

ALASKA MUNICIPAL LEAGUE

2022

NEWLEY ELECTED OFFICIAL HANDBOOK



ALASKA
MUNICIPAL
LEAGUE

Newley Elected Officials Handbook

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Alaska Municipal Government

ROLES AND RESPONSIBILITIES OF PUBLIC OFFICIALS



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	Municipal Attorney
City Council Members	Municipal Clerk
Borough Assembly Members	Municipal Treasurer
School Board Members	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

Staff Roles & Responsibilities

- ▶ 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 Records 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!

CBJ MUNICIPAL CLERK BETH MCEWEN, MMC
CBJ MUNICIPAL ATTORNEY ROBERT PALMER
HOLLY WELLS, PARTNER BIRCH HORTON BITTNER & CHEROT

Additional Resources:

- ▶ Alaska Municipal League (Local Gov't. Primer)
<https://www.akml.org/about/documents/>
- ▶ State of Alaska – Dept. of Commerce, Community & Economic Development: Division of Community & Regional Affairs
<https://www.commerce.alaska.gov/web/dcra/>
- ▶ Alaska Association of Municipal Clerks
<https://www.alaskaclerks.org/>

Parliamentary Procedure
for Local Government
using
Robert's Rules of Order

KACIE PAXTON, MMC, BOROUGH CLERK

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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)

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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)

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Public Participation

Alaska Open Meetings Act - the right for the public to be informed and attend - 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

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.

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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.

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Who was Robert?

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One thing at a time.

One person at a time.

Only one time per meeting.

Minimum for making a decision.

Vote requirements based on member rights.

Basics of Robert's Rules

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There should be an organized agenda properly provided to all members according to your rules or bylaws

Know which of your members are voting members and which are ex-officio or non-voting members.

Know the voting rules in your bylaws.

Make sure you have a quorum according to the requirements in your bylaws or rules of procedure.

If your bylaws do not specify a number, a quorum is a majority of the total membership.
Quorum = Majority

First Things First

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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

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General Meeting Protocol, cont.

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

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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.

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The Role of the Chair, Cont...

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

Fairness, tact, and good judgment must always be exercised by the presiding officer.

KEEP MEETING ON TRACK

- ✓ Keeps discussion germane
- ✓ Discourage repetition
- ✓ Keep it rolling by eliminating side conversations
- ✓ State, Restate, and State the Result

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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
•Committee
•Board of Equalization / Board of Adjustment

Respect the Role of the Chair

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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.

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Making a Motion

Seek Recognition from the Chair.

Be Precise

"I move that..."

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Making a Motion, Cont...

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!

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Making a Motion, Cont...

➤ (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.

Keep language positive and worded in the affirmative.

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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.

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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.

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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.

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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.

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Debate, Cont...

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

- Rights in 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.

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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.

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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.

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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.

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The Order of Precedence of Motions



1. **Fix time to which to adjourn**
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8. **Limit/extend limits of debate**
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10. **Commit or refer**
11. **Secondary Amendment**
12. **Primary Amendment**
13. **Postpone indefinitely**
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.

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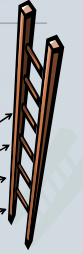
26

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.

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**



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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.

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



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Precedence, Cont.

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.

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



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Precedence, Cont.

We must now vote on those 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, lets follow these steps in order:

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



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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.

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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!**

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Ladder of Motions

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!

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Ladder of Motions - Exception

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.

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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

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Types of Motions

The diagram shows five categories of motions arranged in two rows. The top row contains three boxes: 'Main' (brown), 'Privileged' (green), and 'Subsidiary' (teal). The bottom row contains two boxes: 'Incidental' (purple) and 'Bring Back' (maroon).

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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

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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.

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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."

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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.

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Privileged Motions – Question of Privilege, cont...

- **Question of Privilege**
 - 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)

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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)

 - Can interrupt the speaker
 - 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.

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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.

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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.

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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.

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Subsidiary Motions – Previous Question

- **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.

“Question!”

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Subsidiary Motions – Previous Question, cont...

- **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.

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Subsidiary Motions – 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.

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Subsidiary Motions – Commit or Refer

Establish a due date, or deadline for the committee to report back

- 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.

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Subsidiary Motions - Amendments

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

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.

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

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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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".

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Amendments,
Cont.

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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Amendments,
Cont.

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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Amendments,
Cont...

- 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.
(Based on the outcome, the Chair should read the motion as amended, or if the motion to amend failed, read the main motion as originally stated before continuing discussion. This avoids confusion.)

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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 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

Summary

- 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 rather than directly to the main motion.

They may be offered at any time when they are needed.

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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



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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.



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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



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Incidental Motions – Division of the Question

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.

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

- 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.

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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?

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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.)*

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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.

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Bring Back Motions

Take from the table

- 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.

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Bring Back Motions

Reconsider

- 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.**

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Bring Back Motions

Reconsider, Cont...

- 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 committed 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.

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Bring Back Motions

Reconsider, Cont...

- **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.

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Questions?

Kacie Paxton, MMC, Borough Clerk
kaciep@kgbak.us
907-228-6604

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Resources

- Roberts Rules of Order Newly Revised, 12th Edition; Henry M. Robert III
- The Complete Idiot's Guide to Robert's Rules; Nancy Sylvester, PRP, CPP-T

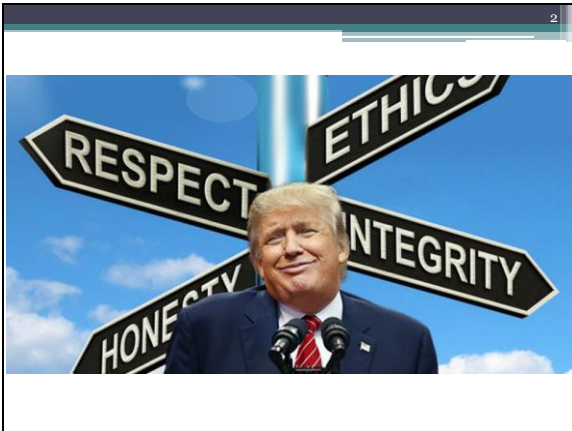
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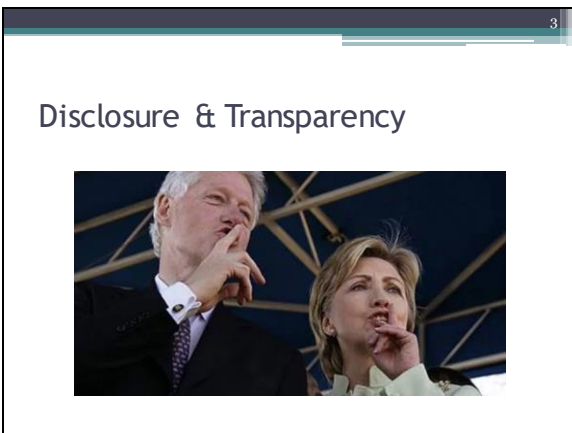
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Municipal Responsibility 101 Ethics & Conflicts of Interest

November 2022
Matt Mead
Lan dye Bennett Blumstein LLP







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...

