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# Report of the Local Boundary Commission to the Second Session of the Twenty-Second Alaska State Legislature

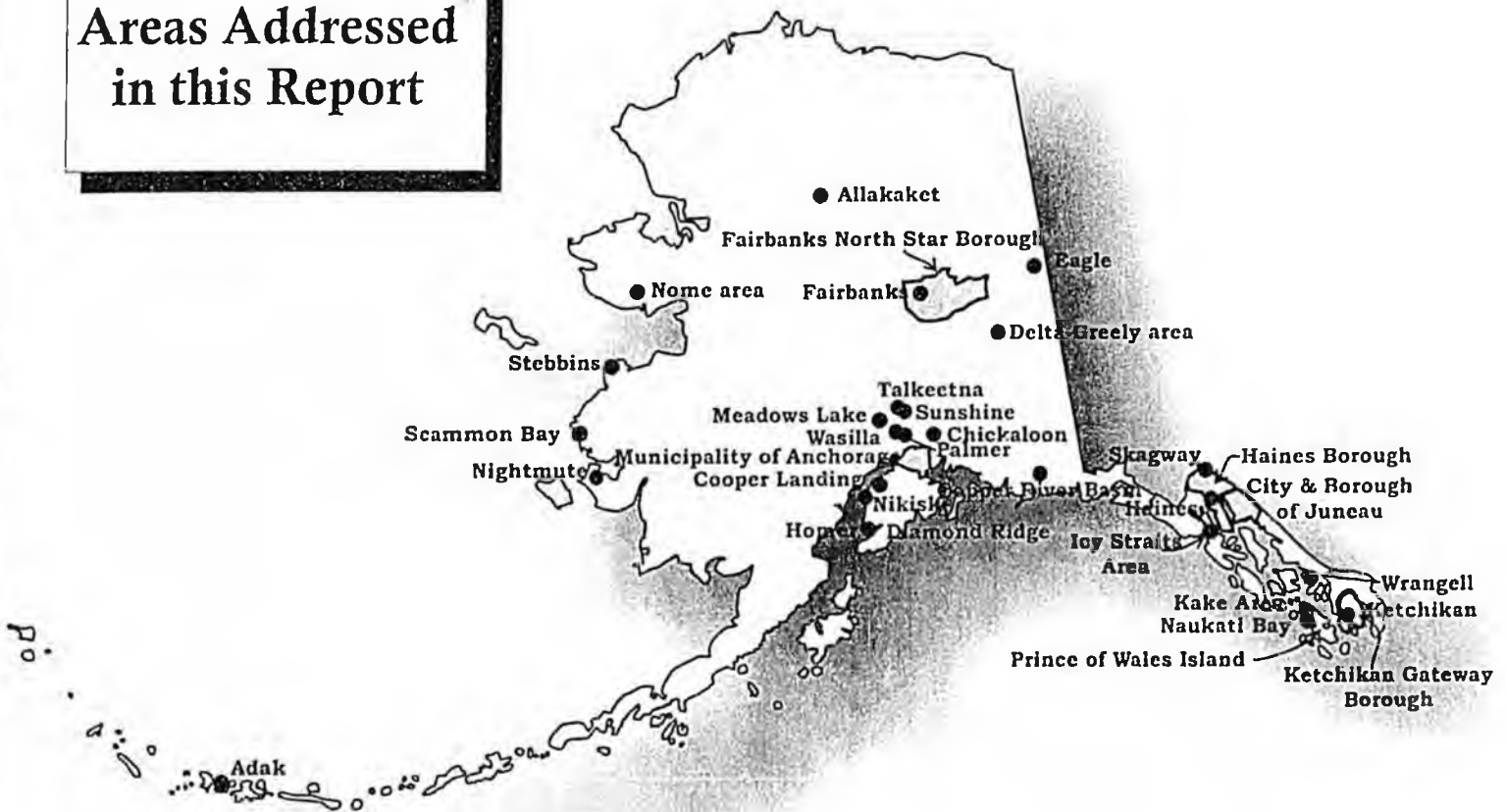
January 23, 2002

LBC Annual Report

Joint House and Senate C&RA Committee  
February 7, 2002

*Senator Torqerson*

**Areas Addressed  
in this Report**



Kevin Waring, Chairperson  
Vacant, 1st Judicial District  
Vacant, 2nd Judicial District  
Allan Tesche, 3rd Judicial District  
Ardith Lynch, 4th Judicial District



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This report is also available on the Local Boundary Commission's website at:

[Http://www.dced.state.ak.us/mra/LBC/Mrad\\_lbc.htm](http://www.dced.state.ak.us/mra/LBC/Mrad_lbc.htm)

# Report of the Local Boundary Commission to the Second Session of the Twenty-Second Alaska Legislature

January 23, 2002

## Local Boundary Commission

Kevin Waring, Chairperson  
Vacant, First Judicial District  
Vacant, Second Judicial District  
Allan Tesche, Third Judicial District  
Ardith Lynch, Fourth Judicial District



Tony Knowles, Governor

Report prepared with assistance from:

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## Message from the Chairperson

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January 23, 2002

On behalf of the members of the Local Boundary Commission, I am pleased to present this report of the Commission to the Second Session of the Twenty-Second Alaska State Legislature.

Chapter 1 provides background information concerning the Local Boundary Commission. Chapter 2 describes activities of the Commission and its staff during 2001. Chapter 3 also describes a number of proposals currently under consideration by municipalities and voters throughout Alaska. Chapter 3 contains discussion of vital public policy issues of particular interest to the Commission. These include the following matters

- Concerns regarding substantial disincentives hindering borough incorporation and annexation and impeding the proper development of local government in Alaska. In that context, the Commission respectfully urges the Alaska House of Representatives to adopt *CSSB 48(FIN) am* to reform State law governing borough incorporation and annexation of areas that are ready and capable of operating boroughs.
- Concerns over ambiguity regarding the authority of newly incorporated municipal governments to levy property taxes during the initial assessment year after incorporation. Similarly, there is uncertainty over the authority of a municipal government that has expanded its boundaries to levy property taxes in the annexed area during the initial assessment year following annexation.

Under separate cover, the Commission has presented to the President of the Alaska Senate and the Speaker of the Alaska House of Representatives a formal recommendation by the Local Boundary Commission for annexation of approximately 4.58 square miles to the City of Homer. Under Article X, § 12 of Alaska's Constitution, the Commission's recommendation for annexation of 4.58 square miles to the City of Homer takes effect unless the Legislature rejects the Commission's recommendation by adopting a joint resolution in both houses within forty-five days from the date of presentation of the recommendation (or by the end of the session, whichever occurs first).

The Commission respectfully invites the Legislature to consider the account of activities and issues addressed in this report.

Cordially,

Kevin Waring  
Chairperson

# Contents

<b>BACKGROUND AND PROCEEDURES</b>	
Role and Purpose of the Commission .....	1
Members of the Commission .....	2
Staff to the Commission .....	3
Procedures of the Commission .....	4
<b>ACTIVITIES AND DEVELOPMENTS DURING 2001 .....</b>	<b>6</b>
City Incorporation .....	6
Borough Incorporation .....	9
City Annexation .....	10
Borough Annexation .....	13
City and Borough Consolidation .....	13
City Dissolution .....	16
City Detachment .....	17
Borough Detachment .....	17
Changes to the Regulations of the Local Boundary Commission .....	18
Litigation Involving the Local Boundary Commission .....	18
<b>POLICY ISSUES</b>	
Senate Bill 48 Addresses Impediments to Development of Local Government in Alaska .....	20
Ambiguities in the Law Concerning Municipal Incorporation, Boundary Changes, Dissolution, and Reclassification .....	28
Small Community Housing Mortgage Loan Program Adversely Impacts Certain Municipal Boundary Proposals .....	30
Promotion of Maximum Common Interests within Boroughs .....	30
Funding for Borough Feasibility Studies .....	32
<b>INDEX .....</b>	<b>33</b>

# 1

# Background and Procedures

This chapter provides information concerning the Local Boundary Commission, including background about the purpose of the Commission and the staff support functions of the Department of Community & Economic Development (DCED). Details of the procedures used by the Commission are also provided.

## Role and Purpose of the Commission

The Local Boundary Commission acts on petitions for the following:

- ◆ incorporation of cities and boroughs;
- ◆ annexation to cities and boroughs;
- ◆ detachment from cities and boroughs;
- ◆ dissolution of cities and boroughs;

- ◆ merger of cities and boroughs;
- ◆ consolidation of cities and boroughs; and
- ◆ reclassification of cities.<sup>1</sup>

The Local Boundary Commission was established under Alaska's Constitution to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal corporations. In the words of the Alaska Supreme Court:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary com-

mission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

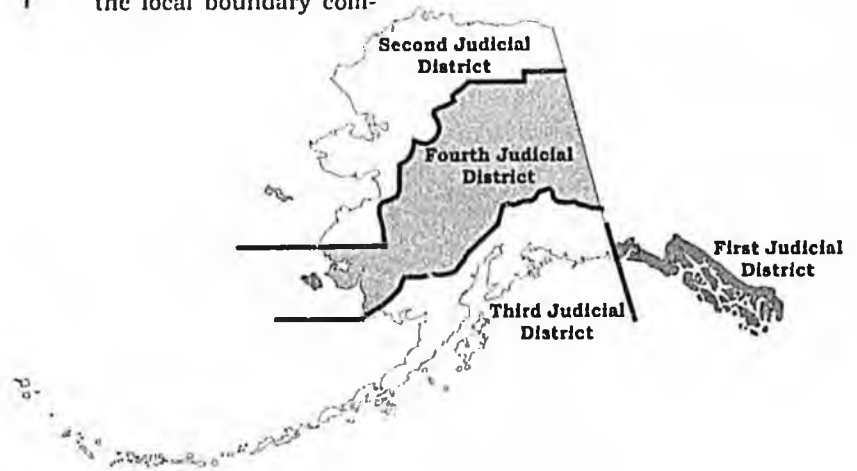
...lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.<sup>2</sup>

Among the 130 or so State Boards and commissions, only the Local Boundary Commission and four others have origins in Alaska's Constitution.<sup>3</sup>

<sup>1</sup> See AS 29.04, AS 29.05, AS 29.06, and AS 44.33.

<sup>2</sup> *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

<sup>3</sup> The Local Boundary Commission was established pursuant to Article X, Section 12 of the Constitution of the State of Alaska and AS 44.33.810. The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission of Judicial Conduct, and Redistricting Board.



Decisions of the Local Boundary Commission often involve important social, political and economic policy issues. In 1974 and again in 1993, the Alaska Supreme Court remarked that:

"A determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy ... The Local Boundary Commission has been given a broad power to decide in the unique circumstance presented by each petition ... Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions."<sup>4</sup>

## Members of the Commission

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership."<sup>5</sup>

Information about current Commissioners follows.

**Kevin Waring**, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner



Waring was one of the original division

directors of the former Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.

**Allan Tesche** serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10,



1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's current term on the Commission expires January 31, 2002.

**Ardith Lynch** serves from the Fourth Judicial District and lives in the greater Fairbanks area.



She was appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her current term on the Commission expires December 21, 2004.

<sup>4</sup> Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92, 98 (Alaska 1974); reaffirmed, Valleys Borough Support Committee v. Local Boundary Commission, 863 P.2d 232, 234 (Alaska 1993).

<sup>5</sup> AS 39.05.060

AS 44.33.020(4)

**(Vacant Seat)** The seat from the First Judicial District is currently vacant. Until recently, Kathleen S. Wasserman, a resident of Pelican, served from the First Judicial District as the Vice-Chairperson of the Commission. She was appointed to the Commission on September 14, 1995 and reappointed in 1996 and 2001. Ms. Wasserman serves as Mayor of the City of Pelican. In the past, Ms. Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaii. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Ms. Wasserman resigned from the Commission on January 3, 2002.

**(Vacant Seat)** The seat from the Second Judicial District is currently vacant. Until recently, Nancy Galstad served on the Commission from the Second Judicial District. Ms. Galstad resigned from the Commission last year when she moved from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed in 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad recently served as the Manager of the City of Kotzebue. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and served as Vice Chair of the Alaska Municipal League Joint Insurance

Association. She also served as a member of the State's Task Force on Education Funding in 1995.

