

MUNICIPALITY OF ANCHORAGE

ANCHORAGE ASSEMBLY

Minutes for Regular Meeting of April 16, 2002

1. CALL TO ORDER:

The meeting was convened at 5:03 p.m. by Assembly Chairman Dick Traini in the Assembly Chambers, 3600 Denali, Anchorage, Alaska.

2. ROLL CALL:

Present: Dan Sullivan, Fay Von Gemmingen, Melinda Taylor, Doug Van Etten, Dick Traini, Anna Fairclough, Dan Kendall, Allan Tesche, Janice Shamberg, Dick Tremaine, Cheryl Clementson.
Absent: None.

3. PLEDGE OF ALLEGIANCE:

The pledge was led by Mr. Kendall.

4. MINUTES OF PREVIOUS MEETING: None.

5. MAYOR'S REPORT:

There was no Mayor's report at this meeting.

6. ASSEMBLY CHAIR'S REPORT:

Municipal Clerk Greg Moyer said the official election results were posted on the Municipality's website under elections information at www.muni.org.

7. COMMITTEE REPORTS: None.

8. ADDENDUM TO AGENDA:

Ms. Fairclough moved, to amend the agenda to include the addendum items.
seconded by Ms. Von Gemmingen,

Chairman Traini read the addendum items.

Ms. Fairclough added item 9.B.7, AR 2002-121, a resolution of the Anchorage Municipal Assembly revising the 2002 general government operating budget by appropriating the sum of \$2,500 from the areawide general fund, 101 balance to the Mayor's office to provide a grant to the Anchorage Cultural Council on the Art to assist with expenses for the Second Annual Mayor's Arts Awards.

Question was called on the motion to amend the agenda to include the addendum items and it passed without objections.

9. CONSENT AGENDA:

Ms. Fairclough moved, to approve all items on the consent agenda as amended.
seconded by Ms. Taylor,

A. RESOLUTIONS FOR ACTION - PROCLAMATIONS AND RECOGNITIONS

1. Resolution No. AR 2002-111, a resolution of the Anchorage Municipal Assembly **recognizing and honoring Elgin Jones for his contribution to the children of Anchorage** through the Kids Kitchen Program, Assemblymembers Taylor, Clementson, Fairclough, Kendall, Shamberg, Sullivan, Tesche, Traini, Tremaine, Van Etten, and Von Gemmingen.

Ms. Taylor requested this item be considered on the Regular Agenda. See item 10.

2. Resolution No. AR 2002-122, a resolution of the Anchorage Municipal Assembly **recognizing and supporting National Library Week – April 14-20, 2002**, Assemblymembers Fairclough, Clementson, Kendall, Shamberg, Sullivan, Taylor, Tesche, Traini, Tremaine, Van Etten, and Von Gemmingen. (**addendum**)

Mr. Tesche requested this item be considered on the Regular Agenda. See item 10.

B. RESOLUTIONS FOR ACTION - OTHER

1. Resolution No. AR 2002-95, a resolution of the Anchorage Municipal Assembly approving the revised (schematic) design for the **East High School Phase 2**, Anchorage School District.
 - a. Assembly Memorandum No. AM 317-2002.
2. Resolution No. AR 2002-96, a resolution of the Anchorage Municipal Assembly approving the preliminary design for the **East High School Phase 3**, Anchorage School District.

- a. Assembly Memorandum No. AM 318-2002.
3. Resolution No. AR 2002-104, a resolution authorizing the granting of **tax refund as a result of manifest clerical error** on Real Property Account 012-512-73, Finance.
 - a. Assembly Memorandum No. AM 357-2002.
4. Resolution No. AR 2002-110, a resolution of the Municipality of Anchorage requesting the U.S. Department of Transportation to require commercial airlines to publish **bereavement policies** and to implement procedures and designate an agency to investigate, mediate, and resolve consumer complaints involving commercial airlines, including application of bereavement policies, Assemblymember Clementson.
5. Resolution No. AR 2002-115, a resolution of the Municipality of Anchorage appropriating \$23,000 as a grant to the Miscellaneous Operational Grants Fund (261), Department of Health and Human Services, from March of Dimes to fund **Folic Acid Outreach Project**.
 - a. Assembly Memorandum No. AM 368-2002.
6. Resolution No. AR 2002-123, a resolution of the Anchorage Assembly making a site available on public lands to the **Simonian Little League** for youth baseball in 2004, Assemblymembers Tesche, Shamberg, Taylor, Traini, Tremaine, Van Etten, and Von Gemmingen. **(addendum)**
7. Resolution No. AR 2002-121, a resolution of the Anchorage Municipal Assembly revising the 2002 general government operating budget by appropriating the sum of \$2,500 from the areawide general fund, 101 balance to the Mayor's office to provide a grant to the Anchorage Cultural Council on the Art to assist with expenses for the Second Annual Mayor's Arts Awards.

Ms. Clementson requested to be added as a co-sponsor of AR 2002-121.

C. BID AWARDS

1. Assembly Memorandum No. AM 348-2002, recommendation of award to Cyto Specialty Laboratories, Inc. for furnishing **pap smear/biopsy interpretation services** to the Municipality of Anchorage, Department of Health and Human Services (ITB 22-Q014) (\$51,900), Purchasing.
2. Assembly Memorandum No. AM 349-2002, recommendation of award to WESCO Distribution, Inc. for furnishing **electrical conductor and cable** to the Municipality of Anchorage, Municipal Light & Power (ITB 22-B013) (\$170,112.38), Purchasing.
3. Assembly Memorandum No. AM 350-2002, recommendation of award to Potelcom Supply for **single-phase wathour meters** to the Municipality of Anchorage, Municipal Light & Power (ITB 22-B019) (\$194,040), Purchasing.
4. Assembly Memorandum No. AM 351-2002, recommendation of award to Concor Construction, Inc. for ML&P Plant No. 2 **XFMR No. 5 containment and firewall** for the Municipality of Anchorage, Municipal Light & Power (ITB 22-C005) (\$211,640), Purchasing.
5. Assembly Memorandum No. AM 352-2002, recommendation of award to FNW Alaska Pipe & Supply for furnishing **miscellaneous hydrant, pipe, plumbing, and treatment parts and supplies** to the Municipality of Anchorage, Anchorage Water and Wastewater Utility (ITB 22-B020) (\$200,000), Purchasing.

D. NEW BUSINESS

1. Assembly Memorandum No. AM 362-2002, **Bidding Review Board appointment** (Colin Maynard), Mayor's Office.
2. Assembly Memorandum No. AM 363-2002, **Geotechnical Advisory Commission appointments** (Joel Grunwaldt, David Shafer), Mayor's Office.
3. Assembly Memorandum No. AM 364-2002, **Women's Commission appointment** (Heidi Bohi), Mayor's Office.
4. Assembly Memorandum No. AM 353-2002, proprietary purchase for furnishing **"Jaws of Life" rescue systems** from L.N. Curtis & Sons for the Municipality of Anchorage, Anchorage Fire Department (\$58,206), Purchasing.
5. Assembly Memorandum No. AM 354-2002, proprietary purchase for furnishing a **starting engine** for Unit #5 from Cummins Northwest, Inc. for the Municipality of Anchorage, Municipal Light & Power (\$84,916), Purchasing.
6. Assembly Memorandum No. AM 355-2002, recommendation of award to Construction Machinery Industrial, LLC for furnishing a **rubber tired hydraulic excavator** to the Municipality of Anchorage, Anchorage Water and Wastewater Utility (AWWU) (\$145,470), Purchasing.
7. Assembly Memorandum No. AM 356-2002, **Small Business Development Center grant** (\$80,000), Municipal Manager's Office.
8. Assembly Memorandum No. AM 360-2002, amendment No. 5 to purchase order 201739 with Unwin, Scheben, Korynta, Huettl, Inc. (USKH) to provide professional **architectural/engineering services** for capital improvement projects for the Municipality of Anchorage, Merrill Field Airport (\$238,880).
9. Assembly Memorandum No. AM 361-2002, change order No. 2 to purchase order 211209 with L.N. Curtis & Sons to provide **turn out gear** on an "as required" basis to the Municipality of Anchorage, Anchorage Fire Department (\$151,564.15), Purchasing.
10. Assembly Memorandum No. AM 369-2002, **2002 Audit Plan. (addendum)**

Mr. Tesche requested this item be considered on the Regular Agenda. See item 10.

11. Assembly Memorandum No. AM 380-2002, sole source contract with A.T. Publishing & Printing for **printing ballots** (\$9,000), Assembly Chair Traini. **(addendum)**

E. INFORMATION AND REPORTS

F. ORDINANCES AND RESOLUTIONS FOR INTRODUCTION

1. Resolution No. AR 2002-105, a resolution of the Municipality of Anchorage appropriating \$545,000 of revenues from within the Areawide General Capital Improvement Fund (401) and \$22,000 from within the Chugiak-Eagle River Parks and Recreation Service Area Capital Improvement Fund (462) for **facility improvements at the Alaska Center for the Performing Arts, William A. Egan Civic and Convention Center, George M. Sullivan Arena, and the Harry J. McDonald Memorial Center**, Cultural and Recreational Services. P.H. 4-23-02.
 - a. Assembly Memorandum No. AM 358-2002.
2. Resolution No. AR 2002-106, a resolution of the Municipality of Anchorage appropriating \$1,447,673 from Alaska Housing Finance Corporation (AHFC) as a grant amendment to the State Categorical Grants Fund (231) for the **Weatherization Assistance Program**, Health and Human Services. P.H. 4-23-02.
 - a. Assembly Memorandum No. AM 359-2002.
3. Resolution No. AR 2002-112, a resolution of the Municipality of Anchorage appropriating \$1,090,000 from the Equipment Maintenance Internal Service Operating Fund (601), to the Equipment Maintenance Internal Service Capital Improvement Fund (606) for the purpose of purchasing **road maintenance/snow removal equipment**, Facility and Fleet Management. P.H. 4-23-02.
 - a. Assembly Memorandum No. AM 365-2002.
4. Resolution No. AR 2002-113, a resolution of the Municipality of Anchorage appropriating \$225,000 as a contribution from the Alaska Center for the Performing Arts to the Areawide General Capital Improvement Program Fund (401) for **improvements to the Voth Rehearsal Hall**, Office of Management and Budget. P.H. 4-23-02.
 - a. Assembly Memorandum No. AM 366-2002.
5. Resolution No. AR 2002-114, a resolution of the Anchorage Municipal Assembly **naming Municipal Light and Power Plant 1 in honor of the late Hank Nikkels**, Manager of power production at Municipal Light and Power (ML&P) for 25 years, Municipal Light and Power. P.H. 5-14-02.
 - a. Assembly Memorandum No. AM 367-2002.
6. Resolution No. AR 2002-119, a resolution of the Anchorage Municipal Assembly supporting the revised **Anchorage Metropolitan Area Transportation Study (AMATS) Operating Agreement**, Traffic Department. P.H. 4-23-02. **(addendum)**
 - a. Assembly Memorandum No. AM 370-2002.