The Curbside Center

Alleged misconduct leads to recall election Nov. 7

Haines Assembly members survive divisive recall election

By Emily Hies, KATIE Haines - August 16, 2017

Multiplied has option to include a statement on upcoming ballot

By Corbin Wilson-Hansen - September 25, 2017

ANCHORAGE DAILY NEWS

Vote on recall of Unalaska mayor moves forward

Author: Carey Restino, Bristol Bay Times-Dutch Harbor Fishermen

Updated: January 7 | Published: January 7

Ethical Obligations are Driven by Two Primary Sources

- STATELAW
 - 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 performed honestly, faithfully, and impartially 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:

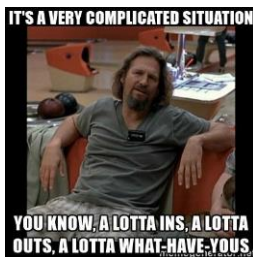
- Under common law, “the focus... [is] on the **relationship between the public official's financial interest and the possible result of the official's action**, regardless of the official's intent.”

Griswold v. City of Homer, 925 P.2d 1015, 1026 (Alaska 1996).

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??




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AK ALASKA PUBLIC MEDIA

In small town Alaska, conflicts of interest a tricky subject

By June Leffler, KSTK - Wrangell - October 19, 2018

Like 10 Tweet



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If you think you may have a conflict, say something!

- The worst thing you can do is to 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.

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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.

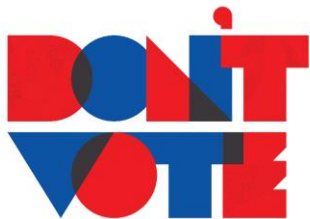
“Madame Chair, members of the Council, I believe I have a conflict of interest in the Council’s consideration of Resolution 2019-34 because my brother is the owner of the company being considered for the road maintenance contract.”



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?

COI: Additional Provision Options (cont.)

- Your municipality can define what “substantial financial interest” means.
- **City Code 2.36.030:** “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 (cont.)

- “Substantial Financial Interest” means “a direct or in direct 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 (cont.)

- 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.

COI: Additional Provision Options (cont.)

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.

COI: Additional Provision Options (cont.)

- 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.

COI: Additional Provision Options (cont.)

- 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.
-*Acevedo v. City of North Pole*, 672 P.2d 130 (Alaska 1983).
- **CHECK YOUR CODE** to see if it prohibits you from holding dual offices.

Conflict of Interest: NEPOTISM?



COI: Nepotism (cont.)

- 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.



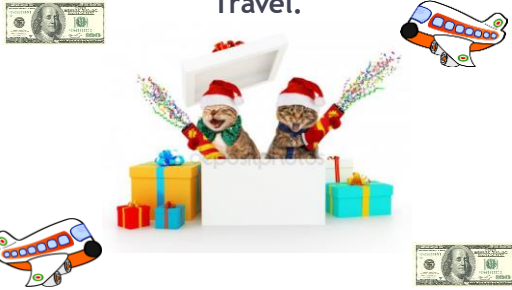
Bronx Councilman King Faces Second Ethics Investigation

Andy King under scrutiny for allegedly misusing funds, involving wife in council activity; claims follow earlier sexual-harassment violation

- 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!



CITY OF WASILLA
SAMPLE BALLOT
SPECIAL ELECTION - FEBRUARY 7, 2012

Completely fill in the oval next to your choice.

GROUNDS FOR RECALL AS STATED ON RECALL PETITION	STATEMENT BY THE OFFICIAL NAMED ON THE RECALL PETITION. STEVE MENARD
<p>"City Council Member Steve Menard traveled to Sitka, Alaska, in his official capacity as Council Member, for the purpose of attending a meeting with the Alaska Municipal League. Menard, without good cause, failed to carry out his official duties. Menard remained overnight at the Westmark Hotel and while intoxicated he inflicted substantial damage to his hotel room and directed the hotel to bill the City of Wasilla for the damage. The damage included urinating on two beds and a chair, vomiting on the carpet and setting fire to a mattress.</p> <p>The Wasilla City Council convened on August 22, 2011 and decided what action it should take regarding Menard. The Council voted to: 1) sanction Menard by prohibiting him from traveling on City business for the remainder of his term, which expires in 2013, and 2) required him to make full restitution to the City for the \$1,424 cost of his travel expenses, and the \$350 the City paid for damage to the hotel room.</p> <p>The Council's action of sanctioning Menard and requiring him to make full restitution for all cost are sufficient reasons to find Menard committed Misconduct in Office."</p>	<p>"I am truly sorry for my actions and all that occurred in the Sitka hotel incident. It should be known that my lack of resignation is not a sign of expected forgiveness but rather gives measure to my continued desire to help serve and form this growing community.</p> <p>All seem to have noticed the headlines on this event, but perhaps what hasn't been noticed is that, My attendance at every council meeting has included coming prepared, engaged, staying until the gavel drops, recuse myself from voting when appropriate and voting on all other issues. Perhaps what hasn't been noticed is my personal time invested at Borough and State meetings because I understand the impact of these decisions on our community. Perhaps what hasn't been noticed is my commitment and response to individual's concerns and seeking a balance between them and the City's overall needs.</p> <p>I work hard to carry out my official duties and strive to make sure when I fall short. I would appreciate your vote to complete my term.</p> <p>In closing, thank you to my family and friends for their unwavering support and the confidence it has given me to see this process through to the end."</p>

Shall Steve Menard be recalled from the office of Council Member?

YES
 NO

Permissible Travel or Ethics Violation?

Wonkblog

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


By Damian Paletta
August 21, 2017



Louise Linton, wife of Treasury Secretary Steven Mnuchin, has made a few headlines during her time in the national spotlight. (Video: Elyse

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Permissible Travel and/or Gifts, or Ethics Violation?



North Slope Borough funded basketball camp for mayor's grandkids, records show
 Author: Nathaniel Herz
 Updated: September 28, 2016
 Published: July 23, 2015


The North Slope Borough paid \$8,400 to fly five of Mayor Charlotte Brower's grandchildren from Barrow to a basketball camp in California last August, according to borough documents.

The documents, contained in a response to an Alaska Dispatch News records request, show Brower's signature approving the use of borough funds for three of her grandchildren's fees and flights for the trip to the camp in Santa Barbara.

The records also detail tens of thousands of

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Permissible Gifts or Ethics Violation?




North Slope Borough mayor's office dispensed over \$800K in gifts, violated donation policy
 Author: Nathaniel Herz
 Updated: September 26, 2016
 Published: August 15, 2015

North Slope Borough Mayor Charlotte Brower's office has dispensed more than \$800,000 in gifts of public funds to local organizations, sports teams and individuals since she took office in 2011, according to borough documents.

The documents cover only one borough account from which donations were made. Still, they include more than \$100,000 for private club basketball teams not associated with popular public high school sports. One \$10,000 contribution went to a team that served food at

Questions?

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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 proforma/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/discourage 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.

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:
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November 30, 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
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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.

E. McQuillin, *Law of Municipal Corporations*, § 16:54 at 409-410 (3d ed. rev. 2004).

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.

Swetzof v. Philemonoff, 203 P.3d 471, 479-82 (Alaska 2009).

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); *5721. *C.C. v. Louisville & Nash. R.R.*, 227 U.S. 88, 91-92, 33 S.Ct. 185, 186-87, 57 L.Ed. 431 (1913)).