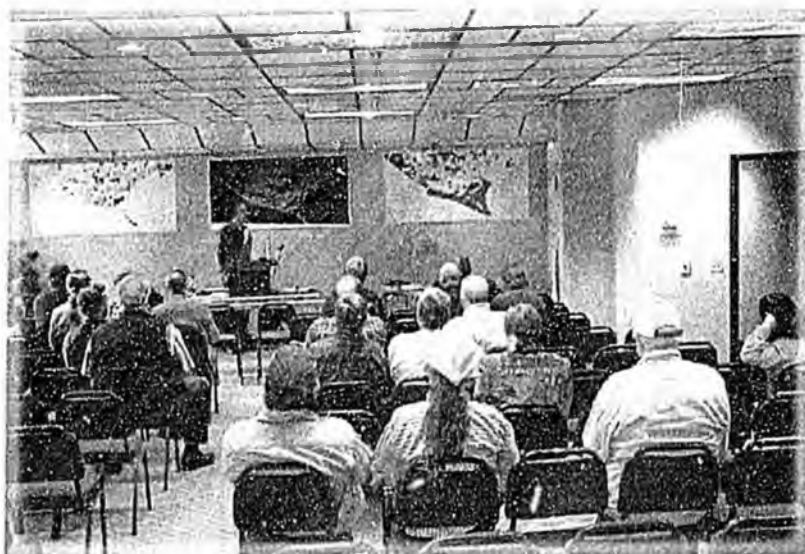
### Staff to the Commission

The Alaska Department of Community and Economic Development (DCED), Division of Community and Business Development (DCBD), provides staff to the Commission.<sup>6</sup>

Commission staff provide technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others. Types of assistance include:

- ◆ conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- ◆ conducting informational meetings;
- ◆ providing technical support during Commission hearings;
- ◆ drafting decisional statements;
- ◆ implementing decisions of the Commission;
- ◆ certifying actions; and
- ◆ maintaining incorporation and boundary records for each of Alaska's 162 existing municipal governments.

As required by law, staff analyzes formal petitions filed with the Commission and prepares reports conveying



DCED staff at a recent public information meeting.

DCED's recommendations for action by the Commission.<sup>7</sup> DCED staff also certifies municipal incorporations, dissolutions, annexations, detachments, mergers, consolidations, and reclassifications. The Commission and DCED are independent of one another with respect to policy matters. For example, the Commission is not bound to follow the recommendations that DCED is required by law to provide to the Commission.

## Procedures of the Commission

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the Commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the

Commission, and opportunity for reconsideration by the Commission. A summary of the procedures follows.

**Preparation and Filing of the Petition.** DCED offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals.

Once a formal petition is prepared, it is submitted to DCED for technical review. If the petition contains all the information required by law, DCED accepts the petition for filing.

**Public Notice and Public Review.** Once a petition is accepted for filing, extensive public notice is given. Interested parties are typically given at least seven weeks to submit responsive briefs and comments supporting or op-



*Materials filed for LBC review and consideration during a recent annexation proceeding.*

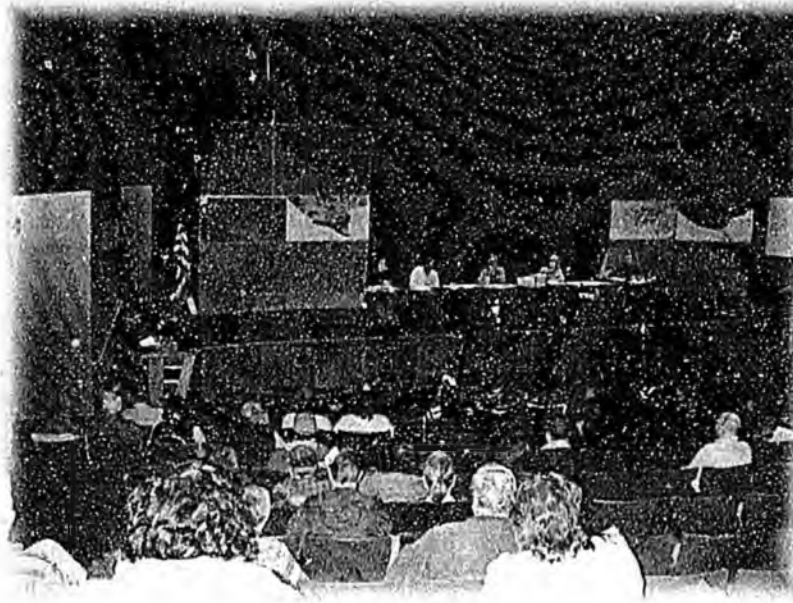
posing a petition. The petitioner is typically provided at least two weeks to file one brief in reply to responsive briefs.

**Analysis.** Following the public comment period, DCED analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. The petitioner and DCED may conduct informational meetings. At the conclusion of its investigation, DCED issues a preliminary report for public review and comment. The report includes a formal recommendation to the Local Boundary Commission for action on the petition.

The preliminary report is typically circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its report, DCED issues its final report. The final report includes a discussion of comments received on the preliminary report and also notes any changes to DCED's recommendations to the Commission. The final report must be issued at least three weeks prior to the hearing on the proposal.

**Commission Review of Materials and Public Hearing.** Members of the Commission review the petition, responsive briefs, written comments, reply brief, and DCED re-

<sup>7</sup> See AS 29.04, AS 29.05, and AS 29.06.



*Local Boundary Commission listening to testimony at a recent hearing.*

ports. If circumstances permit, Commission members also tour the area at issue prior to the hearing in order to gain a better understanding of the area. Following extensive public notice, the Commission conducts at least one hearing in or near the affected territory.

The Commission must act on the petition within ninety days of its final public hearing. The Commission may take any one of the following actions:

- ◆ approve the petition as presented;
- ◆ amend the petition (e.g., expand or contract the proposed boundaries);

- ◆ impose conditions on approval of the petition (e.g., voter approval of a proposition authorizing the levy of taxes to ensure financial viability); or
- ◆ deny the petition.

The law requires the Commission to reach a decision within ninety days of its hearing. However, the Commission typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the Commission must adopt a written statement setting out the basis for its decision. Copies of the statement are provided to the petitioner, respondents, and others who request it. At that point, the

decision becomes final, but is subject to reconsideration. Any party may ask the Commission to reconsider its decision. Such requests must be filed within twenty days of the date that the decision became final. If the Commission does not approve a request for reconsideration within thirty days of the date that the decision became final, the request for reconsideration is automatically denied.

**Implementation.** If the Commission approves a petition, the proposal is typically subject to approval by voters or the legislature. A petition that has been granted by the Commission takes effect upon the satisfaction of any stipulations imposed by the Commission. The action must also receive favorable review under the Federal Voting Rights Act. DCED provides assistance with Voting Rights Act matters.

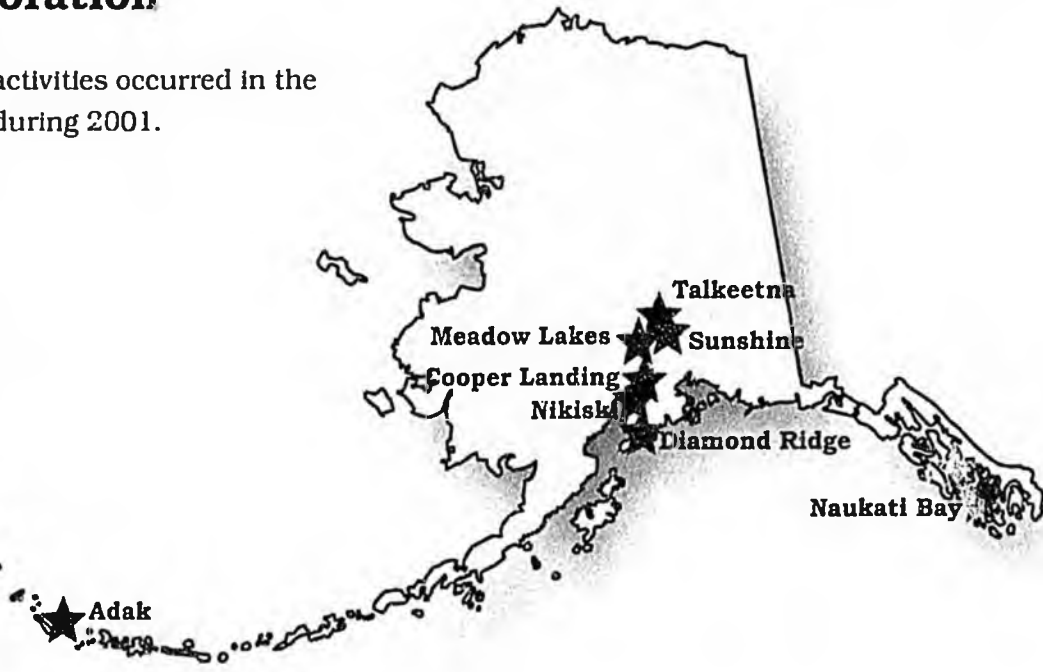


# Activities & Developments During 2001

## City Incorporation

City incorporation activities occurred in the following localities during 2001.

- ◆ Talkeetna
- ◆ Adak
- ◆ Meadow Lakes
- ◆ Naukati Bay
- ◆ Nikiski
- ◆ Sunshine
- ◆ Diamond Ridge
- ◆ Cooper Landing

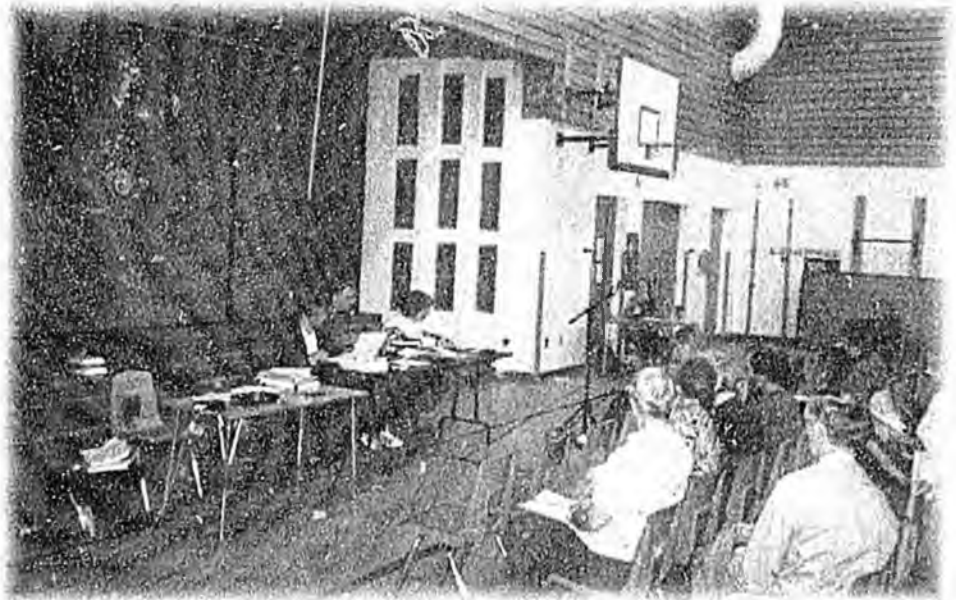


**Talkeetna.** The Local Boundary Commission conducted a public hearing on the proposal to incorporate the City of Talkeetna as a home rule city at the Talkeetna Elementary School on Saturday, August 25, 2001. The petition-

ers' representative, a representative of the respondent Matanuska-Susitna Borough, and members of the public provided oral comments concerning the city incorporation proposal.

At the conclusion of the public hearing, the Commission convened a decisional session. During the session, the Commission voted to approve the amended petition, subject to refinement of the proposed

Home Rule Charter by the petitioners to ensure that it complied with all provisions of law. The motion adopted by the Commission required the proposed Charter to be revised and approved by DCED no later than October 25, 2001.



*LBC holding the Talkeetna incorporation hearing in August 2001.*

The Commission met by teleconference on October 25, 2001 and approved the amended petition.

The Division of Elections subsequently ordered the election on the incorporation proposal to be conducted by mail on March 19, 2002. At the incorporation election, voters will consider the following three propositions:

**Proposition One:** Shall Talkeetna be incorporated as a Home Rule City?

**Proposition Two:** Shall the City of Talkeetna be authorized to levy the particular sales tax outlined in Proposition Number Three that receives the most votes cast at this election? *(Note: Approval of this proposition by a majority of*

*the votes cast on this proposition is required as a condition of incorporation.)*

**Proposition Three:** If the City of Talkeetna is authorized to levy a sales tax pursuant to Proposition Number Two, which of the following sales taxes shall be levied? (Choose One)

(a) A four percent sales tax to be levied from May 1 to September 30 annually, with the limitation that the tax not exceed \$10 on any single sales transaction.