Question was called on the motion to approve the consent agenda as amended and it passed:

AYES: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Kendall, Tesche, Shamberg, Tremaine, Clementson.

NAYS: None.

Mayor Wuerch recognized the following people appointed to boards and commissions: Colin Maynard, Bidding Review Board; Joel Grunwaldt and David Shafter, Geotechnical Advisory Commission and Heidi Bohi, Women’s Commission.

10. REGULAR AGENDA:

A. RESOLUTIONS FOR ACTION - PROCLAMATIONS AND RECOGNITIONS:

1. Resolution No. AR 2002-111, a resolution of the Anchorage Municipal Assembly **recognizing and honoring Elgin Jones for his contribution to the children of Anchorage** through the Kids Kitchen Program, Assemblymembers Taylor, Clementson, Fairclough, Kendall, Shamberg, Sullivan, Tesche, Traini, Tremaine, Van Etten, and Von Gemmingen.

Ms. Taylor moved, to approve AR 2002-111.
seconded by Mr. Tesche,
and it passed without
objections,

Ms. Shamberg read the resolution.

Mr. Jones thanked the Assembly for the recognition. He thanked the Municipality of Anchorage and Parks and Recreation for making the Kids Kitchen Program possible. He thanked Tom McGrath, Tim Sullivan and many others for their participation in the program.

Mr. Tesche thanked Mr. Jones for his service. He noted that Mr. Jones had said he was tired twice this last week and encouraged him to take a break, because they appreciated his service and wanted to keep him around for many years to come.

Ms. Shamberg noted that not only were the children in the Kids Kitchen Program fed, but also they were taught how to sit down together, converse and conduct themselves with proper table manners. She felt the program went beyond just feeding children, but it taught them how to behave and feel like a family.

Ms. Clementson said she appreciated the heart that Mr. Jones had for children. She noted that Mr. Jones was relentless in his efforts in soliciting donations and she appreciated his efforts on behalf of others.

2. Resolution No. AR 2002-122, a resolution of the Anchorage Municipal Assembly **recognizing and supporting National Library Week – April 14-20, 2002**, Assemblymembers Fairclough, Clementson, Kendall, Shamberg, Sullivan, Taylor, Tesche, Traini, Tremaine, Van Etten, and Von Gemmingen. **(addendum)**

Mr. Tesche moved, to approve AR 2002-122.
seconded by Mr. Tremaine,
and it passed without
objections,

Chairman Traini read the resolution.

On behalf of the Municipal Library and the Municipal Library Advisory Board, Ms. Dee Ford thanked the Assembly for their support of the libraries in the community and their importance to our quality of life.

Ms. Fairclough moved, to change the order of the day to take up special order 16.A.
seconded by Mr. Tesche,
and it passed without
objections,

Assembly Memorandum No. AM 338-2002, certification of the April 2, 2002, Regular & Special Municipal Elections, Clerk's Office.

Ms. Fairclough moved, to approve AM 338-2002.
seconded by Mr. Tesche,

Chairman Traini noted that the Municipal Attorney Bill Greene provided an opinion dated April 15, 2002 in which he made some points regarding Assemblymembers being involved in elections. He asked any Assemblymember who had been involved in fundraisers, coffee klatches, donating money, holding signs, and putting signs in their cars or yards or other participation in the election of an individual or issue before the Assembly in the certification to raise their hands. Everyone except Ms. Clementson raised his or her hands.

In response to Ms. Fairclough, Ms. Clementson said there were fliers that had her name on them, but both of the candidates were using her name without her permission. Both campaigns had asked for a public endorsement, which she denied.

In response to Ms. Clementson, Municipal Attorney Bill Greene recommended that certification of the election proceed on a candidate election by candidate election basis.

Ms. Clementson moved, to divide the question to certify the ballot propositions and
seconded by Mr. Kendall, Limited Road Service Areas and then certify each race individually.

Ms. Clementson said it was her assumption that there were no problems with the ballot propositions, but the races were not equal. This was the first time she knew of that the Municipality had to deal with the question of whether or not a candidate was qualified. She felt the Assembly had a responsibility to review the issue, because it was a quasi-judicial proceeding.

Question was called on the motion to divide the question on AM 338-2002 and it failed:

AYES: Sullivan, Fairclough, Kendall, Clementson.
NAYS: Von Gemmingen, Taylor, Van Etten, Traini, Tesche, Shamberg, Tremaine.

Ms. Clementson moved, to divide AM 338-2002 to divide out the Assembly Section 5
seconded by Mr. Sullivan, race and approve the remainder.

Ms. Clementson noted that the Assembly section 5 races was clearly different and should be discussed. Last week the Municipal Attorney Bill Greene gave the opinion that he did not believe Mr. Whittle met the candidacy qualifications. The Municipal Clerk and the Assembly would have to decide on Mr. Whittle's qualifications. She provided the Municipal Attorney with an invitation to a fundraiser that was sponsored by Assemblymembers and questioned whether or not it presented a conflict of interest. Without weighing in on whether or not Mr. Whittle was a qualified candidate or not, the Assembly should discuss the Assemblymember involvement issue. This was a quasi-judicial proceeding and not a legislative proceeding. She urged the Assembly to vote yes on the question to divide.

Question was called on the motion to divide out Assembly Section 5 and approve the remainder and it failed:

AYES: Sullivan, Von Gemmingen, Fairclough, Kendall, Clementson.
NAYS: Taylor, Van Etten, Traini, Tesche, Shamberg, Tremaine.

Municipal Election Commission Chairman Lucretia Olson introduced the commission members. She gave a report on the certification of the regular municipal election of April 2, 2002. They sat as a canvass board to canvass the absentee and question ballots on April 11, 2002 at 10:00 a.m. They met again on April 15, 2002 at 4:00 p.m. to adopt their report. The notice was in the Anchorage Daily News on April 10, 2002. The Assembly had a detailed copy of the report. The total absentee votes counted was 2,183. The total question counted was 1,841. The total absentee votes rejected was 8. The total question rejected was 177. The total absentee in question received was 4,209.

Chairman Traini thanked the Municipal Election Commission for the great job they did.

In response to Chairman Traini, Ms. Olson felt the Accuvote system was very successful and a step forward in the voting process.

In response to Mr. Sullivan, Mr. Bill Mans, Vice Chair of the Municipal Election Commission, said there were some problems feeding the question ballots into the Accuvote system, because they were larger and had to be folded. The mail-in ballots were even more difficult, because the envelopes were small and people were creative in their method of folding the ballots. The envelopes that were used for the question ballots were not carbonless and the second sheet was not very clear.

They asked for additional training before the next election to review possible changes to the system. There were some problems with having two ballots in one envelope, because people were not sure their ballots were counted properly. Don Bizmaier, the representative from Diebolt, shut down the Accuvote machine and recounted the earlier ballots to insure that everything was properly processed.

Mr. Tesche congratulated the Commission for helping the Municipality get into the electronic age with the Accuvote system. He hoped everyone would work together as they strived to improve the election process. He would appreciate any suggestions to improve voter turnout.

In response to Mr. Tesche, Mr. Mans said once they completed the next election in 30 days, they would submit a list of improvement suggestions to the Municipal Clerk.

Ms. Fairclough felt it was in the best interest of the public for the Assembly to have the discussion that Ms. Clementson had suggested. Her vote was not meant to remove Mr. Whittle from the ballot. She wanted to insure that the Assembly had the opportunity to discuss the issue and they had all the information on the table for future reference. She noted there were two different legal opinions, one from the municipal attorney and one from outside counsel. Outside counsel felt Mr. Whittle was a qualified candidate and cited some of the same court cases that the municipal attorney cited, but with contrary opinions. The decision of Mr. Whittle's qualifications was being left to the Assembly. She had not heard from her constituents that the Assembly should not allow Mr. Whittle to continue his candidacy. They felt a gentleman that had lived in his house for 22 years should be able and qualified to run in a Municipal election. The moving of boundaries was beyond Mr. Whittle's control. She did not believe it was the intent of the charter to disqualify a man from running in an election because the Assembly had changed something. The issue may need to go to court and the Supreme Court would make the final decision. She supported the opinion provided to the Assembly by the Law Office of Birch, Horton, Bittner and Klinkner. She welcomed additional information to support Municipal Attorney Bill Greene's opinion.

Mr. Tesche said there were two issues before the Assembly at this time. The first issue was a lingering threshold issue brought to the Assembly in the form of a legal opinion commissioned by Ms. Clementson from the Department of Law that spoke to the issue of whether Assemblymembers could participate in the underlying issue of the certification of the election. He felt the best way to resolve the participation of the Assembly issue was to follow their normal procedures. Any Assemblymember who believed another Assemblymember had a conflict of interest, which would be a substantial financial interest in AM 388-2002, could follow the standard motion process. If such a motion was not made, or the motion was made and resolved, the Assembly could proceed with the debate and discuss the certification of the election and the comments made by Ms. Fairclough.

Mr. Tremaine moved,
seconded by Mr. Tesche,

the question does Assemblymember Dick Tremaine have a
substantial financial interest in the question before the Assembly.

