



# CITY OF WASILLA

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WASILLA, ALASKA 99654-7091

Area Code (907)

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Library  
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Museum  
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Planning  
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Public Works  
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1/18/96

## Informational Memo 96-04

Under Title 29 of the Alaska Statutes the Matanuska-Susitna Borough has statutory operational authority and tax power regarding Parks. Title 29 allows the operational authority to be delegated to another municipal agency and the Borough has done this for the City of Wasilla, pursuant to Borough Ordinance 93-027.

Even with the Borough authorization of Wasillas Park maintenance and improvement program there always seems to have been concern in Wasilla that political winds might shift at the Borough and that the Borough Assembly might rescind its ordinance, thereby assuming control and ownership of Wasillas' Parks and Park improvements.

In order to deal with this concern and to protect the City of Wasillas' investment in Parks and related facilities Mayor Stein, Museum and Recreation Services Dept. Director John Cooper, and City Attorney Richard Deuser have examined this issue.

A copy of Mat-Su Borough ordinance 93-027, Mr. Deusers summary of the issue, and a proposed ordinance that would better protect the City of Wasillas' interests are provided for Council discussion and possible action.

**MATANUSKA-SUSITNA BOROUGH**  
Ordinance Serial No. 93-027

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AUTHORIZING THE BOROUGH MANAGER TO ENTER INTO AN INTER-GOVERNMENTAL COOPERATION AGREEMENT FOR PARKS AND RECREATIONAL ACTIVITIES WITHIN THE CITY OF WASILLA.

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WHEREAS, the city of Wasilla desires to perform parks and recreational activities within its jurisdiction; and

WHEREAS, the Matanuska-Susitna Borough agrees that it is in the best interest of the public for the city to engage in parks and recreational functions within its boundaries; and

WHEREAS, A.S. 29.35.250 authorizes a city to exercise parks and recreational activities, notwithstanding the borough's acquisition of the areawide power, if the ordinance establishing the power authorizes the city to engage in such activities; and

WHEREAS, the Alaska Constitution, art. X, § 13, A.S. 29.35. 010(13), and MSB 1.10.120 authorize the borough to contract with cities for parks and recreational activities; and

WHEREAS, the parks and recreational facilities within the city of Wasilla will be open to all residents of the borough.

NOW, THEREFORE, BE IT ORDAINED BY THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY:

Section 1.       Classification. This ordinance is a non-code ordinance.

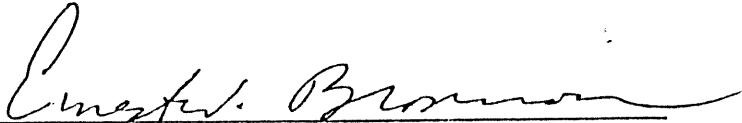
Section 2.       Authorization; Purpose. The assembly authorizes the borough manager to enter into an inter-governmental cooperation agreement with the city of Wasilla for the purposes of providing a portion of the funding for parks and recreational

facilities and to authorize the city to engage in the provision of parks and recreational activities.

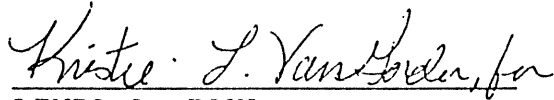
\* Section 3. Effective date. Ordinance Serial No. 93-027 shall take effect upon adoption by the borough assembly.

INTRODUCTION: 3-9-93 PUBLIC HEARING: 3-16-93

ADOPTED by the Matanuska-Susitna Borough Assembly this 16<sup>th</sup> day of March, 1993.

  
ERNEST W. BRANNON  
Borough Mayor

ATTEST:

  
LINDA A. DAHL  
Borough Clerk  
(SEAL)

**MEMORANDUM**

**To:** John Cooper, City of Wasilla

**From:** Richard Deuser, Attorney

**Date:** December 4, 1995

**Re:** Proposed Borough Ordinance Advising City of Wasilla as to Borough's Intentions on Exercise of Parks Powers/Title Rights;

Enclosed with this memorandum is a rough draft ordinance to be adopted by the Matanuska-Susitna Borough. The purpose of this cover memorandum is to provide a narrative explanation of the purpose to be served by the draft ordinance.

