

INITIATIVE / REFERENDUM PETITION SPONSORSHIP APPLICATION  
CITY AND BOROUGH OF SITKA

**Office of the Municipal Clerk**

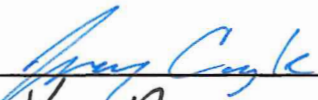

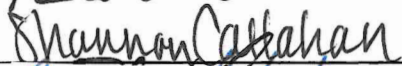
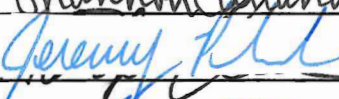



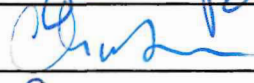
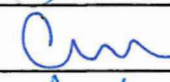

100 Lincoln Street, Suite 306  
Sitka, Alaska 99835  
clerk@cityofsitka.org

Phone: (907) 747-1811  
Fax: (907) 747-7403

ORDINANCE TO BE INITIATED OR REPEALED: (List title here and attach full ordinance)

THE SPONSORS OF THIS APPLICATION ARE: (At least 10 municipal voters must be listed as sponsors)

\*Please provide one of the following identifiers for voter verification: Voter #; Last 4 Numbers of Social Security #; or Birth Date

	Signature	Printed Name	Residence Address	*Identifier
C 1.		Jamey Cagle	[REDACTED]	
C 2.		Kim Mork	[REDACTED]	
C 3.		Shannon Callahan	[REDACTED]	
C 4.		Jeremy Plask	[REDACTED]	
C 5.		Ian Dempster	[REDACTED]	
C 6.		Sherri Blankenship	[REDACTED]	
C 7.		Stefania Potrzewski	[REDACTED]	
C 8.		Christopher McGee	[REDACTED]	
C 9.		Cadance McFraw	[REDACTED]	
C 10.		Noah Rogers	[REDACTED]	

## ALL CORRESPONDENCE RELATING TO THIS APPLICATION/PETITION SHOULD BE SENT TO:

(List name and contact information of prime sponsor and alternate sponsor)

## Prime Sponsor

Chris McGraw

Name

Mailing Address

\*Identifier

Phone

Cell Phone

E-mail Address

## Alternate Sponsor

Jeremy Plank

Name

Mailing Address

\*Identifier

Phone

Cell Phone

E-mail Address

Received in the Municipal Clerk's Office this

11 day of June 20 25

X

Sara Peterson

Municipal Clerk's Office Staff

Certified this \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_.

X

Municipal Clerk

APPLICATION FOR  
CITIZEN INITIATIVE  
FOR  
THE CITY AND BOROUGH OF SITKA, ALASKA  
FOR  
AN ORDINANCE TITLED  
**“ECONOMIC IMPACT STUDY REQUIRED FOR INITIATIVE PROCESS”**

**RECEIVED**  
**JUN 11 2025**  
City & Borough of Sitka-  
Clerk's Office

Pursuant to Section 6.01 of the Home Rule Charter of the City and Borough of Sitka and Section 2.80.040 of the Sitka General Code, the undersigned applicants (collectively, the “Sponsors”) hereby apply for, and request that the Municipal Clerk issue, a petition for a citizen initiative as set forth in this Application.

WHEREAS, recent experience with the citizen initiative process in the City and Borough of Sitka (“Sitka”) demonstrates that ordinances proposed through the process can have significant economic impacts on Sitka, and its municipal functions that serve the citizens of Sitka, as well as on the citizens themselves and their economic interests, whether in owning, investing in, or operating businesses, in their employment, in their property, and in other tangible ways; and

WHEREAS, for the voters of Sitka to express their will in signing or not signing a petition for a proposed citizen initiative and/or in voting for or against a citizen initiative, they must have meaningful access to information about the economic impacts, if any, of the proposed citizen initiative, that is accurate, comprehensive, understandable, transparent, and impartial; and

WHEREAS, it is the intent of the Sponsors to promote fiscal responsibility, transparency, and accountability by requiring that a comprehensive, impartial economic impact study be prepared and made publicly available prior to the solicitation of signatures on a petition for an initiative and prior to the placement of any citizen initiative measure on the ballot, with such analysis evaluating projected costs, potential effects on municipal revenues, employment implications, and the distributional impact across affected populations; and

WHEREAS, by mandating the preparation and disclosure of economic impact studies, this application for a petition for an initiative seeks to safeguard the public interest, prevent unintended financial burdens on Sitka and its residents, and ensure that the voters are equipped with the necessary economic data to cast informed votes on each proposed initiative.

NOW, THEREFORE, the Sponsors propose that the voters of Sitka adopt the following ordinance through the Sitka citizen initiative process:

BE IT ENACTED:

**Section 1. Amendment of SGC 2.80.040.A.** The following provisions shall be added to Section 2.80.040.A of the Sitka General Code immediately following the existing language in such section:

1. Each application for a petition for an initiative shall be accompanied by a written Economic Impact Study Report (“EISR”), dated no more than thirty (30) days prior to the date such application is submitted and signed by the author of the EISR (the “Author”), which meets the requirements set forth in this Subsection A of SGC 2.80.040. An EISR may have more than one Author.

2. For purposes hereof, an EISR shall be a written report delivering detailed, accurate, comprehensive, and impartial analysis, understandable to the average Sitka voter, of the projected economic impact(s) that the proposed initiative, if adopted by the voters, would have on Sitka municipal revenues and expenditures and Sitka citizen employment, business activity, investment, and economic distribution across demographic and geographic groups.

3. Without limiting the foregoing, the EISR shall address each of the following in detail (based on an assumption that the proposed initiative is adopted), along with all other expected economic impacts unique to the proposed initiative:

a. Executive Summary. A short, narrative introduction summarizing, in plain language, the key findings and conclusions set forth in the EISR, to be accompanied by a one-page visual summary presenting the foregoing findings and conclusions using charts and other graphics.

b. Fiscal Impact. An estimate of the projected costs and savings to the City and Borough of Sitka over one-, five-, and ten-year periods, including any new expenditure(s) and reduction(s) in services. Such estimates and analysis must include assessment of implementation, enforcement, and administrative costs; operational or service delivery impacts; costs related to capital improvements and infrastructure; and any changes in pension, labor, or contractual obligations.

c. Revenue Analysis. A projection of the measure’s anticipated impact on Sitka’s municipal revenues, including taxes, fees, grants, and other income sources. Such projection and analysis must include assessment of anticipated changes in municipal taxes and other fund revenues; fees, licenses, permits, and service charges; intergovernmental transfer, grants, and other state or federal aid; and creation or loss of funding streams directly tied to the proposed initiative.

d. Employment Impact. A projection of the measure’s anticipated impact on employment in Sitka, including municipal jobs and the non-municipal labor market. Such projection and analysis must include assessment of net gain or loss of municipal jobs; the effects on the private sector job market in Sitka; wage or benefits implications; and any anticipated workforce training or reallocation requirements.



e. Private Sector Impact. An assessment of how the measure will affect private businesses, economic development, and investment in Sitka. Such assessment must evaluate the effects the initiative, if adopted, would have on business operations, compliance costs, and economic competitiveness; investment or development activity within the City and Borough of Sitka; and tourism, fisheries, healthcare, education, and other key sectors of the local economy.

f. Economic Distribution. An analysis of how economic benefits and burdens of the measure will likely be distributed among different income groups, geographic areas, and demographic populations within Sitka. Such analysis must include assessment of the economic effects on households of different income levels; distinct demographic and geographic communities within the City and Borough of Sitka; and disadvantaged, rural, and underrepresented populations.

g. Timeframe Analysis. Each of the foregoing analyses must include projections for economic impacts over the timeframes of up to the first year following adoption of the initiative (immediate impact), from one to five years following adoption (medium term), and from five to ten years following adoption (long term).

h. Assumptions and Methodology. A description of the assumptions used, sources of data, and analytical methods and models employed in preparing the EISR.

i. Data. Summaries of key data, in numeric or graphic presentation, on which the analyses were performed and the findings and conclusions made.

j. Certification. A signed statement by the Author certifying that the Author meets the requirements set forth in paragraph 4 below. In the case of an Author which is an entity, an individual who is an authorized signor for the Author must make the foregoing certification. In the event there is more than one Author, each Author must make the foregoing certification.

4. Each Author must meet each of the following criteria; in the case of an Author which is an entity, one or more of its principals, supervisors, or reviewers with an active role in the preparation of the EISR must meet each criterion:

a. Education: hold a minimum of a master's degree in economics, public policy, finance, or a related field from an accredited institution, along with an advanced certification in economic modeling and analysis;

b. Experience: have at least five years of professional experience in conducting economic impact studies, economic modeling, or related economic research, with demonstrated experience in analyzing public policy and legislation in southeast Alaska; and

c. Independence: be independent of, and have no familial, financial, or other affiliation with, any sponsor of the proposed initiative.

5. All expenses associated with the preparation and delivery of an EISR shall be borne by the sponsor(s) of the proposed initiative.

6. The municipal clerk shall ensure compliance with the foregoing requirements and shall reject applications for a petition for an initiative that are not accompanied by an EISR that satisfies each of the foregoing requirements, even if the application meets all other requirements for issuance of the petition.

**Section 2. Amendment of SGC 2.80.040.B.** SGC 2.80.040.B shall be amended by deleting the period (“.”) at the end of paragraph 8 and replacing it with “; and”; and the following provision shall be added to Section 2.80.040.B immediately after paragraph 8 as so amended:

9. State that (a) the municipal clerk is in possession of a report addressing the economic impact that the initiative would have on City and Borough of Sitka if the proposed initiative is adopted by the voters of Sitka, and (b) the report is available for review and copying at the municipal clerk’s office by any Sitka-registered voter upon written request delivered to the municipal clerk; and

10. Include in the petition the executive summary and its accompanying one-page visual summary set forth in the EISR submitted with the application for the petition.

**Section 3. Amendment of a New Subsection F to SGC 2.80.040.** SGC 2.80.040 shall be amended by adding the following as a new subsection F:

F. *Severability.* It is the intent of the voters and the City and Borough of Sitka that the provisions of SGC 2.80.040 be enforced to the fullest extent permitted by law, and that, in the event of partial invalidity, the Section’s core purposes and policies shall continue to be implemented. If any provision of SGC 2.80.040 or the application thereof to any person, entity, or circumstance is found to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity of the remaining provisions of this Section. The provisions of this Section are severable, and the remainder of the Section shall remain in full force and effect as if such invalid provision or application had never been included.

**Section 4. Effective Date.** This initiative and the amendments made hereunder shall be effective on the thirtieth (30th) calendar day following certification of the election where the voters approved this initiative.