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, 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*).

The Council's decision in this case involved two components. First, the council decided how and at what interest rate it was going to fund the subdivision's improvements. This clearly involved a policy determination which is "legislative." The legislative character of the decision is evidenced by the fact that the Council did not sift through and decide evidentiary questions unique to any of the affected parties. 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).

III. A Local Governing Body Acts In A Quasi-Judicial Capacity When Exercising The Following Functions.

1. Board of Adjustment.
2. Board of Equalization.
3. Election contests.
4. Platting Board.
5. Certain procurement matters. School board best interests hearing (*Laidlaw*).
6. Liquor license determinations.
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.³⁹ 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).

⁴¹ *Municipality of Anchorage v. Carter*, 818 P.2d 661, 666 n.13 (Alaska 1991).

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. Wagon 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.

B. Are certain proceedings for approval of a contract after a competitive procurement quasi-judicial or administrative? Recall the Supreme Court has held that procurement activities must be handled akin to quasi-judicial activities and even the appearance of impropriety could result in rejection. See, *Paul Wholesale, B.V./IHOLS Trading, GmbH, J.V. v. State*, 908 P.2d 994 (Alaska 1995); *McBirney Associates v. State*, 753 P.2d 1132 (Alaska 1988); but see *Laidlaw Transit Inc., v. Anchorage School District*, 118 P.3d 1018 (Alaska 2005).

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 prejudgment 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?

H. An impartial tribunal is a fundamental of due process. Administrative proceedings must be fair in fact and in appearance. *State v. Lundgren Pacific*, 603 P.2d 889 (Alaska 1979).

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.

 THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

DEPARTMENT OF COMMERCE, COMMUNITY AND
ECONOMIC DEVELOPMENT
DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

Title 29 - Jeopardy


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

 Title 29

**Alaska Statutes: Title 29
Municipal Government**


2020 Updates
from the
31st Legislature

Second Session: January - June 2020



https://www.commerce.alaska.gov/web/Portals/4/pub/Title_29.pdf

ALASKA DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT 2

 Welcome to Title 29!

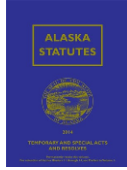
- **What is it?**
- **How to use it?**
- **Things to know**

ALASKA DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT 3



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?

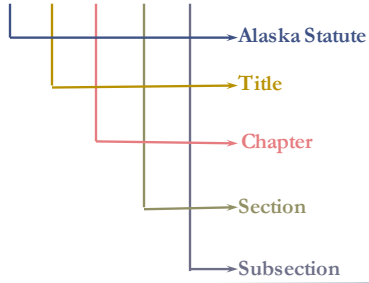
Answer:

AS Sec. 29.20.250. Powers and duties of mayor.



Citation

AS 29.26.030 (a)





Citation

Question:

*What is the section title of the following citation:
AS 29.20.380*

Answer:

Municipal Clerk



Subject Index

Question:

What municipal acts are required by ordinance?

Answer: AS 29.25.010



Chapters

- Organization
 - Chapter 03 The Unorganized Borough
 - Chapter 04 Classification of Municipalities
 - Chapter 05 Incorporation
 - Chapter 06 Alteration of Municipalities
- Routine Operations
 - Chapter 10 Home Rule Municipalities
 - Chapter 20 Municipal Officers & Employees
 - Chapter 25 Municipal Enactment
 - Chapter 26 Elections
- Taxation, Assessment, Debt
 - Chapter 35 Municipal Powers and Duties
 - Chapter 40 Planning, Platting, & Land Use Regulations
 - Chapter 45 Municipal Taxation
 - Chapter 46 Special Assessments
 - Chapter 47 Municipal Debt
- State Assistance
 - Chapter 55 Municipal Programs
 - Chapter 60 State Programs
 - Chapter 65 General Grant Land
 - Chapter 71 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 and designated as the council-manager form. The city is a general-law first class city under the laws of the state."
Dillingham Municipal Code*



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?*



Quiz Answers

(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 ..."



Division of Community & Regional Affairs

Questions?



Title 29 Jeopardy

Incorporation	Powers	Taxes	Officers
\$100	\$100	\$100	\$100
\$200	\$200	\$200	\$200
\$300	\$300	\$300	\$300
\$400	\$400	\$400	\$400



Incorporation \$100

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

Answer



Incorporation \$100

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

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: 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



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



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



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



Powers \$200

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 .



Powers \$300

What powers does a city inside a borough have?

Answer



Powers \$300

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



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



Taxes \$200

Where does one find required exemptions?

Answer What is: 29.45.030



Taxes \$300

Can a municipality levy a flat tax on personal property?

Answer



Taxes \$300

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



Taxes \$400

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

Answer Who is – The state assessor or a designee (29.45.103(a)).



Officers \$200

How often is the governing body supposed to meet?

Answer



Officers \$200

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)



Officers \$300

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

Answer



Officers \$300

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



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)



Division of Community & Regional Affairs

Sandra Moller, Director

Nichole Tham, Division Operations Manager

Eli Jacobson, Local Government Specialist 3

Jed Cox, Local Government Specialist 3

Local Government Resource Desk

<https://www.commerce.alaska.gov/web/dccra/LocalGovernmentResourceDesk.aspx>

resources@alaska.gov

907-269-8122

Title 29 ... and Beyond

Alaska Statutes: Title 29 Municipal Government

2022 Updates
From the
32nd Legislature
Second Session: January – June 2022



Presentation to
Newly Elected Leaders
At the 2022 Annual Conference
of the



William D. Falsey, Senior Counsel
December 5, 2022



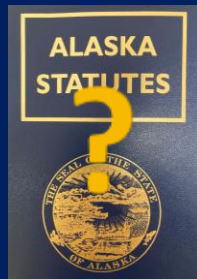
Where are the rules that apply to local government in Alaska?

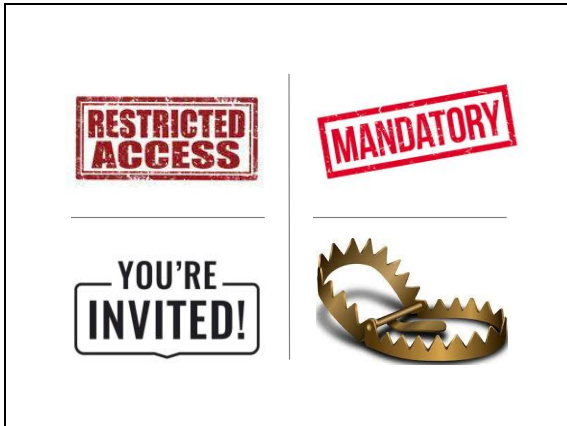
- Article X of the Alaska Constitution
- Title 29
Municipal Government




... 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

(C) 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 (i) of this subparagraph, only when the lien is accompanied by a specific order authorizing the recording or filing of the lien issued by a court of competent jurisdiction recognized under state or federal law, which order shall be recorded or filed with the lien; [] or

MR. CLIFF JOHN GRIM, Municipality of Anchorage, strongly supported this bill. He explained there have been 43 false liens filed against municipal officials in Anchorage. These filings are getting to be more common. He explained some of the financing problems one can run into with liens filed on their properties.



