

Presented by: The Manager  
Introduced: 04/17/2000  
Drafted by: J.R. Corso

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2000-10**

**An Ordinance Amending the Election Code to Provide for Review by the Election Official of Initiative Affidavits.**

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the City and Borough code.

**Section 2. Amendment of Table of Contents.** The table of contents for Chapter 29.10 is amended by the addition of a new section 29.10.025 to read:

Chapter 29.10

INITIATIVE AND REFERENDUM

Sections:

- 29.10.010 Purpose.
- 29.10.020 Attorney assistance on initiative petitions.
- 29.10.025 *Certification of petitioners' committee affidavit.*
- 29.10.030 Petition format.
- 29.10.040 Instructions to petitioners.
- 29.10.050 Objection to petition form or instructions.
- 29.10.060 Submission and receipt of petitions.
- 29.10.070 Supplemental petition.
- 29.10.080 Validation of signatures.

1        29.10.090    Residence address requirements.

2        29.10.100    Petition and signature rejection for other reasons.

3        29.10.110    Termination of suspension of ordinance effective date.

4        **Section 3.    New Section.** There is adopted a new section 29.10.025 reading:

5        29.10.025    CERTIFICATION OF PETITIONERS' COMMITTEE AFFIDAVIT. (a)

6        The committee shall submit the affidavit to the election official who shall either certify it or  
7        notify the initiative committee of the grounds for denial.

8        (b) Certification shall be denied if

9                (1) the affidavit is not substantially in the required form,

10               (2) the proposed measure to be initiated is not in the required form, or

11               (3) there are fewer than 5 qualified members on the committee.

12        (c) The proposed measure to be initiated shall be in the following form:

13               (1) the measure shall be confined to one subject,

14               (2) the measure may not include subjects restricted by Charter Section 7.1 or

15        Article XI, Section 7 of the Alaska Constitution.

16        **Section 4.    Effective Date.** This ordinance shall be effective 30 days after its adoption.

17        Adopted this    day of                    2000.

18

19

20

\_\_\_\_\_  
Dennis Egan, Mayor

21        Attest:

22

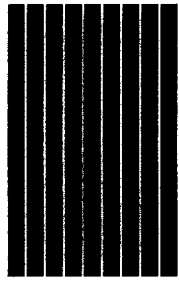
23

\_\_\_\_\_  
Laurie J. Sica, Clerk

24

25

26



*CBJ Law Department*  
**MEMORANDUM**

**To:** Assemblymember Tom Garrett  
**From:** John R. Corso, City & Borough Attorney  
**Subject:** Election Code Reform; rejection of initiative petitions  
**Date:** March 23, 2000

Currently, review of proposed initiatives by the CBJ Attorney and Election Official is either advisory or formal. The Attorney is authorized to provide assistance upon request of a petitioner's committee, but "shall have no authority to rewrite or require the rewriting of any part of a proposed measure."<sup>1</sup> The Election Official may reject damaged or improperly prepared petition booklets,<sup>2</sup> or petitions with insufficient signatures.<sup>3</sup>

Initiatives are subject to more substantive limitations. Charter §7.1 provides

Section 7.1. RESERVATION OF POWERS. The powers of the initiative and referendum are reserved to the people of the municipality with reference to all legislative authority which the assembly may exercise except that the powers of initiative and referendum shall not apply to ordinances establishing budgets, fixing mill levies, or to ordinances or other measures appropriating funds, provided, however, that this limitation on the powers of initiative and referendum shall not be construed to limit the power of the people to approve pursuant to Section 9.7 of this Charter a millage rate in excess of that otherwise imposed thereby.