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INITIATIVE / REFERENDUM PETITION SPONSORSHIP APPLICATION  
CITY AND BOROUGH OF SITKA

**Office of the Municipal Clerk**

100 Lincoln Street, Suite 306  
Sitka, Alaska 99835  
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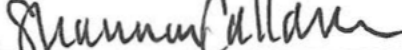
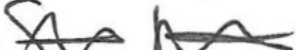


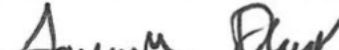


JUL - 3 2025

City & Borough of Sitka-  
Clerk's Office

ORDINANCE TO BE INITIATED OR REPEALED: (List title here and attach full ordinance)

THE SPONSORS OF THIS APPLICATION ARE: (At least 10 municipal voters must be listed as sponsors)

\*Please provide one of the following identifiers for voter verification: Voter #; Last 4 Numbers of Social Security #; or Birth Date

Signature	Printed Name	Residence Address	*Identifier
C✓ 1. 	Chris McGraw	[REDACTED]	[REDACTED]
C✓ 2. 	Jeremy Plank	[REDACTED]	[REDACTED]
C✓ 3. 	Kim Monk	[REDACTED]	[REDACTED]
C✓ 4. 	Shannon Callahan	[REDACTED]	[REDACTED]
C✓ 5. 	Stefania Potrzuski	[REDACTED]	[REDACTED]
C✓ 6. 	Noah Rosen	[REDACTED]	[REDACTED]
C✓ 7. 	Paul Kortemeier	[REDACTED]	[REDACTED]
C✓ 8. 	Savannah Plank	[REDACTED]	[REDACTED]
C✓ 9. 	Erin Dempster	[REDACTED]	[REDACTED]
C✓ 10. 	[unclear]	[REDACTED]	[REDACTED]

**ALL CORRESPONDENCE RELATING TO THIS APPLICATION/PETITION SHOULD BE SENT TO:**

(List name and contact information of prime sponsor and alternate sponsor)

**Prime Sponsor**Chris McGraw

Name

Mailing Address

Sitka, AK 99835

\*Identifier

Phone

Cell Phone

E-mail Address

**Alternate Sponsor**Jeremy Plank

Name

Mailing Address

Sitka, AK 99835

\*Identifier

Phone

Cell Phone

E-mail Address

Received in the Municipal Clerk's Office this

3 day of July 2025.

X

Sara Peterson  
Municipal Clerk's Office Staff

Certified this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

X

\_\_\_\_\_  
Municipal Clerk

RECEIVED

JUL - 3 2025

City & Borough of Sitka-  
Clerk's Office

APPLICATION FOR  
CITIZEN INITIATIVE  
FOR  
THE CITY AND BOROUGH OF SITKA, ALASKA  
FOR  
AN ORDINANCE TITLED  
**“ECONOMIC IMPACT STUDY REQUIRED FOR INITIATIVE PROCESS”**

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Pursuant to Section 6.01 of the Home Rule Charter of the City and Borough of Sitka and Section 2.80.040 of the Sitka General Code, the undersigned applicants (collectively, the “Sponsors”) hereby apply for, and request that the Municipal Clerk issue, a petition for a citizen initiative as set forth in this Application.

WHEREAS, ordinances proposed through the citizen initiative process in the City and Borough of Sitka (“Sitka”) can have significant economic impacts on Sitka, and its municipal functions that serve the citizens of Sitka, as well as on the citizens themselves and their economic interests, whether in owning, investing in, or operating businesses, in their employment, in their property, and in other tangible ways; and

WHEREAS, for the voters of Sitka to express their will in signing or not signing a petition for a proposed citizen initiative and/or in voting for or against a citizen initiative, they must have meaningful access to information about the economic impacts, if any, of the proposed citizen initiative, that is accurate, comprehensive, understandable, transparent, and impartial; and

WHEREAS, it is the intent of the Sponsors to promote fiscal responsibility, transparency, and accountability by requiring that a comprehensive, impartial economic impact study be prepared and made publicly available prior to the solicitation of signatures on a petition for an initiative and prior to the placement of any citizen initiative measure on the ballot, with such analysis evaluating projected costs, potential effects on municipal revenues, employment implications, and the distributional impact across affected populations; and

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2. For purposes hereof, an EISR shall be a written report delivering detailed, accurate, comprehensive, and impartial analysis, understandable to the average Sitka voter, of the projected economic impact(s) that the proposed initiative, if adopted by the voters, would have on Sitka municipal revenues and expenditures and Sitka citizen employment, business activity, investment, and economic distribution across demographic and geographic groups.

3. Without limiting the foregoing, the EISR shall address each of the following in detail (based on an assumption that the proposed initiative is adopted), along with all other expected economic impacts unique to the proposed initiative:

a. Executive Summary. A short, narrative introduction summarizing, in plain language, the key findings and conclusions set forth in the EISR, to be accompanied by a one-page visual summary presenting the foregoing findings and conclusions using charts and other graphics.

b. Fiscal Impact. An estimate of the projected costs and savings to the City and Borough of Sitka over one-, five-, and ten-year periods, including any new expenditure(s) and reduction(s) in services. Such estimates and analysis must include assessment of implementation, enforcement, and administrative costs; operational or service delivery impacts; costs related to capital improvements and infrastructure; and any changes in pension, labor, or contractual obligations.

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f. Economic Distribution. An analysis of how economic benefits and burdens of the measure will likely be distributed among different income groups, geographic areas, and demographic populations within Sitka. Such analysis must include assessment of the economic effects on households of different income levels; distinct demographic and geographic communities within the City and Borough of Sitka; and disadvantaged, rural, and underrepresented populations.

g. Timeframe Analysis. Each of the foregoing analyses must include projections for economic impacts over the timeframes of up to the first year following adoption of the initiative (immediate impact), from one to five years following adoption (medium term), and from five to ten years following adoption (long term).

h. Assumptions and Methodology. A description of the assumptions used, sources of data, and analytical methods and models employed in preparing the EISR.

i. Data. Summaries of key data, in numeric or graphic presentation, on which the analyses were performed and the findings and conclusions made.

j. Certification. A signed statement by the Author certifying that the Author meets the requirements set forth in paragraph 4 below. In the case of an Author which is an entity, an individual who is an authorized signor for the Author must make the foregoing certification. In the event there is more than one Author, each Author must make the foregoing certification.

4. Each Author must meet each of the following criteria; in the case of an Author which is an entity, one or more of its principals, supervisors, or reviewers with an active role in the preparation of the EISR must meet each criterion:

a. Education: hold a minimum of a master's degree in economics, public policy, finance, or a related field from an accredited institution, along with an advanced certification in economic modeling and analysis;

b. Experience: have at least five years of professional experience in conducting economic impact studies, economic modeling, or related economic research, with demonstrated experience in analyzing public policy and legislation in southeast Alaska; and

c. Independence: be independent of, and have no familial, financial, or other affiliation with, any sponsor of the proposed initiative; provided that the

engagement of the Author by such sponsor and the incurrence and payment of fees and costs thereunder shall not create a financial or other affiliation for purposes of this sentence.

5. All expenses associated with the preparation and delivery of an EISR shall be borne by the sponsor(s) of the proposed initiative.

6. The municipal clerk shall ensure compliance with the foregoing requirements and shall reject applications for a petition for an initiative that are not accompanied by an EISR that satisfies each of the foregoing requirements, even if the application meets all other requirements for issuance of the petition.

**Section 2. Amendment of SGC 2.80.040.B.** SGC 2.80.040.B shall be amended by deleting the period (“.”) at the end of paragraph 8 and replacing it with “; and”; and the following provision shall be added to Section 2.80.040.B immediately after paragraph 8 as so amended:

9. State that (a) the municipal clerk is in possession of a report addressing the economic impact that the initiative would have on City and Borough of Sitka if the proposed initiative is adopted by the voters of Sitka, and (b) the report is available for inspection and copying at the municipal clerk’s office pursuant to, and in accordance with, the Alaska Public Records Act, AS 40.25.100 – AS 40.25.295, and SGC 1.20.010 – SGC 1.20.110; and

10. Attach to the petition a copy of the EISR.

**Section 3. Amendment of a New Subsection F to SGC 2.80.040.** SGC 2.80.040 shall be amended by adding the following as a new subsection F:

F. *Severability.* It is the intent of the voters and the City and Borough of Sitka that the provisions of SGC 2.80.040 be enforced to the fullest extent permitted by law, and that, in the event of partial invalidity, the Section’s core purposes and policies shall continue to be implemented. If any provision of SGC 2.80.040 or the application thereof to any person, entity, or circumstance is found to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity of the remaining provisions of this Section. The provisions of this Section are severable, and the remainder of the Section shall remain in full force and effect as if such invalid provision or application had never been included.

**Section 4. Effective Date.** This initiative and the amendments made hereunder shall be effective on the thirtieth (30th) calendar day following certification of the election where the voters approved this initiative.

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This Application is respectfully submitted by the following Sponsors, each of whom is a qualified voter and resident of the City and Borough of Sitka, Alaska, and each hereby states the they constitute the Sponsorship Committee for the above proposed initiative and will be responsible for circulating petition booklets and obtaining vote signatures.

All notices should be mailed to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

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# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## MUNICIPAL CLERK'S OFFICE

100 Lincoln Street | Sitka, Alaska 99835

[www.cityofsitka.com](http://www.cityofsitka.com)

[clerk@cityofsitka.org](mailto:clerk@cityofsitka.org)

907-747-1811

June 27, 2025

**VIA EMAIL ONLY**

Chris McGraw

[REDACTED]

Sitka, AK 99835

[REDACTED]

Jeremy Plank

[REDACTED]

Sitka, AK 99835

[REDACTED]

Re: Application for an Initiative Petition Economic Impact Study Required for Initiative Process

Dear Mr. McGraw and Mr. Plank:

Your initiative petition was filed in person, with the Municipal Clerk's Office, on June 11, 2025. That application seeks to call for an initiative petition requiring each application for an initiative petition be accompanied by a written Economic Impact Study Report.

Find attached the Notice of Determination for your application for an initiative petition.

Please contact me if you have questions. Thank you.

Sincerely,

Sara Peterson, MMC  
Municipal Clerk

Cc: Michael Gatti, of Counsel JDO Law  
Taylor McMahon, Attorney JDO Law  
John Leach, Municipal Administrator  
Josh Branthoover, Acting Municipal Administrator  
Mayor and Assembly Members





# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## NOTICE OF DETERMINATION

### Application for an Initiative Petition Economic Impact Study Required for Initiative Process

I, the undersigned, the duly chosen, qualified Municipal Clerk of the City and Borough of Sitka, Alaska, and keeper of the records of the Assembly, **DO HEREBY CERTIFY:**

That an application for an initiative petition was filed with the Municipal Clerk on June 11, 2025;

That said application for an initiative petition seeks to call for an initiative petition requiring each application for an initiative petition be accompanied by a written Economic Impact Study Report;

That said application for an initiative petition contains the signatures and residence addresses of 10 registered City and Borough of Sitka voters who will sponsor the petition;

That said application for an initiative petition contains the name and address of the prime sponsor: Chris McGraw, 4311 Halibut Point Road, Sitka, Alaska; and the name and address of the alternate sponsor: Jeremy Plank, 303 Islander Drive, Sitka, Alaska;

That said application for an initiative petition contains the full text of the ordinance to be initiated;

That said ordinance is legally insufficient for the reason stated in the attached memorandum from Attorneys Michael Gatti and Taylor McMahon, dated June 27, 2025, which is hereby incorporated by reference.

