

**Aleutians East Borough**  
**Municipal Code**

**NOTE:** The ordinances or sections of ordinances provided on these pages are not the official versions and are provided for informational purposes only. While every effort has been made to ensure accuracy of the information presented herein, if the most current version or precise language of an ordinance is required, it is recommended that you contact the municipality from which it came.

TITLE 1  
GENERAL PROVISIONS

CHAPTERS

- 1.04        CODE ADOPTION
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TITLE 1

GENERAL PROVISIONS

Chapter 1.04 -- Borough Code

**Section:**

1.04 Code Adoption.

**1.04 Code Adoption.**

There is hereby adopted the "Code of the Aleutians East Borough of Alaska, and shall be sufficient to designate any ordinance adding to, correcting, amending, or amendment of the code. Ordinances shall be cited by giving the title, chapter and section numbers preceded by the code."

(Ord. 88-1, Sec. 1.04, part, 1987)

TITLE 1

GENERAL PROVISIONS

Chapter 1.08 -- Borough Data

**Sections:**

- 1.08.010 Aleutians East Borough, Mayor - Assembly Form.
- 1.08.020 Borough Limits.
- 1.08.030 Borough Seal.

**1.08.010 Aleutians East Borough, Mayor - Assembly Form.**

A. The Aleutians East Borough shall continue as a municipal corporation under the name: "Aleutians East Borough."

B. The government of the borough shall be that commonly known and designated as the mayor - assembly form.

(Ord. 88-1, Sec. 1.08.010, part, 1987)

**1.08.020 Borough Limits.**

The boundaries of the borough are those set out in the Certificate of Incorporation dated October 23, 1987.

(Ord. 88-1, Sec. 1.08.020, part, 1987)

**1.08.030 Borough Seal.**

The borough shall have a seal of two concentric circles bearing in the outer circle "Aleutians East Borough, Alaska," "October 23, 1987," and shall depict in the inner circle the word "Seal".

(Ord. 88-1, Sec. 1.08.030, part, 1987)

# TITLE 1

## GENERAL PROVISIONS

### Chapter 1.12 -- Interpretation And Use Of Ordinance Code

#### **Sections:**

- 1.12.010 Definitions.
- 1.12.020 Grammatical Interpretation.
- 1.12.030 Ordinances included in the Aleutians East Municipal Code.
- 1.12.040 Amendments to Code - Effect of New Ordinances Amendatory Language.
- 1.12.050 Supplements or Revisions to the Aleutians East Borough Municipal Code.

#### **1.12.010 Definitions:**

Whenever the following words and terms are used in the Aleutians East Borough Municipal Code, they shall have the meaning herein ascribed to them unless the context clearly indicates otherwise.

- A. "Attorney" means the borough attorney;
- B. "Assembly" means the assembly of the Aleutians East Borough;
- C. "Borough" means the Aleutians East Borough;
- D. "Building Official" means the borough building official;
- E. "Clerk" means the borough clerk;
- F. "Clerk-treasurer," whenever the reference is to duties not involving money, means the borough clerk;
- G. "Code" means the Aleutians East Borough Municipal Code;
- H. "Computation of time" means the time within which an act is to be done. It shall be computed by excluding the first day and including the last day; and if the last day is Sunday or a legal holiday, that day shall be excluded;
- I. "Finance Director" means the borough finance director;
- J. "Judge" or "Magistrate" means the judge of any court of law;

- K. "Law" denotes applicable federal law, the Constitution and Statutes of the State Alaska, the Ordinances of the Borough and, when appropriate, any and all rules and regulations which may be promulgated thereunder;
- L. "May" is permissive;
- M. "Mayor" means the borough mayor;
- N. "Month" means calendar month;
- O. "Municipality" means the Aleutians East Borough
- P. "Municipal Officer or Employee" means an officer or employee of the borough, whether paid or unpaid, including members of the assembly, and members of any board or commission;
- Q. "Must" and "Shall" - each is mandatory;
- R. "Oath" shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed;"
- S. "Or" is disjunctive and "and" is conjunctive;
- T. "Ordinance" means a law of the Borough, provided that a temporary or special law, administrative action, order or directive, may be in the form of a resolution;
- U. "Owner," applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant of the entirety, or agent in charge for any of the foregoing, of the whole or a part of such building or land;
- V. "Peace Officer" means any officer of the state police, members of the police force of any incorporated borough or borough, United States Marshals and their deputies, and other officers whose duty it is to enforce and preserve the public peace;
- W. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them;
- X. "Personal property" includes money, goods, chattels, things in action and evidences of debt;
- Y. "Presiding officer: means the chairperson of the assembly;

- Z. "Property" includes real and personal property;
- AA. "Real property" includes lands, tenements and hereditaments;
- BB. "Registered mail" includes certified mail. When the use of registered mail is authorized or required by this code, certified mail may be used unless expressly prohibited;
- CC. "Sidewalk" means that portion of a street between the curb line and adjacent property line intended for the use of pedestrians;
- DD. "Signature" or "subscription" includes mark when the person cannot write, with his name written near the mark by a witness who writes his own name near the person's name, but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto;
- EE. "State" means the state of Alaska;
- FF. "Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, parking areas, or other public ways which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of the state of Alaska;
- GG. "Tenant" and "occupant," applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others;
- HH. "Title of Office." Use of the title of any officer, employee, department, board or commission of the borough and borough;
- II. "Treasurer" whenever the reference to the duties involving money, means the borough finance director;
- JJ. "Written" includes printed, typewritten, mimeographed or multigraphed;
- KK. "Year" means a calendar year.

(Ord. 88-1, Sec. 1.12.010, part, 1987)

**1.12.020 Grammatical Interpretation**

The following grammatical rules shall apply in the Aleutians East Borough Municipal Code and the Ordinances of the Borough:

- A. Gender. Any gender includes the other genders;

- B. Singular and Plural. The singular number includes the plural and the plural includes the singular;
- C. Tenses. words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable;
- D. Use of Words and Phrases. Words and phrases not specifically defined shall be construed according to the context and approved usage of the language;
- E. All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

(Ord. 88-1, Sec. 1.12.020, part, 1987)

**1.12.030 Ordinances Included in the Aleutians East Borough Municipal Code:**

The assembly, with the advice and assistance of the borough attorney, shall cause each ordinance and resolution having the force and effect of law to be printed as promptly as possible following its adoption in the following manner:

- A. Ordinances enacted by the assembly of the borough and borough general and permanent in nature shall be inserted in the Aleutians East Borough Municipal Code when properly prepared and authenticated by the borough clerk.
- B. Emergency, bond, temporary and appropriation ordinances and resolutions shall not be included in the Aleutians East Borough Municipal code, but shall be retained in the form enacted.
- C. All titles to ordinances, all enacting and repealing clauses, all declarations of emergency, and all purpose, validity and construction clauses shall be omitted from the code unless from their nature it may be necessary to retain some of them to preserve the full meaning and intent of the ordinance.

(Ord. 88-1, Sec. 1.12.030, part, 1987)

**1.12.040 Amendments to Code - Effects of New Ordinances Amendatory Language.**

- A. All ordinances passed subsequent to this code which amends, repeal or in any affect this code, may be provided with numbers in accordance with

the numbering system of this code and printed for inclusion herein. In the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the code by omission from reprinted pages affected thereby.

- B. Amendments to any of the provisions of this code shall be made by amending such provisions by specific reference to the section number of this code in the following language: "That section \_\_\_\_\_ of the Borough Municipal code is hereby amended to read as follows: "\_\_\_\_\_" The new section shall then be set out in full as desired.
- C. In the event a new section not heretofore existing in the Code, is to be added by an ordinance, the following language shall be used: "That the Aleutians East Borough Municipal Code is hereby amended to add a section, to be numbered \_\_\_\_\_, which said section reads as follows:" The new section shall then be set out in full as desired.
- D. All sections, articles, chapters or provisions desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

(Ord. 88-1, Sec. 1.12.040, part, 1987)

**1.12.050                    Supplements or Revisions to the Aleutians East Borough Municipal Code.**

The Aleutians East Borough Municipal Code shall be supplemented at regular intervals, or if the assembly deems that supplementation of the code is unnecessary, the code shall be revised and printed every five years.

(Ord. 88-11, Sec. 1.12.050, part, 1987)

## TITLE 1

### GENERAL PROVISIONS

#### Chapter 1.20 -- Ordinance--Resolutions--Technical Codes

##### **Sections:**

1.20.010	Acts of the Assembly.
1.20.020	Acts Required to be by Ordinance.
1.20.030	Ordinance Procedure.
1.20.040	Ordinance Form and Content.
1.20.050	Emergency Ordinances.
1.20.060	Signature.
1.20.070	Ordinances Confined to Single Subject.
1.20.080	Repeal Shall Not Revive Any Ordinances.
1.20.090	Act by Agents.
1.20.100	Codes of Regulations.
1.20.110	Formal Acts by Resolution.
1.20.120	Resolutions - Reading - Hearing - Final Passage Posting.
1.20.130	Rules and Regulations.

##### **1.20.010 Acts of the Assembly.**

The Assembly shall act only by ordinance, resolution or order. Laws of a general, uniform and permanent nature shall be reduced to ordinance; laws of a temporary or special character shall be reduced to resolution. When the Assembly expresses anything by way of command, the form of expression shall be "ordered"; when it expresses opinions, principles, facts or propositions, the form shall be "resolved."

(Ord. 88-1, Sec. 1.20.010, part 1987)

##### **1.20.020 Acts Required to be by Ordinance.**

In addition to other actions which AS Title 29 requires to be by ordinance, the Assembly shall use ordinances to:

- A. Establish, alter or abolish borough departments;
- B. Fix the compensation of members of the Assembly;
- C. Provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;
- D. Provide for levying of taxes;

- E. Make appropriations and supplemental appropriations or transfer appropriations;
- F. Grant, renew, or extend a franchise;
- G. Regulate the rate charged by a borough public utility;
- H. Adopt, modify or repeal the comprehensive plan, zoning and subdivision ordinances, building and housing codes, and the official map.

(Ord. 88-1, Sec. 1.20.020, part, 1987)

**1.20.030 Ordinance Procedure.**

- A. An ordinance may be introduced if it is in writing and substantially in the form required in Chapters 12 and 20 of this Title.
- B. The following procedure governs the enactment of all ordinances except emergency ordinances:
  - (1) An ordinance may be introduced by a member or committee of the governing body, or by the mayor.
  - (2) An ordinance shall be set by the governing body for a public hearing by the affirmative vote of a majority of the votes authorized on the question.
  - (3) At least five days before the public hearing a summary of the ordinance shall be published together with a notice of the time and place for the hearing.
  - (4) Copies of the ordinances shall be available to all persons present at the hearing, or the ordinance shall be read in full.
  - (5) During the hearing the governing body shall hear all interested persons wishing to be heard.
  - (6) After the public hearing the governing body shall consider the ordinance, and may adopt it with or without amendment. If an amendment to the ordinance is so substantial as to change the basic character of the ordinance, the ordinance, as amended, shall be treated as newly introduced and shall be scheduled for a public hearing to occur after publication of the summary and notice required in subsection B (3) of this section.
  - (7) The governing body shall print and make available copies of an ordinance that is adopted.

- C. An ordinance takes effect immediately upon adoption or at a later date specified in the ordinance.
- D. For the purpose of this section, "published" means appearing at least once in a newspaper of general circulation distributed in the borough, or, if there is no newspaper of general circulation distributed in the municipality such that notice requirements can be met within the time required, posting in three public places within the borough for at least five days. If publication is by posting, publication does not occur until after the notice has been posted for five days. Thereafter, the five day publication required in subsection B(3) begins to run.

(Ord. 88-1, Sec. 1.20.030, part, 1987)

**1.20.040 Ordinance Form and Content.**

All ordinances enacted by the assembly shall be in substantially the following form:

- A. The proposed ordinance shall have a heading and number.
- B. Title: A short summary of the ordinance's provisions shall be included in a title at the head of the ordinance. The title shall make reference to any penalties imposed by the ordinance.
- C. Enacting clause: The enacting clause shall read: "BE IT ENACTED BY THE ASSEMBLY OF THE ALEUTIANS EAST BOROUGH:"
- D. Substantive part of the ordinance: The provisions of the ordinance will follow the enacting clause.
- E. Signatures: Appropriate places shall be provided for the signatures of the mayor and clerk.
- F. Attestation: The enactment and passage date of the ordinance shall be attested by the clerk.
- G. Code section numbers: Ordinances which amend, add to or repeal sections of the Aleutians East Borough Ordinance Code shall refer to the code sections by number.

(Ord. 88-1, Sec. 1.20.040, part, 1987)

**1.20.050 Emergency Ordinance.**

- A. To meet a public emergency the assembly may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the

assembly that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting to which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The assembly must print and make available copies of adopted emergency ordinances.

- B. An emergency ordinance may not be used to levy taxes to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its service.
- C. Emergency ordinances are effective for sixty days.

(Ord. 88-1, Sec. 1.20.050, part, 1987)

**1.20.060 Signature.**

Each ordinance shall be signed by the mayor at its adoption and attested by the clerk.

(Ord. 88-1, Sec. 1.20.060, part, 1987)

**1.20.070 Ordinances Confined to Single Subjects.**

Every ordinance shall be confined to one subject unless it is an appropriation ordinance or one codifying, revising, or rearranging existing ordinances. Ordinances for appropriations shall be confined to appropriation. The subject of each ordinance shall be expressed in the title.

(Ord. 88-1, Sec. 1.20.070, part, 1987)

**1.20.080 Repeal Shall Not Revive Any Ordinance.**

The repeal of an ordinance shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby.

(Ord. 88-1, Sec. 1.20.080, part, 1987)

**1.20.090 Acts by Agents.**

When an act is required by ordinance and the act may be done as well by an agent as by the principal, such requirement shall be construed as to require and include all such acts performed by an authorized agent.

(Ord. 88-1, Sec. 1.20.090, part, 1987)

**1.20.100 Codes of Regulations.**

The assembly may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of fifteen days before adoption at least five hearings. For a period of fifteen days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The assembly shall provide for the adopted code to be sold to the public.

(Ord. 88-1, Sec. 1.20.100, Part, 1987)

**1.20.110 Formal Acts by Resolution.**

A. Formal acts by the assembly not required by law to be enacted by ordinance and not being acts of a general and permanent nature may be adopted by resolution. A resolution shall have:

1. The heading "Aleutians East Borough, Alaska";
2. The space for a number to be assigned -- "Resolution, No. ";
3. A short and concise title descriptive of its subject and purpose;
4. Short premises or whereas clauses descriptive of the reasons for the resolution, of necessary;
5. The resolving clause "Be it Resolved";
6. Provision for signature after the date, and designated lines for the signatures of the mayor
7. An attestation.

B. All resolutions adopted by the assembly whether at the instance of the assembly, shall conform to the requirements set forth in (A.) above.

C. Resolutions shall not be included in any municipal code of ordinances.

(Ord. 88-1, Sec. 1.20.110, part, 1987)

**1.20.120. Resolution--Adoption--Effective Date--Posting.**

- A. Every resolution shall be introduced in writing and may be adopted by the assembly upon introduction and with or without amendments.
- B. Unless specifically stated within the resolution or otherwise required by law, a resolution becomes effective-immediately upon adoption.
- C. Upon adoption of a resolution, a copy of the resolution shall be posted on the public bulletin board at the borough headquarters within the borough for at least fourteen days. Failure to post the resolution as required under this subsection does not affect the validity or enforceability of the resolution.

(Ord. 92-6 (Amended Ord. 88-1), Sec. 1.20.120, part, 1987)

**1.20.130 Rules and Regulations.**

Any rule or regulation made by any administrative officer or board or commission shall be published either by one publication in a newspaper of general circulation in the borough or by posting a copy thereof for ten days following its approval by the borough assembly on the borough bulletin board in the borough offices.

(Ord. 88-1, Sec. 1.20.130, part, 1987)

TITLE 1

GENERAL PROVISIONS

Chapter 1.24 -- Penalties

**Sections:**

- 1.24.010            General Policy
- 1.24.020            Penalty Surcharge Authorization and Collection

**1.24.010            General Policy.**

Every act prohibited by the ordinance of this borough is unlawful. Unless another penalty is expressly provided by an ordinance, every person convicted of a violation of any of the ordinances of this borough, or any rule or regulation adopted or issued in pursuance thereof, shall be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

(Ord. 88-1, Sec. 1.24.010, part, 1987)

**1.24.020            Penalty Surcharge Authorization and Collection.**

The surcharge required to be imposed pursuant to AS 12.55.039 is authorized and shall be imposed as a surcharge on penalties imposed for the violation of an ordinance, code provision, or regulation of the Aleutians East Borough brought under a citation or criminal complaint that would require a proceeding in the Alaska Court System if the defendant were to enter a plea of not guilty. The court may impose and collect the surcharge on all penalties imposed by the court where fines and bail forfeitures are paid to the court. For all criminal proceedings in which the fine or bail forfeiture is collected by the borough, the surcharge imposed shall be collected by the borough with the payment of the fine or forfeited bail and regularly paid over to the appropriate agency of the state less any collection and administration fee or reimbursement authorized by the state to be retained by the borough.

(Ord. 99-01, new section 1.24.020)

TITLE 1

GENERAL PROVISIONS

Chapter 1.28 – Financial Disclosure

**Sections:**

1.28 Financial Disclosure

**1.28 Financial Disclosure**

- A. Financial disclosure is required by all Aleutians East Borough Assembly members, Aleutians East Borough School Board members, Planning Commission members and the Aleutians East Borough Mayor.
- B. Each elected or appointed official shall complete and file with the clerk a report of financial disclosure and business interest, the Aleutians East Borough Financial Disclosure form, no later than April 15 of each year.  
(Ord. 12-03, new section 1.28)

TITLE 2  
ADMINISTRATION

CHAPTERS:

- 2.02        BOROUGH SCHOOL BOARD
- 2.04        BOROUGH ASSEMBLY
- 2.08        ASSEMBLY MEETINGS
- 2.12        ASSEMBLY PROCEDURES
- 2.16        MAYOR
- 2.20        BOROUGH OFFICES AND OFFICERS
- 2.28        BOROUGH CLERK -- TREASURER
- 2.40        PUBLIC WORKS DEPARTMENT
- 2.50        HEALTH DEPARTMENT
- 2.51        ALEUTIANS EAST BOROUGH HEALTH BOARD
- 2.60        NATURAL RESOURCES DEPARTMENT

## TITLE 2

### ADMINISTRATION

#### Chapter 2.02 -- Borough School Board

**Section:**

- 2.02.010 School Board Composition and Apportionment.
- 2.02.020 School Board Elections.
- 2.02.030 Financial Disclosure.

**2.02.010 School Board Composition and Apportionment.**

The School Board shall consist of seven members, elected to seats identified as seats A-G, who are elected at large by the qualified voters of the borough.

(Ord. 07-09 (Amended 02-08), Sec. 2.02.010, part, 1987)

**2.02.020 School Board Elections.**

The borough municipal code Title 4 governing elections is applicable to all School Board elections.

(Ord. 07-09, New Sec. 2.02.020)

**2.02.030 Financial Disclosure.**

- A. Aleutians East Borough School Board members shall submit a financial and business disclosure form in accordance with and as required by Borough Code 1.28.
- B. Participation in all borough governmental activities without the required disclosure by School board members is prohibited.

(Ord. 12-03, New Sec. 2.02.030)

## TITLE 2

### ADMINISTRATION

#### Chapter 2.04 -- Borough Assembly

##### **Sections:**

2.04.010	Borough Assembly--Composition and Apportionment
2.04.020	Qualifications of Assembly and School Board Members.
2.04.030	Election of Assembly and School Board Members--Terms.
2.04.040	Compensation of Assembly Members.
2.04.048	Declaration of Vacancy.
2.04.050	Filling a Vacancy.
2.04.060	Advisory Members.
2.04.070	Financial Disclosure.

##### **2.04.010 Borough Assembly -- Composition and Apportionment.**

The Assembly shall consist of seven members, elected to seats, identified as Seat A-G, elected at large by the qualified voters of the borough.

(Ord. 07-08 (Amended Ord. 02-09), Sec. 2.04.010, part, 1987)

##### **2.04.020 Qualifications of Assembly and School Board Members.**

The assembly and school board members shall be qualified electors of the borough, and shall have been a resident within the borough for a minimum of one (1) year prior to holding office. An assembly or school board member who ceases to be eligible to be a borough voter immediately forfeits his office.

(Ord. 07-08 (Amended Ord. 88-1), Sec. 2.04.020, part, 1987)

##### **2.04.030 Election of Assembly Members -- Terms.**

- (a) An election is held annually on the first Tuesday of October, to choose assembly and school board members for three year terms and until their successors are elected and have qualified. In the event that a new form of representation is adopted, upon certification of the results, the assembly and school board members elected at such election shall determine by lot the length of the terms of office so that the terms of two (2) members shall be for one (1) year, the terms of two (2) members shall be for two (2) years, and the term of three (3) members shall be for three (3) years,

resulting in staggered terms of office for all members subsequently elected.

- (b) The regular term of office begins on the first Monday following the election.
- (c) The assembly may provide by ordinance for different terms not to exceed three (3) years, except that the current term of incumbent assembly members may not be altered.

Ord. 07-08 (Amended Ord. 88-1), Sec. 2.04.030, part, 1987)

**2.04.040 Compensation of Assembly Members.**

Each member of the assembly shall receive a meeting fee of two hundred dollars for each meeting day of the assembly attended, including board of equalization meetings attended. The meeting fee shall be paid monthly and shall be subject to all taxes and withholdings, including deductions for the Public Employee's Retirement System (PERS), if applicable.

(Ord. 02-12 (Amended Ord. 88-1), Sec. 2.04.040, part, 1987)

**2.04.048 Declaration of Vacancy.**

- A. An assembly seat becomes vacant for any reason set out in AS 29.20.170 upon a declaration of vacancy by the assembly by resolution.
- B. Prior to the adoption of a resolution declaring a vacancy, the assembly shall hold a hearing on the question of whether to declare the seat vacant and shall give two weeks' notice of the date, time, place and purpose of the hearing to the assembly member holding the seat. If the reason for the proposed declaration of vacancy is the mental inability of the assembly member to perform the duties of office, notice shall be given to the assembly member and, if possible, to a person responsible either for the care or for the affairs of the assembly member. The assembly member may be represented at the hearing by an attorney and may present such evidence and sworn oral and written testimony as is relevant.
- C. If the declaration of vacancy is because the assembly member no longer physically resides in the borough, there is a rebuttable presumption the assembly member no longer physically resides in the borough if it is shown that the assembly member has established a place of residence outside the borough and has resided outside the borough for 90 or more consecutive or nonconsecutive days during the immediately preceding 6 month period without first having obtained a determination by the assembly that unusual circumstances exist that justify both the temporary establishment of such a residence and the physical presence of the person outside the borough. In

determining whether an assembly member has established a residence outside the borough the assembly may consider such things as:

- (1) Where the assembly member or a member of the assembly member's household owns residential property that the assembly member occupies.
- (2) Where and for what term the assembly member leases or rents and resides at nontransient residential property.
- (3) Whether and where an assembly member who lives aboard a vessel rents transient or permanent moorage.
- (4) The location and amount of time the assembly member resides at residential property owned or rented by or made available for the assembly member, including the location and time residing on a vessel.
- (5) The address to which the assembly member's mail, other than advertising, is sent directly by the sender.
- (6) The physical location of motor vehicles and other goods owned by the assembly member or that are owned by members of his or her household and regularly used by the assembly member.
- (7) The places the assembly member participates in activities of social clubs or other groups.
- (8) The places children of the household of the assembly member attend school.
- (9) Other relevant factors.

- D. Resignation tendered by an assembly member is unconditional and irrevocable. Upon submittal, the resignation shall be transmitted to the assembly for consideration and action and cannot be withdrawn any time prior to consideration and action by the assembly. (Ord. 00-05, new subsection 2.04.048(D))

The assembly may find that an assembly member no longer physically resides in the borough whether or not the conditions for the rebuttable presumption are shown.

(Ord. 90-4, Sec. 2.04.048, part, 1987)

#### **2.04.050 Filling a Vacancy.**

If a vacancy occurs in the assembly, the assembly by vote of a majority of its remaining members shall designate a person to fill the vacancy within thirty days.

(Ord. 88-1, Sec. 2.04.050, part, 1987)

**2.04.060 Advisory Members.**

- (a) There shall be advisory members appointed on the assembly with the rights and responsibilities a set out in this section.
- (b) There shall be one for each of the communities in the borough, which are without an assembly member residing in its respective community.
- (c) The term of an advisory member is one year and begins on January 1<sup>st</sup> of each year. A person appointed holds office until a successor has been appointed and seated.
- (d) Advisory members may attend all assembly meetings, work sessions, committee of the whole meeting and sub committee meetings; except, an advisory member may not attend executive sessions except upon adoption by the assembly or committee of the motion to permit the advisory members to attend the executive session.
- (e) Advisory members may participate in the discussion of any matter that comes before the assembly or committee but may not make motions, vote or otherwise participate except to discuss matters before the body.
- (f) Only a person appointed under this section may participate in assembly meetings as an advisory member. An advisory member may not serve as a proxy or substitute for a regular member of the assembly unless appointed or elected to fill an assembly vacancy. Upon such election or appointment to a vacancy, the advisory seat held by that person becomes vacant.
- (g) If an advisory member clearly expresses a position for or against a proposition, the minutes of the meeting shall reflect the position expressed.
- (h) Advisory members will receive per diem, reimbursement and payments in lieu as may be provided for assembly members.
- (i) The presence or absence of an advisor member at an assembly meeting, the existence of a vacancy in an advisory member seat, and an act or admission of an advisory member shall have no effect on any action of the Borough. An advisory member has no authority to act on behalf of the Borough and the meeting of advisory members does not constitute a meeting of the assembly or any other body of the Borough for any purpose.

- (k) Advisory members shall be governed by the same rules as elected members concerning meeting attendance as provided for in 2.20 and other applicable ordinances.

(Ord. 08-04 (Amended Ord. 88-5), Sec. 2.04.060, part, 1987)

**2.04.070 Financial Disclosure**

- A. Aleutians East Borough Assembly members shall submit a financial and business disclosure form in accordance with and as required by Borough Code 1.28.
- B. Participation in all borough governmental activities without the required disclosure by Assembly members is prohibited.

(Ord.12-03, New Sec. 2.04.070)

## TITLE 2

### ADMINISTRATION

#### Chapter 2.08 - Assembly Meetings

##### **Sections:**

- 2.08.010 Regular Assembly Meetings.
- 2.08.020 Special Meetings.
- 2.08.030 Meetings--Location Change.
- 2.08.040 Meetings - Emergency Special Meetings - Waivers.
- 2.08.050 Executive Sessions.
- 2.08.060 Absences.

##### **2.08.010 Regular Assembly Meetings.**

- A. All regular meetings of the assembly shall be held on the second Thursday of each month at 3:00 p.m.
- B. The regular place of assembly meetings shall be at the borough office at Sand Point, Alaska. In order to give the public a greater opportunity to attend and participate in meetings of the borough assembly, the assembly may hold regular and special meetings in public locations throughout the borough other than at the regular meeting place. When the assembly determines to hold a meeting at a date, time or place other than the regular place, the clerk shall give notice of such meeting. The notice shall either be published in a newspaper or general circulation within the borough at least three days prior to the scheduled meeting or shall be posted in at least one public place in each city and major community within the borough at least three days prior to the scheduled meeting.
- C. All meetings of the assembly, including work sessions and committee meetings, shall be public meetings. The public shall have reasonable opportunity to be heard at regular and special meetings of the assembly.
- D. Audio/Video Conferencing: Attendance and participation of members of the assembly at assembly meetings may be by teleconference or video conference in public locations established within the Borough or in the Borough's Anchorage office. The public shall be given notice of teleconference or video conference locations and all materials that are to be considered at the meeting shall be made available at the locations if practicable.

- E. Telephonic participation by assembly members is not authorized during assembly meetings when an assembly member is physically absent from the Aleutians East Borough or unable to attend at the Borough's Anchorage office or is physically incapacitated except when a quorum is necessary to conduct business or an emergency meetings is necessary.

(Ord. 08-02 (Amended Ord. 89-3), Sec. 2.08.010, part, 1987)

**2.08.020 Special meetings.**

- A. If a majority of the members of the assembly are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members, a special meeting of the assembly may be held at the call of the Mayor or at least three members of the assembly. Notice of the special meeting must be given orally or in writing to each assembly member or written notice may be left at the member's usual place of business or residence. A special meeting may be conducted with less than 24 hours notice if all members of the assembly are present or if absent members have waived in writing the required notice. Waiver of notice may be made before or after the special meeting is held. A waiver of notice must be made part of the journal for the meeting. The location of special meetings shall be the same as for regular meetings unless the assembly, at a regular or special meeting, determines that a special meeting will be held at a different place.
- B. The notice of special meeting must specify the time, place and subject matter of the meeting. If two members at the meeting object, an item of business that was not on or related to an item mentioned in the notice may not be acted on by the assembly, however, such items may be discussed and scheduled for assembly action at a future meeting.

(Ord. 89-3, Sec. 2.08.020, part, 1987)

**2.08.030 Meetings - Location Change.**

Notwithstanding the provisions of Sec. 2.08.010 or 2.08.020, if after having been lawfully assembly in a location properly designated, the assembly determines that a condition exists which renders such location unsuitable; it may recess the meeting and reconvene at a different location suitable to the needs of the assembly. Prior to the recess the assembly shall make known to those assembled for the meeting the location at which the meeting will be reconvened. In addition, a notice of the change of location must be posted at the place originally scheduled for the meeting.

(Ord. 89-3, Sec. 2.08.030, part, 1987)

**2.08.040 Rescheduling of Meetings - Authority of Mayor.**

If, prior to a regular or special meeting, the Mayor makes a written determination that

1. a quorum will not be present at the meeting,
2. there will not be available information, documents or other materials or a person essential for the conduct of the meeting.
3. a substantial number of members of the public who have attempted to get to the place of the meeting will be prevented from attending because of weather or transportation problems beyond their control, or
4. other substantial and compelling reasons justify the postponement of the meeting,

The Mayor may postpone the meeting to a later time. Upon a postponement of a meeting under this section, the Mayor shall have posted in a conspicuous place at the main entrance of the building and on the door of the room in which the meeting was to have been held a notice of the postponement and the date and time to which the meeting is postponed. Similar notice shall be provided orally or in writing to each assembly member. The Mayor shall also have a similar notice posted in a public place in each city and major community in the borough, provided, failure to do the notice required in this sentence posted in each city and major community does not affect the validity of postponed meeting. All matters acted upon by the assembly at a postponed meeting shall be as valid as if such action had taken place at the originally scheduled meeting, but the date of such action shall be the date the action was actually taken.

(Ord. 89-3, Sec. 2.08.040, part, 1987)

**2.08.050            Executive Session.**

- A. The following subjects may be discussed in an executive session:
  1. Matters that immediate knowledge of which would clearly have an adverse effect on the finances of the borough or school district.
  2. Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion.
- B. The following shall be discussed in executive session when the best interests of the borough requires:
  1. Discussions of potential, threatened or pending suits, claims or governmental proceedings in which the borough has an interest.

2. Discussions with legal counsel to the borough.
  3. Discussions of negotiations or other matters in which the public discussion of the possible strategy and positions of the borough would be detrimental to the effectiveness of the borough in such matters.
- C. The adoption of a motion to go into executive session for a purpose under subsection B constitutes a determination by the assembly that the best interests of the borough require such discussion in executive session.
- D. If subjects excepted by law or this section are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss excepted subjects shall be determined by a majority vote of the assembly. No subjects may be considered at an executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at an executive session.

(Ord. 89-3, Sec. 2.08.050, part, 1987)

**2.08.060 Absences.**

No member may absent himself from any meeting of the assembly except for good and sufficient reason.

(Ord. 89-3, Sec. 2.08.060, part, 1987)

## TITLE 2

### ADMINISTRATION

#### Chapter 2.12 -- Assembly Procedures

##### **Sections:**

2.12.010	Presiding Officer.
2.12.020	Meetings--Order of Business.
2.12.030	Agenda.
2.12.040	Minutes.
2.12.050	Council Rules.
2.12.060	Veto.
2.12.070	Duties of the Clerk at Assembly Meetings.