(b) A two percent sales tax to be levied year-round, with the limitation that the tax not exceed \$10 on any single sales transaction.

In addition, the ballot shall provide for election of a mayor and six city council members.

**Adak.** The Local Boundary Commission had approved a proposal to incorporate the second class City of Adak in November 2000. The State Division of Elections conducted an election for incorporation of the City of Adak on April 3, 2001 by mail. Voters approved city incorporation by a margin of 61-6. Voters also authorized the levy of a 3% city sales tax and a 2% fuel transfer tax. The City of Adak was incorporated on April 20, 2001.

**Meadow Lakes.** At the request of the Meadow Lakes community council, DCED staff participated in a February 14, 2001 public meeting of the Meadow Lakes Community Council regarding city in-

corporation. The standards and procedures for city incorporation and questions regarding city annexation were addressed at the meeting.

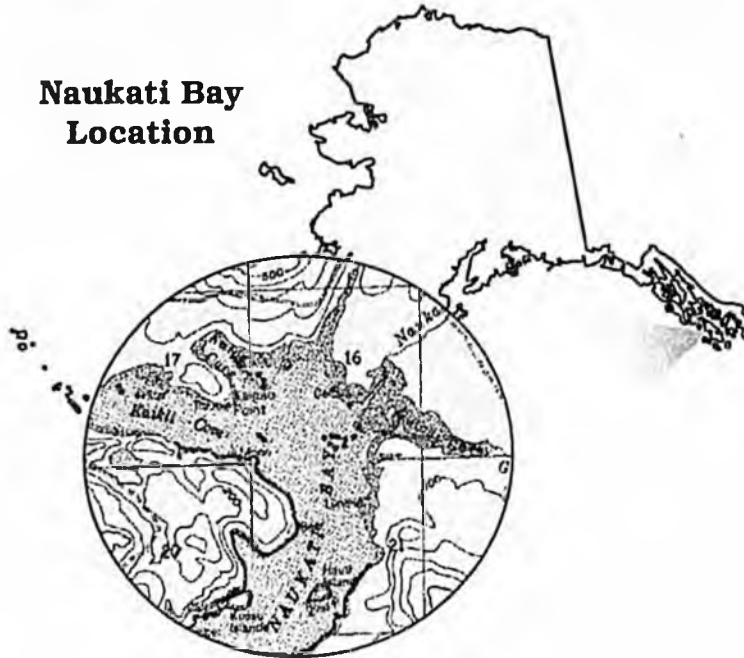
**Naukati Bay.** In March 2001, a resident of Naukati Bay requested and was provided with petition forms for second class city incorporation and background materials. Naukati Bay residents have been exploring city incorporation for more than one year.

**Nikiski.** Nikiski residents held a community meeting regarding incorporation of a home rule City of Nikiski during November 2000. At that meeting, Nikiski residents discussed reviving a proposal advanced a decade ago that sought to incorporate a 2,113 square mile city encompassing greater Nikiski, Salamatof, and Tyonek.

On December 14, 2000, forms for petitioning for incorporation of a home rule city in an organized borough were provided to an attorney representing the group that was interested in incorporation.

At a February 1, 2001 meeting, Nikiski residents discussed three potential city boundary options. The largest encompassed 5,400 square miles, including greater Nikiski, a large portion of Cook Inlet, and Ty-

### Naukati Bay Location



onek. The second option included 503 square miles. The smallest option identified encompassed 72 square miles.

**Sunshine.** In December 2001, a resident of Sunshine indicated that the community has continued to examine the merits of city incorporation and that a Sunshine Chamber of Commerce inquiry showed that approximately 82% of Sunshine residents favored establishing a second class city in Sunshine. Three locally initiated Sunshine community informational meetings regarding city incorporation have occurred and another has been scheduled for March 24, 2002.

**Diamond Ridge.** In November 2001, an opponent of the proposed annexation to the City of Homer requested and

was provided with information regarding incorporation of a second class city. Residents of the Diamond Ridge neighborhood near Homer were reportedly considering city incorporation as an alternative to annexation of the area to the City of Homer.

**Cooper Landing.** In December, a Cooper Landing resident requested and was provided information regarding the standards and procedures for city incorporation.

## Borough Incorporation

The following eight areas of Alaska are examining issues relating to borough incorporation.

- ◆ Skagway
- ◆ Delta-Greely
- ◆ Copper River Basin
- ◆ Kake Area
- ◆ Prince of Wales Island
- ◆ Wrangell Area
- ◆ Icy Straits
- ◆ Nome
- ◆ Chickaloon



**Skagway.** On January 22, 2001, Skagway voters petitioned for dissolution of the City of Skagway and incorporation of a first class borough. The proposed borough boundaries are identical to those of the City of Skagway, encompassing 462 square miles and a population of 862.

On October 23, 2001, notice of the filing of the petition was published, posted, and mailed to adjacent municipalities and interested parties. The deadline for submission of public comments regarding filing of the petition was December 28, 2001.

The Commission expects to render a decision on the Skagway borough incorporation proposal during 2002.

**Delta-Greely.** In January 2001, DCED staff was informed of renewed interest among residents of the Delta-Greely region in borough incorporation.

On October 3, 2001, the Delta Junction City Council adopted Resolution 2002-04 authorizing the City's application for a \$30,000 grant to develop a regional government feasibility study. That resolution reads, in part:

... there has not been funding for an accurate and in-depth study done to research the feasibility and practicalities of a borough in the Delta Junction area, including which services the public might desire along with the associated costs of service delivery and

potential sources of income, and if feasible, putting the question before Delta area voters.

**Copper River Basin.** In June 2001, representatives of the Denali Borough met with residents of the Copper River Basin to share information regarding the borough incorporation process. In December, a local study group met and expressed intent to initiate a borough feasibility study.

**Kake.** In October 2001, information regarding standards and procedures for borough incorporation was provided to a Kake City Council member.

**Prince of Wales Island.** In October, an official of the City of Craig indicated that communities on Prince of Wales Island were seeking funding for a borough feasibility study for Prince of Wales Island. An effort was undertaken to secure funding to defray the costs associated with such a study.

**Wrangell Area.** In November 2001, the City of Wrangell was reportedly preparing to solicit signatures from voters to authorize the filing of a borough incorporation petition. The boundaries of the area being

considered for borough incorporation encompass 2,477 square miles. The City of Wrangell made the petition available for public review at the Wrangell Library.

**Icy Straits.** On February 1, 2001, DCED staff met with residents of Gustavus and officials of the City of Hoonah, City of Pelican, City of Tenakee Springs, and the Haines Borough. Matters regarding borough incorporation, borough annexation, borough apportionment, and related matters were addressed. A borough feasibility study completed several years ago was updated.

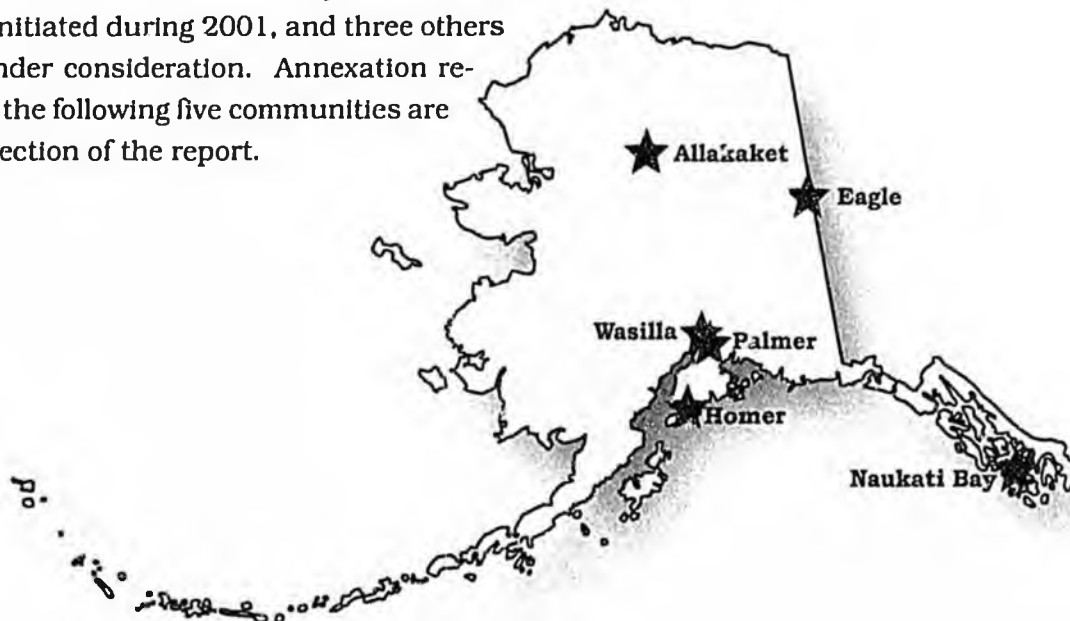
**Nome.** In December 2001, City of Nome staff requested and was provided with information regarding the standards and procedures for borough incorporation.

**Chickaloon.** Information regarding borough detachment standards, incorporation standards, and procedures was provided to a representative of Chickaloon who was purportedly contemplating a petition to detach a large portion of the eastern Matanuska-Susitna Borough and include it in a new borough with additional territory to the east. ■

## City Annexation

Two proposals for annexation of territory to cities were implemented or initiated during 2001, and three others are reportedly under consideration. Annexation related activities in the following five communities are outlined in this section of the report.

- ◆ Homer
- ◆ Wasilla
- ◆ Palmer
- ◆ Allakaket
- ◆ Eagle



**Homer.** On March 20, 2000, the City of Homer petitioned for annexation of an estimated 25.64 square miles with a population of 2,204. The petition was accepted for filing on March 29, 2000.

Fourteen responsive briefs and 168 letters commenting on the petition were filed with DCED in June 2000. In September 2000, the City of Homer filed its Reply Brief.

In July of last year, DCED conducted public informational meetings concerning the annexation proposal. In October 2001, DCED released its 412-page preliminary report concerning the proposed annexation for public review. After considering comments on its preliminary report from 32 individuals and organizations, DCED issued its final report on the matter in November 2001.

Prior to a public hearing on the matter in Homer, the Local Boundary Commission toured the estimated 25.64 square miles by helicopter and automobile. The Commission conducted a public hearing on the proposal on December 14 - 15, 2001. Following the hearing, the Commission amended the petition and approved annexation of an estimated 4.58 square



*Millers Landing portion of the area being recommended for annexation to the City of Homer.*

miles subject to legislative review under the provisions of Article X, § 12 of the Constitution of the State of Alaska.

A formal recommendation under Article X, § 12 for annexation of 4.58 square miles in question has been presented under separate cover to the President of the Alaska Senate and the Speaker of the Alaska House of Representatives. That recommendation includes details about the proceedings along with the finding and conclusions of the Commission supporting annexation of the 4.58 square miles.

Under Article X, § 12, the Commission's recommendation for annexation of 4.58 square miles to the City of Homer takes effect unless the Legislature rejects the Commission's recommendation by adopting a joint reso-

lution in both houses within 45 days from the date of presentation of the recommendation (or by the end of the session, whichever occurs first).

**Wasilla.** On April 10, 2001, the City of Wasilla petitioned for annexation of 32 parcels collectively comprising about 314 acres. The petition was initiated at the request of all owners of the parcels comprising the territory sought for annexation and property owners.

The territory proposed for annexation is comprised of the following seven areas:

- ◆ **Carefree Subdivision** - 22.86 acres at the intersection of the Parks Highway and Seward Meridian Parkway;



Portion of Carefree subdivision being proposed for annexation to the City of Wasilla.

- ◆ **Waiverhill / Lakebrook** - 36.13 acres near the intersection of the Parks Highway and the Palmer-Wasilla Highway;
- ◆ **Silverleaf Estates** - 114 acres at the northwest corner of the existing city boundaries at the intersection of Spruce Road and Ashford Blvd;
- ◆ **Olson Subdivision** - 4.72 acres near the intersection of the Parks Highway and Palmer Wasilla Highway;
- ◆ **Airport South** - 89.09 acres south of the Wasilla Airport;
- ◆ **Airport North** - 7.35 acres north of the Wasilla Airport; and

- ◆ **Happy Mountain** - 39.69 acres adjacent to Happy Mountain Estates.

The petition was accepted for filing on April 16, 2001. On October 25, 2001, the Local Boundary Commission approved a request from the City of Wasilla for relaxation of procedural regulations concerning the petition. The Commission expects to act on the petition early this year.