**THEREFORE**, I find that the application for an initiative petition filed on June 11, 2025 does not meet the requirements for an initiative petition and an initiative petition will not be prepared.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the City and Borough of Sitka this 27<sup>th</sup> day of June, 2025.

---

Sara Peterson, MMC  
Municipal Clerk

## MEMORANDUM

FROM: Michael Gatti  
Taylor McMahon  
TO: Sara Peterson, MMC  
Municipal Clerk  
DATE: June 27, 2025  
RE: Application for an Initiative Petition Regarding Financial Impact Statements

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**I. INTRODUCTION**

We have been asked by the City and Borough of Sitka (“City” or “Sitka”) to provide a legal opinion on an Application for an Initiative Petition that would require economic impact statements to be filed along with each application for an initiative petition (“Application”). The Application was filed by Chris McGraw, owner of the Sitka Sound Cruise Terminal, and Jeremy Plank, part owner of Allen Marine Tours,<sup>1</sup> and is in apparent response to the four initiative applications to limit cruise ship visitation that have been filed over the past two years.<sup>2</sup> The fourth of these initiatives was placed on the ballot and rejected by over 70% of the voters. Application sponsor McGraw opposed that petition through the group Safeguard Sitka’s Future.

The instant Application seeks to amend the provisions of Sitka General Code (“SGC”) Section 2.80.040 by adding additional language to subsection (A) that would require a written Economic Impact Study Report (EISR”) to be filed with each application for a petition for an initiative.<sup>3</sup> The Application proposes an ordinance titled “Economic Impact Study Required for Initiative Process.” It seeks to amend SGC 2.80.040 by adding additional language to subsection (A) that would require each application for an initiative petition to be accompanied by an EISR.

The EISR requirements proposed are quite detailed. It must be issued within 30 days of the date of the application and must “address each of the following in detail...along with all other expected economic impacts unique to the proposed initiative”:

- fiscal impacts over a one, five, and ten year time period;
- revenue analysis, analyzing the measures impact on municipal revenues, including taxes, fees, grants, and other income;
- employment impacts of the measure, in both the public and private sector;

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<sup>1</sup> Mr. Plank is a 35% owner of AM Owner Group, Inc., a holding company for Allen Marine Tours and other, related entities.

<sup>2</sup> The Application’s first “WHEREAS” clause references that “recent experience with the citizen initiative process in the City and Borough of Sitka demonstrates that ordinances proposed through the process can have significant economic impacts on Sitka.”

<sup>3</sup> Applications for a petition for a referendum would not require an EISR. SGC 2.80.040.A(1).

- private sector impact addressing how the measure will affect private businesses, economic development, and investment in Sitka;
- economic distribution impact as to how the economic benefits and burdens of the measure will be distributed among different income groups, geographic areas, and demographic populations within Sitka; and
- timeframe analysis for each of the above addressing the immediate, medium term, and long-term impacts of the proposed measure.<sup>4</sup>

The EISR must be written by an “Author” meeting certain criteria, including holding a master’s degree in economics, public policy, finance, or related field and an advanced certification in economic modeling and analysis.<sup>5</sup> The EISR’s Author must be independent of the initiative’s sponsor and have no financial affiliation with them. However, the proposed ordinance does not address whether procuring and paying for the EISR by the initiative applicant constitutes a financial affiliation.<sup>6</sup>

Applications that are not submitted with an EISR meeting the requirements in the proposed code section are to be rejected by the municipal clerk.<sup>7</sup> The actual EISR is not circulated with the petition. Rather, only the executive summary and “one-page visual summary” are included with the petition.<sup>8</sup> The EISR remains with the municipal clerk, available for inspection upon the written request of a Sitka-registered voter.<sup>9</sup> There are no hardship provisions in the proposed ordinance should the ballot applicant be unable to comply with the requirements and there is no provision to challenge the information in the EISR.

## II. BACKGROUND INFORMATION

Alaska is one of twenty-six states with an initiative and/or referendum process. Of those twenty-six states, eighteen require an economic analysis or fiscal impact statement for ballot initiatives, including Alaska.<sup>10</sup> This proposed ordinance stands apart from those eighteen states, however, through (1) the level of information required in the EISR and (2) the party responsible for preparing it as, in the eighteen states requiring some form of economic summary, such summary statements are prepared by the government, not the initiative sponsor.

In Alaska, AS 15.45.090(a)(4) directs the lieutenant governor to include, with the initiative petitions prepared for circulation, “an estimate of the cost to the state of implementing

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<sup>4</sup> SGC 2.80.040.A(3).

<sup>5</sup> *Id.* subsection A(4).

<sup>6</sup> *Id.* subsection A(4)(c).

<sup>7</sup> *Id.* subsection A(6).

<sup>8</sup> SGC 2.80.040.B(10).

<sup>9</sup> *Id.* subsection (B)(9)-(10).

<sup>10</sup> [https://ballotpedia.org/Fiscal\\_impact\\_statement](https://ballotpedia.org/Fiscal_impact_statement).

the proposed law.” The Alaska Supreme Court has one time considered this statutory section.<sup>11</sup> That case, *Pebble Ltd. Partnership*, concerned an initiative to regulate large scale metallic mineral mines.<sup>12</sup> Once the sponsors of that initiative gained the required signatures, the petition was submitted to the lieutenant governor, who prepared a cost statement for the initiative.<sup>13</sup> The cost statement simply said that because “this initiative appears to propose language that does not differ significantly from existing water quality standards, there will not be significant fiscal impact – either revenues or costs – as a result of this initiative.”<sup>14</sup> On appeal, those opposed to the initiative asserted that the cost statement was defective because it did not consider the cost of implementing regulations related to the measure or the cost of defending litigation related to the same.<sup>15</sup>

The Alaska Supreme Court disagreed, stating that while there was no Alaska case law on point, cases from other states indicated that a review of the cost statement should be “deferential.”<sup>16</sup> Further, because the statute only requires an “estimate” of the costs, “the cost statement need not document every conceivable cost associated with the implementation of the law.”<sup>17</sup> Additionally, as concerns about potential litigation were speculative, it was “impractical” to provide an estimate of such costs in the cost statement.”<sup>18</sup> Because the cost statement at issue contained an “accurate estimate of the likely insignificant costs” the lower court’s determination that it was not defective was affirmed.<sup>19</sup>

The proposed ordinance in this instance is quite removed from the requirements under AS 15.45.090(a)(4) as it requires the initiative sponsor to document a broad range of potential costs and scenarios related to the initiative. The Application asserts that this is necessary so that Sitkans can have “meaningful access to information about the economic impacts, if any, of the proposed citizen initiative.” However, most of the information in the EISR will not be available to the public unless a Sitka-registered voter makes a written request.<sup>20</sup>

The proposed ordinance places a barrier to the initiative process.<sup>21</sup> It is easy to envision that the well-funded and commercially sophisticated will be able to provide these detailed EISRs, which are likely also costly to obtain, with their initiative applications and others would find this requirement too difficult or too costly to comply with. The proposed ordinance is also

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<sup>11</sup> *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064 (Alaska 2009).

<sup>12</sup> *Id.* at 1068.

<sup>13</sup> *Id.* at 1069.

<sup>14</sup> *Id.* at 1071 (internal citations omitted).

<sup>15</sup> *Id.* at 1084.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 1085.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> SGC 2.80.040.B(9)-(10).

<sup>21</sup> A burden is minimal when it “in no way” limits access to the ballot. *Schmitt v. LaRose*, 933 F.3d 628, 641 (6th Cir. 2019).

troublesome because it requires the EISR Author to have access to a vast amount of data, both public and private, to be able to comply with the EISR requirements that may simply be unobtainable. In actuality, multiple Authors may be required to adequately address areas within their expertise (e.g. public vs. private modeling). The question at this juncture is (1) whether this barrier to the initiative process is unconstitutional; (2) whether the proposed ordinance is enforceable as a matter of law; and (3) whether the proposed ordinance is confusing, misleading, or incomplete.

### III. LEGAL FRAMEWORK

Article VI, Section 6.01 of Sitka's Home Rule Charter provides that "[t]he powers and rights of the initiative and referendum are reserved to the people of the municipality as prescribed by law." The Assembly, by ordinance, is tasked with the responsibility of regulating initiative procedures.<sup>22</sup>

Under SGC 2.80.040, a petition for an initiative or referendum shall:

1. Embrace only a single comprehensive subject; and
2. Set out fully the ordinance or resolution sought by the petition; and
3. State upon the petition, when circulated, the date of first circulation of the petition, the name of the petitioner and where he/she can be reached; and
4. Contain the statements, when circulated, that the signatures on the petition must be secured within ninety days from the date of the first circulation and that all signators are qualified voters in the municipality; and
5. Have the required number of signatures as set out in the Charter, spaces for each signature, the printed name of each signer, the date each signature is affixed, the residence and mailing addresses, and one of the following identifiers: Voter ID number, Social security number, or birth date of each signer; and
6. A statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures are those of the persons whose names they purport to be; and
7. Signers must be qualified voters in the municipality; and
8. Space for indicating the total number of signatures on the petition.

Alaska Statutes also address the initiative process at the municipal level. AS 29.26.100 reserves to residents of municipalities the right of local initiative and referendum. Under AS 29.26.110(a), an initiative or referendum is proposed by filing an application with the municipal clerk. The municipal clerk shall then certify the application if she (1) finds it is in the proper

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<sup>22</sup> Sitka Home Rule Charter, Article VI, Section 6.01.



form and (2) that the matter:

1. Is not restricted by AS 29.26.100;
2. Includes only a single subject;
3. Relates to a legislative rather than to an administrative matter; and
4. Would be enforceable as a matter of law.<sup>23</sup>

For purposes of this analysis, we assume that you will review the form of this Application. The following discussion relates to items 1-4 above.

#### **IV. DISCUSSION**

In Alaska, voter initiatives are broadly construed to preserve them whenever possible. Courts have a duty to give careful consideration to questions involving whether a constitutional or statutory limitation prohibits a particular initiative proposal on subject matter grounds.”<sup>24</sup> The role of a municipal clerk in reviewing an initiative application is to determine whether any of the subject matter limitations on the use of the initiative process apply.<sup>25</sup>

##### **a. The proposed ordinance is not restricted by AS 29.26.100**

The restriction imposed by AS 29.26.100 incorporates the subject matters restrictions of Art. XI § 7 of the Alaska Constitution, which provides that:

[t]he initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

Under AS 29.26.100. “An initiative proposes to make an appropriation if it ‘would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that it is executable, mandatory, and reasonably definite with no further legislative action.’”<sup>26</sup>

The Alaska Supreme Court has approved of a two-step inquiry to determine if there is an appropriation: first, the court should “determine whether the initiative deals with a public

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<sup>23</sup> AS 29.26.110(a).

<sup>24</sup> *Swetsof v. Philemonoff*, 203 P.3d 471 (Alaska 2009).

