



City & Borough of Sitka
Municipal Clerk's Office
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Memorandum

To: Mayor and Assembly
From: Municipal Clerk Colleen Ingman
Date: March 18, 2015
Subject: **Ordinances resulting from Legal Analysis**

In September of 2014, CBS contracted with Code Publishing to complete a legal analysis of our code. Their attorney recommended items that they felt needed immediate action to bring the code into legal compliance and, where possible, has recommended amending language for this purpose.

We considered doing a single "clean-up" ordinance but quickly learned that one clean up ordinance that addressed all the recommendations would be extremely bulky and difficult to follow. It is still our intent to bring forward as few ordinances as possible, but at the same time keep the amendments concise enough that they can be easily understood. We will combine amendments whenever possible.

The attached is an ordinance that resulted from the legal analysis and has been shared with the impacted departments, which have approved that it be moved forward.

Please see the purpose section of the ordinance for clarification.

It is my intent to have all clarifying ordinances passed by the final meeting in April. I have placed them on the Consent Agenda for first reading as the majority will be fairly straight forward, plus we are not required to take public testimony until second reading.

Attachment: Ordinance: 2015- 14, 15, 16, 18, 19 & 20

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2015-15

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA
PROPOSING TO CLARIFY THE SITKA GENERAL CODE BY AMENDING TITLE 1
GENERAL PROVISIONS, AT SECTIONS 1.01.010 ADOPTION AND 1.01.030 CODIFICATION
AUTHORITY TO UPDATE ALASKA STATUTE REFERENCES, AMENDING TITLE 2, AT
SECTIONS 2.04.010 AGENDA TESTIMONY TIME, 2.04.170, ASSEMBLY MEETING TIME,
02.12.010 CLARIFYING PHYSICIAN MEMBERS ON HOSPITAL BOARD, 2.40.100
ACCEPTANCE OF NOMINATION, 2.40.290 ELECTION SUPPLIES AND EQUIPMENT,
2.40.300 INSTRUCTIONS TO VOTERS, 2.40.410 PRESERVATION OF BALLOT AFTER
COUNTING, AMENDING TITLE 3 PROCUREMENT, AT SECTIONS 3.16.030 OPEN MARKET
PROCEDURES, 3.16.060 EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS,
3.16.080 PROCUREMENT MONITORING, AMENDING TITLE 4, REVENUE AND FINANCE
AT SECTIONS 4.26.165 (A) AND 4.26.165 (E) TO CLARIFY ALASKA APPELLATE COURT
NAME, IN SECTION 4.28.040 (C) TO UPDATE THE BEST PRACTICES
RECOMMENDATION, IN SECTION 4.44A.010 (B) TO REMOVE AN INCORRECTLY PLACED
WORD, AND AMENDING TITLE 6 BUSINESS LICENSE AND REGULATIONS AT SECTION
6.19.030 (E) COMMERCIAL OPERATIONS PERMIT TO CLARIFY FEE EXPENSE

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 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.** As found in Alaska Statute 29.25.050, the municipal clerk is responsible for ensuring that the municipal code is kept current. Sitka's municipal clerk sought legal analysis from Code Publishing Company for a review of the Sitka General Code for state and federal constitutional issues and apparent conflicts. These clarifying changes to these Code sections are derived from that review and further analysis.

In Title 1, when the City and Borough of Sitka became incorporated as a municipality, Alaska Statutes required codification of all municipal ordinances. At that time, the Alaska Statute requirement was found under AS 29.48.180. The current law on code adoption is AS 29.25.050. This change will bring current those sections of the Sitka General Code.

In Title 2, Section 2.04.010 clarifies meaning of public testimony time in an Assembly meeting. Section 2.04.170 reflects the correct start time for assembly meetings already shown in Section 2.04.020. Section 02.12.010 clarifies that the hospital board is not restricted to only one physician member. Section 2.40.100 correctly names the candidate form. Section 2.40.290 (B) reflects current practice of seals rather than lock and key. Section 2.40.300 (B)(6) clarifies correct ballot marking procedure, (B)(9) names the correct voting system, and

47 (B)(12) removed language from old-style balloting. Section 2.40.410 indicates that the container
48 may not necessarily be a box.

