

Home Rule

Maximum Local Self-Government



Home Rule Municipalities in Alaska

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- Section 1** **Types and Numbers of Municipal Governments in Alaska**
- Section 2** **Interesting Facts About Home Rule Municipal Governments in Alaska**
- Section 3** **Nature of Home Rule Cities in Alaska**
- Section 4** **Procedures for Adoption of a Home Rule Charter by an Existing Municipality**
- Appendix A** **Sections of 1999 Alaska Statutes that Expressly Relate to Home Rule Municipal Governments**
- Appendix B** **Jefferson v. State, 527 P.2d 37 (Alaska, 1974)**
- Appendix C** **Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, 3 U.C.L.A. — Alaska L.R. 1 (1973)**
- Appendix D** **Duvall, Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning, 8 Alaska Law Journal 232, 239 (1970)**
- Appendix E:** **AS 29.10.010 — 29.10.090, Procedures for Adoption of a Home Rule Charter by an Existing Municipal Government**

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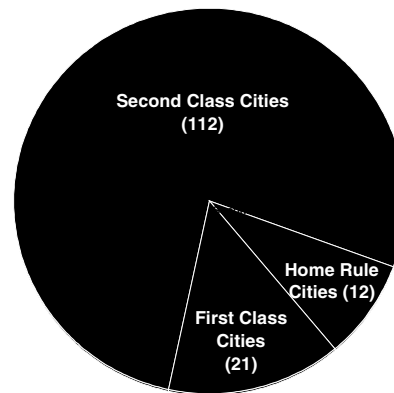
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Section 1 • Types and Numbers of Municipal Governments in Alaska

There are two types of local governments in Alaska, cities and organized boroughs.

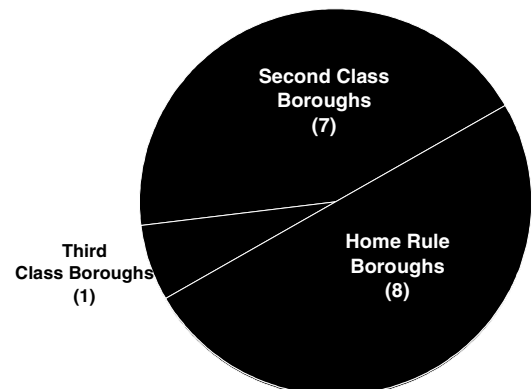
A. Cities

There are 145 city governments in Alaska; 12 are home rule and the remaining 133 are general law. Of the 133 general law cities, 21 are first class cities and 112 are second class cities.



B. Boroughs

There are 16 organized boroughs in Alaska; 8 are home rule and 8 are general law. Of the 8 home rule boroughs, 3 are unified municipalities and the remainder are not. Of the 8 general law boroughs, 7 are second class boroughs and 1 is a third class borough. There are no first class boroughs.



Section 2 • Interesting Facts About Home Rule Municipal Governments in Alaska

A. Popularity of Home Rule Municipal Governments

Home rule is the most accepted form of municipal government in Alaska. Nearly twice as many Alaskans live in home rule municipal governments as

- ☑ All but two of the current home rule cities had initially adopted charters by 1965.
- ☑ The last city to adopt a home rule charter did so 18 years ago (City of Nenana).

The following lists the home rule cities in Alaska:

| Cities | 1999 Population | Charter Adopted |
|--------------------|-----------------|-----------------|
| City of Cordova | 2,435 | 1960 |
| City of Fairbanks | 31,697 | 1960 |
| City of Kenai | 7,005 | 1963 |
| City of Ketchikan | 8,320 | 1960 |
| City of Kodiak | 6,893 | 1965 |
| City of Nenana | 348 | 1982 |
| City of North Pole | 1,616 | 1970 |
| City of Palmer | 4,151 | 1962 |
| City of Petersburg | 3,415 | 1960 |
| City of Seward | 3,010 | 1960 |
| City of Valdez | 4,164 | 1961 |
| City of Wrangell | 2,549 | 1960 |

Nearly twice as many Alaskans live in home rule municipal governments as compared to general law municipal governments.

compared to general law municipal governments. Specifically, 392,541 people (63% of Alaskans) live within a home rule city or home rule borough. This is compared to 211,048 Alaskans (34%) who live only in a general law city or general law borough. The remaining 18,411 Alaskans (3%) live outside any municipal government.

