

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2012-29

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING VARIOUS
SITKA GENERAL CODE SECTIONS TO AUTHORIZE AN ADVISORY VOTE
RATHER THAN A MANDATORY VOTE ON SALE, LEASE, OR DESTRUCTION OF
MUNICIPAL ASSETS**

1. **CLASSIFICATION.** This Ordinance is of a permanent nature and is intended to become part of the Sitka General Code (“SGC”).

2. **SEVERABILITY.** If any provision of this Ordinance or any application to any person or circumstance is held invalid, the remainder of this Ordinance and application to any person or circumstances shall not be affected.

3. **PURPOSE.** The purpose of this ordinance is to amend various SGC sections to allow for an advisory vote rather than a mandatory vote for sale or lease of municipal property above a certain value (e.g. \$500,000 for sale; \$750,000 for leases), size (e.g. tidelands of more than 250 frontage feet, such as the upcoming NSRRA tidelands lease extension), or if municipal property is sold or leased for cruise boat dock or transfer facility. It also would make any vote permissive and only advisory for destruction of municipal building above \$100,000.

The Assembly respects and fully supports the rights of citizens to participate in their government, including by initiative/referendum. The Assembly is also responsible for abiding by the Alaska Constitution. The Alaska Constitution limits initiatives, including any approval or disapproval of appropriations of assets. These SGC amendments makes these SGC sections consistent with the Alaska Supreme Court decision in *Alliance of Concerned Taxpayers Inc. v. Kenai Peninsula Borough* (“ACT”), 273 P.3d 1128 (Alaska 2012). According to this recent decision, the Assembly, rather than the public, holds the authority to approve or disapprove appropriation of public assets, including such assets as municipal land and its disposal (by sale, lease or destruction). The *ACT* decision found an initiative unconstitutional that would have enacted a municipal code section that required any construction project over one million dollars to be approved by a public vote. This decision is applicable here, even though not all of the code sections being amended were created by an initiative, for some were passed by an Assembly ordinance in response to initiative efforts. The underlying ruling in *ACT* makes it clear that a long series of Alaska Supreme Court decisions about state legislature authority applies to municipal legislatures. These Court decisions extend to municipal appropriations of municipal assets, finding that “the legislature [assembly], and *only* the legislature [assembly] retains control over the allocation of state [municipal] assets among competing needs.” *ACT*, 273 P.3d at 1137.

Additionally, this ordinance allows for greater flexibility in addressing affordable housing challenges in Sitka. It would expedite making municipal property available and

1 approving municipal property sales and leases, such as for the bench lands and old city shop
2 properties. These municipal property transactions would not be stalled waiting for a municipal
3 election, that could also require expending municipal monies for a special election.
4

5 Further, this ordinance addresses a conflict between Sitka Charter and SGC as pointed
6 out in *Sitkans for Responsible Government et al. v. CBS et al.*, 274 P.3d 486, 493 (Alaska 2012).
7 Sitka Charter requires any proposed referendum, such as regarding land disposals (i.e. leases,
8 sales, transfers), to be supported by a certain number of elector signatures before putting the
9 ballot referendum to the voters. This ordinance resolves the conflict in current SGC provisions
10 with the Charter by striking the automatic mandatory vote requirement.
11

12 The public will still participate in Assembly decisions on land and property disposals.
13 This ordinance allows for the Assembly to authorize an advisory vote involving certain
14 municipal property sales, leases, and/or disposal. Additionally, even if the Assembly decides not
15 to hold an advisory vote, these municipal property transactions (i.e. sales, leases, building
16 destruction) would involve public hearings because they must be approved by ordinance (non-
17 Sawmill Cove Industrial Park property) or resolution (Sawmill Cove Industrial Park property).
18 Therefore, the public will continue to be advised and involved in these types of municipal
19 property decisions. This ordinance allows to the full extent possible under the law for direct
20 involvement of citizens in local government decision, while recognizing the fact that local
21 governments operate as representative rather than direct law making form of government. These
22 SGC amendments will expedite the process for addressing land and property disposals, including
23 for affordable housing, leasing and sale of property, and disposing of dilapidated municipal
24 buildings and structures. Most importantly, these SGC amendments will result in the SGC and
25 the Sitka Charter to be consistent with each other and with comparable provisions in state law
26 and Alaska Constitution.
27

28 The following sections to be amended are:
29

- 30 • SGC 2.38.080 General powers;
- 31 • SGC 18.12.010B Real property disposal;
- 32 • SGC 18.12.014A Requirement for a public vote and disclosure of information for
33 land disposals related to a dock or vessel transfer facility that could be used by
34 large cruise ships;
- 35 • SGC 18.16.030 Government leases and permits;
- 36 • SGC 18.16.170 Class III – Ratification by voters;
- 37 • SGC 18.16.200 Class III – Lease by ordinance;
- 38 • SGC 18.16.220 Class III – Direct lease by municipality; and
- 39 • SGC 19.07.040 Authorization by ordinance or election.
40

41 4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of
42 the City and Borough of Sitka that the following SGC sections are amended to read as follows:
43 SGC 2.38.080; SGC 18.12.010B; SGC 18.12.014A; SGC 18.16.030; SGC 18.16.170; SGC
44 18.16.200; SGC 18.16.220 and SGC 19.07.040 (new language underlined; deleted language
45 stricken):

**Chapter 2.38
SAWMILL COVE INDUSTRIAL SITE**

* * *

2.38.080 General powers.

A. Subject to state laws and municipal ordinances, the board of directors shall generally exercise all powers necessary and incidental to operation of all Sawmill Cove industrial park facilities in the public interest and in a sound business manner. In particular, and without limitation on the foregoing, the board:

* * *

7. Shall administer and dispose of tideland, submerged land, and other land identified by the assembly by ordinance as subject to Sawmill Cove industrial park administration, subject to the following limitations:

* * *

c. The Assembly may authorize an advisory vote when applicable under other sections of the Sitka General Code.

* * *

18.12.010 Real property disposal.

* * *

B. Upon sale or disposal of real property valued over five hundred thousand dollars, or upon lease of real property, including tidelands, of a value of more than seven hundred fifty thousand dollars, the Assembly may authorize an advisory vote. ~~the ordinance authorizing the sale, lease, or disposition shall provide that the ordinance be ratified by a majority of the qualified voters voting at a general or special election. Any such sale, lease, or disposition shall be revocable pending the outcome of the election. This subsection shall not apply to leases at the former Alaska Pulp Corporation mill site, and the property leased under Ordinance 99-1539.~~

* * *

F. When it is deemed advantageous to the municipality, it may trade uplands or tidelands for other land of approximately equal size or value. Should the municipal property in question be of such size or value or to such a class of grantee as to require an advisory vote, ~~it may be authorized by the Assembly when applicable under other sections of the Sitka General Code.~~ ~~election before conveyance of title can be made, the requirements and procedures concerning such election shall apply.~~

* * *

18.12.014 Advisory Requirement for a public vote and disclosure of information for land disposals related to a dock or vessel transfer facility that could be used by large cruise ships.

~~A. The Assembly may authorize an advisory vote for Notwithstanding Sections 2.38.080(A)(7) and 2.38.090 or any other provision of law, any ordinance authorizing the sale, lease or disposal of any real property of the city and borough for a dock or vessel transfer facility that could be used by cruise ships exceeding three hundred feet in length, shall be effective only after an affirmative vote of the electorate. Not less than thirty days prior to the election, the city and borough shall make available to the electorate the terms of~~

1 the proposed sale, lease or disposal of real property and a summary of the direct anticipated
2 costs to the city and borough.

3
4 B. ~~This section applies to tidelands and other real property owned by the city and borough,
5 including any real property in Sawmill Cove.~~

6 * * *

7
8 **Chapter 18.16**
9 **TIDELAND LEASE PROCEDURE**

10 * * *

11 **18.16.030 Government leases and permits.**

12 When leases or permits are issued to other local, state, or federal governmental units or a
13 corporation or agency through which the governmental unit acts, there is no limit to the front
14 footage obtainable, or valuation limit and no ~~advisory requirement of an~~ election as set out by
15 Sections 18.12.010 and ~~Chapter 18.16.110~~, and no consideration for such a lease shall
16 necessarily be required.

17
18 **18.16.170 Class III – Ratification by voters.**

19 ~~The Assembly may authorize an advisory vote for lease of tidelands to other than~~
20 ~~preference right holders for areas which have more than two hundred fifty feet of frontage~~
21 ~~along the upland meander line, or lease of any tidelands valued above seven hundred fifty~~
22 ~~thousand dollars, shall be submitted to the voters for election ratification. This section shall~~
23 ~~not apply to leases at the former Alaska Pulp Corporation mill site, and the property leased~~
24 ~~under Ordinance 99-1539.~~

25 * * *

26 **18.16.200 Class III – Lease by ordinance.**

27 Should the auction be held and a bid accepted by the assembly, the lease shall be executed
28 subject to passage of an ordinance authorizing the lease. The Assembly may authorize an
29 advisory vote whenever applicable by other sections of the Sitka General Code. ~~If the lease~~
30 ~~is subject to ratification by the voters, the authorizing ordinance should also authorize putting~~
31 ~~the question to the voters at the next regular or special municipal election.~~

32 * * *

33
34 **18.16.220 Class III – Direct lease by municipality.**

35 By ordinance the municipality may elect to lease tidelands upon its own initiative upon such
36 terms as are set out in the ordinance.

37
38 Tidelands leased by the direct lease procedure ~~may shall~~ be subject to an advisory vote if
39 approved by the Assembly ratification election whenever applicable by other sections of the
40 Sitka General Code.

41 * * *

42 **Chapter 19.07**
43 **DEMOLITION OR REMOVAL OF MUNICIPALLY OWNED BUILDINGS**

44 * * *

1 **19.07.040 Authorization by ordinance or election.**

2 If the value of the building exceeds twenty-five thousand dollars, its removal or demolition
3 shall be authorized by ordinance. If the value is more than one hundred thousand dollars, the
4 Assembly may authorize an advisory vote. ~~the removal must be approved by the voters at a~~
5 ~~general or special election.~~

6
7 **5. EFFECTIVE DATE.** This ordinance shall become effective on the day after the
8 date of its passage.

9
10 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of
11 Sitka, Alaska this 25th day of September, 2012.

12 _____
13 Cheryl Westover, Mayor

14 ATTEST:

15 _____
16 Colleen Ingman, MMC
17 Municipal Clerk

Sponsor: Administrator

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 97-1446

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA ADOPTING
THE MOST RECENT VERSIONS OF THE VARIOUS BUILDING AND
CONSTRUCTION CODES BY REFERENCE.**

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.
2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.
3. **PURPOSE.** This ordinance is being adopted to update the various building and construction codes.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Title 19 of the Sitka General Code is hereby repealed and re-enacted to read as follows:

**Title 19
BUILDINGS AND CONSTRUCTION**

Chapters:

- 19.01 Building Code**
 - 19.02 Electrical Code**
 - 19.03 Plumbing Code**
 - 19.04 Mechanical Code**
 - 19.05 Fire Code**
 - 19.06 Uniform Code for Abatement of Dangerous Buildings**
 - 19.07 Demolition or Removal of Municipally Owned Buildings**
 - 19.08 Code Applicability**
-

19.06.040 Section 302 amended - Dangerous Building

The first sentence is amended to read as follows:

For the purpose of this code, any building, structure, or site which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered, *or there exists a public nuisance as defined in section 18.04.010 J. of the Sitka General Code.*

Chapter 19.07

DEMOLITION OR REMOVAL OF MUNICIPALLY OWNED BUILDINGS

(Ord. 77-299)

Sections:

- 19.07.010 Assembly authority.**
- 19.07.020 Bidding.**
- 19.07.030 Buildings considered personal property.**
- 19.07.040 Authorization by ordinance or election.**
- 19.07.050 Value determination.**
- 19.07.060 Scope.**

19.07.010 Assembly authority.
The assembly may by resolution or ordinance provide for the demolition or removal of municipally owned buildings. The assembly may use its discretion in deciding to demolish or remove any building. It may consider such facts and hire such experts as it may see fit.

19.07.020 Bidding.
Demolition or removal shall be by competitive bidding, or the assembly may authorize the administrator to have the building demolished or removed by municipal employees.

19.07.030 Buildings considered personal property.
For all purposes, any building being considered for demolition or removal from its site shall be considered to be personal property and not real property.

19.07.040 Authorization by ordinance or election.
If the value of the building exceeds twenty-five thousand dollars, its removal or demolition shall be authorized by ordinance. If the value is more than one hundred thousand dollars, the removal must be approved by the voters at a general or special election.

19.07.050 Value determination.
Value shall be determined as the amount by which the salvage value of the building, after removal,

or the materials in it, after removal, exceed the estimated cost of removal or demolition.

19.07.060 **Scope.**
This chapter and the procedures contained herein shall take precedence to and prevail over any other ordinances of the municipality passed prior to the ordinance codified in this chapter.

Chapter 19.08
Code Applicability
(Ord. 97-1406)

Sections:

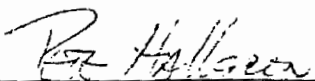
19.08.010 **Geographical**
19.08.020 **Sitka Road System**

19.080010 **Geographical limits.**
Except for The Uniform Code for the Abatement of Dangerous Buildings (which shall apply throughout the entire borough), these codes are adopted as construction standards for the areas of the municipality served by the Sitka road system only.

19.18.020 **Sitka Road System.**
The Sitka Road System shall be considered to include Halibut Point Road, Saw Mill Creek Road, Harbor Drive, and all of their connecting roads, collectors, access roadways, and easements.

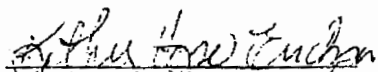
5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 22nd day of July, 1997.



Peter S. Hallgren, Mayor

ATTEST:



Kathy Hope Erickson, Municipal Clerk

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2004-64

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING
TITLE 19, BUILDING AND CONSTRUCTION, OF THE SITKA GENERAL CODE TO
ADOPT THE MOST RECENT VERSIONS OF VARIOUS BUILDING AND LIFE-
SAFETY CODES**

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.
2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.
3. **PURPOSE.** This ordinance adopts the most recent versions of various building and life-safety codes.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Title 19, Building and Construction, of the Sitka General Code is hereby amended to read as follows:

Title 19

BUILDING AND CONSTRUCTION

Chapters:

- 19.01 Building Code
- 19.02 Electrical Code
- 19.03 Plumbing Code
- 19.04 Mechanical Code
- 19.05 Fire Code
- 19.06 Uniform Code for Abatement of Dangerous Buildings
- 19.07 Demolition or Removal of Municipally Owned Buildings
- 19.08 Code Applicability
- 19.09 Electrical Code for Islands
- 19.10 Plumbing Code for Islands
- 19.11 Mechanical Code for Islands
- 19.12 Fire Code for Islands
- 19.14 Building Code for Islands
- 19.20 Fire Marshal Deferral Standards

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19.06.030 Section 205 amended—Board of appeals.