THE SUPREME COURT OF THE STATE OF ALASKA

CEDRIC CUTLER,)
Appellant,) Supreme Court No. S-14215
)
v.) Superior Court No. 3KO-10-00062 CI
)
KODIAK ISLAND BOROUGH,) **OPINION**
Appellee.) No. 6738 - December 21, 2012

I. INTRODUCTION

Boroughs are statutorily authorized to provide and charge residents for garbage-collection services. The primary issue in this appeal is whether boroughs also have the implied or incidental authority to record a real property lien to secure payment of garbage-collection fees. We conclude they do not have that authority.

Public policy dictates the same conclusion. In another context where a municipality recorded a lien without express statutory authority, we stated that "[p]ublic policy would be 'inviolate' if each municipality were allowed to develop a number of different lien systems and noted that 'the determination of lien priorities would be unduly complicated.'"¹⁵ We further explained that the lien-recording issue "should be addressed by specific legislation rather than by municipal, or judicial, fiat."¹⁷ This holds true in the present context as well—if the Borough believes lien-recording powers are necessary to secure payment for garbage services, it should ask the legislature to provide authority for such powers.

SENATE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY SENATOR EGAN BY REQUEST
REPRESENTATIVES Spohnholz, Green

Introduced: 3/29/17
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to municipal liens."

(17) to provide by ordinance for the creation, recording, and notice of a lien on real or personal property to secure payment of past due utility fees, costs incurred by the municipality in the abatement of an unsafe or dangerous building, and other fees and charges provided for by ordinance;





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

Finance
Borrowing (Alaska Const. art. IX)

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 only 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 refunding indebtedness of the State or its political subdivisions.

Home » Statutes & Court Rules » Alaska Statutes & Court Rules » Title 29, Municipal Government

Chapter 47. Municipal Debt

Includes current version of Alaska statutes, constitution & court rules. Browse Table of Contents below or search in

Effective Date: 12/04/2022

Effective date versioning not available for certain content such as court rules and Federal Sentencing Guidelines.

Select all content | No items selected | Clear Selection

- Article 1. Revenue Anticipation Notes
- Article 2. Bond Anticipation Notes
- Article 3. General Obligation Bonds
- Article 4. Revenue Bonds
- Article 5. Refunding Bonds
- Article 6. Miscellaneous Provisions



*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)

Title 29. Municipal Government (Refs & Annos)

Chapter 45. Municipal Taxation

Article 1. Municipal Property Tax

§ 29.45.090. Tax limitation

(a) A municipality may not, during a year, levy an ad valorem tax for any purpose in excess of three percent of the assessed value of property in the municipality. All property on which an ad valorem tax is levied shall be taxed at the same rate during the year.

(b) A municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may not levy taxes

(1) that will result in tax revenues from all sources exceeding \$1,500 a year for each person residing within the municipal boundaries; or **225% to 300%**

(2) on value that, when combined with the value of property otherwise taxable by the municipality, exceeds the product of the percentage determined in (e) of this section of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality.

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. Loc. Boundary Comm'n, 893 P2d 1239, 1247 (Alaska 1995)

§ 29.45.100. No limitations on taxes to pay bonds

The limitations provided for in AS 29.45.080 - 29.45.090 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.



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

Borrowing

- 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)
- Apply certain Pesticides (AS 46.03.330)

Other Prohibitions

- 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)
- TNC's (Uber, Lyft) (AS 29.35.148)



§ 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)

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)



Why?

Enforcement of Other Statutes

- Enforce 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)
- Pesticides (AS 46.03.330)

Public Safety

- Traffic laws (AS 28.01.010)
- Abandoned vehicles (AS 28.11)
- Drunken 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)

State interest?
Uniformity?
Juneau Knows Better?



YOU'RE INVITED!





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

Currentness

(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 teleconference 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 20. Municipal Officers and Employees

Article 1. Conflict of Interest and Public Meetings

AS § 29.20.020

§ 29.20.020. Meetings public

Currentness

(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 that contained in the latest 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)

Title 39. Public Officers and Employees

Chapter 50. Public Official Financial Disclosure

§ 39.50.020. Report of financial and business interests

(b) A public official or former public official other than an elected or appointed municipal officer shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor and lieutenant governor and, if the candidate is not subject to AS 24.60, the legislature shall file the statement under AS 15.25.030. Municipal officers, former municipal officers, and candidates for elective municipal office shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

(8) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality;



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)

§ 29.26.250. Grounds for recall

Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

§ 15.45.510. Grounds for recall

The grounds for recall are (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, OFFICE OF)
 LIEUTENANT GOVERNOR,) Supreme Court No. S-17206
 DIVISION OF ELECTIONS and) Superior Court No. 3AN-19-10903 CI
 DIRECTOR GAIL FENUMIAL, in an)
 official capacity,) OPINION
)
 Appellants,) No. 7542 – July 16, 2021
)
 v.)
)
RECALL DUNLEAVY,)
)
 Appellee.)

The court correctly notes that the constitutional framers rejected leaving the scope of the voter’s right to recall to the voters themselves.⁹ The framers instead left the task of determining the grounds for recall to the legislature,¹⁰ and the legislature adopted by statute the four grounds discussed in the main opinion.¹¹ We have previously observed, and do so again today, that the four statutory grounds can be ambiguous and that “more carefully drawn statutes” could “decrease the need for judicial involvement.”¹² We have also explained that “[t]he political nature of the recall makes the legislative process, rather than judicial statutory interpretation, the preferable means of striking the balances necessary to give effect to the Constitutional command that elected officers shall be subject to recall.”¹³ Truer words cannot be spoken.

I urge every legislator to carefully consider the court’s opinion today. The opinion opens the door to standardless recall petitions. The court repeatedly says that Alaska courts are to apply the “prima facie” standard to recall petition allegations and, accepting the allegations as true, if any logical connection can be made between an allegation and a statutory ground for recall, the petition must be found to be legally sufficient.¹⁴ I urge the legislature to, at the least, provide specific statutory definitions for the recall grounds to decrease the opportunity for judicial involvement in what is best done by the legislature — that is, legislating. This is not a partisan issue. The greatly expanded access to recall created by the court’s decision today can and will be used not to actually seek to recall an elected official for cause, but instead to seek to recall an elected official because of disagreements over policy. And in Alaska, disagreement over policy or political philosophy is not a proper subject for recall.

¹¹⁸ We do not disagree with the dissent’s exhortation that the legislature reconsider the statutory recall framework and allowable statutory grounds for recall.



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)
- 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:

(3) 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.



YOU'RE INVITED!



YOU'RE INVITED!

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)

Title 40. Public Records and Recordors

Chapter 21. Management and Preservation of Public Records

Article 1. Public Records

§ 40.21.090. Transfer of public records of political subdivision to department

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 that are not required for the transaction of current business. The official 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.

YOU'RE INVITED!

Things Local Government May Do

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- Public Records Storage (AS 40.21.090)
- Reserve Water Rights (AS 46.15.145)

§ 46.15.145. Reservation of water

(a) The state, an agency or a political subdivision 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 instream 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.

YOU'RE INVITED!