- ☑ There are 12 home rule cities and 133 general law cities in Alaska.
- ☑ Although only 8% of the city governments in Alaska are home rule, they account

for 48% of the population within city governments in Alaska.

- ☑ The average population of Alaska's 12 home rule cities is 6,300.
- ☑ The median population of Alaska's 12 home rule cities is 3,783.

- ☑ The City of Fairbanks is the most populous home rule city (31,697 residents).
- ☑ The City of Nenana is the least populous home rule city (348 residents).

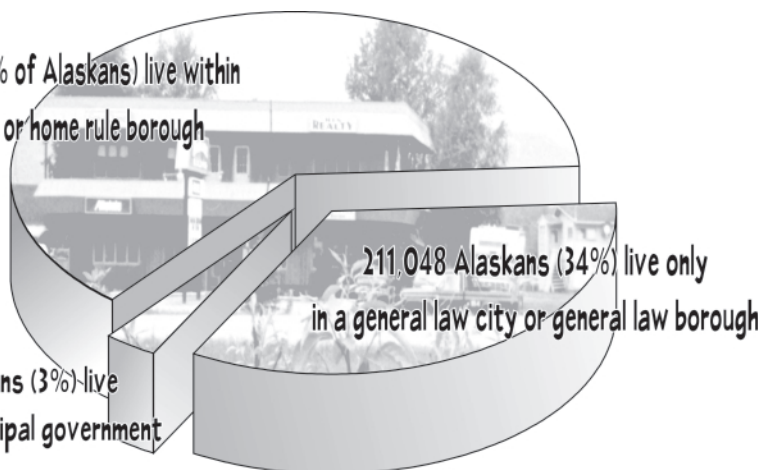
B. Home Rule Cities

- ☑ The option of home rule first became available to cities in Alaska in 1959 when Alaska became a state.

392,541 people (63% of Alaskans) live within a home rule city or home rule borough

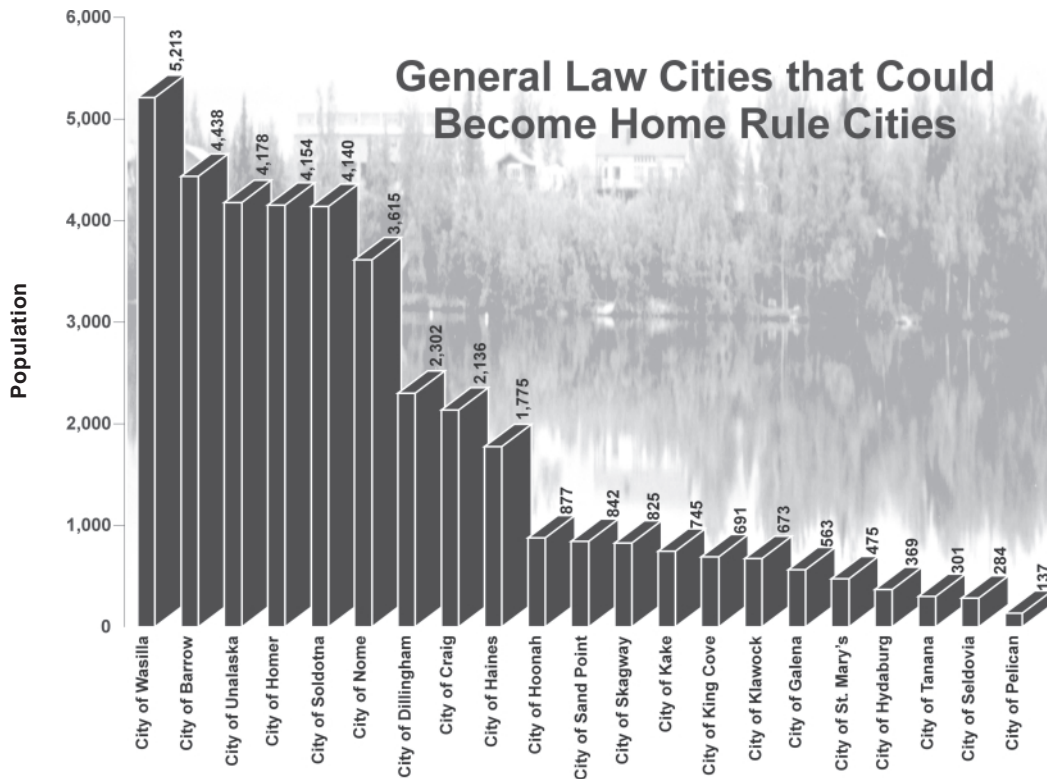
211,048 Alaskans (34%) live only in a general law city or general law borough

