

Chapter 05. Incorporation.

Article

1. Requirements (§§ 29.05.011 - 29.05.031)
2. Procedure (§§ 29.05.060 - 29.05.150)
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Article 1. Requirements.

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Sec. 29.05.011. Incorporation of a city.

(a) A community that meets the following standards may incorporate as a first class or home rule city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;
- (4) the population of the community is stable enough to support city government;
- (5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city. (§ 4 ch 74 SLA 1985; am § 6 ch 58 SLA 1994)

Effect of amendments. — The 1994 amendment, effective August 22, 1994, inserted “or home rule” in the introductory language in subsection (a).

Sec. 29.05.021. Limitations on incorporation of a city.

(a) A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city.

(b) A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or non-areawide basis by the borough in which the proposed city is located, or by annexation to an existing city. (§ 4 ch 74 SLA 1985)

Sec. 29.05.031. Incorporation of a borough or unified municipality.

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough. (§ 4 ch 74 SLA 1985; am § 7 ch 58 SLA 1994)

Effect of amendments. — The 1994 amendment, effective August 22, 1994, in subsection (a), added “, or as a unified municipality” at the end of the introductory language and inserted “or unified municipality” in paragraphs (2) and (3).

Article 2. Procedure.

Section

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Sec. 29.05.060. Petition.

Municipal incorporation is proposed by filing a petition with the department. The petition must include the following information about the proposed municipality:

- (1) class;
- (2) name;
- (3) boundaries;
- (4) maps, documents, and other information required by the department;
- (5) composition and apportionment of the governing body;
- (6) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation;
- (7) for a borough or unified municipality, based on the number who voted in the respective areas in the last general election, the signature and resident address of 15 percent of the voters in

(A) home rule and first class cities in the area of the proposed borough or unified municipality; and

(B) the area of the proposed borough or unified municipality outside home rule and first class cities;

(8) for a first class borough or unified municipality, a designation of areawide powers to be exercised;

(9) for a second class borough, a designation of areawide and non-areawide powers to be exercised;

(10) for a first class, second class, or home rule city, a designation of the powers to be exercised;

(11) for a first class or home rule city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 50 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(12) for a second class city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 25 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(13) for a home rule city, home rule borough, or unified municipality a proposed home rule charter. (§ 4 ch 74 SLA 1985; am § 8 ch 58 SLA 1994)

Effect of amendments. — The 1994 amendment, effective August 22, 1994, substituted “must” for “shall” in the second sentence of the introductory language, inserted “or unified municipality” in three places in paragraph (7) and in one place in paragraphs (8) and (13), substituted “first class, second class, or home rule city” for “first or second class city” in paragraph (10), inserted “or home rule” in paragraph (11), and inserted “city, home rule” in paragraph (13).

Sec. 29.05.070. Review.

The department shall review an incorporation petition for content and signatures and shall return a deficient petition for correction and completion. (§ 4 ch 74 SLA 1985)

Sec. 29.05.080. Investigation.

(a) If an incorporation petition contains the required information and signatures, the department shall investigate the proposal and shall hold at least one public informational meeting in the area proposed for incorporation. The department shall publish notice of the meeting.

(b) The department may combine incorporation petitions from the same general area.

(c) The department shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation. (§ 4 ch 74 SLA 1985)

Sec. 29.05.090. Hearing.

The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal. (§ 4 ch 74 SLA 1985)

Sec. 29.05.100. Decision.

(a) After providing public notice of each proposed amendment or condition and an opportunity for public comment, the Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

(b) A Local Boundary Commission decision under this section may be appealed under the AS 44.62 (Administrative Procedure Act). (§ 4 ch 74 SLA 1985; am § 9 ch 58 SLA 1994; am §2 ch 86 SLA 1999; am §1 ch 46 SLA 2006)

Effect of amendments. — The 2006 amendment, effective May 28, 2006, added “After providing public notice of each proposed amendment or condition and an opportunity for public comment,” in the first sentence. The 1999 amendment, effective September 28, 1999, rewrote subsection (a). The 1994 amendment, effective August 22, 1994, in subsection (a), substituted “may accept” for “Shall accept” and inserted “or amend” in the second sentence, deleted “If the commission determines that the proposed municipal boundaries can be altered to meet the standards, it may alter the boundaries” preceding “and accept the petition” in the former third sentence, and made a related stylistic change.

Sec. 29.05.110. Incorporation election.

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of an incorporation petition. Within 30 days after notification, the director of elections shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial municipal officials. If incorporation is rejected, no officials are elected. The election shall be held not less than 30 or more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officials may be filed.

(b) A qualified voter who is registered to vote within the proposed municipality at least 30 days before the date of the election order may vote.

(c) Areawide borough powers included in an incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each non-areawide power to be exercised is placed separately on the ballot. Adoption of a non-areawide power requires a majority of the votes cast on the question, and the vote is limited to the qualified voters who are registered to vote in the proposed borough but outside all cities in the proposed borough.