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- Reserve Water Rights (AS 46.15.145)
- Cooperative Management of Lands and Recreational Rivers (AS 38.05.027; AS 41.23.480)

Title 38, Public Land
Chapter 05, Alaska Land Act

§ 38.05.027. Cooperative resource management or development agreements

(a) Consistent with the authority of the commissioner under law, the commissioner, after determining that the agreement is in the best interests of the public and the state, may enter into cooperative resource management or development agreements with the federal government, a state agency, a village or municipality, or a person. Specific guidelines to protect the state and public interest shall be established, if necessary, by the commissioner before entering into an agreement under this section.

Title 41, Public Resources
Chapter 23, Multiple Use Management of Public Resources
Article 2, Recreation Rivers

§ 41.23.480. Cooperative management agreements

- (a) The commissioner may enter into a cooperative management agreement for the management of land and water described in AS 41.23.500 or of other adjacent land and water with a federal agency, a municipality, another agency of the state, or a private landowner.
- (b) The commissioner may transfer the management of a specific site within a recreation river corridor described in AS 41.23.500 to a state agency, a municipality, or a private entity to carry out a program authorized by law or to enhance the objectives of the management plan adopted under AS 41.23.440.

YOU'RE INVITED!

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- 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)

Title 4. Alcoholic Beverages

Chapter 11. Licensing

Article 6. Procedures for Public Influence

§ 04.11.480. Protest

(a) A local governing body may protest the issuance, renewal, relocation, or transfer to another person of a license, issuance, renewal, or transfer to another person of a license with one or more endorsements, or issuance of an endorsement by sending the board and the applicant a protest and the reasons for the protest within 60 days of the date of the notice of filing of the application. A protest received after the 60-day period may not be accepted by the board, and in no event may a protest cause the board to reconsider an approved renewal, relocation, or transfer. The local governing body may protest the continued operation of a license or endorsement during the second year of the biennial license period by sending the board and the licensee a protest and the reasons for the protest by January 31 of the second year of the license. The procedures for action on a protest of continued operation of a license or endorsement are the same as the procedures for action on a protest of a renewal application. The board shall consider a protest and testimony received at a hearing conducted under AS 04.11.510(b)(2) or (4) when it considers the application or continued operation, and the protest and the record of the hearing conducted under AS 04.11.510(b)(2) or (4) shall be kept as part of the board's permanent record of its review. If an application or continued operation is protested, the board shall deny the application or continued operation unless the board finds that the protest is arbitrary, capricious, or unreasonable.

(c) A local governing body may recommend that a license be issued, renewed, relocated, or transferred with conditions. The board shall consider recommended conditions and testimony received at a hearing conducted under AS 04.11.510(b)(2) or (4) when it considers the application or continued operation, and the recommended conditions and the record of the hearing conducted under AS 04.11.510(b)(2) or (4) shall be kept as part of the board's permanent record of its review. If the local governing body recommends conditions, the board shall impose the recommended conditions unless the board finds that the recommended conditions are arbitrary, capricious, or unreasonable. If a condition recommended by a local governing body is imposed on a licensee, the local governing body shall assume responsibility for monitoring compliance with the condition, except as otherwise provided by the board.

(d) In addition to the right to protest under (a) of this section, a local governing body may notify the board that the local governing body has determined that a licensee has violated a provision of this title or a condition imposed on the licensee by the board. Unless the board finds that the local governing body's determination is arbitrary, capricious, or unreasonable, the board shall prepare the determination as an accusation against the licensee under AS 44.62.380 and conduct proceedings to resolve the matter as described under AS 04.11.510(c).

YOU'RE INVITED!

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- Protest or Condition Alcohol License (AS 04.11.380)
- Influence Ballot Measures (AS 15.13.145)
- Opt-out of APOC (AS 15.13.030)

Title 15, Elections (Refs & Annos)

Chapter 13, State Election Campaigns (Refs & Annos)

§ 15.13.145. Money of the state and its political subdivisions

(a) Except as provided in (b) and (c) of this section, each of the following may not use money held by the entity to influence the outcome of the election of a candidate to a state or municipal office:

- (1) the state, its agencies, and its corporations;
- (2) the University of Alaska and its Board of Regents;
- (3) municipalities, school districts, and regional educational attendance areas, or another political subdivision of the state, and
- (4) an officer or employee of an entity identified in (1)-(3) of this subsection.

(b) Money held by an entity identified in (a)(1)-(3) of this section may be used to influence the outcome of an election concerning a ballot proposition or question, but only if the funds have been specifically appropriated for that purpose by a state law or a municipal ordinance.

West's Alaska Statutes Annotated

Title 15, Elections (Refs & Annos)

Chapter 13, State Election Campaigns (Refs & Annos)

§ 15.13.010. Applicability



Alaska Department of Administration
ALASKA PUBLIC OFFICES COMMISSION

(a) This chapter applies

(1) in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking judicial retention;

(2) to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Commerce, Community, and Economic Development unless the municipality has exempted itself from the provisions of this chapter; a municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.11.002(1), or a special municipality-wide election called for that purpose, votes to exempt by elected municipal officers from the requirements of this chapter; the question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election.

YOU'RE INVITED!

Things Local Government May Do

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- 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 new maintenance, repair, or renovation of an existing structure, and if the alteration, maintenance, repair, or renovation, when completed, 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.

§ 29.45.050. Optional exemptions and exclusions

(b) A municipality may by ordinance

(1) classify and exempt from taxation

(E) 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, refurbishments, remodels, and renovations. The municipality shall establish eligibility criteria for the credit in the ordinance adopted under this section.

§ 29.45.046. River habitat protection tax credit

(a) Unless prohibited by municipal charter, a municipality may by ordinance provide for a river habitat protection credit to be applied to offset a portion of the property taxes due on land, or an interest in land taxable under this chapter, upon which an improvement has been constructed that aids in

- (1) protecting a river from degradation of fish habitat due to public or private use; or
- (2) restoring riparian fish habitat along or in a river that has been damaged by land use practices.

§ 29.45.047. Air quality improvement tax credit

A municipality may by ordinance provide for a single or multiple year air quality improvement 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 new construction, refurbishments, remodels, and renovations that aid in improving the air quality in the municipality. The municipality shall establish eligibility criteria for the credit in the ordinance adopted under this section.

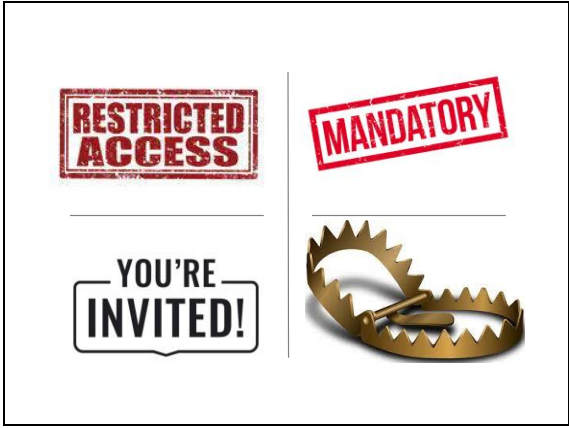
(m) A municipality may by ordinance partially or totally exempt all or some types of economic development property from taxation for a designated period. Except as otherwise provided by an ordinance enacted by the municipality before January 1, 2017, a municipality that is a school district may only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district's required local contribution under AS 14.17.410(b)(2). A municipality may by ordinance permit deferral of payment of taxes on all or some types of economic development property for a designated period. A municipality may apply an exemption or deferral under this subsection to taxes levied for special services in a service area that is supervised by an elected service area board under AS 29.35.460 unless the elected service area board objects to the exemption or deferral by resolution adopted not later than 60 days after the effective date of the municipal ordinance enacting the tax exemption or deferral. A municipality may adopt an ordinance under this subsection only if, before it is adopted, copies of the proposed ordinance made available at a public hearing on it contain written notice that the ordinance, if adopted, may be repealed by the voters through referendum. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption or deferral.