49 In Title 3, the abbreviation "CBS" is used departmentally to refer to "the City and
50 Borough of Sitka," however, is used nationally as acronyms for other purposes. Changing the
51 references in 3.16.030 and 3.16.080 clarifies its usage here. The parenthetical used in 3.16.060
52 (J)(3)(c) inaccurately named only one piece of software when it was intended to refer to the
53 broader systems available on the open market.

54 In Title 4, an aggrieved person may pursue remedy for their claim up through the
55 superior court; sections 4.26.165 (A) and (E) give conflicting names for that court of appeals.
56 This corrects that court name, making the process clearer to the public. Government Finance
57 Officers Association updated its best practices recommendation in February 2008; Section
58 4.28.040 reflects the name of that more current recommended practice. Section 4.44A.010 (B)
59 incorrectly inserted the word "overnight" in reference to repurchase agreements, as the defining
60 section 4.28.060 (A)(4) does not specify nor discuss an overnight stipulation.

61 In Title 6, the amendment for Section 6.19.030 clarifies that the permit required for
62 commercial operations involving organized excursions on tendering facilities or adjoining
63 parking lots owned or operated by the municipality carries a nonrefundable application fee of
64 \$400 and not two such fees, as might be construed by subsection wording in (D) and (E).

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66 4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the
67 City and Borough of Sitka that the following sections of the Sitka General Code are hereby
68 amended to clarify: Sections 1.01.010 and 1.01.030, Sections 2.04.010 (A)(7) and (A)(12),
69 Section 2.04.170, Section 2.12.010, Section 2.40.100, Section 2.40.290 subsection (B)'s last
70 item, Section 2.40.300 subsections (B)(6), (9), and (12), Section 2.40.410, Section 3.16.030 (C),
71 Section 3.16.060 (J)(3)(c), Section 3.16.080, Section 4.26.165 subsections (A) and (E), Section
72 4.28.040 (C), Section 4.44A.010 (B), and Section 6.19.030 (E), to read as follows:

73 **Title 1**
74 **GENERAL PROVISIONS**

75 Chapter:

76 1.01 Code Adoption

77
78 **1.01.010 Adoption.**

79 As authorized by Section 29.25.050 ~~29.48.180~~ of the Alaska Statutes, there is
80 hereby adopted the "Sitka General Code."

81 * * *

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83 **1.01.030 Codification authority.**

84 This code consists of all the regulatory and penal ordinances and certain of the
85 administrative ordinances of the City and Borough of Sitka, Alaska, codified
86 pursuant to the provisions of Section 29.25.050 ~~29.48.180~~ of the Alaska Statutes.

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**Title 2
ADMINISTRATION**

Section:
2.04 City and Borough Assembly

2.04.010 Agenda.

A. At all regular meetings, the order of business shall be:

* * *

7. Public participation on any item off the agenda. Public testimony is not to exceed three minutes per individual, unless the mayor imposes other time constraints at the beginning of the agenda item; Persons to be heard on any matter not on the agenda (not to exceed three minutes);

* * *

12. Public participation on any item on or off the agenda. Not to exceed 3 minutes per individual; Persons to be heard on any matter (not to exceed three minutes);

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2.04.170 Regular meetings.

Regular meetings of the assembly shall be held at six seven p.m. in the appointed

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~~* Code reviser's note: Regular meetings of the assembly are to be held at six p.m. pursuant to Ordinance 09-50's amendment of Section 2.04.020.~~

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2.12 City and Borough of Sitka Hospital Board

Section 2.12.010 City and borough of Sitka hospital board.

There shall be a board ... which shall consist of nine members: seven regular members, **at least** one of whom shall be a physician

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2.40 Elections

2.40.100 Acceptance of Nomination.

...unless it is accompanied by a **Public Official Financial Disclosure** ~~conflict of interest~~ statement of the candidate

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2.40.290 Election supplies and equipment.

B. The municipal clerk shall prepare and furnish: ...

Suitable and sufficient numbers of ballot boxes **with seals** ~~with padlock and keys~~

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2.40.300 Instructions to voters.