##### **2.12.010 Presiding Officer.**

- A. The Mayor shall be the Presiding Officer at meetings of the assembly. He shall preserve order and decorum among the assembly members, and is responsible for conduct of all meetings in compliance with the rules of the assembly. He may at any time make such rules as he deems proper to preserve order among the spectators in the borough assembly chamber during sessions of the assembly.

The Presiding Officer may speak to points of order in preference to other members, and shall decide all points of order, subject to appeal to the assembly by motion duly seconded as herein provided. He may at any time call any member to the chair during any meeting, such substitution to discontinue when he elects to resume the chair and in no event beyond adjournment of the meeting at which such substitution is made.

- B. In the temporary absence or disability of the Presiding Officer, any member of the borough assembly may call the assembly to order at any duly called meeting to elect a president pro tempore from among its number and the president pro tempore shall exercise all the powers of chairman during such temporary absence or disability of the Presiding Officer and may also vote.

(Ord. 88-1, Sec. 2.12.010, part, 1987)

##### **2.12.020 Meetings -- Order of Business.**

At every regular meeting of the borough assembly the order of business shall be as follows:

- A. Call to Order;
- B. Invocation;
- C. Roll Call;
- D. Minutes of Previous Meeting;
- E. Communications and Appearance Requests;
- F. Consent Agenda;
- G. Hearings, Ordinances and Resolutions;
- H. Old Business;
- I. New Business;
- J. Administrator/Manager Reports;
- K. Audience Participation;
- L. Assembly Comments;
- M. Adjournment

(Ord. 92-6 (Amended Ord. 88-1), Sec. 2.12.020, part, 1987)

**2.12.030 Agenda.**

- A. Regular and Special Assembly Meetings. All reports, communications, ordinances, resolutions, contract documents, or other matters to be submitted to the assembly shall, at least seventy-two hours prior to each assembly meeting, be delivered to the borough clerk, whereupon the Mayor shall arrange a list of such matters according to the order of business and the borough clerk shall furnish each member of the assembly and the Mayor with a copy of the same in packet form at least forty-eight hours in advance of the assembly meeting, excluding Saturdays, Sundays and holidays.
- B. Work Sessions. any matter to be considered by the assembly in work sessions shall be listed in agenda form by the clerk and be given to the assembly at least three days prior to said work session. Any written material for said work session shall be furnished by the clerk to the Mayor, assemblymen and borough administrator three days in advance of the scheduled day for said work session. Reasonable public notice for work sessions of the assembly shall be required.

(Ord. 88-1, Sec. 2.12.030, part, 1987)

- C. Consent Agenda. Matters requiring assembly approval that are determined by the Mayor to be routine or noncontroversial may be placed under the Consent Agenda for approval by the assembly upon a single motion. An ordinance may not be placed under the Consent Agenda except for the purpose of introduction and setting of a public hearing date; an ordinance placed under the Consent Agenda shall include a notation indicating the proposed public hearing date. The presiding officer, at his own discretion or upon the request of any member of the assembly, shall remove a Consent Agenda item and place it under the appropriate

agenda item for action at the time such other agenda item comes up. Except for minor clarifications, assembly members may not discuss, debate, or amend any matter while it is on the Consent Agenda. Discussion, debate and amendment on a Consent Agenda item may be had by requesting the item be removed and placed for action under the appropriate agenda item. All items remaining on the Consent Agenda are adopted by approval of a single motion to adopt the Consent Agenda.

(Ord. 92-6, Sec. 2.12.030, part, 1987)

#### **2.12.040 Minutes.**

- A. Minutes of all regular and special meetings shall be taken. Minutes shall be in the form of a summary of discussion including a verbatim report of motions made and actions taken plus a report of each vote cast by assembly members when a roll call vote is made. Summary notes shall be provided for each work session.

All minutes of regular and special meetings, and summary notes of work sessions, shall be kept in the journal of the proceedings of the assembly. All minutes of the assembly shall be distributed by the borough clerk to the public desiring same after payment of a reasonable charge. One copy of the minutes shall be given free of charge to any person appearing in person and requesting same with extra copies in person or by mail available at twenty-five cents per copy per page, and subscriptions available by mail at the rate of ten dollars per year.

- B. Unless a reading of the minutes of an assembly meeting, regular or special, is requested by a member of the assembly, such minutes may be approved without a reading if the clerk has previously furnished each member with a synopsis thereof.
- C. The clerk may be directed by the Mayor, with the consent of the assembly, to enter in the minutes a synopsis of the discussion on any question coming regularly before the assembly.

(Ord. 88-1 (amended by Ord. 90-5), Sec. 2.12.040, part, 1987)

#### **2.12.050 Assembly Rules.**

- A. In all matters of parliamentary procedure not covered in these rules, Robert's Rules of Order shall be applicable and govern.

(Ord. 88-1, Sec. 2.12.050, part, 1987)

#### **2.12.060 Veto.**

The Mayor may veto any ordinance, resolution, motion, or other action of the assembly and may, by veto, strike or reduce items in appropriation ordinances. He shall submit to the assembly at its next regular meeting a written statement advising of his veto and giving his reasons. A veto is overridden by the vote of two-thirds of the authorized membership of the assembly within 21 days following exercise of the veto or at the next regular meeting whichever is later. The veto does not extend to appropriation items in school budget ordinance; actions of the governing body sitting as the board of equalization or the board of adjustment; adoption or repeal of a manager plan of government.

(Ord. 88-1, Sec. 2.12.060, part, 1987)

**2.12.070 Duties of the Clerk at Assembly Meetings.**

The Borough clerk shall give notice of borough assembly meetings, shall attend all meetings of the assembly and keep the journal of its proceedings, shall authenticate by his signature and record in full in a book or file kept for that purpose all ordinances and resolutions duly indexed and open to public inspection. In case of the temporary absence of the borough clerk, the borough assembly may appoint a clerk pro tempore, with all the powers, duties and obligations of the borough clerk, who shall be duly qualified.

(Ord. 88-1, Sec. 2.12.080, part, 1987)

TITLE 2  
ADMINISTRATION  
Chapter 2.16 - Mayor

**Section:**

2.16.010	Mayor as Executive.
2.16.020	Mayor's Additional Duties.
2.16.030	Election and Term of Mayor.
2.16.040	Filling a Vacancy.
2.16.050	Mayor Pro tempore.
2.16.060	Succession to Office of Mayor and Mayor Pro tempore.
2.16.070	Salary of Mayor.
2.16.080	Financial Disclosure.

**2.16.010 Mayor as Executive.**

- A. The Mayor is the chief executive officer of the borough. He shall act as ceremonial head of the borough, and sign documents on the borough's behalf upon assembly authorization.
  
- B. The Mayor shall:
  - 1. Appoint borough employees and administrative officers, except as provided otherwise in Sec. 2.20.050 and AS 14.14.065; he may hire necessary administrative assistants and may authorize an appointive administrative office to appoint, suspend, or remove subordinates in his department;
  - 2. Suspend or remove by written order borough employees and administrative officers, except as provided otherwise in Sec. 2.20.050 and AS 14.14.065;
  - 3. Supervise enforcement of borough law;
  - 4. Prepare the annual budget and capital improvement program for the assembly;
  - 5. Execute the budget and capital program as adopted;
  - 6. Make monthly financial reports to the assembly on borough finances and operations;

7. Report to the assembly at the end of each fiscal year on the finances and administrative activities of the borough;
8. Prepare and make available for public distribution an annual report on borough affairs;
9. Serve as borough personnel officer unless the assembly authorizes him to appoint a personnel officer;
10. Execute other powers and duties specified in AS Title 29 or lawfully prescribed by the assembly.

(Ord. 88-1, Sec. 2.16.010, part, 1987)

**2.16.020 Mayor's Additional Duties.**

The Mayor shall in addition to the powers and duties conferred on his office by Sec. 2.16.010:

- A. Direct and supervise the business of the borough to assure that all ordinances and resolutions are executed;
- B. Act as ex-officio chairman of the board of adjustment for matters of building and zoning regulations of the borough;

(Ord. 88-1, Sec. 2.16.020, part, 1987)

**2.16.030 Election and Term of Mayor.**

- A. A voter of the borough is eligible to hold the office of Mayor. A voter must be a resident of the Borough no less than three consecutive years prior to serving as Mayor.
- B. The Mayor is elected at large for a term of three years and until a successor is elected and has qualified.
- C. The Mayor's regular term begins on the first Monday following his election, which is held on the first Tuesday of October.

(Ord. 88-1, Sec. 2.16.030, part, 1987)

**2.16.040 Filling a Vacancy.**

A vacancy in the office of Mayor occurring within six months of a regular election shall be filled by the assembly. The person designated shall serve until the next regular election and until a successor is elected and has qualified. If an assemblyman is chosen, he shall resign his assembly seat. If a vacancy occurs

more than six months before a regular election; the assembly shall call a special election to the unexpired term.

(Ord. 88-1, Sec. 2.16.040, part, 1987)

**2.16.050 Mayor Pro Tempore.**

Should the office of the Mayor become vacant, or if the existing Mayor is disabled or unable to act, the assembly may appoint a Mayor pro tempore, to serve until the Mayor resumes his official duties, or until a new Mayor is qualified.

(Ord. 88-1, Sec. 2.16.050, part, 1987)

**2.16.060 Successor to Office of Mayor and Mayor Pro Tempore.**

Should the office of Mayor and Mayor pro tempore become vacant or should both the Mayor and Mayor pro tempore be absent or unable to perform the duties of the office of Mayor, the order of interim succession shall be determined as follows:

- A. The assembly member with the longest total period of tenure in office shall assume the office of Mayor pro tempore.
- B. Should more than one assemblyman have the same total period of tenure in office, that assemblyman who received the largest plurality at the last election at which such assembly members were elected shall assume the office of Mayor pro tempore.

(Ord. 88-1, Sec. 2.16.060, part, 1987)

**2.16.070 Salary of Mayor.**

- A. The office of the mayor of the borough may be filled on a part-time basis. The salary of the mayor serving on a part-time basis shall be \$50,000.00 per annum increased annually on July 1 of each year by an amount equal to the increase of the Consumer Price Index (Urban) for the Anchorage area from the preceding July 1. The base date of computing increases is July 1, 1993. The salary of the mayor, shall not be diminished during the mayor's term but may be increased beyond the cost of living index increase provided in this subsection by an amount approved by the assembly in the budget for the next fiscal year. Any increase beyond the annual consumer price index adjustment shall become effective on July 1 of the budget year for which approved unless otherwise provided by the assembly.

(Ord. 01-01 (Amended Ord. 94-2), Subsection 6.04.042 A, part, 1987)

- B. The borough assembly may, at any time during the term of office of a mayor, raise the salary of the mayor to an amount the assembly

determines to be commensurate with the duties and responsibilities of the office of mayor.

- C. The office of the mayor shall be appropriately staffed, subject to assembly approval, in order to meet the requirement of full service to the public.

(Ord. 94-2, (Amended Ord. 88-1) Sec. 2.16.070, part, 1987)

**2.16.080 Financial Disclosure.**

- A. Aleutians East Borough Mayor shall submit a financial and business disclosure form in accordance with and as required by Borough Code 1.28.
- B. Participation in all borough governmental activities without the required disclosure by the Mayor is prohibited.

(Ord. 12-03, New Sec. 2.16.080)

## TITLE 2

### ADMINISTRATION

#### Chapter 2.20 - Borough Offices and Officers

##### **Sections:**

2.20.010	Meetings Public.
2.20.020	Private Meetings.
2.20.030	Public Notice of Meetings.
2.20.040	Publication.
2.20.050	Emergency Meeting.
2.20.060	Oath of Office.
2.20.070	Salaries of Elected Officers Not to be Varied.
2.20.080	Appointment of Officers.
2.20.090	Prohibitions.
2.20.100	Conflicts of Interest.
2.20.110	Vacancies.

##### **2.20.010 Meetings Public.**

Meetings of all municipal bodies shall be public as provide in AS 44.62.310. The assembly and assembly shall provide reasonable opportunity for the public to be heard at regular and special meetings.

(Ord. 88-1, Sec. 2.20.010, part, 1987)

##### **2.20.020 Private Meetings.**

- A. All meetings of the assembly, subcommittees of the assembly, boards, administrative agencies and commissions created by this code or by the assembly, shall be open to the public; provided, however, that the following excepted subjects may be discussed in a private meeting by any of the above:
1. Matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
  2. Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
  3. Matters which by law, municipal charter, or ordinance are required to be confidential.
- B. The following shall be discussed in a private meeting when the best interests of the borough so require:

1. Negotiations with labor organizations representing borough employees;
  2. Discussions of pending or threatened lawsuits in which the borough has an interest.
- C. If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting, and the question of holding a private meeting to discuss matters that come within the exceptions contained in subsections (A) and (B) of this section shall be determined by a vote of the body. No subjects may be considered at the private meeting except those mentioned in the motion calling for the private meeting unless auxiliary to the main questions. No action may be taken at the private meeting.

(Ord. 88-1, Sec. 2.20.020, part, 1987)

#### **2.20.030 Public Notice of Meeting.**

Reasonable public notice shall be given of all meetings of an administrative body, board, commission, committee, subcommittee, authority, agency or other organization including subordinate units of the above groups of the borough including but not limited to assembly, school board, platting board, commissions or organizations advisory or otherwise of the borough.

(Ord. 88-1, Sec. 2.20.030, part, 1987)

#### **2.20.040 Publication.**

For the purpose of giving notice of meetings, reasonable public notice is given if a statement containing the date, time and place of the meeting is published not less than twenty-four hours before the time of the meeting in accordance with 1.20.030(c).

(Ord. 88-1, Sec. 2.20.040, part, 1987)

#### **2.20.050 Emergency Meeting.**

An emergency meeting of the assembly may be held after such public notice as is reasonable under the circumstances without regard to the publication requirements in Sec. 2.20.040, upon the affirmative vote of all members present, or the affirmative vote of three-quarters of those elected that a public emergency affecting life, health, welfare or property exists and that reasonable public notice of the meeting has been given. Any action taken at an emergency meeting is valid only for sixty days.

(Ord. 88-1, Sec. 2.20.050, part, 1987)

**2.20.060 Oath of Office.**

A. All officers elected or appointed before entering upon the duties of office shall affirm in writing the following oath and affirmation:

"I . . . . do solemnly swear that I will support the Constitution of the United States and State of Alaska and the laws and ordinances of the Aleutians East Borough, State of Alaska, and that I will honestly, faithfully and impartially perform the duties of the office of. . . So help me God.

B. The Oath is filed with the municipal clerk.

(Ord. 88-1, Sec. 2.20.060, part, 1987)

**2.20.070 Salaries of Elected Officials Not to be Varied.**

The assembly may fix by ordinance the salaries of elected officials before they are elected. Salaries may not be changed during a term of office. an elected officer may not receive any other compensation for service to the municipality. Per diem payments or reimbursements for expenses are not compensation under this section.

(Ord. 88-1, Sec. 2.20.070, part, 1987)

**2.20.080 Appointment of Officers.**

The municipal clerk, attorney and administrator are appointed by the Mayor. Officers serve at the pleasure of the appointing authority. Appointments by the Mayor are subject to confirmation by the assembly.

(Ord. 88-1, Sec. 2.20.080, part, 1987)

**2.20.090 Prohibitions.**

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

(Ord. 88-1, Sec. 2.20.090, part, 1987)

**2.20.100 Conflicts of Interest.**

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. The presiding office shall rule on the request for abstention (excludes).

The decision of the presiding officer on the request may be overridden by the majority vote of the assembly. An employee or official of the borough, other than an assembly member may not participate in an official action in which he has a substantial financial interest. 29.20.010

(Ord. 88-1, Sec. 2.20.100, part, 1987)

**2.20.110            Vacancies.**

An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly. The assembly shall declare an elective office vacant when the person elected:

- A. Fails to qualify or take office within thirty days after his election or appointment;
- B. Is physically absent from the municipality for a ninety-day period, unless excused by the assembly;
- C. Resigns and his resignation is accepted;
- D. Is physically or mentally unable to perform the duties of his office;
- E. Is removed from office;
- F. Misses three regular meetings annually unless excused; or
- G. Is convicted of a felony or of an offense involving a violation of his oath of office.

(Ord. 88-1, Sec. 2.20.110, part, 1987)

## TITLE 2

### ADMINISTRATION

#### Chapter 2.28 -- Borough Clerk

##### **Sections:**

2.28.010	Appointment--Term.
2.28.020	Borough Clerk.
2.28.030	Additional Duties of Clerk.
2.28.040	Acting Clerk.
2.28.050	Treasurer.
2.28.060	Additional Duties of the Treasurer.
2.28.070	Finance Department.
2.28.080	Administration.

##### **2.28.010 Appointment.**

The borough clerk shall be appointed by the Mayor. He shall hold office at the pleasure of the assembly.

(Ord. 88-1, Sec. 2.28.010, part, 1987)

##### **2.28.020 Borough Clerk -- Treasurer.**

A. The borough clerk shall:

1. Give notice of the time and place of assembly meetings to the assembly and to the public;
2. Attend assembly meetings and keep the journal;
3. Arrange publication of notices, ordinances, and resolutions;
4. Maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;
5. attest deeds and other documents;
6. Perform other duties specified in this title or prescribed by the Mayor or by the assembly.

(Ord. 88-1, Sec. 2.28.020, part, 1987)

**2.28.030 Additional Duties of the Clerk.**

- A. The borough clerk shall record and certify all actions of the assembly.
- B. The borough clerk shall have the power to administer all oaths required by law.
- C. The borough clerk shall be custodian of the borough seal and the official records of the borough.
- D. The borough clerk shall give to the proper officials ample notice of the expiration or termination of any term of office and, when necessary, the conditions or requirements of all bonds, franchises, contracts or agreements.
- E. The borough clerk shall be the registrar of the borough and shall be responsible for the calling and supervision of all borough elections unless otherwise provided by law.

(Ord. 88-1, Sec. 2.28.030, part, 1987)

**2.28.040 Acting Clerk.**

In case of the temporary absence of the borough clerk, the assembly may appoint an acting borough clerk, with all the powers and obligations of the borough clerk. The acting clerk shall be duly qualified.

The acting borough clerk shall in all cases sign all documents in the name of the borough clerk, subscribing his personal signature as acting borough clerk.

(Ord. 88-1, Sec. 2.28.040, part, 1987)

**2.28.050 Treasurer.**

- A. There shall be a borough treasurer who shall be appointed by the Mayor.
- B. The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.
- C. The treasurer shall give bond to the municipality in a sum which the assembly directs.

(Ord. 88-1, Sec. 2.28.050, part, 1987)

**2.28.060 Additional Duties of the Treasurer.**

The treasurer shall:

- A. Be responsible for all matter pertaining to the maintenance of all fund accounts of the borough, and the maintenance and care of all property used for finance;
- B. Certify all appropriation encumbrances as to availability of appropriation balances and funds;
- C. Prepare and submit to the Mayor such financial reports and other data as may be required;
- D. Prescribe and control such procedures as are necessary to protect borough funds and property;
- E. Perform such other duties as the Mayor may require.

(Ord. 88-1, Sec. 2.28.060, part, 1987)

**2.28.070 Finance Department.**

There shall be a finance department, the head of which shall be the treasurer. The finance director may create divisions in the finance department, which approval of the Mayor, the officers of which shall be appointed by the Mayor and under the direction of the treasurer. The number of employees shall be determined by, and each such employee shall be appointed by the Mayor except as he may delegate such power to the treasurer.

(Ord. 88-1, Sec. 2.28.070, part, 1987)

**2.28.080 Administrator.**

There shall be an administrator of the Borough who is appointed by and responsible to the Mayor. The administrator shall, at the direction of the Mayor, oversee and supervise all departments of the Borough. The administrator may serve as the head of one or more departments and may be appointed as treasurer. The administrator shall have such other administrative duties as the Mayor may assign.

(Ord. 88-1, Sec. 2.28.080, part, 1987)

TITLE 2

ADMINISTRATION

Chapter 2.40 -- Public Works Department

**Sections:**

- 2.40.010 Department Established.  
2.40.020 Functions.

**2.40.010 Department Established:**

There is established the Borough public works department. The head of the public works department is the Public Works Director who is appointed by, and serves at the pleasure of, the Mayor. The Public Works Director shall supervise and be responsible for the work and functions of the Borough public works department. Employees of the department shall be hired by the Mayor and supervised by the Director. The department shall be managed and supervised subject to the directions of the Mayor.

(Ord. 97-5, Sec. 2.40.010)

**2.40.020 Functions:**

The Department shall be responsible for:

1. The maintenance, repair and upkeep of buildings, harbor, marine and other public facilities for which the Borough is responsible;
2. The maintenance of equipment assigned to the department;
3. The inspection of all Borough owned schools, docks and other marine facilities and other public facilities owned by the Borough or for which it has contractually assumed maintenance and repair responsibilities;
4. Regularly reporting to the Mayor the condition of all Borough owned buildings and other public facilities;
5. Annually preparing a report on the status and condition of all schools and related facilities for the Assembly and School Board;

6. Preparing a 6 year capital projects plan to accomplish the Borough needs for major and minor repair, rehabilitation and replacement of Borough owned buildings and other public facilities including school facilities;
7. Providing such review of the design, plans, maps and specifications for public works projects as may be requested by the Mayor or Administrator;
8. Coordinating with the Borough's engineer and contractors on public works projects as may be needed;
9. Performing or supervising minor construction projects;
10. Other functions assigned by the Mayor.

(Ord. 97-5, Sec. 2.40.020)

## TITLE 2

### ADMINISTRATION

#### Chapter 2.50 - Health Department

**Section:**

2.50.010 Health Department Established, Functions.

**2.50.010 Health Department Established, Functions.**

There is established the Borough Health Department. The head of the Health Department shall be appointed by the Mayor. Pursuant to powers assumed by the Aleutians East Borough, the department is responsible for providing mental and physical health. The department shall provide to the Aleutians East Borough Health Board information requested by the Board which is not required by law, regulation or ordinance to be kept confidential.

(Ord. 91-9, Sec. 2.50.010)

## TITLE 2

### ADMINISTRATION

#### Chapter 2.51 -- Aleutians East Borough Health Board

##### **Sections:**

2.51.010	Board Established, Purpose.
2.51.020	Members Qualifications.
2.51.030	Term.
2.51.040	Appointments.
2.51.050	Organization.
2.51.060	Procedures.
2.51.070	Meetings.
2.51.080	Expenses, Reimbursement.

##### **2.51.010 Board Established, Purpose.**

- (a) There is established the Aleutians East Borough Health Board consisting of six regular members and up to six additional members.
- (b) The Board shall monitor and evaluate the delivery of health services within the Borough, including services not delivered by the Borough, and shall make such recommendations as it finds appropriate to the Health Department, Mayor and the Assembly. The Health Director will work as staff to the Board. The Board shall review the budget proposed by the Health Department. It shall review and make recommendations of proposed Health Department policies.

(Ord. 91-9, Sec. 2.51.010)

##### **2.51.020 Members, Qualifications.**

- (a) Members of the Board shall be classified as regular members or alternate members. The classification of a member shall be determined and stated by the Mayor when appointing a member to the Board.
- (b) There shall be one regular member from each of the six communities within the Borough.
- (c) For the reason of population, the level of the delivery of publicly provided health services or for other reasons determined to be appropriate by the Mayor, the Mayor may appoint from any one or more of the six communities in the Borough as additional regular member to represent the community. Additional regular members serve a term of three years. The

first year of the term of a person appointed as an additional regular member runs until December 31 of the year of the appointment.

- (d) The Mayor may appoint an alternate member from each of the six communities. The alternate member will serve a term ending on the same date as the regular member appointed by the community. An alternate member may attend Board meetings and exercise all rights of a regular Board member when the seat of the regular Board member is vacant or when the regular member of the community is unable to attend a Board meeting.
- (e) Board members must be bona fide residents of the Borough and of the community from which they are appointed at the time of appointment and during their tenure on the Board.

(Ord. 91-9, Sec. 2.51.020)

**2.51.030 Term.**

The term of regular members of the Board shall be three years with the term of two seats ending each year. Terms shall begin on January 1. Terms ending in a particular year shall end on December 31; provided, regular members and alternates continue to serve after the end of their term until a replacement has been appointed and takes their seat.

(Ord. 91-9, Sec. 2.51.030)

**2.51.040 Appointments.**

Appointments to the Board shall be made by the Mayor and confirmed by the Assembly. The Mayor shall consider recommendations made by the City Council of a community or by a recognized community group.

(Ord. 91-9, Sec. 2.51.040)

**2.51.050 Organization.**

At the first meeting after January 1 at which one or more new members or reappointed members attend, the Board shall organize and elect from its membership a chair, a vice chair and a secretary.

(Ord. 91-9, Sec. 2.51.050)

**2.51.060 Procedures.**

The Board procedures shall be governed by the most current version of Roberts Rules of Order with such additions or changes as the Board or the Assembly

adopts. A quorum shall be the number of members exceeding one-half the total membership of the Board. The total membership of the Board is the six regular members plus a number equal to the number of regular additional member seats as are filled at the time the determination is made.

(Ord. 91-9, Sec. 2.51.060)

**2.51.070 Meetings.**

The Board shall meet at least once each quarter and may meet by teleconference. All regular and special Board meetings and meetings of any subcommittee of the Board shall comply with the Alaska Open Meetings statute, AS 44.62.310. The Board shall maintain minutes of its meetings and shall provide the Mayor and Assembly a copy of both draft and approved minutes.

(Ord. 91-9, Sec. 2.51.070)

**2.51.080 Expenses Reimbursement.**

Board members shall receive reimbursement for expenses and per diem at the same rate as provided for Assembly members unless the Assembly by resolution establishes a different rate for the Board; provided, no expenses may be reimbursed unless there is an appropriation or other Assembly authorization for such expense. No expense or per diem may be paid to any Board member unless the expense is first approved by the Mayor or is incurred in accordance with procedures established by the Mayor. Expenses of the Board for such things as teleconferencing, copying and distribution of materials to Board members shall be an expense of the Health Department but may be incurred only to the extent that funds within the Department have been appropriated or allocated to such purposes.

(Ord. 91-9, Sec. 2.51.080)

TITLE 2

ADMINISTRATIVE

CHAPTER 2.60 -- NATURAL RESOURCES DEPARTMENT

**Sections:**

- 2.60.010 Natural Resources Department - Established
- 2.60.120 Natural Resources Department - Functions

**2.60.010 Natural Resources Department - Established.**

There is established the Borough Natural Resources Department. The head of the department shall be appointed by and serve at the pleasure of the mayor and shall be known as the director of the department. Employees of the department shall be hired and terminated by or with the approval of the mayor and shall work under the direction and supervision of the director.

(Ord. 92-13, Sec. 2.60.010)

**2.60.120 Natural Resources Department - Functions.**

The department is responsible for:

- (a) the identification of land and interests in land that are appropriate for selection by the Borough under any entitlement.
- (b) The acquisition, management, and disposal of land and interests in land,
- (c) The study, investigation, and monitoring of fish, wildlife and other natural resources within the Borough.
- (d) The promotion of development, use, and renewal of natural resources within the Borough.
- (e) The provision of assistance and guidance, to other responsible parties, on the protection, development, management, and renewal of natural resources within or affecting the Borough, and
- (f) Maximizing benefits to the Borough and its residents from the presence, development, use and renewal of natural resources within and affecting the Borough.

(Ord. 92-13, Sec. 2.60.020)

## Title 3

### Purchasing Procedures

#### Chapters:

3.02 Purchasing Procedures

## Title 3

### Purchasing Procedures General Provisions

#### **Sections:**

- 3.02.010 Definitions
- 3.02.020 Purpose and Interpretation
- 3.02.030 Authority of Purchasing Officer
- 3.02.040 Centralization of Procurement Authority
- 3.02.050 Standard Specifications
- 3.02.060 Contract Authority, in General
- 3.02.070 Contracts Enforceable Against the Borough
- 3.02.080 Availability of Funds
- 3.02.090 Execution of Contracts
- 3.02.100 Assembly Approval of Contracts
- 3.02.110 Contract Amendments; Assembly Approval
- 3.02.120 Multiyear Contracts
- 3.02.130 Competitive Sealed Bidding Required: exceptions
- 3.02.140 Solicitation and Acceptance of Bids
- 3.02.150 Award Only to Qualified Responsive and Responsible Bidder
- 3.02.160 Local Bidder Preference Award
- 3.02.170 Procedures for Award
- 3.02.180 Waiver of Irregularities
- 3.02.190 Competitive Sealed Proposals; Negotiated Procurement
- 3.02.200 Open Market Procedure
- 3.02.210 Proprietary Requirements
- 3.02.220 Emergency Procurements
- 3.02.230 Professional Services
- 3.02.240 Award of Contracts or Purchases Without Competitive Bids
- 3.02.250 Bonds
- 3.02.260 Waiver of Formal Bidding Procedures
- 3.02.270 Appeals
- 3.02.280 Assembly Report
- 3.02.290 Intergovernment Contracts
- 3.02.300 Borough Preference Policy
- 3.02.310 Contracts; Employment Preferences
- 3.02.320 Refund for Local Hire
- 3.02.330 General Provisions
- 3.02.340 Definitions
- 3.02.350 General Provisions
- 3.02.360 Grant Administration

### **3.02.010 Definitions**

- (a) For the purposes of this chapter, the following definitions shall apply unless the content clearly indicates or requires a different meaning.
- (1) “Agency” means any department or office of the borough.
  - (2) “Agency head” means the department director or other chief administrative officer of an agency.
  - (3) “Architectural-engineering-land surveying services” means those professional services within the scope of the practice of architecture, engineering or land surveying, as defined by Alaska law.
  - (4) “Certifying officer” means the Finance Director of the borough or the officer’s designee.
  - (5) “Construction” means the on-site erection, alteration, extension or repair of improvements to real property, including painting or redecorating buildings, highways or other improvements, under contract for the borough, but does not include:
    - i. routine operation, repair or maintenance of existing buildings or improvements which are recurring services nominally performed in connection with the ownership, occupancy or use of the building or improvement;
    - ii. building or installation of an improvement to real property by the property owner when the improvement is expressly required by this code.
  - (6) “Contract” means all types of borough agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, professional services or construction, but does not include collective bargaining agreements, subdivision agreements, water or sewer main extension agreements or other similar agreements in which the owner or a person acting under the direction of the owner of real property agrees to construct improvements of a public nature on property to be dedicated to the borough.
  - (7) “Contract amendment” means any change in the terms of a contract accomplished by agreement of the parties, including change orders.
  - (8) “Person” means any individual, or any business or non-business association recognized by law, whether or not organized for profit or any governmental unit or entity.

- (9) “professional service” means those advisory, consulting, architectural, engineering, research or developmental services which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise or training gained by formal studies or experience.
- (10) “Purchasing officer” means the borough administrator or the borough administrator’s designee.
- (11) “Services” means those services of a non-professional nature which are described within contract specifications and which are needed or desired by the municipality.
- (12) “Supplies” means any tangible personal property.

**3.02.020 Purpose and Interpretation**

- (a) The purposes of this chapter are:
  - (1) To implement code provisions requiring that the assembly by ordinance provide for competitive bidding for goods and services and for exceptions to the bidding process;
  - (2) To maximize fair and open competition and to discourage collusive bidding for borough contracts consistent with the efficient operation of the municipal government; and
  - (3) To maximize the purchasing value of borough funds.
- (b) This title shall be construed and applied to promote the purposes stated in this section.

**3.02.030 Authority of Purchasing Officer**

- (a) Except as this code provides otherwise, the purchasing officer shall:
  - (1) Procure all supplies, services and construction required by the borough;
  - (2) Sell, trade or otherwise dispose of surplus supplies belonging to the borough;
  - (3) Maintain all records pertaining to the procurement of supplies, services and construction, and the disposal of supplies by the borough;
  - (4) Join with other units of government in cooperative purchasing ventures where the best interests of the borough would be served;

- (5) Compile and maintain, to the extent practicable, bidders' and vendors' lists for supplies, services, professional services and construction utilized by the borough;
  - (6) Compile and maintain a log of all contracts awarded for supplies, services, professional services or construction, together with any amendments to the contracts.
- (b) The purchasing officer shall perform any other authorities and responsibilities which this chapter assigns the purchasing officer.