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C. General Law Cities that Could Become Home Rule Cities.

Under current State law [AS 29.10.010(a)] first class cities — but not second class cities — may adopt home rule charters. The chart below lists the 21 existing first class cities in Alaska ranked in descending order of population.



D. Home Rule Boroughs

- ☑ There are 8 home rule boroughs in Alaska.
- ☑ 50% of the borough governments in Alaska are home rule, they account for 59% of the population within organized boroughs.
- ☑ Anchorage is the most populous home rule borough (259,391 residents).
- ☑ Yakutat is the least populous home rule borough (729 residents).
- ☑ The average population of Alaska’s 8 home rule boroughs is 39,617.
- ☑ The median population of Alaska’s 8 home rule boroughs is 7,143.
- ☑ The last borough to adopt a home rule charter did so 8 years ago (Yakutat).
- ☑ Four of the last five boroughs to form are home rule boroughs.

| Boroughs | 1999 Population | Charter Adopted |
|-----------------------------|-----------------|-----------------|
| Municipality of Anchorage | 259,391 | 1975 |
| Denali Borough | 1,871 | 1990 |
| City and Borough of Juneau | 30,189 | 1970 |
| Lake and Peninsula Borough | 1,791 | 1989 |
| North Slope Borough | 7,413 | 1974 |
| Northwest Arctic Borough | 6,873 | 1987 |
| City and Borough of Sitka | 8,681 | 1971 |
| City and Borough of Yakutat | 729 | 1992 |

Section 3 • Nature of Home Rule Cities in Alaska

Article X of Alaska's Constitution deals with local government. Section 1 of the local government article states the following with respect to the purpose and construction of the constitutional provisions regarding local government:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. **A liberal construction shall be given to the powers of local government units.** (emphasis added)

All local governments in Alaska – general law cities, home rule cities, general law boroughs, and home rule boroughs – enjoy broad powers. Twenty-two years ago, the Alaska Supreme Court ruled as follows with regard to the provisions for a liberal construction of the powers of local government in the second sentence of Article X, Section 1:

The constitutional rule of liberal construction was intended to make explicit the framers' intention to overrule a

common law rule of interpretation which required a narrow reading of local government powers.¹ Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1978)

The principles of liberal construction of local government powers

and broad local power were carried forward by the legislature as evidenced by the following provisions in current law:

☑ "A liberal construction shall be given to all powers and functions of a mu-

nicipality conferred in this title."
(AS 29.35.400)

☑ "Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident

¹ The rule, called Dillon's rule states:

[a] municipal corporation possesses and can exercise the following powers and not others. First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

Merriam v. Moody's Executors, 25 Iowa 163, 170 (1868). The minutes of the constitutional convention reveal that the liberal construction clause of Article X, Section 1 was intended to assure that general law municipalities, as well as those having home rule powers, would not be governed by this rule, but would have their powers liberally interpreted. The following colloquy between delegates Hellenenthal and Victor Fischer is illustrative:

HELLENTHAL: Is there a compelling reason for the retention of the last sentence in the section?

V. FISCHER: Mr. President, we were advised by our committee consultants that due to the fact that in the past, courts have very frequently, or rather generally interpreted the powers of local government very strictly under something called "Dillon's Rule", or something like that, that a statement to this effect was rather important, particularly in connection with the local government provisions of the article to make sure that it would be interpreted to give it the maximum amount of flexibility that we desire to have in it and to provide the maximum powers to the legislature and to the local government units to carry out the intent of this article.

...

HELLENTHAL: Now I refer to Section 11. Doesn't Section 11 clearly reverse this rule that you refer to as Dillon's Rule?