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- B. The printed instructions to voters shall include at least the following information.
 - 6. To vote for a candidate, fill in the oval next to the right of the name on the ballot. In order to vote for a write-in candidate, write in the candidate's name in the space provided, and, in addition, mark the oval next to the written-in name.
 - 9. After leaving the booth, insert the ballot into the optical scan voting ballot scanning system.
 - 12. ~~If two or more ballots are found folded together in the ballot box, neither will be counted.~~ You will not be allowed to vote any ballot except the one

* * *

2.40.410 Preservation of ballot after counting.

- A. Hand-counted ballots. It shall be the duty Unopened questioned ballots will also be placed in the ballot container ~~box~~ to be removed.... and write thereon ... election held on __ day of _____, 20__ 19__

**Title 3
PROCUREMENT**

3.16 Procurement Policy

3.16.030 Open market procedures.

- C. All purchases less than twenty-five thousand dollars shall be made on the open market with such competition as is reasonable and practical in the circumstances as long as by doing so, does not interfere with the ability of the City and Borough of Sitka ~~GBS~~ to receive grants and other funding sources. It is the city and borough of Sitka's intent to promote local purchases whenever the availability, quality, price and delivery is:....

* * *

3.16.060 Exceptions to competitive bidding requirements:

- J. Sole-Source Procurement
 - 3. Contracts for electronic data processing ... shall be by professional services contract; provided, however:
 - c. Software and systems readily available to the open market (e.g. computer operating systems) (i.e. ~~Windows 95~~) are not subject to this exception. Competition will be sought to the maximum extent practicable.

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3.16.080 Procurement monitoring.

The City and Borough of Sitka ~~GBS~~ purchases covered under this chapter will be tracked by zip code and a local purchase report included in quarterly financial reports to the assembly.

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**Title 4
REVENUE AND FINANCE**

4.26 Excise Tax on Cigarettes and Tobacco Products

4.26.165 Taxpayer, licensee, cardholder, or other person remedies.

A. Any person aggrieved by any action of the department ...may appeal to the superior court of the first judicial district in accordance with the **Alaska Rules of Appellate Procedure** ~~Alaska Appellate Court Rules~~. The person

* * *

E. Taxes, license fees, penalties and interest declared to be due in the final administrative decision must be paid within thirty days after the date of the decision, or a bond must be filed with the court in accordance with **Alaska Rules of Appellate Procedure** ~~Alaska Court Rules of Appellate Procedure~~.

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4.28 Investment Policy

4.28.040 Reporting.

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C. Marking to Market. The market value of the portfolio shall be calculated at least semi-annually and a statement of the market value of the portfolio shall be issued at least semi-annually. This will ensure that review of the investment portfolio, in terms of value and price volatility, has been performed consistent with the Government Finance Officers Association (GFOA) Recommended Practice on **“Mark-to-Market Reporting for Public Investment Portfolios”** ~~“Mark to Market Practices for State and Local Government Investment Portfolios and Investment Pools.”~~ In defining market value, considerations should be given to the GASB Statement 31 or later pronouncements.

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4.44A Southeast Economic Development Fund

4.44A.010 Required levels of cash on hand.

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B. For purposes of this chapter, cash and cash equivalents shall be defined as cash held in demand deposits, ~~overnight~~ repurchase agreements as defined by Section 4.28.060(A)(4), money market mutual funds as defined by Section 4.28.060(A)(5), certificates of deposit as defined by Section 4.28.060(A)(2), and local government investment pools per Section 4.28.060(A)(6).

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**Title 6
BUSINESS LICENSES AND REGULATIONS**

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6.19 Regular of Commercial Operators Selling Organized Excursions or Renting Equipment for Organized Excursions

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6.19.030 Permit required for commercial operations involving organized excursions when such operations occur in certain areas.

D. Fees. Each applicant for a permit issued under this chapter shall pay a nonrefundable application fee of four hundred dollars each year....

E. Application. A person or company seeking a permit shall file a written application on a form provided by the city and borough. ~~and pay an initial application fee of four hundred dollars.~~ The application shall contain the following information: ...

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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 14th day of April, 2015.

