Infrastructure: roads, ports/harbors
- AML:
  - We track
  - We can help you with talking points

---

Lobbying Effectively: **ADVOCACY DO’s DON’Ts TIPS**

- Call ahead for appointments
- Consistent messaging
- Prepare 5-minute explanation of request
- Local process and support
- Agency support helpful
- Leave written backup at office
- Work with and know importance of staff
- Know who you are talking to (leadership, party, committee membership)

---

Lobbying Effectively: **ADVOCACY DON’Ts**

- Don’t: Blow past staff
- Don’t: Send conflicting messages
- Don’t: Roll your eyes in committee
- Don’t: “Educate”
- Don’t: Ambush
  ...other Don’ts from the audience?
Lobbying Effectively: **ALASKA MUNICIPAL LEAGUE**

- AML is here to help
- Legislative Committee – get involved
- Your visits to Juneau
- Statewide Issues
- Share – the more we know... the better

*ALASKA MUNICIPAL LEAGUE*