V. FISCHER: That would apply to home rule, cities and boroughs, but the point is that there may be a lot of local government units in Alaska over the years that may not be granted the home rule authority by the legislature and it may not want to adopt a home rule charter. Alaska Constitutional Convention Proceedings, Part 4, 2690 – 96.

to the purpose of all powers and functions conferred in this title.” (AS 29.35.410)

☑ “Specific examples in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.” (AS 29.35.420)

☑ “A city inside a borough may exercise any power not otherwise prohibited by law.” (AS 29.35.250(a))

☑ “A city outside a borough may exercise a power not otherwise prohibited by law. A provision that is incorporated by reference to laws governing boroughs applies to home rule cities outside boroughs only if the provision is made

applicable to home rule boroughs.” (AS 29.35.260(a))

☑ “A first class borough may exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law.” (AS 29.35.200(a))

☑ “In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise a power not otherwise prohibited by law if the power has been acquired in accordance with AS 29.35.300.” (AS 29.35.200(c))

☑ In addition to powers conferred by (a) of this section, a second class borough may, on a nonareawide basis, exercise a power not otherwise prohibited by law if the exercise of the



Local Government Committee meeting, Alaska Constitutional Convention, 1956, Steve McCutcheon photographer

power has been approved at an election by a majority of voters living in the borough but outside all cities in the borough.” (AS 29.35.210(c))

☑ “In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis, exercise a power not otherwise prohibited by law if the power has been acquired in accordance with AS 29.35.300.” (AS 29.35.210(d))

☑ “A third class borough may acquire any power not otherwise prohibited by law, except the power may only be exercised within a service area.” (AS 29.35.220(d))

While general law local governments in Alaska have broad powers, home rule local government have even more so. It is noteworthy that the very first phrase of Alaska’s constitutional provisions concerning local government deal with promoting “maximum local self-government.” Adoption of a home rule charter promotes maximum local self-government to the greatest extent possible. Tom Morehouse and Vic Fischer, recognized experts in Alaska local government, wrote the following account of the views of the constitutional convention delegates with regard to this matter:

An oft-repeated theme of the [Alaska constitutional] convention, and one of the stated purposes

“... one of the stated purposes of the local government article, was provision of maximum local self-government to the people of Alaska...”

Thomas A. Morehouse and Victor Fischer,
Borough Government in Alaska, 56 (1971)

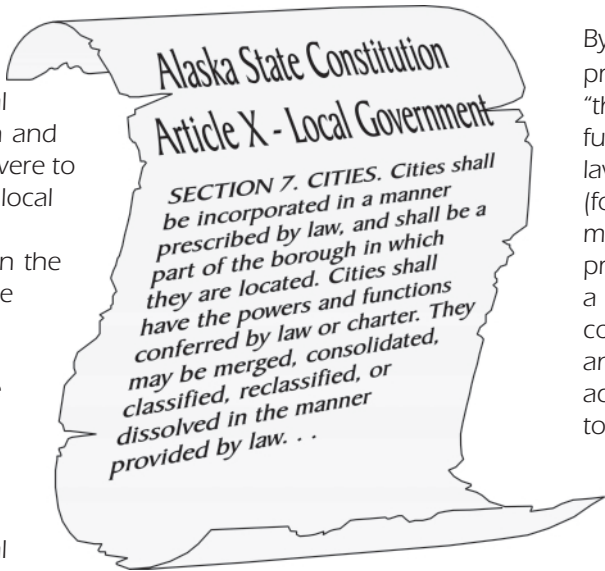
of the local government article, was provision of maximum local self-government to the people of Alaska. . . . Home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local problems at the local level. It was also to be the means for promoting local government adaptation in a state with great variations in geographic, economic, social, and political conditions.

This home rule philosophy was not believed to be inconsistent with a strong state role in local affairs. As the above discussion indicates, the exercise of state authority was considered essential in matters of incorporation and boundaries, i.e., the creation of local governments and their areas of jurisdiction were felt to be matters ultimately of state responsibility. When properly established, however, their internal organization and operations were to be primarily local concerns, particularly in the case of home rule units. Moreover, a "strong state role" also meant that the state would support local

governments with financial aid and technical assistance.