Mr. Tremaine said he was shocked that Assemblymembers had not done this for every election, because for the entire history of the community they have voted the incumbents to seat themselves. He believed he was the first Assemblymember to ever indicate that there may be a conflict of interest.

Ms. Clementson felt it was interesting that the Assembly was choosing to ignore the real question. This was not a legislative matter. The matter of financial gain was appropriate, whether it was a legislative or a quasi-judicial matter, but it was not the only issue. She noted this was a quasi-judicial issue and there was more than just financial gain at stake. When members actively participate to the point of not only endorsing candidates publicly, but to the point of becoming deputy treasurers or sending out fliers, the person was no longer unbiased and able to make a decision on the particular individual that the Municipal Attorney said was disqualified. She had not stated whether or not she felt Mr. Whittle should be disqualified, because she did not feel the Assembly had reached the point of answering that question yet. The question was whether or not everyone could vote on it. She felt Mr. Tremaine had a conflict on his particular race. He had a substantial financial gain and should not vote on his race. The real question was whether or not there were other issues at hand in District 5. She felt Mr. Tremaine had a conflict of interest in his race, but they did not move to divide the question and take up each race separately.

Mr. Tesche referenced Title 1 of the code, which said the financial interest must be substantial in nature. He saw no evidence, argument, case authority or any other persuasive material in the memorandum offered by the city attorney to suggest that Mr. Tremaine had a contingent benefit that he would gain if the Assembly certified the election. He did not feel Mr. Tremaine had a conflict of interest.

In response to Mr. Kendall, Mr. Tremaine said the question before the Assembly was certifying the vote of the people. To the extent that the people had voted in candidates who would do a good job as Assemblymembers, it would free up more of his time to earn money elsewhere. He felt that gave him an indirect conflict of interest. To the extent people voted in a candidate who would obstruct the legislative process and cause him to work longer, it would take away from the rest of his life and he would have an indirect cost. He did not believe he had any direct financial gain or loss dependent on who was elected. If he voted against the will of the people, they probably would have grounds to recall him on grounds of breaking the people's trust. He did not feel he had any direct conflicts of interest, but he had indirect conflicts of interest.

Mr. Kendall said they were talking about political capital. The Assembly was a political body and certain groups supported specific candidates.

In response to Mr. Kendall, Mr. Tremaine said he was a citizen of the United States, the State of Alaska and the Municipality of Anchorage. He had certain inalienable rights, which included the freedom of speech and expression. He had the right to campaign for the people and ideas that he held dear and supported. None of those rights were taken away from him by holding public office. He gave up certain rights as a public official, such as the right to privacy, but he did not lose any of his inalienable rights. He had opinions and voted. He did not feel he had any direct conflicts.

In response to Chairman Traini, Municipal Attorney Bill Greene referenced the memorandum of opinion for Assembly election district race number five. They advised that if there was a conflict of interest with respect to a particular candidate race then the Assemblymember could be recused from the decision on the certification of the election and the remainder of the Assembly could decide the issue. If the facts alleged in their opinion were correct then in one instance seven

Assemblymembers should be recused and in the other instance five Assemblymembers should be recused. The way out of the situation would be to certify each election district separately.

In response to Chairman Traini, Mr. Greene said he had been with the municipal attorney's office since 1994. He did not remember having to address this issue in the past and the issue had not arisen in the past either factually or otherwise.

In response to Mr. Tesche, Mr. Greene said he believed Mr. Tesche would have a conflict of interest and should not participate in the certification of his election.

Mr. Tesche made the following statement with respect to Mr. Greene as a fellow municipal lawyer. He was stunned. This was the first he had heard in the history of municipal law in Alaska that sitting members of an Assembly called upon to do what was ultimately an administrative act, could not confirm the election because they had a conflict of interest due to their stake in the outcome of the election. He felt the decision defied reason and common sense. He noted that no case law for that proposition in Alaska under Title 29 had been presented. He urged the Assemblymembers to reject the notion, because it was unfounded in the law.

In response to Mr. Tremaine, Mr. Greene said the Assembly did not hire him as the Municipal Attorney, but the Mayor appointed him and the Municipal Assembly confirmed the appointment. His client was the Municipality of Anchorage, acting through its constituent representatives. The Assembly could not terminate his employment with the Municipality.

Mayor Wuerch objected to Mr. Tremaine's line of questioning of Mr. Greene. He felt personnel matters should be discussed in executive session.

Chairman Traini said he would allow Mr. Tremaine to proceed with this line of questioning. He noted that Mr. Tesche would not be asking for Mr. Greene's resignation.

Mr. Tremaine said he knew that when the Mayor was a sitting Assemblymember three years ago and he was running in a race in an open seat, the Mayor and his family gave a great deal of money to Mr. Tremaine's opponent. He did not view that as a conflict of interest nor did he take it personally. He noted that was the same situation as the one they were currently dealing with. Three years ago Ms. Clementson was re-elected to the exact same position that he was currently in. No one brought forward that she might have a conflict of interest and should not vote. There was a time when the Assembly supported a mayoral candidate over Mr. Fink. At that time the municipal attorney did not say there was a conflict of interest. He questioned if all of those certifications of elections were invalid or illegal.

Ms. Von Gemmingen moved,
seconded by Ms. Shamberg,

to amend the motion to state all Assemblymembers, except
Ms. Clementson, had a conflict of interest.

Ms. Von Gemmingen noted that the Assembly was performing an administrative action. If they were going to change the report from the Clerk's office and the Commission then they would be in a more quasi-judicial situation. The people of Anchorage went to the polls and voted. She was sure that Mr. Tremaine did not vote 7,500 times. She felt the Assembly should resolve this issue and move on to other business.

Mr. Tesche declared another conflict of interest that he and his wife had. They owned a small bed and breakfast on G Street. If a new civic and convention center was built in Anchorage, their bed and breakfast could benefit. He noted that he had supported the civic and convention center.

Mr. Sullivan suggested voting on the certification of the election, but have the Assemblymembers abstain from voting on their own particular race.

Mr. Kendall felt the Assembly was ignoring the important issue that the attorneys had brought forward, which were the qualifications of Mr. Whittle. The conflict was between the common practice of what was traditionally done and a literal interpretation of the Anchorage Charter. The Anchorage Charter sets forth that when the population changed the Assembly shall reapportion itself according to the new population. One of the safe guards in the Charter was the one-year requirement. He felt it was important for the Assembly to review Mr. Greene's opinion, but the Charter was very clear. Because the Assembly does the reapportionment, there should be a safe guard to keep politics immediately out of the reapportionment process. He felt there were some real problems and the Assembly should look at changing the Charter, because it did not work well. Historically there had not been disclosures about potential conflicts, because there was no controversy. The questions were raised and answered and he felt the Assembly should give them due consideration.

Ms. Clementson felt the question before the Assembly was totally absurd and a good way of avoiding the real question. The people did not care if ten Assemblymembers put a campaign sign in their car windows or yards. There were serious issues to be discussed. The Assembly had never had a private opinion on the qualifications of a particular candidate before, because they never asked for one. They have never had this opinion from Mr. Greene before, because the question was never asked. There were some complications in the process and the Assembly needed to look at the real issues.

Question was called on the motion of whether the named Assemblymembers had a conflict of interest and it failed:

AYES: Kendall.

NAYS: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Tesche, Shamberg, Tremaine, Clementson.

In response to Ms. Taylor, Mr. Kendall said the question was whether or not Mr. Whittle was qualified to be a candidate in the new district that he was not previously in. Mr. Sullivan was clearly in his district and the boundary did not affect where he lived or the requirement that he live there a year. It was not clear whether or not Mr. Whittle had lived in his district for a year.

Ms. Taylor noted that Mr. Sullivan was in a new district, as was Mr. Whittle. She felt they were in similar situations, because they both resided in districts, but had not been in those specific districts for 12 months as of the election.

Mr. Tremaine said the discussion was what happened when the Assembly recertified. South Anchorage had about 5,000 too many people and they had to move them north to the Eagle River district, which incorporated part of Muldoon. They moved them both through the west and the east of Anchorage, reapportioning as they went. He guessed that about 15,000 people changed districts. He could not ascribe to a political philosophy that purposefully disenfranchised 15,000 people from holding office every 10 years. The legal philosophy brought forward by the municipal attorney was that we, in our Charter, consciously and premeditatedly disenfranchise those voters from holding office. He did not feel that was democracy, a republic or anything he could believe in. He believed that the municipal attorney's opinion was wrong. He felt what they were looking at was the district that the election happened for, which was the boundary that exists and Mr. Whittle lived within the boundary for 22 years.

Mr. Tesche said the question was certification of the election. What would ordinarily be an administrative and happy moment for the Assemblymember had turned into a problem. He felt they should look at the facts, the law and the public policy. The facts were undisputed. The candidate in question had lived in the same house for 22 years. He was within one district and then by act of the Assembly's reapportionment, he was in another district. He decided to run for the Anchorage Assembly. He noted that several other boundary lines had changed. The law was brought to the Assembly in the form of two different legal opinions. The Municipal Attorney provided an opinion that surprised a number of the Assemblymembers, because the Chairman of the Assembly and the Municipal Clerk had been told on several occasions that the Department of Law had looked into the question of the boundary change and had determined that Mr. Whittle was qualified to run, but the written opinion came out differently. Instead of containing the cases that had been shown to the Municipal Clerk as supporting Mr. Whittle's candidacy, there was only legal argument in the opinion that would hold Mr. Whittle not qualified for office. He reviewed the opinion carefully and could not find one controlling case in any jurisdiction that stood for the proposition for which the opinion was offered. Mr. Klinkner's opinion was based on a California decision and determined Mr. Whittle's candidacy should go forward. He would support the opinion provided to the Assembly by Mr. Klinkner. He did not feel the opinion provided to the Assembly by the Department of Law served its purposes very well. Beyond the legal merits of this issue there was a procedural question. The Assembly was poised on the decision to certify the election or not. He was troubled that he did not see a clear cut legal remedy available to the Assembly that would allow them to take this election away from the voters of east Anchorage and tell the voters that those votes did not count. He noted it was not the role of the Assembly to take elections away from the people. For all of those reasons and the public policy reason of allowing the voters, and not the politicians, to decide, he would vote to certify the election.