**3.02.040 Centralization of Procurement Authority**

Except as this code provides otherwise, all rights, powers and authority pertaining to the procurement of supplies, services and construction required by the borough are vested in the purchasing officer.

**3.02.050 Standard Specifications**

- (a) Every using agency shall propose, insofar as practicable, standard specifications for the supplies, services, professional services and construction that it requires.
- (b) The purchasing officer shall adopt standard specifications for supplies, services and construction wherever practicable. The standard specifications adopted by the purchasing officer shall be based upon those proposed by using agencies, modified as necessary to maximize clarity, uniformity and open competition, while effectively serving the needs of the using agencies and the efficient operation of the municipal government.

**3.02.060 Contract Authority, in General**

The borough may, pursuant to an award in accordance with this chapter, contract with any person to acquire any supplies, services, professional services or construction required by the borough.

**3.02.070 Contracts Enforceable Against the Borough**

A contract for supplies, services, professional services or construction, or any amendment to the contract, may not be enforced against the borough unless its terms have been approved in accordance with this chapter, and unless the contract or amendment to the contract has been set forth in writing, executed in accordance with this chapter.

**3.02.080 Availability of Funds**

A contract for supplies, services or construction may not be approved or executed unless the certifying officer has certified in writing that funds are available for the borough's performance under the contract.

### **3.02.090 Execution of Contracts**

All borough contracts for supplies, services, professional services and construction, and any amendments to the contracts shall be signed by the borough administrator.

### **3.02.100 Assembly Approval of Contracts**

- (a) A contract or contract amendment for supplies, services, professional services, or construction which obligates the borough to pay more than \$100,000 may not be executed unless the assembly has approved a memorandum setting forth the essential terms of the contract. To the extent applicable for particular contracts, the following essential terms shall be set forth:
  - (1) The identity of the contractor;
  - (2) The contract price;
  - (3) The nature and quantity of the performance that the borough shall receive under the contract;
  - (4) The using agency; and
  - (5) The time for performance under the contract.
- (b) If contracts are awarded to more than one bidder pursuant to an invitation for bids, contracts with different bidders shall be considered separately for purposes of determining the application of subsection (a). If any contract to be awarded under a given bid is subject to assembly approval, the award of other contracts pursuant to the same invitation for bids may, at the discretion of the purchasing officer, be delayed pending assembly approval.
- (c) A grant to a governmental or quasi-governmental agency or to a private nonprofit corporation under the provisions of this chapter for more than \$100,000 may not be issued unless the assembly has approved a memorandum setting forth:
  - (1) The identity of the grantee;
  - (2) The grant amount;
  - (3) The purpose to which grant funds are to be devoted; and
  - (4) The agency charged with administration of the grant.

### **3.02.110 Contract Amendments; Assembly Approval**

- (a) Contract amendments shall not be used to avoid procurement by the competitive procedures established under this title.
- (b) Except for emergency procurements authorized under this chapter, contracts for supplies, services, professional services and construction may be amended by the purchasing officer with the approval of the assembly, as set forth in this chapter, only for the following reasons:
  - (1) To change the quantity ordered or date of delivery under contract for supplies, where necessary to meet unforeseen borough requirements;
  - (2) To change the quantity of services or professional services to be rendered, or to change the scope of a project under a contract for services or professional services where necessary to meet unforeseen changes in borough requirements;
  - (3) To change the scope of a project or the scope of services or professional services under a construction contract to meet unforeseen borough requirements, or to change the specifications under a construction contract because unforeseen conditions render the original specifications impracticable;
  - (4) To change the time for completing a project under a contract for services, professional services, or construction;
  - (5) To correct an error in contract specifications made by the borough in good faith or to resolve a good faith dispute between the borough and a contractor as to a party's rights and obligations under the contract; and
  - (6) To change administrative provisions of a contract without materially altering the contract terms governing the quantity or quality of supplies, services, professional services or construction furnished the borough.

### **3.02.120 Multiyear Contracts**

- (a) The borough may enter into contracts for a term exceeding one year provided that funds for the borough's performance during the fiscal year in which the contract term commences are certified in writing by the finance director as being available.
- (b) The borough's payment and performance obligations for succeeding fiscal years after issue of a multiyear contract shall be subject to the availability of funds lawfully appropriated therefor.

- (c) Contracts for construction are not to be construed as multiyear contracts; however, lawfully appropriated funds must be available for the term of the contract.

### **3.02.130 Competitive Sealed Bidding Required: Exceptions**

Unless otherwise authorized under this chapter or other provisions of law, all borough contracts in excess of One Hundred Thousand Dollars (\$100,000.00) for supplies, services and construction shall be awarded by competitive sealed bidding.

### **3.02.140 Solicitation and Acceptance of Bids**

- (a) The purchasing officer shall initiate competitive sealed bidding by issuing an invitation for bids. The invitation for bids shall state, or incorporate by reference, all specifications and contractual terms and conditions applicable to the procurement.
- (b) Public notice of the invitation for bids shall be published at least once in a newspaper of general circulation in the borough at least 14 calendar days before the last day on which bids shall be accepted. Notice shall also be posted by the borough clerk's office. The contents of the notice shall be sufficient to inform interested readers of the general nature of the supplies, services or construction being procured and the procedure for submitting a bid. The purchasing officer shall mail or otherwise deliver notices to a sufficient number of prospective bidders from a current bidders or vendors mailing list maintained in the purchasing office to afford equitable opportunity for competition. The failure of any person to receive notice under this subsection shall not affect the validity of any award or contract.
- (c) The purchasing officer shall establish and maintain a list of contractors who indicate a wish to provide goods or services to the borough. Upon an invitation for bids, each contractor on the list with the indicated necessary qualifications to bid shall receive a notice of the invitation.
- (d) The purchasing officer may provide for a pre-bid conference to be held at least seven calendar days before the last day for submitting bids. At the pre-bid conference or at other times deemed appropriate by the purchasing office, the terms of an invitation for bids may be modified or interpreted only by written addenda issued by the purchasing officer. Addenda to bids shall be sent to each recipient of the original bid documents. Only a bid acknowledging receipt of all addenda may be considered responsive, unless the addendum, in the opinion of the purchasing officer, would have no material effect on the terms of the bid.
- (e) Sealed bids shall be designated as such on the outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the invitation for bids. Bids not submitted at the proper place or within the

time specified shall not be opened or considered and shall be returned to the respective bidders.

- (f) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Any bidder, prior to award, may review bids after the purchasing officer has tabulated or summarized them. The purchasing officer shall tabulate the amount of each bid and shall record other information as may be necessary or desirable for evaluation together with the name of each bidder. The tabulation shall be open to public inspection, and a copy of the tabulation shall be furnished to each bidder upon request.
- (g) Bids shall be accepted unconditionally without alteration or correction. For purposes of determining the low bidder and the responsiveness of bids, no criteria except those set forth in the invitation for bids, including all specifications and addenda, may be used.

**3.02.150 Award Only to Qualified Responsive and Responsible Bidder**

- (a) A contract award under this chapter shall be made only to a qualified, responsive and responsible bidder. The purchasing officer shall determine whether a bidder is qualified, responsive and responsible based on:
  - (1) The skill and experience demonstrated by the bidder in performing contracts of a similar nature;
  - (2) The bidder's record of honesty and integrity;
  - (3) The bidder's capacity to perform in terms of facilities, personnel and financing;
  - (4) At all times the interests of the borough shall be recognized in awarding bids.

**3.02.160 Local Bidder Preference Award**

- (a) A contract or purchase shall be awarded to a local bidder where the bid by such local bidder is, in all material respects, comparable to the lowest responsible non-local bid if the amount bid by such local bidder does not exceed the lowest non-local bid by more than the following percentages, unless such an award is contrary to state or federal law or regulation, or unless the assembly, at its discretion, determines prior to giving notice soliciting bids that the provisions of this section shall not apply to the contract or purchases:

*Nonlocal bid is:*  
\$0-\$5,000,000.00  
Over \$5,000,000.00

*Local bid is not more than:*  
5 per cent higher than non-local bid  
2.5 per cent higher than non-local bid

- (b) “Local bidder,” for purposes of this section, means a person or firm who:
  - (1) Holds a current Alaska business license to provide such goods or services, and such other Alaska regulatory licenses as are required to provide such goods or services;
  - (2) Submits a bid for goods or services under the name appearing on the person’s or firm’s current Alaska business license;
  - (3) Has maintained a place of business within the boundaries of the Aleutians East Borough for a period of six (6) months immediately preceding the date of the bid; and
  - (4) Is not delinquent in the payment of any taxes, charges, or assessments owing to the Aleutians East Borough on account of that business.
- (c) The borough administrator may require such documentation or verification by the person or firm claiming to be a local bidder as is deemed necessary to establish the requirements of this section.

**3.02.170 Procedures for Award**

- (a) Contracts shall be awarded by written notice issued by the purchasing officer to the lowest qualified, responsive and responsible bidder, provided that, if the lowest bids are approximately equal, that is, within the lesser of \$2,000 or 5 percent of each other, preference may be given to local bidders who maintain and operate businesses within the boundaries of the borough.
- (b) The borough may reject any or all bids if the borough administrator determines that it is in the best interest of the borough.
- (c) If the lowest qualified, responsive and responsible bid exceeds the amount of funds certified by the finance director to be available for the procurement, and if sufficient additional funds are not made available, the scope of the procurement may be reduced to bring its estimated cost within the amount of available funds. The purchasing officer shall issue a new invitation for bids for the reduced procurement, or, upon finding that the efficient operation of the borough government requires that the contract be awarded without delay, and the purchasing officer may negotiate with the three lowest qualified, responsive and responsible bidders, and may award, or recommend to the assembly for award, the reduced contract to the best negotiated proposal.

**3.02.180 Waiver of Irregularities**

The borough administrator shall have the authority to waive irregularities on any and all bids, except that timeliness and manual signature requirements shall not be waived.

### **3.02.190 Competitive Sealed Proposals; Negotiated Procurement**

- (a) If the purchasing officer determines that use of competitive sealed bidding is not practicable, the borough may procure supplies, services, or construction by competitive sealed proposals under this section.
- (b) The purchasing officer shall solicit competitive sealed proposals by issuing a request for proposals. The request for proposals shall state, or incorporate by reference, all specifications and contractual terms and conditions to which a proposal shall respond, and shall state the factors to be considered in evaluating proposals and the relative importance of those factors. Public notice of a request for proposals shall be given as deemed appropriate by the purchasing officer. One or more pre-proposal conferences may be held by the purchasing officer. A request for proposals may be modified or interpreted only in written addenda issued by the purchasing officer.
- (c) Sealed proposals shall be designated as such on an outer envelope and shall be submitted by mail or in person at the place, and no later than the time specified in the request for proposals. Proposals not submitted at the place or within the time specified shall not be opened or considered.
- (d) Proposals shall be received at the time and place designated in the request for proposals, and shall be opened so as to avoid disclosing their contents to competing proposers during the process of negotiation. Proposals, tabulations and associated documentation submitted in response to a proposal requested pursuant to this section may not be disclosed to the public or to proposers until the issuance of a written notice of tentative award of a contract to the apparent successful proposer.
- (e) In the manner provided in the request for proposals, the purchasing officer may negotiate with those qualified and responsible proponents whose proposals are determined by the purchasing officer to be reasonably responsive to the request for proposals. Negotiations shall be used to clarify and assure full understanding of the requirements of the request for proposals. The purchasing officer may permit proponents to revise their proposals after submission and prior to award to obtain best and final offers. Proponents deemed eligible for negotiations shall be treated equally regarding any opportunity to discuss and revise proposals. In conducting negotiations and requesting revisions, neither the purchasing officer, nor any other borough officer or employee shall disclose any information derived from proposals of competing proponents.
- (f) Awards shall be made by written notice to the qualified and responsible proponent whose final proposal is determined to be most advantageous to the borough. No criteria other than those set forth in the request for proposals may be used in proposal evaluation. If the borough administrator determines that it

is in the best interest of the borough to do so, the borough may reject any or all proposals.

### **3.02.200 Open Market Procedure**

- (a) The borough administrator may procure all supplies, services, professional services and construction having an estimated value of not more than one hundred thousand dollars (\$100,000.00) on the open market without formal advertising or other formal bid procedures. The borough administrator shall approve a written policy for the implementation of this section.
- (b) Whenever practicable, at least three informal bids or quotations shall be solicited for any procurement under this section. The solicitation may be either oral or written, and shall be in a form reasonably calculated to yield the lowest responsive bid by a qualified and responsible bidder.
- (c) Awards, where practicable, shall be made to the lowest responsive, qualified and responsible bidder. The purchasing officer shall keep a record of all open market bids received and awards made on the bids.
- (d) When requested by the assembly, the purchasing officer shall provide a report to the assembly of all procurements under this section.

### **3.02.210 Proprietary Requirements**

- (a) The borough may award a contract for supplies, services or construction without competition where the purchasing officer determines in writing that the borough's requirements reasonably limit the source for the supplies, services or construction to one person.
- (b) When requested by the assembly, the purchasing officer shall provide a report to the assembly of all procurements under this section.

### **3.02.220 Emergency Procurements**

The borough may award a contract for supplies, services, professional services, or construction without competition, formal advertising or other formal procedure where the borough administrator determines in writing that an emergency threatening the public health, safety, property or welfare requires that the contract be awarded without delay. A report on an emergency contract shall be made to the assembly no later than the next regular meeting following award of the contract.

### **3.02.230 Professional Services**

- (a) Except as authorized by this chapter, professional services shall be procured in accordance with the terms of this section.

- (b) Persons interested in providing professional services for the borough may submit statements of qualifications to the purchasing office.
- (c) To the extent practicable, notice of the need for professional services shall be given by the purchasing office. The notice shall describe the services required and shall list the type of information and data required of each person submitting a proposal.
- (d) The agency head and the purchasing officer may conduct discussions with any person who has submitted a proposal to determine the person's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other persons.
- (e) Award shall be made to the person determined by the agency head and the purchasing officer to be the best qualified, and shall be for an amount of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified person, negotiations shall be formally terminated with that person. If proposals were submitted by one or more other persons determined to be qualified, negotiations may be conducted with the persons, in order of their respective qualification ranking. The contract may be awarded to the person then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.
- (f) Legal services may be procured by direct negotiation with an attorney or law firm qualified to handle the type of legal problems presented. No negotiations or contracts for the services of legal counsel may be pursued or awarded without the prior approval in writing of the borough administrator.

**3.02.240 Award of Contracts or Purchases Without Competitive Bids**

Unless otherwise required by the assembly, contracts and purchases may be made without competitive bidding for the following:

- (a) For professional or specialized services such as, but not limited to, services rendered by accountants, architects, appraisers, engineers, land surveyors, financial consultants, attorneys, planning consultants, economists, computer programmers and system analysts, insurance consultants and risk analysts, and other specialized consultants, which services shall be purchased as provided in 3.02.230 Professional Services Contracts.
- (b) For purchase of insurance.
- (c) For contractual services purchased from a public utility at a rate determined by law, regulation or ordinance.
- (d) For supplies, materials, equipment, construction, or contractual services which can be furnished only by a single provider or dealer or which have a uniform price wherever bought.

- (e) When calling for and obtaining bids on a competitive basis is unavailable, impractical or impossible, including, but not limited to, when rates are set by statute or ordinance, or when like items, equipment or vessels are traded in, or when used items, equipment or vessels are being purchased.
- (f) For work and services on public works or projects performed by employees of the borough.
- (g) When it is advantageous to the borough to enter into a contract or purchase with a bidder for the same supplies, materials, equipment, construction or contractual services, such bidder is providing another Alaskan local government, the state of Alaska, or the United States when such supplies, materials, equipment, construction or contractual services are being provided to the other governmental unit on the basis of formal competitive sealed bids submitted, and when the borough contract is on substantially the same terms as those bid; or to a contract with or through such other governmental unit so that the benefit of the responsible bid accrues to the borough.
- (h) Supplies, materials, equipment, construction or contractual services which must be purchased from a specific source in order to prevent incompatibility with previously purchased supplies, materials, equipment, construction or contractual services. For purposes of this paragraph, the term "incompatibility" is defined as the inability to (1) interconnect, combine, interchange or join; or (2) that which causes or necessitates maintenance expertise or training where such acquisition would result in substantial duplication. Any purchase which is to be excluded from competitive bidding by the authority of this paragraph which exceeds one hundred thousand dollars (\$100,000) must be first approved by the assembly.
- (i) When competitive procedures have been followed but only one bid is received or no bids are received. In such a case, the borough administrator may proceed to negotiate with the single bidder as to price, scope of work or other terms or conditions or, if no bids were received, to have the supplies, materials, equipment, construction or contractual services purchased or performed without further competitive bidding or quotation.
- (j) For high technology procurements including, but not limited to, computer systems, provided such purchases are made in accordance with 3.02.230, Professional Services Contracts.

### **3.02.250 Bonds**

- (a) The purchasing officer may require that persons submitting bids pursuant to this chapter accompany their bids with a bid bond in an amount and in a form acceptable to the purchasing officer. The bond shall be issued by a company qualified by law to do business as a surety in the state of Alaska, or shall be in the form of a cashier's check or cash deposit. A condition of the bond shall be

that if the bidder receives the award, the bidder shall enter into a contract with the borough.

- (b) If a requirement for a performance and payment bond is included in the terms of the invitation to bid, the purchasing officer may require that any person awarded a borough contract furnish a performance and payment bond, issued by a company qualified to do business as a surety in the state. The bond shall be in an amount determined by the purchasing officer and in a form approved by the borough attorney. The bonds shall, at a minimum, guarantee the full and faithful performance of all contract obligations and the payment of all labor and materials to be used under the contract.
- (c) The borough administrator may grant an exemption from bonds pursuant to AS 36.25.025.

### **3.02.260 Waiver of Formal Bidding Procedures**

- (a) The borough administrator may waive, in writing, some or all of the formal bidding procedures of this chapter when there is not sufficient time to comply with the waived requirements, or the best interests of the borough shall be served by the waiver.
- (b) All contracts for which formal procedures are waived under this section shall be reported to the assembly. The report shall contain the information described in this chapter and shall state the reason for proceeding under this section.

### **3.02.270 Appeals**

- (a) *Bids.* Within five (5) days (Saturdays, Sundays and borough holidays excluded) of issuance of a notice of award or a notice of intent to award, an unsuccessful bidder may appeal a bid award to the assembly by delivering a written protest to the borough clerk.
- (b) *Requests for proposals.* Within five (5) days (Saturdays, Sundays and borough holidays excluded) of issuance of a notice of award or a notice of intent to award, an unsuccessful proposer may appeal a proposal award to the assembly by delivering a written protest to the borough clerk.
- (c) *Deposit Required.* A written protest under (a) and (b) must be delivered along with an appeal deposit of five (5) percent of the low bid or proposal cost, with a minimum of two thousand five hundred dollars (\$2,500.00). If the protest is upheld by the assembly the deposit will be returned. If the protest is rejected, the deposit will be forfeited to the borough.
- (d) *Protests.* A protest under (a) or (b) of this section must state which provision of the Aleutian East Borough Code is alleged to have been violated or misapplied by the proposed award. The protest must state the basis for the

protest, explaining how the conduct described establishes that an error has occurred. It must also include copies of any documents or other information which the protesting party believes shows that an error has been made.

- (e) *Effect of Protest.* If a timely protest is filed, the award will be suspended until the assembly has met and issued a decision. Any award which is timely protested must be confirmed by approval or rejection of the award by the assembly after the appeal is decided.

### **3.02.280 Assembly Report**

- (a) In a contract for the purchase of any supplies, services, professional services or construction, if the borough administrator waives formal bidding procedures or if the contract is awarded to other than the low bidder, a report on the procurement contract shall be made to the assembly no later than the next regular meeting following the award of the contract.
- (b) A report to the assembly shall include;
  - (1) The identity of the contractor;
  - (2) The contract price;
  - (3) The nature and quantity of the performance that the borough shall receive under the contract;
  - (4) The using agency;
  - (5) The time for performance under the contract; and
  - (6) A description of the waiver, emergency or other procedure followed.

### **3.02.290 Intergovernment Contracts**

Notwithstanding the other provisions of this chapter, the borough may enter into procurement agreements with the federal, state or other municipal governments when it is in the best interest of the borough to do so.

### **3.02.300 Borough Preference Policy**

It is the policy of the borough to give preference to local residents, workers, businesses, contractors, producers and dealers to the extent consistent with the law and interests of the public.

### **3.02.310 Contracts; Employment Preferences**

In the performance of contracts awarded by the borough for construction, repairs, preliminary surveys, and engineering studies for maintenance work, 95 percent of

residents shall be employed where the residents are available and qualified. If ten or fewer persons are employed under the contract, then 90 percent of residents shall be employed where available and qualified. In all cases of public works projects, preference shall be given to residents of the borough and of the state to the extent authorized by law.

### **3.02.320 Refund for Local Hire**

- (a) Where the entire funding for a project is obtained from borough property tax revenues, the borough administrator shall, for all contracts awarded under the formal competitive bidding procedures in this chapter, on the contractor's request, refund to the contractor 5 percent of the cost of salary paid by the contractor directly or through the subcontractors to residents of the borough, who were directly employed on the project for which the referenced contract applies.
- (b) Refunds may be requested at the same time as periodic payments, if any, are authorized under the contract. The contractor shall detail all employee costs for which refunds are requested and shall submit supporting documentation as required by the finance director.
- (c) In this section, "bona fide borough residents" means an employee of the contractor, who during the time the employee performed services to the contractor in connection with performance of the contract work was a registered voter in the Aleutians East Borough, or was, by virtue of the employee's residency, qualified to become a registered voter of the Aleutians East Borough during that time.

### **3.02.330 General Provisions**

- (a) The assembly may appropriate funds to nonprofit service organizations. Any funds appropriate to nonprofit service organizations shall be expended only for a public purpose permitted by Article IX, Section 6 of the constitution of the state of Alaska, and pursuant to a power granted to or assumed by the borough. The organization shall be a nonprofit corporation organized under the laws of the state, whose purpose is:
  - (1) To foster the general community welfare of the borough; and
  - (2) To serve as a funding agency, the primary purpose of which is to channel money or services to other nonprofit service organizations whose purpose is to foster the general community welfare.
- (b) If the organization is a funding agency for other organizations it shall be specifically found to:

- (1) Have established fair and objective guidelines approved by the assembly for the disbursement of funds to other nonprofit service organizations;
  - (2) Follow a policy of forwarding funds or services only to those nonprofit service organizations which provide services designed for the benefit of the residents of the borough.
- (c) To qualify for an appropriation, an organization shall ensure that it:
- (1) Is organized to meet a certain need within the community;
  - (2) Has a program designed to meet that specific need;
  - (3) Is the best qualified organization within the community to meet the identified need;
  - (4) Has provided a functional work program, has a responsible organizational structure, and, in the case of previously existing organizations, can demonstrate a record of financial responsibility; and
  - (5) Has the capacity and willingness to account for moneys to establish that all moneys spent are spent only for the public purpose designated by the assembly and only pursuant to a power granted to or assumed by the municipality.
- (d) Funds which have been appropriated by the assembly to nonprofit organizations for the benefit and welfare of the public shall be controlled by regulations proposed by the administrator. Funds appropriated to nonprofit service organizations shall be subject in all cases to audit by the borough, and for nonprofit organizations which require independent financial audits, a copy of the audits shall be furnished to the borough.

### **3.02.340 Definitions**

- (a) For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (1) “Grant” means the furnishing by the state and federal government of financial or other assistance to the borough to implement a project or program authorized by law, excluding revenue-sharing programs, required compliance with terms and conditions under a grant agreement.
  - (2) “Grant agreement” means the contract document including, but not limited to, rules, regulations and laws pertaining to the grant, between the borough and the granting agency.

- (3) "Grantee" means the Aleutians East Borough.
- (4) "Granting agency" means the state and federal department administering the grant.
- (5) "Grantor" means the state and federal government agency offering the grant to the grantee.

**3.02.350 General Provisions**

- (a) The assembly shall appropriate funds and accept grant offers from state and federal granting agencies.
- (b) The assembly may authorize the mayor or borough administrator to enter into grant agreements.
- (c) The assembly may authorize the borough administrator to enter into contracts with incorporated entities, including organized cities, to assist the borough in performing under the terms and conditions of grant agreement.
- (d) The borough administrator shall establish policies and procedures under this chapter.

**3.02.360 Grant Administration**

- (a) Except as this code provides otherwise, all rights, powers and authority pertaining to grants are vested in the borough administrator.
- (b) The borough administrator or the borough administrator's designee shall administer all facets of grants from preapplication through final grant audit.
- (c) The borough administrator or the borough administrator's designee shall have the responsibility to assure full compliance by the borough with the terms and conditions of the grant agreement.

(Ord. 04-03, Chapter 3.02)

TITLE 4  
ELECTIONS

CHAPTERS

- 4.04      BOROUGH ELECTIONS - IN GENERAL
- 4.08      ELECTION OFFICIALS
- 4.12      CANDIDATES - NOMINATIONS
- 4.16      NOTICE OF ELECTIONS
- 4.20      ELECTION EQUIPMENT
- 4.24      ELECTION PROCEDURES
- 4.28      CANVASSING OF ELECTION RETURNS
- 4.32      ABSENTEE VOTING
- 4.36      CONTEST OF ELECTION
- 4.40      ELECTIONS BY MAIL

## TITLE 4

### ELECTION

#### Chapter 4.04 - General Provisions

#### **Sections**

4.04.010	Administration of Elections.
4.04.020	Voter Qualification.
4.04.030	General Election - Date.
4.04.040	Special Elections.
4.04.050	Election Expenses.
4.04.060	Time Off for Voting.
4.04.070	Majority Elections.
4.04.080	Polling Places.

#### **4.04.010 Administration of Elections.**

The borough clerk shall conduct all borough elections and may establish such specific rules and procedures as may be required to supplement the general rules set out in this title and in applicable statutes.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.04.010, part, 1987)

#### **4.04.020 Voter Qualification.**

A person may vote in a borough election only if the person is a United States citizen who is qualified to vote in state elections, has been a resident of the borough for thirty days immediately preceding the election, is registered to vote in state elections at a residence address within the borough and precinct in which the person seeks to vote at least 30 days before the borough election at which the person seeks to vote, and is not disqualified under Article V of the State Constitution. For purposes of this section, a person is qualified to vote in state elections if the person would be permitted to vote in a state election held on the same day as the borough election.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.04.020, part, 1987)

#### **4.04.030 General Election - Date.**

On the first Tuesday of October of each year a general borough election will be held for the election of persons to vacant assembly, school board and other vacant elective offices established by the assembly and for the determination of such other matters as may be placed on the ballot by the assembly or as may be required by law.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.04.030, part, 1987)

**4.04.040 Special Elections.**

- (a) The borough assembly, by resolution or ordinance, may order that a special election be held.
- (b) The clerk shall schedule and conduct a special election when the assembly fails to order a special election required by law or borough code. If applicable law or the borough code requires a special election for the purpose of conducting a runoff election or for the submission of an initiative or referendum, and the assembly has not adopted a special election resolution or ordinance by a date sufficient in advance of the last Tuesday upon which the election may be held in conformance with applicable law or the borough code to permit the clerk to meet applicable requirements for notice of the election, the clerk shall schedule and conduct the election on the last Tuesday upon which such election may be held.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.04.040, part, 1987)

**4.04.050 Election Expenses.**

The borough shall pay all necessary election expenses, including those of securing places for polls and providing ballot boxes, ballots, voting booths, screens, national and state flags, voting machines, ballot counters, other supplies, and the wages of election judges and clerks. Salaries for election judges and clerks appointed for the election shall be set by the mayor unless the assembly establishes such wages when it appoints the election judges. However, all expenses of conducting a recount pursuant to an election contest shall be paid by the candidate or voters contesting the election, unless the results of the election are changed by the recount. If the recount is conducted pursuant to a contest by more than one person, such persons shall be jointly and severally liable for the expenses of the recount. The minimum cost for a recount is \$250 per election district.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.04.050, part, 1987)

**4.04.060 Time Off for Voting.**

Any qualified voter who does not have sufficient time outside the voter's working hours within which to vote at any borough election may, without loss of pay, take off as much working time as will enable the voter to vote. If any employee has two consecutive hours in which to vote, either between the opening of the polls and the beginning of the voter's regular shift or between the end of the voter's regular working shift and the closing of the polls, the voter is deemed to have sufficient time outside working hours within which to vote.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.04.060, part, 1987)

**4.04.070 Majority Elections.**

- (a) If no candidate for the school board, assembly, or the office of mayor receives in excess of 40% of the votes cast for the seat for which the candidates are running, a runoff election shall be held between the two candidates receiving the greatest number of votes for the seat. Notice of a runoff election shall be published at least five days before the election.
- (b) The election of a candidate to any other elected office established by the borough shall be by a plurality vote.
- (c) If more than one undesignated seat is vacant on a body, the candidate receiving the most votes is elected to one seat, and the candidates receiving the next highest vote tally in descending order are elected to the remaining seats until all seats are filled. If seats are available that have different terms, the candidate receiving the most votes is elected to the seat with the longest term while candidates who are elected with fewer votes are elected to seats with the shorter terms, said seats being allocated on the basis of the number of votes received by the elected candidates, with the terms awarded being allocated in accordance with the relative standing of the candidates. No candidate for a school board or Assembly seat may be elected unless the candidate receives in excess of 40% of the votes cast for the seat.
- (d) or the purpose of determining whether a candidate for a school board or assembly seat has received in excess of 40% or more of the votes cast for the seat, the number of votes cast for the seat shall be determined by dividing all votes cast for all seats to which the candidate could be elected, by the number of seats to which the candidate could be elected. The result of this computation shall be divided into the number of votes cast for the candidate to determine the percentage of votes received by the candidate.
- (e) If more than one seat remains unfilled because no candidate received the requisite number of votes to be elected to the seat, the runoff election shall be for all seats that are unfilled for that reason. The runoff shall be between the number of candidates equal to the number of unfilled seats plus one. The candidates in the runoff election shall be the required number of unelected candidates receiving the most votes for the seat.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.04.070, part, 1987)

**4.04.080 Polling Places.**

The clerk shall establish a polling place for each precinct. In any precinct in which there is one or more city or distinct community that is not connected by

road to the regular polling place, the clerk may establish an auxiliary polling place in one or more of the other communities.

(Ord. 92-12 (amended Ord. 90-6) Sec. 4.04.080, part, 1987)

## TITLE 4

### ELECTIONS

#### Chapter 4.08 - Election Officials

##### **Sections**

4.08.010	Duties of Borough Clerk - General
4.08.020	Election Judges and Clerks
4.08.030	Filling Vacancies on Election Board
4.08.040	Oath
4.08.050	Canvass Committee

##### **4.08.010 Duties of Borough Clerk - General.**

- (a) The borough clerk shall perform the duties necessary for the conduct and administration of borough elections. The borough clerk may appoint assistant clerks for the purpose of assisting the borough clerk in the conduct and administration of borough elections, including the administration of in-person absentee voting.
- (b) The borough clerk may publish notices urging voter registration and may cooperate with the State of Alaska in encouraging borough residents to register and may register state voters when so authorized by the State of Alaska.

(Ord. 92-12 (amended Ord. 90-6) Sec. 4.08.010, part, 1987)

##### **4.08.020 Election Judges and Clerks.**

- (a) Before each borough election, the assembly shall appoint at least three judges for each precinct polling place and auxiliary polling place to constitute the election board for that polling place. For each polling place, the first person appointed by the assembly shall be the chair person for that board unless a different person is specifically designated by the assembly as the chair of that election board. The chair of the election board shall be primarily responsible for administering the election at that precinct polling place. The assembly may appoint two additional persons as election clerks for each precinct polling place. Two judges on each election board may also serve as election clerks. The borough clerk may appoint up to three additional election clerks at any polling place where necessary to facilitate the orderly conduct of the election or to relieve the judges or clerks of undue hardship.
- (b) Each judge or clerk must be a qualified voter of the borough and of the precinct for which appointed unless the clerk or assembly is unable to find a voter willing to serve.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.08.020, part, 1987)

**4.08.030 Filling Vacancies on Election Board.**

If an appointed judge or clerk fails to appear and subscribe to the oath on election day or becomes incapacitated during the time of the election or canvass, the remaining election board members present shall elect, by a majority voice vote, a qualified voter to fill the vacancy.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.08.030, part, 1987)

**4.08.040 Oath.**

(a) The borough clerk will choose an election judge from each election board to appear before the borough clerk or before any person authorized under AS 09.63.010 to administer oaths where the election judge shall affirm in writing the oath set forth in this section. If no person authorized to administer oaths is available in the area served by the polling place at which the person is to serve as an election judge, the oath may be affirmed in writing before two persons of voting age. This election judge shall then administer the same oath to all other election judges and clerks at the polling place of that board. The oath administered will be as follows:

I . . . . do solemnly swear that I will honestly and faithfully perform the duties of election judge (or clerk) according to law. I will endeavor to prevent fraud, deceit, or abuse in conducting the election. All of this I will perform to the best of my ability, so help me God.