Before Alaska became a state, there was little self-determination either at territorial or local levels. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government that could be established and restricting the powers that could be exercised by incorporated cities. Throughout its deliberations, therefore, the Local Government Committee emphasized the need for effective constitutional provisions for home rule. Thomas A. Morehouse and Victor Fischer, Borough Government in Alaska, 56 (1971)

Home rule cities shall have the powers and functions conferred by charter. Article X, Section 7, of the Constitution of the State of Alaska provides as follows:



2 Article XII, Section 11, Alaska Constitution states: "As used in this constitution, the terms "by law" and "by the legislature," or variations of these terms, are used interchangeably when related to law-making powers. . . ." Linda H. Duvall notes that "Law, of course, includes the United States Constitution since it operates to restrain state power as well. Law also includes the provisions of the state constitution. Beyond this, law is defined by the general provisions of the Alaska Constitution to mean the acts of the legislature. (see Appendix D, page 237-238)

Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. **Cities shall have the powers and functions conferred by law or charter.** ² They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law. (emphasis and footnote added)

In 1963, the Alaska Supreme Court interpreted the provisions of Article X, Section 7 as follows:

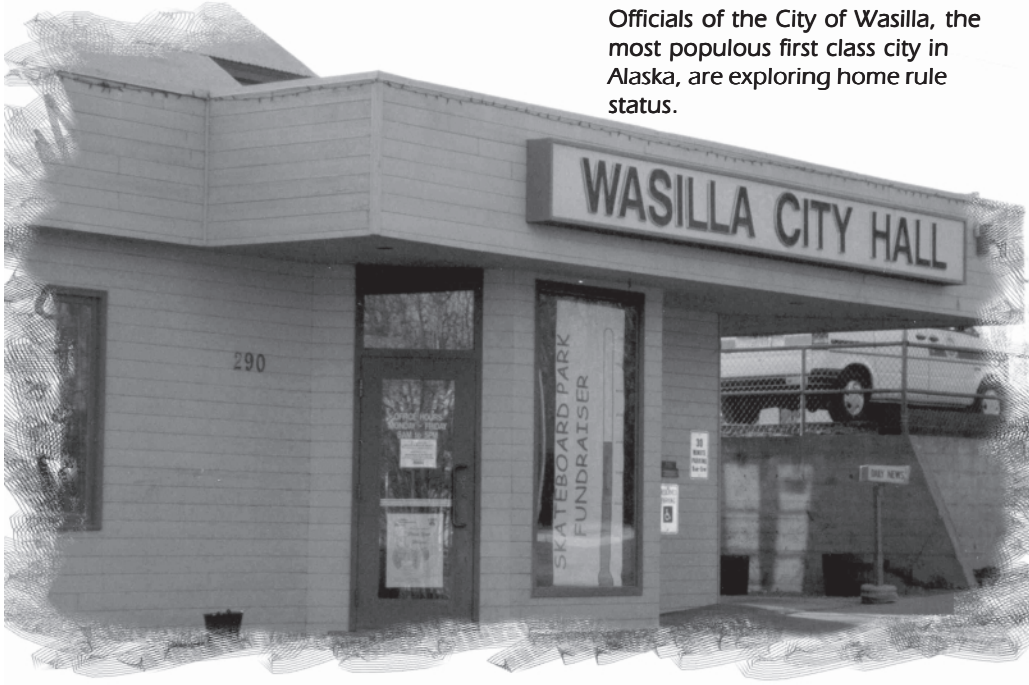
By constitutional provision cities have "the powers and functions conferred by law or charter." (footnote omitted) The meaning of this provision is that where a home rule city is concerned the charter, and not a legislative act, is looked to in order to determine whether a particular power has been conferred upon the city. It

would be incongruous to recognize the constitutional provisions stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" and then to say that the power of a home rule city is measured by a legislative act." Lien v. City of Ketchikan, 383 P.2d 721, 723 (Alaska 1963)

Given the provisions of Article X, Section 7 and the interpretation in Lien, home rule city charters invariably confer broad powers to the respective home rule cities. For example, the home rule charter of the City of Ketchikan provides as follows:

The City of Ketchikan, Alaska, shall have all the powers, functions, rights, privileges, franchises and immunities of every name and nature whatever, which a home rule city may have under the