<sup>25</sup> *Alaska Action Center, Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992-93 (Alaska 2004).

<sup>26</sup> *Id.* at 993 (2004) (citing *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991)).

asset.”<sup>27</sup> Second, the Court should determine whether the initiative “would appropriate that asset.”<sup>28</sup> There are two reasons for this prohibition:

First, the provision ‘prevents an electoral majority from bestowing state assets on itself.’ This concern comes into play when the initiative would enact a give-away, forcing the state or a municipality to transfer assets into private hands...Second, the limitation on initiatives ‘preserves to the legislature the power to make decisions concerning the allocations of state assets.’ This ‘ensures that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs.’ This concern is implicated in cases in which the initiative ‘designates the use of state assets,’ even if the assets remain in state ownership.<sup>29</sup>

In the present case, the Application, does not violate this provision. It places virtually no burden on the government, other than that the municipal clerk should reject applications not containing an EISR that satisfies “each of the foregoing requirements” under proposed subsection (A)(6). Rather, its impact is focused on those individuals who avail themselves of the initiative process.

**b. The proposed ordinance includes only a single subject.**

This proposed ordinance pertains to a single subject, the requirement that EISRs must be included with applications for a petition for an initiative. Therefore, the proposed ordinance satisfies AS 29.26.110(a)(2).

**c. The proposed ordinance is legislative, not administrative.**

Under AS 29.26.110(a)(3), an initiative must relate to a legislative, not an administrative matter. The Alaska Supreme Court has approved of using the following three guidelines to determine whether a proposed ordinance is legislative or administrative:<sup>30</sup>

1. An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.
2. Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative.

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<sup>27</sup> *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418, 422 (Alaska 2006).

<sup>28</sup> *Id.* at 423.

<sup>29</sup> *Alaska Action Center* at 993-94 (internal citations omitted).

<sup>30</sup> *Swetsof* at 479.

3. Decisions which require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of a policy.<sup>31</sup>

In the present case, the proposed ordinance is likely legislative, not administrative. First, it makes a new law placing additional requirements on those citizens wishing to submit an application for an initiative petition. Second, it declares a public purpose of providing “meaningful access to information about the economic impacts, if any, of the proposed citizen initiative.” As to the third consideration, neither specialized training nor intimate knowledge of the City’s fiscal affairs will be required for the municipal clerk to determine whether the EISR complies with the requirements of the proposed ordinance. Rather, it is more likely that the municipal clerk would have to create a checklist for compliance against which EISRs are review. Based on a review of the *Swetzof* guidelines, the proposed ordinance is likely legislative.

**d. The proposed ordinance is not enforceable as a matter of law because it is not compliance with public records laws.**

AS 29.26.110(a)(4) prohibits ordinances that are unenforceable as a matter of law. While procedural and technical requirements are relaxed for citizen initiatives, “confusing or misleading petitions frustrate the ability of voters to express their will.”<sup>32</sup> Additionally, while most constitutional challenges are not ripe until after voter enactment, proposed initiatives that are clearly unconstitutional or illegal should not be certified.<sup>33</sup> In this case, the proposed initiative would require the municipal clerk to violate public records laws and is thus unenforceable. The proposed ordinance also may invite constitutional challenges and has provisions that could be more complete, but neither of those issues justify rejection at this point. The public records problem does.

**i. This proposed ordinance may implicate protected constitutional rights, but that should be determined by a Court.**

States are not required to create an initiative procedure. There is no federal right to initiative. But “if [a state] creates such a procedure, the state cannot place restrictions on its use

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<sup>31</sup> The fourth guideline is that “no one act of a governing body is likely to be solely administrative or legislative, and the operation of the initiative and referendum statute is restricted to measures which are quite clearly and fully legislative and not principally executive or administrative. 2003 P.3d at 477. The Court elected not to follow this guideline, noting that it ran counter to the rule of construction that proposed initiatives should be construed liberally whenever possible. *Id.* at 479.

<sup>32</sup> *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage*, 129 P.3d 898, 902 (Alaska 2006).

<sup>33</sup> *Carmony v. McKechnie*, 217 P.3d 818, 819-20 (Alaska 2009).

that violate the federal Constitution.”<sup>34</sup>

It is well-settled in Alaska that restrictions on petition circulation implicate “core political speech” based on the fact that “circulating a petition necessarily involves ‘both the expression of a desire for a political change and a discussion of the merits of the proposed change.’”<sup>35</sup> Such burdens on core political speech are subject to exacting scrutiny by the Court, requiring that the burden be “narrowly tailored to serve a compelling state interest.”<sup>36</sup> The Alaska Supreme Court affirmed in *Resource Development Council* that “speech relating to ballot initiatives is entirely protected” and First Amendment protection for the exchange of political ideas is “at its zenith.”<sup>37</sup>

The proposed initiative in this case is different because it concerns requirements for initiative applications, prior to the time when the initiative would be circulated and any burdens on that circulation would be subject to this heightened scrutiny. Alaska has not addressed this issue. Most of the Circuit Courts that have have concluded that a state may impose content-neutral, non-discriminatory requirements on the initiative process. However, the Ninth Circuit has held that the ballot initiative process implicates the fundamental right to vote.

On the one hand, the Eleventh Circuit has held that state initiative regulations do not burden “core political speech.” If such regulations are content neutral and do not disparately impact particular political viewpoints, they are not subject to strict scrutiny under the First Amendment.<sup>38</sup> In *Biddulph v. Mortham*, a citizen challenged Florida’s initiative process, which requires that, after signatures are collected, the secretary of state must submit the initiative to the attorney general, who must petition Florida’s Supreme Court for an advisory opinion regarding the compliance of the text with the single subject requirement and whether the ballot title or summary is ambiguous. If the Florida Supreme Court finds that the petition is not in compliance with Florida’s requirements, it will remove the initiative from the ballot.<sup>39</sup> Biddulph, an initiative sponsor who had his initiative removed from the ballot, argued that Florida’s process was unnecessarily burdensome, costly, and time consuming.<sup>40</sup> He claimed that Florida had to narrowly tailor any restrictions it imposed on the initiative petition process and that the restrictions must serve a compelling state interest.<sup>41</sup> The Eleventh Circuit disagreed, stating that

A state’s broad discretion in administering its initiative process is subject to strict scrutiny only in certain narrow circumstances. We obviously

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<sup>34</sup> *Thompson v. Dewine*, 959 F.3d 804, 808 (6th Cir. 2020) (quoting *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 295 (6th Cir. 1993)).

<sup>35</sup> *Resource Development Council for Alaska, Inc. v. Vote Yes for Alaska’s Fair Share*, 494 P.3d 541, 548 (Alaska 2021) (quoting *Meyer v. Grant*, 486 U.S. 414, 421 (1988)).

<sup>36</sup> *Id.* at 551.

<sup>37</sup> *Id.*

<sup>38</sup> *Biddulph v. Mortham*, 89 F.3d 1491 (11th Cir. 1996).

<sup>39</sup> *Id.* at 1494.

<sup>40</sup> *Id.* at 1496.

<sup>41</sup> *Id.*

would be concerned about free speech and freedom of association rights were a state to enact initiative regulations that were content based or had a disparate impact on certain political viewpoints. We also would be troubled were a state to apply facially neutral regulations in a discriminatory manner...nor, as *Meyer* held, could a state impermissibly burden the free exchange of ideas about the object of an initiative proposal. Most restrictions a state might impose on its initiative process would not implicate First Amendment concerns.<sup>42</sup>

As to Biddulph's claims that Florida's process was burdensome because it was unpredictable and costly, the Court concluded that "the Constitution does not require Florida to structure its initiative process in the most efficient, user-friendly way possible. The facts and arguments presented here do not require us to apply strict First Amendment scrutiny to Florida's initiative process."<sup>43</sup>

In the Fourth Circuit case of *Kendall v. Balcerzak*,<sup>44</sup> Kendall signed a petition to obtain a referendum on a zoning ordinance. The Board of Elections invalidated 87% of the signatures gathered for failure of the signatures to comply with the requirements of the Maryland Code.<sup>45</sup> On appeal, the Fourth Circuit concluded that the case did not implicate the right to vote.<sup>46</sup> However, "where a state affords its citizens the privilege to pursue ballot initiatives or referenda, those privileges do enjoy some measure of constitutional protection."<sup>47</sup> It held that "a State may establish non-discriminatory and content-neutral limitations on any referendum or initiative procedure."<sup>48</sup> If the restrictions are content-neutral and nondiscriminatory, "the State's important regulatory interests are generally sufficient to justify the restrictions. We do not use a higher level of scrutiny as we do in some First Amendment cases."<sup>49</sup>

The Sixth Circuit, in *Taxpayers United for Assessment Cuts v. Austin*, likewise held that "[b]ecause the right to initiate legislation is a wholly state-created right, we believe that the state may constitutionally place nondiscriminatory, content-neutral limitations on the plaintiffs' ability to initiate legislation."<sup>50</sup> Similar to *Kendall*, *Taxpayers United* concerned an initiative that was not certified due to the fact that the signatures on the petition did not comply with the statutory requirements.<sup>51</sup> The Sixth Circuit concluded that Michigan's procedures concerning signature validation were content neutral, nondiscriminatory, and reasonably related to the purpose of

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<sup>42</sup> *Id.* at 1500.

<sup>43</sup> *Id.* at 1500-1501.

<sup>44</sup> 650 F.3d 515 (4th Cir. 2011).

<sup>45</sup> *Id.* at 519-20.

<sup>46</sup> *Id.* at 524.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 525.

<sup>50</sup> *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 297 (6th Cir. 1993).

<sup>51</sup> *Id.* at 293.



administering honest and fair initiative procedures.<sup>52</sup> Thus, the First Amendment claims were without merit.<sup>53</sup>

However, the approach in the Ninth Circuit is different. In another case concerning the signature validation process, the Ninth Circuit held that “state regulations on the initiative and referendum process implicate the fundamental right to vote.”<sup>54</sup> This is due, in part, to the principal that when the powers of initiative and referendum are reserved to the people, they serve as a “basic instrument of democratic government.”<sup>55</sup> The Ninth Circuit applied the “flexible” standard under *Burdick v. Takashi*, to analyze the challenged signature validation process, rather than strict scrutiny.<sup>56</sup> Ultimately, the Court concluded that the signature validation process was only a minimal burden on the right to vote justified by Oregon’s interests in detecting fraud and having orderly elections.<sup>57</sup>

The analysis under the *Burdick* case that the Ninth Circuit referred to in *Lemons* is commonly referred to as the *Anderson Burdick* framework.<sup>58</sup> As set forth by the Ninth Circuit:

Government must play an active role in structuring elections, but any election system inevitably affects – at least to some degree – the individual’s right to vote and his right to associate with others for political ends. Thus, the Supreme court has developed a balancing test to resolve the tension between a candidate’s first Amendment rights and the state’s interest in preserving the fairness and integrity of the voting process. This is a sliding scale test, where the more severe the burden, the more compelling the state’s interest must be, such that a state may justify election regulations imposing a lesser burden by demonstrating the state has important regulatory interest. A regulation imposing severe restrictions, at the far end of the scale, is subject to strict scrutiny.<sup>59</sup>

While the Ninth Circuit has held that initiative regulations implicate the right to vote, it is unknown how the Alaska Supreme Court would address this issue. Our Court has cautioned that the United States Constitution sets only “national minimum constitutional standards” and has “often held that Alaska’s constitution is more protective of rights and liberties than is the United States Constitution.” Therefore, “the free speech guarantee of article I, section 5 of the Alaska

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<sup>52</sup> *Id.* at 297.