Sentences two and three are deleted.

19.06.040 Section 302 amended—Dangerous building.

The first sentence is amended to read as follows:

For the purpose of this code, any building, structure, or site which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered, or there exists a public nuisance as defined in section 18.04.010 J. of the Sitka General Code.

Chapter 19.07

**DEMOLITION OR REMOVAL OF MUNICIPALLY OWNED
BUILDINGS**

Sections:

19.07.010 Assembly authority.

19.07.020 Bidding.

19.07.030 Buildings considered personal property.

19.07.040 Authorization by ordinance or election.

19.07.050 Value determination.

19.07.060 Scope.

19.07.010 Assembly authority.

The assembly may by resolution or ordinance provide for the demolition or removal of municipally owned buildings. The assembly may use its discretion in deciding to demolish or remove any building. It may consider such facts and hire such experts as it may see fit.

19.07.020 Bidding.

Demolition or removal shall be by competitive bidding, or the assembly may authorize the administrator to have the building demolished or removed by municipal employees.

19.07.030 Buildings considered personal property.

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For all purposes, any building being considered for demolition or removal from its site shall be considered to be personal property and not real property.

19.07.040 Authorization by ordinance or election.

If the value of the building exceeds twenty-five thousand dollars, its removal or demolition shall be authorized by ordinance. If the value is more than one hundred thousand dollars, the removal must be approved by the voters at a general or special election.

19.07.050 Value determination.

Value shall be determined as the amount by which the salvage value of the building, after removal, or the materials in it, after removal, exceed the estimated cost of removal or demolition.

19.07.060 Scope.

This chapter and the procedures contained herein shall take precedence to and prevail over any other ordinances of the municipality passed prior to the ordinance codified in this chapter.

Chapter 19.08

CODE APPLICABILITY

Sections:

19.08.010 Geographical limits.

19.08.020 Sitka road system.

19.08.025 Docks and floating buildings.

19.08.030 Islands.

19.08.040 Definition of "Islands" for purposes of this Title and Title 22.

19.08.010 Geographical limits.

Except for the Uniform Code for the Abatement of Dangerous Buildings (which shall apply throughout the entire municipality), the provisions of Title 19 apply as construction standards for the areas of the municipality served by the Sitka road system only, except as modified by SGC 19.09 through 19.14 (Island codes).

19.08.020 Sitka road system.

The Sitka road system shall be considered to include Halibut Point Road, Saw Mill Creek Road, Harbor Drive, and all of their connecting roads, collectors, access roadways and easements.

Sponsor: Administrator

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 99-1539

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AUTHORIZING THE LEASING OF 17.8 ACRES, INCLUDING APPROXIMATELY 100,000 SQUARE FEET OF EXISTING BUILDINGS, AT THE FORMER ALASKA PULP CORPORATION MILL SITE AND THE SALE OF UP TO 400 MILLION GALLONS OF BLUE LAKE WATER A YEAR FOR BOTTLING, TO SAWMILL CREEK DEVELOPMENT COMPANY L.L.C.

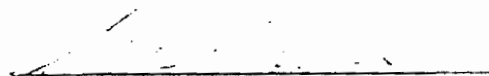
1. CLASSIFICATION. This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code.
2. SEVERABILITY. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.
3. PURPOSE. In April 1999, the municipality accepted title to the former Alaska Pulp Corporation mill site in order to place the property back into use and stimulate Sitka's economy. It was the hope and belief of the Assembly that taking title to the property would accelerate the process of reactivating the property and ensure the redevelopment was consistent with the community's vision of the future. Sawmill Creek Development Company proposes to construct a water bottling plant which would provide a clean industry and local employment.
4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka as follows:
 - A. A long-term lease of 17.8 acres including approximately 100,000 square feet of existing buildings, at the former Alaska Pulp Corporation mill site, on terms negotiated by staff and approved by the Assembly, to Sawmill Creek Development Company is hereby authorized.
 - B. The Assembly finds that the provision, in Sitka General Code 18.12.010 B., requiring that ordinances authorizing leases of real property of a value more than seven hundred fifty thousand dollars be submitted to the electorate for ratification is not appropriately applied to the mill site property, which was acquired to be disposed of for industrial uses and is necessarily conveyed in large high-value parcels. Therefore the Assembly ordains that the lease authorization in 4A of this ordinance need not be submitted to the voters for ratification. This is an ordinance-created exception to the provisions of 18.12.010B.
 - C. The sale of up to 400 million gallons of water per year to Sawmill Creek Development Company L.L.C. under terms to be negotiated by staff and

approved by the Assembly is hereby authorized.

- D. Under Section 11.14(b) of the Sitka Home Rule Charter, and Sitka General Code section 18.12.010 E, the Assembly finds that competitive bidding is not appropriate for the lease authorized under 4A and the water sale under 4C because the nature of the transactions and the surrounding circumstances:
1. The proposed leasehold is not normal governmental property or state grant property. It is industrial acreage and buildings, which are difficult to delineate for bid without knowledge of the use and identified user.
 2. The desire of the municipality is to attract clean industry and family wage jobs. Sawmill Creek Development Company fits both of those criteria and is the only possible tenant who has approached Sitka with a proposal of this nature and scale.
 3. Sitka has a need to put at least a portion of the site into use quickly, and Sawmill Creek Development Company has the ability and desire to move forward.
 4. Sawmill Creek Development Company's funding must be committed in the near future.
 5. A negotiated lease is appropriate because of the nature of the property and the circumstances surrounding the proposal.
 6. The water sale is an integral use of the property and the negotiations for the lease.

5. EFFECTIVE DATE. This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 27th day of July, 1999.


Stan J. Filler, Mayor

ATTEST:


Kathy Hope Erickson
Municipal Clerk

Sponsor: Christianson, Pearson

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 99-1545

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA
AMENDING SUBSECTIONS 18.12.010 B. AND 18.16.120 OF THE SITKA GENERAL CODE TO
PROVIDE THAT THE ELECTION REQUIREMENTS IN THOSE SUBSECTIONS DO NOT APPLY TO THE
MILL SITE PROPERTY ACQUIRED FROM ALASKA PULP CORPORATION

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. SEVERABILITY. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. PURPOSE. In April 1999, the municipality accepted the conveyance of the Alaska Pulp Corporation (APC) mill site property with the intention of developing it as an industrial park to benefit Sitka's economy.

Since the property was acquired for disposal in the interest of economic development, there is no reason to have a vote to determine whether to lease all or part of the property. In leasing industrial parcels, it will be necessary to act in an expeditious, business-like manner. The APC mill site can only be used for industrial purposes and holding an election to authorize the decision to lease a parcel is inappropriate.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that subsections 18.12.010 B. and 18.16.120 of the Sitka General Code are amended to add the following:

This subsection shall not apply to leases at the former Alaska Pulp Corporation mill site, and the property leased under Ordinance 99-1539.

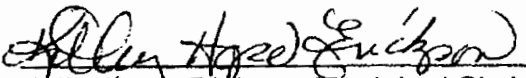
5. EFFECTIVE DATE. This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 24th day of August, 1999.



Stan J. Filler, Mayor

ATTEST:


Kathy Hope Erickson, Municipal Clerk

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 00-1568

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING TITLE 2
OF THE SITKA GENERAL CODE ADDING CHAPTER 2.38, ESTABLISHING RULES AND
PROCEDURES GOVERNING LEASES AND PROPERTY MANAGEMENT AT THE FORMER
ALASKA PULP CORPORATION MILL SITE

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. SEVERABILITY. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. PURPOSE. Unlike other property owned by the municipality, the former Alaska Pulp Corporation mill site was acquired not for governmental purposes from the state or federal government, but for economic development and disposal. In general, the property will not be used for public improvements. It will be leased or sold to individuals and corporations to develop business opportunities and provide jobs. For that reason, it is important to enact a procedure for property management and disposal at the site which more closely corresponds to private sector disposals.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Title 2 of the Sitka General Code is amended to add Chapter 2.38, which shall read as follows:

A. Chapter 2.38 Sawmill Cove Industrial Site

- 2.38.010 Designation
- 2.38.020 Sawmill Cove Industrial Park Board of Directors
- 2.38.030 Board of Directors organization
- 2.38.040 Vacancies
- 2.38.050 Meetings
- 2.38.060 Coordination
- 2.38.070 Membership in associations
- 2.38.080 General powers
- 2.38.090 Leasing powers
- 2.38.100 Adoption of regulations
- 2.38.110 Sawmill Cove Industrial Park Director designated appointment
- 2.38.120 Director duties and responsibilities
- 2.38.130 Schedule of fees and charges
- 2.38.140 Industrial Park fees
- 2.38.150 Preparation and submission of a budget
- 2.38.160 Other fiscal matters
- 2.38.170 Employee relations
- 2.38.180 Definitions

2.38.060 Coordination.

The board shall submit to the assembly, at least quarterly, a report on Industrial Park operations and pending issues.

The Municipal Administrator or his designee shall be made an ex-officio member of the board.

The board shall adopt safety policies acceptable to the municipal risk manager or such other officer as the Director may designate.

In emergencies the Industrial Park shall, to the extent necessary to resolve the emergency, be under the control of the fire chief or such other officer as the Municipal Administrator may designate.

2.38.070 Membership in associations.

The Board of Directors may maintain membership in any local, state, or national group or association organized and operated for the promotion, improvement, or assistance in the administration of port and harbor facilities, or industrial park facilities and, in connection therewith, pay dues and fees thereto. The Assembly shall select one of its members to serve as the liaison to the Board.

2.38.080 General powers.

(a) Subject to state laws and municipal ordinances, the Board of Directors shall generally exercise all powers necessary and incidental to operation of all Sawmill Cove Industrial Park facilities in the public interest and in a sound business manner. In particular, and without limitation on the foregoing, the board:

1. Shall be responsible for the operation, maintenance, development, and marketing of the municipally owned and operated Sawmill Cove Industrial Park, including such facilities as site development, docks, and facilities appurtenant thereto.
2. Shall approve annual budgets prepared by the Industrial Park Director to be submitted to the assembly for final approval and adoption.
3. Shall formulate and prepare Planning Documents for the ongoing development of the Industrial Park.
4. Shall enforce all rules and regulations necessary for the administration of the facilities under its management. Said rules and regulations shall be prepared and amended by the Board and subject to the final approval of the assembly before implementation.
5. Shall prescribe the terms under which persons and vessels may use the facilities and shall establish and enforce standards of operation, consistent with the Prospective Purchasers Agreement and the State of Alaska Department of Environmental Conservation Management Plan and the Conveyance Agreement with Alaska Pulp Corporation.
6. Shall, within the Industrial Park appropriation and in general conformity with the rates of pay established for municipal positions of similar responsibility, establish, and may amend, the pay plan for Industrial Park municipal employees.
7. Shall administer and dispose of tideland, submerged land, and other land identified by the assembly by ordinance as subject to Sawmill Cove Industrial Park administration, subject to the following limitations:

(A) Any sale, purchase, or trade of land other than short term lease (which may be approved by the Municipal Administrator) shall be subject to approval by the assembly by resolution.

(B) All land transactions by the board in accordance with this section shall be governed by this chapter rather than Title 18 of this code, as follows:

1. The long term leasing of all of the property at the Sawmill Cove Industrial Park is hereby authorized regardless of value.
2. Leases shall be granted to the highest responsible bidder unless the assembly, determines that because of the nature of the trust to be leased, the nature of the business being sought for the lease (of seeking a lease) or the number of jobs to be produced, that competitive bidding is inappropriate and the terms of the proposed lease, including price, should be negotiated. Applications for non-bid dispositions shall be referred to the board for recommendations.

8. May propose capital improvement projects to and apply for funding from state and federal agencies; provided that such request shall be subject to prioritization by the assembly with other municipal capital improvement funding requests.

9. Shall, on behalf of the municipality, enter into memoranda of understanding, permit negotiations and similar agreements with public agencies for Industrial Park purposes. The board may negotiate and enter into contracts for goods and services pursuant to regulations set out in this ordinance; provided that all legal services shall be provided by or under the supervision of the Municipal Attorney. All services provided by a municipal agency other than the Municipal Attorney shall be pursuant to a memorandum of understanding or other instrument providing for payment or such other settlement as the Municipal Administrator and board may approve. Contracts for public improvements and, whenever practicable, other purchase of supplies, materials, equipment, and services, except professional services and services of officers and municipal employees, shall be by competitive bid and awarded to the lowest qualified bidder according to the procedures established in SGC Title 18. all contracts, and purchased items specifically identified within the Sawmill Cove Industrial Park budget shall not require prior assembly approval. All contracts and purchases shall require Municipal Administrator approval.

2.38.090 Leasing powers.

All leases of land, whether uplands or tidelands, within the Sawmill Cove Industrial Park are subject to the leasing provisions set forth in this chapter.

2.38.100 Adoption of regulations.

The Board of Directors shall adopt regulations for the administration of the industrial park. The Board shall submit regulations to the Assembly for review prior to final adoption.

2.38.110 Sawmill Cove Industrial Park Director designated appointment.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 03-1751

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA
REPEALING AND REENACTING CHAPTER 18.16 TIDELAND LEASE PROCEDURE
OF THE SITKA GENERAL CODE SO AS TO CHANGE
THE PROCEDURES FOR THE CITY AND BOROUGH TO LEASE TIDELANDS**

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.
2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person and circumstances shall not be affected thereby.
3. **PURPOSE.** This ordinance is intended to streamline the tidelands lease process while maintaining a sound public process. This ordinance would remove several unnecessary and cumbersome administrative details have been removed that are not appropriate for inclusion in a municipal code. This ordinance would leave in place the basic steps for leasing tidelands, while creating a process that can be easily followed and implemented.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Chapter 18.16 of the Sitka General Code is repealed and reenacted to read as follows:

**Chapter 18.16
TIDELAND LEASE PROCEDURE**

Sections:

- | | |
|-----------|--|
| 18.16.010 | Generally. |
| 18.16.020 | Leases and permits. |
| 18.16.030 | Government leases and permits. |
| 18.16.035 | Types and classes of leases and permits. |
| 18.16.040 | Approval of Classes for permits and leases. |
| 18.16.050 | Procedures and fees for Class I, Class II, and Class III Approvals. |
| 18.16.060 | Class IIA, Class IIB, and Class IIC Approvals – Application Requirements. |
| 18.16.070 | Class IIA, Class IIB, and Class IIC Notification Requirements. |
| 18.16.080 | Class IIA, Class IIB, and Class IIC Review – Planning Commission. |
| 18.16.090 | Class IIA and Class IIB Review – Assembly. |
| 18.16.100 | Class III Pre-application advice. |
| 18.16.110 | Class III Formal application. |
| 18.16.120 | Class III Plat requirements. |
| 18.16.130 | Class III Lease preference rights and nonpreference rights. |
| 18.16.140 | Class III Notification of upland owner. |

Ordinance 03-1751
Tidelands Lease
Page 2

18.16.150	Class III Preliminary approval.
18.16.160	Class III Notice of auction and intended lease.
18.16.170	Class III Ratification by voters.
18.16.180	Class III Protest.
18.16.190	Class III Determination of lease price.
18.16.200	Class III Lease by ordinance.
18.16.210	Class III Annual lease payments and terms.
18.16.220	Class III Direct lease by municipality.
18.16.230	Execution of permit and lease documents.