**Palmer.** In February 2001, a consulting firm retained by the City of Palmer issued a study analyzing "potential effects of annexing areas outside current boundaries of the City of Palmer". The report "also identifies policies the City should consider in providing municipal services be-

yond its boundaries, as well as current LBC policies that are relevant to the City's annexation policy."

The areas considered encompass approximately 12 square miles. At the direction of the Palmer City Council, the study analyzed an area that encompasses the City's sewer service area boundary and three square-miles located south of the sewer service area.

City staff subsequently indicated that a petition for annexation of an as-yet-undetermined area would likely be submitted by March 2002, for possible consideration by the Legislature in 2003.

**Allakaket.** DCED staff provided assistance to the City of Allakaket in its efforts to develop a petition for annexation of developed areas adjacent to the existing City boundaries. The area to be considered for annexation was developed after floods that inundated the community in 1994.

**Eagle.** In December, the Eagle City Clerk indicated that the City is considering extending the City's boundaries. She requested and was provided with information regarding standards and procedures for annexation. ■

## Borough Annexation

No petitions for annexation of territory to organized boroughs were filed during 2001 but officials of the following two organized boroughs expressed interest in annexation.

- ◆ Haines Borough
- ◆ City and Borough of Juneau



**Haines Borough.** A Haines Borough official requested and was provided forms and sample materials needed to petition for annexation.

Borough officials were exploring extension of the Borough's boundaries in a westerly direction to the boundaries of

the City and Borough of Yakutat (thereby encompassing Gustavus) and in a northeasterly direction (thereby encompassing Skagway).

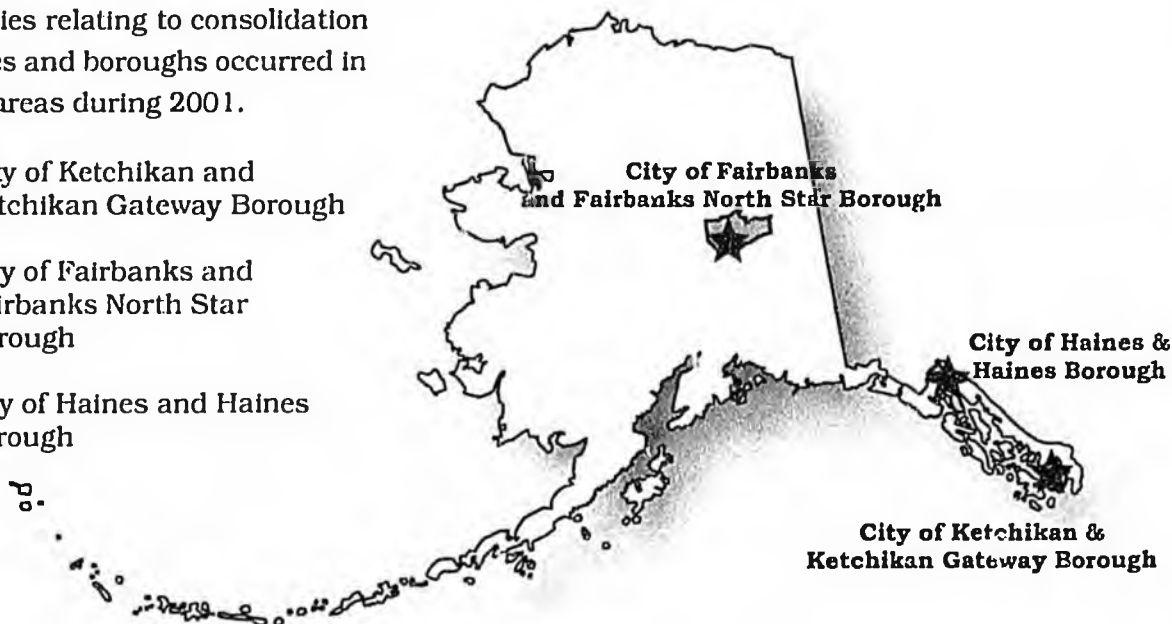
Borough officials subsequently determined not pursue annexation.

**City and Borough of Juneau.** On December 17, 2001, the Manager of the City and Borough of Juneau indicated that local officials were exploring the prospects of extending the boundaries of the City and Borough of Juneau to include Hobart Bay in the context of harbor development. ■

## City and Borough Consolidation

Activities relating to consolidation of cities and boroughs occurred in three areas during 2001.

- ◆ City of Ketchikan and Ketchikan Gateway Borough
- ◆ City of Fairbanks and Fairbanks North Star Borough
- ◆ City of Haines and Haines Borough



**City of Ketchikan/Ketchikan Gateway Borough.** On May 8, 2000, the City of Ketchikan petitioned to consolidate the Ketchikan Gateway Borough and the City of Ketchikan into one local government (a home rule borough).

In February of last year, DCED issued its preliminary report on the petition. The Report concluded that the proposal offered credible prospects for significant advances regarding efficiencies, effectiveness, economies, and equities with regard to Ketchikan's local government structure. The preliminary report also concluded that the

Ketchikan consolidation proposal satisfied all legal standards governing consolidation. The report recommended that the Local Boundary Commission approve the petition with limited technical amendments.

Five parties submitted timely comments on DCED's preliminary report. After considering those comments, DCED issued its final report on the matter.

The Commission held a public hearing on the proposal in Ketchikan on Saturday, April 21, 2001. Following the hearing, the Commission unanimously approved

the petition, with minor technical amendments. The State Division of Elections conducted the consolidation election on July 17, 2001.

The proposition was approved by voters inside the City of Ketchikan by a two to one margin. However, voters outside the City of Ketchikan rejected the proposal by a margin of roughly four to one. The areawide tally, which determined the outcome, resulted in the rejection of the proposal by a margin of 1,642 to 2,273.

STATE OF ALASKA  
DIVISION OF ELECTIONS  
JUNEAU

CERTIFICATE

*I, Janet Kowalski, Director of the Division of Elections for the State of Alaska, do hereby certify that in accordance with AS 29.06.090, a Consolidation Election was held by mail in the Community of Ketchikan on July 17, 2001. Following are the results:*

SHALL THE EXISTING HOME RULE CITY OF KETCHIKAN  
AND THE EXISTING SECOND CLASS KETCHIKAN GATEWAY  
BOROUGH BE CONSOLIDATED AS THE NEW HOME RULE  
MUNICIPALITY OF KETCHIKAN?

YES 1642 NO 2273



*In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital, this 2<sup>nd</sup> day of August, A.D. 2001.*

*Janet Kowalski, Director  
Division of Elections*

STATE OF ALASKA  
DIVISION OF ELECTIONS  
JUNEAU

CERTIFICATE

*I, Janet Kawahiki, Director of the Division of Elections for the State of Alaska, do hereby certify that in accordance with AS 29.06.090 and AS 29.06.140, a Consolidation Election was held by mail in the City of Fairbanks and the Fairbanks North Star Borough on August 28, 2001. Following are the results:*

SHALL THE CITY OF FAIRBANKS AND THE FAIRBANKS NORTH STAR BOROUGH BE CONSOLIDATED AS THE MUNICIPALITY OF FAIRBANKS, A NEW SECOND CLASS BOROUGH?

YES 3,521 NO 12,519



*In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital, this 11th day of September, A. D. 2001.*

*Janet Kawahiki, Director*  
Division of Elections

*Division of Election's certification of the Fairbanks consolidation election held in August 2001.*

**City of Fairbanks/Fairbanks North Star Borough.**

On March 20, 2000, voters in the Fairbanks North Star Borough submitted a petition to consolidate the Borough and the City of Fairbanks. The proposal called for the replacement of the two governments with a new second class borough.

The petition was signed by 4,042 voters of the Fairbanks North Star Borough, of whom 1,416 were also voters of the City of Fairbanks.

During the ten-week period allowed for public review and comment on the proposal, the City of Fairbanks, Fairbanks North Star Borough, and In-

terior Taxpayers' Association filed briefs opposing consolidation. Two other interested parties submitted timely letters opposing consolidation and the petitioners filed a reply brief.

DCED issued its preliminary report regarding the consolidation proposal on December 28, 2000. After reviewing comments on its preliminary report, DCED issued its final report regarding the matter on March 16, 2001.

On April 7, 2001, the Commission conducted a public hearing in Fairbanks on the consolidation petition. During the hearing, a witness for the City of Fairbanks urged

the LBC to delay action on the proposal to allow for the establishment of an elected commission to prepare a home rule charter, which would be added to the petition through an amendment. The petitioners' representative, the Fairbanks North Star Borough, and the City of Fairbanks also requested that the Commission defer action on the petition. More specifically, the parties requested that the Commission allow the Borough Assembly until May 22, 2001 to adopt a resolution calling for the election of a charter commission, and allow the Fairbanks City Council to adopt a resolution approving the charter commission election. The Com-

mission recessed the meeting and provided that if either body failed to pass resolutions by May 22, 2001, the LBC would act on the petition.

The charter commission election was never held. Accordingly, on May 23, 2001, the Commission granted the petition with limited modifications that had been endorsed by the petitioners' representative. The Commission issued its decisional statement on June 7, 2001.

The consolidation issue was placed before Fairbanks North Star Borough voters at an election conducted on August 28, 2001. Voters rejected the consolidation petition by a vote of 3,521 in favor and 12,519 opposed.

**City of Haines/Haines Borough.** On December 27, 2000, the City of Haines petitioned to consolidate the City of Haines and the Haines Borough as a single Home Rule Borough.

In February of last year, the Haines Borough filed a responsive brief opposing consolidation. In addition, eleven parties submitted written comments on the consolidation proposal. In April, the City of Haines submitted a reply brief in answer to the Borough's responsive brief and the written comments from the individuals and groups.

In July, DCED issued its preliminary report on the matter. DCED concluded that the petition satisfied applicable le-

gal standards for consolidation and recommended that there are fundamental public policy reasons supporting consolidation of the City of Haines and the Haines Borough.

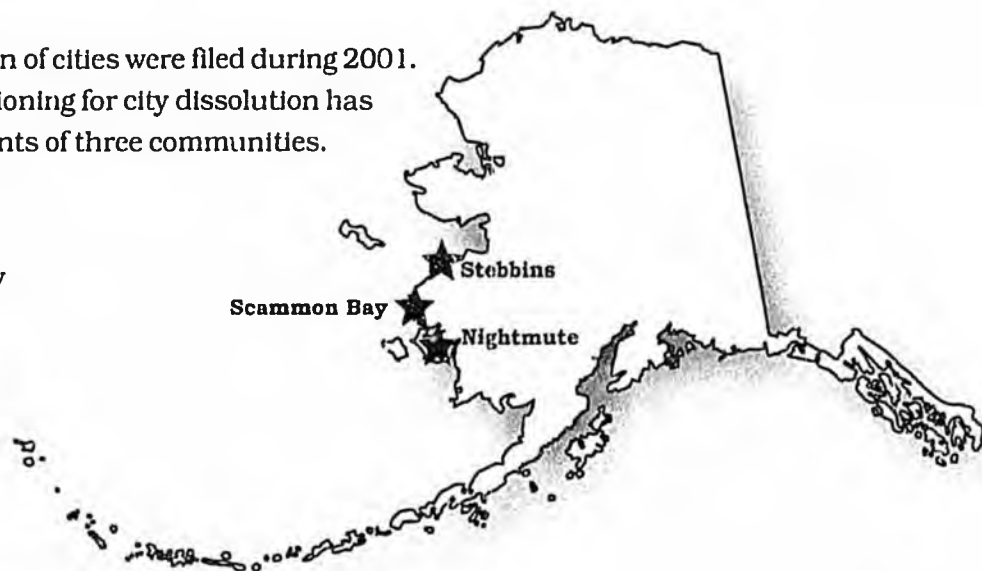
The Commission anticipates that it will conduct a public hearing on the Haines consolidation proposal early this year.

The *Chilkat Valley News* recently reported interest on the part of the local officials in exploring ways to modify the pending consolidation petition, including the Charter, to make consolidation more acceptable to Haines voters. ■

## City Dissolution

No petitions for dissolution of cities were filed during 2001. However, interest in petitioning for city dissolution has been expressed by residents of three communities.

- ◆ City of Nightmute
- ◆ City of Scammon Bay
- ◆ City of Stebbins



**Nightmute.** On November 3, 2001, a community meeting regarding dissolution of the City of Nightmute was conducted. No petition for dissolution has yet been submitted.