<sup>53</sup> *Id.*

<sup>54</sup> *Lemons v. Bradbury*, 538 F.3d 1098, 1102 (9th Cir. 2008); *Accord Idaho Coalition United for Bears v. Cenarrussa*, 342 F.3d 1073, 1076-77 (9th Cir. 2003).

<sup>55</sup> *Id.* at 1103.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 1105.

<sup>58</sup> *Mecinas v. Hobbs*, 30 F.4th 890, 902 (9th Cir. 2022); *See also Thompson v. Dewine*, 959 F.3d 804, 808 (6th Cir. 2020).

<sup>59</sup> *Soltysik v. Padilla*, 910 F.3d 438, 444 (9th Cir. 2018) (internal citations omitted)

Constitution – under which [the Court] decide[s] challenges to election laws – is more protective of the right to participate in the political process than its federal counterpart, the First Amendment to the United States Constitution.”<sup>60</sup> As an open question in Alaska and given the Court’s guidance that a municipal clerk “must presume an initiative to be constitutional absent clear authority establishing its invalidity,” the proposed ordinance cannot be rejected as unconstitutional so long as it is content-neutral and non-discriminatory.

### **1. The proposed ordinance is likely content-neutral**

Under Alaska’s Constitution, “laws prohibiting free expression, based on the content of the expression, are sustainable only for the most compelling of reasons.”<sup>61</sup> “The ‘principal inquiry’ in determining whether a regulation is content-neutral or content-based ‘is whether the government has adopted [the] regulation...because of agreement or disagreement with the message it conveys.’”<sup>62</sup>

For instance, the Alaska Supreme Court held that the Official English Initiative (“OEI”), requiring the government to use English in “all government functions and actions,” was a content-based restriction on language.<sup>63</sup> As a content-based restriction on speech, the government must have a compelling interest and the restriction must be narrowly tailored. Other classic content-based restrictions concern prohibitions on political protests based on the viewpoint expressed or restrictions on sexually-explicit television programming.<sup>64</sup>

A content-neutral restriction, on the other hand, is one that restricts the time, place, or manner of expression regardless of the content.<sup>65</sup> For instance, a Municipality of Anchorage sign ordinance that classified signs on the basis of physical appearance was content-neutral.<sup>66</sup>

In the present case, the proposed ordinance could fail this content neutrality requirement because the initiative is based on disapproval of the initiative efforts to limit cruise ship visitation in Sitka. Its first “WHEREAS” clause states that:

recent experience with the citizen initiative process in the [City] demonstrates that ordinances proposed through the process can have significant economic impacts on Sitka, and its municipal functions that

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<sup>60</sup> *Id.*

<sup>61</sup> *Club SinRock, LLC v. Municipality of Anchorage, Office of the Municipal Clerk*, 445 P.3d 1031, 1037 (Alaska 2019).

<sup>62</sup> *Crawford v. Lungren*, 96 F.3d 380, 384 (9th Cir. 1996) (cited approvingly by the Alaska Supreme court in *Trask v. Ketchikan Gateway Borough*, 253 P.3d 616 (Alaska 2011); *Accord Stevens v. Matanuska-Susitna Borough*, 146 P.3d 3, 9 (Alaska 2006).

<sup>63</sup> *Alaskans for a Common Language, Inc. v. Ktitz*, 170 P.3d 183, 187, 206 (Alaska 2007).

<sup>64</sup> *Id.* at 206.

<sup>65</sup> *Id.*

<sup>66</sup> *Barber v. Municipality of Anchorage*, 776 P.2d 1035, 1037 (Alaska 1989).

serve the citizens of Sitka, as well as on the citizens themselves and their economic interests, whether in owning, investing in, or operating businesses, in their employment, in their property, and in other tangible ways.

Thus, this initiative is a response to the prior cruise ship limitation efforts, which likely would have had a significant impact on the finances of this initiative's sponsors: who are heavily invested in the cruising industry. As such, it begins to look like a content-based restriction because it is adopted based on disapproval of the message conveyed in the recent, voter-rejected cruise ship initiatives.

That this proposed initiative is aimed at chilling those initiatives that would have economic impact on the City is further underscored by the differences between this proposed ordinance and its statutory counterpart. While AS 15.45.090(a)(4) directs the lieutenant governor to include, with the petitions for circulation, "an estimate of the cost to the state of implementing the proposed law," which requirement may be met with a single sentence,<sup>67</sup> this proposed ordinance has substantial and costly requirements that some citizens will not be able to comply with. Were it to become law, it would be a radical departure from its statutory counterpart. However, while there may be constitutional challenges to whether it is content-neutral, at this point there is no controlling guidance that justify rejection.

## **2. The proposed ordinance does not appear discriminatory**

Generally, a restriction is discriminatory if it has a disparate impact on certain political viewpoints.<sup>68</sup> This proposed ordinance would apply to all initiative applications and thus does not appear discriminatory. While it could have disparate impact, that is a speculative concern that should not be addressed by the municipal clerk at this point.

### **ii. The proposed ordinance is not in compliance with public records laws.**

There is one aspect of the proposed ordinance that is not enforceable as a matter of law. Proposed section 2.80.040(B)(9) provides that the EISR is available to "any Sitka-registered voter upon written request delivered to the municipal clerk." This is contrary to public records statutes and Sitka Code, which provide that all public records are open to the "public."<sup>69</sup> EISRs submitted to the City will become public records and subject to public records laws. Access to these public records cannot be restricted by the municipal clerk to only Sitka-registered voters. Therefore, the municipal clerk would not be able to enforce this provision of the proposed

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<sup>67</sup> *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064 (Alaska 2009).

<sup>68</sup> *Biddulph* at 1500.

<sup>69</sup> Sitka General Code 1.20.010; AS 40.25.110(a).

ordinance as it is contrary to law. While there is a severability provision of the proposed ordinance, severability can only be accomplished by a court of competent jurisdiction.<sup>70</sup> Therefore, the municipal clerk would be left in limbo until this occurred. Because the proposed ordinance is unenforceable as a matter of law, it should be rejected and the applicants may resubmit their application with a version that is in compliance with public records laws.

### **iii. Whether the ordinance is confusing, misleading, or incomplete.**

The legal sufficiency of a proposed initiative includes a consideration of whether the ordinance and its associated materials have confusing, misleading, or incomplete language.<sup>71</sup> The touchstone for this analysis is whether or not the initiative and its associated materials would confuse or mislead a voter or signatory to the petition.<sup>72</sup> This is because confusing, misleading, or incomplete language “frustrate[s] the ability of voters to express their will.”<sup>73</sup> The “main concern” is that all matters put up for a vote should be “presented clearly and honestly to the people of Alaska.”<sup>74</sup> “A description which is untruthful, misleading, or which is not complete enough to convey basic information as to what the ordinance does, cannot be regarded as a legally adequate or sufficient description within the meaning of the ordinance.”<sup>75</sup> Court decisions indicate that the legal review of this issue is limited and should be confined to “basic” information and “minimum standards” of accuracy and fairness.<sup>76</sup>

There are a couple of areas where this proposed ordinance could be improved. For instance, it is slightly misleading that the goal of the proposed initiative is to provide comprehensive information to voters, but then the information is not actually provided with the petitions and has to be gained by written request. Second, it is unclear whether the applicant sponsor paying for an EISR constitutes a “financial...affiliation” under section 2.80.040(4)(c).

Additionally, the proposed ordinance does not have any hardship exception for the EISRs should they prove too difficult to obtain nor is there any sort of provision for challenge to the contents of an EISR. However, under “minimum standards” of accuracy and fairness set forth by the Alaska Supreme Court, this proposed ordinance is complete enough and can be understood.

## **V. CONCLUSION**

We recommend that the Application be rejected because it is unenforceable as a matter of law due to its violation of public records laws. Applicants may resubmit a compliant version,

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<sup>70</sup> AGC 2.80.040(F).

<sup>71</sup> *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage*, 129 P.3d 898, 902 (Alaska 2006).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 901.

<sup>75</sup> *Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1219 (Alaska 1993) (emphasis added); *Sitkans for Responsible Gov’t v. City & Borough of Sitka*, 274 P.3d 486, 494 (Alaska 2012) (reiterating and relying on *Faipeas* holding).

<sup>76</sup> *Sitkans*, 274 P.3d at 494.

should they choose. The Assembly may also adopt a code section that is “substantially the same as the proposed law”<sup>77</sup> that looks to the cost summary provisions of State statute, which should pass muster and be less onerous to its citizens.

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<sup>77</sup> AS 15.45.210.



# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## MUNICIPAL CLERK'S OFFICE

100 Lincoln Street | Sitka, Alaska 99835

[www.cityofsitka.com](http://www.cityofsitka.com)

[clerk@cityofsitka.org](mailto:clerk@cityofsitka.org)

907-747-1811

July 17, 2025

**VIA EMAIL ONLY**

Chris McGraw

[REDACTED]

Sitka, AK 99835

[REDACTED]

Jeremy Plank

[REDACTED]

Sitka, AK 99835

[REDACTED]

Re: Application for an Initiative Petition Economic Impact Study Required for Initiative Process

Dear Mr. McGraw and Mr. Plank:

Your revised initiative petition was filed in person, with the Municipal Clerk's Office, on July 3, 2025. That application seeks to call for an initiative petition requiring each application for an initiative petition be accompanied by a written Economic Impact Study Report.

Find attached the Notice of Determination for your application for an initiative petition.

Please contact me if you have questions. Thank you.

Sincerely,

Sara Peterson, MMC  
Municipal Clerk

Cc: Rachel Jones, Municipal Attorney  
John Leach, Municipal Administrator  
Mayor Eisenbeisz and Assembly Members



# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## NOTICE OF DETERMINATION

### Application for an Initiative Petition Economic Impact Study Required for Initiative Process

I, the undersigned, the duly chosen, qualified Municipal Clerk of the City and Borough of Sitka, Alaska, and keeper of the records of the Assembly, **DO HEREBY CERTIFY:**

That a revised application for an initiative petition was filed with the Municipal Clerk on July 3, 2025;

That said application for an initiative petition seeks to call for an initiative petition requiring each application for an initiative petition be accompanied by a written Economic Impact Study Report;

That said application for an initiative petition contains the signatures and residence addresses of 10 registered City and Borough of Sitka voters who will sponsor the petition;

That said application for an initiative petition contains the name and address of the prime sponsor: Chris McGraw, 4311 Halibut Point Road, Sitka, Alaska; and the name and address of the alternate sponsor: Jeremy Plank, 303 Islander Drive, Sitka, Alaska;

That said application for an initiative petition contains the full text of the ordinance to be initiated;

That said ordinance **is legally sufficient** for the reason stated in the attached memorandum from Attorney Rachel Jones, dated July 16, 2025, which is hereby incorporated by reference.