(b) A person appointed by the borough clerk under section 4.08.010 as an assistant borough clerk for the election shall take the oath set out in subsection (a) before the borough clerk or shall submit to the borough clerk such a sworn oath in writing.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.08.040, part, 1987)

**4.08.050 Canvass Committee.**

The assembly shall appoint a canvass committee which will canvass all votes after the election judges have completed their tally of votes. The members of the canvass committee shall be qualified voters of the borough. In lieu of appointing private persons as members of the canvass committee, the assembly may declare itself to be the canvass committee.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.08.050, part, 1987)

## TITLE 4

### ELECTIONS

#### Chapter 4.12 - Candidates - Nominations

##### **Sections**

4.12.010	Candidates - Qualifications
4.12.020	Declaration of Candidacy - Form, Filing
4.12.030	Declaration of Candidacy - Time for Filing
4.12.040	Declaration of Candidacy - Record, Preservation
4.12.050	Declaration of Candidacy – Withdrawal
4.12.060	Conflict of Interest Statement Requirement.

##### **4.12.010 Candidates - Qualifications.**

- (a) No person may hold any elective office or be eligible to seek election thereto unless the person is a qualified voter of the borough and a resident of the district represented by the seat the person holds or seeks for not less than 30 consecutive days immediately preceding the date of the election. The member of a body who represents a district and who becomes a resident of another district within the borough continues to serve until the next regular election. A person who has been a resident of territory annexed to the borough or to a district is deemed to have resided in the borough or district during the time immediately preceding the annexation.
- (b) A qualified voter of the borough is a person who meets the requirements of section 4.04.020 of this title.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.12.010, part, 1987)

##### **4.12.020 Declaration of Candidacy - Form, Filing.**

A voter who is otherwise qualified may become a candidate for elected office by executing and filing a declaration of candidacy. The declaration must be on a form provided by the borough clerk and must be executed under oath before a person authorized to take oaths. The declaration must state, in substance:

- (a) The full name of the candidate and the manner in which the candidate wishes his or her name to appear on the ballot; provided nicknames not commonly derived from a given name of the person may not be used;
- (b) The full residence address of the candidate;

- (c) The full mailing address of the candidate;
- (d) The office or the body and seat for which the candidate is declaring;
- (e) That the candidate is a qualified voter and resident of the borough;
- (f) That the candidate will have been a resident of the borough for one year preceding the date of the election;
- (g) If the candidate is running for a seat on the school board, that the candidate is a resident of the district represented by the seat for which the candidate is filing. If the candidate seeks a seat on the borough assembly, that for a minimum of one year prior to the date of the election, the candidate has been a resident of the district represented by the seat for which the candidate is filing. If the candidate is filing for the office of mayor, that the candidate has been a resident of the borough for the three consecutive years immediately preceding the date of the election; for any other elected office, the clerk shall provide language that reflects the residency requirement, if any, for that office.
- (h) Any other information or statement requested by the borough clerk that is reasonably necessary to administer the declaration of candidacy process.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.12.020, part, 1987)

**4.12.030 Declaration of Candidacy - Time for Filing.**

- (a) Not earlier than 45 days nor later than 30 days prior to the date of the election, a candidate may file a declaration of candidacy with the borough clerk or an assistant borough clerk appointed for the purpose of the election.
- (b) A declaration of candidacy may be filed by facsimile transmission and is effective if the following conditions are met:
  - (1) The facsimile is received by the borough clerk or an assistant borough clerk appointed for the purposes of the election within the period prescribed in subsection (a).
  - (2) The facsimile is legible and there is no question regarding any part of the declaration.
  - (3) The original declaration is postmarked on a day that falls within the period set out in subsection (a), and the original is received by the borough clerk or an assistant borough clerk appointed for the purposes of the election not more than 3 business days following the last day upon which declarations may be filed under subsection (a).

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.12.030, part, 1987)

**4.12.040 Declaration of Candidacy - Record, Preservation.**

- (a) The borough clerk shall maintain a record containing the name and address of every person for which a declaration of candidacy is filed whether or not timely filed, and the date, time, place and method of filing. If the last day upon which a filing may be received falls on a Saturday, Sunday or a holiday recognized by the borough, the last day for filing is extended through the next borough business day. A filing received after 5:00 p.m. on the last day for which a filing may be submitted is untimely and the name of the candidate may not be placed on the ballot for the office for which the untimely filing was made.
- (b) The declaration of candidacy of each candidate will be preserved by the borough clerk until the term for which the candidate declares has expired. The declaration of candidacy includes the original and the facsimile copy for candidates that filed by facsimile.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.12.040, part, 1987)

**4.12.050 Declaration of Candidacy - Withdrawal.**

A candidate who has filed a declaration of candidacy may withdraw the declaration by submitting a written and signed notice of withdrawal of candidacy to the borough clerk prior to the last day upon which a declaration of candidacy may be filed. A withdrawal may not be filed by facsimile. The name of a person who has filed a declaration of candidacy and submitted a timely withdrawal shall not appear on the ballot. The clerk, in the clerk's sole discretion, may remove from the ballot the name of a person who has filed a declaration of candidacy who has filed an untimely withdrawal of candidacy, but no such person has the right to have their name removed from the ballot.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.12.050, part, 1987)

**4.12.060 Conflict of Interest Statement Requirement.**

- A. No candidate's nomination petition for an elected municipal office may be accepted by the clerk unless the candidate has also filed a report of financial and business interest as required by Borough Code 1.28. In the event such petition has been accepted without such statement, the clerk shall return such items to the candidate.
- B. A write-in candidate who wins election shall execute a report of financial and business interest as required by Borough Code 1.28 prior to taking the oath of office.

- C. A person who has on file with the borough clerk a report of financial and business interest as required by Borough Code 1.28 for the current year shall not be required to file such a statement required under subsection A or B of this section. Candidates are required to comply with AS 15.13.010 through 15.13.130 as regards to election spending.

## TITLE 4

### ELECTIONS

#### Chapter 16 - Notice of Elections

##### **Sections:**

4.16.010	Notice of Election
4.16.020	Content of Notice
4.16.030	Notice of Filing
4.16.040	Defective Notice

##### **4.16.010 Notice of Election.**

The borough clerk shall give at least 20 days' notice of each general election and shall give 20 days' notice of each special election by posting notice thereof in two or more conspicuous places in each voting precinct of the borough and by publishing notice in a newspaper of general circulation within the borough. Notice may also be given by radio.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.16.010, part, 1987)

##### **4.16.020 Content of Notice.**

Notice of a general or special election must contain the following:

- (1) The type of election, whether general or special and the notice that it is a borough election,
- (2) The date of the election,
- (3) The seats to be filled and the propositions to be voted upon,
- (4) The time polling places will open and close,
- (5) The location of precinct polling places and auxiliary polling places, a boundary description of the voting precincts, or a reference to the Alaska Administrative Code sections establishing the precinct boundaries, or one or more maps depicting the boundaries of the voting precincts,
- (6) The location where voters may view or receive sample ballots,
- (7) The location or locations where voters may cast absentee ballots in person, and

(8) The address to which voters may write to request an absentee ballot.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.16.020, part, 1987)

**4.16.030 Notice of Filing.**

In addition to the notice required under section 20 of this chapter, the borough clerk may, in the clerk's sole discretion, provide notice of the seats to be filled and elected offices within the borough at the next general election, explain the procedures for becoming a candidate, the period for filing declarations of candidacy or nominating petitions, explaining the requirements for qualifying as a voter in the borough election, identifying the location of places where residents may register, urging residents to register and setting out such additional information as may facilitate residents in registering, voting, or becoming candidates for elected borough offices.

(Ord. 92-12, Sec. 4.16.030, part, 1987)

**4.16.040 Defective Notice.**

No defect in the notice required to be given under sections 10 and 20 of this chapter, except a defect in the date of the election, may be the basis, in whole or in part for an invalidation of the election or the election of any candidate to office or the passage or rejection of any proposition voted upon at the election. A defect in the notice of the date of the election may not be the basis of any invalidation if a corrective or corrected notice is given within a reasonable time prior to the election, even if such correction occurs less than 20 days prior to the election.

(Ord. 92-12, Sec. 4.16.040, part, 1987)

## TITLE 4

### ELECTIONS

#### Chapter 4.20 - Election Materials and Equipment

##### **Sections:**

4.20.010	Election Booths
4.20.020	Voter Instructions
4.20.030	Ballots--Printing and Inspection
4.20.040	Ballots--Form
4.20.050	Sample Ballots
4.20.060	Registration Index and Original Register--Distribution to Precinct Officials
4.20.070	Punch Card Ballots

##### **4.20.010 Election Booths.**

The borough clerk shall provide booths at each polling place, with appropriate supplies and conveniences to enable each voter to mark his or her ballot screened from observation. At least three sides of each booth shall be enclosed. Ballot boxes shall be placed outside of the voting booths within plain view of the judges, clerks, voters, and other persons at the polling places.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.20.010, part, 1987)

##### **4.20.020 Voter Instructions.**

The borough clerk shall furnish to each election board written instructions for the guidance of voters covering the following:

- (a) How to obtain ballots;
- (b) The manner for marking ballots;
- (c) The method for obtaining information;
- (d) The method for obtaining assistance in marking a ballot; and
- (e) How to procure new ballots to replace any ballot destroyed or spoiled by the voter.

The clerk will furnish a sufficient number of these instruction sheets to the election board in each precinct to permit voters who are waiting to vote to read the instructions.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.20.020, part, 1987)

**4.20.030                    Ballots - Printing and inspection.**

In all borough elections, the borough clerk shall be responsible for the printing of ballots. The ballots will be printed and in the possession of the borough clerk, at least fifteen days prior to a general election and seven days before a special election and shall be subject to inspection by candidates or their agents.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.20.030, part, 1987)

**4.20.040                    Ballots - Form.**

- (a) A ballot shall contain a list of candidates and the propositions and questions to be decided at the election.
- (b) The official ballots shall be printed on plain white paper. The ballots shall be consecutively numbered, the number being placed in an area of the ballot where it may be easily removed and on a portion of the ballot that can be seen when the manner in which the ballot is marked is concealed from view. At the top of the ballot, so as to be clearly visible when the ballot is folded so as to conceal the manner in which marked shall be printed the words: "Official Ballot of the Aleutians East Borough, Alaska," the date of the election, and whether a regular or special election.
- (c) All candidates for the same office shall be shown on one ballot. The title of each office to be filled shall be followed by the printed names of all candidates for that office and provision shall be made for write-in candidates equal in number to the positions to be filled, except there shall be no provision made for write-ins on a runoff election ballot. The names of candidates shall be printed as they appear upon the declarations and petitions except that any honorary or assumed title or prefix shall be omitted, but may include in the candidate's name any nickname or familiar form of a proper name of the candidate. The words "Vote for not more than \_\_\_" with the appropriate number replacing the blank, shall be placed before the lists of candidates for each office. The names of candidates shall be rotated as required in the Alaska Statutes applicable to state elections.
- (d) Following the names of the offices and candidates, there shall be placed on the ballot all propositions and questions to be voted upon. The words "Yes" and "No" or "For" and "Against" shall be placed below the statement of each proposition and question.
- (e) Somewhere on the ballot, so as to be clearly visible, will be printed the name and a facsimile signature of the clerk who had the ballots printed.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.20.040, part, 1987)

**4.20.050                    Sample Ballots.**

The borough clerk will have a number of sample ballots printed. The sample ballots will be printed on nonwhite paper and clearly labeled as a "Sample Ballot" where the words "Official Ballot" appear on the official ballots. Sample ballots shall be available for inspection by voters prior to the date of the election and will be delivered to the election board in each precinct.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.20.050, part, 1987)

**4.20.060                    Registration Index and Original Register- Distribution to Precinct Officials.**

Prior to the opening of the polls, the borough clerk shall deliver a registration index, and an original register to the election officials in every precinct. The original register will provide sufficient space to enable voters to sign their name and enter residential and mailing addresses. A record shall be kept in the original register of the names of persons who offer to vote but are refused, and a brief statement of the basis for the refusal. The signing of the register constitutes a declaration by the voter that he is qualified to vote.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.20.060, part, 1987)

**4.20.070                    Punch Card Ballots.**

Punch card ballots may be used in part or entirely in place of paper ballots. Punch card ballots shall be printed, numbered, controlled, accounted for, counted and otherwise handled and processed in a manner similar to that required by state law and regulations for punch card voting in state elections. The borough clerk shall appoint a counting board to receive and tally punch card ballots. The borough clerk may appoint such additional boards and may establish such procedures as may be necessary to facilitate and ensure the security and accurate accounting for the ballots.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.20.070, part, 1987)

## TITLE 4

### ELECTIONS

#### Chapter 4.24 - Election Procedures

##### **Sections:**

4.24.010	Time For Opening and Closing Polls
4.24.020	Distribution of Ballots
4.24.030	Preparation of Ballot Box
4.24.040	Voting Procedure
4.24.050	Marking of Ballots by Voters
4.24.060	Challenging of Voters of Suspect Qualifications 4.24.070
	Questioning a Voter's Ballot
4.24.080	Questioned Ballots--Disposition
4.24.090	Ballots--Counting and Tallying
4.24.100	Defective and Unused Ballots
4.24.110	Election Certificate
4.24.120	Majority Decision of Election Board
4.24.130	Prohibition of Persuasion Near Election Polls

##### **4.24.010 Time For Opening and Closing Polls.**

- (a) On the day of any election, each election board shall open the polls for voting at eight o'clock in the morning, shall close the polls for voting at eight o'clock in the evening, and shall keep the polls open during the time between these hours. The election board members shall report to the polling place not later than 7:30 in the morning of an election day. The hour shall be determined by the standard time, or daylight saving time, that is applicable to the polling place.
- (b) Fifteen minutes before the closing of the polls, a judge or clerk shall proclaim to all persons present in the polling place the time remaining before the polls close. When the polls are closed, the fact will be similarly announced. Thereafter, no ballots will be given out except to qualified voters present at the polls and waiting to vote when the polls are closed.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.010, part, 1987)

##### **4.24.020 Distribution of Ballots.**

- (a) The borough clerk shall deliver the ballots to the election board before the polls are opened on election day. The ballots shall be delivered in separate sealed packages, with the number of ballots enclosed in each package clearly marked on the outside of it. A receipt for each package shall be taken from the election board to which it is delivered and

preserved by the borough clerk. No ballot may be taken from the polling place before the closing of the polls.

(b) The clerk shall keep the following records:

- (1) The number of ballots delivered to the various polling places.
- (2) The name of the persons to whom the ballots are delivered; and
- (3) The date and time the ballots are delivered.

(c) When the ballots are returned, the clerk shall record the following:

- (1) The number and character of the ballots returned;
- (2) The date and time when the ballots are returned; and
- (3) The name of the person returning the ballots.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.020, part, 1987)

#### **4.24.030 Preparation of Ballot Box.**

Before receiving any ballots the election board must, in the presence of all persons assembled at the polling place, open and exhibit the ballot box to be used at the polling place. Thereafter, the box will be sealed and not opened again until the polls are finally closed. At the close of the polls and upon the receipt within the ballot box of all ballots timely voted, the ballot box will be personally opened by the election judges.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.030, part, 1987)

#### **4.24.040 Voting Procedure.**

- (a) A voter shall give the judges and clerks his or her name, and shall sign his or her name and write his or her residence and mailing address on the first available line of the registration book. If any judge or clerk present believes the person cannot be identified as a qualified voter, the judge or clerk immediately shall challenge the person and deny him or her the right to vote a regular ballot.
- (b) If the voter is not challenged, the voter shall be given one ballot and shall retire alone to a voting booth. There, without undue delay, the voter shall prepare the ballot by marking the appropriate boxes opposite the names of candidates of the voter's choice, whether printed on the ballot or written in by the voter on the blank lines provided for the purpose, and the appropriate boxes for questions and propositions. Before leaving the voting booth, the voter shall fold the ballot in a manner to conceal the manner in which the voter has marked the ballot, but displaying the number thereon, and deliver it to one of the judges or clerks, who shall tear the number off and deposit the ballot in the ballot box if the ballot

bears the same number as the ballot given to the voter by the judges and clerks. A judge or clerk shall announce that the voter has voted.

- (c) A voter who by accident or mistake mutilates or spoils a ballot shall, upon returning the same to the judges and clerks, be given another. A voter who is blind or otherwise incapable of marking a ballot without assistance shall be assisted in doing so by a judge, a clerk or a person of the voter's choosing who is present if the voter requests such assistance.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.040, part, 1987)

#### **4.24.050 Marking of Ballots by Voters.**

- (a) A voter may mark the ballot only by the use of cross marks, "X" marks, check, or plus signs that are clearly placed in the square opposite the name of the candidate the voter desires to designate.
- (b) A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.
- (c) If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked.
- (d) If a voter marks more names than there are persons to be elected to the office, the votes for candidates for that office shall not be counted.
- (e) The mark shall be counted only if it is substantially inside the square provided, or touching the square so as to indicate clearly that the voter intended that particular square to be designated.
- (f) Improper marks on the ballot shall not be counted and shall not invalidate marks for candidates properly made.
- (g) An incomplete erasure or incomplete correction invalidates only that section of the ballot in which it appears.
- (h) Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot unless the election board determines, on the basis of other evidence that the ballot was so marked for the purpose of identifying the ballot.
- (i) Stickers bearing a candidate's name may be affixed to a paper ballot in lieu of writing in a candidate's name if write-in votes or ballots are otherwise permitted; provided, the voter must still place a mark in the box on the ballot opposite the candidate's name. Stickers may not be used on punch card ballots.

- (j) No voter may leave the polling place with the official ballot that he received to mark.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.050, part, 1987)

#### **4.24.060 Challenging of Voters of Suspect Qualifications.**

Every election judge and election clerk shall challenge, and every watcher and other person qualified to vote in the precinct may challenge a person attempting to vote if the challenger has good reason to suspect that the challenged person is not qualified to vote. All challenges shall be made in writing settling out the reason for the challenge. A challenged person before voting shall

subscribe to an oath and affidavit on a questioned ballot envelope provided by the borough clerk attesting to the fact that in each particular the person meets all the qualifications of a voter, that he is not disqualified, and that he has not voted at the same election. He shall also state the place from which he came immediately before living in the precinct in which he now seeks to vote and the length of time of his residence in the former place. After the challenged person has taken the oath and signed the affidavit, the person may vote a questioned ballot. If the challenged person refuses to take the oath or sign the affidavit, the person may not vote.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.060, part, 1987)

#### **4.24.070 Questioning a Voter's Ballot.**

- (a) If a voter's polling place is in question, a voter shall be allowed to vote, but any election official may consider the ballot as a questioned ballot.
- (b) A person who resides in a precinct that is served by an auxiliary polling place shall vote a questioned ballot if the voter attempts to vote at a polling place other than the one established to serve the place of the voter's residence.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.070, part, 1987)

#### **4.24.080 Questioned Ballots - Disposition.**

After a challenged voter has cast his or her ballot, the challenged voter will insert the ballot into a small blank envelope and seal it. This envelope shall be placed in a larger envelope upon which is printed the signed oath and affidavit. The oath and affidavit envelope shall be sealed and inserted into a larger envelope with all other questioned ballots. All questioned ballots will be delivered to the borough clerk. The borough clerk will present these materials to the canvass committee and assist in determining the merits of the challenge.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.080, part, 1987)

**4.24.090            Ballots - Counting and Tallying.**

- (a) Immediately after the polls close and the last vote has been cast, the election judges will open the boxes containing the ballots cast. The ballots will be counted to determine whether the total number of ballots is equal to the total number of persons who voted as indicated in the original registry. If the number of ballots drawn from the ballot box does not match the number of ballots indicated by the registration book to have been cast in the precinct, the ballots shall be recounted until the election board finds that there is a discrepancy or that the number of ballots cast matches the number of ballots indicated by the registration tally. If a discrepancy is determined to exist, it shall be explained in detail on the tally paper or papers, and such explanation shall be signed by the judges.
  
- (b) The counting of the ballots will be public. The opening of the ballot box at the close of the polls shall be accomplished in full view of any persons present. The public may not be excluded from the area in which the ballots are counted. However the chairman of the election board shall not permit anyone present to interfere in any way or to distract the appointed officials from their duties, and no one other than appointed election officials may handle the ballots. The judges shall remove the ballots from the ballot box one by one, and tally the number of votes for each candidate and for or against each issue. The ballots shall be inspected for disqualifying marks or defects. The election judges shall cause the vote tally to be continued without adjournment until the count is complete.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.090, part, 1987)

**4.24.100    Defective and Unused Ballots.**

If a voter marks more names than there are persons to be elected to any office, or if for any reason it is impossible to determine from a ballot the voter's choice for any office to be filled, the ballot shall not be counted as to that office or issue. A failure to properly mark a ballot as to one or more candidates or issues shall not invalidate the entire ballot. No ballot shall be rejected if the election board can determine from an inspection of the ballot the person for whom the voter intended to vote and the office intended to be designated by the voter. Ballots not counted shall be marked "Defective" on the back thereof, and ballots to which objection has been made shall be marked "Objected To" on the back thereof. An explanation of the defect or objection shall be written on the back of the ballot and signed by the chairman. All such ballots shall be enclosed in an envelope marked on the outside with a description of its contents. All ballots not voted and all ballots mutilated or spoiled by voters shall be returned by the judges to the borough clerk, who shall give a receipt therefor and keep a record

of the number and character of ballots returned indicating when and by which judge each was returned.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.100, part, 1987)

**4.24.110 Election Certificate.**

After the votes are announced and counted, a certificate will be drawn stating the number of votes each candidate has received, and designating the office for which each candidate has run. The poll lists and tallies will be attached to the certificate. The certificate will be signed by the election judges. The registration index, original register, tallies or tally papers, oath of judges, oaths of voters, other papers, and the certificate will be placed in an envelope. The envelope will be marked "Election Returns, \_\_\_\_\_precinct" and delivered to the borough clerk.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.110, part, 1987)

**4.24.120 Majority Decision of Election Board.**

The decision of the majority of judges determines the action that the election board shall take regarding any question which arises during the course of the election.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.120, part, 1987)

**4.24.130 Prohibition of Persuasion Near Election Polls.**

During the hours the polls are open, no person who is in the polling place or within 100 feet of any entrance to the polling place, may attempt to persuade a person to vote for or against a candidate, proposition or question.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.24.130, part, 1987)

TITLE  
ELECTION

Chapter 4.28 - Canvassing of Election Returns

**Sections:**

4.28.010	Canvass Committee--Meeting - Postponing Canvass
4.28.020	Canvass to be Made Public
4.28.030	Investigation of Challenged Ballots
4.28.040	Challenged Ballots--Subpoenas
4.28.050	Canvass Committee--Report - Contents
4.28.060	Results of Election--Public declaration
4.28.070	Certificate of Election

**4.28.010 Canvass Committee -- Meeting - Postponing Canvass.**

The canvass committee will meet on the first Monday after the election for which they are appointed and canvass all absentee and questioned ballots executed in the election. The canvass may be postponed from day to day for cause by the borough clerk or the canvass committee.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.28.010, part, 1987)

**4.28.020 Canvass to be Made Public.**

- (a) The canvass of the returns will be made in public by opening the returns, and announcing the results thereof in front of those who may be present.
- (b) Absentee ballots and questioned ballots the borough clerk determines should be counted shall be counted in the following manner by the borough clerk and two or more assistants appointed by the borough clerk: All ballot envelopes shall be removed from return envelopes and placed in a ballot box. The return and affidavit envelopes shall be delivered to the borough clerk. The absentee and questioned ballots shall then be removed one by one from the ballot box, taken out of the blank ballot envelopes and counted in the same manner as ballots cast at the polls are counted by an election board.
- (c) The canvass shall include a review and comparison of the tallies of paper ballots with the precinct election certificates to correct any mathematical error in the count of paper ballots.
- (d) If the borough clerk finds an unexplained error in the tally of paper ballots in any precinct election tally, the clerk may count the ballots from the

precinct. The borough clerk shall certify in writing to the canvass board any changes resulting from the count.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.28.020, part, 1987)

**4.28.030 Investigation of Challenged Ballots.**

- (a) The canvass committee may request the assistance of the borough clerk, borough attorney or the mayor to investigate the challenges made to ballots not counted by the borough clerk. Any borough voter may appear to give testimony concerning the challenged ballots. If the canvass committee denies a challenge, the ballot shall be placed in a ballot box and counted with other challenged ballots that are to be counted.
- (b) The canvass committee will deliver to the assembly the challenged ballots not counted and submit a report of its findings. The assembly may, by a majority vote of those present deny a challenge. If a challenge is not denied, the ballot challenged will not be opened and counted, but will be strung and preserved as other ballots. If a challenge is denied, the ballot will be counted; provided, in order to protect the secrecy of the ballot, if less than three questioned ballots are to be counted, such ballot or ballots shall not be counted unless the result of the election could be changed by the ballot or ballots to be counted. The borough clerk will notify a voter whose ballot is not counted that the challenge was upheld.
- (c) If the assembly is itself the canvass committee, it may still act separately 25 such a committee, and then review its own findings in the manner outlined in subsection (a).

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.28.030, part, 1987)

**4.28.040 Challenged Ballots - Subpoenas.**

The canvass committee and the assembly may order testimony of witnesses and issue subpoenas or subpoenas duces tecum while investigating challenged ballots. The subpoenas may be enforced by the court upon certification as provided by the state court rules of civil procedure concerning the enforcement of administrative and state agency subpoenas.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.28.040, part, 1987)

**4.28.050 Canvass Committee -- Report - Contents.**

The canvass committee shall immediately provide a copy of its report to the borough clerk for public posting in the clerk's office and shall submit the report of

its findings to the assembly prior to noon on the second Monday following the election. The report will show:

- (a) The number of ballots cast in the election;
- (b) The names of the candidates voted for and the proposition voted upon;
- (c) The office voted for;
- (d) The number of votes cast for each candidate and the number of votes cast for or against each proposition voted on at the election;
- (e) A proposed disposition of all regularly counted, challenged, absentee, voided and unused ballots; and
- (f) Other matters which the canvass committee may determine to be necessary.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.28.050, part, 1987)

**4.28.060 Results of Election--Public Declaration.**

- (a) If a contest is not initiated under the provisions of sections 4.36.010 through 4.36.060, the result of the election shall be publicly declared by the assembly and entered in the minutes of a special meeting of the assembly on the second Monday following the election. If the canvass committee has not delivered its report by noon on the second Monday following the election, the mayor shall call a special meeting to be held on the day the report is to be received or the first day thereafter that a special meeting may be held.
- (b) If a contest is held and determined, the result of the election shall be publicly declared by the assembly and entered in the minutes of a special meeting of the assembly within a week after the contest is determined.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.28.060, part, 1987)

**4.28.070 Certificate of Election.**

- (a) The borough clerk shall make and execute a certificate of the final results of the election as determined by the assembly.
- (b) The borough clerk shall make and deliver a certificate of election to every person elected. The certificate of election will be signed by the mayor and clerk. It will be authenticated by the corporate seal of the borough.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.28.070, part, 1987)

## TITLE 4

### Elections

#### Chapter 4.32 - Absentee Voting

##### **Sections**

4.32.010	Absentee Voting - Eligible Persons
4.32.020	Absentee Ballots - Application - Filing
4.32.030	Absentee Ballots - Delivery
4.32.040	Determination of Right by Clerk
4.32.050	Notation of Ballot Number and Date of Application
4.32.060	Completion and Return of Absentee Ballots
4.32.070	Absentee Voting at Clerk's Office - Surrender of Absent Voter's Ballot
4.32.080	Absentee Ballots - Executing Outside City
4.32.090	Absentee Voting by – Electronic Transmission
4.32.100	Absentee Ballots – By Personal Representative
4.32.101	Absentee Voting - By Electronic Transmission
4.32.110	Absentee Ballots – Receipts
4.32.120	Absentee Ballots – Voting Supplies
4.32.130	Liberal Construction

##### **4.32.010 Absentee Voting--Eligible Persons.**

Any qualified voter, who expects, on the day of the election, to be absent from his election precinct or who will be unable to vote in such precinct by reason of physical or medical disability or who will be at a place within the borough that is not connected by road to the polling place that serves the area in which the voter resides may cast an absentee ballot.

##### **4.32.020 Absentee Ballots -- Application - Filing.**

- (a) A person who seeks to vote by absentee ballot may request an application for an absentee ballot by phone, fax, email, in person, or by mailing a written application to the borough clerk or an assistant clerk appointed for the purposes of the election.
- (b) After receiving an application, a person who seeks to vote an absentee ballot may return their application either in person, by fax, or by mailing his written application to the borough clerk.
- (c) An application made by mail must be received by the borough clerk or assistant not more than thirty calendar days, or less than five business days before a borough election. An application made in person must be

filed with the borough clerk or assistant not more than fifteen calendar days before the borough election, and no later than noon on the day before a borough election.

- (d) The application must be signed by the applicant and show the applicant's place of residence. If the application requests that an absentee ballot be sent by fax or email, a fax number or email address must be supplied to the borough clerk.
- (e) Nothing in this section is intended to prevent the borough clerk or an assistant borough clerk appointed for purposes of the election from personally delivering an application to a person who, because of a physical incapacity, is unable to make application in person at the borough clerk's office for an absent voter's ballot.

(f) the absentee application form follows:

**ALEUTIANS EAST BOROUGH  
APPLICATION FOR ABSENTEE BALLOT:**

I, \_\_\_\_\_, a qualified voter and resident of \_\_\_\_\_, Alaska, do hereby make application for an absentee ballot for the borough election to be held on \_\_\_\_\_, 20\_\_.

Residence address: \_\_\_\_\_  
Street, Community and Zip

Mailing address: \_\_\_\_\_  
P O Box, Community and Zip

Reason for requesting absentee ballot:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address to which absentee ballot should be mailed or fax number if requesting ballot be sent by fax, or email address if requesting ballot to be sent via email

\_\_\_ Address: \_\_\_\_\_

\_\_\_ Fax: \_\_\_\_\_

\_\_\_ E-mail: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Voter

Received by: \_\_\_\_\_ Date Received \_\_\_\_\_

Borough Official

Return this application via fax, in person, or by mail to:

Borough Clerk

Aleutians East Borough

P.O. Box \_\_\_\_

Sand Point, AK

Fax:

Email:

**4.32.030 Absentee Ballots--Delivery.**

- (a) If the assembly has, by resolution, designated a village an absentee voting station, the Borough Clerk shall distribute the absentee ballots, envelopes and other absentee voting material to absentee voting officials at absentee ballot stations recognized by the State of Alaska and established under A.S. 15.20.045(b) before the date upon which a person may first apply for an absentee ballot in person.
- (b) Upon timely receipt of a complete application for an absentee voter's ballot, the receiving clerk will file it. The clerk will then check the latest state registration listings to determine whether the applicant is registered pursuant to AS Chapter 15.07. If the applicant is properly registered, the clerk will deliver to the applicant, personally or by mailing to the address given by the applicant, or at an absentee voting station, or if by fax, a voter certification form, an official ballot for the election, an identification envelope and a return envelope. If the absent voter's ballot is personally delivered, it shall be executed in the clerk's presence at the time of delivery. If the application requests that an absentee ballot for a borough election be sent by fax or by email, the clerk shall send the absentee ballot and other absentee voting material to the applicant via the requested method (fax or email).

**4.32.040 Determination of Right by Clerk.**

Before delivering a ballot, the borough clerk must be satisfied that the applicant has a right to an absent voter's ballot, pursuant to section 4.32.010.