Ms. Von Gemmingen noted that in Mr. Greene's opinion he cited laws that talked about the asserted interest of the state in assuring that those who govern were acquainted with the conditions, problems and needs of those who were governed could not be questioned. She felt that presented a problem in her own district, because it meant that she and Mr. Sullivan would not know anything about the area that was just annexed to their districts. She felt the Assembly could not disenfranchise the voters who went to the polls and voted. The Assembly spends a lot of time encouraging people to vote. She would not disenfranchise the many voters in the Anchorage area.

Mr. Sullivan referenced Mr. Greene's opinion regarding the veto powers of the Mayor, which were upheld by courts. He felt this was also an item that would be decided by the courts. He felt the election should be certified and Mr. Whittle's candidacy would be determined valid or invalid by a court of law. He noted that previous negative tones regarding Mr. Greene's opinions had proven to be out of line. One of the arguments that were rejected was the concept that when the borderline of the district was changed, an entirely new district was created and everyone within that district was ineligible. The Assembly did not create a new district, but they made a slight alteration to the existing district. The problem was Mr. Whittle did not live in District 5 prior to the reapportionment. When the Charter Commission wrote the charter it was for dual protection. They did not want people jumping into a district before the filing deadline and all of a sudden being the strongest candidate in that district. Nor did they want the Assembly to change the district to do the same thing. He felt the issue would be for the courts to decide and the Assembly should vote on the certification of the election.

Ms. Clementson did not feel the certification of the election was an administrative act, because when there were problems that the Assembly needed to take action on and make some decisions. The decisions carried the weight of law and had serious consequences. She did not feel they would reduce the voter turnout unless they failed to publicize the date of the election. The process had been a mess from the beginning. Last time they reapportioned, the elections were in the fall and this issue would not have been a problem. The maps were not posted on the Internet in a timely fashion. After the filing period closed at the beginning of February, it was discovered that the wrong maps were on four out of five Municipal websites. They held a special election along with the regular election, because the Assembly did not approve things in a timely fashion. She was not sure it was right to disqualify any candidate because he was in a new area, because the entire process had been a mess from the beginning with the exception of the fine work done by the Elections Commission.

In response to Ms. Clementson, Mr. Greene said his memorandum indicated that they had not confirmed Ms. Clementson's allegations. If the allegations were correct then Assemblymembers had an obligation to disclose their conflicts of interest. If the Assembly found the information to be accurate then the motion could be made to disqualify those Assemblymembers from participating in the vote on the certification of the election. The Municipal Attorney's Office did not issue an opinion different than the opinions the Assembly received on this subject. His investigation of the allegation that he supplied the Municipal Clerk with citations that Mr. Whittle's candidacy was all right revealed that there was discussion that at the stage of their research they had found cases to support both sides of the issue in various states across the country, but that was a long way from providing the opinion as to the candidacy durational residency qualifications of Mr. Whittle.

Ms. Clementson noted that Mr. Greene's opinion did state numerous cases, but there were no cases exactly like this one. The California case that was referenced earlier in the evening as supporting Mr. Whittle's candidacy said in California the judge found that if a reapportionment happened and someone wanted to run then they could run in their old district or their new district, but that was not the case in Alaska. She noted that people in Alaska did not have a choice of running in either their old or new district.

Ms. Clementson moved, seconded by Mr. Kendall, to request disclosure of any Assemblymember who had publicly endorsed a candidate, publicly invited people to a fundraiser or held an office in a candidate's race in Section 3 and Section 5.

Question was called on the motion to request disclosure of the Assemblymembers' involvement in Section 3 and Section 5 and it failed:

AYES: Taylor, Fairclough, Kendall, Clementson.
 NAYS: Von Gemmingen, Van Etten, Traini, Tesche, Shamberg, Tremaine.
 ABSTAIN: Sullivan.

Mr. Kendall said he did not mind disclosing his involvement. He gave Mr. Sullivan \$100 for his candidacy. A couple of years ago there were questions from the Assembly concerning the budget and the budget process, which went to court. The legal advice from this same Legal Department was upheld in that case.

Ms. Von Gemmingen did not feel there was a substantial financial interest on behalf of anyone, except those who were elected. She felt the Assembly was wasting time and should vote on the certification of the election.

Mr. Sullivan publicly declared that he gave a contribution to Mr. Paul Bauer, Jr.'s candidacy and publicly opposed Mary Rasmussen's candidacy.

Ms. Clementson reminded the Assembly that when they dealt with quasi judicial matters such a liquor licenses or appeals before the Board of Adjustment, they had to declare any contact they had or anything that affected their thinking so the other Assemblymember could decided whether or not they should participate. She felt this was the same situation.

Question was called on the motion to approve AM 338-2002 and it passed:

AYES: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Tesche, Shamberg, Tremaine.
 NAYS: Kendall, Clementson.

(Clerk's Note: Mr. Sullivan, Ms. Fairclough and Mr. Tremaine requested to be listed as an "abstain" vote for their particular election race.)

Mr. Tesche moved, seconded by Mr. Tremaine, for immediate reconsideration of AM 338-2002.

Mr. Tesche recommended a no vote.

Question was called on the motion for immediate reconsideration of AM 338-2002 and it failed:

AYES: Kendall, Clementson.
 NAYS: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Tesche, Shamberg, Tremaine.

Ms. Fairclough noted that she tried to contribute to Mr. Sullivan's campaign and attend one of his fundraisers, but did not make it. She contributed and worked to promote a certain School Board member, but she would not state the candidate's name since it was not an issue at this time.

Magistrate Brock Shamberg swore in the following Assemblymembers: Ms. Fairclough, Mr. Sullivan, Mr. Traini, Mr. Tremaine, and Mr. Tesche.

The Assembly then considered item 12, Appearance Requests.

A. **Karen Vosburgh**, regarding denial of booth space at the Sullivan Arena.

KAREN VOSBURGH said she was the executive director for Alaska Right to Life. They were being discriminated against. They applied to attend the Women's Show. They received a written response denying their attendance. She filled out the application at Aurora Productions and specifically stated that they would not be showing pictures of aborted babies. Their objective was to inform women about the connection between abortion and birth control pills and breast cancer. Alaska Right to Life litigated this issue in a case involving the Alaska State Fair versus Alaska Right to Life. The decision was that a private agency using public facilities supported by the government could not stifle free speech by such censorship. The Sullivan Arena is a Municipal building.

BOB LIND, President of Alaska Right to Life, said they had an application for a booth at the Women's Show that was turned down. They planned to display their information without any photographs of aborted babies and they would agree to do so in writing. They were denied their right to a booth. The Sullivan Arena claimed that their policy restricted display of materials that promoted a specific political agenda or which might offend persons of any race, religion or political outlook. Planned Parenthood and their follows have had access to the Women's Show in the past. They felt it was absurd that a right to life display would offend someone's religion or lack of religion. It was absurd that breast cancer or being pro-life had anything to do with one's race or political persuasion. They felt Mr. Shepard's denial was nothing more than garden-variety discrimination against Alaska Right to Life. They respectfully requested the Assembly to remedy this situation to the benefit of all concerned, especially women in danger of breast cancer.

In response to Mr. Kendall, Ms. Vosburgh said the Women's Show would be held on April 26, 27 and 28. She filed the application at Aurora Productions, but did not receive a copy. The application stated that they would not display gory pictures and their display would pertain to breast cancer.

In response to Mr. Kendall, Municipal Attorney Bill Greene said he did not think this was something that would be within the jurisdiction of the Equal Rights Commission, but he would need to check on that. The Municipality advised that this was a

contract issue between Alaska Right to Life and the group that had the lease of the Sullivan Arena and not a Municipal issue. When the Municipality contracts for services, construction or supplies, there is a non-discriminatory clause in the contracts. He could not state whether or not there was a non-discriminatory clause in this particular permit form.

In response to Mr. Kendall, Mr. Posey said the Women's Show was proposed by a private party and was a private event without any involvement by the Municipality. There were standards that must be met, but he was not sure what the contract specified. He would supply the Assembly with an answer in the next few days.

WAYNE ANTHONY ROSS said he litigated the Alaska State Fair versus Alaska Right to Life case. A decision was rendered in 1986. Alaska State Fair, Inc. was seeking to require Alaska Right to Life to remove certain pictures of aborted babies from their booth at the state fair. Alaska Right to Life refused and a lawsuit was brought by Alaska State Fair. The decision by the court stated that when a private corporation used a public facility that was supported by a governmental agency, the acts of that private corporation to censor or impede free speech was precluded. They received a settlement of \$15,000 from Alaska State Fair, Inc. as a result of the lawsuit. The incident regarding the Women's Show was not the only incident that has occurred. The Alaska Gun Collectors rented the Ben Boeke Ice Arena last weekend for a gun show. He put up a display entitled "Let's Elect a Pro Gun Governor" that had some of his opponents views on gun control. He was advised by Randy Smith that he and his cohorts intended to censor his display. He attempted to contact Municipal Attorney Bill Greene, without success. On Saturday, Mr. Randy Smith and several of his cohorts insisted that his son remove any political items regarding his campaign from the booth under the implied threat that his son would be arrested. Later in the day Mr. Randy Smith ran off some people who were circulating a petition from MEA in front of the building. Litigation may result from the censoring of his display against Mr. Smith and others. He urged the Assembly to recognize the potential liability that the Municipality had when private organizations were using Municipal facilities and were attempting to impose their own political beliefs and censor others.

In response to Mr. Tremaine, Mr. Ross said he had unsuccessfully tried to get a hold of Municipal Attorney Bill Greene on Wednesday. Mr. Ross had to leave town on Thursday and Friday for a funeral.

MARIANNE BECKMAN said she was the contracting manager for the Cultural and Recreational Services Department and was responsible for the management of the contract.