18.16.010 Generally.

When in the best interests of the municipality the city and borough may grant leases to tidelands, filled tidelands, tidelands in the intertidal area, submerged tidelands, submerged lands, and reclaimed lands as outlined below. (Ord. 01-1605 § 4 (part), 2001.)

18.16.020 Leases and permits.

The municipality may grant leases or permits for the use of Sitka-owned tidelands, filled tidelands, tidelands in the intertidal area, submerged tidelands, submerged lands, and reclaimed lands under such policy directions and conditions as the assembly shall set from time to time. Leases and permits shall be subject to all other applicable municipal, state, and federal regulations. (Ord. 01-1605 § 4 (part), 2001.)

18.16.030 Government leases and permits.

When leases or permits are issued to other local, state, or federal governmental units or a corporation or agency through which the governmental unit acts, there is no limit to the front footage obtainable, or valuation limit and no requirement of an election as set out by Sections 18.12.010 and 18.16.110, and no consideration for such a lease shall necessarily be required. (Ord. 01-1605 § 4 (part), 2001.)

18.16.040 Approval of Classes for permits and leases.

- A. There shall be three classes of approvals for permits and leases.
- B. **Class I** Approvals which are for permits for use of tidelands that are cancelable by the municipality on thirty days notice.
- C. **Class II** Approvals, are for personal use docks and facilities are immediately seaward of deeded lands and deeded tidelands.
- D. The approval of **Class IIA** facilities shall grant the owner exclusive use of a personal use dock with a perimeter that does not exceed 300 linear feet and the tidelands that are immediately adjacent the facility.
- E. **Class IIB** approvals are for exclusive use of personal use docks with a perimeter of more than 300 linear feet.
- F. **Class IIC** approvals are for mooring buoys.
- G. **Class III** Approvals, which are for leases for commercial docks and facilities and/or personal docks that include the lease of space and facilities. The approval of **Class III** facilities shall grant the facility owner exclusive use of the facility. The area required for the berthing of all vessels shall be included in the lease area. **Class III** facilities include community use docks or docks

Ordinance 03-1751

Tidelands Lease

Page 6

and any other matter related to the tidelands and set a minimum bid price. (Ord. 01-1605 § 4 (part), 2001.)

18.16.160 Class III Notice of auction and intended lease.

Notice of auction and of the application for lease shall be contained in one notice and shall be made substantially as follows:

The municipal clerk shall publish three times over a three week period at the expense of the applicant, a notice in at least one newspaper of general circulation in the vicinity in which the land, property, or interest therein is to be leased, and provided that the lease of lands be held after the end of the three week advertisement period. Copies of this notice shall be served on adjacent property owners by a copy being sent to them by first class mail.

The notice shall set forth the following:

- A. A general description of the request;
 - B. The date, if any, time and place, and the general terms, including the minimum bid, if any, of the sale, lease, or other disposal;
 - C. The location and description of the lands or interest therein and the improvements thereon; and
 - D. The preference or preference rights claimed, if any.
- (Ord. 01-1605 § 4 (part), 2001.)

18.16.170 Class III Ratification by voters.

Lease of tidelands to other than preference right holders for areas which have more than two hundred fifty feet of frontage along the upland meander line, or lease of any tidelands valued above seven hundred fifty thousand dollars, shall be submitted to the voters for election ratification. This section shall not apply to leases at the former Alaska Pulp Corporation mill site, and the property leased under Ordinance 99-1539. (Ord. 01-1605 § 4 (part), 2001.)

18.16.180 Class III Protest.

Anyone may file a protest with respect to the grant, sale, lease, or other disposal of tidelands or materials thereon or therein. Such protest shall be in writing and contain a statement as to the nature and reason for the protest. Each protest so made shall be filed with the municipal clerk during the period of publication. Failure to protest shall constitute a waiver. (Ord. 01-1605 § 4 (part), 2001.)

18.16.190 Class III Determination of lease price.

Lease price shall finally be determined by open auction. The Assembly shall set the upset price for the auction and advertise the minimum price. In determining the minimum price, the Assembly may rely on the Municipal Assessor's advice as to value and consider such additional input, as it may desire. The minimum price shall be no less than the value established by the municipal assessor.

In addition to a minimum bid, the Assembly may require a development plan from each bidder and may evaluate such plans for acceptability prior to auction. Acceptability shall be based upon a determination that the plan would enhance the long range development of the municipality and benefit the public. (Ord. 01-1605 § 4 (part), 2001.)

18.16.200 Class III Lease by ordinance.

Ordinance 03-1751
Tidelands Lease
Page 7

Should the auction be held and a bid accepted by the Assembly, the lease shall be executed subject to passage of an ordinance authorizing the lease. If the lease is subject to ratification by the voters, the authorizing ordinance should also authorize putting the question to the voters at the next regular or special municipal election. (Ord. 01-1605 § 4 (part), 2001.)

18.16.210 Class III Annual lease payments and terms.

- A. The annual lease payment to the municipality shall be nine percent of the price established at the auction plus sales tax.
- B. On the seventh anniversary of each lease, and each seven years thereafter the annual lease payment shall be adjusted as follows: The annual lease payment shall be changed by the percentage change in the amount (expressed in dollars and cents) established by dividing the grand total land value on the official municipal real property assessment roll for the initial lease year by the number of that year's real property tax accounts, compared with a similar calculation using the figures seven years later. Each lease shall state the base figure and tax year on which it was calculated. The term shall be thirty years unless otherwise determined by the Assembly.
- C. The Assembly may require such other terms and conditions as it may desire to be included in the lease at its commencement.
- (Ord. 01-1605 § 4 (part), 2001.)

18.16.220 Class III Direct lease by municipality.

By ordinance the municipality may elect to lease tidelands upon its own initiative upon such terms as are set out in the ordinance.

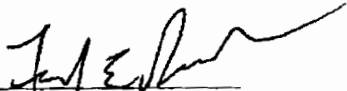
Tidelands leased by the direct lease procedure shall be subject to a ratification election whenever applicable by other sections of the Sitka General Code. (Ord. 01-1605 § 4 (part), 2001.)

18.16.230 Execution of permit and lease documents.


- A. Following any approval the Administrator shall prepare and execute lease documents. Those documents shall include clauses covering termination of leases for non payment and ownership of facilities involving terminated or expired leases.

5. EFFECTIVE DATE. This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 25th day of November 2003.


Fred Reeder, Mayor

ATTEST:


Colleen Pellett, CMC
Municipal Clerk

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2006-39

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA
REPEALING AND REENACTING SGC 18.12.014 TO REQUIRE VOTER
APPROVAL BEFORE THE CITY AND BOROUGH OF SITKA SELLS, LEASES, OR
DISPOSES OF REAL PROPERTY FOR A DOCK OR VESSEL TRANSFER
FACILITY THAT COULD BE USED BY LARGE CRUISE SHIPS, AND REQUIRING
THE CITY AND BOROUGH OF SITKA TO PROVIDE INFORMATION BEFORE
THE VOTE.

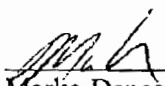
1. CLASSIFICATION. This ordinance is of a permanent nature. Section 3 is intended to become a part of the Sitka General Code upon election certification.
2. PURPOSE. The purpose of this ordinance is to provide the residents of Sitka, Alaska with information and require a public vote before the City and Borough of Sitka disposes of real property for any dock or vessel transfer facility that could be used by cruise ships exceeding three hundred feet in length.
3. ENACTMENT. NOW, THEREFORE, BE IT ENACTED that Sitka General Code Section 18.12.014 is hereby repealed and reenacted to read as follows:

18.12.014 Requirement for a Public Vote and Disclosure of Information for Land Disposals Related to a Dock or Vessel Transfer Facility that could be used by Large Cruise Ships.
 - A. Notwithstanding Sections 2.38.080 A.7 and 2.38.090 or any other provision of law, any ordinance authorizing the sale, lease or disposal of any real property of the City and Borough for a dock or vessel transfer facility that could be used by cruise ships exceeding three hundred feet in length shall be effective only after an affirmative vote of the electorate. Not less than thirty days prior to the election, the City and Borough shall make available to the electorate the terms of the proposed sale, lease or disposal of real property and a summary of the direct anticipated costs to the City and Borough.
 - B. This section applies to tidelands and other real property owned by the City and Borough, including any real property in Sawmill Cove.
4. EFFECTIVE DATE. This ordinance shall become effective immediately on certification by the Assembly if the results of the election show that a majority of the qualified voters approved enactment.

Ordinance No. 2006-39
Page 2


PASSED BY A MAJORITY VOTE OF THE ELECTORATE AT A REGULAR
MUNICIPAL ELECTION HELD OCTOBER 3, 2006.

Results: YES = 1912
NO = 1057



Marko Dapceovich, Mayor

ATTEST:



Colleen Pellett, MMC
Municipal Clerk

AMENDED 7/26/83 .599
AMENDED 8/9/83
AMENDED 9/13/83
AMENDED 9/27/83

C I T Y A N D B O R O U G H O F S I T K A

ORDINANCE NO. 83-556

AN ORDINANCE OF THE CITY AND BOROUGH OF
SITKA ENACTING A NEW PROPERTY TITLE 18
TO THE SITKA GENERAL CODE

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the SITKA GENERAL CODE.
2. SEVERABILITY. If any provision of this ordinance, or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstance shall not be affected thereby.
3. PURPOSE. In the twelve years since unification the property section of the Sitka General Code has not received major review. Based upon experience during that time many improvements have been suggested. It seems preferable to do an entire redraft rather than piecemeal the changes.
4. ENACTMENT.

NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka as follows:

Title 18 of the Sitka General Code is hereby repealed and reenacted to read as follows below, with the exception of Section 18.62 (Public Improvements, Bonding Requirements) which remains unchanged but is renumbered to be Section 18.32.

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REAL PROPERTY DISPOSAL

Chapter 18.12

18.12.010 Real Property Disposal.

- A. Real property, including tidelands, and land acquired from the state, may be sold or leased only when authorized by ordinance. Lease of space within municipal buildings shall be treated as disposals of personal property without ordinance.
- B. Upon sale or disposal of real property valued over \$150,000, or upon lease of real property, including tidelands, of a value of more than \$250,000, the ordinance authorizing the sale, lease, or disposition shall provide that the ordinance be ratified by a majority of the qualified voters voting at a general or special election. Any such sale, lease, or disposition shall be revocable pending the outcome of the election.
- C. No election, ratification by the electorate, or competitive bid is required for
exchange of municipal property, both real and personal, including tidelands, or any interest in property, with the United States, the State of Alaska, or a political subdivision.

Such disposals to other governmental units, shall be done by ordinance.

All leases of real property and tidelands approved by the assembly and signed by the lessee prior to the date of enactment of this ordinance are hereby confirmed and ratified and voter ratification is hereby waived. (Enactment Date Sept 27, 1989)

- D. The lease of any municipal property on a temporary basis may be made by the administrator upon motion of the assembly without ordinance. Temporary shall be defined as any lease terminable at the will of the

municipality where no more than thirty (30) days prior notice of intent to terminate is required.

- E. Sale or lease of municipal real property, including tidelands shall be by competitive bid, unless the assembly finds that competitive bidding is inappropriate, due to the size, shape, or location of the parcel, rendering it of true usefulness to only one party, or is waived by Section (C) above.
- F. When it is deemed advantageous to the municipality, it may trade uplands or tidelands for other land of approximately equal size or value. Should the municipal property in question be of such size or value or to such a class of grantee as to require an election before conveyance of title can be made, the requirements and procedures concerning such election shall apply.
- G. The administrator is authorized to sign all municipal lease and conveyance documents.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 92-1110

AN ORDINANCE OF THE CITY & BOROUGH OF SITKA
AMENDING SITKA GENERAL CODE 18.12.010 AMENDING SUBSECTION B
WHICH REQUIRES AN ELECTION TO AUTHORIZE SALE OR DISPOSAL OF
PROPERTY OF A VALUE OVER \$150,000 AND LEASE OF PROPERTY OF A
VALUE OVER \$250,000

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. SEVERABILITY. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. PURPOSE. The amounts requiring voter approval in Sitka General Code 18.12.010B were set in 1983. Inflation and the needs of the Municipality make higher amounts desirable.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that subsection B of Sitka General Code 18.12.010 is hereby amended to set the value amounts requiring approval by the voters at \$500,000 for sales of real property and \$750,000 for leases of real property.

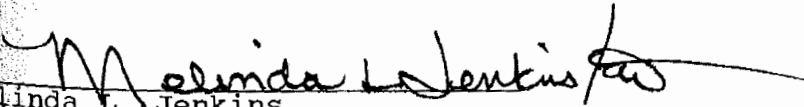
5. EFFECTIVE DATE. This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 8th day of December, 1992.



Dan Keck, Mayor

ATTEST:



Melinda L. Jenkins
Municipal Clerk

Westlaw.

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274 P.3d 486
 (Cite as: 274 P.3d 486)

C

Supreme Court of Alaska.
SITKANS FOR RESPONSIBLE GOVERNMENT, Michael Litman, and Jeffery Farvour, Appellants,
 v.
CITY & BOROUGH OF SITKA and Colleen Pellett, Municipal Clerk, Appellees.

No. S-13394.
 April 20, 2012.

Background: Citizens sought municipal ballot initiative eliminating special regulations that governed real property transactions in local economic development area, and after municipal clerk twice denied petition for ballot initiative, sponsors brought action for order placing initiative on ballot. The Superior Court, First Judicial District, Sitka, David V. George, J., upheld municipal clerk's denial. Sponsor appealed.

Holdings: The Supreme Court, Carpeneti, C.J., held that:

- (1) ballot initiative was not contrary to law, and
- (2) language of petition for ballot initiative was not confusing or misleading.

Reversed and remanded.

West Headnotes

[1] Appeal and Error 30 ↪893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In general. Most Cited Cases

Supreme Court reviews a superior court's summary judgment decision de novo, drawing all inferences in favor of, and viewing the facts in the record in the light most favorable to, the non-moving party.

[2] Municipal Corporations 268 ↪108.3

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k108 Initiative

268k108.3 k. Initiative procedure. Most Cited Cases

Mootness and the legality of a municipal ballot initiative are both legal questions to which the Supreme Court applies de novo review, adopting the rule of law that is most persuasive in light of precedent, reason, and policy.