**THEREFORE**, I find that the revised application for an initiative petition filed on July 3, 2025 does meet the requirements for an initiative petition and an initiative petition will be prepared.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the City and Borough of Sitka this 17<sup>th</sup> day of July, 2025.

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Sara Peterson, MMC  
Municipal Clerk





# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## MEMORANDUM

**To:** Sara Peterson, Municipal Clerk

**From:** Rachel Jones, Municipal Attorney

**Date:** July 16, 2025

**Subject:** Legal Sufficiency of Revised Application for an Initiative Petition – “Economic Impact Study Required for Initiative Process”

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Madam Clerk,

The City and Borough of Sitka’s Legal Department has been asked by the Municipal Clerk’s Office to provide a legal opinion on the revised initiative petition application entitled “Economic Impact Study Required for Initiative Process,” submitted on July 3, 2025 by sponsors Chris McGraw and Jeremy Plank. The Applicants submitted the revised petition following the Clerk’s rejection of the original petition on advice from outside counsel, Michael Gatti and Taylor McMahon of Jermain Dunnagan & Owens, P.C., (“JDO”) in a legal opinion dated June 27, 2025.

Specifically, the prior version was rejected solely because it contained language that limited public access to economic reports in a manner contrary to the Alaska Public Records Act. The revised ordinance replaces this with language expressly referencing and complying with the Alaska Public Records Act (AS 40.25.100–.295) and Sitka General Code 1.20.010–.110, thereby curing the legal defect. Additionally, the Applicants have removed a “WHEREAS” provision from the current petition that referenced a recent citizen initiative effort to limit cruise ship visitation.

This memorandum incorporates the legal analysis and conclusions from JDO’s June 27, 2025 memorandum, except for the discussion related to unenforceability under public records law in Section IV(d) and the discussion regarding content neutrality in Section IV(d)(i)(1) , which are not incorporated into this memo.

With those sections set aside and, in light of the correction made to the ordinance language, I advise that the revised petition is legally sufficient and may proceed to circulation.

### **Recommendation:**

The application is legally sufficient. The Municipal Clerk may issue petition booklets for circulation and allow the initiative process to proceed.

## MEMORANDUM

FROM: Michael Gatti  
Taylor McMahon  
TO: Sara Peterson, MMC  
Municipal Clerk  
DATE: June 27, 2025  
RE: Application for an Initiative Petition Regarding Financial Impact Statements

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**I. INTRODUCTION**

We have been asked by the City and Borough of Sitka (“City” or “Sitka”) to provide a legal opinion on an Application for an Initiative Petition that would require economic impact statements to be filed along with each application for an initiative petition (“Application”). The Application was filed by Chris McGraw, owner of the Sitka Sound Cruise Terminal, and Jeremy Plank, part owner of Allen Marine Tours,<sup>1</sup> and is in apparent response to the four initiative applications to limit cruise ship visitation that have been filed over the past two years.<sup>2</sup> The fourth of these initiatives was placed on the ballot and rejected by over 70% of the voters. Application sponsor McGraw opposed that petition through the group Safeguard Sitka’s Future.

The instant Application seeks to amend the provisions of Sitka General Code (“SGC”) Section 2.80.040 by adding additional language to subsection (A) that would require a written Economic Impact Study Report (EISR”) to be filed with each application for a petition for an initiative.<sup>3</sup> The Application proposes an ordinance titled “Economic Impact Study Required for Initiative Process.” It seeks to amend SGC 2.80.040 by adding additional language to subsection (A) that would require each application for an initiative petition to be accompanied by an EISR.

The EISR requirements proposed are quite detailed. It must be issued within 30 days of the date of the application and must “address each of the following in detail...along with all other expected economic impacts unique to the proposed initiative”:

- fiscal impacts over a one, five, and ten year time period;
- revenue analysis, analyzing the measures impact on municipal revenues, including taxes, fees, grants, and other income;
- employment impacts of the measure, in both the public and private sector;

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<sup>1</sup> Mr. Plank is a 35% owner of AM Owner Group, Inc., a holding company for Allen Marine Tours and other, related entities.

<sup>2</sup> The Application’s first “WHEREAS” clause references that “recent experience with the citizen initiative process in the City and Borough of Sitka demonstrates that ordinances proposed through the process can have significant economic impacts on Sitka.”

<sup>3</sup> Applications for a petition for a referendum would not require an EISR. SGC 2.80.040.A(1).

- private sector impact addressing how the measure will affect private businesses, economic development, and investment in Sitka;
- economic distribution impact as to how the economic benefits and burdens of the measure will be distributed among different income groups, geographic areas, and demographic populations within Sitka; and
- timeframe analysis for each of the above addressing the immediate, medium term, and long-term impacts of the proposed measure.<sup>4</sup>

The EISR must be written by an “Author” meeting certain criteria, including holding a master’s degree in economics, public policy, finance, or related field and an advanced certification in economic modeling and analysis.<sup>5</sup> The EISR’s Author must be independent of the initiative’s sponsor and have no financial affiliation with them. However, the proposed ordinance does not address whether procuring and paying for the EISR by the initiative applicant constitutes a financial affiliation.<sup>6</sup>

Applications that are not submitted with an EISR meeting the requirements in the proposed code section are to be rejected by the municipal clerk.<sup>7</sup> The actual EISR is not circulated with the petition. Rather, only the executive summary and “one-page visual summary” are included with the petition.<sup>8</sup> The EISR remains with the municipal clerk, available for inspection upon the written request of a Sitka-registered voter.<sup>9</sup> There are no hardship provisions in the proposed ordinance should the ballot applicant be unable to comply with the requirements and there is no provision to challenge the information in the EISR.

## II. BACKGROUND INFORMATION

Alaska is one of twenty-six states with an initiative and/or referendum process. Of those twenty-six states, eighteen require an economic analysis or fiscal impact statement for ballot initiatives, including Alaska.<sup>10</sup> This proposed ordinance stands apart from those eighteen states, however, through (1) the level of information required in the EISR and (2) the party responsible for preparing it as, in the eighteen states requiring some form of economic summary, such summary statements are prepared by the government, not the initiative sponsor.

In Alaska, AS 15.45.090(a)(4) directs the lieutenant governor to include, with the initiative petitions prepared for circulation, “an estimate of the cost to the state of implementing

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<sup>4</sup> SGC 2.80.040.A(3).

<sup>5</sup> *Id.* subsection A(4).

<sup>6</sup> *Id.* subsection A(4)(c).

<sup>7</sup> *Id.* subsection A(6).

<sup>8</sup> SGC 2.80.040.B(10).

<sup>9</sup> *Id.* subsection (B)(9)-(10).

<sup>10</sup> [https://ballotpedia.org/Fiscal\\_impact\\_statement](https://ballotpedia.org/Fiscal_impact_statement).

the proposed law.” The Alaska Supreme Court has one time considered this statutory section.<sup>11</sup> That case, *Pebble Ltd. Partnership*, concerned an initiative to regulate large scale metallic mineral mines.<sup>12</sup> Once the sponsors of that initiative gained the required signatures, the petition was submitted to the lieutenant governor, who prepared a cost statement for the initiative.<sup>13</sup> The cost statement simply said that because “this initiative appears to propose language that does not differ significantly from existing water quality standards, there will not be significant fiscal impact – either revenues or costs – as a result of this initiative.”<sup>14</sup> On appeal, those opposed to the initiative asserted that the cost statement was defective because it did not consider the cost of implementing regulations related to the measure or the cost of defending litigation related to the same.<sup>15</sup>

The Alaska Supreme Court disagreed, stating that while there was no Alaska case law on point, cases from other states indicated that a review of the cost statement should be “deferential.”<sup>16</sup> Further, because the statute only requires an “estimate” of the costs, “the cost statement need not document every conceivable cost associated with the implementation of the law.”<sup>17</sup> Additionally, as concerns about potential litigation were speculative, it was “impractical” to provide an estimate of such costs in the cost statement.”<sup>18</sup> Because the cost statement at issue contained an “accurate estimate of the likely insignificant costs” the lower court’s determination that it was not defective was affirmed.<sup>19</sup>

The proposed ordinance in this instance is quite removed from the requirements under AS 15.45.090(a)(4) as it requires the initiative sponsor to document a broad range of potential costs and scenarios related to the initiative. The Application asserts that this is necessary so that Sitkans can have “meaningful access to information about the economic impacts, if any, of the proposed citizen initiative.” However, most of the information in the EISR will not be available to the public unless a Sitka-registered voter makes a written request.<sup>20</sup>

The proposed ordinance places a barrier to the initiative process.<sup>21</sup> It is easy to envision that the well-funded and commercially sophisticated will be able to provide these detailed EISRs, which are likely also costly to obtain, with their initiative applications and others would find this requirement too difficult or too costly to comply with. The proposed ordinance is also

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<sup>11</sup> *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064 (Alaska 2009).

<sup>12</sup> *Id.* at 1068.

<sup>13</sup> *Id.* at 1069.

<sup>14</sup> *Id.* at 1071 (internal citations omitted).

<sup>15</sup> *Id.* at 1084.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 1085.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> SGC 2.80.040.B(9)-(10).

<sup>21</sup> A burden is minimal when it “in no way” limits access to the ballot. *Schmitt v. LaRose*, 933 F.3d 628, 641 (6th Cir. 2019).

troublesome because it requires the EISR Author to have access to a vast amount of data, both public and private, to be able to comply with the EISR requirements that may simply be unobtainable. In actuality, multiple Authors may be required to adequately address areas within their expertise (e.g. public vs. private modeling). The question at this juncture is (1) whether this barrier to the initiative process is unconstitutional; (2) whether the proposed ordinance is enforceable as a matter of law; and (3) whether the proposed ordinance is confusing, misleading, or incomplete.

### III. LEGAL FRAMEWORK

Article VI, Section 6.01 of Sitka's Home Rule Charter provides that "[t]he powers and rights of the initiative and referendum are reserved to the people of the municipality as prescribed by law." The Assembly, by ordinance, is tasked with the responsibility of regulating initiative procedures.<sup>22</sup>

Under SGC 2.80.040, a petition for an initiative or referendum shall:

1. Embrace only a single comprehensive subject; and
2. Set out fully the ordinance or resolution sought by the petition; and
3. State upon the petition, when circulated, the date of first circulation of the petition, the name of the petitioner and where he/she can be reached; and
4. Contain the statements, when circulated, that the signatures on the petition must be secured within ninety days from the date of the first circulation and that all signators are qualified voters in the municipality; and
5. Have the required number of signatures as set out in the Charter, spaces for each signature, the printed name of each signer, the date each signature is affixed, the residence and mailing addresses, and one of the following identifiers: Voter ID number, Social security number, or birth date of each signer; and
6. A statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures are those of the persons whose names they purport to be; and
7. Signers must be qualified voters in the municipality; and
8. Space for indicating the total number of signatures on the petition.