In response to Chairman Traini, Ms. Beckman said there was nothing in the contract that prevented them from complying with all Municipal laws or state statutes. It was her understanding that since this was a private promoter renting the facility at a set lease price; it was up to the private promoter to choose the vendors. The Cultural and Recreational Services Department was not privy to the choices that the promoter makes. Our contract is with the contractor, SMG of Alaska. It is the contractor's responsibility to lease out the space. The contract is between SMG of Alaska and Aurora Productions. The city is the owner of the property, but we are not party to the contract, nor are we a part of the consideration as to who gets to be a vendor at these events.

Mr. Tremaine said he was not comfortable with what was going on, but he was not sure where the Assembly should go with it. He noted this issue could end up in court and that would not serve anyone's purposes. He encouraged the administration and the contractor to work on this issue in a matter that would keep it out of court.

Ms. Clementson said four years ago Marilyn Manson came to Anchorage and it was very controversial and people wanted to have the concert stopped. The Assembly could not stop the concert, because the public had the right of free speech. She understood that this was a private contract, but Alaska Right to Life was willing to censor and amend the information that they would normally put out to make it harmonious with the Women's Show. The Women's Show had offered space to people with an opposing viewpoint in the past. She felt if Alaska Right to Life were willing to meet Aurora Production's criteria, then Aurora Production needed to offer equal access if they were offering it to other vendors and it was being held in a public place.

Mr. Tesche pointed out that Alaska Right to Life, a private non-profit organization was in negotiations with Aurora Production, a private non-profit entity. He noted that the Alaska State Fair case was a private entity running a public event. He did not know if there was a distinction between the two or not.

In response to Mr. Tesche, Mr. Bob Lind said this issue had not been brought before the Public Facilities Advisory Commission. They brought it before the Assembly due to the time constraints.

Mr. Tesche felt the best solution to this issue would be to have the Public Facilities Advisory Commission look into the issue with advice from the Legal Department. The Public Facility Advisory Commission reviewed arena policies, contracts and the fine print of the relationships between promoters and ultimate tenants. The Assembly's hands were somewhat tied in that they did not administer the arena.

Mayor Wuerch said the administration would be happy to investigate this issue on an expedited basis to insure that the contract was legal, enforceable and adhered to.

In response to Ms. Fairclough, Ms. Beckman said the Public Facilities Advisory Commission's next meeting would Thursday, 4:00 o'clock, Sullivan Arena VIP room. She would be happy to add this issue to the agenda.

Ms. Fairclough requested Mr. Greene to have legal representation attend the Public Facilities Advisory Commission meeting on Thursday.

B. Ed Blahous & Denis Corral, concerning tower under construction at "Eagle's Nest" in Eagle River.

ED BLAHOUS said he had lived on Golden Eagle Drive near the top of Skyline Drive in Eagle River for over 20 years. He and several of his neighbors were here to express their displeasure with the proposed construction of an additional radio tower near the top of Skyline Drive. Potential users of the existing tower were planning to build an additional, separate 130-foot tower within several hundred feet of the existing tower. The construction of this tower would create the beginning of an antenna farm on residential property in Eagle River. Several years ago, after much discussion and heated exchanges of ideas

before the Assembly, the Assembly allowed the construction of a 180-foot lighted radio transmission tower within one mile of his home on property zoned for residential use. When granting the conditional use permit that allowed this tower to be constructed, the Assembly required several restrictions and neighborhood protections to be followed by the builders and users of the tower. Among the restrictions were no peripheral towers radiating antennas could exist on the site, a fence around the property was to be constructed to protect passersby and limit access to the site, the electric power supply to the site had to be buried and noise emanating from the site was to be minimized or mitigated. The entire facility had to be painted in a color friendly to the environment. A committee of nearby neighbors and the owners of the tower at that time were created to meet periodically to review compliance with the conditional use permit and requirements and try to work through any problems that might arise. He was a member of that committee. They worked together reasonably well for a period, however there had not been any meetings of that committee for several years. The requirements of the conditional use permit were generally met with the exception of burying the electric supply line and the moving of all peripheral radiating towers to the main tower. Most of the peripheral towers were moved, but some still remain on the site apart from the main tower. The members of the nearby community relied on language in the Municipal code in effect at that time when the conditional use permit was issued which prevented the construction of additional towers in excess of 75 feet in height within one horizontal mile of any existing tower to protect them from any additional intrusions into the residential community. Approximately two years ago the Assembly allowed the code to be changed, which essentially removed the protections they were relying upon. The Assembly, in its agreeing to facilitate the cell phone industry's need for additional cell phones, removed the protections they were relying on. They realized that the existing code did not prohibit the construction of the additional tower, so the Assembly's ability to deny the request for construction was limited. However, they asked the Assembly to consider some alternate options that could satisfy the needs of the new tower while preserving the intent of the original conditional use permit. The alternate options are to require the owners and operators of the existing tower to make room on the existing tower for all additional tenants requesting space and require the developers of the new tower to negotiate or approach the owners of the tower to use space on the existing tower. They also asked that the Assembly immediately start a code review rewrite process that restored the community protections previously stated in the code that was now absent. Such a process would keep them from coming back before the Assembly when additional towers were built on the property adjacent to the existing tower.

In response to Ms. Fairclough, Mr. Blahous said the previous code required that no tower be built within one horizontal mile of an existing tower that exceeded 75 feet in height. Towers that did not exceed 75 feet could be built. When the existing tower was built, it was within one horizontal mile of an existing tower, but the City allowed that via the conditional use permit.

Ms. Clementson noted that the Assemblymembers who voted to change the code were not happy about it. There was a change in federal law that required the Assembly to make some of those changes and preempted their ability to put controls on that type of thing.

In response to Ms. Clementson, Mr. Blahous said at the time the code was changed, those opposed to it did not realize that what was being done by the City was supporting federal regulations and the cell tower industry.

Ms. Fairclough said the people who wanted to locate on the new tower went to the old tower owners and asked to co-locate, but they were denied. It was her understanding from Code Enforcement that inside of the current code we did not have enough criteria or the expertise of the criteria for antenna towers to be able to discern whether or not it was a proper rejection. It was her understanding that the current owner rejected the co-location because there would be inadequate power supply available. After that, a private developer contracted to place a second tower up there and has been all the way through the process for the 100 feet that was allowable under the code. After that time, they decided maybe they could go up another 30 feet. They contacted Code Enforcement to ask how they would go about that. For each 15 feet, they need an additional co-location client. She believed people were leaving the first tower to jump over to the second tower for whatever reason, which was not something the Assembly anticipated when they originally passed this. The developer of the new tower has gone through all the process that they were supposed to go through. They provided what was required inside of the code as far as documentation. Community Council typically did not meet during the summertime, so her constituents were unaware that this was happening. The Community Council was not notified, but that was not a requirement within the existing code.

Mr. Holton asked anyone with any concerns about the conditional use and the construction that occurred to contact Jerry Weaver.

Ms. Fairclough said the process had failed the constituents who lived close to the tower. They had a certain expectation of how their property was going to be protected against future antennas on the site. There was some historical mistrust in how the first tower originally got there. She felt the neighbors were trying to remediate a change.

In response to Mr. Kendall, Mr. Blahous said Steve Ellis of the Municipal Enforcement Office informed him that the requirement for no additional towers in excess of 75 feet above the ground in height could be built within one horizontal mile from an existing tower had been removed from the code when it was rewritten.

Mr. Kendall reminded the Assemblymembers that the later change made by the Assembly was made in a bit of a hurry when they were looking at the Turnagain tower. He felt they had some unintended consequences and maybe they should have kept the provisions in the original code.

Mr. Tremaine said he did not recall while they took the one horizontal mile out of the code, but he thought it was because they were not allowed to keep it in the code, especially with type four towers. He concurred that this was an unintended consequence. He noted that the Assembly had not been happy with the code change, but federal law mandated the changes.

In response to Ms. Fairclough, Mr. Holton said they would coordinate a meeting between the homeowners to discuss the issue.

DENIS CORRAL presented a petition that was signed by 53 individuals from 33 households immediately below the tower. The majority of the neighborhood was opposed to the tower. Many of the neighbors felt the Municipality had greased the way for commercial ventures in the area. The existing tower was esthetically unappealing to the neighborhood.

The meeting recessed at 7:20 p.m. and reconvened at 7:53 p.m.

The Assembly then addressed item 13, Continued Public Hearings.

Resolution No. AR 2002-70, a resolution of the Anchorage Municipal Assembly **making a site in the vicinity of Ruth Arcand Park available to the Simonian Little League** in 2004, Assemblymembers Shamberg, Von Gemmingen, Fairclough, Taylor, Clementson, and Van Etten.
(CONTINUED FROM 4-9-02)

Chairman Traini opened the public hearing and asked if anyone wished to speak. There was no one, and he closed the public hearing.

Ms. Shamberg moved, to postpone AR 2002-70 indefinitely.
seconded by Mr. Tesche,

Ms. Clementson noted that she had assisted in the writing of AR 2002-70 and was a co-sponsor. She felt if the Assembly had pre-decided that they were going to offer another solution, it would have been a courtesy to inform the sponsors.

Question was called on the motion to postpone AR 2002-70 indefinitely and it passed:

AYES: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Kendall, Tesche, Shamberg, Tremaine, Clementson.
NAYS: None.

B. RESOLUTIONS FOR ACTION – OTHER: None.

C. BID AWARDS: None.

D. NEW BUSINESS:

1. Assembly Memorandum No. AM 369-2002, 2002 Audit Plan. (addendum)

Mr. Tesche moved, to approve AM 369-2002.
seconded by Ms. Von Gemmingen,

Mr. Tesche said he appreciated the work of the Audit Committee in preparing the 2002 Audit Plan. He recommended adding the Municipal Library to the requested audits. The library system will soon be undergoing a transition.

Mr. Tesche moved, to amend AM 369-2002 to add the Municipal Library to the
Seconded by Ms. Shamberg, requested audits.
and it passed without
objections,

Question was called on the motion to approve AM 369-2002 as amended and it passed without objections.

