



## KENAI PENINSULA BOROUGH

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**JOHNI BLANKENSHIP, CMC  
BOROUGH CLERK**

June 17, 2009

Ruby M. Kime  
P. O. Box 39334  
Ninilchik, Alaska 99639

RE: Application for Initiative Petition

Dear Ms. Kime:

On June 3, 2009, the Clerk's Office received an application for an initiative petition. For clarity, the proposed initiative has been assigned a number and is designated as follows:

No. 2009-01, An Ordinance That Limits the Amount of Borough Tax  
That can be Collected

AS 29.26.110 provides that, when reviewing an application for an initiative petition, the clerk must address the following requirements and/or prohibitions:

**Is the matter restricted by AS 29.26.100?**

While the initiative would limit the assembly's ability to generate tax revenue, it does not prescribe the objects for which that revenue may be spent, or undo an appropriation that the assembly previously enacted.

**Does it include a single subject?**

The single subject rule is broadly interpreted. Sales and real property taxes are separate processes governed by articles in Title 29; however, the common thread of limiting borough taxes runs throughout the initiative proposal; thus, it does not appear to violate the single subject rule.

**Does it relate to a legislative rather than to an administrative matter?**

The proposed initiative is legislative as it enacts a new, permanent law of general application, implements a broad policy decision, and provides ways and means of accomplishing that purpose.

### **Would it be enforceable as a matter of law?**

The initiative is not enforceable as a matter of law. The initiative is rejected for the following reasons:

1. By requiring voter approval for an increase in the revenue cap, where the sources of revenue are either property or sales taxes, the initiative necessarily limits the tax rate of either the property or sales tax, or both. To the extent this is applied to property taxes, the initiative directly conflicts with AS 29.45.010 and AS 29.45.240 which grant to the municipality the sole authority to determine the rate of levy for property taxes subject to limitations in state law. AS 29.45.010 and AS 29.45.240 require the tax to be levied by a municipality which is defined as an incorporated political subdivision. It does not provide for the people to levy a tax, unlike the statutory sales tax provisions which specifically authorize the voters approval of the sales tax rate. Requiring voter approval to increase the revenue cap necessarily conflicts with the statutory provision granting to the assembly the sole authority to set the rate of levy.
2. As the revenue cap necessarily limits the authority of the assembly to set the rate of levy for property taxes, the initiative clearly conflicts with the case *Whitson v. Anchorage*, 608 P.2d 759 (Alaska 1980) interpreting former AS 29.53.170 (currently AS 29.45.240) that only the assembly may establish the rate of levy. The only plausible interpretation of *Whitson* is that the assembly has the exclusive authority, by state statute, to set the mill levy. If this initiative is approved by the voters, then the voters will have set the maximum rate of levy, invading the assembly's exclusive authority to set the rate of levy, contradicting *Whitson*.
3. The initiative contravenes the required method of levying taxes on AS 43.56 property as set out in AS 29.45.080.
4. The proposal is internally contradictory as it states that items 1 and 5 are excluded from the CPI calculation, and they then appear to be included in this calculation. The language is unclear on this point, and the borough cannot discern the intent of the proponents based on this inconsistency.

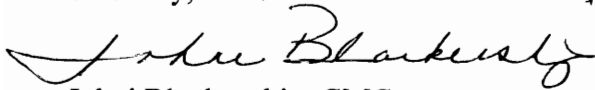
### **ADDITIONAL CONCERNS:**

There may be additional concerns; however, there are statutory time constraints placed on the clerk's review of the application. Please be advised that at least the following additional concerns are presented by the initiative:

1. The calculation of the tax limitation proposed by the initiative conflicts with the statutory tax limit established by AS 29.45.090;
2. The assembly may not raise the voter approved sales tax rate which impacts the assembly's ability to levy real property taxes since the initiative has intertwined two tax processes that are separate under the statutory scheme;
3. Municipalities' attempts to assess, levy, or collect a real or personal property tax in a manner other than that set forth in AS 29.45 have been consistently rejected by the Alaska Supreme Court;

4. The definition of voter approved services is problematic because service areas with boundaries that have been altered without voter approval would be included in the CPI calculation, while those altered with voter approval would not, and there is no justification for this distinction;
5. The definition of “emergency” in the initiative conflicts with the assembly’s statutory authority to determine what constitutes an emergency.

Sincerely,



Johni Blankenship, CMC  
Borough Clerk

cc: Michael McBride, Alternate Prime Sponsor, P. O. Box 6, Kenai, AK 99611  
Milli Martin, KPB Assembly President  
Members of the Assembly  
Mayor Dave Carey  
Colette Thompson, Borough Attorney