Alaska Statutes also address the initiative process at the municipal level. AS 29.26.100 reserves to residents of municipalities the right of local initiative and referendum. Under AS 29.26.110(a), an initiative or referendum is proposed by filing an application with the municipal clerk. The municipal clerk shall then certify the application if she (1) finds it is in the proper

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<sup>22</sup> Sitka Home Rule Charter, Article VI, Section 6.01.

form and (2) that the matter:

1. Is not restricted by AS 29.26.100;
2. Includes only a single subject;
3. Relates to a legislative rather than to an administrative matter; and
4. Would be enforceable as a matter of law.<sup>23</sup>

For purposes of this analysis, we assume that you will review the form of this Application. The following discussion relates to items 1-4 above.

#### IV. DISCUSSION

In Alaska, voter initiatives are broadly construed to preserve them whenever possible. Courts have a duty to give careful consideration to questions involving whether a constitutional or statutory limitation prohibits a particular initiative proposal on subject matter grounds.”<sup>24</sup> The role of a municipal clerk in reviewing an initiative application is to determine whether any of the subject matter limitations on the use of the initiative process apply.<sup>25</sup>

##### **a. The proposed ordinance is not restricted by AS 29.26.100**

The restriction imposed by AS 29.26.100 incorporates the subject matters restrictions of Art. XI § 7 of the Alaska Constitution, which provides that:

[t]he initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

Under AS 29.26.100. “An initiative proposes to make an appropriation if it ‘would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that it is executable, mandatory, and reasonably definite with no further legislative action.’”<sup>26</sup>

The Alaska Supreme Court has approved of a two-step inquiry to determine if there is an appropriation: first, the court should “determine whether the initiative deals with a public

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<sup>23</sup> AS 29.26.110(a).

<sup>24</sup> *Swetsof v. Philemonoff*, 203 P.3d 471 (Alaska 2009).

<sup>25</sup> *Alaska Action Center, Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992-93 (Alaska 2004).

<sup>26</sup> *Id.* at 993 (2004) (citing *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991)).

asset.”<sup>27</sup> Second, the Court should determine whether the initiative “would appropriate that asset.”<sup>28</sup> There are two reasons for this prohibition:

First, the provision ‘prevents an electoral majority from bestowing state assets on itself.’ This concern comes into play when the initiative would enact a give-away, forcing the state or a municipality to transfer assets into private hands...Second, the limitation on initiatives ‘preserves to the legislature the power to make decisions concerning the allocations of state assets.’ This ‘ensures that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs.’ This concern is implicated in cases in which the initiative ‘designates the use of state assets,’ even if the assets remain in state ownership.<sup>29</sup>

In the present case, the Application, does not violate this provision. It places virtually no burden on the government, other than that the municipal clerk should reject applications not containing an EISR that satisfies “each of the foregoing requirements” under proposed subsection (A)(6). Rather, its impact is focused on those individuals who avail themselves of the initiative process.

**b. The proposed ordinance includes only a single subject.**

This proposed ordinance pertains to a single subject, the requirement that EISRs must be included with applications for a petition for an initiative. Therefore, the proposed ordinance satisfies AS 29.26.110(a)(2).

**c. The proposed ordinance is legislative, not administrative.**

Under AS 29.26.110(a)(3), an initiative must relate to a legislative, not an administrative matter. The Alaska Supreme Court has approved of using the following three guidelines to determine whether a proposed ordinance is legislative or administrative:<sup>30</sup>

1. An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.
2. Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative.

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<sup>27</sup> *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418, 422 (Alaska 2006).

<sup>28</sup> *Id.* at 423.

<sup>29</sup> *Alaska Action Center* at 993-94 (internal citations omitted).

<sup>30</sup> *Swetsof* at 479.



3. Decisions which require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of a policy.<sup>31</sup>

In the present case, the proposed ordinance is likely legislative, not administrative. First, it makes a new law placing additional requirements on those citizens wishing to submit an application for an initiative petition. Second, it declares a public purpose of providing “meaningful access to information about the economic impacts, if any, of the proposed citizen initiative.” As to the third consideration, neither specialized training nor intimate knowledge of the City’s fiscal affairs will be required for the municipal clerk to determine whether the EISR complies with the requirements of the proposed ordinance. Rather, it is more likely that the municipal clerk would have to create a checklist for compliance against which EISRs are review. Based on a review of the *Swetzof* guidelines, the proposed ordinance is likely legislative.

**d. The proposed ordinance is not enforceable as a matter of law because it is not compliance with public records laws.**

AS 29.26.110(a)(4) prohibits ordinances that are unenforceable as a matter of law. While procedural and technical requirements are relaxed for citizen initiatives, “confusing or misleading petitions frustrate the ability of voters to express their will.”<sup>32</sup> Additionally, while most constitutional challenges are not ripe until after voter enactment, proposed initiatives that are clearly unconstitutional or illegal should not be certified.<sup>33</sup> In this case, the proposed initiative would require the municipal clerk to violate public records laws and is thus unenforceable. The proposed ordinance also may invite constitutional challenges and has provisions that could be more complete, but neither of those issues justify rejection at this point. The public records problem does.

**i. This proposed ordinance may implicate protected constitutional rights, but that should be determined by a Court.**

States are not required to create an initiative procedure. There is no federal right to initiative. But “if [a state] creates such a procedure, the state cannot place restrictions on its use

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<sup>31</sup> The fourth guideline is that “no one act of a governing body is likely to be solely administrative or legislative, and the operation of the initiative and referendum statute is restricted to measures which are quite clearly and fully legislative and not principally executive or administrative. 2003 P.3d at 477. The Court elected not to follow this guideline, noting that it ran counter to the rule of construction that proposed initiatives should be construed liberally whenever possible. *Id.* at 479.

<sup>32</sup> *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage*, 129 P.3d 898, 902 (Alaska 2006).

<sup>33</sup> *Carmony v. McKechnie*, 217 P.3d 818, 819-20 (Alaska 2009).

that violate the federal Constitution.”<sup>34</sup>

It is well-settled in Alaska that restrictions on petition circulation implicate “core political speech” based on the fact that “circulating a petition necessarily involves ‘both the expression of a desire for a political change and a discussion of the merits of the proposed change.’”<sup>35</sup> Such burdens on core political speech are subject to exacting scrutiny by the Court, requiring that the burden be “narrowly tailored to serve a compelling state interest.”<sup>36</sup> The Alaska Supreme Court affirmed in *Resource Development Council* that “speech relating to ballot initiatives is entirely protected” and First Amendment protection for the exchange of political ideas is “at its zenith.”<sup>37</sup>

The proposed initiative in this case is different because it concerns requirements for initiative applications, prior to the time when the initiative would be circulated and any burdens on that circulation would be subject to this heightened scrutiny. Alaska has not addressed this issue. Most of the Circuit Courts that have have concluded that a state may impose content-neutral, non-discriminatory requirements on the initiative process. However, the Ninth Circuit has held that the ballot initiative process implicates the fundamental right to vote.

On the one hand, the Eleventh Circuit has held that state initiative regulations do not burden “core political speech.” If such regulations are content neutral and do not disparately impact particular political viewpoints, they are not subject to strict scrutiny under the First Amendment.<sup>38</sup> In *Biddulph v. Mortham*, a citizen challenged Florida’s initiative process, which requires that, after signatures are collected, the secretary of state must submit the initiative to the attorney general, who must petition Florida’s Supreme Court for an advisory opinion regarding the compliance of the text with the single subject requirement and whether the ballot title or summary is ambiguous. If the Florida Supreme Court finds that the petition is not in compliance with Florida’s requirements, it will remove the initiative from the ballot.<sup>39</sup> Biddulph, an initiative sponsor who had his initiative removed from the ballot, argued that Florida’s process was unnecessarily burdensome, costly, and time consuming.<sup>40</sup> He claimed that Florida had to narrowly tailor any restrictions it imposed on the initiative petition process and that the restrictions must serve a compelling state interest.<sup>41</sup> The Eleventh Circuit disagreed, stating that

A state’s broad discretion in administering its initiative process is subject to strict scrutiny only in certain narrow circumstances. We obviously

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<sup>34</sup> *Thompson v. Dewine*, 959 F.3d 804, 808 (6th Cir. 2020) (quoting *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 295 (6th Cir. 1993)).

<sup>35</sup> *Resource Development Council for Alaska, Inc. v. Vote Yes for Alaska’s Fair Share*, 494 P.3d 541, 548 (Alaska 2021) (quoting *Meyer v. Grant*, 486 U.S. 414, 421 (1988)).

<sup>36</sup> *Id.* at 551.

<sup>37</sup> *Id.*

<sup>38</sup> *Biddulph v. Mortham*, 89 F.3d 1491 (11th Cir. 1996).

<sup>39</sup> *Id.* at 1494.

<sup>40</sup> *Id.* at 1496.

<sup>41</sup> *Id.*

would be concerned about free speech and freedom of association rights were a state to enact initiative regulations that were content based or had a disparate impact on certain political viewpoints. We also would be troubled were a state to apply facially neutral regulations in a discriminatory manner...nor, as *Meyer* held, could a state impermissibly burden the free exchange of ideas about the object of an initiative proposal. Most restrictions a state might impose on its initiative process would not implicate First Amendment concerns.<sup>42</sup>

As to Biddulph's claims that Florida's process was burdensome because it was unpredictable and costly, the Court concluded that "the Constitution does not require Florida to structure its initiative process in the most efficient, user-friendly way possible. The facts and arguments presented here do not require us to apply strict First Amendment scrutiny to Florida's initiative process."<sup>43</sup>

In the Fourth Circuit case of *Kendall v. Balcerzak*,<sup>44</sup> Kendall signed a petition to obtain a referendum on a zoning ordinance. The Board of Elections invalidated 87% of the signatures gathered for failure of the signatures to comply with the requirements of the Maryland Code.<sup>45</sup> On appeal, the Fourth Circuit concluded that the case did not implicate the right to vote.<sup>46</sup> However, "where a state affords its citizens the privilege to pursue ballot initiatives or referenda, those privileges do enjoy some measure of constitutional protection."<sup>47</sup> It held that "a State may establish non-discriminatory and content-neutral limitations on any referendum or initiative procedure."<sup>48</sup> If the restrictions are content-neutral and nondiscriminatory, "the State's important regulatory interests are generally sufficient to justify the restrictions. We do not use a higher level of scrutiny as we do in some First Amendment cases."<sup>49</sup>

The Sixth Circuit, in *Taxpayers United for Assessment Cuts v. Austin*, likewise held that "[b]ecause the right to initiate legislation is a wholly state-created right, we believe that the state may constitutionally place nondiscriminatory, content-neutral limitations on the plaintiffs' ability to initiate legislation."<sup>50</sup> Similar to *Kendall*, *Taxpayers United* concerned an initiative that was not certified due to the fact that the signatures on the petition did not comply with the statutory requirements.<sup>51</sup> The Sixth Circuit concluded that Michigan's procedures concerning signature validation were content neutral, nondiscriminatory, and reasonably related to the purpose of

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<sup>42</sup> *Id.* at 1500.