(d) A home rule charter included in an incorporation petition under AS 29.05.060(13) is considered to be part of the incorporation question. The home rule charter is adopted if the voters approve incorporation of the city, borough, or unified municipality.

(e) The director of elections shall supervise the election in the general manner prescribed by the AS 15 (Election Code). The state shall pay all election costs under this section.

(f) In this section a qualified voter has the meaning given in AS 15.60.010. (§ 4 ch 74 SLA 1985; am § 10 ch 58 SLA 1994; §§ 58 – 60 ch 2 FSSLA 2005)

Effect of Amendments. —The 2005 amendment, effective September 22, 2005, substituted “qualified voter who is registered to vote” for “voter who has been a resident of the area” and substituted “at least” for “for” in subsection (b) and “qualified voter who is registered to vote” for “residing” in subsection “c”; and added subsection (f); The 1994 amendment, effective August 22, 1994, substituted “the city, borough, or unified municipality” for “the borough” in the second sentence in subsection (d).

Sec. 29.05.115. Incorporation with legislative review.

(a) If the Local Boundary Commission submits a proposal for borough incorporation to the legislature under art. X, sec. 12, Constitution of the State of Alaska, AS 29.05.060 - 29.05.110 do not apply. However, before the proposal is submitted to the legislature, the Local Boundary Commission shall hold at least two public hearings in the area proposed for incorporation.

(b) This section may not be construed as granting authority to the Local Boundary Commission to propose a borough incorporation under art. X, sec. 12, Constitution of the State of Alaska. (§2 ch 46 SLA 2006)

Sec. 29.05.120. Election of initial officials.

(a) Nominations for initial municipal officials are made by petition. The petition shall be in the form prescribed by the director of elections and must include the name and address of the nominee and a statement of the nominee that the nominee is qualified under the provisions of this title for the office that is sought. A person may file for and occupy more than one office, but may not serve simultaneously as

(1) borough mayor and as a member of the assembly; or

(2) city mayor and as a member of the council in a first class city.

(b) Except for a proposed second class city, petitions to nominate initial officials must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officials are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) Petitions to nominate initial officials of a second class city must include the signature and resident address of 10 voters in the area of the proposed city.

(d) The director of elections shall supervise the election in the general manner prescribed by the AS 15 (Election Code). The state shall pay all election costs.

(e) The initial elected officials take office on the first Monday following certification of their election.

(f) The initial elected members of the governing body shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected. (§ 4 ch 74 SLA 1985)

Sec. 29.05.130. Integration of special districts and service areas.

(a) A service area in a newly incorporated municipality shall be integrated into the municipality within two years after the date of incorporation. On integration the

municipality succeeds to all the rights, powers, duties, assets, and liabilities of the service area. On integration all property in the service area subject to taxation to pay the principal and interest on bonds at the time of integration remains subject to taxation for that purpose.

(b) After integration, the municipality may exercise in a former service area all of the rights and powers exercised by the service area at the time of integration, and, as successor to the service area, may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a municipality in which the service area was formerly located. (§ 4 ch 74 SLA 1985)

Sec. 29.05.140. Transition.

(a) The powers and duties exercised by cities and service areas that are succeeded to by a newly incorporated municipality continue to be exercised by the cities and service areas until the new municipality assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new municipality.

(b) Before the assumption, the new municipality shall give written notice of its assumption of the rights, powers, duties, assets, and liabilities under this section and AS 29.05.130 to the city or service area concerned. Municipal officials shall consult with the officials of the city or service area concerned and arrange an orderly transfer.

(c) After the incorporation of a new municipality, a service area in it may not assume new bonded indebtedness, make a contract, or transfer an asset without the consent of the governing body.

(d) Upon incorporation, the home rule charter of a unified municipality operates to dissolve all municipalities in the area unified in accordance with the charter.

(e) This section applies to home rule and general law municipalities.

(f) Unless the incorporation takes effect on January 1, the newly incorporated municipality may not levy property taxes before January 1 of the year immediately following the year in which the incorporation takes effect. (§ 4 ch 74 SLA 1985; am § 11 ch 58 SLA 1994; am § 1 ch 012 SLA 2004)

Effect of amendments. — The 2004 amendment, effective July 5, 2004 added subsection (f). The 1994 amendment, effective August 22, 1994, added present subsection (d).

Sec. 29.05.150. Challenge of legality.

A person may not challenge the formation of a municipality except within six months after the date of its incorporation. (§ 4 ch 74 SLA 1985)

Article 3. Transitional Assistance.

Section

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| 190. Organization grants to boroughs and unified municipalities | 210. Transitional assistance to boroughs and unified municipalities |

Sec. 29.05.180. Organization grants to cities.

(a) To defray the cost of transition to city government and to provide for interim government operations, each city incorporated after December 31, 1985 is entitled to an organization grant of \$50,000 for the first full or partial fiscal year after incorporation.