**SUMMARY DESCRIPTION OF PURPOSE OF THE  
PROPOSED ORDINANCE**

Title 29 is structured in an effort to correlate park management responsibility with taxing power for parks and recreational purposes. By historical Borough resolution and by the structure of Title 29, the Matanuska-Susitna Borough is the entity with both the taxing power and the statutory authority to exercise certain rights regarding the operation of parks powers and the power to hold title to land related to such powers. Pursuant to the statutory mechanism of Title 29, the Borough has delegated the power to exercise parks and recreational activities to the City of Wasilla.

The central concern of the City of Wasilla is focused upon the potential that the City will, pursuant to the existing authorization, invest considerable resources in improving the parks and recreational facilities of the City. Thereafter, there is concern that the Borough will take action to withdraw the existing authority and attempt to assert rights to obtain operational and title control over the facilities built by the City.

The proposed ordinance, enclosed herein, would attempt to allay the concerns of the City of Wasilla. The ordinance would be a public declaration by the governing body of the Borough declaring that it has no intention of asserting rights to realty improved by the efforts of the City of Wasilla. The intention is that passage of such a ordinance could then be later used under a theory of "estoppel" to preclude and prevent the Borough from asserting land title rights and/or parks powers with the effect of assuming valuable property

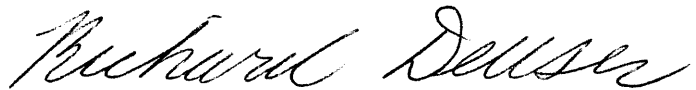
rights built by the efforts of the City.

**CONCLUSION**

Enclosed is a draft ordinance containing premises language that outlines the historical background and the purpose to be served by the ordinance. This will assist anyone in reading the ordinance so as to understand the background context and purpose to be served.

Please advise as to your thoughts on alteration of the enclosure for purposes of communicating with Borough personnel and/or other staff of City of Wasilla. I look forward to your comments.

Sincerely,



Richard Deuser

/lll  
enclosure  
cc: Mayor Stein w/encl.

[MAT-SU BOROUGH LETTERHEAD]

**MATANUSKA-SUSITNA BOROUGH**  
**ORDINANCE SERIAL NO. 96-**  
**AMENDING ORDINANCE SERIAL NO. 93-027**

**ORDINANCE ADVISING THE CITY OF WASILLA THAT THE MATANUSKA-SUSITNA BOROUGH HAS NO INTENTION TO EXERCISE PARKS/RECREATIONAL POWERS NOR AN INTENTION TO ACQUIRE TITLE TO PARKS OR RECREATIONAL REAL PROPERTIES IMPROVED BY THE EFFORTS OF THE CITY OF WASILLA PURSUANT TO MATANUSKA-SUSITNA BOROUGH ORDINANCE NO. 93-027, AUTHORIZING THE CITY OF WASILLA TO EXERCISE PARKS AND RECREATIONAL POWERS. THIS ORDINANCE IS INTENDED TO ALLOW THE CITY OF WASILLA TO RELY UPON THIS POLICY STATEMENT WHEN PROCEEDING TO MAKE CAPITAL IMPROVEMENT INVESTMENTS IN THE WASILLA PARKS PROPERTIES WITHOUT CONCERN THAT THE BOROUGH MAY THEREAFTER ASSERT OWNERSHIP INTERESTS IN SUCH IMPROVEMENTS.**

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**PREMISES**

**WHEREAS**, A.S. 29.35.250(b) provides:

On adoption of a borough ordinance to provide for areawide exercise of a power, no city may exercise the power unless the borough ordinance provides otherwise or the borough by ordinance ceases to exercise the power.

and

**WHEREAS**, an October 4, 1966, a ballot proposition was approved, as certified October 6, 1966, such ballot proposition authorizing the Borough to exercise parks powers on an area wide basis; and

**WHEREAS**, the action on the ballot proposition was confirmed by action of the Borough Assembly on April 17, 1973, adopting Ordinance No. 73-17 noting, in part:

The Borough shall exercise the power to provide Parks and Recreation as approved by the electorate . . .