[3] Municipal Corporations 268 ↪108.3

274 P.3d 486
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268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k108 Initiative

268k108.3 k. Initiative procedure. Most Cited Cases

When reviewing municipal ballot initiatives, the Supreme Court construes them broadly so as to preserve them whenever possible.

[4] Municipal Corporations 268 ↪108.3

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k108 Initiative

268k108.3 k. Initiative procedure. Most Cited Cases

Supreme Court applies a deferential standard of review for challenges to the adequacy of an municipal initiative petition summary and those attacking the summary bear the burden to demonstrate that it is biased or misleading.

[5] Municipal Corporations 268 ↪108.3

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k108 Initiative

268k108.3 k. Initiative procedure. Most Cited Cases

Sponsors' appeal from denial of petition for municipal ballot initiative, eliminating special regulations that governed real property transactions in local economic development area, was not moot, even though election had passed, where there was live, definite, and concrete controversy, actively litigated between adverse parties, touching upon parties' legal rights, and concerning attainable relief.

[6] Appeal and Error 30 ↪781(1)

30 Appeal and Error

30XIII Dismissal, Withdrawal, or Abandonment

30k779 Grounds for Dismissal

30k781 Want of Actual Controversy

30k781(1) k. In general. Most Cited Cases

Supreme Court generally declines to address a moot claim, that is, a claim that has lost its character as a present, live controversy.

[7] Action 13 ↪6

13 Action

13I Grounds and Conditions Precedent

13k6 k. Moot, hypothetical or abstract questions. Most Cited Cases

A claim is moot if the party bringing the action would not be entitled to any relief even if it prevails.

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[8] Action 13 ↪6

13 Action

13I Grounds and Conditions Precedent

13k6 k. Moot, hypothetical or abstract questions. Most Cited Cases

Justiciable controversies are marked by adversity between the parties: there must be a definite and concrete controversy touching the parties' legal relations, not simply hypothetical or abstract disputes.

[9] Declaratory Judgment 118A ↪65

118A Declaratory Judgment

118AI Nature and Grounds in General

118AI(D) Actual or Justiciable Controversy

118Ak65 k. Moot, abstract or hypothetical questions. Most Cited Cases

Declaratory Judgment 118A ↪66

118A Declaratory Judgment

118AI Nature and Grounds in General

118AI(D) Actual or Justiciable Controversy

118Ak66 k. Advisory opinions. Most Cited Cases

Mootness is particularly important in a case seeking a declaratory judgment because there is an added risk that the party is seeking an advisory opinion, which the Supreme Court seeks to avoid.

[10] Municipal Corporations 268 ↪108.1

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k108 Initiative

268k108.1 k. In general. Most Cited Cases

Supreme Court liberally construes the constitutional and statutory provisions pertaining to the use of municipal ballot initiatives so that the people are permitted to vote and express their will on the proposed legislation.

[11] Municipal Corporations 268 ↪108.2

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k108 Initiative

268k108.2 k. Matters subject to initiative. Most Cited Cases

Municipal ballot initiative, eliminating special regulations that governed real property transactions in local economic development area, was not contrary to law; although superior court held initiative to be contrary to law on theory that general city municipal land disposal ordinance, in requiring referendum for high-value disposals, violated city charter, and held that initiative, in requiring land disposal transactions to come into conformity with general ordinance, would also violate city charter, if there was problem with existing ordinance, it could not be basis for finding initiative to be contrary to law.

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(Cite as: 274 P.3d 486)

[12] Municipal Corporations 268 ↪ 108.3

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k108 Initiative

268k108.3 k. Initiative procedure. Most Cited Cases

Language of petition for municipal ballot initiative, eliminating special regulations that governed real property transactions in local economic development area, was not confusing or misleading; petition clearly stated its general purpose to bring treatment of industrial park real property under same rules that governed all other city property, and then set out specific changes to city law that would accomplish purpose, and petition did not seek to persuade voters with partisan language, nor was it grammatically unclear such that voters could not reasonably understand what conduct they were authorizing.

*488 Joseph W. Geldhof, Law Office of Joseph W. Geldhof, Juneau, for Appellants.

Theresa Hillhouse, Municipal Attorney, Sitka, for Appellee City & Borough of Sitka, Michael Gatti and Leila R. Kimbrell, Wohlforth, Johnson, Brecht, Cartledge & Brooking, Anchorage, for Appellee Colleen Pellett, Municipal Clerk.

Before: CARPENETI, Chief Justice, FABE, WINFREE, and STOWERS, Justices.

OPINION

CARPENETI, Chief Justice.

I. INTRODUCTION

Citizens sought a ballot initiative eliminating the special regulations that govern real property transactions in a local economic development area. After the municipal clerk twice denied the petition for a ballot initiative, the sponsors sued for an order placing the initiative on the ballot. Finding the petition to be both contrary to existing law and misleading, the superior court upheld the municipal clerk's denial. The sponsors appealed. Because we conclude that the petition is neither contrary to existing law nor misleading, we reverse.

II. FACTS AND PROCEEDINGS

A. Facts

1. The petition

On June 25, 2008, Jeffery Farvour filed a petition for a ballot initiative with the municipal clerk of the City and Borough of Sitka.^{FN1} The initiative would change how Sitka manages Sawmill Cove Industrial Park (Sawmill Cove).

FN1. The petition states:

CITY AND BOROUGH OF SITKA

ORDINANCE NO.2008-____

274 P.3d 486
(Cite as: 274 P.3d 486)

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA

REPEALING AND/OR REENACTING PORTIONS OF TITLE 2 & TITLE 18 OF THE SITKA GENERAL CODE TO REQUIRE THAT THE SALE, LEASE OR DISPOSALS OF REAL PROPERTY WITHIN SAWMILL COVE INDUSTRIAL PARK BE CONSISTENT WITH AND CONFORM TO THE PROPERTY DISPOSAL ORDINANCES CONTAINED IN TITLE 18, INCLUDING A PUBLIC VOTE, IF NECESSARY.

1. CLASSIFICATION. This ordinance is of a permanent nature. Section 3 is intended to become a part of the Sitka General Code upon election certification.

2. PURPOSE. The purpose of this ordinance is to require that the administration and disposals of tidelands, submerged land, and other real property in the Sawmill Cove Industrial Park take place and is governed by Title 18 of the Sitka General Code and, as necessary that disposals of property within the Sawmill Cove Industrial Park are subject to a public vote.

3. ENACTMENT. NOW, THEREFORE, BE IT ENACTED that Sitka General Code Section 2.38.080(a)(7) is repealed and reenacted to read as follows:

7. All land transactions shall be governed in accordance with Title 18 of Sitka General Code.

BE IT FURTHER ENACTED that Sitka General Code Section 2.38.090 (Ord. 00-1568 § 4 (part), 2000.), pertaining to leasing powers is repealed.

BE IT FURTHER ENACTED that Sitka General Code Section 18.12.010(B) is repealed and reenacted to read as follows:

B. Upon sale or disposal of real property valued over five hundred thousand dollars, or upon lease of real property, including tidelands, of a value of more than seven hundred fifty thousand dollars, the ordinance authorizing the sale, lease, or disposition shall provide that the ordinance be ratified by a majority of the qualified voters voting at a general or special election. Any such sale, lease, or disposition shall be revocable pending the outcome of the election.

4. EFFECTIVE DATE. This ordinance shall become effective immediately on certification by the Assembly if the results of the election show that a majority of the qualified voters approved enactment.

Sawmill Cove is the former site of the *489 Alaska Pulp Corporation mill. ^{FN2} Sitka acquired the site in 2000 to manage economic development. ^{FN3} According to the purpose statement of the municipal acquisition:

FN2. See Sitka General Code (SGC) 02.38.080(A)(5) (2009) (noting conveyance agreement with Alaska Pulp Corporation).

FN3. Sitka Ordinance (SO) 00-1568 (2000).

Unlike other property owned by the municipality, [Sawmill Cove] was acquired ... for economic development and disposal. In general, the property will not be used for public improvements. It will be leased or sold to individuals and corporations to develop business opportunities and provide jobs. For that reason, it is important

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to enact a procedure for property management and disposal at the site which more closely corresponds to private sector disposals.^{FN4}

FN4. *Id.*

Accordingly, Sitka manages the site through a Board of Directors (the Board), whose extensive control over the site includes the power to operate, develop, budget for, and regulate Sawmill Cove.^{FN5} The Board may enter into contracts on behalf of Sitka,^{FN6} and the Board may dispose of Sawmill Cove property.^{FN7}

FN5. SGC 02.38.080(A).

FN6. *Id.* at (A)(9).

FN7. *Id.* at (A)(7).

The Board's power to dispose of Sawmill Cove property is broader than the city's power to dispose of other property. In order to sell, lease, buy, or trade real property in Sawmill Cove, the Board needs only the support of the Sitka assembly, in the form of a resolution.^{FN8} Short-term leases require only the municipal administrator's approval.^{FN9} In contrast, Sitka is more limited regarding disposal of its other, non-Sawmill Cove properties. Before the assembly can sell other real property valued over \$500,000 or enter into a lease valued over \$750,000, the assembly must pass an ordinance and Sitka voters must ratify the action in an election.^{FN10}

FN8. *Id.*

FN9. *Id.* at (A)(7)(a).

FN10. SGC 18.12.010(B).

The petition giving rise to this case would eliminate the Board's broad authority to transact real property in Sawmill Cove, and would instead require those transactions to comply with the normal requirements for any Sitka municipal land transaction. To do this, the petition revokes the language in Sitka General Code 02.38.080(A)(7), which contains the special procedures for transacting Sawmill Cove property. Instead, that section would read: "All land transactions shall be governed in accordance with Title 18 of Sitka General Code." Title 18 contains the normal procedures for Sitka's municipal land transactions.^{FN11} That means that Sawmill Cove would be governed by the normal requirement that voters ratify any high-value land transaction—sales over \$500,000 or leases over \$750,000.^{FN12} The change to Title 18 would also eliminate the Board's ability to execute short-term leases with only the municipal administrator's approval; instead, assembly approval would be required.^{FN13} Finally, the change would impact all land transactions—large or small, lease^{FN14} or sale^{FN15}—by removing the Board's authority to *490 initiate such actions and instead requiring municipal action.

FN11. *See* SGC 18.12.010.

FN12. *Id.* at (B).

FN13. *See supra* note 1. The third section of the ballot initiative (titled "Enactment") proposed eliminating the current SGC 02.38.080(A)(7)(a), which only requires administrative approval for short-term leases in Sawmill Cove, and replacing it with SGC 18.12.010, which would require authorization by ordinance of any lease, with certain minor exceptions.

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FN14. *See supra* note 1. The third section of the ballot initiative proposed replacing the current SGC 02.38.080(A)(7), the section of the ordinance that allows the Board to administer and dispose of property (sometimes subject to assembly approval) with the procedures in SGC 18.12.010, which grants no authority to the Board and requires an ordinance for most transactions.

FN15. *See supra* note 1. The petition makes two other minor changes to the Sitka code, each removing language currently stating that Sawmill Cove is not subject to Title 18. The petition would repeal SGC 02.38.090 (clarifying that Sawmill Cove leases are pursuant to Title 2, chapter 38) and amend SGC 18.12.010(B) (currently exempting Sawmill Cove property from Title 18).

2. Sitka's denial of the petition

Jeffery Favour's June 25, 2008 petition identified Favour and Michael Litman (the sponsors) as contacts for the petition, and sought approval to begin collecting signatures to qualify the petition for the October 7, 2008 election.^{FN16} Sitka forwarded the petition to its outside counsel, which responded with many reasons to deny the petition. Although it is unclear how strong these reasons are,^{FN17} the outside counsel found that the petition (1) is confusing and misleading; (2) appropriates a public asset; (3) relates to an administrative matter; (4) is inconsistent with existing code; (5) is inconsistent with the local planning process; (6) immediately affects public health, safety, and welfare; (7) does not provide an effective date; and (8) conflicts with a requirement for Department of Justice pre-clearance. Accordingly, Sitka Municipal Clerk Colleen Pellett denied the petition on July 10, 2008. Although her denial notice was cursory, she attached the more extensive memo from outside counsel.

FN16. To qualify for the Sitka ballot, an initiative must be signed by at least as many people as constitute 20% of the total number of electors voting at the last regular annual election. Home Rule Charter of City and Borough of Sitka Art. 6.01 (2009).

FN17. For example, the paragraph alleging that the petition concerns an administrative matter contains no analysis. Several other arguments raised in the memo are also conclusory.

On July 22, 2008, Litman submitted an amended petition on behalf of **Sitkans for Responsible Government**. A cover letter discussed the concerns listed in the July 10 denial, but the petition corrected only two minor problems.^{FN18} Sitka again forwarded the petition to its outside counsel, which responded with a memorandum highlighting essentially the same issues as it had in the first petition. The municipal clerk denied this second petition on August 5, 2008, again including a memo from outside counsel.

FN18. First, the new version stated that Sawmill Cove requirements would "be consistent with and conform to" Title 18, whereas the original petition had only stated "conform to." Second, the new petition corrected a typographical error so that 18.12.010(B) would be repealed, not 18.38.080(B), which had been erroneously listed in the original petition.

B. Proceedings

On August 8, 2008, the sponsors filed a complaint in superior court.^{FN19} They sought an injunction directing the clerk to certify the initiative for inclusion in the regular municipal election and declaratory relief confirming the propriety of the initiative. Superior Court Judge David V. George granted a preliminary injunction against Sitka and ordered the clerk to provide the sponsors with signature booklets so that they could gather signatures, which was done. The superior court then held an expedited hearing on August 19 and, in an order issued August 27, the court denied the sponsors' request for relief.

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FN19. *Sitkans for Responsible Government* was the lead plaintiff, but the superior court eventually dismissed the group for lack of standing.

In its subsequent written decision, the superior court denied the sponsors' motion for summary judgment and dismissed the sponsors' complaint. Based on two independent grounds, the superior court upheld the Sitka clerk's denial of the petition for a ballot initiative: the court held (1) the initiative is contrary to law and unenforceable, and (2) the initiative is misleading and confusing.^{FN20} The sponsors now appeal both of these holdings. Sitka, in turn, contends the case is moot.

FN20. The court found unsupported a third reason—that the initiative was illegally used to make an appropriation. And the court did not reach a fourth reason—that the initiative improperly concerns administrative action. We note that courts should rule on all the reasons given for rejecting citizen petitions. Piecemeal litigation and piecemeal appeals can delay and potentially thwart the ability of the people to initiate laws or to decide not to do so. Ruling on all the reasons given for rejecting citizen petitions will prevent citizens from having to return to the courthouse multiple times to secure a spot on the ballot for their initiatives.