**4.32.050 Notation of Ballot Number and Date of Application.**

Upon personal delivery or the mailing of an absent voter's ballot, the clerk will enter on the application of the absent voter, and on the space provided in the voter registration index, the number of and the date the ballot was delivered or mailed. Before the election the clerk will send the election judges a list of voters who have received the respective ballots under this section.

**4.32.060 Completion and Return of Absentee Ballots.**

The identification envelope and return envelope provided to the voter will be of such form, size and weight as prescribed by the borough clerk. The identification envelope will have printed on its face an affidavit substantially as follows:

"IDENTIFICATION ENVELOPE"

State of Alaska:

\_\_\_\_\_ deposes and says: I am a resident of and a voter in precinct No. \_\_\_ in the Aleutians East Borough, Alaska, and I hereby enclose my ballot in compliance with Chapter 4.32.

Voter \_\_\_\_\_

\_\_\_\_\_ Residence address within the borough.

SUBSCRIBED AND SWORN to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, at \_\_\_\_\_ (a.m. or p.m.). I hereby certify that in my presence this affiant enclosed said ballot and handed me this envelope sealed; that he/she signed this affidavit and I acknowledge the same, all in accordance with the law.

\_\_\_\_\_  
Official's Signature

(Seal)

\_\_\_\_\_  
Title of Officer

NOTICE: After receiving the sealed envelope from the person taking your affidavit when voting outside the office of the borough clerk of the Aleutians East Borough, you must immediately return it by mail, postage prepaid, to the Borough Clerk, P.O. Box 349, Sand Point, AK 99661.

MARKED BALLOT ENCLOSED TO BE  
OPENED ONLY BY THE BOROUGH CLERK

(Ord. 02-01 (amended Ord. 92-12) Sec. 4.32.070, part, 1987)

**4.32.070 Absentee Voting at Clerk's Office--Surrender of Absent Voter's Ballot.**

A voter who receives an absent voter's ballot may, on any day prior to the day of the election, appear at the office of the borough clerk, Aleutians East Borough, Alaska, and execute his ballot under the scrutiny of the borough clerk or the clerk's designee in the following manner:

- (a) The voter will first display the ballot to the clerk to show that the ballot has not been previously marked. The voter then will proceed to mark the ballot in the voting booth at the clerk's office. The voter will place the ballot in the envelope provided in a manner that permits the clerk to see the number. The voter will then hand the ballot to the clerk, who will examine

it. If the clerk determines that the ballot is numbered correctly, the clerk will tear the printed number off and permit the voter to enclose the ballot in the identification envelope.

- (b) The voter will then make out and swear to the affidavit printed on the face of the envelope. The voter will seal the envelope and deliver it to the clerk before whom the ballot is marked.
- (c) The clerk will certify the affidavit printed on the identification envelope by writing or stamping the clerk's name across the seal. The clerk will deposit the envelope in a safe place, to be kept by the clerk to be counted as provided under this chapter.
- (d) If an absent voter returns to his voting precinct on election day, he will not be allowed to vote until he surrenders the absent voter's ballot and any other supplies mailed to him. The election judges will return the unused absent voter's ballot with the unused ballots.

#### **4.32.080 Absentee Ballots -- Executing Outside City.**

After receiving an absent voter's ballot, a voter may appear on any day prior and including the day of the election, before a notary public, clerk or officer of any borough, state, territory or district within the United States. Under the scrutiny of such officer, the voter may execute the ballot as set forth in section 4.32.080. However, the voter must mark the ballot with pen and ink or indelible pencil. The officer will then certify the affidavit printed on the identification envelope, enclose the envelope in the return envelope and seal it.

#### **4.32.090 Absentee Voting by – Electronic Transmission.**

- (a) The Clerk shall adopt procedures applicable to the delivery of absentee ballots by electronic transmission (e.g. fax and e-mail). The procedures shall:
  - (1) Require the voter to comply with the same time deadlines as for voting in person on or before the closing hour of the polls.
  - (2) Ensure the accuracy and, to the greatest degree possible, the integrity and secrecy of the ballot process.
  - (3) Provide reasonable conditions for electronically transmitting and receiving absentee ballots.
  - (4) Include a provision requiring the transmission of a copy of the ballot to be used at the election (a photocopy of the computerized ballot card prepared for the election is deemed acceptable).

- (b) Absentee ballots that are completed and returned by a voter via electronic transmission shall be executed under oath as to the voter's identity: the statement under oath shall be witnessed by two United States citizens who are 18 years of age or older and contain the following statement:
  - (1) "I understand that by using electronic transmission to return my marked ballot, I am voluntarily waiving a portion of my right to a secret ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible." The voter's statement shall be followed by the voter's signature and date of signature.
- (c) Electronically transmitted absentee ballots shall be counted in the same manner as other absentee ballots received by the Clerk.

(Ord. 02-01 (amended Ord. 01-03, Sec. 4.32.101), Section 4.32.090)

**4.32.100 Absentee Voting – By Personal Representative.**

- A. A qualified voter who is physically disabled may apply for an absentee ballot through a personal representative to the following election officials at the times specified:
  - 1. To the borough clerk's office, or assistant borough clerk's office, to the voter's residence in the borough on or after the 15<sup>th</sup> day before an election up to and including the day of election;
  - 2. To the nearest city clerk's office or assistant borough clerk's office, to the voter's residence in the borough after the 15<sup>th</sup> day before an election up to and including the day of election;
  - 3. To the election board chairman or his designee on election day in the precinct in which the voter is entitled to vote.
- B. Upon receipt of a written application by personal representative, the election officials authorized to issue the absentee ballot shall provide the ballot and other absentee voting material to the personal representative if the written application is signed by the applicant a statement signed by two qualified voters stating that the applicant will be unable to go to the polling place because of physical disability.
- C. The personal representative shall deliver the absentee ballot to the voter as soon as practicable. Upon receipt of an absentee ballot through a personal representative, the voter shall proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the envelope in the larger envelope, and to sign the voter's certificate on the back of the envelope in the presence of the personal representative who shall sign as

attesting witness and date his signature. The voter shall then return the absentee ballot to his personal representative who shall deliver the ballot to the election official who provided the ballot. The absentee ballot must be returned to the election official within 3 days from the date it is obtained but not later than 8:00 p.m. on election day. An election ballot that is not returned to the election official by the close of business on the third day from the day it is obtained may not be counted but the voter may vote in the election.

- D. Each election official shall keep a record of the name and signature of each personal representative requesting an absentee ballot and the name of the person on whose behalf the ballot is requested. The election official shall record the date and time the absentee ballot is provided and the time the ballot is returned to the election official.

#### **4.32.110 Absentee Ballots - Receipts.**

To be counted, an absent voter's ballot must be executed and postmarked prior to the time the polls close in the borough and be received by the clerk prior to the time the ballots are canvassed by the canvassing committee.

#### **4.32.120 Absentee Ballots - Voting Supplies.**

All supplies necessary for the voter to execute and return his ballot will be furnished by the clerk. No borough official may make any charge for services rendered to any voter under the provisions of this chapter.

#### **4.32.130 Liberal Construction.**

Section 4.32.010 through 4.32.120 will be liberally construed, so as to accomplish the purposes for which they are intended.

(Ord. 02-01 (amended Ord. 92-12) Chapter 4.32, part 1987)

TITLE 4

Elections

Chapter 4.36 - Contest of Election

**Sections**

4.36.010	Contest of Election
4.36.020	Recount Expenses--Appeal
4.36.030	Contest of Election--Investigation
4.36.040	Ballot Recount
4.36.050	Prohibited Practices Alleged
4.36.060	Sustained Charges--Recount
4.36.070	Determination of Tie Votes

**4.36.010 Contest of Election.**

- (a) A candidate who did not receive enough votes to be elected, may demand a recount of the votes cast for candidates running for the seat or office for which the candidate ran. An elected official who loses a recall election may demand a recount of the votes cast in question of the recall of that official. Ten or more voters may demand the recount of votes cast for and against a proposition or question.
- (b) Any losing candidate or any ten qualified voters may contest the election of any person or any ten qualified voters may contest the approval or rejection of any question or proposition or request a recount.
- (c) The losing candidate or the designated representative of ten qualified voters contesting the election must appear before the assembly at the meeting held on the second Monday following the election or such other special meeting as has been called for the purpose of receiving the report of the canvass committee. The candidate or representative shall deliver a sworn written notice of contest, which will state with particularity the provisions of the law or the borough code allegedly violated and the specific acts asserted as misconduct. The notice shall be in substantially the following form:

NOTICE OF ELECTION CONTEST

The undersigned believes that prohibited practices occurred at the borough election held on \_\_\_\_\_.

The undersigned states that the following provisions of law or ordinance were violated: \_\_\_\_\_

\_\_\_\_\_

The undersigned states that the above provisions of the law or ordinance were violated in the following manner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The foregoing statements are based on facts known by the undersigned or reasonably believed by the undersigned to be true.

\_\_\_\_\_  
Signature of Election Candidate  
(or Representative of Voters)

SUBSCRIBED AND SWORN to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Notary Public in and for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Signatures of voters contesting election.

<u>Signature</u>	<u>Printed Name</u>
_____	_____
_____	_____
_____	_____

etc.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.36.010, part, 1987)

**4.36.020 Recount Expenses - Appeal.**

- (a) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.
- (b) No person may appeal or seek judicial review of a borough election for any cause or reason unless the person is qualified to vote in the borough, has exhausted all administrative remedies before the assembly and has commenced, within 10 days after the assembly has finally declared the election results, an action in the superior court in the judicial district in which the borough is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive and valid in all respects.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.36.020, part, 1987)

**4.36.030 contest of Election - Investigation.**

The borough assembly will order an investigation to be made by the borough attorney, borough clerk and mayor, if a notice of contest is received.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.36.030, part, 1987)

**4.36.040 Ballot Recount.**

If only a recount of ballots is demanded, the borough clerk and such assistants as the clerk may appoint shall recount the ballots in those precincts in which error is alleged.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.36.040, part, 1987)

**4.36.050 Prohibited Practices Alleged.**

When the contestant alleges prohibited practices the assembly will direct the borough clerk to produce the original precinct register books for the election and such other material as may be relevant to the contest.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.36.050, part, 1987)

**4.36.060 Sustained Charges - Recount.**

If the charges alleged by the contestant are sustained and it is shown that the outcome of the election could be changed if the illegal votes are purged, the defective ballots will be purged from the election returns if possible, and the canvassing committee shall make a recount without counting the illegal votes. The results of such recount will be reported immediately to the assembly. The assembly will then certify the correct election returns as provided in section 4.28.060.

(Ord. 92-12 (amended Ord. 88-1) Sec. 4.36.060, part, 1987)

**4.36.070 Determination of Tie Votes.**

If after a recount and/or appeal of the election results the following occurs:

- (1) Two or more candidates are tied for the seat or office;
- (2) more than two candidates tie for the highest number of votes with no candidate receiving excess of 40% of the votes cast for the same seat or office;

- (3) two or more candidates tie for the second highest number of votes with no candidate receiving excess of 40% of the votes cast for the same seat or office.

The borough clerk shall notify the candidates who tied. The borough clerk shall notify the candidates of a reasonably suitable time and place to determine the successful candidate by lot. All tied candidates shall be present at such time and place, either in person or by proxy, to participate in the determination. If any tied candidate fails for any reason to attend in person or by proxy, the mayor shall designate a disinterested person to participate as the proxy for the absent candidate. After the determination has been made by lot, the mayor shall so certify to the clerk and the assembly.

(Ord. 10-04 (amended Ord. 92-12) Sec. 4.36.070, part, 1987)

TITLE 4  
ELECTIONS

Chapter 4.40 – Elections by Mail

**Sections**

<b>4.40.010</b>	<b>By Mail Precincts</b>
<b>4.40.020</b>	<b>By Mail Elections</b>
<b>4.40.030</b>	<b>Casting Ballots</b>
<b>4.40.040</b>	<b>Notice of Election-Election Date-Public Notice</b>
<b>4.40.050</b>	<b>Absentee Voting Officials-Duties</b>
<b>4.40.060</b>	<b>Storing Ballots</b>

**Section 4.40.010 By Mail Precincts.**

- (a) Local communities may be designated as “absentee by-mail” precincts by resolution of the Assembly. In those precincts, no election workers shall be appointed. Local communities may, by request to and approval of the Assembly, change to or from an “absentee by-mail” precinct.
- (b) Voters wishing to vote absentee in person may do so at any designated polling place.
- (c) Any precinct designated as an “absentee by-mail” precinct in accordance with the provisions of subsection (a) above, will remain an “absentee by-mail” precinct until such time as the “absentee by-mail” status is removed by resolution of the Assembly.
- (d) Any ballot voted by mail and not at a designated polling place is considered an absentee ballot and therefore subject to the provisions of Aleutians East Borough Municipal Code Chapter 4.32.

(Ord. 01-04 New Section 4.40.010)

**Section 4.40.020 By Mail Elections.**

- (a) In addition to the designated “absentee by-mail” precincts provided in § 4.40.010, the Clerk may conduct entire special elections by mail.
- (b) When the clerk conducts an election by mail, the clerk shall send a ballot to each person whose name appears on the official voter registration list prepared under AS 15.07.125 for that election. The ballot shall be sent to the address stated on the official registration list unless the voter has notified the clerk in writing of a different address to which the ballot should

be sent. The clerk shall send ballots by first class, non-forwardable mail on or before the 22<sup>nd</sup> day before the election.

- (c) The clerk shall review ballots voted under this section using the same procedures established for the review of absentee ballots.
- (d) There shall be a return envelope supplied to each by-mail voter. The return envelope shall have printed upon it an affidavit by which the voter shall declare his or her qualification to vote, followed by provision for attestation by two attesting witnesses who are at least eighteen years of age. Specific instructions for voting a by-mail ballot will be mailed to each voter.

(Ord. 01-04 New Section 4.40.020)

**4.40.030 Casting Ballots**

- (a) Upon receipt of a mail-in ballot, the voter shall cast his ballot in the manner specified in AEB § 4.32.100. If the ballot is cast in the Clerk's Office, the clerk shall retain it for delivery to the canvas board. If the ballot is cast in another location, the voter shall return it by mail to the clerk immediately for delivery to the canvas board.
- (b) A voter who does not receive a mail-in ballot may cast his ballot in person as specified in AEB § 4.40.040.
- (c) A voter may return the mail-in ballot to an absentee voting official as provided in AEB § 4.40.050.

(Ord. 01-04 New Section 4.40.030)

**4.40.040 Notice of Election – Election date – Public Notice.**

- (a) The notice of election calling for the election must state that the election is to be conducted by mail and that there will be no polling place open for regular in-person voting on election day. In a by-mail election, election day is the deadline by which a voter's ballot must be received by the borough clerk.
- (b) For each election conducted by mail, the public notice posted in each precinct and the notice published in newspapers of general circulation in the area of the election jurisdiction will include the information specified in AEB § 4.40.050.

(Ord. 01-04 New Section 4.40.040)

**4.40.050 Absentee voting officials – Duties.**

- (a) The borough clerk may, with the approval of the city clerks in the borough, appoint city clerks or others in the area to act as absentee voting officials. The clerk shall supply adequate voting supplies and ballot to the city clerks serving as absentee voting officials. The clerk shall provide moderate compensate to the city clerks to cover added expenses of the administration of this service, which shall be agreed to by the city clerks.
- (b) The duties of the absentee voting officials shall be as follows:
1. Provide absentee voting in person on any date including the day of the election following the procedures in AEB § 4.40.040 and have until the day of the election to return the ballots.
  2. Sign a voter's by-mail oath and affidavit envelope as an authorized attesting official, except that the absentee voting official may not attest his or her own ballot.
  3. Accept receipt of a by-mail voter's hand-delivered voted ballot, which has been sworn to, attested and sealed in by-mail return envelope.
  4. Provide general voter assistance, including but not limited to, assistance to a qualified voter who cannot read, mark the ballot, or sign his name, and providing replacement ballots to voters who have improperly marked or damaged their ballots.
  5. Date-stamp all ballots received.
  6. Provide for the security and safekeeping of all ballots received and present those ballots to the clerk for canvassing.

(Ord. 01-04 New Section 4.40.050)

**4.40.060 Storing Ballots.**

The clerk shall provide for the secure storage of the mail-in ballots received from the voters and by-mail officials, until the date set by the clerk for the counting of the ballots.

(Ord. 01-04 New Section 4.40.060)

TITLE 6  
FISCAL POLICIES

CHAPTERS

6.04 FINANCES

6.08 INVESTMENT POLICY AND OBJECTIVES

## TITLE 6

### FISCAL POLICIES

#### Chapter 6.04 -- Finances

##### **Sections:**

6.04.010	Budget and Capital Program.
6.04.020	Bonding Capital Improvements.
6.04.030	Fiscal Year.
6.04.040	Funds Designated.
6.04.041	Permanent Fund Account
6.04.042	Capital Improvement Maintenance Reserve and Improvement Account.
6.04.050	Audit of Borough Government Accounts.
6.04.060	Centralized Treasury.
6.04.070	Obligations and Expenditures.
6.04.080	Appropriation.
6.04.90	Treatment of Funds.
6.04.100	Set-offs Prior to Disbursements.

##### **6.04.010 Budget and Capital Program.**

- A. The mayor shall arrange for the preparation of a budget and capital program. The budget and capital expenditure proposals shall be given a public hearing.
- B. After public hearing, the Assembly may approve budgets with or without amendments and shall appropriate the funds required for the approved budgets.
- (Ord. 88-1, Sec. 6.04.010, part, 1987)

##### **6.04.020 Bonding Capital Improvements.**

The Borough may waive the bonding requirements and may exempt contractors from compliance with the provisions of AS 36.25.010 (a), if the estimated cost of the project does not exceed \$400,000, and

- (1) the contractor is, and for two years immediately preceding the award of the contract has been, a licensed contractor having its principal office in the state;
- (2) the contractor certifies that it has not defaulted on a contract awarded to the contractor during the period of three years preceding the award of a contract for which a bid is submitted;
- (3) the contractor submits a financial statement, prepared within a period of nine months preceding the submission of a bid for the contract and certified by a public accountant or a certified public accountant licensed under AS 08.04,

demonstrating that the contractor has a net worth of not less than 20 per cent of the amount of the contract for which a bid is submitted; and

- (4) the total amount of all contracts that the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the net worth of the contractor reported in the certified financial statement prepared and submitted under (3) of this section by more than seven times.

(Ord. 01-05 (amended Ord. 88-1), Sec. 6.04.020, part, 1987)

**6.04.030            Fiscal Year.**

The fiscal year of the municipality shall begin on the first day of July and end on the last day of June.

(Ord. 88-1, Sec. 6.04.030, part, 1987)

**6.04.040            Funds Designated.**

The accounts of the borough shall be divided into the following principal funds:

1. General Fund. All financial transactions relating to the general operations of the municipal government shall be recorded in the accounts of this fund. The General Fund will be funded, to the extent permissible by the source of revenues, from the proceeds received in the year prior to their expenditures, unless approved for immediate disbursement by the Assembly in a budget ordinance. The General Fund shall contain the following accounts:

(Ord. 07-06 (amended Ord. 01-08), Sec. 6.04.040 1)

- A. Trust, agency, and bond fund accounts as required.
- B. The permanent fund account. Funds appropriated or allocated to this account by the Assembly shall be available only to meet the needs of the Borough, including the school district, arising out of natural disasters, major financial emergencies, and for the payment of principal and interest on general obligation bonds to prevent an impending default. In the event of a natural disaster, or major financial emergency, the Assembly may appropriate money from the permanent fund account to forward fund the Borough's operating budget for the next fiscal year.  
(Ord. 01-08 (amended Ord. 90-13), Sec. 6.04.040 1(B))
- C. Such other accounts as the mayor determines are necessary or appropriate under current government accounting practices and are approved by the Assembly.

2. Special Assessment Funds. These funds shall be created upon establishing a special assessment district and providing for financing of public improvements by special assessments.

(Ord. 01-08 (amended 89-6), Sec. 6.04.040, part, 1987)

**6.04.041. Permanent Fund Account.**

- A. **Assembly Authority.** Unless the Assembly provides otherwise in its approved budget or an appropriation ordinance, the provisions of this section shall govern the deposit and crediting of funds to the Permanent Fund Account established under section 6.04.040 1(B).
- B. **Balance.** It is the goal of the Assembly that the balance of the Permanent Fund Account be \$20 million. Until such goal is reached, the provisions of section 6.04.041C and D shall govern the required deposits to be made to the fund each year. At any time, the mayor may propose and the Assembly may, on its own initiative or upon the recommendation of the mayor, deposit in the Permanent Fund Account amounts from any lawfully available source.
- C. **Budgeted Deposit.**
  1. Each year until the balance of the account equals or exceeds the account balance goal set out in section 6.04.041B the mayor may propose in the budget submitted to the Assembly a deposit to the permanent fund account of excess moneys from the General Fund at the close of the Borough's fiscal year.
  2. Upon approval of the Assembly by resolution or ordinance, and subject to prior covenants made pursuant to authority granted under this section 6.04.041C2, the Borough may enter into a bond covenant requiring that prior to any deposit or transfer to the Permanent Fund Account, the current fiscal year debt service on the bonds shall be paid or that one or more deposits shall be made to the debt service fund of the bonds until the balance of the debt service fund equals an amount not exceeding debt service payments on the bonds remaining due during the current fiscal year. Funds of appropriations subject to a pledge under this subsection shall be deposited in accordance with such pledge. When the pledge has been fulfilled, funds that subsequently become available that are appropriated for the debt service on the bonds shall be deposited to the Permanent Fund Account to the extent the appropriation to the Permanent Fund Account is unfunded. Debt service payments include payments of principal and interest on bonds for which a pledge pursuant to this section 6.04.041 has been made.

- D. **Earnings.** The Borough Assembly may only appropriate from the permanent fund as follows: In its discretion and consistent with this Chapter, the Borough Assembly may, in any fiscal year, appropriate an amount not to exceed eight percent (8%) of the five-year average fund market value, to be computed using the five (5) prior calendar years market value.

(Ord. 12-01 (amended 01-08) Sec. 6.04.041(D))

- E. **Earnings - Allocation.** Earnings on the Permanent Fund Account not required to be redeposited to the credit of the account under section 6.04.041D may be deposited in the General Fund and used for any municipal purpose or such amounts may be allocated to specific municipal functions. Notwithstanding an allocation made pursuant to this section, such amounts must still be appropriated before they may be spent for such functions.

(Ord. 01-08 (amended 92-7) Sec. 6.04.041)

- F. **Investments – Purpose and Limitations.** A purpose of the permanent fund is growth through prudent investment of fund assets. Notwithstanding the objectives of the Borough policy for the investment of its operating and other funds set out in Code Section 6.08.010(C), the investment of permanent fund assets shall be made to maintain safety of principal while maximizing total return. Investments shall be diversified to minimize the risk of loss resulting from a concentration of investments in a specific maturity, issuer, class of security, financial institution or, with respect to equity investments, in a specific company, industry or investment sector. Fund assets may be invested in the instruments and securities set out in Code Section 6.08.030 and in the following securities:

- (1) (a) Domestic Equities, which taken as a whole, attempt to replicate the Standard & Poor's 500 Index, including both mutual funds and exchange traded funds (ETF's).
- (b) International Equities, which taken as a whole, attempt to replicate the FTSE Developed ex North America Index, including both mutual funds and exchange traded funds (ETF's).
- (c) Equities, which taken as a whole, attempt to replicate the universe of domestic real estate investment trusts as represented by the S&P REIT Index or the Cohen & Steers Realty Majors Portfolio Index, including both mutual funds and exchange traded funds (ETF's).
- (d) Domestic Equities, which taken as a whole, attempt to replicate the Standard & Poor's 400 MidCap Index, including both mutual funds and exchange traded funds (ETF's).
- (e) Emerging markets equity index funds, which taken as a whole, attempt to replicate the FTSE Emerging Market Index, including both mutual funds and exchange traded funds (ETF's).

- (2) Permanent Fund asset allocation plan and performance measurement targets.

The asset allocation targets and ranges are as follows:

Asset Class	Target % Weighting	Range %
Domestic Equity	36	30-50
Mid / Cap. Equity	5	0-10
International Equity	10	5-15
Real Estate Equity	10	5-15
Fixed Income	34	25-60
Emerging Markets	5	0-10

- (3) The Performance of the investment advisors will be measured as follows:

(a) Performance measurement for the Domestic Equity Allocation will be measured against the Target Weighting, using the Standard & Poor's 500 as the Benchmark.

(b) Performance measurement for the Mid/Small Cap Equity Allocation will be measured against the Target Weighting, using the Standard & Poor's 400 MidCap Index as the Benchmark.

(c) Performance measurement for the International Equity Allocation will be measured against the Target weighting using the FTSE Developed ex North America Index for the Benchmark.

(d) Performance measurement for the Real Estate Allocation will be measured against the Target weighting using the Standard & Poor's REIT Index for the Benchmark.

(e) Performance measurement for the Fixed Income Allocation will be measured against the Target weighing using the Lehman Intermediate Gov/Credit Index for the Benchmark. The duration of the Fixed Income Allocation should be maintained between 80% and 120% of the duration of the Benchmark.

(f) Performance measurement for the Emerging Market Allocation will be measured against the Target weighting using the FTSE Emerging Market Index for the Benchmark.

(Ord. 13-04 (amended 12-04) Sec. 6.04.041(F))

**6.04.042 Capital Improvement Maintenance Reserve and Improvement Account.**

1. **Annual Deposit.** Each year the mayor shall include in the proposed budget for the coming fiscal year the deposit to the Capital Improvement Maintenance Reserve Account of the greater of \$100,000 or an amount equal to two and one-

half percent of the total anticipated revenues from the borough sales tax and the state shared fisheries business license tax. The amount shown to be deposited to the account in the annual budget finally approved by the Assembly and all interest earned on the account shall be deposited to the account.

2. **Appropriation.** The Assembly may appropriate from the account all or any part of the balance for the purpose of maintenance and minor repair of borough capital improvements. The Assembly may appropriate from the account all or any part of the account that exceeds \$500,000 for capital projects, including expenses for advance project studies or definition work, capital matching grants, planning, design, acquisition, construction and other capital project expenses.
3. **Not a Limit.** There shall be no maximum or minimum balance for the account. The Assembly may appropriate monies for maintenance and minor repair of borough capital improvements and for capital projects from other sources. The Assembly may provide for deposits to the account in any amount and from any sources it determines appropriate.

Ord. 96-1 (Amended Ord. 92-8), Sec. 6.04.042, part, 1987)

#### **6.04.050                    Audit of Borough Government Accounts.**

Prior to the end of each fiscal year the Assembly shall designate certified public accountants who, as of the end of the fiscal year, shall make an independent audit of all the accounts and other evidences of financial transactions including, but not being limited to, trust and agency funds and bond and assessment funds, of the borough government and shall submit their report to the Assembly and to the mayor. Such accountant or accountants shall have no personal interest, direct or indirect, in the fiscal affairs of the borough government or of any of its officers. They shall not maintain any accounts or records of the borough business, but, within specifications approved by the Assembly, shall post-audit the afore described books of the borough government. Copies of the audit shall be available to the public on request.

(Ord. 88-1, Sec. 6.04.050, part, 1987)

#### **6.04.060                    Centralized Treasury.**

There is established the borough centralized treasury. All municipal funds received by the borough, its school district, departments or other agencies of the borough shall be deposited in the borough centralized treasury.

(Ord. 89-7, Sec. 6.04.060)

#### **6.04.070                    Obligations and Expenditures.**

- (a) No obligation may be incurred against, nor may payment be made from money in the treasury except in accordance with an appropriation duly made by the Assembly.

- (b) Except as to the operating budget appropriation made to the school district, no payment may be made and no obligation incurred against any appropriation unless the mayor or the mayor's designee ascertains that there is a sufficient unencumbered balance in the appropriation and that sufficient money is or will be available to cover the obligation.
- (c) No payment may be made and no obligation may be incurred against operating budget appropriation to the school district unless the superintendent or the superintendent's designee ascertains that there is a sufficient unencumbered balance in the appropriation and that sufficient money is or will be available to cover the obligation.
- (d) Every obligation incurred and every payment and authorization of payment made in violation of this section 070 is void unless ratified by the Assembly.

(Ord. 91-6, Sec. 6.04.070)

**6.04.080                      Appropriation.**

- (a) Appropriations shall be by ordinance and shall set forth appropriation categories in such detail as the Assembly deems appropriate; provided, the operating budget appropriations to the school district shall be deemed a single appropriation category for purposes of this section 080.
- (b) Transfers within the operating budget appropriation to the school district shall be made in accordance with the policies of the school board.
- (c) Except as provided in subsections (c) and (d), all appropriations lapse and are void at the end of the last day of the fiscal year for which the appropriation was made unless otherwise specifically provided in the appropriating or other ordinance. However, a valid, unpaid obligation existing on June 30 is automatically reappropriated for the fiscal year beginning on the succeeding July 1. This subsection applies to appropriations to the Borough and the school district.
- (d) Appropriations for capital purposes do not lapse until the capital project has been completed and the mayor has determined that all expenses of the project have been paid or until the project has been formally abandoned by the Borough Assembly. Appropriations required by a federal or state grant or similar program to carry over to the following fiscal year do not lapse at the end of the fiscal year if the lapse of the appropriation would be a violation of the grant or program requirements.

(Ord. 91-6, Sec. 6.04.080)

**6.04.090                      Treatment of Funds.**

- (a) Federal and state money received by the Borough shall be deposited in the Borough centralized treasury and shall be disbursed in the same manner as other Borough money. State and federal money is subject to the fiscal controls imposed by the chapter except to the extent state or federal laws or regulations prevent such treatment.
- (b) Unexpended, unobligated money in the treasury at the end of a fiscal year that was allocated under an appropriation that lapses under section 070 is available for appropriation by the Assembly for any lawful purpose; provided, any money received by the Borough under a restriction that it be expended only for specified purposes or within a specified area, may be reappropriated only for such purposes or areas.
- (c) For the purpose of determining the source of unexpended, unobligated money available for reappropriation at the end of a fiscal year, money shall be deemed expended in the following order, to the extent related expenditures were made during the fiscal year:
  - (1) federal money required to be expended for a specific purpose.
  - (2) state money required to be expended for a specific purpose.
  - (3) donated money accepted with conditions as to use.
  - (4) Borough revenues that must be spent within specified areas of the Borough.
  - (5) unrestricted federal money,
  - (6) unrestricted state money,
  - (7) unrestricted Borough money.

(Ord. 91-6, Sec. 6.04.090)

**6.04.100 Set-offs Prior to Disbursements.**

- (a) Disbursements of money to a person, firm or corporation Shall be made only after all the various receivable accounts of the Borough have been reviewed for outstanding balances owed, and the disbursement will be reduced by setting off the amount of any delinquent indebtedness due the Borough from such person, firm or corporation.
- (b) All contracts to which the Borough is a party which will or may involve the disbursement of Borough funds shall contain the following clause, or its substantial equivalent: "Disbursement of money by the Aleutians East Borough hereunder shall be subject to set-off pursuant to the provisions of the Code of the Aleutians

East Borough.” Such contracts include, but are not limited to, oral contracts, employment contracts, construction contracts, purchasing contracts and contracts.

(Ord. 04-01, Sec. 6.04.100)

## TITLE 6

### REVENUE AND FINANCE

#### Chapter 6.08 -- Investments And Securities

##### **Sections:**

6.08.010	Investment Policy and Objectives.
6.08.020	Mayor Authorized to Invest Borough Funds.
6.08.030	Authorized Investments.
6.08.040	Collateralizations.
6.08.050	Safekeeping and Custody of Securities.
6.08.060	Competitive Placement of Investments.
6.08.070	Emergencies.
6.08.080	Portfolio Liquidity.

##### **6.08.010 Investment Policy and Objectives.**

- A. This chapter applies to the investment of all borough monies unless otherwise expressly provided by ordinance.
- B. Each person making decisions regarding the investment of borough monies shall use the same judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of large investments entrusted to them not for the purpose of speculation, but for the permanent disposition of funds, taking into account the objectives set out in subsection (c) of this section.
- C. Borough investments shall be diversified to minimize the risk of loss resulting from a concentration of investments in a specific maturity, a specific issuer, a specific class of security or a specific financial institution. Individual investments shall be made based on the following objections set out in the order of relative importance:
  - (1) Safety of Principal,
  - (2) Maintenance of sufficient liquidity to meet the cash flow requirements of the borough, and
  - (3) Achievement of a reasonable return on the investment.