**WHEREAS**, A.S. 29.35.340(a) states:

On acquisition of an areawide power, the first or second class borough succeeds to all the rights, powers, and duties of any city or service area with respect to that power. The borough

succeeds to claims, franchises, and other contractual obligations, liability for bonded and all other indebtedness, and to all of the right, title, and interest in the real and personal property held by a city or service area for exercise of the power.

and subsection (c) further provides that a city within a borough:

... shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties, and other matters related to acquisition of the areawide powers.

and

**WHEREAS**, the Matanuska-Susitna Borough adopted Ordinance Serial No. 93-027 on March 16, 1993 (such ordinance citing the authority of A.S. 29.35.010(13) and the Alaska Constitution art. X, §13, and MSB 1.10.120) authorizing the Borough and the City of Wasilla to enter into an intergovernmental cooperation agreement so as to enable the City of Wasilla to provide parks and recreational activities, and

**WHEREAS**, the City of Wasilla has, since the adoption of Ordinance Serial No. 93-027, undertaken improvement of parks and recreational facilities within the City of Wasilla; and

**WHEREAS**, the City of Wasilla generally intends to continue to promote improvement of parks and recreational facilities within the City of Wasilla utilizing available resources including, but not limited to, the City's own self-generated tax revenues; and

**WHEREAS**, the City of Wasilla, prior to making further capital investment in the improvement of parks and recreational land and facilities is concerned about the potential that the Borough may exercise rights, pursuant to A.S. 29.35.340, to assert title ownership interest and/or power over the operation of facilities improved by the City of Wasilla; and

**WHEREAS**, the Borough desires to encourage parks and recreation development by the City of Wasilla while also allaying any concern that the Borough may later attempt to exercise A.S. 29.35.340 powers or rights over such improvements;

NOW, THEREFORE, BE IT ORDAINED BY THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AS FOLLOWS:

### **RESOLUTIONS**

Section 1. **Classification**. The "premises" provisions of this ordinance, stated above, are non-code sections. Section 2, below, of this ordinance, is a code section to be incorporated into Ordinance Serial No. 93-027 as new "Section III," thereby requiring the renumbering of existing Section III to be re-numbered Section IV.

Section 2. **Representations to the City of Wasilla by the Matanuska-Susitna**

**Borough Assembly to be Relied Upon by the City of Wasilla in Undertaking Past and Future Improvements to Parks and Recreation Land and Facilities.** The Matanuska-Susitna Assembly hereby advises the City of Wasilla that the Matanuska-Susitna Borough has no intention to exercise parks/recreational powers nor an intention to acquire title to parks or recreational real properties improved by the efforts of the City of Wasilla subsequent to the Matanuska-Susitna Borough Ordinance No. 93-027, authorizing the City of Wasilla to exercise parks and recreational powers. This ordinance is intended to allow the City of Wasilla to rely upon this statement when proceeding to make capital improvement investments in the City of Wasilla parks properties without the concern that the Borough may thereafter assert ownership interests in such improvements.

Section III. **Effective Date.** This Ordinance No. 96-\_\_\_\_ shall take effect upon adoption by the Borough Assembly.

INTRODUCTION \_\_\_\_\_ PUBLIC HEARING \_\_\_\_\_

DISCUSSION ONLY

ADOPTED by the Matanuska-Susitna Borough Assembly this \_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
Barbara Lacher  
Borough Mayor

DECEMBER 4, 1995

ATTEST:

\_\_\_\_\_  
Borough Clerk

(SEAL)