Ms. Clementson moved, to change the order of the day to address item 11.B,
seconded by Mr. Kendall, AO 2002-37.
and it passed with two
objections,

Ordinance No. AO 2002-37, an ordinance amending Anchorage Municipal Code Subsection 4.60.180.A. to **change the number of Animal Control Advisory Board members from 9 to 7**, Health and Human Services.

1. Assembly Memorandum No. AM 201-2002.
(CARRIED OVER FROM 3-19-02; POSTPONED FROM 4-9-02)

Chairman Traini opened the public hearing and asked if anyone wished to speak.

MIKE WALSH said the Animal Control Advisory Board passed a resolution to reduce the board size from nine members to seven members. In 2000, they had problems making quorum and went through many different board members. They reviewed several options. They had board members who were not showing up to regularly scheduled meetings and the administration exercised the three unexcused absence rule and replaced those board members. The other option was to reduce the board from nine members to seven members. From mid-2001 to 2002 they had not had a problem making quorum.

In response to Ms. Shamberg, Mr. Walsh said the administration made the appointments to the board and the Assembly confirmed the appointments. He did not see the applications for the board members.

In response to Ms. Shamberg, Mayor Wuerch said the administration processed between 200 and 400 applications a year. Typically they did not limit a candidate to just one thing unless they only had strong opinions about one thing. They recruited people who were willing to serve and then decided on what boards and commissions they should be placed.

In response to Ms. Shamberg, Mr. Walsh said the last two or three applicants for the board were before the Assembly when he became aware of them. It was the purview of the administration to place people on the board. One of the problems they experienced on the board was members who were single-issue people who had burning issues, but once that was resolved they seemed to lose interest.

In response to Ms. Von Gemmingen, Mr. Walsh said he owned both dogs and cats. Most of the people on the board had dogs and about 50 percent of them owned cats. They had a veterinarian on the board that had reptiles. Three of the board members had kennel licenses.

In response to Ms. Fairclough, Mr. Walsh said the charter of the board was to advise the administration and Assembly on animal matters. When they did that they considered issues of public safety. The problem with meeting quorum had been prior to May of 2001. This month they had three meetings with perfect attendance. He would not be opposed to postponing the action for six months and trying to place more people on the board.

Ms. Fairclough moved, to postpone AO 2002-37 indefinitely.
seconded by Mr. Tremaine,

In response to Mr. Tesche, Mayor Wuerch said they had citizen volunteers donating hours and hours of their personal free time to sit on the board. The board voted to ask to have the board reduced from nine members to seven members. Under questioning, the chairman of the board said postponing the decision might not be a bad idea. The board asked to have their numbers reduced from nine to seven. He felt it was his job to help represent the volunteers by bringing the issue forward. They could find volunteers to fill the board, which was not the issue. The issue was what the volunteer citizens wanted to do. He encouraged the Assembly to postpone action for a minimum of 90 days, but he felt they should consider the citizens' interest in the issue.

Mr. Tesche moved, to substitute the motion to postpone AO 2002-37 for 90 days.
seconded by Ms. Von Gemmingen,

Ms. Fairclough said she postponed AO 2002-37 indefinitely so they could bring it back before the Assembly in six months. She noted that it took 30 days to process the records to place someone new on the board and a 90-day postponement would only allow attendance records for two meetings. If the reduction in the board was based on attendance issues, she felt they needed a longer period of time to review the attendance of the new board members.

Mr. Kendall felt the Assembly should honor the Animal Control Advisory Board's request.

Mr. Sullivan moved, to substitute the motion to postpone AO 2002-37 for 6 months.
seconded by Ms. Clementson,

Ms. Fairclough accepted the motion as a friendly amendment to postpone AO 2002-37 for 6 months.

Mr. Tesche withdrew his motion to postpone AO 2002-37 for 90 days.

Question was called on the motion to amend AO 2002-37 and it passed:

AYES: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Tesche, Shamberg, Tremaine, Clementson.
NAYS: Kendall.

Ms. Fairclough requested AO 2002-37 be scheduled for the first meeting in October.

Question was called on the motion to approve AO 2002-37 as amended and it passed:

AYES: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Tesche, Shamberg, Tremaine, Clementson.
NAYS: None.

(Clerk's Note: Mr. Kendall was out of the room at the time of the vote.)

E. INFORMATION AND REPORTS: None.

F. ORDINANCES AND RESOLUTIONS FOR INTRODUCTION: None.

11. OLD BUSINESS AND UNFINISHED ACTION ON PUBLIC HEARING ITEMS:

- A. Ordinance No. AO 2001-158, an ordinance amending all of Title 17, regulating the **care and control of animals** within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Health and Human Services.
 - 1. Assembly Memorandum No. AM 748-2001.
 - 2. Ordinance No. AO 2001-158(S), an ordinance amending all of Title 17, regulating the care and control of animals within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Health and Human Services.
 - 3. Assembly Memorandum No. AM 232-2002.
 - 4. Information Memorandum No. AIM 20-2002, Title 17 revisions, Health and Human Services.
 - 5. Ordinance No. AO 2001-158(S-1), an ordinance amending all of Title 17, regulating the care and control of animals within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Health and Human Services.
 - 6. Ordinance No. AO 2001-158(S-2) an ordinance amending all of Title 17, regulating the care and control of animals within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Chairman Traini.
 - 7. Assembly Memorandum No. AM 315-2002.

- 8. Ordinance No. AO 2001-158(S-3), an ordinance amending all of Title 17, regulating the care and control of animals within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Assemblymember Tremaine. **(LAID ON THE TABLE)**
(CARRIED OVER FROM 2-26-02; CONTINUED FROM 3-5-02; PUBLIC HEARING CLOSED & CARRIED OVER FROM 3-19-02; POSTPONED FROM 4-9-02)

This item addressed later in the meeting. See item 14.

- B. Ordinance No. AO 2002-37, an ordinance amending Anchorage Municipal Code Subsection 4.60.180.A. to **change the number of Animal Control Advisory Board members from 9 to 7**, Health and Human Services.
 - 1. Assembly Memorandum No. AM 201-2002.
(CARRIED OVER FROM 3-19-02; POSTPONED FROM 4-9-02)

This item addressed earlier in the meeting. See item 10.

- C. Assembly Memorandum No. AM 294-2002, **Public Facilities Advisory Commission appointment** (Devery Prince), Mayor’s Office.
(CARRIED OVER FROM 3-19-02)

This item addressed later in the meeting. See item 14.

- D. Resolution No. AR 2002-92, a resolution of the Anchorage Municipal Assembly supporting enacting of State legislation allowing issue of **serial caterers’ permits** for periodic events such as the First Friday Gallery Walk involving the serving of alcoholic beverages, Assemblymembers Taylor, Tesche, Shamberg, Traini, Tremaine, Van Etten, and Von Gemmingen.
(CARRIED OVER FROM 3-19-02)

This item addressed later in the meeting. See item 14.

- E. Ordinance No. AO 2002-61, an ordinance indefinitely reauthorizing AO No. 2001-58 regarding **telephonic participation and voting of Assembly members** under Anchorage Municipal Code Subsection 2.30.070.H. and providing amendments thereto, Assembly Chair Traini.
(POSTPONED FROM 4-9-02)

This item addressed later in the meeting. See item 14.

12. APPEARANCE REQUESTS (SHALL BEGIN NO EARLIER THAN 6:00 P.M. AND NO LATER THAN 7:00 P.M.):

- A. **Karen Vosburgh**, regarding denial of booth space at the Sullivan Arena.

This item addressed earlier in the meeting. See item 10.

- B. **Ed Blahous & Denis Corral**, concerning tower under construction at “Eagle’s Nest” in Eagle River.

This item addressed earlier in the meeting. See item 10.

13. CONTINUED PUBLIC HEARINGS (SHALL BEGIN NO EARLIER THAN 6:00 P.M. AND NO LATER THAN 7:00 P.M.):

- A. Resolution No. AR 2002-70, a resolution of the Anchorage Municipal Assembly **making a site in the vicinity of Ruth Arcand Park available to the Simonian Little League** in 2004, Assemblymembers Shamberg, Von Gemmingen, Fairclough, Taylor, Clementson, and Van Etten.
(CONTINUED FROM 4-9-02)

This item addressed earlier in the meeting. See item 10.

14. NEW PUBLIC HEARINGS (SHALL BEGIN NO EARLIER THAN 6:00 P.M. AND END NO LATER THAN 10:30 P.M.):

- A. Ordinance No. AO 2002-52, an ordinance amending the zoning map and providing for the rezoning of approximately 0.437 acres from R-2A (Two-Family District with Special Limitations) to R-2M SL (Multiple Family District) with Special Limitations for **McCaughey Subdivision, Block 1, Lot 1**; generally located at the southeast corner of East 68th Avenue and Stella Place (Abbott Loop Community Council) (Planning and Zoning Commission Case 2001-106), Planning Department.
 - 1. Assembly Memorandum No. AM 202-2002.

Chairman Traini opened the public hearing and asked if anyone wished to speak.

DIANA NELSON said she was the petitioner. She provided the Assemblymembers with a packet about the subject property. She received a copy of what the City sent over and noted that they took it before the Abbott Loop Community Council and received approval with no objection. They took it to the Zoning Commission and they seemed to be in favor of it.

Chairman Traini asked if anyone else wished to speak. There was no one, and he closed the public hearing.

Mr. Van Etten moved, to approve AO 2002-52.
seconded by Ms. Fairclough,

Ms. Fairclough noted there were two people who opposed AO 2002-52 in the packet.

Question was called on the motion to approve AO 2002-52 and it passed:

AYES: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Kendall, Tesche, Shamberg, Tremaine.
NAYS: None.

(Clerk’s Note: Ms. Clementson was out of the room at the time of the vote.)