(Ord. 89-1, Sec. 6.08.010)

##### **6.08.020 Mayor Authorized to Invest Borough Funds.**

The mayor is authorized to invest borough monies in accordance with this chapter and to establish, in writing, such administrative procedures as may be necessary to implement the policies and requirements of this chapter. The mayor may delegate in writing to the borough administrator and to other borough employees all or any part of the management authority over the borough investment program. It shall be the responsibility of the mayor to ensure that each person who invests borough monies does so in strict compliance with this chapter and the administrative procedures established in writing by the mayor.

(Ord. 89-1, Sec. 6.08.020)

**6.08.030                    Authorized Investments.**

A. Borough monies shall be invested only in the following instruments:

- (1) U.S. Treasury securities,
- (2) Other obligations guaranteed by the U.S. Government or its agencies or instrumentalities,
- (3) Repurchase agreements with financial institutions for the sale and repurchase of securities specified in subsections (1) and (2) of this section,
- (4) Certificates of deposits and other deposits at banks and savings and loan associations collateralized as provided in section 6.08.040,
- (5) Uncollateralized deposits at banks and savings and loan associations to the extent that the deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation,
- (6) Bonds and notes which are issued by any state or political subdivision thereof and which are graded A or higher by Moody's Investor's Service, Inc., or Standard and Poor's Corporation, and
- (7) Prime commercial paper graded A1 or higher by Moody's Investor's Service, Inc., or P1 or higher by Standard and Poor's Corporation.
- (8) Obligations of corporations, provided the obligations are graded "Baa" or higher by Moody's Investor's Service Inc., or Standard and Poor's Corporation and issued in the United States and denominated in US dollars. Not more than 15% of the fixed income portfolio may be held in Baa rated securities,
- (9) The Alaska Municipal League Investment Pool, Inc.
- (10) Income producing real estate investments.

(Ord. 05-02, (Amended Ord. 96-5), Sec. 6.08.030)

**6.08.040 Collateralization.**

- (a) If borough monies are invested in certificates of deposits or other deposits in a bank or savings and loan association, the entire amount of principal and interest that will be payable to the borough upon maturity of the investment must be collateralized by any combination of the following, unless otherwise provided:
  - (1) Insurance issued by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation,
  - (2) U.S. Treasury securities,
  - (3) Obligations guaranteed by the U.S. Government or its agencies and instrumentalities, or
  - (4) Obligations of the State of Alaska or its political subdivision which are secured by the full faith, credit and taxing power thereof and which are rated A or higher by Moody's Investor's Service, Inc. or Standard and Poor's Corporation.
- (b) At all times during the term of a borough investment required to be collateralized, the bank or savings and loan association with which such monies are invested shall pledge and maintain collateral which has, at all times, a current market value equal to the total of the principal and interest which will be due and owing to the borough at the maturity date of the investment. The mayor may require greater amounts of collateralization if the mayor determines that such action is reasonably necessary to protect the security of borough investments.

(Ord. 89-1, Sec. 6.08.030)

- (c) The collateralization requirements of this section do not apply to investments of the Borough permanent fund.

( Ord. 96-5 (amended Ord. 89-1), new subsection Sec. 6.08.030(c)

**6.08.050 Safekeeping and Custody of Securities.**

Unless waived by the mayor in writing, all investments purchased by the borough and all securities pledged to the borough's collateral shall be held either directly by the borough or by a third party custodial bank or a nationally recognized brokerage firm as agent of the borough. The mayor may enter into agreements with one or more banks to provide custodial and safekeeping services for borough investments or a nationally recognized brokerage firm to provide brokerage services for borough investments.

(Ord. 94-1, (Amended Ord. 89-1), Sec. 6.08.050)

**6.08.060 Competitive Placement of Investments.**

To the extent reasonably possible, the investment of borough funds shall be done on a competitive basis.

(Ord. 89-1, Sec. 6.08.060)

**6.08.070                    Emergencies.**

Notwithstanding any other provision of this chapter, if the mayor determines that a reasonable possibility exists that the principal or interest of a borough investment is not adequately secured for any reason, the mayor may take any action with respect to such investment as may be appropriate to protect the principal and interest of the borough investment, including, but not limited to:

- (1) Rescind or otherwise terminate the investment without regard to interest or other penalties which may arise because of said action.
- (2) Demand from the financial institution additional or substitute collateral,
- (3) Demand from the financial institution additional or substitute safekeeping measures,
- (4) Notify state or federal regulatory agencies of the nature and reasons for said insecurity and seek assistance in remedying the insecurity.
- (5) Temporarily deviate from the provisions of section 6.08.010 (c) relating to borough portfolio diversification, and
- (6) Take any other action the mayor deems reasonably necessary to protect the security of the principal or interest of the borough investment.

(Ord. 89-1, Sec. 6.08.070)

**6.08.080                    Portfolio Liquidity.**

Investments will have maturity dates so that at least \$500,000 of all borough investments will mature or may be drawn upon within 100 days. The limitations of this section do not apply to investments of the Borough permanent fund nor may investments of the Borough permanent fund that mature within 100 days be considered for purposes of meeting the requirements of this section.

(Ord. 96-5 (amended Ord. 89-1), Sec. 6.08.080)

TITLE 7  
PERSONNEL POLICIES

CHAPTERS:

7.10 HIRING POLICIES

7.20 CONDITIONS OF BOROUGH EMPLOYMENT

7.40 STATE PUBLIC EMPLOYMENT RELATIONS ACT

TITLE 7

PERSONNEL POLICIES

Chapter 7.10 -- Hiring Policies

**Sections:**

- 7.10.010 Personnel Officer.
- 7.10.020 Personnel Policy.
- 7.10.030 Personnel Policy Amendment.

**7.10.010 Personnel Officer.**

The Mayor is the Personnel Officer of the Aleutians East Borough. The Mayor may authorize another member of the staff to serve as the Personnel Officer upon written notification. The Mayor may rescind this delegation at any time upon written notification.

**7.10.020 Personnel Policy.**

The Assembly shall adopt a personnel policy to direct the acts of borough employees.

**7.10.030 Personnel Policy Amendment.**

The Assembly can amend the personnel policy when it deems necessary. Amendment shall be by resolution.

Ord. 95-2 (Amended Ord. 88-11), Chapter 7.10)

## TITLE 7

### PERSONNEL POLICIES

#### Chapter 7.20 -- Conditions of Borough Employment

This chapter adopted under the Borough Ordinance 88-11, is repealed in its entirety.

(Ord. 95-2 (Amended Ord. 88-11), Chapter 7.20)

TITLE 7

PERSONNEL POLICIES

Chapter 7.40 -- State Public Employment Relations Act.

**Sections:**

7.40.010 Rejection of Application of State Public Employment Relations Act.

**7.40.010 Rejection of Application of State Public Employment Relations Act.**

Pursuant to Section 4, Chapter 113, SLA 1972, the borough rejects the application of the provisions of the state Public Employment Relations Act AS 23.40.070 et seq. This rejection shall be broadly construed.

(Ord. 91-14, Chapter 7.40.010)

TITLE 40

ALEUTIANS EAST BOROUGH  
PLANNING, PLATTING AND LAND USE

CHAPTER

40.01 GENERAL PROVISIONS

40.05 PLANNING COMMISSION

40.06 PLANNING DEPARTMENT

40.10 COMPREHENSIVE PLAN

40.15 ZONING DISTRICTS

40.20 RESOURCE DEVELOPMENT

## TITLE 40

### PLANNING, PLATTING AND LAND USE

#### Chapter 40.01 General Provisions

##### **Sections:**

40.01.010	Purpose
40.01.020	Geographic Scope
40.01.030	Borough Administration
40.01.040	Compliance
40.01.050	Fees and Penalties
40.01.060	Definitions

##### **40.01.010 Purpose**

This title creates land management principles and procedures for administering development within the Borough. The purpose of this title is to:

- (a) Achieve the goals and objectives and implement the policies of the Borough's Comprehensive Plan;
- (b) Establish the Borough's Land Use Regulations;
- (c) Establish a Planning Commission and a Planning Department;
- (d) Administer the Comprehensive Plan and Coastal Zone Management Plan;
- (e) Establish Zoning Districts;
- (f) Promote and protect the public health, safety, morals, and general welfare, as well as the historical, economic, social, and cultural interest of the Borough's residents;
- (g) Protect fish resources and ensure continuation of a productive commercial fishery;
- (h) Protect subsistence resources;
- (i) Ensure the future growth and development is in accord with the values of its residents;
- (j) Secure the beneficial effects of development for present and future residents;
- (k) Identify, avoid, and mitigate the negative effects of development;
- (l) Ensure future development is of the proper type, design, and location and is served by a proper range of public services and facilities;
- (m) Protect human health and the environment by prohibiting adverse impacts of industrial pollution;

- (n) Ensure public involvement in permitting, planning, and zoning decisions;
- (o) Encourage local business development;
- (p) Maintain all Borough maps and resource data within a Geographic Information System;
- (q) Implement the requirements of the Borough Charter and AS 29.40 as they pertain to Planning, Platting, and Land Use Regulations; and
- (r) Public and private development will be encouraged to:
  1. Provide the maximum long term local benefits that reach the maximum number of Borough residents;
  2. Develop the undeveloped resources of the Borough or otherwise diversify the economic base of the Borough;
  3. Be a stable economic force that maximizes local employment;
  4. Minimize the adverse impact of the development on the environment, natural resources, neighboring properties and communities, and on public infrastructure;
  5. Bear its share of burden on local governments of providing public facilities and services and should contribute to improving the quality of life in the Borough; and
  6. Be sensitive and responsive to the subsistence and other life styles that exist in the communities that the development will affect.

**40.01.020            Geographic Scope**

This title applies to all private, state, federal, Borough, and municipally owned lands, tidelands, submerged lands and waters within the Borough’s boundaries. This title does not apply to federally restricted town site lots or allotments unless allowed by federal law. This title does not apply to any lands within the municipal boundaries of Akutan, Cold Bay, King Cove, and Sand Point; planning, platting and land use is administered by these municipalities under Chapter 45.05.030, which governs Planning, Platting and Land Use Regulations within the Borough.

**40.01.030            Borough Administration**

- (a) All planning, platting and land use approvals require Assembly approval. Only minor amendments, to previously approved Resource Development projects, may be approved by the Planning Director under 40.20.010 (d).
- (b) The Planning Commission reviews all applications and major amendments to previous approved projects. Planning Commission prepares a recommendation for Assembly action.

- (c) The Administrator and Planning Director serve as staff to the Mayor, Assembly, and Planning Commissions to carry out the requirements of this title.

#### **40.01.040 Compliance**

The Administrator may revoke, suspend, or modify any approval that is in conflict with this title or any applicable state or federal requirement. The Administrator may approve continued operation under a Compliance Plan until the compliance violation is remedied or require the use to cease. Penalties for non-compliance may be assessed by the Administrator pursuant to Chapter 1.24, which pertains to penalties.

#### **40.01.050 Fees and Penalties**

The Planning Commission will establish a schedule of fees and penalties for compliance with this title. The Assembly will establish procedures for the Administrator to follow when pursuing civil and criminal penalties.

#### **40.01.060 Definitions**

The definitions listed below are in addition to those listed in Chapter 1.12.010, which provides general definitions for the Code:

- A. "Applicant" means the person who makes an application for use under the provisions of this title, and successors in title or interest;
- B. "Commercial" means use involving the storing, wholesaling, retailing, or rental of any article, service, or substance for cash, trade, or any form of compensation, and supporting activities, but excludes such uses when they are conducted in a dwelling unit or accessory building and are clearly subordinate to the use of the dwelling for residential purposes provided that the primary use and appearance of the lot and accessory building remains residential and generally conforming to the appearance of the surrounding area. For the purposes of this title, Resource Development activities are administered as a separate and distinct commercial activity and are not included in this definition;
- C. "Compliance Plan" means a written plan developed by the Administrator to bring development into compliance with this title;
- D. "Comprehensive Plan" means a document officially adopted by the Assembly including text, charts, graphics, or maps, or any combination, designed to portray general long-range proposals for the arrangement of land uses and development of an economic base and human resources and which is intended to guide government policy towards achieving orderly and coordinated development of the entire community;

- E. “Industrial” means an intensive land use and economic activity involved with manufacturing and production. For the purposes of this title, Resource Development activities area administered as a separate and distinct industrial activity and are not included in this definition;
- F. “Residential” means a use involving the occupation of a building or structure for living, cooking, sleeping, and accessory uses;
- G. “Resource Development” means exploration and development of petroleum, natural gas, coal, metal ore, sand, gravel, other natural resources, and minerals, and all associated processing, refining, and transportation and distribution infrastructure required to commercially develop these resources and bring them to market, for example core drilling, seismic work, and trenching;
- H. “Scientific Advisory Council” means a council that is appointed by the Mayor to evaluate the Study and Project Monitoring Plans to determine if they are acceptable; this council will work closely with the Borough’s Natural Resource Department described in Chapter 2.6 of this Code.

TITLE 40

PLANNING, PLATTING AND LAND USE

Chapter 40.05  
Planning Commission

**Sections:**

40.05.010	Planning Commission
40.05.020	Appointment
40.05.030	Term of Membership
40.05.040	Vacancy
40.05.050	Filling Vacancy
40.05.060	Organization
40.05.070	Rules of Procedure
40.05.080	Meetings
40.05.090	Reimbursement and Compensation
40.05.100	Powers and Duties

**40.05.010 Planning Commission**

A Borough Planning Commission is adopted pursuant to authority set forth in Alaska Statute 29.40.020 and consists of seven Borough residents appointed by the Mayor and confirmed by the Assembly.

**40.05.020 Appointment**

The Mayor shall appoint the Planning Commission members as follows: two from the City of Sand Point, a first class city; two from the City of King Cove, a first class city; and three from the Aleutians East Borough, outside the corporate limits of the cities of Sand Point and King Cove. Members appointed from the cities of Sand Point and King Cove must be appointed from a list of recommendations submitted by the Council of the respective City that the Planning Commission member is to represent. The list must contain at least two names for each vacancy. People recommended must be residents of the respective City the Commission member will represent. Each member of the Planning Commission has one vote.

**40.05.030 Term of Membership**

The term of a member shall begin on January 1, and shall continue for the duration of three years and until a successor is appointed and takes office.

(Ord. 88-4, Sec. 40.05.030)

**40.05.040            Vacancy**

The office of a member of the Planning Commission becomes vacant upon:

- (a) The death or resignation of a member;
- (b) The failure of a member to attend three consecutive regular meetings without first being excused by the Planning Commission;
- (c) Failure of the member to attend two-thirds of the regular and special meetings of the Planning Commission during any twelve month period without first being excused by the Planning Commission;
- (d) Upon a two-thirds vote of the Assembly to remove the member from office; or
- (e) The occurrence of any other event that by ordinance or other law causes the office to become vacant.

**40.05.050            Filling Vacancy**

If a vacancy occurs on the Planning Commission, the vacant position shall be filled by appointment for the unexpired term of the Commission member being replaced.

**40.05.060            Organization**

At the first meeting of each calendar year, following the day the Assembly confirms the annual appointments to the Planning Commission, the Planning Commission shall elect one member to chair meetings of the Planning Commission. The chair shall appoint a recording secretary. Annually, the Planning Commission shall establish and publish in a newspaper of general circulation in the Borough regular meeting dates for the Planning Commission. Schedule revisions must be published 30 days in advance of the meetings.

**40.05.070            Rules of Procedure**

- (a) Robert's Rules of Order, Newly Revised, shall govern the procedures of the Planning Commission to the extent it does not conflict with other provisions of this Code. The Planning Commission may, by resolution, modify Robert's Rules of Order.
- (b) A quorum of the Planning Commission for the conduct of any meeting or public hearing shall be a majority of the commission. No actions shall be taken by the

commission except by concurrence of at least four members.

- (c) Any and all final decisions of the Planning Commission may be overruled or reversed by the Assembly, but only upon a vote of five Assembly members in favor of such overruling or reversal.

#### **40.05.080 Meetings**

- (a) Regular meetings of the Planning Commission shall be held as set out in the schedule of regular meetings.
- (b) Special meetings of the Planning Commission may be called by the chairman or by three members. Reasonable notice of the meeting shall be given to all members and the public. The notice must state the subject or subjects of the meeting. No action may be taken on any matter that was not within the scope or subject of the meeting as set out in the notice.

#### **40.05.090 Reimbursement and Compensation**

Planning Commission members shall be reimbursed, or paid a per diem, for such reasonable and necessary expenses the member incurs in the discharge of the member's duties. The Assembly may, by resolution, establish per diem rates, rules relating to reimbursement and other payments, and may authorize additional reimbursable item payments in lieu of, as well as payment of, compensation for an honorarium.

#### **40.05.100 Powers and Duties**

The Planning Commission shall:

- (a) Prepare and submit to the Assembly a proposed Comprehensive Plan in accordance with AS 29.40.030 for systematic and organized development of the Borough;
- (b) Recommend amendments to the Comprehensive Plan to the Assembly for approval;
- (c) Review, recommend, and administer measures necessary to implement the Comprehensive Plan, including measures provided under AS 29.40.040 and Chapter 40.15 (Land Use Regulations) of this Title;
- (d) Act as the Aleutians East Borough Platting Board;
- (e) Have the authority to prepare and submit to the Assembly for its approval a Master Plan for the physical development of the Borough, including the general location,

character and extent of streets, bridges, parks, waterways, and other public ways, grounds and spaces, together with the general location of the public buildings and other public property, public utilities, and the extent and location of any public housing projects. The Planning Commission shall recommend modifications to the Master Plan from time to time, as it deems in the Borough's interest;

- (f) Prepare and recommend to the Assembly a comprehensive zoning ordinance and map, or propose amendments or revisions thereof, with such provisions as the commission shall deem necessary or desirable for the promotion of health, safety, morals, and general welfare of the inhabitants of the Borough;
- (g) Act as the platting board and exercise other functions with respect to land subdivisions, planning, and zoning as may be prescribed elsewhere in this code or any other ordinance of the Borough, not inconsistent with the provisions of the Borough charter;
- (h) Review all applications, and major amendments to previous approved projects, and prepare recommendations for Assembly action;
- (i) Cause minutes of each meeting to be recorded and forwarded to the Borough Assembly through the Borough Assembly; and
- (j) Perform other duties as may be prescribed by ordinance or requested by the Assembly.

(Ordinance 04-02, Chapter 40.05)

**40.05.110 Financial Disclosure.**

- A. Planning Commission members shall submit a financial and business disclosure form in accordance with and as required by Borough Code 1.28.
- B. Participation in all borough governmental activities without the required disclosure is prohibited.

(Ord. 12-03, New Sec. 40.05.110)

TITLE 40

PLANNING, PLATTING and LAND USE

Chapter 40.06  
Planning Department

**Sections:**

40.06.010	Planning Department
40.06.020	Planning Director
40.06.030	Functions

**40.06.010 Planning Department**

The Planning Department Director is appointed by the Mayor, confirmed by the Assembly, and reports to the Administrator. The Planning Department carries out the Borough functions described in:

- (a) Chapter 40.06 Planning Department
- (b) Chapter 40.10 Comprehensive Plan
- (c) Chapter 40.15 Zoning Districts
- (d) Chapter 40.20 Resource Development

**40.06.020 Planning Director**

The Planning Director is responsible for providing balanced and orderly Resource Development within the Borough. Local, state, and federal law and regulations will govern the actions of the Planning Director.

**40.06.030 Planning Department Functions**

The Planning Department functions include:

- (a) Maximizing Resource Development benefits for Borough residents, while ensuring protection of human health and safety, the environment, commercial fishery resources, subsistence resources, cultural and historic sites, and other economic opportunities within AEB;
- (b) Ensuring all Resource Development within the Borough complies with the Borough's Comprehensive Plan and all other local, state, and federal laws;
- (c) Preparing written recommendations to the Planning Commission for each Resource Development application; to either approve the project, deny it, or approve it with conditions;

- (d) Review and comment on state and federal permits and approvals required for Resource Development projects within the Borough to ensure compliance with local requirements and address local concerns;
- (e) Inspecting and auditing Resource Development projects for compliance with local, state, and federal requirements;
- (f) Conducting enforcement actions; and
- (g) Maintaining complete and accurate maps and documentation on each Resource Development project within a Geographic Information System.

## TITLE 40

### PLANNING, PLATTING and LAND USE

#### Chapter 40.10 Comprehensive Plan

##### **Sections:**

- 40.10.010 Description and Purpose
- 40.10.020 Planning Commission Review and Recommendations
- 40.10.030 Assembly Action
- 40.10.040 Adoption and Contents

##### **40.10.010 Description and Purpose**

The Comprehensive Plan is a guide for the systematic and organized physical, social and economic development, both public and private, of the Borough and serves as a long-range policy guide for the development of the Borough as a whole. It may include separate elements that deal with discrete topics such as transportation, education, subsistence, economic development, tourism, public infrastructure, comprehensive development plans for specific communities or areas, delivery of public services, Borough lands management, and other subjects that may affect the orderly and beneficial development of the Borough.

It is the purpose of the Comprehensive Plan to:

- (a) Encourage maximum, sound and reasonable development and use of renewable and nonrenewable resources within the Borough;
- (b) Minimize the adverse impact of such development and use on the residents and environment of the Borough;
- (c) Promote a healthy and stable ecosystem;
- (d) Minimize the occurrence of incompatible land uses; and
- (e) Promote the health, welfare, and safety of the residents of the Borough.

The Comprehensive Plan shall be implemented through the adoption and application of land use regulations, conditional use and other permitting, zoning, platting, site development and other land use and related regulations.

##### **40.10.020 Planning Commission Review and Recommendations**

The Planning Commission shall regularly review the Comprehensive Plan and recommend additions, deletions, and revisions to the Assembly.

**40.10.030 Assembly Action**

The Assembly may expand, contract, or amend the Comprehensive Plan by ordinance.

**40.10.040 Adoption and Contents**

The Borough Comprehensive Plan is adopted and consists of the following plans, statements, programs, reports, policies, recommendations, goals, standards, maps and documents:

- A. Aleutians East Borough Coastal Management Program, titled, "Coastal Area Boundary Policies Implementation Resource Inventory and Analysis," prepared by Jon Isaacs and Associates *Resource Analysis Fineline Graphics*. Effective Date, November, 1992; reprinted April, 1993.
- B. Aleutians East Borough Transportation Improvement Program, prepared by HDR Alaska, Inc., dated September 2001.
- C. Overall Economic Development Plan 1999, City of False Pass, prepared by The Stadum Group for the City of False Pass, dated July, 1999.
- D. Strategic Economic and Community Development Plan 2001, Nelson Lagoon, prepared for Nelson Lagoon by The Stadum Group, dated November 2001.
- E. Overall Economic Development Plan 1999, City of Cold Bay, prepared for the City of Cold Bay by The Stadum Group, dated July 1999.
- F. Aleutians East Borough Resolution Number 04-10 entitled A Resolution of the Aleutians East Borough Adopting General Borough Policies to Guide Public and Private Development and Other Significant Activities within the Borough.
- G. Coastal Resources Inventory and Environmental Sensitivity Maps, prepared by Research Planning, Inc Columbia, South Carolina, dated September 2001.
- H. Aleutians East Borough, Alaska, Overall Economic Development Plan, dated March 1, 1994.
- I. Borough Land Use Standards Document, dated February 2007.

(Ordinance 04-02, Chapter 40.10)

TITLE 40  
PLANNING, PLATTING and LAND USE

Chapter 40.15  
Zoning Districts

**Sections:**

- 40.15.010 Enacting Clause
- 40.15.020 Scope
- 40.15.030 Compliance Required
- 40.15.040 Official Zoning Districts, Boundaries, and Map
- 40.15.050 Amendments

**40.15.010 Enacting Clause**

The zoning standards contained herein, together with all amendments, shall officially constitute the zoning regulations of the Aleutians East Borough.

**40.15.020 Scope**

(a) Minimum Requirements

In interpreting and applying the provisions of this Ordinance such provisions shall be the minimum requirements for the promotion of the public health, safety, and general welfare.

Whenever the requirements of this title are at variance with the requirements of any other lawfully adopted ordinance of the Borough, those imposing the higher standards shall apply.

(b) Replacement of Other Ordinances

The provisions of this Ordinance shall not be deemed or construed to repeal, amend, modify, alter, or change any other Ordinance or any part thereof not specifically repealed, amended, modified, altered, or changed herein, except in such particulars or matters where this Ordinance is more restrictive than such other Ordinances or parts thereof; and if this

Ordinance is found to be more restrictive, and each other Ordinance is found to be less restrictive, each such other Ordinance shall remain in full force and effect and shall prevail.

(c) Compliance With Other Ordinances and Laws

Nothing in this Ordinance shall be construed to authorize the use of lands, buildings, and/or structures in violation of this Ordinance or any other applicable statutes, ordinances, or laws.

(d) Reference to Any Portion of this Ordinance

Whenever reference is made to any portion of this Ordinance, or any other law or ordinances, the reference shall apply to all amendments and additions now or hereafter made.

(e) Severability

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of provisions thereof other than the part so decided to be invalid or unconstitutional.

**40.15.030 Compliance Required.**

All land, and buildings, structures, or appurtenances located thereon within the Borough, and subject to this Ordinance, which are hereafter occupied, used, erected, altered, or converted shall be used, placed, and erected in conformance with the Land Use Standards prescribed for the Zoning District in which such land, or buildings, structures, and appurtenances are located, except as hereinafter provided.

To insure that public uses and structures conform to the general community pattern and to regulations governing private uses and development, agencies of the federal government, the state, and the Borough shall submit plans and receive approvals in conformance with the requirements outlined in this title.

Whenever private use is made of any public land or public structures, such use shall fully conform to the regulations set forth in this title.

**40.15.040 Establishment of Official Zoning Districts, Boundaries, and Map.**

(a) Zoning District Established

The unincorporated areas within the corporate limits of the Borough are hereby divided into zoning districts. The districts established herein shall be known as:

<u>Abbreviated Designation</u>	<u>Zoning District Name</u>
R	Residential
C	Commercial
I	Industrial
RD	Resource Development

1. **Residential:** The Borough contains one Residential Zoning District, which encompasses the Village of Nelson Lagoon and extends 10 miles from the Village boundary in each compass direction, with the exception of the Village of Nelson Lagoon airport and associated fuel and equipment storage facilities.
2. **Commercial:** The Borough contains one Commercial Zoning District, which encompasses the Village of Nelson Lagoon airport and associated fuel and equipment storage facilities.
3. **Industrial:** The Borough does not include any Industrial Zoning Districts at this time.
4. **Resource Development:** A Resource Development Zoning District has been established, which includes all Borough Land between the 160<sup>00</sup>'00" and 162<sup>00</sup>'00" degrees longitude, excluding the City of Sand Point and its boundaries, and the City of King Cove and its boundaries, and the Nelson Lagoon Residential and Commercial districts.

(b) Zoning District Map

The boundaries of the zoning districts set out herein are delineated and shown on the Zoning District Map of the Borough; said map being a part of this ordinance as fully as if the same were set forth herein in detail.

Two original, official, and identical copies of the Zoning Districts Map are hereby adopted, bearing the signature of the Mayor and the attestation of the Borough Clerk, and shall be filed and maintained as follows:

1. One copy shall be filed with the Borough Clerk and retained as the original record and shall not be changed in any manner;
2. One copy shall be filed with the Planning Commission and shall be maintained up to date by posting thereon all changes and subsequent amendments; and

3. Reproductions of the official Zoning Districts Map, as amended, may be made from time-to-time for informational purposes.

(c) Zoning District Boundaries

The district boundary lines shown on the Zoning Districts Map are usually along streets, alleys, property lines or extensions thereof. Where uncertainty exists as to the boundaries of districts as shown on the official Zoning Districts Maps, the following rules shall apply:

1. Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such center line.
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
3. Boundaries indicated as approximately following city limits shall be construed as following city limits.
4. Boundaries indicated as following the centerline of creeks, drainage courses, or rivers shall be construed as following such centerline.
5. Boundaries indicated as parallel to, or extensions of, features indicated above shall so be construed. Distances not specifically indicated on the original Zoning Districts Map shall be determined by the scale of the map.

(d) Zoning District Amendments

Zoning Districts Amendments require Assembly approval.  
(Ordinance 05-05, Chapter 40.15)

## TITLE 40

### PLANNING, PLATTING AND LAND USE

#### Chapter 40.20 Resource Development

##### **Sections:**

40.20.010	Approval Required
40.20.020	Purpose
40.20.030	Duration
40.20.040	Application Contents
40.20.050	Approval Criteria
40.20.060	Compliance and Enforcement
40.20.070	Resource Development Fund

##### **40.20.010 Approval Required**

All Resource Development within the Resource Development District requires Assembly approval prior to construction or operation.

- a. **Pre-application Meeting:** The Owner/Operator must meet with the Borough for a pre-application meeting at least 180 days prior to submitting the application for approval. At the pre-application meeting the Applicant must present the project scope and timeline to the Borough and explain how this project will comply with the requirements of this title and state and federal laws and regulations. At the pre-application meeting, the Applicant will be required to submit an initial payment of \$50,000 to be placed in a Resource Development Review Fund for this project. The Borough will use these funds to pay for the cost of reviewing and approving the proposed Resource Development project and will administer these funds in accordance with Chapter 40.20.070. Payment of the application fee does not guarantee approval of the project.
- b. **Application Meeting:** The Owner/Operator must meet with the Borough at least 180 days prior to construction or operation to submit an application for Borough approval.
- c. **Approval Process:** The Planning Director will have 90 days to review the application, including a 30 day public notice period. The Planning Director may extend review time periods for complex projects. The public notice period will not commence until the Planning Director has determined that the application is complete and ready for Borough consideration.

By the end of the 90 day review period, the Planning Director will submit a written recommendation to the Planning Commission. The Planning

Commission will have 60 days to develop a written recommendation to the Assembly. The Assembly will grant the approval with or without conditions, or deny the application with explanation within 30 days.

- d. **Amendments:** Resource Development Approval Amendments will require Borough approval. The Planning Director will determine the significance of the proposed amendment. Minor amendments may be approved by the Planning Director. Significant amendments may warrant public and Planning Commission review, and Assembly approval, as determined by the Planning Director.

#### **40.20.020 Purpose**

Borough approval is required for all Resource Development projects to ensure compliance with this title. The Planning Commission must recommend approval to the Assembly, and the Assembly must approve the Resource Development. The Assembly may place conditions on the approval.

#### **40.20.030 Duration**

Approvals are valid while Owner/Operator is in compliance with this title, conditions of Borough approval, and all state and federal requirements. Approvals expire automatically within 12 months, if no construction or activity has commenced or if construction has been suspended for 12 consecutive months.

#### **40.20.040 Application Contents**

To obtain Approval the Owner and Operator must submit the following to the Planning Director:

1. Project Scope and Schedule;
2. Conflict Avoidance Plan (Fisheries & Subsistence Use);
3. Study & Project Monitoring Plan;
4. Local Economic Development Plan;
5. Field Office Plan;
6. Infrastructure Support Plan;
7. Transportation Plan;
8. Historical and Cultural Resources Protection Plan;
9. Good Neighbor Plan;
10. Pollution Prevention Plan;
11. Hazard Assessment Plan;
12. Surety;
13. Reclamation Plan;
14. Emergency Plan; and
15. Fees & Payments.

#### **40.20.050 Approval Criteria**

The Planning Commission will establish procedures for the Planning Director to follow when reviewing applications for approval. At a minimum, the Planning Director must verify the application is complete and meets the requirements of this title prior to recommending it for Planning Commission consideration. The Planning Commission will make a recommendation for Assembly approval. Due deference will be given to residents affected by the proposed development when setting the terms and conditions of approval.

Based on Planning Director and Planning Commission recommendation for Approval, the following criteria must be met for the Assembly to approve Resource Developments:

1. **Project Scope and Schedule**

The project scope and schedule must be submitted in written form by the Owner/Operator and must be compatible with existing and proposed adjacent uses, commercial fisheries, subsistence activities, and projected community needs. The project must adhere to the goals and objectives of the Aleutians East Borough Comprehensive Plan. Facilities must be consolidated as practical; site selection must include sufficient acreage to allow for reasonable expansion of facilities and should minimize site clearing, dredging, and disturbance of productive habitats, and should be located in an area of least biological productivity, diversity, and vulnerability, and where effluents and spills can be contained. Maps of proposed project must be submitted electronically for incorporation into the Borough's Geographic Information System.