<sup>43</sup> *Id.* at 1500-1501.

<sup>44</sup> 650 F.3d 515 (4th Cir. 2011).

<sup>45</sup> *Id.* at 519-20.

<sup>46</sup> *Id.* at 524.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 525.

<sup>50</sup> *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 297 (6th Cir. 1993).

<sup>51</sup> *Id.* at 293.

administering honest and fair initiative procedures.<sup>52</sup> Thus, the First Amendment claims were without merit.<sup>53</sup>

However, the approach in the Ninth Circuit is different. In another case concerning the signature validation process, the Ninth Circuit held that “state regulations on the initiative and referendum process implicate the fundamental right to vote.”<sup>54</sup> This is due, in part, to the principal that when the powers of initiative and referendum are reserved to the people, they serve as a “basic instrument of democratic government.”<sup>55</sup> The Ninth Circuit applied the “flexible” standard under *Burdick v. Takashi*, to analyze the challenged signature validation process, rather than strict scrutiny.<sup>56</sup> Ultimately, the Court concluded that the signature validation process was only a minimal burden on the right to vote justified by Oregon’s interests in detecting fraud and having orderly elections.<sup>57</sup>

The analysis under the *Burdick* case that the Ninth Circuit referred to in *Lemons* is commonly referred to as the *Anderson Burdick* framework.<sup>58</sup> As set forth by the Ninth Circuit:

Government must play an active role in structuring elections, but any election system inevitably affects – at least to some degree – the individual’s right to vote and his right to associate with others for political ends. Thus, the Supreme court has developed a balancing test to resolve the tension between a candidate’s first Amendment rights and the state’s interest in preserving the fairness and integrity of the voting process. This is a sliding scale test, where the more severe the burden, the more compelling the state’s interest must be, such that a state may justify election regulations imposing a lesser burden by demonstrating the state has important regulatory interest. A regulation imposing severe restrictions, at the far end of the scale, is subject to strict scrutiny.<sup>59</sup>

While the Ninth Circuit has held that initiative regulations implicate the right to vote, it is unknown how the Alaska Supreme Court would address this issue. Our Court has cautioned that the United States Constitution sets only “national minimum constitutional standards” and has “often held that Alaska’s constitution is more protective of rights and liberties than is the United States Constitution.” Therefore, “the free speech guarantee of article I, section 5 of the Alaska

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<sup>52</sup> *Id.* at 297.

<sup>53</sup> *Id.*

<sup>54</sup> *Lemons v. Bradbury*, 538 F.3d 1098, 1102 (9th Cir. 2008); *Accord Idaho Coalition United for Bears v. Cenarrussa*, 342 F.3d 1073, 1076-77 (9th Cir. 2003).

<sup>55</sup> *Id.* at 1103.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 1105.

<sup>58</sup> *Mecinas v. Hobbs*, 30 F.4th 890, 902 (9th Cir. 2022); *See also Thompson v. Dewine*, 959 F.3d 804, 808 (6th Cir. 2020).

<sup>59</sup> *Soltysik v. Padilla*, 910 F.3d 438, 444 (9th Cir. 2018) (internal citations omitted)

Constitution – under which [the Court] decide[s] challenges to election laws – is more protective of the right to participate in the political process than its federal counterpart, the First Amendment to the United States Constitution.”<sup>60</sup> As an open question in Alaska and given the Court’s guidance that a municipal clerk “must presume an initiative to be constitutional absent clear authority establishing its invalidity,” the proposed ordinance cannot be rejected as unconstitutional so long as it is content-neutral and non-discriminatory.

### **1. The proposed ordinance is likely content-neutral**

Under Alaska’s Constitution, “laws prohibiting free expression, based on the content of the expression, are sustainable only for the most compelling of reasons.”<sup>61</sup> “The ‘principal inquiry’ in determining whether a regulation is content-neutral or content-based ‘is whether the government has adopted [the] regulation...because of agreement or disagreement with the message it conveys.’”<sup>62</sup>

For instance, the Alaska Supreme Court held that the Official English Initiative (“OEI”), requiring the government to use English in “all government functions and actions,” was a content-based restriction on language.<sup>63</sup> As a content-based restriction on speech, the government must have a compelling interest and the restriction must be narrowly tailored. Other classic content-based restrictions concern prohibitions on political protests based on the viewpoint expressed or restrictions on sexually-explicit television programming.<sup>64</sup>

A content-neutral restriction, on the other hand, is one that restricts the time, place, or manner of expression regardless of the content.<sup>65</sup> For instance, a Municipality of Anchorage sign ordinance that classified signs on the basis of physical appearance was content-neutral.<sup>66</sup>

In the present case, the proposed ordinance could fail this content neutrality requirement because the initiative is based on disapproval of the initiative efforts to limit cruise ship visitation in Sitka. Its first “WHEREAS” clause states that:

recent experience with the citizen initiative process in the [City] demonstrates that ordinances proposed through the process can have significant economic impacts on Sitka, and its municipal functions that

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<sup>60</sup> *Id.*

<sup>61</sup> *Club SinRock, LLC v. Municipality of Anchorage, Office of the Municipal Clerk*, 445 P.3d 1031, 1037 (Alaska 2019).

<sup>62</sup> *Crawford v. Lungren*, 96 F.3d 380, 384 (9th Cir. 1996) (cited approvingly by the Alaska Supreme court in *Trask v. Ketchikan Gateway Borough*, 253 P.3d 616 (Alaska 2011); *Accord Stevens v. Matanuska-Susitna Borough*, 146 P.3d 3, 9 (Alaska 2006).

<sup>63</sup> *Alaskans for a Common Language, Inc. v. Ktitz*, 170 P.3d 183, 187, 206 (Alaska 2007).

<sup>64</sup> *Id.* at 206.

<sup>65</sup> *Id.*

<sup>66</sup> *Barber v. Municipality of Anchorage*, 776 P.2d 1035, 1037 (Alaska 1989).

serve the citizens of Sitka, as well as on the citizens themselves and their economic interests, whether in owning, investing in, or operating businesses, in their employment, in their property, and in other tangible ways.

Thus, this initiative is a response to the prior cruise ship limitation efforts, which likely would have had a significant impact on the finances of this initiative's sponsors: who are heavily invested in the cruising industry. As such, it begins to look like a content-based restriction because it is adopted based on disapproval of the message conveyed in the recent, voter-rejected cruise ship initiatives.

That this proposed initiative is aimed at chilling those initiatives that would have economic impact on the City is further underscored by the differences between this proposed ordinance and its statutory counterpart. While AS 15.45.090(a)(4) directs the lieutenant governor to include, with the petitions for circulation, "an estimate of the cost to the state of implementing the proposed law," which requirement may be met with a single sentence,<sup>67</sup> this proposed ordinance has substantial and costly requirements that some citizens will not be able to comply with. Were it to become law, it would be a radical departure from its statutory counterpart. However, while there may be constitutional challenges to whether it is content-neutral, at this point there is no controlling guidance that justify rejection.

## **2. The proposed ordinance does not appear discriminatory**

Generally, a restriction is discriminatory if it has a disparate impact on certain political viewpoints.<sup>68</sup> This proposed ordinance would apply to all initiative applications and thus does not appear discriminatory. While it could have disparate impact, that is a speculative concern that should not be addressed by the municipal clerk at this point.

### **ii. The proposed ordinance is not in compliance with public records laws.**

There is one aspect of the proposed ordinance that is not enforceable as a matter of law. Proposed section 2.80.040(B)(9) provides that the EISR is available to "any Sitka-registered voter upon written request delivered to the municipal clerk." This is contrary to public records statutes and Sitka Code, which provide that all public records are open to the "public."<sup>69</sup> EISRs submitted to the City will become public records and subject to public records laws. Access to these public records cannot be restricted by the municipal clerk to only Sitka-registered voters. Therefore, the municipal clerk would not be able to enforce this provision of the proposed

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<sup>67</sup> *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064 (Alaska 2009).

<sup>68</sup> *Biddulph* at 1500.

<sup>69</sup> Sitka General Code 1.20.010; AS 40.25.110(a).

ordinance as it is contrary to law. While there is a severability provision of the proposed ordinance, severability can only be accomplished by a court of competent jurisdiction.<sup>70</sup> Therefore, the municipal clerk would be left in limbo until this occurred. Because the proposed ordinance is unenforceable as a matter of law, it should be rejected and the applicants may resubmit their application with a version that is in compliance with public records laws.

### **iii. Whether the ordinance is confusing, misleading, or incomplete.**

The legal sufficiency of a proposed initiative includes a consideration of whether the ordinance and its associated materials have confusing, misleading, or incomplete language.<sup>71</sup> The touchstone for this analysis is whether or not the initiative and its associated materials would confuse or mislead a voter or signatory to the petition.<sup>72</sup> This is because confusing, misleading, or incomplete language “frustrate[s] the ability of voters to express their will.”<sup>73</sup> The “main concern” is that all matters put up for a vote should be “presented clearly and honestly to the people of Alaska.”<sup>74</sup> “A description which is untruthful, misleading, or which is not complete enough to convey basic information as to what the ordinance does, cannot be regarded as a legally adequate or sufficient description within the meaning of the ordinance.”<sup>75</sup> Court decisions indicate that the legal review of this issue is limited and should be confined to “basic” information and “minimum standards” of accuracy and fairness.<sup>76</sup>

There are a couple of areas where this proposed ordinance could be improved. For instance, it is slightly misleading that the goal of the proposed initiative is to provide comprehensive information to voters, but then the information is not actually provided with the petitions and has to be gained by written request. Second, it is unclear whether the applicant sponsor paying for an EISR constitutes a “financial...affiliation” under section 2.80.040(4)(c).

Additionally, the proposed ordinance does not have any hardship exception for the EISRs should they prove too difficult to obtain nor is there any sort of provision for challenge to the contents of an EISR. However, under “minimum standards” of accuracy and fairness set forth by the Alaska Supreme Court, this proposed ordinance is complete enough and can be understood.

## **V. CONCLUSION**

We recommend that the Application be rejected because it is unenforceable as a matter of law due to its violation of public records laws. Applicants may resubmit a compliant version,

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<sup>70</sup> AGC 2.80.040(F).

<sup>71</sup> *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage*, 129 P.3d 898, 902 (Alaska 2006).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 901.

<sup>75</sup> *Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1219 (Alaska 1993) (emphasis added); *Sitkans for Responsible Gov’t v. City & Borough of Sitka*, 274 P.3d 486, 494 (Alaska 2012) (reiterating and relying on *Faipeas* holding).

<sup>76</sup> *Sitkans*, 274 P.3d at 494.



should they choose. The Assembly may also adopt a code section that is “substantially the same as the proposed law”<sup>77</sup> that looks to the cost summary provisions of State statute, which should pass muster and be less onerous to its citizens.

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<sup>77</sup> AS 15.45.210.