Officials of the City of Wasilla, the most populous first class city in Alaska, are exploring home rule status.



constitution and laws of the State of Alaska. The city may exercise all legislative powers not prohibited by law or by this charter. (Section 1 - 4)

The provision of the City of Ketchikan's home rule charter conferring powers to the City takes maximum advantage of Article X, Section 11 of Alaska's Constitution which provides as follows:

A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

In 1974, the Alaska Supreme Court ruled that the prohibitions referred to in Article X, Section 11 can be either in express or

implied terms. Specifically, the Court stated:

The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded with weight of law. Jefferson v. State, 527 P.2d 37, 43 (Alaska, 1974)

Appendix A provides an index of the 135 sections of the current Alaska Statutes that specifically refer to home rule cities and/or home rule boroughs. Most of those (102) are found in Title 29 of the Alaska Statutes dealing with municipal government. The remaining 33 are scattered in 19 other titles of the Alaska Statutes.

Many of the 135 sections of the Alaska Statutes listed in Appendix A are express prohibitions on legislative powers of home rule municipalities. However, as noted above, the Alaska Supreme Court has ruled in Jefferson that prohibitions may also be implied. In a separate concurring opinion, Justice Connor explained:

The state legislature has expressly prohibited the exercise of total local power in such areas as taxation, utilities regulation, security for bonds, municipal elections, and other matters of general state concern.³ It is naïve, however, to expect that these prohibitions contemplate each and every matter in which the legislature would properly wish to restrict local power. A

home rule concept which relies only on express prohibition to define the scope of local power presupposes a degree of legislative foresight and draftsmanship ability which is completely unrealistic. See Duvall, *Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning*, 8 Alaska Law Journal 232, 239 (1970).

For example, the Uniform Commercial Code, AS 45.05.002 et seq., and the Insurance Code, AS 21.03.010 et seq., enacted by the legislature, no doubt were meant to operate upon a statewide basis, though nothing in those codes expressly prohibits municipal legislation in the field of commercial law or insurance law. Yet to say that a home rule city could alter the operation of such comprehensive statutory systems would be intolerable. Transactions whose reliability is vital to a functioning economy would become unsettled, to the detriment of the business community and the citizenry of the state. A conflict between the city and the state could not be ignored in this type of situation despite the absence of an express prohibition. Id., 45

It is observed that the Insurance Code, AS 21.03.010 et seq., is a poor example to argue that it is naïve to expect that the express prohibitions contemplate each and every matter in which the legislature would properly wish to restrict local power. Eight years before the decision in Jefferson, the 1966 Alaska Legislature had, in fact, pre-empted regulation of “insurers and their managing general agents, insurance producers, and representatives.” The 1966 Legislature also provided in the same law that, “All political subdivisions of the state, including home rule boroughs or cities, are prohibited from requiring of an insurer, managing general agent, insurance producer, or representative regulated under this title an authorization, permit, or registration of any kind for conducting transactions lawful under the authority granted by the state under this title.” (AS 21.03.060)

Notwithstanding, Justice Connor emphasized the use of the “local activities rule” as a realistic tool by which to interpret whether a municipal home rule

law or State law is superior. Specifically, Justice Connor stated as follows:

One test we have used in determining whether the ordinance or the statute must yield, is the “local activities rule.” This test, applied in Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970), and Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971), should not be regarded, as it has been by one commentator,⁴ as the rule the framers of the constitution rejected in establishing a broad home rule policy. Rather, it should be recognized as a realistic tool by which to interpret this policy. The “local activities rule” requires the court to focus upon whether the particular subject under consideration is of such statewide concern that the exercise of municipal power is inconsistent with the effectuation of statewide policy, as expressed by statute. Some matters are obviously of statewide concern, some less so.

Some matters are so traditionally and readily classified as matters of local government that there will be no difficulty in finding that they are within municipal competence. Here, too, the municipal code adopted by the legislature is of great help in delineating the areas of permissible local action. Id., 45.