**Scammon Bay.** Petition forms, standards, and procedures were requested by and provided to a Scammon Bay resident on June 8, 2001. No petition for dissolution has been filed in the matter.

**Stebbins.** Stebbins residents are developing a petition to dissolve the second class City of Stebbins and designate the Stebbins IRA Council as the successor to the City. ■

## City Detachment

No petitions for detachment of territory from cities were filed during 2001. However, interest has been expressed in detachment of territory from one city.

**Allakaket.** Continued local interest in seeking detachment of Alatna from the City of Allakaket has been reported. ■



## Borough Detachment

No petitions for detachment of territory from organized boroughs were filed during 2001. However, interest in detachment of territory from one borough was evident.

**Municipality of Anchorage.** Eagle River area residents are exploring the merits of formation of an Eagle River-Chugiak borough. Other governmental structures are also being contemplated. These reportedly include detachment of Eagle River-Chugiak from the Municipality of Anchorage and annexation of that area to the Matanuska-Susitna Borough. Another option reportedly being explored is the reconstitution of the Municipality of Anchorage from a unified borough to a non-unified borough, thereby permitting communities such as Eagle River and Girdwood to form city governments. ■



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## **Changes to the Regulations of the Local Boundary Commission**

During the past two years, the Commission devoted considerable effort to revision of its regulations in Title 3 of the Alaska Administrative Code. The revisions were warranted since the last comprehensive review of the Commission's regulations occurred more than ten years ago. Since then, there have been numerous changes in State statutes concerning matters involving the Commission.

Work sessions to address the proposed changes were conducted on April 28, April 30, May 24, June 27, and October 30, 2000. The Commission held a public hearing on the proposed changes on June 27, 2001. The hearing was teleconferenced to five sites. The Commission met again on July 27, 2001 to review the written and oral testimony concerning the proposed regulations. At that time, the Local Boundary Commission approved the proposed regulation changes. The proposed changes to the Commission's regulations are currently being reviewed by the Alaska Department of Law. ■

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## **Litigation Involving the Local Boundary Commission**

During 2001, there were no new or on-going court challenges concerning actions by the Local Boundary Commission. ■

# 3 Policy Issues

**T**he Local Boundary Commission wishes to bring the following policy issues to the attention of the 2002 Legislature:

- ◆ Substantial disincentives for borough incorporation and annexation continue to impede development of local government in Alaska. The Commission has raised this issue with the legislature annually since the 1980s. Last year, the Commission submitted a detailed policy paper on the topic ("The Need to Reform State Laws Concerning Borough Incorporation and Annexation"). The policy paper included a proposal to address impediments to development of borough government. Senate Bill 48, which embodied the reforms recommended in the policy paper, was introduced. It passed the Senate in modified form (*CSSB 48(FIN) am*) and is awaiting consideration by the House of Representatives.

The Commission encourages the House of Representatives to give serious consideration to the legislation. Additional comment on the issue and SB 48 are provided in this Chapter of the report.

- ◆ Ambiguity exists regarding the authority of newly incorporated municipal governments to levy property taxes during the initial assessment year after incorporation. Similarly, there is uncertainty over the authority of a municipal government that has expanded its boundaries to levy property taxes in the annexed area during the initial assessment year following annexation.
- ◆ Last year, the Alaska Housing Finance Corporation resolved certain concerns expressed by the Commission with respect to impacts that the Small Community Mortgage Loan program was having on

municipal boundary proposals. Specifically, the AHFC Board of Directors adopted regulations that neutralized the impact of the loan program with regard to municipal mergers and consolidations. However, a solution to similar concerns on the part of the Commission regarding municipal annexations and incorporations remains elusive.

- ◆ Article X, Section 3 of the Constitution of the State of Alaska requires that each borough, including each unorganized borough, "embrace an area and population with common interests to the maximum degree possible." However, there is now, and always has been, a lack of common interests within the unorganized borough.

## Senate Bill 48 Addresses Impediments to Development of Local Government in Alaska

Since the 1930s, the Local Boundary Commission has urged the Legislature to examine and address the substantial disincentives for borough incorporation and annexation. The Legislature and the Commission have complementary duties relating to that issue. Specifically, the Legislature has the constitutional duty to prescribe procedures and standards for borough formation (see Article X, Section 3 of the Constitution of the State of Alaska). The Commission has the statutory duty to make studies of local government boundary problems (see AS 44.33.812[a][1]).

Alaska's Constitution encourages the creation of organized boroughs.<sup>8</sup> The authors of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government. According to Constitutional Convention Delegate Vic Fischer:<sup>9</sup>

... the convention gave consideration to whether boroughs should be established on a voluntary or compulsory basis. The [Local Government] committee had previously decided that although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state, because the borough would, as appropriate, carry out state functions. Also, the state may want to mandate incorporation if an area is deemed to have reached a position where "it should take on the burden of its own government."<sup>10</sup> Committee members anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum,<sup>11</sup> and that the state would offer adequate in-

ducement to local people to accept organized borough status and to initiate incorporation.<sup>12</sup>

The founders recognized that the Legislature would have divergent alternatives available to carry out its constitutional duty to prescribe methods for borough formation.

As noted above, delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they also recognized that, to be successful, a voluntary approach must be coupled with adequate inducements to establish boroughs. Constitutional Convention Delegate Maynard D. Londborg reflected such in his comments to the Convention:

We felt that it could be handled in different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no way you can get out of it; you have to organize. I believe the method that Mr. Rivers brought out would be the more desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government.<sup>13</sup>

<sup>8</sup> See *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

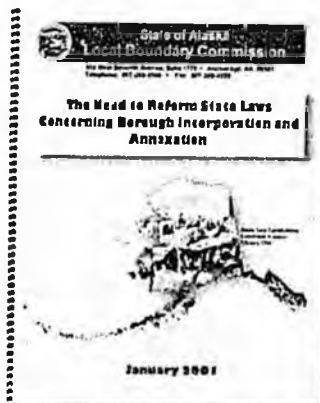
<sup>9</sup> *Borough Government in Alaska*, Thomas A. Morehouse and Victor Fischer, page 39 (1971).

<sup>10</sup> *Alaska Constitutional Convention Proceedings*, (Juneau: Alaska Legislative Council, March 1965) pp. 2673-74.

<sup>11</sup> *Ibid.*, pp 2674-76

<sup>12</sup> *Ibid.*, pp 2650-51

<sup>13</sup> *Proceedings of the Alaska Constitutional Convention*, Alaska State Legislature, Legislative Council, page 2651.



<sup>14</sup> Tales of Alaska's Bush Rat Governor, Jay Hammond, page 149 (1994).

<sup>15</sup> Borough Government in Alaska, page 73.

<sup>16</sup> Metropolitan Experiment in Alaska, page 93.

<sup>17</sup> The bill was ultimately amended to exclude the Haines-Skagway area from the mandate to incorporate a borough.

<sup>18</sup> Areawide Local Government in the State of Alaska, Ronald Cease, pages 71-72 (1964).

In 1961, the legislature enacted the initial laws implementing procedures for the formation of organized boroughs. With minor exceptions, those laws remain in place today. The 1961 Legislature opted to try the voluntary approach to borough formation.

However, inducements to organize were lacking. Legislators recognized from the very beginning that adequate incentives had not been provided to encourage people to form boroughs. Jay Hammond, who was a member of the State House of Representatives when the Borough Act of 1961 was adopted, characterized the matter as follows:<sup>14</sup>

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?

Constitutional Convention Delegate Victor Fischer and Thomas Morehouse portrayed the Borough Act of 1961 as follows:<sup>15</sup>

**Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?" Jay Hammond**

... the 1961 Borough Act was predicated on the assumption that local desire to establish borough government would supply the force toward incorporation, despite the findings of previous Boundary Commission hearings that there was little enthusiasm in the state for the unknown and untried form of local government. There were also pockets of intense local opposition, particularly in areas outside independent school districts.

By the end of the fourth year of statehood, only one undersized organized borough had formed. It encompassed only about 600 residents. A number of officials were critical that Alaska's only organized borough was a drastic departure from the regional concept envisioned by the Constitutional Convention Delegates. Each of the nine regions of the state that had created independent school districts - legal under Territorial law, but not recognized under Alaska's Constitution - clung to those single purpose governmental units.

When the 1963 Legislature convened, Representative John Rader took the position that the lack of progress to-

ward borough formation was the "greatest unresolved political problem of the State":<sup>16</sup>

My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hand necessary governmental functions. I therefore decided to do what I could.

To address the pressing issue, Representative Rader drafted and introduced a bill that mandated incorporation of boroughs in all areas of Alaska that had independent school districts. Nine areas were named in the legislation. Those consisted of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, Lynn Canal - Icy Straits Election District, and Fairbanks.<sup>17</sup>

In promoting his bill, Representative Rader stressed:<sup>18</sup>

We must make local government and, in this instance, boroughs, financially desirable and gener-

ally give communities additional incentives to govern themselves. Apparently, the desire for self-government as a principle has not been strong enough in most areas of the state to cause the incorporation of boroughs under the present law. Too frequently, Alaskans have found that when they form a local unit of government (either a city, public utility district or school district) that they continue to pay the same amount of state taxes and also pay local taxes to provide services which the state previously supplied free of charge. Not only is there little incentive for local government under these conditions, but there is an actual penalty placed upon the citizens who assume responsibility for local problems by organizing local government.<sup>19</sup>

The legislation was amended during deliberations to remove the Haines-Skagway region from the bill. Following the amendment, the bill narrowly passed and was signed into law by Democratic Governor William A. Egan.

An agreement had reportedly been reached among legislators during the First Session of the Third Alaska Legislature prior to approval of the 1963 Mandatory Borough Act that additional boroughs would later be mandated by the legislature.<sup>20</sup> However, neither the Second Session of the Third Alaska State Legislature nor any other subsequent legislature has mandated additional boroughs.

While neither the Borough Act of 1961 nor the 1963 Mandatory Borough Act provided adequate incentives to form boroughs voluntarily, the 1963 Mandatory Borough Act did promise that organized boroughs would not be penal-

Mandatory Borough Act, organized boroughs are severely penalized with respect to certain State financial aid. Consider, for example, public education.

<sup>19</sup> Ibid., page 47.  
<sup>20</sup> Personal communication with Clem Tillton, member of the House of Representatives in the Third Alaska Legislature, April 28, 2000.

**Last fiscal year, organized boroughs received \$143 million less in State educational foundation aid than they would have received had they not been organized as boroughs.**

ized because of incorporation. Specifically, Section 1 of Chapter 52, SLA 1963 provided as follows:

**Declaration of Intent.** It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. *No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation.* (Emphasis added)

Notwithstanding the promise of equity in the 1963

Organized boroughs are mandated by State law (AS 29.35.160) to carry out, within their boundaries, the duties of the State of Alaska under Article VII, Section 1 of the Constitution for public education. Moreover, organized boroughs are mandated by State law (AS 14.17.410) to pay a significant portion of the State's cost of education in the form of a "local contribution."

The local contribution required of organized boroughs is deducted from the level of State education foundation funding that would otherwise be paid to the district. Last fiscal year, organized boroughs received \$143 million less in State educational

<sup>21</sup> Home rule and first class cities in the unorganized borough are subject to the same laws requiring a local contribution in support of schools. However, the remainder of the unorganized borough, made up of regional educational attendance areas which comprises approximately two-thirds of the population of the unorganized borough, has no obligation to make a local contribution. As such, regional educational attendance areas (REAA's) suffer no reduction in the level of State education foundation aid, as is the case for municipal school districts. In fact, the single purpose REAA's in Southeast Alaska receive National Forest Receipts funding which boosts their level of financial aid well beyond the basic need determination made under the education foundation formula.

<sup>22</sup> Matanuska-Susitna Borough School District v. State, 931 P.2d 391, 398 (Alaska 1997).

foundation aid than they would have received had they not been organized as boroughs.<sup>21</sup> Thus, contrary to the express intent of the 1963 Mandatory Borough Act, organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation.

In addition to the \$143 million in required "local contributions", the sixteen organized boroughs made "voluntary local contributions" of \$159,401,604 or \$1,508 per student last year. The total contributions in support of schools by organized boroughs last year amounted to \$302,866,353 or \$2,866 per student.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula have been unsuccessful. In one recent case the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.<sup>22</sup> Justices Matthews and Rabinowitz stated that any remedy of the per-

ceived inequities must be pursued through the legislature rather than the courts.