(9) "economic development" means an action intended to result in an outcome that causes an increase in, or avoids a decrease of, economic activity, gross domestic product, or the tax base.



*Things Local Government
May Do*

- Sue for Antitrust violations (AS 45.50.576)
- Apply for a Foreign Trade Zone (AS 45.77.020)
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- 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)





Tricks?

- PERS Post-2008


* Sec. 19, AS 39.35 is amended by adding a new section to read:


Sec. 39.35.625. Termination costs. (a) Notwithstanding AS 39.35.255, an employer that terminates participation of a department, group, or other classification of employees in the plan under AS 39.35.615 or that terminates participation in the plan under AS 39.35.620 shall pay to the plan each payroll period until the past service liability of the plan is extinguished an amount calculated by applying the current past service contribution rate adopted by the board to the greater of total base salaries paid

(1) during the payroll period to employees in positions for which coverage has been terminated;

(2) at the time of termination to employees in positions for which coverage has been terminated; or

(3) during the corresponding payroll period for the fiscal year ending June 30, 2008, to employees in positions for which coverage has been terminated.





Tricks?

- PERS Post-2008
- 8% Interest on Tax Refunds (AS 29.45.500)

Alaska Municipal League
Resolution #2020-17

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, including taxes refunded after "a remittance by a taxpayer through error"; and

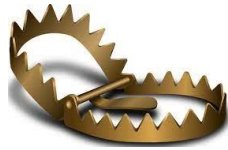
WHEREAS, the statute presently requires municipalities to pay interest fixed at 8%; and

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 pre-judgment interest awarded in lawsuits under AS 09.30.070, tied interest rates to the "12th 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 taxpayer (and not of the municipality).



Thank you!



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Others

- Contract requirements where state funds used
- Preference for AK Recycled products
- Slum Clearance
- Bond Bank
- Joint Insurance

Newly Elected Officials (NEOs)
2022
Local Tax Policy in Alaska
 Joe Caisie – State Assessor
 Department of Commerce, Community & Economic Development

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Responsible Tax Policy

Page # 2

Local Government in Alaska


ALASKA
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- **Constitution of the State of Alaska**
- **Article 10 § 1**
 - “Maximum local self government”...
- **Current local governments:**
 - 19 Boroughs, 146 Cities


Page # 3

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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"

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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.

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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

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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?



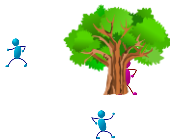
Tax Policy Considerations

- 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

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- **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.

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Who Pays the Tax - Advanced

Tax Incidence Analysis!

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- **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.

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Reliability of Tax Revenue

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- **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.


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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

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Budgets and Taxes

How They Work

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

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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.

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Tax Revenue Collected by Local Governments in 2017

Sales Tax	\$ 229,203,933	(13.2%)
Special Taxes	\$ 129,254,888	(7.4%)
Local Property Tax	\$ 930,055,612	(53.5%)
Oil & Gas Property Tax	\$ 446,756,597	(25.7%)
Total Tax Revenues	\$1,735,271,030	

PROPERTY TAXES MAKE UP OVER 79% OF ALL LOCAL TAX REVENUE FOR LOCAL GOVERNMENTS.

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Tax type	Boroughs	Cities
Sales	9	113
Special	17	49
Property	15	21
NONE	0	22

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Tax Alternatives

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

Some of these include:

- 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.

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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.

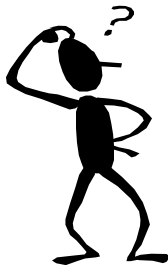


Sales Tax (Cont.)

- 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.

$$10,000 / 1,550,000 = 6.45 \text{ mills}$$

Values	Tax (6.45)			
\$150,000	\$968			
\$200,000	\$1,290			
\$300,000	\$1,935			
\$400,000	\$2,580			
\$500,000	\$3,225			
\$1,550,000	\$10,000			



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.

$$10,000 / 1,300,000 = 7.7 \text{ mills}$$

Values	Tax (6.45)	New val	Tax (7.7)	
\$150,000	\$968	\$100,000	\$769	
\$200,000	\$1,290	\$150,000	\$1,154	
\$300,000	\$1,935	\$250,000	\$1,923	
\$400,000	\$2,580	\$350,000	\$2,692	
\$500,000	\$3,225	\$450,000	\$3,462	
\$1,550,000	\$10,000	\$1,300,000	\$10,000	



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.

Values	Tax (6.45)	New value	Tax (7.7)	Change in taxes
\$150,000	\$968	\$100,000	\$769	-\$198
\$200,000	\$1,290	\$150,000	\$1,154	-\$136
\$300,000	\$1,935	\$250,000	\$1,923	-\$12
\$400,000	\$2,580	\$350,000	\$2,692	+\$112
\$500,000	\$3,225	\$450,000	\$3,462	+\$237
\$1,550,000	\$10,000	\$1,300,000	\$10,000	



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

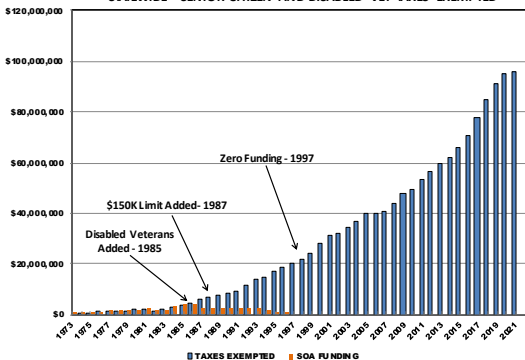


Required Property Tax Exemptions AS 29.45.030

- 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



STATEWIDE SENIOR CITIZEN AND DISABLED VET TAXES EXEMPTED



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 schools 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.



The Property Tax: Pros

- Property data collected can be used for more than taxes: for example, public safety, and disaster recovery.
- Generally, people have an understanding of the system and property value.



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!



2022 AML Newly Elected
Officials Training
Governmental Fund Accounting and Budgeting

MERTZ
CPA & Advisor


*Altman, Rogers
& Co.* CERTIFIED
PUBLIC
ACCOUNTANTS

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 budgets!!!



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

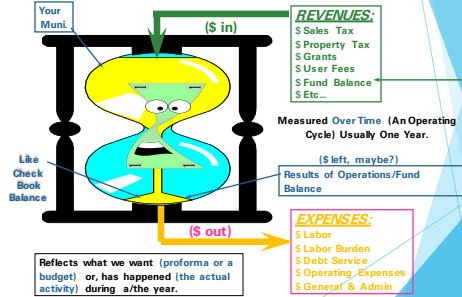
2. We guess what the changes will be to our assets & liabilities (cash, receivables, equipment, capital projects, liabilities, debt, and our equity (fund balance)).