State statute<sup>4</sup> provides that a charter may not permit the initiative and referendum to be used for a purpose prohibited by art. XI, § 7 of the state constitution, which provides:

**§ 7. RESTRICTIONS.** The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.<sup>5</sup>

---

<sup>1</sup> CBJ 29.10.020(b)

<sup>2</sup> CBJ 29.10.060(c)

<sup>3</sup> CBJ 29.10.070

<sup>4</sup> AS 29.10.030

<sup>5</sup> Interestingly, the language about referenda and "laws necessary" is substantially the same as that found in the Washington constitution and used recently by the King County Superior Court to strike down I695, the anti-tax initiative, on the grounds that its voter-approval requirement amounted to a "universal referendum" on all tax legislation. If this ruling survives appellate review, it suggests some issues for the CBJ tax cap adopted by initiative and found at Charter §9.7.

The lieutenant governor is required to review an initiative application and “either certify it or notify the initiative committee of the grounds for denial.”<sup>6</sup> Certification must be denied if “(1) the proposed bill to be initiated is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors.”<sup>7</sup>

Analysis of the bill’s form is guided by AS 15.45.040.

#### 15.45.040. Form of proposed bill

The proposed bill shall be in the following form:

- (1) the bill shall be confined to one subject;
- (2) the subject of the bill shall be expressed in the title;
- (3) the enacting clause of the bill shall be: “Be it enacted by the People of the State of Alaska;”
- (4) the bill may not include subjects restricted by AS 15.45.010.

This referenced statute, AS 14.45.010, essentially echoes the constitutional limitations:

**15.45.010. PROVISION AND SCOPE FOR USE OF THE INITIATIVE.** The law-making powers assigned to the legislature may be exercised by the people through the initiative. However, an initiative may not be proposed to dedicate revenue, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.<sup>8</sup>

The Lieutenant Governor’s review is limited to the form of the petition and the form of the bill (including the subjects prohibited under AS 15.45.010), but does not extend to the bill’s substantive constitutionality or ambiguities in its language. *Boucher v. Engstrom*, 528 P.2d at 460 n.13 (Alaska 1974). These issues are justiciable only after the initiative has been enacted by the electorate. *Id.* In other words, the Lieutenant Governor may decide only whether it is a good initiative, not whether it is a good law.

This limitation was evident during the 1993 Attorney General review of an initiative to “re-legalize” hemp, when the AG advised<sup>9</sup> a doubtlessly outraged Lieutenant Governor Coghill that it was no business of his that the clemency provisions in the initiative interfered with the executive’s discretionary powers, that the requirements for destruction of criminal records and challenge of federal laws violated the separation of powers doctrine, and the bill was generally a broad and ambiguously worded mess. Those issues must await enactment, challenge, and judicial review.

With these limitations in mind, I have prepared and attached a rough draft of an ordinance expanding the Municipal Clerk initiative review procedure to include the prohibitions mentioned in the Charter and the Alaska Constitution.

Although City Hall review of initiatives under the draft ordinance would be limited to matters of form and a small list of prohibited subjects, it would also be possible to regulate the initiative process to

---

<sup>6</sup> AS 15.45.070

<sup>7</sup> AS 15.45.080

<sup>8</sup> Constitutional amendments are also a prohibited subject. *Starr v. Hagglund*, 374 P.2d 316, 317 n.2 (Alaska 1962).

<sup>9</sup> File No. 663-94-0083, November 29, 1993

address the methods used to collect signatures for petitions. This has not been an issue in Juneau as it has been in some jurisdictions with intense commercial signature campaigns, and I assume you are less interested in the subject. Accordingly, I have not gone to the trouble of preparing a draft ordinance. However, some members of the Alaska Municipal Attorneys Association are interested in the issue, so I have attached their proposal for some statutory amendments that would be necessary for non home-rule cities and boroughs to regulate the circulation of petitions. CBJ could do this on its own: let me know if you are interested. Government regulation of initiative petitions was addressed by the U.S. Supreme Court in *Buckley v. American Constitutional Law Foundation*, which I have attached.

The King County Superior Court recently issued an interesting ruling on I695, the controversial Washington initiative that would have limited the fee for automobile registration and required the approval of voters prior to any tax increase. I have attached that opinion as well.

JRC/szl

I:\ORD\BACKUP\2000-10\2000-03-23 JRC to Garrett re initiative procedures.wpd