... the legislature can decide whether and how much to tax property in REAA's free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.<sup>23</sup>

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- ◆ Areas of the unorganized borough outside of home rule and first class cities have no obligation to financially support operation of their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45% of basic need, whichever is less).
- ◆ Borough formation would bring about consolidation of school districts in the unorganized borough,
- ◆ In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- ◆ Borough formation or annexation would mean the loss of eligibility on the part of REAA's and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.
- ◆ The extension of borough government would result in the loss of eligibility on the part of cities for federal

an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13% of the state's population, the unorganized borough encompasses 70% of Alaska's school districts.

payments in lieu of taxes (PL 94-565, as amended by PL 104-333). Funds would be paid to the borough.

- ◆ Borough formation or annexation would cause the loss of eligibility for State Revenue Sharing by unincorporated communities and volunteer fire departments in the unorganized borough.
- ◆ Extension of borough government would bring about the loss of eligibility for State capital matching grants by unincorporated communities in the unorganized borough.
- ◆ Borough formation or annexation would mean a 50% reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- ◆ The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).
- ◆ In some cases, borough formation carries with it the prospect of significant

funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4% of Alaskans live in boroughs that were formed voluntarily.<sup>24</sup> In contrast, 83% of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13% of Alaskans live in the unorganized borough.

It is noteworthy that the Alaska Municipal League shares the Commission's concerns. The 2002 Policy Statement adopted by the Alaska Municipal League States:

**Encouragement of Municipal Government in the Unorganized Borough:** The League supports state policies that remove disincentives and encour-

age the formation and annexation to boroughs in the unorganized areas of the state . . .

**Call for a Review of the Role of Government.** The League calls for a review of municipal government . . . to determine if state policies are consistent with the intent of the Alaska Constitution mandating "maximum local self-government with a minimum of local government units. . ." According to the Local Boundary Commission, the state has created significant disincentives to the formation of new municipal governments.

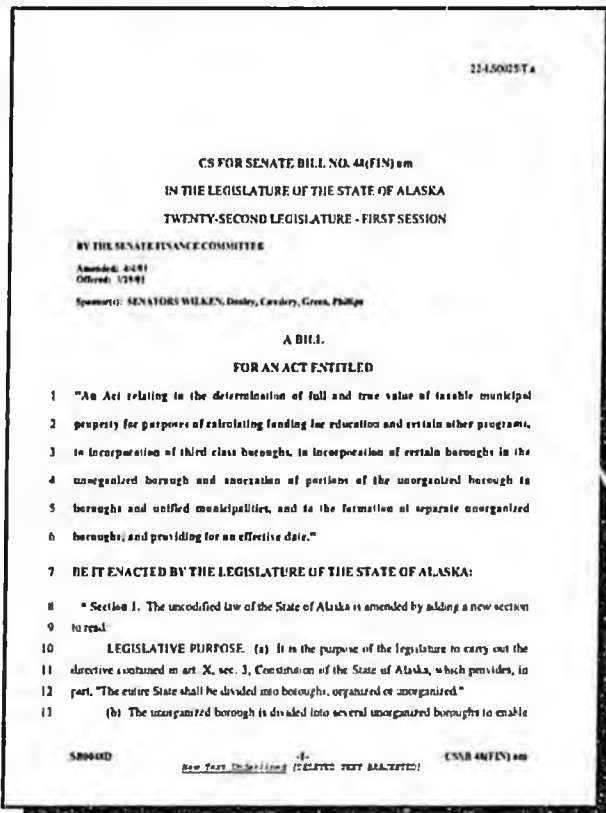
It is also noteworthy that, the City of Cordova, the seventh most populous city in the unorganized borough, has advocated for the type of reform provided by Senate Bill 48. In December 1999, the Council of the City of Cordova adopted Resolution Number 1299-83 urging "the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process."

<sup>23</sup> Ibid., 406.

<sup>24</sup> Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.



Cordova, where officials of the seventh most populous city government in the unorganized borough, called for reform similar to SB 48.



The Local Boundary Commission takes the position that *CSSB 48(FIN) am* provides a carefully designed process to promote borough incorporation and annexation in those areas of Alaska that have the human and financial resources to support fundamental local governmental operations. The bill provides a well thought-out public evaluation of the capabilities of unorganized areas to assume a reasonable measure of local responsibility for the delivery of fundamental

mission takes the position that there is benefit in addressing the concerns raised about this issue.

To assuage such concerns, the Commission recommends that the 2002 Legislature amend *CSSB 48(FIN) am* to establish a specific economic threshold below which it would be presumed that an unorganized region lacks the financial resources to operate a borough. For example, the legislation could be amended to provide that if an unorganized region lacked at least two-thirds of the median per capita income of organized boroughs, a formal presumption would exist that the region lacks the financial resources needed to operate an organized borough.

For illustrative purposes, a table is provided on the following page which lists organized and unorganized regions of Alaska according to per capita income as reported in the 1990 Census. Comparable data from the 2000 Census will not be released until sometime between March and May of this year. Notwithstanding the eleven-year old data, economists indicate that the relative rankings of the regions generally remain unchanged over time, absent major economic developments affecting a particular region.

Cordova City officials drafted a paper outlining a concept to promote borough formation in those parts of the unorganized borough that have the capacity to assume the responsibility for local government.

The Local Boundary Commission developed a separate proposal to address impediments to borough government incorporation and annexation for consideration by the Legislature. That proposal was introduced as Senate Bill 48. The legislation passed the Senate in modified form (*CSSB 48(FIN) am*) and is awaiting consideration by the House of Representatives.

public services.

There are a number of unorganized regions that have expressed concern that they may be compelled to form boroughs even though they might not be able to afford to do so. *CSSB 48(FIN) am* would require the Commission to make a thorough review of the financial capabilities of any region proposed for incorporation based on standards that have long been established in State law. The Commission certainly recognizes that it would be counter to the interests of the State to create organized boroughs that were not financially viable. Notwithstanding, the Com-

The unorganized regions (i.e., census areas) listed in the table generally do not conform to prospective boroughs. However, unlike Bureau of Economic Analysis income data, Census Bureau data on per capita income are available at the community level. The use of Census Bureau data would allow the Commission to make determinations specific to each prospective borough. The table lists fourteen boroughs. Two additional boroughs were created subsequent to the 1990 Census (Denali Borough in 1990 and City and Borough of Yakutat in 1992).

While the Commission endorses *CSSB 48(FIN) am*, there is one aspect of the legislation that the Commission opposes. Section 5 of *CSSB 48(FIN) am* would repeal a 1985 law prohibiting the incorporation of new third class boroughs.

The Commission views the third class borough form of government as archaic. Laws allowing the incorporation of a third class borough were enacted to respond to a unique set of circumstances in the Haines area that will never occur again.<sup>25</sup>

Beyond its archaic nature, the third class borough concept has been distorted in its implementation. Under statute, a third class borough is expressly prohibited from ex-

ercising any areawide power other than "education and tax assessment and collection" (see AS 29.35.220(b)). Yet, under the liberal interpretation of municipal powers provided by Article X, Section 1 of Alaska's Constitution and AS 29.35.400 - 29.35.420, the "education" powers of the third class borough have been

stretched to include the operation of a public library, public museum, and cultural facilities center.

Further, a third class borough is authorized to exercise only one power on a non-areawide basis (i.e., in the area of the borough outside of city governments as defined in AS 29.71.800[14]). That sole authorized non-areawide function is the power necessary to

<sup>25</sup> As noted earlier in this discussion, Representative Rader originally included the Lynn Canal - Icy Straits Election District in the 1963 legislation mandating borough incorporation because Haines was operating an independent school district. While the Lynn Canal - Icy Straits Election District was ultimately excluded from the Mandatory Borough Act, the Act nonetheless provided for the dissolution of all independent school districts on July 1, 1964.

ORGANIZED AND UNORGANIZED REGIONS OF ALASKA RANKED ACCORDING TO PER CAPITA INCOME	
Boroughs listed in capital letters and bold text (1990 Census Data)	
BOROUGH AND CENSUS AREAS	PER CAPITA INCOME
Valdez-Cordova Census Area	\$22,772
<b>KODIAK ISLAND BOROUGH</b>	<b>\$19,979</b>
<b>CITY AND BOROUGH OF JUNEAU</b>	<b>\$19,920</b>
<b>MUNICIPALITY OF ANCHORAGE</b>	<b>\$19,620</b>
<b>BRISTOL BAY BOROUGH</b>	<b>\$19,123</b>
Wrangell-Petersburg Census Area	\$19,012
<b>KETCHIKAN GATEWAY BOROUGH</b>	<b>\$18,789</b>
<b>NORTH SLOPE BOROUGH</b>	<b>\$18,231</b>
<b>KENAI PENINSULA BOROUGH</b>	<b>\$18,173</b>
Median of organized boroughs	\$17,708
<b>ALEUTIANS EAST BOROUGH</b>	<b>\$17,242</b>
<b>CITY AND BOROUGH OF SITKA</b>	<b>\$16,962</b>
<b>HAINES BOROUGH</b>	<b>\$16,204</b>
<b>FAIRBANKS NORTH STAR BOROUGH</b>	<b>\$15,914</b>
<b>MATANUSKA-SUSITNA BOROUGH</b>	<b>\$15,898</b>
Prince of Wales-Outer Ketchikan Census Area	\$15,510
Skagway-Yakutat-Angoon Census Area	\$15,463
Aleutians West Census Area	\$15,035
Dillingham Census Area	\$12,782
Southeast Fairbanks Census Area	\$12,505
66.67% of the median of organized boroughs	11,806
<b>LAKE AND PENINSULA BOROUGH</b>	<b>\$11,560</b>
Yukon-Koyukuk Census Area	\$11,554
Nome Census Area	\$10,701
<b>NORTHWEST ARCTIC BOROUGH</b>	<b>\$10,040</b>
Bethel Census Area	\$8,833
Wade Hampton Census Area	\$6,519

contain, clean up, or prevent a release or threatened release of oil or a hazardous substance" (see AS 29.35.220[e]). However, the Haines Borough has, in fact, assumed other powers on a 'de facto non-areawide basis' through the creation of a service area encompassing the identical territory which AS 29.71.800(14) defines as the non-areawide part of the borough. Doing so effectively annuls the legislative prohibition set out in AS 29.35.220(e).

Moreover, since the Borough has assumed powers on a 'de facto non-areawide basis' that are prohibited on a 'de jure non-areawide basis', there is nothing to suggest that a similar occurrence will not some day exist on an areawide basis.

The City of Haines recently commented to the Commission as follows with respect to the third class form of borough government:

... there comes a time where such a classification can be "outgrown" and efficiencies achieved through consolidation. In addition, Borough voters themselves expressed their dissatisfaction with the Third Class Borough in

**Service Areas**

The Borough is correct in its note that the Riverview Drive Road Maintenance Service Area was omitted from exhibit J (though it was included in other sections) of the petition and should continue to exist after consolidation. It is also true that four (4) governmental units (service areas) will be streamlined into the one (1) new consolidated government. This is yet another example of the benefits of consolidation.

**Constitutional Standards**

It is clear and should have no misinterpretation as implied in the Borough's dissertation. The purpose as stated is to provide for the maximum local self-government with a minimum of local government units. It will also prevent duplication of tax-levying jurisdictions.

While we appreciate the Borough's lecture to the State "that a third class borough has more to offer to cities and the unorganized areas of the state than the current options allowed by the state", we feel that, even if true, there comes a time where such a classification can be "outgrown" and efficiencies achieved through consolidation. In addition, Borough voters themselves expressed their dissatisfaction with the Third Class Borough in October of 1998. When asked if they preferred the Third Class Borough as the form of government, the majority said no.

The Borough's selective memory fails on the argument for "the combination of the school board and assembly". While the Borough's brief champions such a benefit, the voters, by a substantial margin, voted against a combined school board/assembly when asked at the ballot box in June of 1990 and then again by a margin of over two to one in 1997.

**Staffing**

Consolidation offers the potential to effect long-term savings and general improvements in overall government efficiency. The lack of administrative depth in a small community becomes an issue of cost effectiveness and efficiency. The Borough's operations appear to suffer from the lack of centralized administrative support. That is evidenced here by the Borough's Assessor/Land Manager having to prepare the Borough's brief at the expense of his own responsibilities.

**Tax Revenue**

Taxes collected will benefit those from whom they are collected.

CITY OF HAINES
4
REPLY BRIEF

October of 1998. When asked if they preferred the Third Class Borough as the form of government, the majority said no.