- B. Ordinance No. AO 2002-53, an ordinance approving the rezoning of 17.5 acres from R-9 (Rural Residential) Zoning District to R-6 (Suburban Residential-Large Lot) for a portion of **NW 1/4, Section 13, T12N, R3W, S.M.**, generally located on the south east corner of Hillside Drive and Beacon Hill Drive (Hillside East Community Council) (Planning and Zoning Commission Case 2001-198), Planning Department.
 1. Assembly Memorandum No. AM 226-2002.

Chairman Traini opened the public hearing and asked if anyone wished to speak. There was no one, and he closed the public hearing.

Ms. Clementson moved, to approve AO 2002-53.
seconded by Mr. Kendall,

Mr. Tremaine noted this was one of the last larger lots available. The proposal was to move from 2.5 acres to 1.25 acres. It was challenged with both wet soils and slope. He felt it was unlikely it would ultimately go to 1.25 acres, but he had not seen an organized opposition and everything around it was R-6. He would support AO 2002-53.

Ms. Fairclough noted there were four people in opposition to AO 2002-53 in the file.

Question was called on the motion to approve AO 2002-53 and it passed:

AYES: Sullivan, Taylor, Traini, Fairclough, Kendall, Tesche, Shamberg, Tremaine.
NAYS: Von Gemmingen, Van Etten.

(Clerk’s Note: Ms. Clementson was out of the room at the time of the vote.)

- C. Ordinance No. AO 2002-31, an ordinance **repealing and reenacting Title 23 of the Anchorage Municipal Code** to adopt the 2000 editions of the following codes and enacting local amendments thereto: Administrative, Building, Mechanical, Plumbing, Fire, Existing Buildings, Residential, Building Construction Contractor Requirements, Fire Protection Service Outside Service Areas, Energy Conservation, School Relocatables, Safety Code for Elevators and Escalators, Electrical Code, Mobile Aircraft Shelters, Grading, and Fuel Gas Code, Department of Development Services.
 1. Assembly Memorandum No. AM 124-2002.

Chairman Traini noted that item 14.C; AO 2002-31 had been postponed to May 21, 2002. There would be an hour and a half Assembly work session, which would be scheduled at a later date.

Mr. Van Etten moved, to change the order of the day to take up issues 11.C, 11.D and 11.E.
Seconded by Mr. Tremaine,
and it passed without objections,

Assembly Memorandum No. AM 294-2002, Public Facilities Advisory Commission appointment
(Devery Prince), Mayor’s Office.
(CARRIED OVER FROM 3-19-02)

Chairman Traini gave the history of and noted no motion was on the floor.

Mr. Van Etten moved, to approve AM 294-2002.
seconded by Mr. Kendall,

Mr. Tremaine said he would be voting no on AM 294-2002, because he felt the qualifications were lacking. He was looking for more hands on participation.

In response to Mr. Van Etten, Mr. Prince said he applied for the Public Facilities Advisory Commission because he was called and asked if he would be interested in participating. He felt people who were opinionated and offered suggestions should be willing to serve when asked.

Question was called on the motion to approve AM 294-2002 and it passed:

AYES: Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Kendall, Tesche, Shamberg, Tremaine, Clementson.
NAYS: None.

(Clerk’s Note: Mr. Sullivan was out of the room at the time of the vote.)

Mayor Wuerch welcomed Mr. Prince to the board and thanked the Assembly for confirming the appointment.

Resolution No. AR 2002-92, a resolution of the Anchorage Municipal Assembly supporting enacting of State legislation allowing issue of **serial caterers' permits** for periodic events such as the First Friday Gallery Walk involving the serving of alcoholic beverages, Assemblymembers Taylor, Tesche, Shamberg, Traini, Tremaine, Van Etten, and Von Gemmingen.
(CARRIED OVER FROM 3-19-02)

Chairman Traini gave the history of AR 2002-92 and noted no motion was on the floor.

Ms. Taylor moved, to postpone AR 2002-92 indefinitely.
seconded by Mr. Tremaine,
and it passed without
objections,

Ordinance No. AO 2002-61, an ordinance indefinitely reauthorizing AO No. 2001-58 regarding **telephonic participation and voting of Assembly members** under Anchorage Municipal Code Subsection 2.30.070.H. and providing amendments thereto, Assembly Chair Traini.
(POSTPONED FROM 4-9-02)

Chairman Traini gave the history of AO 2002-61 and noted no motion was on the floor.

Ms. Von Gemmingen moved, to approve AO 2002-61.
seconded by Ms. Clementson,

Ms. Von Gemmingen said she had asked for AO 2002-61 to be delayed, because they needed to review the reasons for the telephonic participation. She referenced line 41 which said: You can participate if you are unable to be there due to sickness, accident or other unforeseen emergency or outside of the Municipality on official Municipal travel for business. She felt the Assembly had stretched that beyond the bounds in the past. This would not apply to an Assemblymember who was on vacation.

Mr. Kendall did not feel it was necessary for the Assembly to have telephonic participation. The Assembly had operated for many years with specific rules on what to do if Assemblymembers were not present. He noted that in the age of electronics this sounded like a good idea, but he did not feel it was necessary.

Mr. Sullivan did not feel the guidelines were consistent or made sense. He felt they should either say an Assemblymember could or could not participate telephonically, regardless of the reason they were absent.

Ms. Fairclough noted that the time she was on vacation and participated telephonically was a special meeting, because she never scheduled travel outside of the Assembly's normal meeting schedule. She suggested considering special meetings, because she had participated telephonically because they needed a quorum.

Mr. Kendall noted that the criteria set forth in the ordinance said the Assembly had to have a quorum physically present.

Ms. Clementson said she would vote no on AO 2002-61. If the ordinance was approved, she suggested the Clerk should keep a copy of it in the desk drawer, because this issue had come up several times. She felt there should be a qualifier in the ordinance that the Assemblymember needed to know what they were voting on and have the supporting documentation.

Question was called on the motion to approve AO 2002-61 and it passed:

AYES: Von Gemmingen, Taylor, Traini, Fairclough, Tesche, Shamberg, Tremaine.
NAYS: Sullivan, Kendall, Clementson.

(Clerk's note: Mr. Van Etten was out of the room at the time of the vote).

The Assembly then returned to consider item 11.A, AO 2001-158.

Ordinance No. AO 2001-158, an ordinance amending all of Title 17, regulating the **care and control of animals** within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Health and Human Services.

1. Assembly Memorandum No. AM 748-2001.
2. Ordinance No. AO 2001-158(S), an ordinance amending all of Title 17, regulating the care and control of animals within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Health and Human Services.
3. Assembly Memorandum No. AM 232-2002.
4. Information Memorandum No. AIM 20-2002, Title 17 revisions, Health and Human Services.
5. Ordinance No. AO 2001-158(S-1), an ordinance amending all of Title 17, regulating the care and control of animals within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Health and Human Services.
6. Ordinance No. AO 2001-158(S-2) an ordinance amending all of Title 17, regulating the care and control of animals within the Municipality, including but not limited to adoption, impound, euthanasia, licensing, immunization, quarantine, administration, fees, fines and penalties, and other matters, Chairman Traini.
7. Assembly Memorandum No. AM 315-2002.
8. Ordinance No. AO 2001-158(S-3), an ordinance amending all of Title 17, regulating the care and control of animals within the Municipality, including but not limited to adoption, impound,

Mr. Sullivan moved, to amend AO 2001-158 S-3 to remove the cat licensing language
seconded by Ms. Von Gemmingen, throughout the document.

In response to Ms. Clementson, Mr. Tesche withdrew his previous motion to approve AO 2001-158 S-3.

Mr. Sullivan said AO 2001-158 S-3 was uncomplicated. Where the document previously referred to animals, including dog and cat, dog has been substituted to make it clear that these sections were referring to only dogs. There are a few sections that needed to be discussed.

Mr. Tremaine said he owned a cat and did not mind putting a bar code underneath the cat's skin, but he did not want to uniformly license cats. Licensing of cats seemed to be a very emotional issue for many people.

In response to Mr. Tesche, Chairman Traini said the cat identification requirement document was prepared by the Animal Control Advisory Board.

In response to Mr. Tesche, Mr. Sullivan said there was some criticism of the S-1 and S-2 version of AO 2001-158 that said they were going to remove one line that spoke to cat licensing, but did not continue that thought throughout the document. The amendment would go throughout the document and removes that language in all the appropriate places.

Mr. Tesche said it was still the wish of the Animal Control Advisory Board to retain cat licensing, but if cat licensing were to be eliminated they would like it done per this recommendation.

Mr. Tesche said if it was the wish of the Assembly to eliminate cat licensing, they could move this particular series of amendments proposed by the board subject to Mr. Tremaine's review of the specific amendments and how they fit in. They could make minor changes to the S-3 version at another meeting if necessary. He felt it was appropriate to vote up or down the amendments on cat licensing.

Mr. Sullivan concurred with Mr. Tesche.

Ms. Clementson noted that it was unlawful to allow your pet to run wild. She questioned if the Assembly was going to pass a law that said if a person was going to break the law then they had to license their animal.

In response to Ms. Clementson, Mr. Sullivan said this was only meant to be a starting point so Mr. Tremaine, as chairman of the committee, could review the document and decide if this satisfied the Assembly's intentions.

Chairman Traini said voting on the cat licensing issue would give Mr. Tremaine direction that the Assembly did or did not intend to license cats.

In response to Chairman Traini, Mike Walsh said if the Assembly adopted this as a policy it would do away with the collection of fees for cat licensing. Cat identification would be required, but not licensing.

In responses to Ms. Clementson, Mike Walsh said it was against the law to allow your cat run loose, but it was difficult to find the person responsible for allowing that cat to run loose because the cats could not be identified. They had 766 cats through the facility in the first three months of the year with only 17 of them claimed by their owners. The cat that was outside running loose illegally had no means of identification. The identification process would allow us to write the owner a ticket for allowing the cat to run loose. The Animal Control Advisory Board felt cat licensing was the best method of handling the situation. They understood it was an emotional issue so they were offering an alternative between what they were currently doing and what they would like to do in the future.

Mr. Sullivan said the amendment would make it unlawful for cat owners to allow their cats to be in a public place or on another person's private property unless the person maintained an identification tag. In other words, they were saying as long as there was an identification tag, it would be lawful to allow your cats to run loose.