"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?



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.

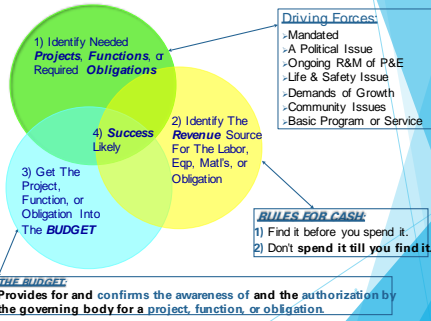
Budgets are created to establish a basis for measuring future performance, to resolve competing demands, and to identify changes in revenue or spending policies needed to guarantee both short-term and long-term fiscal health.

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

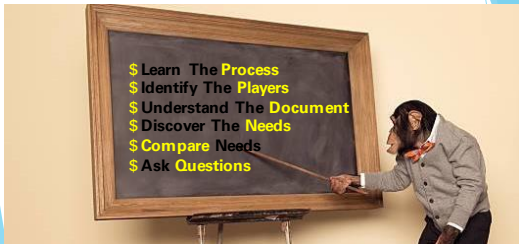
No budget, however meticulously developed, can predict the future perfectly. They are going to be wrong, and, they might need adjusting. DON'T BE SURPRISED, rather, EMBRACE BUDGET AMENDMENTS!!!!!!

ESSENCE OF BUDGETING

Less Formal
Non Accounting Approach



THE REAL OBVIOUS BASICS



Governments and Business – They're Different



What controls the strings & drives private enterprise operations and decisions **is not** the same set of strings that controls & drives municipal operations and municipal decisions!

Private enterprise experience can help you, **and/or**, hurt you. It depends on how you try and apply it!

PRIVATE ENTERPRISE



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.

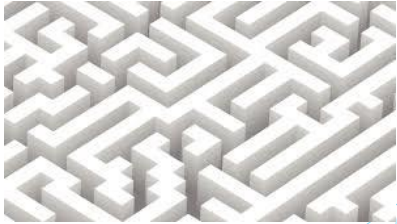
MUNICIPAL GOVERNMENTS

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 Privatepurpose 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.

Fund Balances

HAINES BOROUGH

BALANCE SHEETS - GOVERNMENTAL FUNDS

June 30, 2019

General Fund	
ASSETS	
Cash and cash equivalents	\$ 1,734,837
Investments	10,516,948
Receivables	485,735
Due from other funds	111,843
Due from component units	19,452
Prepaid expenses	540
Inventory	78,539
Total Assets	\$ 12,733,287

LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND FUND BALANCES	
Liabilities	
Accounts payable	\$ 200,763
Accrued payroll	248,653
Due to other funds	6,808,524
Deferred inflows of Resources	312,867
Total Liabilities	7,500,807

Deferred inflows of Resources	312,867
Unavailable revenue - property taxes	96,436
Unavailable revenue - land sales	—
Total Deferred inflows of Resources	409,303

Fund Balances	78,617
Nonspendable	1,795,594
Restricted	295,549
Assigned	2,809,424
Total Fund Balances	5,005,049

Total Liabilities, Deferred inflows of Resources and Fund Balances	\$ 12,733,287
---	----------------------

BACK TO PRIVATE ENTERPRISES



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

Debt Service Fund

Water

Sewer

Elec.

Enterpr.

Special Revenue Funds

General Fund

Capital Projects Funds

Your Need Here

WE PUT GUARDS AROUND EVERY POT, WITH ITS OWN SET OF RULES

Outside Rule(s)
(GASB, Federal, State, etc.)

Encumbrance
(\$ can't be used twice)

Power
(Authorized legal use of this pot of \$)

Appropriation
(Approved by elected body)

Adopted Budget

CHARTERS & THE BUCKETS

An Enterprise Fund Bucket used for Transportation, Water/Sewer or Harbors

The General Fund Bucket

A Special Revenue Bucket used for Man-A-Ro-We

A budget appropriation opens the spigot

AREAWIDE POWERS

- > Public Schools
- > Assessing & Tax Collections
- > Planning, Zoning, Land Use
- > Transportation
- > Parks & Recreation
- > Library
- > Animal Control
- > Air Pollution

NON-AREAWIDE POWERS

- > Economic Development
- > Emergency Services
- > Ski area
- > Specific tax use

PUBLIC WORKS DEPT.



GENERAL FUND		OTHER FUNDS	
Expenditures	Revenues	Expenditures	Revenues
Assembly	Local Sources	Debt Service Fund	Interest Earnings
Mayor	Texas (see Note #1)	Debt Retirement	Contributions from General & Non-Applicable Funds
Mayor's Office	Charges for Services	Printing Agent Fees	
Assessing	Other Local		
City Development	State Sources	Capital Projects Fund	Special Revenue Projects Funds
Non-Construction	State Grants/Contrib	Projects	Contributions from General & Non-Applicable Funds (as needed)
Construction	State Grants/Contrib		
Debt Service Fund	State Shared Revenue	Education	Education Expenses - Contribution from General Fund
Capital Budget Process	Other State	Education Expenses	Contribution from General Fund
Education	Federal Sources	Child Care Fund	State Grant
Child Care Fund		Financial Services Dept	State Grant
Traffic Operating Fund		Child Care Division	Contribution from General Fund
Custom Community Action		Emergency Operations	Enhanced 911 Surcharge Dept
Center (CAC) Operating Fund		Enhanced 911 Div.	Interest Earnings
		Emergency Operations	Non-Applicable Fund
		Emergency Medical	Emergency Medical Fees
		Emergency Medical	State Shared Revenue
		Mayor's Office	
		Economic Development	
		Community Planning Dept	
		Community Research Division	
		Community Services	
		Debt Service Fund	
		Capital Budget Projects	
		Solid Waste Collection District Fund	
		Public Works Dept	Texas (see Note #3)
		Solid Waste	State Shared Revenue
		Collection Div.	
		Service Area Funds	
		113 separate active funds	Fees (see Note #4)
		Fire & Other	State Shared Revenue
		Service Area Funds	Safe Communities
			Interest Earnings

INTERNAL SERVICE FUNDS

Expenditures	Revenues
Vehicles and Equipment Repair Fund (VERP)	Interfund Charges
Transportation Dept	Proceeds from Capital Leases
WERF Division	

TRANSFERS

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 budg 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.