Given the circumstances cited here, the Local Boundary Commission opposes provisions in CSSB 48(FIN) am that would allow the incorporation of new third class boroughs.

The Commission looks forward to the opportunity to address CSSB 48(FIN) am further with the Legislature this year. ■

## Ambiguities in the Law Concerning Municipal Incorporation, Boundary Changes, Dissolution, and Reclassification

State statutes are unclear with respect to municipal authority to levy property taxes during an initial period following incorporation, boundary change, dissolution, and reclassification. Ambiguity exists with respect to whether a municipal government that incorporates or changes its boundaries after January 1 of a particular year is prohibited by AS 29.45.110(a) and AS 29.45.120(a) from levying and collecting property taxes in the area of change during that calendar year.

This issue, as it relates to annexation, was addressed by the State Attorney General's office at the request of the Senate Finance Committee thirteen years ago.<sup>26</sup> The Attorney General's office concluded that as long as the local government in question had time to add the property in question to its tax rolls, it had the authority (and probably the duty) to levy and collect the tax.

However, the question of whether AS 29.45.110(a) and AS 29.45.120(a) prohibit the levy of taxes during the initial year if jurisdiction is not established by January 1, appears to have become more uncertain as a result of a recent decision of the Alaska Supreme Court. In the case at issue, the Court interpreted AS 29.45.110(a), AS 29.45.120(a), AS 29.45.240(a), and AS 29.45.300 collectively to mean that "The tax 'accrues' in full each year on January 1."<sup>27</sup>

The Commission urges the Legislature to eliminate the ambiguity to avoid needless litigation and unintended adverse consequences for affected municipalities. Elimination of the ambiguity serves the public interest by promoting both taxpayer equity and financially sound local governments.

The Commission's authority to approve incorporations, boundary changes, and city reclassifications implies a general authority to empower local governments to levy taxes. The Legislature has already granted specific authority for the Commission to deal with the property taxation issues relating to step annexations to cities (see AS 44.33.812[a][4]).<sup>28</sup> As a matter of policy, there is no reason why similar specific authority should not be expressly extended to all annexation and incorporations.

The Commission stresses that every proposal that comes before it is unique and demands flexibility. Although the Commission is not committed to any particular language, one way to resolve the issues raised here is to enact a clear grant of authority for the Commission to make determinations concerning property taxation in the course of its proceedings. This could be done by a statutory requirement for petitioners to present transition plans as a part of their petitions. Transition plans would be prepared in consultation with affected local governments and State instrumentalities (e.g., regional educational attendance areas). As provided under current law for other elements of a petition, the

<sup>26</sup> Memorandum from Assistant Attorney General Marjorie L. Odland, March 1, 1989, file number 663-89-0387.

<sup>27</sup> *Kenai Peninsula Borough v Arndt*, 958 P.2d 1101, 1104 (Alaska 1998).

<sup>28</sup> AS 44.33.812(a)(4) states that the "Local Boundary Commission shall develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services."

<sup>29</sup> The Commission has adopted regulations (3 AAC 110.900) that require transition plans in all proceedings that come before the Commission. While that regulation ostensibly covers matters involving taxation and service areas, absent express authority from the legislature concerning the issues raised above, it has not remedied the ambiguities to the satisfaction of many parties.

transition plans should be subject to amendment by the Commission following a public hearing on the proposal.<sup>29</sup>

The Commission emphasizes that there are suitable checks and balances on the authority of the Commission. Ac-

tions that come before the Commission are: (1) initiated by all property owners and residents of the affected area, (2) subject to approval by the voters of the affected area, and/or (3) subject to tacit approval by the Legislature.

The Commission offers the following draft language for consideration as a means to implement the proposed change. The draft language offered by the Commission would provide for the enactment of a new section as AS 44.33.830 to read as follows:

**AS 44.33.830. Transition Plan.** (a) A petition for change involving incorporation, annexation, detachment, merger, consolidation, dissolution, or city reclassification shall include a transition plan. The transition plan shall set out a practical proposal to implement the proposed change through the assumption, transfer, or surrender of relevant powers, duties, assets, and liabilities of affected cities, organized boroughs, and service areas of the unorganized borough. The transition plan may provide for the assessment, levy, and collection of property taxes by a city or organized borough on a prorated basis in the area of change for the remainder of the tax year following the change, notwithstanding AS 29.45.110(a) and AS 29.45.120(a). The transition plan may provide for other measures reasonably necessary to implement the proposed change.

(b) The transition plan shall be prepared in consultation with officials of affected cities, organized boroughs, and service areas of the unorganized borough. If such officials decline reasonable opportunities for consultation, the transition plan may be included in the petition without such consultation.

(c) The local boundary commission may amend the transition plan following a public hearing on the petition.

(d) A transition plan included in a petition approved by the local boundary commission takes effect only after any requisite approval of the petition under AS 29.04, AS 29.05, AS 29.06, or AS 44.33. A transition plan included in a petition that takes effect has the force and effect of law. ■

## Small Community Housing Mortgage Loan Program Adversely Impacts Certain Municipal Boundary Proposals

Historically, provisions in State law concerning AHFC's Small Communities Housing Assistance program (AS 18.56.400 - 18.56.600) have affected the outcome of certain important municipal boundary proposals. For example, in 1998, opponents of the proposal for consolidation of the City of Haines and the Haines Borough published advertisements stating, in part:

... all Borough residents inside and outside the City will lose their eligibility for rural financing if we consolidate, because our combined population will

exceed 1600. This means paying up to 1% more in interest on housing loans after consolidation.

Because of these and many more reasons please vote no on consolidation November 3rd.

The 1998 proposition for consolidation of local governments in Haines was defeated by just three votes. Considering the close vote and the substantial concern over the loss of eligibility to participate in the housing loan program, it is reasonable to conclude that the Haines consolidation

would have been approved if the impacts on the housing loan program had been neutralized.

Last year, the AHFC Board of Directors adopted regulations that resolved the concerns of the Local Boundary Commission relating to merger and consolidation. However, concerns regarding annexation and incorporation were not addressed.

A means of resolving the remaining concerns of the Local Boundary Commission in a manner that maintains the Small Communities Housing Assistance program but eliminates the unintended adverse impacts on legitimate municipal boundary changes without a fiscal impact on the State of Alaska appears to be elusive. ■

## Promotion of Maximum Common Interests within Boroughs

As it has done previously, the Commission brings to the attention of the Legislature that the unorganized borough is configured in a manner that does not conform to the requirements of Alaska's constitution. Article X, Section 3 of the Constitution provides that:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible

In an effort to facilitate implementation of that constitutional mandate, the Local Boundary Commission recommended to the 1960 legislature that the Commission be given a mandate by resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature. However, that recom-

mendation was rejected. Instead, in 1961, the Legislature implemented Article X, Section 3 by dividing all of Alaska into a single unorganized borough. For the past four decades, State law has stipulated that the unorganized borough comprises that portion of Alaska not within organized boroughs.

From its inception, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the constitution. The contemporary contrasts in various parts of the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles, 57% of the total area of Alaska. It ranges in a non-contiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. The unorganized borough also extends in a non-contiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough:

- ◆ encompasses portions of each of Alaska's four judicial districts;
- ◆ wholly encompasses eleven census areas;

- ◆ encompasses all or portions of nine state house election districts;
- ◆ wholly encompasses nineteen regional education attendance areas;
- ◆ encompasses all or portions of ten of Alaska's twelve regional Native corporations formed under the Alaska Native Claims Settlement Act;
- ◆ partially encompasses model borough territory for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely diverse interests rather than maximum common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, regional educational attendance areas, regional Native corporations, and model boroughs, each of which is to some extent comprised of an area with common social, cultural, and other characteristics.

Greater compliance with the Common Interests Clause of Article X, Section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS

29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions.

The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 - 1992. However, just as the formal corporate boundaries of organized boroughs in Alaska are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model borough boundaries must also remain flexible. It has been thirteen years since efforts were initiated to define model borough boundaries. The Commission has found that in certain instances, social, economic, or other developments might warrant a change to model boundaries. For example, when the model borough boundaries were developed, Adak was a huge naval base with its own regional educational attendance area. Accordingly, the model borough boundaries identified a separate prospective borough for the area from Adak west. Subsequently, however, the naval base at Adak closed and the Adak regional educational attendance area merged with the Aleutian Region REAA. It seems reasonable to presume today that if

the Commission were defining model borough boundaries for the unorganized borough portion of the Aleutian region, those boundaries would encompass all of the territory west of the Aleutians East Borough.

This issue is addressed by *CSSB 48(FIN) am*. As it is currently worded, the legislation would require the Alaska Department of Community and Economic Development to submit a proposal to Commission by November 30, 2001 for the establishment of multiple unorganized boroughs. Further, the Local Boundary Commission is required to

submit its proposal to divide the unorganized borough into multiple unorganized boroughs to the 2002 Legislature which take effect unless rejected by Legislature within 45 days. The Commission endorses the provision. However, the dates provided in the current legislation must obviously be altered. ■

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## Funding for Borough Feasibility Studies.

AS 44.33.840 – AS 44.33.846 authorizes the undertaking of borough feasibility studies. Unfortunately, however, funding for the studies has never been appropriated. The Commission is aware of two regions that have recently expressed interest in conducting borough feasibility studies. Those are the Prince of

Wales Island region and the Delta-Greely region. The Commission recommends that the Legislature appropriate at least \$50,000 annually to the fund to facilitate local borough study efforts. ■

# Index

<b>A</b>	<b>G</b>	<b>N</b>
Adak 7 Alatna 17 Allakaket 12, 17 Anchorage 17	Girdwood 17 Gustavus 13	Naukati Bay 8 Nightmute 17 Nikiski 8 Nome 10
<b>C</b>	<b>H</b>	<b>P</b>
Chickaloon 10 Cooper Landing 8 Copper River Basin 9	Haines 16 Haines Borough 13, 16 Homer 11	Palmer 12 Prince of Wales Island 10
<b>D</b>	<b>I</b>	<b>S</b>
Delta-Greely 9 Diamond Ridge 8	Icy Straits 10	Scammon Bay 17 Skagway 9, 13 Stebbins 17 Sunshine 8
<b>E</b>	<b>J</b>	<b>T</b>
Eagle 12 Eagle River 17 Eagle River-Chugiak borough 17	Juneau 13	Talkeetna 6
<b>F</b>	<b>K</b>	<b>W</b>
Fairbanks 15 Fairbanks North Star Borough 15	Kake 9 Ketchikan 14 Ketchikan Gateway Borough 14	Wasilla 11 Wrangell Area 10
	<b>M</b>	<b>Y</b>
	Matanuska-Susitna Borough 17 Meadow Lakes 7	Yakutat 13

---

--	--

# Table of Contents

1

## LBC Materials

- 1/23/01 Letter to Senate President Halford
- Statement of Decision – 1/2002

2

## Executive Summary of the Preliminary Report – 10/2001

3

## Legal Opinions:

- LAA 1/29/01 ~~01~~ 02
- Request 1/02/02 & LAA 1/09/02
- AG's: Truncation & Service Areas
- Request 4/06/01 & LAA 4/09/01

4

## Historical Information

- LBC Recommendations
- 1989 Fairbanks Resolve

5

## Constitution:

Article X: Local Government

6

## Title 29, Chapter 6, Article 2 Annexation and Detachment

7

## Regulations: 3 AAC Part 15: LBC

- Current
- Proposed Draft

8

## Public Testimony

- CCAA
- Individual Letters, POMS, Email

9

## LBC Additional Materials 2/5/02

- Remarks dated 2/7/02
- Map – Land Use Homer Area

10

①

LBC MATERIALS

• 1/23/01 LETTER TO  
SENATE

• STATEMENT OF  
DECISION -  
1-2002

Tony Knowles, Governor



## State of Alaska Local Boundary Commission

550 West Seventh Avenue, Suite 1770 • Anchorage, AK 99501  
Telephone: 907-269-4560 • Fax: 907-269-4539

January 23, 2002

The Honorable Rick Halford  
President  
Alaska State Senate  
Juneau, Alaska

Subject: Annexation of 4.58 Square Miles to the City of Homer

Dear Senator Halford:

The Alaska Local Boundary Commission hereby presents its recommendation to the Second Session of the Twenty-Second State Legislature under Article X, Section 12 of the Constitution of the State of Alaska for annexation of 4.58 square miles to the City of Homer.<sup>1</sup> Under Article X, Section 12, "The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house."