Jefferson provides more details about the Court’s interpretation of the nature of home rule cities in

Alaska. A copy of the decision in that case is included as Appendix B (see, in particular, pages 41 – 46). Appendix C consists of a copy of Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, 3 U.C.L.A. – Alaska L.R. 1 (1973). Appendix D is comprised of a copy of Appendix D: Duvall, Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning, 8 Alaska Law Journal 232, 239 (1970).

4 See, Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, 3 UCLA Alaska Law Review 1, 53 (1973)

HOME RULE IN ALASKA: A CLASH BETWEEN THE CONSTITUTION AND THE COURT

Gerald L. Sharp*

INTRODUCTION

A home rule borough or city may exercise all legislative powers not prohibited by law or charter.¹

With this simple and what appears to be alarmingly broad grant of power to home rule municipalities, the constitution of the State of Alaska launched what its drafters must have hoped was a new approach to home rule, an approach unencumbered by the ambiguities of home rule grants which in other states have caused the courts endless problems of interpretation. Grants of home rule have produced not just different but opposite judicial conclusions from state to state; such grants have produced various tests to determine what is and is not within, or protected by, a home rule grant, and, because the courts have been unable to flesh out these tests with any standards, their application often produced inconsistent results.

The two most recent decisions² of the Alaska Supreme Court interpreting the home rule section of the Alaska constitution cast serious doubt on whether that court will be able to steer clear of the judicial tangle in which its sister state courts have become enmeshed. These decisions also cast doubt on whether the Alaska court is as sympathetic to the concept of a constitutional grant of broad home rule power as were the drafters of the local government article.

To determine the probable intent of the drafters of the home rule section and of the convention which adopted it in 1956 as a part of the then proposed state constitution, the background and circumstances surrounding its drafting and adoption must be examined. At the time the constitution was written Alaska was still a territory. The local government structure under territorial status did not include home rule for cities.³ In drafting the local govern-

* B.A., University of Washington, 1970; J.D., University of Washington, 1973; Member of the Washington State Bar Association, Assistant to the Attorney for the City and Borough of Juneau, Alaska; Member of the Assembly for the Greater Juneau Borough, 1965-1967. The earliest version of this article was prepared under the supervision of Professor William R. Anderson while the author was a student at the School of Law at the University of Washington.

¹ ALASKA CONST. art. X, § 11.
² Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971); Chugach Elec. Ass'n v. City of Anchorage, 476 P.2d 115 (Alaska 1970).

³ R. CLASE & J. SAROFF, THE METROPOLITAN EXPERIMENT IN ALASKA: A STUDY OF BOROUGH GOVERNMENT 2-3 (1968) [hereinafter cited as CLASE & SAROFF].

Section 4 • Procedures for Adoption of a Home Rule Charter by an Existing Municipality

The following summarizes the procedures and other provisions set out in AS 29.10.010 – 29.10.090 for adoption of a home rule charter by an existing municipality. A copy of the AS 29.10.010 – 29.10.090 is included as Appendix E.

A. Election of Charter Commission.

A election for a seven member charter commission is called by filing a petition with the governing body in accordance with AS 29.10.010(e) or by resolution of the governing body.

A candidate for a charter commission must have been qualified to vote in the municipality for at least one year immediately preceding the charter commission election. A charter commission candidate is nominated in the

manner set out in AS 29.10.040(b).

If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and an election on the question may not be held.

If voters approve the creation of a charter commission, the seven candidates receiving the highest number of votes must immediately organize as a charter commission.

B. Preparation of Charter.

The charter commission must prepare a proposed home rule charter within one year.

The commission must hold at least one public hearing on the proposed charter before approving and filing the charter with the municipal clerk. Within 15 days of the filing, the clerk must publish the proposed charter and make copies available.

organic law of the municipality effective on the date the election is certified. Copies of the charter are filed with agencies specified in the law

If a proposed charter is rejected, the charter commission must prepare another proposed charter to be



In 1998, the Haines Charter Commission (pictured above) drafted a petition for consolidation of the first class city of Haines and third class Haines Borough into a single home rule government.

C. Charter Election.

The proposed home rule charter must be submitted to the voters at an election held not less than 30 days or more than 90 days after the proposed charter is published.

If a majority of voters favor the proposed charter, the proposed charter becomes the

submitted to the voters at an election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission is dissolved and the question of adoption of a charter is treated as if it had never been proposed or approved.