Matt Hunter, Deputy Mayor

ATTEST:

Colleen Ingman, MMC
Municipal Clerk

Sitka, Alaska

Legal Review of General Code

	Title 1, General Provisions	Action
1.	1.01.010 Adoption. This section refers to AS 29.48.180. That section no longer exists; the current law on code adoption is AS 29.25.050. Recommendation: Referring to this new law requires an ordinance.	○
2.	1.01.030 Codification authority. See comment for 1.01.010.	○

	Title 2, Administration	Action
7.	<p>2.04.010 Agenda. Subsection (A)(7) allows speaking by “Persons to be heard on any matter not on the agenda (not to exceed three minutes).” Subsection (A)(8) specifies that its items are “not to exceed three minutes per report.” The implication is that, since (A)(7) does not say “(not to exceed three minutes per person),” all persons to be heard under (A)(7) must combine to take no more than three minutes.</p> <p>Recommendation: If the intention is for each person under (A)(7) to get three minutes, an ordinance should amend this section to say so. Otherwise, no action is required.</p>	○
8.	<p>2.04.170 Regular meetings. This section includes a code reviser’s note explaining meeting time discrepancy from Section 2.04.020.</p> <p>Recommendation: This section should be amended by ordinance to permanently fix the discrepancy.</p>	○

10.	<p>2.12.010 City and borough of Sitka hospital board. This section establishes that the hospital board has “seven regular members, one of whom shall be a physician.” It appears the intent of this section is to ensure that at least one member is a physician, not that exactly one is a physician.</p> <p>Recommendation: If this is the case, this section should be amended by ordinance to say “at least one of whom” instead of “one of whom.”</p>	○
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13.	<p>2.40.410 Preservation of ballot after counting. This section requires the clerk to write a date form with a year blank formatted as 19__.</p> <p>Recommendation: This should be amended by ordinance to 20__.</p>	○
14.	<p>2.40.470 Notice of Election Contest. See comment for 2.40.410.</p>	#10

	Title 3, Procurement	Action
19.	<p>3.16.030 Open market procedures. Subsection (C) refers to CBS, which in this context appears to mean City and Borough of Sitka.</p> <p>Recommendation: If it does, the next housekeeping ordinance should spell this out, as CBS is not defined in the Code and is better known as an acronym for something else.</p>	0
20.	<p>3.16.060 Exceptions to competitive bidding requirements. Subsection (J)(3)(c) requires competitive purchasing for “Software and systems readily available on the open market (i.e., Windows 95).” As i.e. is used as a lead-in to an exact list (as opposed to e.g., which lists examples), the literal reading of this exception says that only Windows 95 requires competitive purchasing which, given the pace of technological advances, is probably not an operating system the City is actively interested in purchasing.</p> <p>Recommendation: To solve these issues, an ordinance should amend “(i.e., Windows 95)” to “(e.g., computer operating systems)” to achieve the intended effect. Until such amendment, (J)(3)(c) literally applies exclusively to Windows 95 purchases.</p>	0
21.	<p>3.16.080 Procurement monitoring. See comment for 3.16.030.</p>	28-19

	Title 6, Business Licenses and Regulations	Action
28.	<p>6.04.080 Bond. This section requires certain bond sureties to be executed by residents of the city and borough who are also “the owners of real property therein.” While it is clear why residents of the city should be asked, it is less clear (and risky from a due process standpoint) why those residents should own real property. In the abstract, it does not seem that an apartment dweller’s bond is less sure than any other bond.</p> <p>Recommendation: As such, this section should be amended by ordinance to delete “and the owners of real property therein.”</p>	Other ord
29.	<p>6.19.030 Permit required for commercial operations involving organized excursions when such operations occur in certain areas. Subsections (D) and (E) both reference a permit application fee for permits under this section. Both subsections list a fee of \$400. It appears that the subsections intend to refer to the same fee, but they are listed separately, implying that there are two application fees of \$400 rather than one.</p> <p>Recommendation: If two fees are required, no change is needed. If there is only one \$400 application fee associated with this permit, the City and Borough should amend this section by ordinance to consolidate the language in (D) and (E).</p>	0