*491 III. STANDARD OF REVIEW

[1][2] We review a superior court's summary judgment decision de novo, drawing all inferences in favor of, and viewing the facts in the record in the light most favorable to, the non-moving party.^{FN21} Mootness^{FN22} and the legality of a ballot initiative^{FN23} are both legal questions to which we also apply de novo review, adopting the rule of law that is most persuasive in light of precedent, reason, and policy.^{FN24}

FN21. *Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1072 (Alaska 2009) (citing *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418, 422 (Alaska 2006)).

FN22. *Ulmer v. Alaska Rest. & Beverage Ass'n*, 33 P.3d 773, 776 (Alaska 2001).

FN23. *Pebble Ltd.*, 215 P.3d at 1072.

FN24. *Id.*; *Jacob v. State, Dep't of Health & Soc. Servs.*, 177 P.3d 1181, 1184 (Alaska 2008).

[3][4] When reviewing initiatives, we construe them broadly so as to preserve them whenever possible.^{FN25} We apply a deferential standard of review for challenges to the adequacy of a petition summary and "[t]hose attacking the summary bear the burden 'to demonstrate that it is biased or misleading.'" ^{FN26}

FN25. *Pebble Ltd.*, 215 P.3d at 1073 (citing *Anchorage Citizens for Taxi Reform*, 151 P.3d at 422).

FN26. *Id.* (citing *Alaskans for Efficient Gov't, Inc. v. State*, 52 P.3d 732, 735 (Alaska 2002)).

IV. DISCUSSION

A. The Issues On Appeal Are Not Moot.

[5] Sitka contends this appeal is moot because the October 7, 2008 election has passed. Assuming the sponsors' request to be included on a ballot refers only to the October 2008 election, Sitka points out certification for a past election is impossible and the case is therefore moot. Further, regarding the sponsors' request for declarat-

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ory relief, Sitka asserts any relief upholding the petition's language would constitute an improper advisory opinion for a hypothetical future petition. Again, this assumes the sponsors would have to file a new petition for an upcoming election. However, because Sitka has not actually demonstrated the sponsors would need to file a new petition, and because this case is rich with adversity, we do not find it to be moot.

[6][7][8][9] We generally decline to address a moot claim—that is, a claim that “has lost its character as a present, live controversy.”^{FN27} A claim is moot if “the party bringing the action would not be entitled to any relief even if it prevails.”^{FN28} By contrast, justiciable controversies are marked by adversity between the parties: There must be a “definite and concrete” controversy touching the parties' legal relations, not simply “hypothetical or abstract” disputes.^{FN29} “Mootness is particularly important in a case seeking a declaratory judgment because there is an added risk that the party is seeking an advisory opinion,”^{FN30} which we seek to avoid.^{FN31}

FN27. *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1195 (Alaska 1995); *Ulmer*, 33 P.3d at 776.

FN28. *Ulmer*, 33 P.3d at 776 (internal quotation marks omitted).

FN29. *Kodiak Seafood Processors Ass'n*, 900 P.2d at 1195; see also *Ulmer*, 33 P.3d at 776 (stressing the adversity requirement).

FN30. *Kodiak Seafood Processors Ass'n*, 900 P.2d at 1195.

FN31. *Earth Movers of Fairbanks, Inc. v. State, Dep't of Transp. & Pub. Facilities*, 824 P.2d 715, 718 (Alaska 1992).

Sitka relies on *Ulmer v. Alaska Restaurant & Beverage Ass'n*,^{FN32} which concerned mootness in the context of a ballot initiative. There, the State appealed the superior court's decision that the lieutenant governor's petition summary was legally defective.^{FN33} But the sponsors of the initiative had dropped out of the litigation,^{FN34} and we were not convinced the sponsors could legally reinvigorate*492 the petition if it were upheld.^{FN35} We said that such “speculation about what other parties may choose to do in the future is exactly the sort of indeterminacy the mootness doctrine was developed to avoid.”^{FN36}

FN32. 33 P.3d 773 (Alaska 2001).

FN33. *Id.* at 774.

FN34. *Id.* at 776–77.

FN35. *Id.* In fact there was no reason to believe the sponsors would even try to do so, since they were not taking part in the litigation. *Id.*

FN36. *Id.* at 777.

Unlike *Ulmer*, the litigants in this case remain actually adverse: The parties that filed the petition and litigated the case below remain actively engaged in the litigation. More importantly, Sitka has pointed to no authority barring this petition from being placed on an upcoming ballot.^{FN37} This is of particular importance because the sponsors' complaint does not request inclusion in any particular election. Accordingly, the injunctive relief

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the sponsors request is available. And because their initiative could be placed on an upcoming ballot, the sponsors' request for declaratory relief upholding the wording of their petition is appropriate—that is, our decision will affect the actual petition in question and will not result in an advisory opinion for a hypothetical future petition. Accordingly there is a live, definite, and concrete controversy, actively litigated between adverse parties, touching upon the parties' legal rights, and concerning attainable relief. The case is therefore not moot. We turn to the merits of that controversy.

FN37. See SGC 02.40.040 (2008) (providing time limits for gathering signatures and rejecting petitions, but not for placing petitions on the ballot).

B. It Was Error To Hold That The Petition Is Contrary To Law And Unenforceable.

Of the two grounds the superior court gave on which to uphold the municipal clerk's denial of the petition, the first is that the petition is contrary to existing law. The superior court found Sitka's existing procedures for land transactions conflict with the Sitka Charter, and therefore the petition—requiring Sitka's general procedures to be used in Sawmill Cove—also conflicts with the Charter. Specifically, the conflict is between Title 18's requirement that high-value land transactions be ratified by voters (i.e., through a referendum),^{FN38} and article 6, section 1 of the Sitka Home Rule Charter, which states Sitka cannot have a referendum without advance support (signatures) from 20% of the number of people voting in the last election.

FN38. SGC 18.12.010(B) (2008).

The sponsors first argue that this holding is a violation of their state constitutional right to petition, and second that their petition does not add any new procedures, let alone constitute a referendum in violation of the Charter. Because we agree with their latter claim, we cannot uphold the superior court's ruling.

1. The superior court's ruling did not implicate the sponsors' constitutional right to petition.

[10] Article XI of the Alaska Constitution provides a right of initiative and referendum regarding state law, whereas AS 29.26.100 reserves to the residents of municipalities the right of local initiative and referendum.^{FN39} A city clerk may reject a petition if it would not be enforceable as a matter of law.^{FN40} In *Whitson v. Anchorage*,^{FN41} we upheld a clerk's denial and found unenforceable a municipal petition that conflicted with a higher law—there a state statute.^{FN42} However, we liberally construe “the constitutional and statutory provisions pertaining to the use of initiatives ... so that the people are permitted to vote and express their will on the proposed legislation.”^{FN43}

FN39. *Carmony v. McKechnie*, 217 P.3d 818, 820 (Alaska 2009); *Griswold v. City of Homer*, 186 P.3d 558, 563 (Alaska 2008).

FN40. AS 29.26.110(a)(4).

FN41. 608 P.2d 759 (Alaska 1980).

FN42. *Id.* at 761–62.

FN43. *Carmony*, 217 P.3d at 820 (internal quotations and bracketing omitted); see also *Citizens for Implementing Med. Marijuana v. Municipality of Anchorage*, 129 P.3d 898, 901 (Alaska 2006).

*493 The sponsors' argument that the superior court's order violated the Alaska Constitution is unpersuasive because the constitutional provisions cited by the sponsors pertain to state initiatives and referenda, while muni-

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cial initiatives and referenda are instead governed by state statutes.^{FN44} We must look to those statutes, which allow a clerk to deny a petition that would be unenforceable because it conflicts with existing law, to resolve this first issue.^{FN45}

FN44. See *Carmony*, 217 P.3d at 820; *Med. Marijuana*, 129 P.3d at 901.

FN45. AS 29.26.100(a); *Whitson*, 608 P.2d at 761–62.

2. It was error to hold that the initiative was contrary to law.

[11] The superior court held the initiative to be contrary to law on the theory that the general Sitka municipal land disposal ordinance—in requiring a referendum for high-value disposals—violates the Sitka Charter. The superior court held that the initiative, in requiring Sawmill Cove land disposal transactions to come into conformity with the general ordinance, would by definition also violate the Charter. We conclude that if there is a problem with the existing ordinance, it cannot be the basis for finding an initiative to be contrary to law.

The specific problem found by the court was that, while it was an initiative in form, the sponsors' petition “would create a blanket or compulsory referendum for certain future actions of the Assembly. Specifically, the initiative mandates a referendum vote for all future assembly actions [in high-value Sawmill Cove transactions].” It would do so, the court found, because under current Sitka General Code 18.12.010, large-scale disposals of municipal land must be ratified by the voters. The court characterized such ratification as a referendum. In attempting to bring large-scale municipal land disposals in Sawmill Cove under the same rules and procedures governing other large-scale municipal land disposals, the initiative would subject them to the requirement of voter approval. Thus, the court found, the initiative “dispenses with the Charter requirement that a proposed referendum be supported by a certain number of elector signatures before being put to the voters” and “is in direct violation of referendum requirements under City Charter and implementing ordinance and is therefore unenforceable as a matter of law.”

As the sponsors persuasively argue, their initiative would do no more than bring disposals of municipal land in the Sawmill Cove area into conformity with Sitka ordinances pertaining to disposal of municipal land generally. During the course of the proceedings below and in this court, neither party argued Sitka's general ordinances pertaining to disposal of municipal land violate the Charter. Sitka's argument that the initiative would require a referendum for transactions of a certain size (and that requiring a referendum without previously obtaining the signatures of a certain number of voters would violate the Sitka Charter) completely ignores that Sitka law currently requires exactly that: a referendum for transactions of a certain size. If Sitka believes there is a conflict between SGC 18.20.010 and the Sitka Charter—an issue never explicitly decided by any court, much less raised by any party in this litigation, and an issue Sitka conceded at oral argument is not before this court—the city should amend either its Charter or the ordinance. It may not be heard to argue that a citizen initiative, which merely attempts to extend to all transactions a Sitka law currently applicable only to some transactions, is contrary to law because current law violates the Sitka Charter.

Accordingly, we reverse the superior court's ruling that the initiative in this case was in direct violation of referendum requirements and therefore unenforceable as a matter of law.

C. It Was Error To Hold That The Petition's Language Is Confusing And Misleading.

[12] As a second independent basis for upholding the clerk's denial, the superior court found the petition confusing and misleading. Specifically, the superior court found the petition confusing and misleading *494 because it does not inform voters that it would result in automatic referenda contrary to the Sitka Charter. As ex-

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plained above, we do not agree that the petition would conflict with the Charter. Moreover, we conclude that the petition is neither confusing nor misleading.

We previously considered the legal sufficiency of proposed ordinances in *Faipeas v. Municipality of Anchorage*^{FN46} and in *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage*,^{FN47} both of which regarded proposed ordinances in Anchorage.^{FN48} In *Faipeas*, we based our analysis on an Anchorage Municipal Code requirement that a petition “describe the ordinance or resolution sought by the petition....”^{FN49} We concluded that “[a] description which is untruthful, misleading, or which is not complete enough to convey basic information as to what the ordinance does, cannot be regarded as a legally adequate or sufficient description within the meaning of the ordinance. The word ‘describe’ in a legal context carries the requirement that the required description must be fair and accurate.”^{FN50} Further, we stated that “[t]he public interest in informed lawmaking requires that referendum and initiative petitions meet minimum standards of accuracy and fairness.”^{FN51} We then rejected the referendum petition because the title of the petition was “partisan and potentially prejudicial.”^{FN52}

FN46. 860 P.2d 1214 (Alaska 1993).

FN47. 129 P.3d 898 (Alaska 2006).

FN48. *Faipeas*, 860 P.2d at 1215; *Med. Marijuana*, 129 P.3d at 899.

FN49. *Faipeas*, 860 P.2d at 1219 (emphasis added) (internal quotation marks omitted); *Med. Marijuana*, 129 P.3d at 901.

FN50. *Faipeas*, 860 P.2d at 1219; see also *Med. Marijuana*, 129 P.3d at 901 (reiterating *Faipeas* holding).

FN51. *Faipeas*, 860 P.2d at 1221.

FN52. *Faipeas*, 860 P.2d at 1217, 1221. The referendum petition in *Faipeas* was titled: “REFERENDUM PETITION TO REPEAL A ‘SPECIAL HOMOSEXUAL ORDINANCE.’ ” The contents of the petition were then laid out in much smaller print. *Id.* at 1217. We concluded that “[w]hile opponents of the ordinance regard it as giving special rights to homosexuals, proponents view it as merely adding sexual orientation to the list of other important personal characteristics and choices such as gender, religion, race, and marital status, which are protected from discrimination in public employment.” *Id.*

In *Medical Marijuana*, we considered the legal sufficiency of a proposed ordinance in Anchorage.^{FN53} We again noted that the Anchorage Municipal Code required a petition to “describe the ordinance or resolution sought by the petition”^{FN54} and stated that our “main concern should be that all matters (legislative enactments, initiative petitions and proposed resolutions) should be presented *clearly* and honestly to the people of Alaska.”^{FN55} We then identified the various descriptive shortcomings and “puzzling grammatical deficiencies” of the proposed ordinance, noting that: the petition did not explain the context and purpose of the proposed initiative, the petition title was “misleading as to the proposition’s scope,” and the petition included multiple confusing “whereas” clauses.^{FN56} On this basis we affirmed⁴⁹⁵ the superior court’s grant of summary judgment on behalf of the city.^{FN57}

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FN53. *Med. Marijuana*, 129 P.3d at 901.

FN54. *Id.* The Anchorage Municipal Code no longer requires a petition to “describe the ordinance or resolution sought by the petition.” See *Faipeas*, 860 P.2d at 1219 (internal quotation marks omitted). Anchorage Municipal Code 2.50.020 now requires a petition “set out verbatim the ordinance or resolution sought to be enacted or repealed by the petition” and “meet constitutional, charter and other legal requirements or restrictions.” AMC 2.50.020(B)(3)(a), (c).

FN55. *Med. Marijuana*, 129 P.3d at 901 (emphasis in original).

FN56. *Id.* at 901–05. The petition at issue in *Medical Marijuana* was entitled “An Initiative Allowing Those Items Used with Marijuana Legal as Medicine or a Right to Privacy.” *Id.* at 902. The text of the proposed initiative read:

Shall Article II of the Municipal Charter be amended to add the following section:

(14) The right to buy, sell, or possess those items which could be used to consume, grow or process marijuana for medicine, or as is in accord with the right to privacy protected by Article I, Section 22 of the Alaska Constitution.

We noted in *Medical Marijuana* that the petition as a whole could be read either to legalize marijuana paraphernalia in specific situations or to legalize possession and sale of marijuana paraphernalia in “virtually all situations,” even if not intended to be used in accordance with Alaska’s medical marijuana statute or the right to privacy. *Id.* at 904.

FN57. *Id.* at 905.