2. **Conflict Avoidance Plan (Fisheries & Subsistence Use)**

The Conflict Avoidance Plan must demonstrate that Commercial Fishing, Subsistence Use, and Sport Harvest Conflicts will be avoided. Alternative site locations, transportation routes, and other mitigation measures may be proposed to avoid conflict. Commercial fishing, subsistence use, and sport harvest have priority.

3. **Study & Project Monitoring Plan**

A Study and Project Monitoring Plan must be comprehensive and must ensure protection of human health and the environment. The plan must be reviewed and approved by the Borough Scientific Advisory Council.

4. **Local Economic Development Plan**

A Local Economic Development Plan must include a local hire manpower plan, local business contracting plan, training program, and mentoring program for both construction and operation phases of the resource extraction project.

5. **Field Office Plan**

Resource Development activities are required to maintain a field office at the construction and operating site. The field office must be manned 24 hours per day to ensure proper oversight of project activities. The field office staff must include, at a minimum, a Native and Community Liaison, a Fisheries Protection Biologist, and an Environmental Compliance Officer to provide project oversight, monitoring, address local concerns, and ensure compliance.

6. **Infrastructure Support Plan**

Resource Development Applicants must meet with Village, Municipal Government, and Tribal Leaders of all communities within 25 miles of their operations to determine whether it will be beneficial to expand community infrastructure to include resource extraction needs, or whether it would be more appropriate to institute enclave development requirements. A joint tribal, local community and industry agreement on this issue must be reached, approved by all parties, and submitted to the AEB. In the event there is agreement to expand existing community infrastructure to meet the needs of industrial development (e.g. medical clinic, school, community center, tank farm, recreation facilities, etc.), industry is responsible for construction, maintenance, and operation costs of expanding these facilities to support their activities.

7. **Transportation Plan**

Transportation infrastructure (e.g. roads, bridges, runways, marine facilities, etc.) built by industry on Borough, state, or federal lands must be available for all AEB resident use and access. Wherever possible, existing transportation infrastructure should be expanded to meet industry needs to minimize duplication and environmental impact. Industry is responsible for construction, maintenance, and operating costs for the transportation infrastructure required to support their activities. Whenever possible, onshore exploration activities should be supported by air service, an existing road system or port facility, or by vehicles which do not cause significant damage to the ground surface or vegetation. At cessation of operations, the transportation infrastructure must be donated to AEB for public use, or the transportation infrastructure must be completely removed and the area must be remediated to AEB's satisfaction.

8. **Historical and Cultural Resources Protection Plan**

A Historical and Cultural Resources Protection Plan must be submitted to demonstrate that traditional, historical and cultural sites may not be disturbed or adversely impacted during the construction or operation of the Resource Development project.

9. **Good Neighbor Plan**

The Good Neighbor Plan must include a plan to ensure surrounding residential properties are not adversely impacted by excessive noise, fumes, odors, glare, smoke, light, vibration, dust, litter or interference with media reception. The plan should include charitable contributions to support local education, art, and charities, provide employment training programs to maximize local hire. This

program should provide a fund for impact assistance if adverse impacts are realized by the community or individual residents.

**10. Pollution Prevention Plan**

The Pollution Prevention Plan must include best management practices for protecting drinking water, air, and local food sources from pollution, and a recycling program.

**11. Hazard Assessment Plan**

A Hazard Assessment Plan must include evaluation of all potential hazards to the Resource Development Project including, but not limited to, geophysical hazards, fire, flood, landslides, erosion, earthquake, coastal storms, and ice.

**12. Surety**

Surety must be appropriate for the magnitude, type, cost, nature, and duration of the development. Surety must be provided in an amount sufficient to fund:

- a. Environmental clean-up and restoration requirements;
- b. Compensate residents for any adverse human health impacts;
- c. Compensate commercial fisherman and subsistence users for adverse impacts;
- d. Dismantle, remove, and restore the Resource Development site to its original condition prior to development; and
- e. The liability under the surety provisions shall continue until such time as released, or in its entirety, by the Planning Director.

**13. Reclamation Plan**

The Reclamation Plan must be provided in sufficient detail to determine surety requirements and describe the reclamation actions to be completed at cessation of operations. The Reclamation Plan must be developed using best management practices.

**14. Emergency Plan**

The Emergency Plan must provide for adequate medical, rescue, fire, and other emergency services. The plan should preferably include proposals to fund expansion of existing Borough emergency services to support increased demands created by the new Resource Development project.

**15. Fees & Payments**

Resource Development Fund payments (Chapter 40.20.070) and all fees required by Chapters 40.01.060 must be paid.

**40.20.060 Compliance and Enforcement**

Compliance with Borough approval is required. The Operator must submit quarterly reports demonstrating compliance with the approved plans listed in Chapter 40.20.050 by January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup> and October 15<sup>th</sup> and of each calendar year. Compliance violations will be subject to enforcement under Chapter 40.01.040 and may be subject to penalties under Chapter 40.01.050

#### **40.20.070 Resource Development Fund**

Each Resource Development project will be required to fund the cost for Borough review and approval of their application, and the cost of inspection and oversight of the project once it is in operation. The Resource Development Fund requirements are triggered at the pre-application meeting, or at the discretion of the Planning Director, if Borough is incurring costs to participate in project meeting, discussions, and review prior to the pre-application meeting. At the pre-application meeting, the Applicant will be required to submit an initial payment of \$50,000 to be placed in a Resource Development Fund for this specific project. Each month, the Planning Director will provide the Applicant with an account describing how the funds were used by the Borough to review, approve, or monitor project compliance. The Applicant must maintain a minimum balance of \$25,000 in this fund at all times. Failure to maintain and provide adequate funding within the Resource Development Fund for the project will trigger compliance actions under 40.01.040. Unused funds will be returned to the applicant at the completion of the project, or if an application is withdrawn from consideration.

TITLE 45  
POWERS AND FUNCTIONS

CHAPTERS:

- 45.05      AREAWIDE POWERS
- 45.10      NON-AREAWIDE POWERS
- 45.15      SERVICE AREA POWERS

TITLE 45

POWERS AND FUNCTIONS

Chapter 45.05 -- Areawide Powers

**Sections:**

45.05.010	Areawide Powers and Functions.
45.05.020	Assessment and Collection of Taxes.
45.05.030	Planning, Platting and Land Use Regulations.
45.05.040	Medical and Mental Health Services.
45.05.050	Airport Powers.
45.05.060	Docks, Ports and Harbors.
45.05.070	Transportation Systems.

**45.05.010 Areawide Powers and Functions.**

The powers and functions set out in this chapter are areawide and shall be exercised both inside and outside cities with such exceptions as are set out in this chapter or are as specifically set out in other provisions of this code.

(Ord. 88-3, Sec. 45.05.010)

**45.05.020 Assessment and Collection of Taxes.**

- (a) The Borough shall assess and collect sales and use taxes that are levied within its boundaries as provided in AS 29.45 with the exception of city sales and use taxes as set out in subsection (b).
- (b) Pursuant to the authority granted under AS 29.45.700(a), the Assembly authorizes each city within the Borough to levy and collect at their own expense sales and use taxes on such sources as each city may at any time provide by ordinance.

(Ord. 88-3, Sec. 45.05.020)

**45.05.030 Planning, Platting and Land Use Regulation.**

- (a) The Borough shall provide for planning, platting and land use regulation as provided in AS 29.40 with the exception of those areas of the Borough that are within cities as set out in subsection (b).
- (b) Pursuant to the authority granted in AS 29.40.010(b), the Assembly authorizes each city within the Borough, at its own expense, to exercise within the boundaries of the city all of the powers and duties of the Borough under AS 29.40. The delegation under this subsection is effective only if a city accepts and consents to the delegation by July 1, 1988.

(Ord. 88-3, Sec. 45.05.030)

**45.05.040 Medical and Mental Health Services.**

- (a) The Borough shall exercise on an areawide basis the power to provide medical and mental health services, including treatment for substance abuse. The power includes the power to provide facilities within which to provide the services authorized under this section and to provide financial assistance for those medical services it may not provide directly as set out in subsection (b).
- (b) The power assumed under this section shall be broadly construed; provided, there is specifically excluded from such power the power to directly provide emergency medical services or to directly operate clinics for medical health practitioners.
- (c) The power under this section is assumed pursuant to Aleutians East Borough Resolution 90-7, adopted on February 22, 1990 and approved by separate majority votes both inside all cities and outside all cities at a special election held on March 21, 1990.

(Ord. 90-10, Sec. 45.05.040)

**45.05.050 Airport Powers.**

- (a) The Borough shall exercise on an areawide basis the power to construct, operate, maintain, expand and regulate public airports.
- (b) This power is assumed pursuant to the exercise of said power on a non-areawide basis pursuant to voter approval of a proposition at a special Borough election held on March 21, 1990 and acceptance by the Borough under Borough Ordinance 91-3 of the transfer of the power from the City of Akutan by Akutan Ordinance No. 90-04 adopted on June 29, 1990; from the city of Cold Bay, by Cold Bay Ordinance No. 90-03, adopted on June 26, 1990; from the city of King Cove by King Cove Ordinance 90-5, adopted on May 17, 1990; and from the City of Sand Point by Sand Point Ordinance No. 90-9, adopted on May 8, 1990; said four cities being all the cities within the Aleutians East Borough on September 11, 1990. The airport power shall be exercised on an areawide basis commencing on September 11, 1990.
- (c) There is retained by each city and there is granted to each city formed within the Borough after September 11, 1990 such powers as are necessary to permit each city to enter into one or more agreements, leases or other arrangements for the city to acquire, construct, operate and maintain airports acquired, owned, to be owned, or otherwise held by the Borough under its areawide airport power and to enter into joint exercise of powers agreements with the Borough.

(Ord. 91-3, Sec. 45.05.050)

**45.05.060 Docks, Ports and Harbors.**

- (a) The Borough shall exercise on an areawide basis the power to construct, operate, maintain, and regulate public docks, ports and harbors upon which construction was started after September 11, 1990, along with such other powers as may be necessary or convenient thereto, including the power to acquire and own such facilities.
- (b) This power is assumed pursuant to the exercise of said power on a non-areawide basis pursuant to voter approval of a proposition at a special Borough election held on March 21, 1990 and acceptance by the Borough of the transfer of the power from the City of Akutan by Akutan Ordinance No. 90-04 adopted on June 29, 1990; from the City of Cold Bay, by Cold Bay Ordinance No. 90-03, adopted on June 26, 1990; from the City of King Cove by King Cove Ordinance 90-5, adopted on May 17, 1990; and Sand Point Ordinance No. 90-9, adopted on May 8, 1990; said four cities being all the cities within docks, ports and harbors power shall be exercised on an areawide basis commencing on September 11, 1990.
- (c) Only the following docks, ports and harbors were under construction or constructed prior to September 11, 1990.
  - (1) In the City of Sand Point:
    - (a) Sand Point City Dock
    - (b) Sand Point Boat Harbor
    - (c) Sand Point Harbor Expansion Dock and Uplands as more specifically shown on Exhibit A to Sand Point Ordinance 90-9.
  - (2) In the City of King Cove, King Cove Boat Harbor as more specifically shown on Exhibit A to King Cove Ordinance 90-5.
  - (3) In the City of Akutan:
    - (a) The Akutan City Dock and Uplands Support Facilities
    - (b) The Akutan Seaplane Ramp and Turn-around, and
    - (c) The barge situated at the Old Seawest Dock, all as more particularly shown on Exhibit A to Akutan Ordinance 90-04.
  - (4) In the City of Cold Bay, there are no docks, ports or harbors constructed or operated by the City upon which construction was started prior to September 11, 1990.

- (d) There is retained by each city and there is granted to each city formed within the Borough after September 11, 1990 such powers as are necessary to permit each city to enter into one or more agreements, leases or other arrangements for the city to acquire, construct, operate and maintain docks, ports and harbors acquired, owned, to be owned, or otherwise held by the Borough under its areawide docks, ports, and harbors power and to enter into joint exercise of power agreements with the Borough.

(Ord. 91-4, Sec. 45.05.060)

**45.05.070                    Transportation Systems.**

- (a) The Borough shall exercise on an areawide basis the power to provide transportation systems.
- (b) The power set out in this section is assumed pursuant to Alaska Statute 29.35.210(b)(1) and consists of the power to acquire, construct, maintain, regulate and operate roads, vessels, and vehicles, including passenger, marine, and vehicle terminals and all related equipment and facilities that are necessary or appropriate for the construction, maintenance, regulation and operation of roads, vessels and vehicles that comprise a transportation system that interconnects cities and communities within the Borough.
- (c) There is retained by each city, and there is granted to each city formed within the Borough after the effective date of Ordinance 99-02, such powers as are necessary to permit each city to enter into one or more agreements, leases or other arrangements for the city to acquire, construct, operate and maintain parts of the transportation systems held by the Borough under its areawide transportation systems power and to enter into joint exercise of power agreements with the Borough.

(Ordinance 99-02, Sec.45.05.070)

TITLE 45

POWERS AND FUNCTIONS

Chapter 45.10 - Non-Areawide

**Sections:**

- 45.10.010                    General.
- 45.10.020                    Economic Development Power.

- 45.10.030            Airport Powers.
- 45.10.040            Docks, Ports and Harbors

**45.10.010            General.**

- (a) The borough assumes and may exercise on a non-areawide basis the powers and functions set out in this chapter.
- (b) The borough may enter into agreements with the United States, the State of Alaska, or with one or more cities for the cooperative or joint administration of all or any part of a power subject this chapter.
- (c) Upon the transfer of all or a portion of a power by a city by ordinance and approval of the transfer by the assembly by ordinance, the borough shall exercise the transferred power within the city. Upon the assumption of the power by the borough on a non-areawide basis and the transfer of the power by all cities within the borough, the power shall be exercised on an areawide basis.

(Ord. 89-2, Sec. 45.10.010)

**45.10.020            Economic Development Power.**

- (a) The borough shall exercise on a non-areawide basis the power to provide for economic development, as authorized under AS 29.35.210 (a).
- (b) The exercise of the power to provide for economic development includes, but is not limited to:
  - (1) Providing financial and other forms of assistance to public and private groups for the conduct of activities intended to preserve or further the economic health or development of the borough.
  - (2) Construct, improve, operate and maintain facilities such as docks, wharves, harbors, transportation facilities, and industrial development sites that will encourage, or accommodate the needs of, the fishing industry within the borough.
- (c) Such other similar or different activities as the Assembly determines to be intended for the preservation or expansion of the economy of the borough.

(Ord. 89-2, Sec. 45.10.020)

**45.10.030            Airport Powers.**

Pursuant to the approval by the voters of the Aleutians East Borough at a special election held on March 21, 1990, the Borough assumes and shall exercise on a

non-areawide basis the power to acquire, own, construct, operate, maintain and regulate public airports along with such other powers as may be necessary and convenient thereto.

(Ord. 91-3, Sec. 45.10.030)

**45.10.040 Docks, Ports and Harbors**

Pursuant to the approval by the voters of the Aleutians East Borough at a special election held on March 21, 1990, the Borough assumes and shall exercise on a non-areawide basis the power to acquire, own, construct, operate, maintain and regulate public docks, ports and harbors along with such other powers as may be necessary and convenient thereto.

(Ord. 91-4, Sec. 45.10.040)

TITLE 45

POWERS AND FUNCTIONS

Chapter 45.15 - Service Area Powers

**Section:**

45.15.100 Akutan Health Clinics Service Area

**45.15.100 Akutan Health Clinics Service Area.**

This section adopted under Borough Ordinance 92-1, is repealed and the service area dissolved.

(Ord. 93-4 (Amended Ord. 92-1), Sec. 45.15.100)

TITLE 50  
PROPERTY

CHAPTER

50.10      REAL PROPERTY ACQUISITION AND DISPOSAL

TITLE 50  
PROPERTY

Chapter 50.10 -- Real Property Acquisition and Disposal

**Sections:**

50.10.010	Rights, Powers and Duty of Borough.
50.10.020	Acquisition of Real Property.
50.10.030	Temporary Use of Borough Lands.
50.10.040	Casual Use of Borough Lands.
50.10.050	Disposal of Real Property.
50.10.060	Methods of Disposal.
50.10.070	Price For Disposal.
50.10.080	Conveyances to Natives Tribes or Councils.
50.10.090	Form, Fees, and Standard Terms.
50.10.100	Definitions.

**50.10.010 Rights Powers and Duty of Borough.**

- (a) The borough shall have and may exercise all rights and powers to acquire, own, hold, dispose of manage real property, both inside and outside the borough.
- (b) The borough holds all real property in trust for the benefit of the public and shall hold, manage and dispose of such property in a manner consistent with that trust; it must insure that the public receives fair and reasonable compensation or benefit from borough actions in the disposal of real property.

(Ord. 89-5, Sec. 50.10.010)

**50.10.020 Acquisition of Real Property**

- (a) Except as may be prohibited by law, the borough may acquire, own, and hold real property inside or outside the borough boundaries by purchase, lease, exchange, transfer, dedication, gift, condemnation or declaration of taking under the Borough's power of eminent domain, tax or special assessment foreclosure, or any other legal method.
- (b) Unless otherwise directed by the assembly, the mayor, without further assembly approval, may acquire real property by a negotiated purchase when:
  - (1) The real property has been identified by the assembly for acquisition, or is required for a project approved by the assembly,
  - (2) funds have been appropriated for the acquisition, and

- (3) the real property is acquired for a price not exceeding either fair market value or the amount appropriated or budgeted for the real property.
- (c) Unless otherwise directed by the assembly, the mayor may after failure of negotiations for real property under the conditions set out in subsection (b), initiate acquisition by condemnation or declaration of taking.
- (d) The selection of real property to be acquired pursuant to an entitlement under AS 29.65, or under Section 14(c) (3) of the Alaska Native Claims Settlement Act (P.L. 92-203), as amended, or under any other limited entitlement must be approved by the Assembly by resolution as set out in subsection (g). Any conveyance or agreement purporting to be in complete satisfaction of any entitlement is ineffective until approved by the assembly by ordinance.
- (e) Except as provided in subsections (b) and (c) acquisition of real property for a valuable consideration, including an exchange, must be authorized by the assembly by ordinance.
- (f) All acquisitions by gift, donation, bequest, or dedication other than a dedication through a subdivision plat approved by the borough platting authority, or any other method not involving the giving of valuable consideration and not covered by subsection (d) shall be in accordance with the terms and conditions approved by the assembly by resolution or motion.
- (g) Before acquiring real property for a valuable consideration, the mayor shall obtain a title report on, and shall determine the fair market value of, the real property; provided, the mayor with approval of the assembly may waive the requirement for a title report upon a determination that the risk involved or the interest to be acquired does not warrant a title report. The determination of fair market value may be by means of a fee appraisal or such reasonable estimates as the mayor with the approval of the assembly finds to be reliable or appropriate under the circumstances.
- (h) All real property shall be held in the name of the "Aleutians East Borough."

(Ord. 89-5, Sec. 50.10.020)

#### **50.10.030 Temporary Use of Borough Lands.**

- (a) The mayor with the approval of the Assembly may issue special land use permits for the exclusive or non-exclusive, temporary, non-consumptive use

of borough lands. A special land use permit does not convey an interest in the land and may be revoked upon 30 days' notice unless a shorter period is provided for in the permit or may be revoked without prior notice for breach of a condition of the permit. Unless otherwise agreed to in writing, the land must be

restored to its original condition upon expiration or revocation of the permit. Easements may not be granted under a special land use permit.

- (b) Upon receipt of an application for a temporary land use permit under this section, the mayor shall post notice of the application, including the date upon which the assembly will hear persons or receive comments on the proposed application. The date of the hearing must be at least two weeks after the first day upon which the notice is posted. After the hearing, the assembly may, by motion, authorize the issuance of the permit and may impose such restrictions as it deems appropriate.
- (c) A special land use permit and all extensions and renewals thereof may not exceed one year except upon assembly approval. Special land use permits are not transferable.
- (d) Fees charged for a special land use permit shall be in accordance with a fee schedule established by the assembly.

(Ord. 89-5, Sec. 50.10.030)

**50.10.040 Casual Use of Borough Lands.**

- (a) Except as provided in subsection (b) and (c), no borough land is open to public use.
- (b) Land which has been acquired or improved by the borough for a public function may be opened to public use under such terms and conditions as the borough may prescribe.
- (c) Land which has been designated by the borough as casual use land is open to the public for casual use; provide, the borough makes no warranty as to the natural or artificial conditions of such land and persons who use such land do so at their own risk as to natural and artificial conditions of the land, and by such use waive their right to recover from the borough for any injury or death occurring on the land not attributable to reckless or intentional misconduct of the borough. No fee may be charged for casual use of borough land.

(Ord. 89-5, Sec. 50.10.040)

**50.10.050 Disposal of Real Property.**

- (a) Except for real property acquired or developed for or dedicated or devoted to a governmental purpose, the borough holds all real property in a proprietary capacity as a borough resource. The disposal of all real property not covered by disposal methods under other sections of this chapter may be processed in accordance with this section.
  
- (b) The disposal must be authorized by ordinance and must contain:
  - (1) a description of the property,
  - (2) a finding and the facts that supports the finding that the property or interest is no longer required for a public purpose if the property or interest is or was used for a governmental purpose,
  - (3) the type of interest to be disposed of if less than a fee interest,
  - (4) conditions and reservations that are to be imposed upon the property,
  - (5) the fair market value of the property,
  - (6) the minimum disposal price of the real property,
  - (7) the method of disposal, including time, place and dates when relevant,
  - (8) special conditions for the disposal, including, when relevant, special qualifications of purchasers and purchase terms, and
  - (9) a finding and the facts supporting the finding of the public benefits to be derived if the disposal is to be for less than market value.

(Ord. 89-5, Sec. 50.10.050)

**50.10.060                    Methods of Disposal.**

Disposal of real property may be by sealed bids, outcry auction, lottery, first-come, first-served, negotiation, or such other method as the assembly may provide in the resolution authorizing the disposal.

(Ord. 89.5, Sec. 50.10.060)

**50.10.070                    Price for Disposal.**

- (a) Unless otherwise provided in the resolution authorizing the disposal, the disposal shall be at not less than the fair market value as determined by a fee appraisal, by the borough's assessor's valuation, or by such reasonable estimates as the mayor or assembly, as appropriate, finds to be reliable or appropriate under the circumstances.

- (b) Except for a conveyance to another governmental unit, a disposal for less than fair market value may be made only upon a determination by the assembly that the public benefits to be realized from the disposal equal or exceed the reduction in value of the consideration to be received by the borough. If a disposal at less than market value is to be made to a private entity or person and the reduced price is justified by an identified use, the conveyance document must contain a clause restricting the use of the property to the identified use. The assembly may limit the time during which the use restriction applies. When determined appropriate by the assembly, the conveyance document must also include a clause providing for the reversion to the borough of the real property upon the failure of the real property to be used for the identified use.
- (c) Uses and purposes that may justify a disposal at less than market value include, but are not limited to:
  - (1) use for a governmental or governmental type of service;
  - (2) use for new business or industry;
  - (3) use that promotes economic development;
  - (4) the purpose of increasing the availability of land if the assembly has determined that the land values in an area are inflated because of a scarcity of land in private ownership or that such disposals are necessary to stimulate or reduce the cost of new housing construction; and
  - (5) the purpose of settling boundary or other land disputes.
- (d) A conveyance to the state, the federal government, another local government, or to a governmental agency may be at less than the market value if the assembly, in its sole discretion, determines the conveyance should be authorized. Such conveyances may, but need not, contain restrictions on use, reverter clauses and be for some consideration.

(Ord. 89-5, Sec. 50.10.070)

**50.10.080 Conveyances to Native Tribes or Councils.**

No real property may be conveyed to a Native Tribe or Council organized under Section 16 or 17 of the Indian Reorganization Act of 1934 as amended (25 U.S.C.A. 476, 477) unless the tribe or council gives to the borough a waiver of immunity from suit for the purpose of enforcement of the provisions of the conveyance and associated instruments.

(Ord. 89-5, Sec. 50.10.080)

**50.10.090                    Form. Fees and Standard Terms.**

- (a) The mayor may establish procedures and forms for the processing of requests, applications and disposals under this chapter.
- (b) The assembly may establish a schedule of fees, including application, use, and rental fees, applicable to application, permits and the use and conveyance of real property under this chapter.
- (c) The assembly may approve standard terms to be included in leases, licenses, permits and other conveyance documents. Upon such approval all conveyances to which the standard terms are applicable shall include such terms unless modified or waived by the assembly or the mayor determines that one or more terms are inappropriate or must be modified or deleted to meet the intent or purpose of the conveyance authorization.

(Ord. 89-5, Sec. 50.10.090)

**50.10.100                    Definitions.**

The following words have the meanings ascribed in this chapter unless the context clearly indicates a different meaning.

- (1) "Casual use" means the temporary, safe, non-exclusive use of borough land in a manner that does not disturb the surface and includes but is not limited to such uses as hiking, hunting, fishing, short term camping, picnicking, operation of all terrain and similar vehicles and berry picking.
- (2) "Conveyance" means the voluntary transfer of real property from one person or entity to another.
- (3) "Fair market value" means the price a property would bring in a sale between a willing buyer and a willing seller, both being fully informed as to all relevant conditions of the property when the property has been exposed for sale for a reasonable period of time.
- (4) "Hazardous or obnoxious use" means a use involving a danger or a risk of damage to property or injury to persons or a use the ordinary person would find offensive.
- (5) "Mayor" means the mayor the Aleutians East Borough or a person designated by the mayor for the purpose of discharging any duty or right of the mayor under this chapter.
- (6) "Posting" means the posting in each community within the borough at a place where public notices are posted, a notice of the action proposed,

along with the date, time, and place or address at which a hearing will be held or to which comments are to be sent.

- (7) "Real Property" includes interests in real property as well as rights to real property, and includes, but is not limited to, leases, easements, security interests, licenses, permits and options.

(Ord. 89-5, Sec. 50.10.100)

TITLE 60  
REVENUE

CHAPTER

60.20 SALES TAX

60.40 SEVERANCE TAX

TITLE 60

REVENUE

Chapter 60.20 - Sales Tax

**Sections:**

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**60.20.010 Tax Levied.**

There is levied and shall be collected a tax of two percent on all sales of raw fish in the Borough. The tax applies to the sale of raw fish whether delivered directly or indirectly by the seller to the buyer in the Borough.

(Ord. 88-2(s), Sec. 60.20.010)

**60.20.020 Obligation to Pay Tax.**

The tax levied under this chapter is an obligation of the seller. The buyer shall collect the tax at the time of sale by withholding from payment to the seller the amount of the tax. If payment is not made at the time of sale or delivery, the buyer shall segregate from funds of the buyer an amount equal to the tax due on the sale. For purposes of this chapter, funds required to be segregated under this section are taxes collected or required to be collected under this chapter.

(Ord. 88-2(s), Sec. 60.20.020)

**60.20.030 Computation of Tax.**

The tax due under this chapter shall be computed by multiplying the sale price by two percent. The sale price includes all forms of consideration given for the raw fish. The tax due on a transaction shall be rounded to the nearest whole cent with fractions of one-half cent and more rounded upward.

(Ord. 88-2(s), Sec. 60.20.030)

**60.20.040 Tax Funds Held in Trust.**

All funds required to be collected or segregated by the buyer are funds of the Borough and shall be held in trust by the buyer until paid over to the Borough. Interest earned on such funds while held by the buyer may be retained by the buyer.

(Ord. 88-2(s), Sec. 60.20.040)

**60.20.050 Payment and Remittance.**

- (a) Taxes required to be collected under this chapter during a calendar month are due and payable to the Borough on the last day of the calendar month. Every buyer liable for collection of the tax shall file with the Borough on forms furnished by the Borough a return containing the following information:
  - (1) Gross purchases by the buyer during the calendar month;
  - (2) Nontaxable purchases during the calendar month;
  - (3) Taxable purchases during the calendar month;
  - (4) Taxes collected on taxable purchases;
  - (5) Interest, penalties, deductions and such other information as may be required on the form.
- (b) The return shall be signed and its completeness and accuracy sworn to by the buyer under penalty of perjury.

- (c) The completed return, together with the remittance of the tax required to be collected during the calendar month, must be received by the Borough at the address designated on the return form on or before the fifteenth day of the month following the end of the calendar month for which the return is required. If the fifteenth day of a month falls on a Saturday, Sunday or a State holiday, the date for receipt is extended to the next day that is not a Saturday, Sunday or State holiday.
- (d) Any buyer who was required to collect a tax during a calendar month shall file a return for the next following calendar month even though no tax may be due during the following month. A return filed for a month in which no tax was required to be collected must show why no tax was collected or is due. If the business is sold or transferred to another, whether voluntarily or involuntarily, the person filing the return shall provide on the form the name of the person to whom the business was sold or transferred. A person who files a return for a calendar month in which no taxes were required to be collected is not required to file additional returns until the person is required to collect a tax under this chapter.
- (e) If a complete return accompanied by the entire tax due is received by the Borough within the time allowed, the person collecting the tax may deduct and retain up to two percent of the tax due as compensation for its costs of administration of the tax; however, the amount deducted and retained may not exceed \$150 for any month.  
(Ord. 98-3, amended Sec. 60.20.050 (e) (amended Ord. 89-4))
- (f) Amounts received with the return shall be applied in the following order:
  - (1) penalties due, beginning with the oldest penalty;
  - (2) interest due, beginning with the interest due on the oldest month; and
  - (3) taxes due, beginning with the taxes due from the oldest month.

(Ord. 98-3 (amended Ord. 88-2), Sec. 60.20.050)

**60.20.060 Sale or Transfer of Business.**

If any buyer or other person required to collect a tax under this chapter sells, leases or in any other manner disposes of the business or if the business is transferred voluntarily or involuntarily, the person selling, leasing or otherwise transferring the business shall make or deliver to the Borough within fifteen (15) days of the date of the sale or other transfer a final sales tax return. The purchaser, lessee or other successor or assign shall withhold a sufficient portion of the purchase or lease money to cover the amount of the tax required to be collected under this chapter, penalties, and interest as may be due on unpaid taxes to the Borough until such time as the former owner has produced a receipt

from the Borough showing that all tax obligations through the date of sale imposed by this chapter have been paid. The purchaser, lessee or other transferee or successor-in-interest of a business required to collect the tax under this chapter shall be liable for all taxes required to have been collected by the former owner but not paid over to the Borough and shall be liable for all penalties and interest on such unpaid taxes and on late or unfiled returns.

(Ord. 88-2, Sec. 60.20.060)

**60.20.070 Exemptions.**

The following sales are exempt from the tax imposed by this chapter:

- (1) Casual or isolated sales not made in the regular course of business;
- (2) Resale of the same raw fish in essentially the same form as when purchased if a prior purchase was subject to the tax under this chapter and such prior purchase was fair market value for the fish under the circumstances of such prior purchase;
- (3) All rentals and services performed in the Borough; and
- (4) Sale of all goods except raw fish;
- (5) Twenty-five percent of the sale price of raw fish. This exemption shall be effective only for sales or use prior to July 1, 1989 unless, prior to that date, the assembly adopts an ordinance or resolution extending the effective date for one additional fiscal year. If the exemption is extended under this or the preceding sentence, it shall expire at the end of the extension fiscal year unless again extended by the assembly by ordinance or resolution for one additional fiscal year. (Ord. 88-8, Sec. 60.20.070, Ord. 88-2(s), part, 1987)

(Ord. 88-2, Sec. 60.20.070)

**60.20.080 Rulings and Regulations.**

- (a) The Chief Administrator may promulgate and amend regulations and may prescribe the use of forms appropriate to the implementation of this chapter. Regulations promulgated by the Chief Administrator are effective on the date they are promulgated unless a different date is indicated in the regulations; provided, all regulations are subject to repeal or revision by the Assembly at any time. Prior to promulgation, proposed regulations shall be submitted to the Borough Attorney for review and comment. Upon promulgating a regulation or any amendment to an existing regulation, the Chief Administrator shall submit the regulation or amendment to the Assembly at its next regular meeting.