	General Fund	Parkland Fund	New School Bond School District	Capital Project Funds	Passenger Vessel Fee	Other Governmental Funds	Total Governmental Funds
REVENUES							
Taxes							
Property	\$ 2,632,245	\$ -	\$ 375,589	\$ -	\$ -	\$ 14,238	\$ 3,022,072
Sales	1,784,411	-	-	981,842	-	954,908	3,721,161
Intergovernmental	-	-	-	133,990	-	3,264	438,006
Federal grants and contracts	296,840	-	-	-	-	-	426,976
Federal payments in lieu of taxes	426,976	-	-	-	-	-	1,214,268
State grants and contracts	1,214,268	-	-	-	-	-	139,356
Rentals, Service and admission fees	139,356	-	104,100	65,363	174,689	48,012	2,482,923
License and permits	34,338	-	-	-	-	1,950	84,308
Investment earnings	308,036	601,899	-	-	-	-	909,935
Grants and other	53,375	-	-	100,369	-	875	312,422
Total Revenues	6,802,477	601,899	1,279,779	1,244,355	174,689	1,033,324	11,263,925
EXPENDITURES							
Current							
General government	822,515	23,885	-	-	-	20,987	867,427
Public safety	1,674,685	-	-	-	-	347,392	1,922,386
Public works and streets	877,662	-	-	-	-	75,308	953,028
Economic development	-	-	-	-	-	448,004	448,004
Education	1,819,917	-	-	-	-	-	1,823,927
Port development	-	-	-	-	144,482	-	144,482
Cultural, recreation, and library	1,141,836	-	-	-	-	-	1,143,328
Debt service	-	-	870,000	-	-	2,219	872,219
Principal	-	-	421,700	-	-	6,889	428,589
Interest	-	-	1,450,700	-	-	-	1,450,700
Total Current	6,358,612	23,885	1,291,700	1,245,799	144,482	806,418	9,969,796
Total Expenditures	6,358,612	23,885	1,291,700	1,245,799	144,482	806,418	9,969,796
Excess (Deficiency) of Revenues							
Over (Under) Expenditures	553,864	578,014	(1,021)	(61,444)	30,207	222,888	1,322,938
Other Financing Sources (Uses)							
Transfers in	554,280	1,879	-	565,539	-	-	1,121,698
Proceeds on	(626,245)	(184,000)	-	(293,059)	(80,007)	(185,845)	(1,368,156)
Sale of capital assets	-	-	-	-	-	24,865	24,865
Total Other Financing Sources (Uses)	(72,005)	(182,121)	-	315,480	(80,007)	(161,111)	(856,333)
Net Change in Fund Balances	481,789	375,893	(1,021)	294,039	202,072	161,777	5,166,602

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?

20

THE ANSWER:

With Fund Accounting & A System of Controls

Why?
To Prevent Bad Behavior

Really,
it's about:
"Accountability"
Expenditures/appropriations out via "adopted" budgets!

Revenues In

And: we budget one bucket at a time!

Thank you.
max@mertzcpa.com; 907-957-7131

Newly Elected Officials

Reviewing the Fundamentals of Elected Office:

Lobbying Effectively



Alaska Municipal League
December 2022
Jordan Marshall
AML Lobbyist

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



Newly Elected Officials
December 2022

Lobbying Effectively: LOBBYING

- Local Government Legislative Priorities / Resolutions
- AML can help

Sec. 24.65.142. Exceptions
(a) This chapter does not apply to
(1) an individual
(2) any lobbyist without payment of compensation or other consideration and makes no disbursement or expenditure for or on behalf of a public official to influence legislative or administrative action other than to pay the individual's reasonable personal travel and living expenses; and
(3) who limits lobbying activities to appearances before public sessions of the Legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies.
(b) An officer or employee shall not, as a municipal public officer or an employee of the state or a municipality acting in an official capacity or within the scope of employment,



Newly Elected Officials
December 2022

Lobbying Effectively: LOBBYING

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

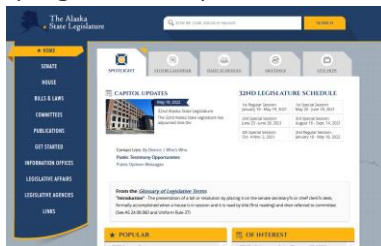


Lobbying Effectively: RESOURCES

- 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



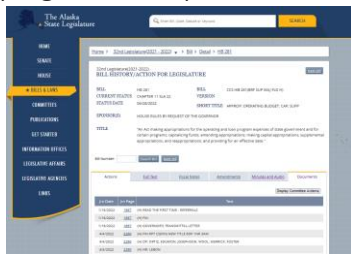
Lobbying Effectively: RESOURCES



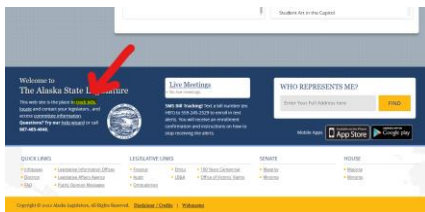
Lobbying Effectively: RESOURCES



Lobbying Effectively: RESOURCES



Lobbying Effectively: RESOURCES



Lobbying Effectively: RESOURCES



Lobbying Effectively: RESOURCES



Lobbying Effectively: RESOURCES



Lobbying Effectively: RESOURCES

Governor's Proposed Operating Budget
 This Budget Book reflects the Governor's Proposed Budget. When available, the Components on the right are subdivisions of the Results Delivery Unit on the left.

(Full Budget Book)

Department of Commerce, Community and Economic Development

RESULTS DELIVERY UNIT	COMPONENT	STAFFING CHART
Executive Administration and Development	Commissioner's Office	Chair
	Administrative Services	Chair
Marketing and Outreach	Marketing and Outreach	Chair
Community and Regional Affairs	Community and Regional Affairs	Chair
	State Parks	Chair
Business Working	Payment & a lot of Taxes (P&T)	
	Regional Council Services	
	Technical Teams	
Cooperation, Business and Professional Councils	Cooperation, Business and Professional Councils	Chair
Executive Development	Executive Development	

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 - The Legislative Process in Alaska
 - Steps in Passage of a Bill



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




Newly Elected Officials
December 2022

Lobbying Effectively: **ORGANIZATION & PROCESS**

SENATE Majority Caucus

- Elvi Gray-Jackson
- Matt Claman

8 Republican



- Bert Stedman – Co.Ch. Fin.
- Gary Stevens – Sen. Pres.
- Jesse Bjorkman
- Cathy Giessel – Maj. Leader
- James Kaufman
- Kelly Merrick
- David Wilson
- Click Bishop – Maj. Whip

9 Democratic

- Jesse Kiehl

Minority (3 Republican)

- Shelley Hughes
- Robb Myers
- Mike Shower

Newly Elected Officials
December 2022

Lobbying Effectively: **ORGANIZATION & PROCESS**

House Organization – Caucuses TBD

21 Republican

- Jamie Alard
- Ben Carpenter
- Julie Coulombe
- Mike Cronk
- David Eastman*
- Craig Johnson
- Delena Johnson
- Kevin McCabe
- Tom McKay*
- Mike Prax
- George Rauscher
- Justin Ruffridge

13 Democratic

- Dan Saddler
- Laddie Shaw
- Will Stapp
- Louise Stutes
- Jesse Sumner
- Cathy Tilton
- Sarah Vance
- Stanley Wright
- Frank Tomaszewski
- Jennie Armstrong*
- Ashley Carrick
- Maxine D'ibert
- Zack Fields
- Neal Foster

6 Independent

- Andrew Gray
- Cliff Groh
- Sara Hannan
- Andy Josephson
- CJ McCormick
- Donna Mears
- Genevieve Mina
- Andi Story
- Bryce Edgmon
- Alyse Galvin
- Rebecca Hirschshoot
- Dan Ortiz
- Josiah Patkotak
- Calvin Schrage





Newly Elected Officials
December 2022

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 - 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 (AP: Becky Bohrer)



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, comm 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't's 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



Newly Elected Officials
December 2022