Unlike the then-existing Anchorage Municipal Code in *Faipeas* and *Medical Marijuana*, section 02.40.040 of the Sitka General Code provides that petitions shall “set out fully the ordinance or resolution sought by the petition.” ^{FN58} Notably, the word “describe” does not appear in subsection (B). ^{FN59} Even assuming that the requirement to “set out fully the ordinance or resolution” contains the same descriptive requirement as the then-existing Anchorage Municipal Code in *Faipeas* and *Medical Marijuana*, the sponsors’ petition in the present case is neither confusing nor misleading. The petition first identifies its purpose:

FN58. SGC 02.40.040(B)(2).

FN59. See SGC 02.40.040(B). The superior court concluded without discussion that “[w]hile the Sitka Code does not contain the same requisite initiative description requirement as did the Anchorage code in *Faipeas*, the standards employed by the court are appropriately applied to the initiative language here.” We find that it is not clear from the terms of the Sitka General Code whether Sitka intended to require a descriptive element similar to the then-existing Anchorage Municipal Code, and we note that neither *Faipeas* nor *Medical Marijuana* resolve the question of how much context, if any, is required where a home rule municipality’s own code does not contain a descriptive requirement. But the question of whether a petition must include a description, even where the relevant home rule municipal law does not mandate such a requirement, is a constitutional issue not raised by the parties and not properly before us. Because we conclude that the sponsors’ petition in the present case satisfies our standards as announced in *Faipeas* and *Medical Marijuana*, we decline to reach these additional questions.

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[T]o require that the administration and disposal of tidelands, submerged land, and other real property in the Sawmill Cove Industrial Park take place and is governed by Title 18 of the Sitka General Code and, as necessary that disposals of property within the Sawmill Cove Industrial Park are subject to a public vote.

The petition then states that "Sitka General Code Section 2.38.080(a)(7) is repealed and reenacted [such that all] land transactions shall be governed in accordance with Title 18 of the Sitka General Code." The petition further provides that "Sitka General Code Section 2.38.090 ... is repealed." Finally, the petition states:

Sitka General Code Section 18.12.010(B) is repealed and reenacted [such that] ... [u]pon sale or disposal of real property valued over five hundred thousand dollars, or upon lease of real property, including tidelands, of a value of more than seven hundred fifty thousand dollars, the ordinance authorizing the sale, lease, or disposition shall provide that the ordinance be ratified by a majority of the qualified voters voting at a general or special election. Any such sale, lease, or disposition shall be revocable pending the outcome of the election.

The petition clearly states its general purpose to bring the treatment of Sawmill Cove Industrial Park real property under the same rules that govern all other city property, and then it sets out the specific changes to Sitka law that will accomplish this purpose. The petition does not seek to persuade voters with partisan language,^{FN60} nor is it grammatically unclear such that voters could not reasonably understand what conduct they are authorizing.^{FN61} The petition language is neither confusing nor misleading. We therefore reverse the decision of the superior court.

FN60. See *Faipeas*, 860 P.2d at 1219.

FN61. See *Med. Marijuana*, 129 P.3d at 898.

V. CONCLUSION

Because the initiative is neither contrary to existing law nor confusing or misleading, we REVERSE the decision of the superior court. We REMAND for further proceedings consistent with this opinion.

CHRISTEN, Justice, not participating.

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C

Supreme Court of Alaska.
ALLIANCE OF CONCERNED TAXPAYERS, INC., Appellant,
 v.
KENAI PENINSULA BOROUGH, Appellee.
 Kenai Peninsula Borough, Appellant,
 v.
Alliance of Concerned Taxpayers, Inc., Appellee.

Nos. S-13596, S-13883.
 April 6, 2012.

Background: Citizens group brought declaratory and injunctive relief action against borough, challenging sales tax increase by the borough assembly and seeking to enforce an initiative ordinance that required voter approval for capital projects above a specified cost. The Superior Court, Third Judicial District, Kenai, Carl Bauman, J., granted borough summary judgment, and denied borough's motion for attorney fees. Citizens group appealed, and borough cross-appealed.

Holdings: The Supreme Court, Fabe, J., held that:

- (1) earlier voter approval of a sales tax not to exceed three percent authorized borough assembly to raise sales tax rate to three percent without submitting the increase for voter approval;
- (2) initiative ordinance that required voter approval of capital projects above one million dollars violated the Alaska Constitution; and
- (3) borough was not precluded by statute from seeking attorney fees incurred on the capital project initiative dispute.

Superior Court affirmed in part and reversed in part.

West Headnotes

[1] Appeal and Error 30 ↪893(1)

30 Appeal and Error
 30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In general. Most Cited Cases

Grants of summary judgment are reviewed de novo, drawing all factual inferences in favor of, and viewing the facts in the light most favorable to, the party against whom summary judgment was granted.

[2] Appeal and Error 30 ↪893(1)

30 Appeal and Error

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30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In general. Most Cited Cases

Questions of law and questions of statutory interpretation are reviewed de novo, adopting the rule of law which is most persuasive in light of precedent, reason, and policy.

[3] Statutes 361 ↪ 181(2)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(2) k. Effect and consequences. Most Cited Cases

Statutes 361 ↪ 184

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k184 k. Policy and purpose of act. Most Cited Cases

Statutes 361 ↪ 217.2

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.2 k. Legislative history of act. Most Cited Cases

Courts interpret the meaning of a statute according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose.

[4] Statutes 361 ↪ 217.4

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.4 k. Legislative history in general. Most Cited Cases

Courts use a sliding-scale approach when interpreting statutes, under which the clearer the statutory language is, the more convincing legislative history must be to justify another interpretation.

[5] Municipal Corporations 268 ↪ 108.1

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268 Municipal Corporations
 268IV Proceedings of Council or Other Governing Body
 268IV(B) Ordinances and By-Laws in General
 268k108 Initiative
 268k108.1 k. In general. Most Cited Cases

When reviewing initiatives, courts construe voter initiatives broadly so as to preserve them whenever possible; however, initiatives touching upon the allocation of public revenues and assets require careful consideration because the constitutional right of direct legislation is limited by the Alaska Constitution. Const. Art. 11, § 7.

[6] Municipal Corporations 268 ↪57

268 Municipal Corporations
 268II Governmental Powers and Functions in General
 268k57 k. Powers and functions of local government in general. Most Cited Cases
 Courts give liberal construction to the powers of local government units.

[7] Municipal Corporations 268 ↪60

268 Municipal Corporations
 268II Governmental Powers and Functions in General
 268k60 k. Powers and functions of council or other governing body. Most Cited Cases
 There is a presumption that proceedings of the governing body of a municipality have been conducted in accordance with the law.

[8] Municipal Corporations 268 ↪956(4)

268 Municipal Corporations
 268XIII Fiscal Matters
 268XIII(D) Taxes and Other Revenue, and Application Thereof
 268k956 Power and Duty to Tax in General
 268k956(4) k. Submission to popular vote. Most Cited Cases

Statute, requiring that an increase in a sales tax approved by ordinance be ratified by a majority of the voters at an election before the increase took effect, was satisfied, in regard to borough ordinance that raised the borough sales tax from two to three percent, by both a voter authorization 20 years earlier that authorized the borough assembly to levy a sales tax not to exceed three percent and the defeat of a subsequent referendum to repeal the rate increase; because the three percent rate of levy in the ordinance was not an increase from the rate previously approved by the voters no additional voter ratification was required, and a savings clause in the statute preserved the borough's right to raise the rate to the rate previously approved by voters. AS 29.45.670.

[9] Appeal and Error 30 ↪171(1)

30 Appeal and Error
 30V Presentation and Reservation in Lower Court of Grounds of Review
 30V(A) Issues and Questions in Lower Court
 30k171 Nature and Theory of Cause
 30k171(1) k. In general; adhering to theory pursued below. Most Cited Cases

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Appeal and Error 30 ↪1078(1)

30 Appeal and Error
30XVI Review

30XVI(K) Error Waived in Appellate Court
30k1078 Failure to Urge Objections

30k1078(1) k. In general. Most Cited Cases

Citizens group on appeal waived argument that an earlier voter authorization allowing a borough sales tax rate not to exceed three percent was not a general tax levy because the levy was used for school improvements, in action challenging ordinance adopted by borough assembly increasing the borough's sales tax to three percent on the basis that it was not authorized by voters, by failing to raise the argument in the trial court or in its opening appellate brief. AS 29.45.670.

[10] Municipal Corporations 268 ↪108.2

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative

268k108.2 k. Matters subject to initiative. Most Cited Cases

A two-part inquiry is used to determine whether a particular municipal initiative is an improper appropriation that violates provision in the Alaska Constitution that prohibits initiatives from being used to dedicate revenues or to make or repeal authorizations: (1) the court determines whether the initiative deals with a public asset, and (2) the court determines whether the initiative would appropriate the public asset, which involves looking to the two core objectives of the constitutional limitation, which are to prevent give-away programs that appeal to the self-interest of the voters and to preserve legislative discretion by ensuring the legislature retains control over the allocation of state assets among competing needs. Const. Art. 11, § 7.

[11] Municipal Corporations 268 ↪108.2

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative

268k108.2 k. Matters subject to initiative. Most Cited Cases

Initiative ordinance requiring borough assembly to seek voter approval for capital projects that exceeding one million dollars violated provision in Alaska Constitution that prohibited initiatives from being used to dedicate revenues or to make or repeal authorizations, as the voters' ability to veto a capital project infringed on the borough assembly's ability to allocate resources among competing uses. Const. Art. 11, § 7.


[12] Municipal Corporations 268 ↪1040

268 Municipal Corporations
268XVI Actions
268k1040 k. Costs. Most Cited Cases

Statute precluding an award of attorney fees to the prevailing party in an action to establish, protect, or enforce a right under the Alaska Constitution did not preclude an award of attorney fees to borough and against cit-

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izens group that unsuccessfully sought to enforce initiative ordinance that required voter approval for capital projects above a specified cost, as local initiative power was statutory rather than constitutional. Const. Art. 11, § 7; AS 09.60.010(c)(2), 29.26.100.

[13] Statutes 361  206

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k206 k. Giving effect to entire statute. Most Cited Cases

Courts construe a statute so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.

*1130 Kenneth P. Jacobus, Kenneth P. Jacobus, P.C., Anchorage, for Appellant/Appellee Alliance of Concerned Taxpayers, Inc.

Colette G. Thompson, Borough Attorney, and Holly B. Montague, Deputy Borough Attorney, Soldotna, for Appellee/Appellant Kenai Peninsula Borough.

Before: CARPENETI, Chief Justice, FABE, WINFREE, and STOWERS, Justices.

OPINION

FABE, Justice.

I. INTRODUCTION

This case concerns the validity of two 2005 Kenai Peninsula Borough (Borough) ordinances: one enacted by the Borough Assembly and the second enacted by voter initiative. The Borough Assembly enacted an ordinance in June 2005 that increased the sales tax rate from two percent to three percent. Then in an October 2005 election, Borough voters passed an initiative that required prior voter approval for all Borough capital projects with a total cost of more than one million dollars.

The Alliance for Concerned Taxpayers (ACT) challenged the sales tax increase and sought to enforce the capital projects voter approval requirement. ACT argued that the sales tax increase was impermissible under state statute because it was enacted without ratification by Borough voters. The Borough responded that voters had authorized the increase both by approving a three-percent sales tax rate in 1964 and by defeating a post-enactment referendum to repeal the increase in 2006. ACT also sought to enforce the capital project voter approval initiative. The Borough contended that requiring prior voter approval for capital projects was unlawful because it delegated budgeting authority to the voters in violation of Alaska law and because it violated the Alaska Constitution's limits on local initiative power that forbid voters to make or repeal appropriations.

The superior court granted summary judgment to the Borough on both matters: on the sales tax issue, reasoning that the 1964 voter action allowed the increase and the 2006 referendum defeat ratified it; and on the capital projects voter approval issue, reasoning that Proposition 4 was an unconstitutional use of the initiative power to appropriate a public asset. ACT appeals the merits of that ruling in case number S-13596. We affirm the superior court's grant of summary judgment on the sales tax issue and the capital project voter approval issue. We

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conclude that the 1964 voter authorization of a three-percent sales tax preserved the Borough's right to raise the rate to three percent, and that the 2006 defeat of the referendum to repeal the rate increase constituted a ratification of the increase. On the voter approval issue, we conclude that allowing voters to veto any capital improvement projects of over \$1 million has the effect of diluting the Borough Assembly's exclusive control over the budget and is therefore an impermissible appropriation.

The superior court awarded the Borough attorney's fees as the prevailing party on the sales tax issue but determined that ACT was protected from paying attorney's fees on the capital project approval issue under the AS 09.60.010(c)(2) exception for constitutional litigants. The Borough cross-appeals the latter ruling in case number S-13883. We conclude that ACT has not asserted a constitutional right and that it does not fall under the constitutional litigant exception to the attorney's fees rule. We reverse the superior court's determination that ACT is protected from paying an attorney's fee award to the Borough by AS 09.60.010(c)(2).

*1131 II. FACTS AND PROCEEDINGS

A. Facts

1. The assembly-enacted sales tax increase

The Kenai Peninsula Borough, a second-class borough,^{FN1} enacted Ordinance No.2005-09 (Ordinance 9) in June 2005. Ordinance 9 increased the sales tax rate from two percent to three percent. The relevant factual background shows that in October 1964 Borough voters authorized the Assembly to levy a sales tax not to exceed three percent, and that the Assembly established a three-percent sales tax in April 1965, though it reduced the rate to two percent in August 1975.

FN1. A second-class borough is a "general law" municipality, meaning that it only has those powers conferred by statute (as opposed to a home rule borough, which may exercise all legislative powers not prohibited by law). Alaska Const. art. X, § 11; AS 29.04.010; AS 29.04.020; AS 29.04.030. A second-class borough, like all municipalities, has the general power to levy taxes and enforce ordinances. AS 29.35.010. A second-class borough has certain additional powers conferred by statute, some of which are mandatory and some of which are discretionary. *See, e.g.*, AS 29.35.150-.180; AS 29.35.210.

In June 1985 the State enacted AS 29.45.670. That statute provides: "A new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election." The statute was a re-numbered modification of AS 29.53.420,^{FN2} and it included a "savings clause" which directed that "[a] right or liability of a municipality existing on January 1, 1986, is not affected by the enactment of this Act."^{FN3}

FN2. AS 29.53.420 provided in relevant part:

The assembly shall hold a referendum vote on the question of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12-month period. A sales tax proposition may be submitted to the voters at a regular or special election or at a general election of the state.

FN3. SLA 1985, ch. 74, § 89.

Twenty years later, on June 7, 2005, the Borough Assembly enacted Ordinance 9, increasing the sales tax

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rate from two to three percent. The increase was to be effective on October 1, 2005, but the effective date was later extended to January 1, 2006.^{FN4} On June 8, the day after Ordinance 9 was enacted, members of ACT and others filed three applications: (1) an application for an initiative to set the sales tax rate at two percent; (2) an application for an initiative to require 60% voter approval at a regular election to approve any sales tax rate over two percent; and (3) an application for a referendum to repeal Ordinance 9. During the October 2005 election, 54.17% of Borough voters approved an initiative setting the sales tax rate at two percent and requiring a 60% supermajority voter approval to increase that rate.