- (b) If any person who is or may be required to pay or collect a tax under this chapter questions the application of this chapter to a transaction or other situation in which that person is involved or may become involve, the person may apply to the Sales Tax Administrator for a ruling on the question. The Sales Tax Administrator may rule on the question and may seek the service of the Borough Assembly on the question. Before a ruling of the Sales Tax Administrator is effective or binding on the Borough, it must be signed by the Chief Administrator. Rulings having general applicability shall be considered by the Chief Administrator for promulgation as a regulation.

(Ord. 88-2, Sec. 60.20.080)

**60.20.090 Registration-Authority to Enforce Collection.**

- (a) All persons required to collect a tax under this chapter shall file with the Sales Tax Administrator an application for a certificate of registration on a form provided by the Borough. The application must be filed not later than 30 days after the date upon which the person engages in a transaction taxable under this chapter. The application must contain or be accompanied by:
- (1) the name and mailing address of the applicant;
  - (2) the location at which the applicant will conduct its business where transactions subject to the tax under this chapter will occur; if the applicant's business is to be conducted from one or more vessels, the name of the vessels and the general location or areas in which each vessel will operate;
  - (3) the applicant's Alaska Fisheries Business License number;
  - (4) a copy of the applicant's most recent Alaska Fisheries Business License Tax filing;
  - (5) a copy of the most recent statement provided the State of the amount of fisheries products the person expects to produce during the applicant's license year; and
  - (6) a statement of the extent of licensable property owned by the applicant in the Borough against which the tax liability of the applicant may be collected and other information with respect to descriptions, location and value of the property which the department prescribes.
- (b) Upon receipt of a properly executed application, the Sales Tax Administrator will issue a certificate of registration setting out the name of the registrant, its physical and its mailing addresses, the place the registrant will conduct its taxable transactions if the registrant will conduct its taxable

transactions if the registrant has a fixed place of operations, or the name of the vessel and the general area in which the vessel operates if the registrant will be operating from a vessel. The certificate shall authorize the registrant to collect and enforce the collection of the tax required to be collected under this chapter. The certificate must be prominently displayed at the location set out in the certificate or upon the vessel named in the certificate. A separate certificate shall be issued for each vessel or location of an applicant.

- (c) A certificate of registration is nonassignable and nontransferable and must be surrendered to the Sales Tax Administrator by the registrant to whom it is issued upon the registrant's ceasing to do business at the location or on the vessel named therein. If the business is continued at the same location, but there is a change in its form of organization, such as a change of a single proprietorship to a partnership or corporation, or the admission or withdrawal of a partner, or other change, the registrant shall surrender the old certificate to the Sales Tax administrator with an application for a new certificate. If the business of a registrant is sold, leased or in any other manner transferred to another person, the registrant shall surrender the certificate to the Sales Tax Administrator and the new owner, lessee or other successor to the business shall immediately apply for a new certificate.
- (d) If there is a change of location of a registrant's place of business, the registrant shall surrender the certificate for the old location to the Sales Tax Administrator along with a statement of the new address. Upon receipt of the old certificate and the new address, the Sales Tax Administrator shall issue a new certificate of registration showing the new location.
- (e) Before issuing a certificate of registration, the applicant shall post a bond, furnish a statement of net worth, or furnish such additional security as may be required by the Sales Tax Administrator to insure full and prompt payment of taxes required to be collected under this chapter; provided, no bond, statement of net worth, or additional security may be required except in accordance with regulations promulgated by the Chief Administrator.
- (f) A person applying for a certificate of registration under this section thereby gives consent to an inspection by the Borough of the applicant's Alaska Fisheries Business Tax Returns and other information or records filed by the registrant with the State of Alaska for the purpose of enforcement and administration of the provisions of this chapter.

(Ord. 88-2, Sec. 60.20.090)

**60.20.100            Statement of Tax.**

A person required to collect tax under this chapter shall provide the seller with a statement of the amount of tax owing on any taxable transaction and shall retain

a copy of such statement for a period of not less than five (5) years following the due date of the payment of the tax to the Borough.

(Ord. 88-2, Sec. 60.20.100)

**60.20.110                    Protest of Tax.**

- (a) The buyer shall determine whether a sale is taxable under this chapter. If the buyer fails to collect the tax due on a transaction because of an incorrect determination of taxability by the buyer or for any other reason, the buyer becomes liable to the Borough for the tax in the same manner as if the tax had been collected. (Ord. 88-2(s), 60.20.110)
  
- (b) If a seller believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter, to the tax, the seller shall pay to the buyer the tax under protest. A tax is paid under protest by stating to the buyer that the tax is paid under protest and requesting the buyer mark any sales slips, vouchers or other evidence of the sale to indicate that the tax is paid under protest. The seller shall file with the buyer and with the Sales Tax Administrator, a statement of protest on a form provided to the buyer by the Borough. Failure to file a complete statement of protest with both the buyer and the Sales Tax Administrator within 10 days of the date of the sale or to pay the tax constitutes a waiver of the protest and of any other right of the seller to challenge the tax in any other forum. The seller shall clearly set out on the form the terms and conditions of the sale, the amount of the sale, the quantity of fish involved, the location of the sale or other transaction and all other information necessary to support the seller's claim that the tax does not apply. The form shall include the names and mailing addresses of both the seller and the buyer and any other party involved in the transaction and must be signed by the seller. Unless the buyer records on the seller's statement of protest facts different from those recorded by the seller on the statement, forwarding the statement to the borough constitutes a confirmation by the buyer of the facts set out on the statement to the extent the buyer has knowledge of such facts.  
(Ord. 88-12 (amended 88-2), Sec. 60.20.110 (b))
  
- (c) Upon receipt of a written protest, the buyer shall forward the protest to the Sales Tax Administrator along with any additional statements the buyer believes may assist the Sales Tax Administrator in determining the protest. The written protest must be forwarded to the Sales Tax Administrator as promptly as possible, and in any case not later than thirty days after delivery of the protest to the buyer.
  
- (d) The Sales Administrator shall issue a written ruling on each seller protest within 30 days of receipt of the protest from the buyer. The burden of proof is on the seller. The Sales Tax Administrator may seek the advice of the Borough attorney on any protest. The ruling will be in writing and must set forth the reason for the grant or denial of the protest. The ruling will be sent

to the buyer and the seller at the addresses given on the protest. (Ord. 88-12 (amended 88-2), Sec. 60.20.110 (d))

- (e) If a protest is granted, the Sales Tax Administrator shall determine whether the tax protested has been received by the Borough from the buyer. If the tax has been received, the Sales Tax Administrator shall refund directly to the seller the amount of the tax to be refunded. If the tax has not been received by the Borough, the buyer shall be instructed to refund to the seller the appropriate amount if the buyer has actually collected the tax from the seller. If the buyer has not yet paid for the fish, the buyer shall make such adjustment as necessary to the accounts of the seller to reflect the correct amount of the tax due. The buyer and the seller may make other arrangements for crediting to the seller the amount of the refund if the buyer and the seller reach a mutual agreement as to such alternate procedure.
- (f) In the event a protest is denied, the seller may, within thirty days of the date of mailing of the notice of denial, request that the claim be referred to the Chief Administrator if that person is not acting as the Sales Tax Administrator. The Chief Administrator shall receive such additional information, whether written or oral, as the protesting seller may desire to present. The Chief Administrator may also receive such additional testimony as the Sales Tax Administrator may present. The Chief Administrator shall render a decision in writing and give notice of the decision to both the seller and buyer. The decision of the Chief Administrator, whether acting as the Chief Administrator or as the Sales Tax Administrator, if final and is subject to judicial review under the applicable rules of court.

(Ord. 88-2(s), Sec. 60.20.110)

**60.20.115 Protest of Tax by Buyer.**

- (a) If a buyer believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter or believes that a penalty interest or other charge is not owing but has been informed by the borough that such transaction is subject to the tax imposed under this chapter or such charge is owing, the buyer may protest the tax by paying the tax owed to the borough and filing with the borough at the time of payment a statement of protest setting out all relevant facts and clearly explaining why the transaction taxed or charge made is exempt, not otherwise subject to the tax levied under this chapter or not owing. The payment and statement of protest must be received by the borough not later than the 30th day following the date the tax was required to be collected from the seller; or, if no tax was collected, the later of the occurrence of the challenged transaction or the date the notice from the borough that the transaction is taxable; or if the protest is of a disallowance, charge levied, or similar action by the borough, the date of the notice to the buyer of the borough

determination. Failure to file a statement of protest and to pay the amount claimed by the borough as owing within the time permitted under this subsection constitutes a waiver of the right to protest the tax, disallowance, charge or other borough determination under this chapter and is a waiver of the right to appeal the protest to the chief administrator or to appeal or otherwise challenge the tax, charge or determination in any judicial or other proceeding.

- (b) The Sales Tax Administrator shall issue a written ruling on each buyer protest within 30 days of receipt of the protest. The buyer has the burden of proof. The Sales Tax Administrator may permit or require the buyer to provide additional information relevant to the protest. The Sales Tax Administrator may seek the advice of the Borough attorney on any protest. The ruling will be in writing and must set forth the reason for the grant or denial of the protest. The ruling will be sent to the buyer at the address given on the protest.
- (c) If a protest is granted, the Sales Tax Administrator shall refund to the buyer the charge levied or the tax collected and paid over to the borough that was on an exempt transaction or otherwise not subject to the tax levied under this chapter. The buyer shall immediately refund to each seller from whom the tax was collected the amount of the tax improperly collected; provided, if the buyer has failed to directly or indirectly collect the tax but has paid the tax to the borough from its own account, the buyer may retain the tax refunded.
- (d) In the event a protest is denied, the buyer may, within 30 days of the date of the notice of denial, request that the protest be referred to the Chief Administrator if that person was not acting as the Sales Tax Administrator on the protest. The Chief Administrator shall receive such additional information, whether written or oral, as the protesting buyer may desire to present. The Chief Administrator shall render a decision in writing and give notice of the decision to the buyer. The decision of the Chief Administrator, whether acting as the Chief Administrator or as the Sales Tax Administrator, is final and is subject to judicial review by an appeal to the superior court under applicable appellate court rules. Failure to file a request that the denied protest be referred to the Chief Administrator within 30 days of the date of the mailing of the decision by the Sales Tax Administrator constitutes a waiver of the right of the buyer to any further administrative or judicial review of the tax or the protest.

(Ord. 88-12, Sec. 60.20.115, part, 1987)

**60.20.118 Refund of Excess Payment.**

- (a) A taxpayer or collector who, through a clerical or similar error, pays a tax under this chapter that exceeds the amount actually due may receive a

refund of the excess payment upon meeting the conditions set out in this section 60.20.118.

- (b) A taxpayer who has made an excess sales or use tax payment as set out in subsection (a) shall be given a refund of the excess by the collector if the taxpayer.
  - (1) notifies the collector of the excess payment.
  - (2) proves to the collector that an excess payment was made, and
  - (3) provides such notification and proof to the collector prior to the date the collector pays over to the borough the taxes collected during the reporting period in which the claimed excess payment was made.
- (c) A taxpayer who has made an excess tax payment as set out in subsection (a) who has been denied a refund by the collector or who did not meet the requirements of subsection (b) (3) may file with the Borough for a refund of the excess payment. The taxpayer must file the request for the refund and satisfactory proof of entitlement with the Borough not later than the last business day of the calendar quarter following the quarter during which the claimed excess payment was made. A refund shall be made if the taxpayer is entitled to the refund and the collector has transmitted the excess payment to the borough. The Manager may establish a reasonable fee for processing refund requests under this subsection.
- (d) A collector who has made an excess tax payment as set out in subsection (a) shall be given a refund of the excess if the borough receives written notice from the collector of the amount claimed as an excess payment. The Borough must receive the notice and satisfactory proof of the excess payment, in the form required by the Sales Tax Administrator, not later than the last day upon which the collector may file a tax return under this chapter for the month following the month for which the claimed excess payment was made. (Ord. 98-3, (amended Ord. 90-9), Sec. 60.20.118 (d))
- (e) Upon approval of a refund to collector, the borough may pay the refund to the collector or authorize the collector to take the refund as a credit against future month tax payments; provided, the amount taken as a credit in any one month may not exceed 30 percent of the taxes otherwise due from the collector for the month. No interest may be paid on the excess payment.  
(Ord. 98-3, (amended Ord. 90-9), Sec. 60.20.118 (e))
- (f) A claim for a refund of an excess payment to which this section 118 applies is forever barred if notice and proof of the excess payment are not given within the time required.

(Ord. 90-9, Sec. 60.20.118)

**60.20.120                    Disposition of Tax Information.**

Information in the possession of the Borough which was obtained by the borough in the administration or enforcement of the provisions of this chapter and which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of borough, state or United States investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items or prohibits the publication of tax lists showing the names of taxpayers or delinquent and relevant information which may assist in the collection of delinquent taxes. Information otherwise protected by this Section may be furnished on a reciprocal basis to other agencies of the State or the United States concerned with the enforcement of tax laws.

(Ord. 88-2, Sec. 60.20.120)

**60.20.130                    Records--Investigation and Audits.**

- (a) Every person required to collect the tax imposed under this chapter shall maintain, keep and preserve such records, books and accounts of all sales made by the person as may be necessary to determine the amount of tax the person is obligated to collect and pay over to the Borough. Such records, books and accounts shall be preserved for a period of five years following the date all taxes involved in the accounting period were required to be paid to the borough.
- (b) For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Sales Tax Administrator may conduct investigations, hearings and audits and to that end may examine any relevant books, papers, memoranda, records or other writings of any seller or buyer and may require the attendance and sworn testimony of any seller or buyer or any officer or employee of the seller or buyer at a hearing. Upon written demand by the Sales Tax Administrator in the office of the Sales Tax Administrator such books, papers, memoranda, records and other written material as may be set out in the demand unless the Sales Tax Administrator and the person upon whom the demand is made agree to presentation of such materials at a different place.

(Ord. 88-2, Sec. 60.20.130)

**60.20.140                    Penalties and Interest.**

- (a) A person who fails to file a return as required under this chapter or who fails to remit all the taxes due the Borough by that person shall pay a penalty of five percent of the taxes due if no return is filed and five percent of the delinquency if a return is filed. The penalty shall be imposed for each

month or part of a month during which the delinquency of failure to file exists up to a maximum of twenty-five percent; provided, the total penalty for a single calendar quarter shall not exceed three thousand dollars. The filing of an incomplete return shall be treated as the filing of no return.

- (b) Interest at the rate of twelve percent (12%) per annum shall be paid on all amounts due the Borough that are not received by the Borough as required under this chapter except, interest does not accrue on penalties.
- (c) A person who fails to apply for a certificate of registration as required by this chapter shall pay a penalty of two hundred dollars. Such penalty must be paid before the license is issued or before a renewal or amendment to the license is issued if the original license was issued before the determination that a penalty was due. A person who fails to apply for a certificate of registration, who engages in taxable transactions after being informed in writing that a certificate of registration is required, shall pay a penalty of four hundred dollars before the determination that a penalty was due.
- (d) A person required to collect a tax under this chapter, who fails to provide a written statement setting out the amount of the tax due on the transaction, shall pay a penalty to the Borough equal to the amount of the tax due on the sale.
- (e) A failure of or refusal of a person required to collect a tax under this chapter, to produce records or allow inspection at such reasonable time as requested or demanded by the Sales Tax Administrator shall pay to the Borough a penalty equal to three times any deficiency found or estimated to have occurred by the Sales Tax Administrator; provided, the minimum penalty payable is three hundred dollars.
- (f) A person required to maintain records under the provisions of this chapter shall immediately notify the Borough of any fire, theft or other casualty that would prevent the person from complying with the provisions of this chapter. Such casualty is a defense to a civil penalty levied under this section 140, but does not excuse the person from the liability for payment to the Borough of taxes required to be collected. Accidental or unexplained loss of funds or records does not excuse a person from the performance of any of the requirements under this chapter.

(Ord. 88-2, Sec. 60.120.140)

**60.20.150            Records Submitted.**

No person required to provide information or to keep or provide records of any nature may falsify or change content of a record so as to misrepresent the facts or information contained therein, nor submit to the Borough any information or record that has been falsified or changed to create a misrepresentation.

(Ord. 88-2, Sec. 60.20.150)

**60.20.160            Forced Filing.**

If a person required to collect taxes under this chapter fails to file a return or to pay over taxes due as required by this chapter, the Sales Tax Administrator may make an estimate of the tax due based upon any information available. The Sales Tax Administrator shall file a return for such person and shall provide a copy of the return to the person with a request that the person file a correct return along with payment of the taxes due. The Sales Tax Administrator may require the person filing the return to provide sufficient information to support the corrected return. If the person has not filed a corrected return satisfactory to the Sales Tax Administrator, along with the taxes due, within thirty (30) days of the date of mailing of the forced filing, the amount shown on the forced filing becomes delinquent.

(Ord. 88-2, Sec. 60.20.160)

**60.20.162            Lien.**

The tax, penalty and interest imposed by this chapter constitutes a lien in favor of the Borough upon all real and personal property within the Borough of the person required to collect the tax under this chapter. The lien arises upon the delinquency of the payment of the tax to the Borough and continues until the liability for the amount owing is satisfied or the property is sold at a foreclosure sale. The lien is not valid as against a mortgage, pledge, purchase or judgment creditor until notice of the lien is filed in the office of the Recorder for the District in which the property is located in the manner provided for federal tax liens under AS 43.10.090 this chapter. These sections of the state statute are hereby adopted by reference the same as if set out in full in this section.

(Ord. 88-2, Sec. 60.20.162)

**60.20.170            Accelerated Returns.**

A person who is required to file a return and pay taxes to the Borough, who fails for more than fifteen days to file a return or pay the taxes due or who has, within a twelve month period, filed or paid taxes late on two or more occasions may be required by the Sales Tax Administrator to file and pay on a weekly basis; provided, the Sales Tax Administrator shall provide to the person a hearing after reasonable notice of the Sales Tax Administrator's intention to require more frequent filing and payment. The Sales Tax Administrator may establish the number of calendar or business days following the Saturday that ends the reported week by which the Borough must receive the weekly filing and payment. If a specific time is not established by the Sales Tax Administrator for a person on a weekly reporting basis, weekly filings and payments must be received by the Borough by the tenth business day following the Saturday that ends the

reported week. The person required to file and pay on a weekly basis who fails to file and pay the full amount due within ten days of the date required for such filing and payment or such a person who files late two or more times during a four month period may be required by the Sales Tax Administrator to file on a daily or other basis more frequent than weekly after written notice of intent and a hearing as provided in this section.

(Ord. 98-3 (amended Ord. 88-2), Sec. 60.20.170)

**60.20.180                    Time Extensions.**

For good cause shown, the Sales Tax Administrator may grant an extension of the time required for the performance of any act under this chapter. The extension shall be subject to such terms and conditions as the Administrator finds appropriate. An application for an extension must be filed in writing before the date required for performance.

(Ord. 88-2, Sec. 60.20.180)

**60.20.185                    Liability of Responsible Persons**

Each responsible individual as defined under section 60.20.250 is liable to the Borough for the payment of sales and use taxes that are delinquent and which were collected or required to be collected or required to be paid over to the Borough while such individual was a responsible individual with respect to such taxes. Such individual is liable to the Borough for penalties and interest on the delinquent taxes accrued to the date of payment. Upon written demand for payment of delinquent taxes, penalty and interest sent by registered mail to a responsible individual, the responsible individual shall pay over to the Borough the amount of the delinquent taxes, interest and penalty due within 20 days of the date of the written demand. If the responsible individual upon whom demand for payment has been made fails to pay the taxes, penalty and interest due within 20 days of the date of the demand, the amount due may be collected in a civil action against the responsible individual.

(Ordinance 96-4, Sec. 60.20.185)

**60.20.220                    Use Tax Levied.**

- (a) There is levied and shall be collected a use tax of two percent (2%) on the processing, storage, consumption or other use of raw fish within the Borough if such raw fish has not been the subject of a transaction otherwise taxable under this chapter. The tax shall be levied and collected in an amount equal to two percent of the value of the raw fish used.
- (b) A credit shall be allowed against the tax imposed by this section in an amount that the present user, the user's agent, bailor or donor has paid a sales tax with respect to such fish in any other state or political subdivision prior to the use of the fish in the Borough. The person who processes, stores, consumes or otherwise uses raw fish subject to taxation under this section is liable for the payment of the tax to the Borough and shall file a

return, obtain a certificate of registration and remit the taxes due in the same manner and subject to the same requirements for reporting, payment, interest penalties, inspection of records, enforcement, administration and other applicable provisions of this chapter as are set out in the taxation of the sale of raw fish. (Ord. 00-01 (amended Ord. 88-2), Sec. 60.20.220(b))

(Ord. 88-2, Sec. 60.20.220)

**60.20.250            Definitions.**

Unless it is clear from the context that a different meaning was intended, the following words used in this chapter have the meaning ascribed as follows:

- (1) "Borough" means the Aleutians East Borough.
- (2) "Buyer" means the first person in the Borough who becomes directly or indirectly obligated to a seller for payment for raw fish.
- (3) "Chief Administrator" means the Mayor, except, if the Borough is operating under the manager form of government, then it is the Borough Manager.
- (4) "Person" means an individual, corporation, partnership or other form of association.
- (5) "Processed" or "processing" means cooking, canning, smoking, butchering, freezing, salting, dehydrating and other activities that modify the condition of the fish in preparation of the fish for sale, but does not include decapitating, gutting, gilling, sliming, or icing by the person harvesting the fish if done for the purpose of maintaining the quality of the fish until it can be sold.
- (6) "Raw fish" means fin fish and shellfish and includes, but is not limited to crabs, shrimp, scallops, clams, oysters, salmon, halibut, cod, herring, flounder and pollock that have not been processed.
- (7) "Responsible individual" means any individual, including a group of individuals such as a board of directors, partnership, joint venture, corporation or other entity who has the responsibility to , is required to, has the authority to, or has the authority to direct or cause another person to:
  - (a) collect the tax levied under this chapter,
  - (b) segregate funds in lieu of the direct collection of the tax under this chapter,
  - (c) pay over to the Borough taxes required to be collected under this chapter, or
  - (d) determine which creditors of the tax collector are to be paid,

and may include, but is not limited to, such officers and employees of a tax collector as the chief executive officer, president, vice-president for finance, controller, comptroller, treasurer, bookkeeper, majority shareholder, finance director, manager, partner, managing partner, chief fiscal or financial officer and accountant if they possess any of the authority, responsibility or duties described in this definition.

(Ord. 96-4, (amended Ord. 88-8) New Sec. 60.20.250(7), renumbering the existing subsections 7-9 to 8-10)

- (8) "Sale" is an event that occurs when a person within the Borough becomes directly or indirectly obligated for the payment for raw fish without regard to whether delivery of the fish occurred inside or outside the Borough if the fish are purchased for delivery or are delivered to a location inside the Borough. The place of sale is the business location of the buyer inside the Borough to which the last delivery of the raw fish is made prior to processing or transfer outside the Borough. Delivery of raw fish to an agent, employee, or any entity within the Borough for the purpose of transporting the raw fish outside the Borough to a person who has purchased the fish or who becomes or is obligated to pay for the raw fish is a sale at the place of delivery within the Borough. A sale in the Borough occurs if raw fish are purchased by a buyer and delivered to the buyer inside the Borough even if the buyer initially takes possession outside the Borough or the raw fish are transported outside the Borough prior to delivery to the location inside the Borough.

(Ord. 95-6 (amended Ord. 88-7) Sec. 60.20.250(8)

- (9) "Sales Tax Administrator" is the Chief Administrator or such other person as the Chief Administrator designates.
- (10) "Value of raw fish" is the consideration, whether money, credit, rights, or other property, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser or person who uses the raw fish to the seller for the raw fish, the use of which is taxable under Section 220 of this chapter. In the case of raw fish used that are acquired under conditions wherein the purchase price does not represent the true value of the fish, the value of the raw fish used shall be determined as nearly as possible according to the selling price at the place of use of the raw fish of like quality or character.

(Ord. 88-2, Sec. 60.20.250)

**60.20.260 Authority to Contract Collection.**

The Chief Administrator may, with the consent of the Assembly, contract with a City within the Borough to collect the taxes imposed by this chapter.

(Ord. 88-2, Sec. 60.20.260)

**60.20.300                    Enforcement and Penalties.**

- (a) Violation of any of the requirements of this chapter is a misdemeanor. For convictions for a violation of a provision of this chapter, a fine of not to exceed five hundred dollars may be imposed; except, for a subsequent violation of any provision of this chapter, whether similar to or different from the prior conviction, the maximum penalty that may be imposed is a fine of one thousand dollars or imprisonment for not to exceed thirty days, or both if the subsequent conviction is for a violation that occurred within three years after the conviction for the prior violation.
- (b) Each day upon which a violation of this chapter continues is a separate offense.
- (c) The Borough may recover taxes, interest and civil penalties due in a civil action independent of or in addition to any criminal action filed.

(Ord. 88-2, Sec. 60.20.300)

## **Chapter 60.40 SEVERANCE TAX**

### Sections:

60.40.010	Definitions
60.40.020	Resources subject to tax
60.40.030	Exemption
60.40.040	Collection and administration
60.40.050	Enforcement and penalties
60.40.060	Severance tax return verification
60.40.070	Confidentiality
60.40.080	Liability for and collection of severance tax
60.40.090	Penalties and interest

### **60.40.010 Definitions.**

A. “The gross production value” means the value per unit at the point of severance multiplied by the number of recovered units of the natural resources sold during the calendar quarter.

B. “Severer or harvester” means a person, company, corporation or other entity engaged in the business of severing or harvesting natural resources. This includes offshore processors of fish products who process, deliver, catch, or receive fish products within the boundaries of the Aleutians East Borough if those activities are not already subject to the Borough’s Sales and Use Tax. It also includes fish harvesters who harvest fish within the boundaries of the Borough and transport the fish themselves to locations outside the Borough for sale and/or processing provided that these harvesters are not already subject to the Borough Sales and Use Tax.

C. “Calendar quarter” means any one of the following three-month periods beginning July 1<sup>st</sup>: July 1<sup>st</sup> to September 30<sup>th</sup>; October 1 to December 31<sup>st</sup>; January 1 to March 31<sup>st</sup>; and April 1 to June 30<sup>th</sup>.

D. “Recovered units” means all units mined, extracted, or removed whether produced directly or contractually during the period of production.

E. “Point of severance” for purposes of computing the tax is defined as:

1. Prepared for transport at the mine site in the case of resources as defined in 60.40.020 (A);
2. The scale at the pit or quarry in the case of resources as defined in 60.40.020 (B);
3. The dock in the case of resources defined in 60.40.020 (C).

F. "Commercial Products of Borough Waters" means any raw finfish or bottomfish, shellfish, mollusks or other invertebrates and all other commercial products of the sea harvested in Borough Waters, whether fresh, estuarine or salt, for sale, profit or commercial use.

**60.40.020 Resources subject to tax.**

There is levied in the Borough, on any severed or harvester of certain natural resources, an excise tax, denominated as a severance tax. The tax rate shall be the Borough-wide mill levy as determined annually by the assembly which will be multiplied by the gross production value for the calendar quarter resulting from the following activities:

- A. Mining, extracting, harvesting, removing or producing for sale, profit or commercial use, any copper, gold, silver, zinc, lead, molybdenum, or other metallic mineral product, compound, or combination of mineral products;
- B. Gravel mining, quarrying, or producing for sale, profit, or commercial use, any sand, gravel, rock or coal; and
- C. Harvesting and processing Commercial Products of Borough waters.

**60.40.030 Tax rates for resources subject to tax.**

The tax levied by this section shall be at the following rates:

- A. For metal ores and coal extracted from the ground, 1.5% times the gross production value per ton;
- B. For gravel extracted 10 cents per cubic yard;
- C. For Commercial Products of Borough Waters, 2% of purchase price;
- D. For resources not included herein: as may be considered and approved by the Borough Assembly.

**60.40.040 Exemption.**

- A. If the annual gross production value of severed or harvested natural resources within the Borough does not equal or exceed the amount of \$5,000 annually, the severer or harvester shall be exempt from taxation under this chapter. This exemption does not apply to 60.40.020(C).
- B. Local governments are exempted from payment of this tax for resources that the local government owns before severance which are to be used after severance exclusively in public works projects undertaken by that local government within the local government's jurisdiction or as a local match for

public works projects undertaken by that local government within the local government's jurisdiction.

**60.40.050 Collection and administration.**

A. Every severer or harvester of resources subject to taxation under this chapter, shall register with the Borough prior to beginning a severance or harvesting activity. Registration shall take place on forms provided by the Borough.

B. Except regarding resources described in 60.40.20 (C), every severer or harvester shall submit to the Borough a severance tax return, under oath, at the time the tax is paid, containing the following information:

1. A description of the property from which the resource was severed or harvested by legal description or Borough assigned account number.
2. The gross amount of recovered units severed or harvested during the calendar quarter.
3. The gross sales value of all recovered units severed or harvested during the calendar quarter.

C. With regards to resources described in 60.40.20 (C), every severer or harvester shall submit to the processor or purchaser of such resource an Aleutians East Borough severance tax return, under oath, containing the following information:

1. A description of the waters from which the resource was severed or harvested by longitude and latitude or such description of location as may be approved by the Borough.
2. The gross amount of recovered units severed or harvested during the calendar quarter.
3. The gross sales value of all recovered units severed or harvested during the calendar quarter.

After receipt of the Aleutians East Borough severance tax return, the receiving processor shall withhold the applicable percentage of the gross production value of the resource, remitting 95% to the Borough along with the Aleutians East Borough severance tax return completed by the severer or harvester as the applicable Aleutians East Borough severance tax on that resource, retaining 5% as a tax collection fee, but not to exceed \$300.00. It is the responsibility of the severer or harvester in every instance to insure that the Aleutians East Borough severance tax is paid.

D. The return or tax statement along with all taxes due to the Borough for the calendar quarter must be received by the Borough on or before the last business day of the month following the end of the calendar quarter for which the return or statement is required.

E. This tax constitutes a lien chargeable against the property owned by the severer. The lien may be foreclosed by the Borough in the same manner as any other lien against real or personal property.

**60.40.060 Enforcement and penalties.**

A. The superior court, upon the request of the finance director, shall issue an injunction requiring compliance with the provisions of this chapter. In the alternative, the finance director may determine the severance tax on parties who have not filed a return in an amount based on historical data and the best information available.

B. A person who fails, refuses, or neglects to file a severance tax return in compliance with this chapter shall, in addition to any other penalties provided by law, be liable for a penalty of 10 percent of the tax.

**60.40.070 Severance tax return verification.**

Except for those harvesters who have filed under and fully complied with 60.40.50 (D) and have paid all taxes when due, the finance director, or his designee, may:

A. Require a person engaged in natural resource extraction, production, or transportation, any agent or employee of the person, or the purchaser of natural resources taxed under this chapter to furnish any additional information reasonably necessary to compute the amount of the tax or to determine if a tax is due;

B. Examine the books, records, and files of any such person;

C. Conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any person; and

D. Make an investigation or hold any inquiry reasonably necessary to a disclosure of facts as to:

1. The amount of extraction or production of a natural resources of an extractor, producer, or seller;
2. The purchaser of the natural resource; and
3. Transportation of the resource.

**60.40.080 Confidentiality.**

Information and materials in the possession of the Borough which disclose the particulars of the business or affairs of the payer of taxes under this chapter will be kept confidential by the Borough except in connection with an official investigation by the Borough or other agency enforcing the laws of the Borough or of the state. The Borough may publish statistics in a manner which prevents identification of particular returns and may publish tax lists showing the names, taxes, penalties, and interest with respect to taxpayers who are delinquent to assist in the collection of taxes.

**60.40.090 Liability for and collection of severance tax.**

The severer or harvester or, in the case of 60.40.20 (C) the purchaser or processor of the resources assessed under this chapter is liable for the amount of taxes, interest and penalties due. The tax, together with penalties and interest, may be collected in a personal action brought in the name of the Borough.

**60.40.100 Penalties and interest.**

All taxes due under this chapter but not timely paid as required are subject to a penalty of 10 percent of the tax due. Interest shall accrue on the tax due including penalties and interest at the rate of 12 percent per year from the date such taxes are due. Partial payments shall be applied first to accrued penalties, then to interest and then to principal. A payment is timely paid when mailed to the Borough postage prepaid bearing a postmark date no later than the due date.

(Ord. 11-05, Chapter 60.40)