In response to Mr. Sullivan, Mr. Walsh said an unidentified cat would be one ticket, but the person would also receive a ticket for violating the leash law. A loose cat with an identification tag would still receive the ticket for the violation of the leash law ordinance. It was specifically stated the section should not apply to cats under control by leash or by confinement. It tied it back to 17.10.10.

Ms. Von Gemmingen had a question on number 17, page 36, lines 27 to 29, A-1, which said cats shall be kept for one full Animal Care and Control Center business day unless redeemed earlier by their owner.

In response to Ms. Von Gemmingen, Mr. Walsh said a cat without identification would be kept for one day, but a cat with identification would be kept for three days. This would provide an incentive for the owners to place identification on their animals. Currently both dogs and cats were kept for three days whether or not they were tagged.

Ms. Fairclough said she would like to know the pros and cons of licensing cats. Based on the contacts she has had, the pros were it would lead to responsible pet ownership and being able to reunite animals with their owners, which would reduce the number of animals currently being euthanized at the shelter. The cons were it was a way to raise additional money for the Municipality to fund something else, which was not the case. People felt cats were different than dogs, because they stayed in the house, and should not require licensing. There would be an avoidance issue if cats were licensed and there would be fewer cats with rabies shots and adoption capabilities would be removed due to the increased prices.

Mr. Sullivan accepted Mr. Tremaine's friendly amendment to eliminate the last sentence on page 1, subsection 012, sub A, to read: It shall be unlawful for the owner or custodian of a cat over the age of four months to allow the cat to be in a public place or upon the private property of another unless the person maintains an identification worn by the cat or maintains the cat under leash control.

Ms. Clementson noted that the amendment was saying it was unlawful to allow a cat to run loose and on someone else’s property unless it had identification or was on a leash, which was in opposition to the rest of the code. It was not all right for a cat to run loose even if it had identification. The goal was to prevent cats from running around, not find the cat’s owner. She felt the paragraph needed some reworking. She noted that two cats had taken up residence underneath her back deck. In December her outside freezer was too full to put the turkey in, so she put it outside in a bag and the cats ate her turkey. She did not own a cat because she was allergic to cats and did not even want them around her house. This amendment would say it was okay for the cat to be running loose as long as it had an identification tag. She concurred with the listing of the pros and cons provided by Ms. Fairclough. She was not sure what the Assembly would be voting on, because there were some very specific amendments. He felt Mr. Tremaine’s motion of shall we license cats would at least give the Assembly some direction, but the proposed amendment was very specific and confusing.

Mr. Tremaine said the Animal Control Board had done a great job, but the first version and the S version had not gone through thorough attorney review. He recommended that the Assembly acknowledge that this was a work session approach to specific language that they fully expected to comport with the rest of the document.

Mr. Sullivan concurred with Mr. Tremaine. Even if the Assembly voted on an amendment, they could always re-amend it and change it once they went through the process of having another work session and the Legal Department had a chance to look at it.

Mr. Sullivan moved, to amend the amendment to AO 2001-158 S-3, section 17, A-1, to read: cats shall be kept for three full Animal Care and Control Center business days.

Mr. Tremaine suggested going to the S-3 version on page 37, line 27, 28 and 29, which treats all animals, the same.

Mr. Walsh said by approving the amendment to the amendment, the Assembly would be lengthening the time for identified cats. We shorten the time for an unidentified cat to be claimed by its owner, but we lengthen the time for adoption. Currently they were at three and five. If the amendment passed, they would be at three and seven. He referenced section 18, page 39, lines 35 through 38, E-2. The intent of the board was not to shorten the period of time in which we would have the cat at the facility, but to shorten the period of time in which it could be claimed by its owner. If we had an owner that came in on the third day, they would have to adopt the animal and it would be micro-chipped and spayed or neutered.

In response to Mr. Tremaine, Mr. Koeniger said there was a lot of testimony that it was only the irresponsible cat owners that were letting their cats run loose and responsible cat owners should not have to license their cats. If we were dealing with the irresponsible cat owner and we looked at the reclamation statistics then we cannot return the cats to the owners without identification. If the cat has an identification tag then we try to contact them and they have three days to come in and claim the cat. If the cat does not have an identification tag, the cat would probably belong to an irresponsible owner who would not come in to claim the cat anyway and we would make that animal available for adoption sooner.

Mr. Sullivan withdrew his motion to amend AO 2001-158 S-3.

Mr. Tremaine noted that they were talking about cat identification and not cat licensing.

Mr. Tremaine moved, the question of whether cat identification should be mandatory or optional.

Ms. Fairclough said if the Assembly chose to support the amendment that it would be an indication to the rest of the body that they were not supporting cat licensing.

In response to Ms. Von Gemmingen, Chairman Traini said adoption of the amendment would get rid of cat licensing and adds the provision 17.10.012 that required people to have identification on their cat.

Mr. Koeniger said the cat identification could be in the form of a collar or a microchip.

Ms. Fairclough explained that a yes vote on this amendment would not support cat licensing and a no vote would mean you would leave cat licensing and the \$6 fee in AO 2001-158 S-3.

Chairman Traini clarified the motion. A yes vote would eliminate cat licensing. A no vote would keep cat licensing.

Question was called on the motion to amend AO 2001-158 S-3 and it passed:

AYES: Sullivan, Taylor, Van Etten, Traini, Tesche, Shamberg, Tremaine.
NAYS: Von Gemmingen, Fairclough, Kendall, Clementson.

Ms. Fairclough noted that the amendment to AO 2001-158 S-3 passed, which meant cat licensing was out and they had a new piece in front of the Assembly that required identification of cats.

Mr. Tesche referenced page 20, line 18 of AO 2001-158 S-3.

Mr. Tesche moved, to amend AO 2001-158 S-3, page 20, line 18, contain the word “may” seconded by Ms. Clementson, rather than “shall.”

Mr. Tesche felt dog parks were fine, but should be discretionary and not mandatory.

Ms. Clementson noted that the word “shall” meant there was a requirement and process through Parks and Recreation. Mr. Posey said the Assembly needed to raise the fee for licensing dogs so they could afford to maintain the dog parks if they were required.

Ms. Von Gemmingen moved,
seconded by Ms. Taylor,

to substitute to amend AO 2001-158 S-3, item 7 to read: “The Municipality may establish designated areas known as dog parks for dogs off leashes in areas, which minimize impact with other uses. An action may not be brought against the Municipality for the designation, design, maintenance or operation of a dog park.”

Mr. Kendall said this appeared to be an advisory sentence on immunity. He did not think they could tell people that they could not sue the Municipality.

In response to Chairman Traini, Ms. Rhonda Fehlen of the Legal Department concurred with Mr. Kendall that they could not tell people that they could not sue the Municipality.

Mr. Tesche said there were two different concepts in the amendment. One was whether or not someone could bring a lawsuit against the Municipality. Anyone with \$100 could file a lawsuit. The other issue was if a lawsuit was brought against the Municipality with respect to the designation, design, maintenance or operation of dog parks could the Municipality, by ordinance, immunize itself and say the Municipality would not be responsible in damages with respect to decisions it makes over the designation, design, maintenance or operation of a dog park. This gets to the issue of tort immunity for Municipalities, which is addressed in Alaska Statutes. If we want to allow discretionary dog parks, but at the same time include a provision limiting our liability as much as possible, he would want to see this very carefully drafted by defense counsel that handles tort cases for the City who are very experienced in the state tort immunity statute. There are questions about discretionary versus planning or operational considerations. There is a question as to how far that statute might go to prohibit contrary Municipal enactments like this. He felt the language needed to be crafted by counsel.

Question was called on the motion to amend AO 2001-158 S-3 and it passed:

AYES: Sullivan, Von Gemmingen, Taylor, Van Etten, Traini, Fairclough, Tesche, Shamberg, Tremaine.
NAYS: Kendall.

(Clerk’s note: Ms. Clementson was out of the room at the time of the vote).

15. BOARD OF ADJUSTMENT/ASSEMBLY APPEALS: None.

16. SPECIAL ORDERS:

A. Assembly Memorandum No. AM 338-2002, certification of the April 2, 2002, Regular & Special Municipal Elections, Clerk’s Office.

This item addressed earlier in the meeting. See item 10.

B. Resolution No. AR 2002-121, a resolution of the Anchorage Municipal Assembly revising the 2002 General Government Operating Budget by appropriating the sum of \$2,500 from Areawide General Fund (101) Balance to the Mayor’s Office to provide a grant to the Anchorage Cultural Council on the Arts to assist with the expenses for **the 2nd Annual Mayor’s Arts Awards**, Assembly Office. **(LAID ON THE TABLE)**
1. Assembly Memorandum No. AM 374-2002.

17. UNFINISHED AGENDA: None.

18. AUDIENCE PARTICIPATION: None.

19. ASSEMBLY COMMENTS:

Ms. Fairclough said she spent a very productive Saturday last week by starting off with the first ever One Stop Recycling in Eagle River at the Wal-Mart parking lot. CSX Sea-Land provided vans. Lynden Transport provided a truck and a driver. There were many other sponsors from the community. They had 208 cars go through and 50 volunteers. She thanked the Citizens for Recycling for helping with the effort. After that she met with her legislators and appreciated the legislators coming out and speaking to the community. She was with Ms. Shamberg at a beautiful ceremony honoring her contributions to her community. The appreciation for her in this community was shared by all and it was a wonderful event. Ms. Shamberg has been recognized as a woman of achievement in our community.

Ms. Shamberg thanked her fellow Assemblymembers for their support and for attending the ceremony.

20. EXECUTIVE SESSIONS: None.

21. ADJOURNMENT:

Ms. Fairclough moved,
seconded by Mr. Sullivan,
and it passed without
objections,

to adjourn the meeting.

Chairman Traini adjourned the meeting at 9:35 p.m.

Chairman

ATTEST:

Municipal Clerk

Date Minutes Approved: _____, 2002

GM/cmw