FN4. Under AS 29.26.180(b), when ACT filed a referendum petition on Ordinance 9, the effective date of Ordinance 9 was suspended pending the results of the referendum election.

One year later, in October 2006, the referendum to repeal Ordinance 9 was put before the voters. The explanation of the repeal referendum in the voter's pamphlet stated that a "yes" vote would leave the sales tax at two percent, and a "no" vote would retain the ordinance and allow the sales tax to be increased to three percent. A 57.31% majority voted to retain the Ordinance. On April 3, 2007, the Assembly enacted Ordinance No.2007-07 to impose a three-percent sales tax effective January 1, 2008.

2. Prior voter approval for capital projects

During the October 2005 election, Borough voters approved Initiative Ordinance No.2005-01 (Proposition 4), which required prior voter approval for Borough capital improvement projects with a total cost of more than \$1 million. As codified at Kenai Peninsula Borough Code (KPB) 05.04.110 (2005), Proposition 4 read:

(A.) All capital improvement projects to be constructed or acquired by the borough must be approved by the voters of the borough at a regular or special election, before the project is constructed or acquired if the total project cost is more than \$1,000,000, including architectural, engineering, inspection, design, administration *1132 or any other cost. This section applies to all proposed capital improvement projects to be financed with borough funds which are not the proceeds of a bond issue approved by voters. This section does not apply to insurance proceeds covering the repair or replacement of damaged borough capital improvements. A capital improvement project that is proposed to be built in phases shall include the projected cost of all phases as the total project cost for purposes of this ordinance.

(B.) When the total projected cost of a capital improvement project as defined in this section is more than \$1,000,000 it must receive an affirmative vote by no less than 60 percent of the affected voters voting at a borough election for such a project to be approved.^{FN5}

FN5. Proposition 4 was modified in 2008 to exclude grant funds, private gifts, and hospital plant expansion and replacement funds. It was modified again in 2010 to raise the expenditure threshold to \$2,000,000 and to provide that the threshold would increase each year by \$50,000. KPB 05.04.110 (2010).

ACT alleged that by the time members of ACT filed a complaint against Proposition 4 in December 2006, the Borough had approved at least two capital improvement projects costing more than \$1 million without prior voter approval: the purchase of a CT scanner for South Peninsula Hospital, and replacement of the Spruce Creek bridge.^{FN6} ACT also alleged that the Borough intended to continue to undertake construction of capital projects without prior voter approval "unless restrained from doing so."^{FN7}

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FN6. The Borough denies that either the CT scanner or the Spruce Creek bridge would have been the types of projects properly referred to voters under Proposition 4 because the CT scanner was not a capital improvement and the Spruce Creek bridge replacement was an emergency.

FN7. In its November 1, 2008 motion for summary judgment, ACT alleged that eight other capital projects over \$1 million had been approved in violation of KPB 05.04.110 (2008).

B. Proceedings

ACT filed a complaint on December 26, 2006, challenging the sales tax increase and seeking to enforce the capital project voter approval requirement. ACT requested declaratory and injunctive relief. ACT argued the sales tax increase and alleged failure to follow Proposition 4 violated due process under the Alaska Constitution and asked for an award of full costs and attorney's fees "in this public interest litigation." The Borough answered on January 23, 2007, asserting affirmative defenses including that Proposition 4 violated the constitutional prohibition on making or repealing an appropriation through the initiative power. The Borough also sought costs and attorney's fees.

1. The sales tax increase (Ordinance 9) summary judgment proceedings

In May 2007 the parties agreed that no material facts were in dispute regarding the sales tax issue, and the superior court confirmed that the issues involved were questions of law. On December 4, 2007, ACT filed a motion for summary judgment on the sales tax issue. The Borough responded by filing its own cross-motion for summary judgment.

The superior court determined, in its December 31, 2007 decision, that Ordinance 9 was valid and the sales tax rate increase to three percent would be effective on January 1, 2008. The decision cited our direction that AS 29.45.650(a), which authorizes boroughs to levy and collect a sales tax, must be interpreted "in favor of the broad power of municipal governments." FN8 Noting that Borough voters had twice approved a sales tax rate of up to three percent at a general election, first in 1964 and again in 2006, the superior court concluded that "the voters' action in 1964 approving a sales tax rate up to three percent has continuing legal force and effect sufficient to authorize the increase to three percent in [Ordinance 9] notwithstanding AS 29.45.670." In addition, the superior court concluded that even without the 1964 approval the sales tax rate increase to three percent was valid because the October 2006 majority vote defeating the referendum on Ordinance 9 "satisfie[d] the voter approval requirement *1133 in AS 29.45.670." The superior court granted summary judgment to the Borough.

FN8. *City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1007 (Alaska 2000).

2. The capital project voter approval (Proposition 4) summary judgment proceedings

After the parties and superior court agreed in March 2008 that only issues of law remained in the dispute over Proposition 4, ACT filed a motion for summary judgment on the capital projects approval issue on November 8, 2008. The Borough again responded with a cross-motion for summary judgment on the issue.

The superior court issued a decision on March 10, 2009, ruling that Proposition 4 was invalid both as to the supermajority requirement and the voter approval requirement. Regarding the supermajority issue, the superior court stated that "a mere majority cannot impose a supermajority obligation on other voters for approval of future Borough ordinances." But the superior court determined that the supermajority provision of the initiative ordinance was severable, and so went on to address the validity of the remainder of Proposition 4. The superior court concluded that "[t]he initiative ordinance crafted by ACT restricts the appropriation power of the Borough Assembly for capital projects to prior approval by voting residents" and that "Article XI, section 7, of the Alaska

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Constitution makes it clear that the initiative power cannot be used to make or repeal appropriations.” The superior court granted summary judgment to the Borough.

3. Attorney's fee proceedings

Final judgment on all issues relating to the sales tax and capital projects issues was entered on July 30, 2009. On August 13, 2009, the Borough filed a motion for attorney's fees. ACT opposed the motion, arguing that it is a “public interest non-profit corporation” and that it was “attempting to protect [citizens' and residents'] right of initiative—a right granted to them under the Constitution and the laws of the [S]tate of Alaska.” In a March 18, 2010 decision, the superior court found that the capital project approval issue “implicat[ed] federal and state constitutional concepts” and concluded that ACT was protected pursuant to AS 09.60.010(c)(2) from having to pay an attorney's fee award on that issue.^{FN9} On March 31 the Borough filed a motion for reconsideration, arguing that the superior court failed to consider this court's rulings establishing that the municipal initiative power is statutory, not constitutional, and that to be protected by AS 09.60.010(c)(2) a litigant must fail to prevail in “asserting” a constitutional right rather than simply lose a case “where any constitutional concepts are implicated.” The superior court denied the Borough's motion for reconsideration on May 3, 2010, explaining that ACT “did raise state constitutional issues regarding the initiative restrictions on the capital projects and supermajority issues,” and adding that the superior court had referenced numerous constitutional provisions in its decision on the capital project approval issue.

FN9. The superior court found that the sales tax issue “did not turn on federal or state constitutional issues” and awarded the Borough costs and attorney's fees of \$2,544.75 on that issue.

ACT appeals the superior court's July 30, 2009 final judgment denying ACT summary judgment on the merits of both the sales tax and capital project voter approval issues (case number S-13596). The Borough cross-appeals the superior court's March 18, 2010 decision awarding ACT attorney's fees on the capital project approval issue (case number S-13883).

III. STANDARD OF REVIEW

[1] We review grants of summary judgment de novo, “draw[ing] all factual inferences in favor of, and view[ing] the facts in the light most favorable to, the party against whom summary judgment was granted.”^{FN10}

FN10. *Interior Cabaret, Hotel, Rest. & Retailers Ass'n v. Fairbanks N. Star Borough*, 135 P.3d 1000, 1002 (Alaska 2006) (internal footnotes omitted).

[2][3][4] Questions of law and questions of statutory interpretation are reviewed de novo, adopting the rule of law which is “most persuasive in light of precedent, reason, and *1134 policy.”^{FN11} We interpret the meaning of a statute “according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose.”^{FN12} We use a “sliding-scale approach” when interpreting statutes, “under which the clearer the statutory language is, the more convincing legislative history must be to justify another interpretation.”^{FN13}

FN11. *Kohlhaas v. State, Office of Lieutenant Governor*, 147 P.3d 714, 717 (Alaska 2006) (citing *Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989, 991 (Alaska 2004)).

FN12. *Lot 04B & 5C, Block 83 Townsite v. Fairbanks N. Star Borough*, 208 P.3d 188, 191 (Alaska 2009) (internal quotation marks omitted).

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FN13. *Interior Cabaret*, 135 P.3d at 1002.

[5] When reviewing initiatives, we “construe voter initiatives broadly so as to preserve them whenever possible. However, initiatives touching upon the allocation of public revenues and assets require careful consideration because the constitutional right of direct legislation is limited by the Alaska Constitution.”^{FN14}

FN14. *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418, 422 (Alaska 2006) (quoting *Pullen v. Ulmer*, 923 P.2d 54, 58 (Alaska 1996)).

IV. DISCUSSION

A. The Sales Tax Voter Ratification Requirement Is Satisfied By The 1964 Authorization Of A Three-Percent Sales Tax And The 2006 Defeat Of The Repeal Referendum.

Alaska Statute 29.45.670 provides that “an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election.” ACT argues that Ordinance 9, which increased the sales tax rate from two to three percent without direct ratification by the voters, is contrary to the requirements of AS 29.45.670. The Borough agrees voter ratification is required by AS 29.45.670, but argues that the requirement was satisfied by both the 1964 authorization of a sales tax rate of up to three percent and the 2006 defeat of the referendum that would have repealed Ordinance 9. ACT argues on appeal that neither of these events fulfilled the statutory requirement.

[6][7] We generally “give ‘liberal construction ... to the powers of local government units.’ ”^{FN15} In regard to municipalities’ power to levy and collect taxes, we have cautioned that we will “not be quick to [infer] limitations on the taxing authority of a municipality where none are expressed.”^{FN16} And in reviewing AS 29.45.670 in *City of St. Mary’s v. St. Mary’s Native Corp.*, we observed that “Alaska’s constitution and our prior case law require us to interpret AS 29.45.650(a) in favor of the broad power of municipal governments.”^{FN17} Moreover, there is a “presumption that proceedings of the governing body of a municipality have been conducted in accordance with the law.”^{FN18}

FN15. *Interior Cabaret*, 135 P.3d at 1002 (quoting Alaska Const. art. X, § 1).

FN16. *Bookey v. Kenai Peninsula Borough*, 618 P.2d 567, 569 (Alaska 1980) (quoting *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1121 (Alaska 1978)); see also *Fannon v. Matanuska-Susitna Borough*, 192 P.3d 982, 984 (Alaska 2008) (referencing a superior court’s comment that there is “a long history of Alaska Supreme Court precedent broadly interpreting municipal taxation powers”).

FN17. 9 P.3d 1002, 1007 (Alaska 2000); AS 29.45.650(a).

FN18. *McCormick v. City of Dillingham*, 16 P.3d 735, 738 (Alaska 2001) (quoting *Liberati*, 584 P.2d at 1118).

[8][9] ACT contends that the 1964 ordinance authorizing a sales tax rate of three percent did not satisfy the voter ratification requirement of AS 29.45.670 because the “rate of levy” referred to in the statutory text refers to the actual rate of levy in place at the time an increase is contemplated, not some earlier authorized rate of levy.^{FN19} The *1135 statute specifies, however, that only “an increase in the rate of levy of a sales tax approved by ordinance” must be submitted to voters for ratification. In 1964 Borough voters approved a proposition that authorized the Borough “to the extent provided by law ... to levy a ... sales and use tax subject to such

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exemptions as the Assembly may prescribe and not exceeding three percent.” In 1975 the Borough Assembly found that “a reduction in taxes [could] be made without interfering [sic] with any essential services.” The Assembly therefore enacted an ordinance “lev[ying] a consumers' sales tax of two percent.” No voter action was taken regarding this reduction. The public voted to allow the Borough to levy a sales tax of up to three percent and the Borough has adjusted that rate over the years without voter ratification.

FN19. ACT adds in its reply brief that the 1964 authorization dictated that the sales tax was to be used for school improvements and thus does not authorize a *general* sales tax levy of three percent. But because ACT did not raise this argument in the superior court or in its opening brief, it has waived it. See *Braun v. Alaska Commercial Fishing & Agric. Bank*, 816 P.2d 140, 145 (Alaska 1991) (“Attention to the issue [omitted from points on appeal and insufficiently briefed in an opening brief] in a reply brief does not resuscitate it.”). Moreover, it appears that the proceeds from the three-percent sales tax levy now in effect under KPB 05.18.100 are also to be used exclusively for borough school purposes, as ACT appeared to admit at oral argument. See KPB 05.18.110 (1990).

Because the three-percent rate of levy in Ordinance 9 was not an increase from the rate previously “approved by ordinance,” no additional voter ratification was required.^{FN20} In addition, the savings clause included in the same chapter as AS 29.45.670 specifically preserves any “right” of the Borough as it existed in 1986.^{FN21} As the Borough points out, when AS 29.53.420, the precursor to AS 29.45.670, was enacted in 1972, the Borough sales tax rate of levy was three percent. If the Borough had the right to impose a sales tax at a rate of levy of three percent in 1972, there does not appear to be any reason that the savings clause would not have preserved that right.

FN20. Similarly, ACT’s argument that the “rate of levy of sales tax was actually set at 2% by ordinance several times” is unpersuasive because the rate of levy was also set at three percent by ordinance in 1965.

FN21. There is no question that municipalities and boroughs have the power to levy taxes. See AS 29.35.010 (“All municipalities have the following general powers, subject to other provisions of law ... (6) to levy a tax ...”); AS 29.45.650(a) (“[A] borough may levy and collect a sales tax on sales, rents, and on services provided in the borough.”); see also *Stevens v. Matanuska-Susitna Borough*, 146 P.3d 3, 7 (Alaska App.2006) (“All municipalities, including second-class boroughs, have general powers to, among other things, establish salaries for municipal employees, levy taxes, enforce ordinances, and acquire and dispose of property.”); *Bookey*, 618 P.2d at 568 (Alaska 1980) (“Boroughs and cities may levy and collect a sales tax.”). In fact, this power is arguably “mandatory” for boroughs pursuant to AS 29.35.170. See AS 29.35.170(a) (“A borough shall assess and collect property, sales, and use taxes that are levied in its boundaries, subject to AS 29.45.”).