(b) To defray the cost of reclassification, each second class city in the unorganized borough incorporated before January 1, 1986 that reclassifies as a first class city or adopts a home rule charter after December 31, 1985 is entitled to an organization grant equal to \$50,000 for the first full or partial fiscal year after reclassification.

(c) The department shall disburse an organization grant under (a) or (b) of this section within 30 days after certification of the incorporation, reclassification, or home rule charter election, or as soon after certification as money is appropriated and available for the purpose.

(d) A city entitled to an organization grant under (a) or (b) of this section is entitled to a second organization grant of \$25,000. The department shall disburse the second organization grant within 30 days after the beginning of the city's second fiscal year after incorporation, reclassification, or adoption of a home rule charter or as soon after that time as money is appropriated and available for the purpose. (§ 4 ch 74 SLA 1985)

Sec. 29.05.190. Organization grants to boroughs and unified municipalities.

(a) For the purpose of defraying the cost of transition to borough government and to provide for interim governmental operations, each borough or unified municipality incorporated after December 31, 1985, is entitled to organization grants as follows:

- (1) \$300,000 for the municipality's first full or partial fiscal year;
- (2) \$200,000 for the municipality's second fiscal year; and
- (3) \$100,000 for the municipality's third fiscal year.

(b) The department shall disburse the first organization grant to a borough or unified municipality within 30 days after certification of the election favoring incorporation, or as soon after that as money is appropriated and available for the purpose. The second grant shall be disbursed within 30 days after the beginning of the municipality's second fiscal year, or as soon after that as money is appropriated and available for the purpose. The third grant shall be disbursed within 30 days after the beginning of the municipality's third fiscal year, or as soon after that as money is appropriated and available for the purpose.

(c) Except as provided in (d) of this section, this section does not apply to a borough incorporated by consolidation or to a unified municipality that occupies the area formerly occupied by a borough.

(d) For the purpose of defraying the cost of government transition, each third class borough that merges or consolidates with a city after January 1, 2002, and each municipality that unifies after January 1, 2002, in an area formerly occupied by a third class borough is entitled to an organization grant of \$200,000 for the municipality's first full or partial fiscal year after the merger or consolidation or after unification. (§ 4 ch 74 SLA 1985; am § 12 ch 58 SLA 1994; am §§ 1, 2 ch 53 SLA 2002)

Effect of amendments. — The 2002 amendment, effective September 17, 2002, added the exception language at the beginning of subsection (c) and added subsection (d). The 1994 amendment, effective August 22, 1994, inserted “or unified municipality” in the introductory language of subsection (a) and in the first sentence of subsection (b); substituted “municipality’s” for “borough’s” in paragraphs (a)(1)-(a)(3) and in the second and third sentences of subsection (b); substituted “the election favoring incorporation” for “the incorporation election favoring incorporation of a borough” in the first sentence in subsection (b); and, in subsection (c), added “that occupies the area formerly occupied by a borough” to the end.

Sec. 29.05.200. Organization grant fund.

(a) The organization grant program is established in the department. An appropriation made to the program shall be used for organization grants to municipalities that qualify under AS 29.05.180 or 29.05.190.

(b) Before August 31 of each fiscal year the department shall submit a report to the office of management and budget indicating

(1) each municipality expected to qualify to receive an organization grant during the next fiscal year;

(2) the amount of money needed to cover all organization grants expected to be awarded during the next fiscal year. (§ 4 ch 74 SLA 1985; am § 1 ch 43 SLA 1997; am § 22 ch 12 SLA 2006)

Effect of amendments. — The 2006 amendment, effective April 4, 2006, amended subsection (b) by deleting Department of Administration and inserting office of management and budget. The 1997 amendment, effective July 1, 1997, substituted “program” for “fund” in two places in subsection (a).

Sec. 29.05.210. Transitional assistance to boroughs and unified municipalities.

(a) Within 30 days after the date of incorporation of a borough or unified municipality incorporated after December 31, 1985, the department shall determine the population of the borough or unified municipality.

(b) The department shall provide assistance to each borough and unified municipality incorporated after December 31, 1985, in

(1) establishing the initial sales and use tax assessment and collection department if the borough or unified municipality has adopted a sales or use tax;

(2) determining the initial property tax assessment roll if the borough or unified municipality has adopted a property tax, including contracting for appraisals of property needed to complete the initial assessment.

(c) This section does not apply to a borough incorporated by consolidation or to a unified municipality that occupies the area formerly occupied by a borough. (§ 4 ch 74 SLA 1985; am § 13 ch 58 SLA 1994)

Effect of amendments. — The 1994 amendment, effective August 22, 1994, inserted “or unified municipality” in two places in subsection (a) and in one place in paragraphs (b)(1) and (b)(2), inserted “and unified municipality” in the introductory language of subsection (b), and added “that occupies the area formerly occupied by a borough” at the end of subsection (c).