And this court has referred to a municipality’s “right” to tax in at least two prior cases. See *Cool Homes, Inc. v. Fairbanks N. Star Borough*, 860 P.2d 1248, 1253 (Alaska 1993); *Alascom, Inc. v. N. Slope Borough, Bd. of Equalization*, 659 P.2d 1175, 1180 (Alaska 1983).

California considered a similar issue in *AB Cellular LA, LLC v. City of Los Angeles*.^{FN22} The California court of appeals considered AB Cellular’s contention that the City was required to submit an increased cell phone tax to voters for approval pursuant to a proposition giving voters the right to approve any increase of local tax before it goes into effect.^{FN23} The language of that proposition stated in part that “[n]o local government

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may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote.”^{FN24} Initially, the court noted that a tax is not deemed “increased” under California’s statutory definition if it “[i]mplements or collects a previously approved tax, ... so long as the rate is not increased beyond the level previously approved.”^{FN25} The California court then explained: “[A] local taxing entity can enforce less of a local tax than is due under a voter-approved methodology, or a grandfathered methodology, and later enforce the full amount of the local tax due under that methodology without transgressing [the voter approval proposition].... The evil to be counteracted is the increase of local *1136 taxes beyond what was formerly approved.”^{FN26}

FN22. 150 Cal.App.4th 747, 59 Cal.Rptr.3d 295 (Cal.App.2007).

FN23. *Id.* at 752–53, 59 Cal.Rptr.3d 295.

FN24. *Id.* at 760, 59 Cal.Rptr.3d 295.

FN25. *Id.*

FN26. *Id.* at 763–64, 59 Cal.Rptr.3d 295.

We agree with the California court’s reasoning in *AB Cellular*. The Borough voters expressly authorized the Borough to enact a sales tax of up to three percent, and the savings clause at AS 29.45.670 preserved the Borough’s right to do so. Although the Borough subsequently reduced the tax rate to two percent, it did not need to seek further voter ratification to raise the tax rate to the amount approved by voters in 1964.^{FN27}

FN27. Because the 1964 authorization gave the Borough the authority to set the sales tax rate at up to three percent without need for further ratification, we do not need to reach the question of the 2006 defeat of the referendum to repeal Ordinance 9. But we note that voters rejected the referendum on Ordinance 9’s repeal. The voter’s pamphlet states that if the referendum failed, “a 3 percent sales tax would become effective,” so the voters’ rejection of the referendum was an approval of the three-percent tax.

B. Requiring Prior Voter Approval For All Capital Projects With A Cost Of Over \$1 Million Is An Impermissible Appropriation.

Proposition 4 required prior voter approval for Borough capital projects with a total cost of more than \$1 million. It was approved by Borough voters in 2005. As it appeared codified at KPB 05.04.110 (2005), it provided:

(A.) All capital improvement projects to be constructed or acquired by the borough must be approved by the voters of the borough at a regular or special election, before the project is constructed or acquired if the total project cost is more than \$1,000,000, including architectural, engineering, inspection, design, administration or any other cost....

(B.) When the total projected cost of a capital improvement project as defined in this section is more than \$1,000,000 it must receive an affirmative vote by no less than 60 percent of the affected voters voting at a borough election for such a project to be approved.

The question presented here is whether Proposition 4 is an appropriation and therefore an impermissible initiative. Alaska Statute 29.26.100 grants the power of lawmaking by initiative on the local level to municipal residents. But the statute also restricts the initiative power, directing that “[t]he powers of initiative and referendum

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... do not extend to matters restricted by art. XI, § 7 of the state constitution.” Article XI, section 7 of the Alaska Constitution, in turn, states that “[t]he initiative shall not be used to dedicate revenues, [or to] make or repeal appropriations.”

The superior court found that Proposition 4 was invalid because a voter approval requirement would “restrict the budget and capital program appropriation power vested by the Legislature in the assembly,” and that in light of the constitutional restrictions on the initiative power “[i]mposing a prior voting resident [approval] threshold by initiative would improperly restrict the power of the assembly to make appropriations.” ACT argues that the ordinance does not violate article XI, section 7 of the Alaska Constitution because it does not explicitly make or repeal an appropriation. ACT distinguishes Proposition 4 from other initiatives “whose primary object is to require the outflow of government assets” because it “does not dispose of public assets nor does it involve the making of an appropriation of public assets.”

ACT argues that we have narrowly construed the constitutional prohibition on initiatives making or repealing an appropriation. The Borough contends that we have read the prohibition more broadly, to reach any initiative that restricts the government’s authority to “allocate funds between competing needs,” thereby “arrest[ing] the assembly’s control over the budget.”

[10][11] While the term “appropriation” is not defined in the statute or in the Alaska Constitution, we have held that an initiative “proposes to make an appropriation if it ‘would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action.’ ” ^{FN28} We have described*1137 in detail the two-part inquiry to determine whether a particular initiative is an improper appropriation. First, “we determine whether the initiative deals with a public asset.” ^{FN29} There is no question that the municipal funds involved are public assets; no item is more clearly a public asset than public revenue.^{FN30}

FN28. *Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989, 993 (Alaska 2004) (quoting *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991)); see also *Fairbanks Convention & Visitors Bureau*, 818 P.2d at 1156–57 (noting that “appropriation” may be defined more narrowly when considering whether an initiative or referendum repeals an appropriation than when it makes an appropriation).

FN29. *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418, 422 (Alaska 2006).

FN30. See, e.g., *Thomas v. Rosen*, 569 P.2d 793, 796 (Alaska 1977) (defining “appropriation” as involving setting aside “public revenue”).

Second, “we determine whether the initiative would appropriate [the public] asset,” which involves looking to the “two core objectives” of the constitutional limitation.^{FN31} The first objective is to prevent “ ‘give-away programs’ that appeal to the self-interest of voters and endanger the state treasury” by allowing “rash, discriminatory, and irresponsible” appropriations.^{FN32} The second, related objective is to “preserv[e] legislative discretion by ensuring that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs.” ^{FN33}

FN31. *Anchorage Citizens for Taxi Reform*, 151 P.3d at 423.

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FN32. *Id.* (internal quotation marks omitted).

FN33. *Id.* at 423 (internal quotation marks omitted) (emphasis in original).

This second core objective was recognized in our decision in *McAlpine v. University of Alaska*.^{FN34} The initiative in *McAlpine* dictated the creation of a community college system separate from the University of Alaska and required the university to transfer a specified amount of property to the community college system.^{FN35} We held that the initiative was impermissible not because it was a “give-away” of resources but because it “designate[d] the use of” state assets.^{FN36}

FN34. 762 P.2d 81 (Alaska 1988).

FN35. *Id.* at 87–88.

FN36. *Id.* at 89.

We have since clarified that the constitutional restriction on the initiative power is meant to retain the legislature's control of the “process” of making appropriations.^{FN37} We held that an initiative is unconstitutional when it causes the voters to “essentially usurp the legislature's resource allocation role.”^{FN38} Finally, we recently explained that the “primary question” in assessing the second core objective “is whether the initiative narrows the legislature's range of freedom to make allocation decisions in a manner sufficient to render the initiative an appropriation.”^{FN39} This case presents the question whether an initiative may run afoul of the core objectives underlying the initiative restrictions when it allocates public assets *away from* a particular purpose. We hold that it can.

FN37. *Staudenmaier v. Municipality of Anchorage*, 139 P.3d 1259, 1263 (Alaska 2006) (quoting *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1156 (Alaska 1991)).

FN38. *Id.*

FN39. *Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1075 (Alaska 2009) (citing *Pullen v. Ulmer*, 923 P.2d 54, 64 n. 15 (Alaska 1996)).

We conclude that Proposition 4 sufficiently narrows the Borough's ability to make allocation decisions to render it an appropriation. ACT relies heavily on our decision in *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*.^{FN40} There, we upheld an initiative that repealed a city code designating a certain portion of bed tax revenues for purposes of tourism development, and instead deposited the revenues in a discretionary fund.^{FN41} We reasoned that the initiative did not reduce the city council's control over the appropriations process but rather *increased* its discretion in appropriating funds.^{FN42} In *1138 addition, we explained that a measure was not an appropriation where it did “not reflect an action taken by the governing body after annual approval of the budget.”^{FN43} ACT argues that there is no prohibition against allowing voters to approve a major project in advance of the budget approval.

FN40. 818 P.2d 1153 (Alaska 1991).

FN41. *Id.* at 1154–55.

FN42. *Id.* at 1157–58.

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FN43. *Id.* at 1157.

Referring capital projects to voters, however, will almost invariably result in voters “vetoing” certain projects, at which point there is nothing the Borough can do to go forward with the project. In ACT’s view this means that the municipal funds are still available to be used at the Borough’s discretion. But the voters’ ability to veto a capital project, even prior to budget approval, infringes on the assembly’s ability to allocate resources among competing uses because there is nothing that the assembly can do to appropriate money for that project.

In *Pullen v. Ulmer*, we struck down an initiative that established a salmon harvest priority system as contravening both of the “core objectives” of the constitutional provision because it would lead to the “very real possibility that [some groups] will be excluded” from using the resource.^{FN44} Under our decision in *Pullen*, an initiative may make an impermissible appropriation not only when it designates public assets for some particular use, but also when it allocates those assets *away from* a particular group or purpose.^{FN45} Proposition 4 dictates the same result, although in a less direct fashion: While the ordinance itself does not allocate public assets, it requires that voters be permitted to allocate those resources. Practically, when voters refuse to approve a capital project they allocate municipal funds away from the particular project, which interferes with the Borough’s exclusive power to allocate funds among competing uses. Proposition 4 thus violates the underlying purposes of the constitutional restrictions on municipal citizens’ initiative power.^{FN46}

FN44. 923 P.2d at 64.

FN45. *See also* 2 Proceedings of the Alaska Constitutional Convention (PACC) 941 (Dec. 16, 1955) (discussing that the initiative should not be used to “try[] to nullify” “functions of the government that have to be carried on ... by cutting off appropriations for them”).

FN46. The superior court also determined on summary judgment that the 60% supermajority voter approval requirement of Proposition 4 could not be imposed by initiative. ACT did not identify this issue in its points on appeal, its statement of issues presented, or its discussion in its opening brief. ACT has therefore waived the issue. *See Gunderson v. Univ. of Alaska, Fairbanks*, 902 P.2d 323, 327 n. 5 (Alaska 1995) (holding that issue not included in points on appeal is waived). Moreover, it appears that KP.B 05.04.110 was recently amended with the supermajority provision deleted.

C. ACT Does Not Fall Under The AS 09.60.010(c)(2) Attorney’s Fee Exception For Constitutional Litig- ants.

Alaska Statute 09.60.010(c)(2) provides that “[i]n a civil action or appeal concerning the establishment, protection, or enforcement of a right under the United States Constitution or the [Alaska] Constitution,” a litigant “may not [be ordered] to pay the attorney fees of the opposing party devoted to claims concerning constitutional rights if the claimant as plaintiff ... did not prevail in asserting the right.”^{FN47} The superior court determined that AS 09.60.010(c)(2) “preclude[d] a fee award in favor of [the Borough] against ACT on the capital spending issues.”

FN47. This second provision is the corollary to section (c)(1), which provides that full reasonable attorney’s fees and costs shall be awarded to a “claimant, who, as plaintiff ... has prevailed in asserting the right.”

[12] The Borough argues in its cross-appeal that ACT is not entitled to statutory protection from an attorney’s fee award for at least three reasons: (1) the case did not involve the “protection of the right to enact local

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laws by initiative” because the initiative was, in fact, placed on the ballot and later challenged as contrary to statute; (2) the initiative was local and thus based on statutory authority rather than the federal or state constitutions; and (3) any constitutional concepts implicated in the case were “collateral at best” and so ACT did not actually prevail on a constitutional claim. ACT counters that the superior court’s decision was correct because the Alaska Constitution protects the *1139 municipal initiative power and the capital project approval issue did concern constitutional rights. ACT also asks this court to conclude that “[a]ll municipal initiative cases should be treated as ... arising under the Constitution of Alaska.”

[13] We will construe a statute “so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”^{FN48} The text of AS 09.60.010(c)(2) provides that the protection against attorney’s fees only applies if the action “concern[ed] the establishment, protection, or enforcement of a [constitutional] right.”^{FN49} Thus, the correct inquiry is whether this case concerned a constitutional right. The only right at issue here was the right of municipal citizens to legislate by initiative. We have definitively concluded that the local initiative power is statutory rather than constitutional.^{FN50} In *Griswold v. City of Homer*, we determined that “because the initiative was local, and not statewide, the power to initiate ... was directly derived from AS 29.26.100,” not the Alaska Constitution.^{FN51} And in *Carmony v. McKechnie*, we again addressed the origins of the municipal initiative power in the context of a public interest litigant. We held that the plaintiff seeking review of a municipal ballot initiative did not qualify as a public interest litigant.^{FN52} Citing *Griswold*, we explained that because the case “did not involve a constitutional claim, but rather concerned the statutory power of the local initiative,” the plaintiff “could not be protected by AS 09.60.010(c)(2) from an award of attorney’s fees.”^{FN53}

FN48. 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 46:6, at 231–42 (7th ed.2007).

FN49. AS 09.60.010(c).

FN50. *Carmony v. McKechnie*, 217 P.3d 818 (Alaska 2009); *Griswold v. City of Homer*, 186 P.3d 558 (Alaska 2008).

FN51. *Griswold*, 186 P.3d at 563.

FN52. *Carmony*, 217 P.3d at 823–24.

FN53. *Id.* at 824.

We reaffirm our earlier rulings that the local initiative power is statutory in origin. Article X of the Alaska Constitution, which concerns local government, does not discuss the initiative and referendum power. Article XI, which concerns initiative powers, does not expressly reserve a local initiative right. Delegates to the Constitutional Convention did not indicate that article XI was intended to preserve a local initiative power. Two delegates did discuss a local initiative power, but their exchange implied that local governments could include in the charter the referendum power or not, as they chose. As delegate Victor Fischer stated, “When [the people of a borough] adopt a charter, they will get together, just as we’re doing here, and write the constitution or charter for that borough. And they can put in referendum or they can leave them out.”^{FN54} Had the delegates thought the constitution guaranteed a local initiative right, it would not have been necessary to discuss local choice.

FN54. 4 PACC 2677 (Jan. 19, 1956).

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Here, the constitutional limitations on the statutory right for local citizens to legislate by initiative are still incorporated into and imposed by AS 29.26.100, even though an analysis of the limitations necessitates an analysis of constitutional case law. We therefore hold that ACT did not raise issues concerning the establishment, protection, or enforcement of a right under the Alaska Constitution and therefore is not entitled to protection from an attorney's fee award under AS 09.60.010(c)(2).

V. CONCLUSION

For the foregoing reasons, we AFFIRM the decision of the superior court with respect to the grants of summary judgment in favor of the Borough on the merits of Ordinance 9 and Proposition 4. We REVERSE the superior court's determination that ACT qualifies as a constitutional litigant under AS 09.60.010.

CHRISTEN, Justice, not participating.

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