Alaska's constitution-makers expected that local governmental annexations would often be very controversial. The City of Homer's original petition to annex 25.64 square miles certainly fulfilled that expectation. Consequently, the Commission's review and decision process for the petition has been painstakingly lengthy and detailed. The process spanned nearly two years. The written record of the proceedings stands 14 inches tall and weighs 35 pounds. Given the extent of the record, the Commission will provide a summary of the reasons for its recommendation to the Senate Community and Regional Affairs Committee.

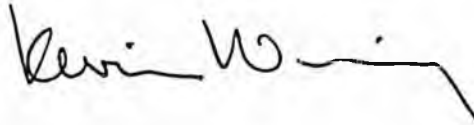
In the end, the Commission did not approve the City of Homer's original petition to annex 25.68 square miles, approving instead annexation of a reduced area of 4.58 square miles.

<sup>1</sup> A map and legal description of the 4.58 square miles recommended for annexation is provided on pages 38 – 41 of the enclosed *Statement of Decision in the Matter of the March 20, 2000 Petition by the City of Homer for Annexation of Approximately 25.64 Square Miles*.

The Honorable Rick Halford  
January 23, 2002  
Page Two

The Commission looks forward to reviewing its recommendation for this annexation to the City of Homer with the Senate Community and Regional Affairs Committee.

Cordially,

A handwritten signature in black ink, appearing to read "Kevin Waring". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin Waring  
Chairman

cc: The Honorable John Torgerson, Chairman, Senate Community and Regional Affairs Committee and Senator from District D



State of Alaska  
Local Boundary Commission

# Statement of Decision

Members

Kevin Waring  
Chairperson  
At-Large

Kathleen Wasserman  
Vice-Chairperson  
First Judicial District

Member  
Second Judicial District

Allan Tesche  
Member  
Third Judicial District

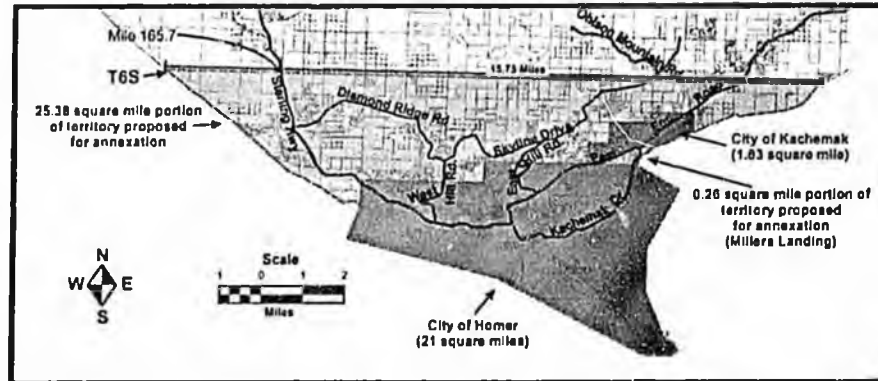
Ardith Lynch  
Member  
Fourth Judicial District



IN THE MATTER OF THE MARCH 20,  
2000 PETITION BY THE CITY OF  
HOMER FOR ANNEXATION OF  
APPROXIMATELY 25.64 SQUARE  
MILES

## SECTION I SUMMARY OF PROCEEDINGS

As allowed by Article X, § 12 of the Constitution of the State of Alaska, AS 44.33.812(a)(3), and 3 AAC 110.410, the City of Homer (hereinafter "City" or "Petitioner") formally initiated efforts on March 20, 2000 to expand its boundaries to encompass an additional estimated 25.64 square miles. The City did so by submitting a petition (hereinafter "Petition") to the Local Boundary Commission for "legislative review annexation" under Article X, §12 of the Constitution of the State of Alaska, AS 29.06.040(b), and AS 44 33.812(b)(2).



The Petition was accepted for filing by the Alaska Department of Community and Economic Development (hereinafter "DCED") on March 29, 2000. DCED serves as staff to the Commission under AS 44.33.020(4).

Public notice of the filing of the Petition was given under 3 AAC 110.450. Notice of filing of the Petition was published by the

<sup>1</sup> In its lower case form, the word "city" refers to city governments in general.

Petitioner in the *Homer News*, a newspaper of general circulation in the territory, on April 3, April 10, and April 17, 2000.

DCED arranged for publication of the notice of filing of the Petition on the State of Alaska's Internet Website, *Online Public Notices*.<sup>2</sup> The notice was also published on the LBC Internet Website maintained by DCED.

As required by 3 AAC 110.450(a)(2), on April 3, 2000, notice of the filing of the Petition was posted at prominent locations readily accessible to the public within the area proposed for annexation. Posting occurred at the following three locations:

1. Village Barabara Texaco Service Station, Mile 169.3 Sterling Highway;
2. Pudgy's Meat & Groceries, Mile 2.4 East End Road; and
3. Northern Enterprises Boat Yard, 42122 Kachemak Drive.

Notice of the filing of the Petition was also posted by the Petitioner at the following five locations within the existing boundaries of the City of Homer on April 3, 2000:

1. Homer City Hall, 491 East Pioneer Avenue;
2. State Courthouse, 3670 Lake Street;
3. United States Post Office, Sterling Highway;
4. Eagle Quality Center, Sterling Highway; and
5. Lakeside Center Shopping Mall, 3858 Lake Street.

On April 3, 2000, notice of the filing was also posted at the Kachemak City Hall. Although the City of Kachemak is outside the proposed boundaries of the City of Homer, the territory petitioned for annexation virtually surrounds the corporate boundaries of the City of Kachemak.

On April 5, 2000, the Petitioner sent a copy of the notice of filing of the Petition to the following nine individuals and organizations:

1. State Representative Gail Phillips;
2. State Senator John Torgerson;
3. South Peninsula Hospital Service Area Board;
4. City of Kachemak;
5. Kenai Peninsula Borough, Mayor's office;
6. Kenai Peninsula Borough Road Service Area;
7. Citizens Concerned About Annexation;
8. City Residents Annexation Process Study Group; and
9. City of Seldovia.

DCED staff sent notice of the filing of the Petition to thirty-nine State officials, including members of the Local Boundary Commission, the heads of principal agencies, and others.

Under 3 AAC 110.460(b), the Petition, including all exhibits, was made available for public review. The City designated the Homer City Hall and Homer Public Library as locations where Petition materials were to be made available to the public.

June 5, 2000 was set by the Commission Chairman as the deadline for filing responsive briefs and written comments in support of or in opposition to the annexation proposal.

On April 17, April 18, and May 2, 2000, DCED staff attended meetings regarding annexation with various groups in Homer.

Fourteen responsive briefs collectively comprising 147 pages along with 604 pages of exhibits were filed with DCED by the June 5, 2000 deadline.<sup>3</sup> The fourteen individuals and organizations that filed responsive briefs are:

Respondent	Representative	Brief	Exhibits
1. Alaskans Opposed to Annexation	Erwin and Erwin, LLC	24 pages	33 pages
2. Cabana, Doris	Same	8 pages	8 pages
3. Dodd-Butters, Sallie	Same	6 pages	0 pages
4. Fuller, Abigail	Same	11 pages	21 pages
5. Griswold, Mary	Same	17 pages	0 pages
6. Jerrel, Vi, Ph.D.	Same	5 pages	23 pages
7. Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation	Hicks Boyd Chandler & Falconer	30 pages	511 pages
8. Kenai Peninsula Borough	Same	2 pages	0 pages
9. Objective Annexation Review	Larry Smith	11 pages	0 pages
10. Roberts, Peter	Same	8 pages	0 pages
11. Seelye, Steve and Margret	Same	3 pages	0 pages
12. Smith, Bill	Same	4 pages	0 pages
13. The Crossman Ridge Neighborhood	Cris Rieout	12 pages	8 pages
14. The Raven Ridge Homeowners Association	Wayne Clark	6 pages	0 pages

In addition to the fourteen responsive briefs, a total of 168 timely letters concerning the proposed annexation were received by DCED. The vast majority of the letters expressed opposition to the proposed annexation, three letters expressed support for the proposed change, and others raised issues but did not support or oppose the entire annexation proposal per se.

On June 14 and August 24, 2000, DCED staff attended additional meetings in Homer regarding annexation.

On September 11, 2000, the City of Homer filed its *Reply Brief of the City of Homer Supporting Its Petition for Annexation to the City of Territory West, North, & East of the Current City Limits* (hereinafter "Reply Brief") in response to the fourteen Responsive Briefs and the 168 written comments.

On July 31, 2001, DCED staff conducted two public informational meetings under 3 AAC 110.520 in Homer. Additionally, on July 31, DCED staff was available to the public to address questions from noon to 10:00 p.m.

<sup>3</sup> 3 AAC 110.480(a) provides that "Any interested person or entity may file with the department a responsive brief."

Forty-seven people attended the first public informational meeting on July 31, which began at 2:00 p.m. Nineteen people attended the second meeting, which began at 7:00 p.m. During both meetings, an opportunity was provided for the public to comment or ask questions about developments relating to the Petition that had occurred since the filing of the City's Reply Brief in September 2000. Most of those offering comments expressed opposition to all, or specific elements of the proposed annexation.

In early October 2001, DCED completed its 412-page *Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Preliminary Report"). The Preliminary Report recommended amendment of the Petition to limit annexation to approximately 3.3 square miles.

On October 5, 2001, DCED distributed copies of its four-page *Executive Summary of the Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Executive Summary") to thirty-one interested individuals and organizations including the Petitioner, respondents, Local Boundary Commission members, State Representative Drew Scalzi, State Senator John Torgerson, City of Kachmak, and Homer-area media.

In addition, those same individuals and organizations were provided a compact disc containing the Executive Summary and DCED's complete Preliminary Report. The Homer City Clerk and the Director of the Homer Public Library were each provided ten copies of the disc for use by the public. DCED also posted a copy of the Executive Summary on the Internet on October 5, 2001.

On October 6, 2001, a printed copy of the 412-page Preliminary Report was mailed to the same individuals and organizations to whom the Executive Summary had been mailed the previous day.

On October 8, 2001, DCED mailed an additional 138 copies of the Executive Summary to interested individuals and organizations. On October 9, 2001, DCED distributed seventy-six printed copies of the Preliminary Report to twelve individuals and organizations. The October 9, 2001 mailing included sixty copies of the Preliminary Report and six additional copies of the CD-ROM sent to the Homer City Clerk for distribution to the Library and City officials.

On October 9, 2001, the Director of the Homer Public Library made available to the public the printed copy of the Preliminary Report mailed by DCED on October 6. Also on October 9, the Library Director made available to the public ten CD-ROM copies of the Preliminary Report, and fifteen copies of the Executive Summary. On October 22, 2001, the Homer Library made twenty-five additional copies of the printed Preliminary Report available to the public.

Between October 5 through October 26, 2001, DCED received requests from the public for five additional copies of the Preliminary Report. DCED promptly fulfilled each request.

Because of the extensive size of the Preliminary Report, it was necessary to post the DCED Preliminary Report on the Internet in increments. DCED staff posted segments of the DCED Preliminary Report, beginning with Chapters 4 and 5, on October 10, October 19, and October 25, 2001.

In total, DCED distributed 268 printed Executive Summaries, 56 CDs containing the Preliminary Report, and 126 printed copies of the Preliminary Report.

The Chairman of the Local Boundary Commission set November 6, 2001 as the deadline for comment on the Preliminary Report. Comments expressing a wide range of views

were received from thirty-two individuals and organizations.<sup>4</sup> A copy of the comments was made available for public review at the Homer City Clerk's office and the Homer City Library on November 8, 2001.

The Commission scheduled a public hearing on the Homer annexation proposal to begin December 14, 2001. DCED arranged for notice of the hearing to be published in the *Homer News* on November 8, November 22, and December 6, 2001 and in the *Homer Tribune* on November 14, November 28, and December 12, 2001. In addition, DCED arranged for public notice of the hearing to be provided on the State of Alaska *Online Public Notice* system beginning November 5, 2001 and continuing through the date of the hearing.

The notice, draft agenda, statutes and regulations governing hearing and decisional procedures, and guidelines for comments at the hearing were mailed to the Petitioner, respondents, Local Boundary Commission members, Representative Drew Scalzi, Senator John Torgerson, City of Kachemak, and Homer-area media on November 5, 2001.

On November 5, a request for public service broadcast announcements of the hearing was sent to KBBI-AM, the Homer affiliate of the Alaska Public Radio Network. On November 5, 2001, the City of Homer posted the notice of the hearing at the following nine locations:

1. Village Barabara Texaco Service Station, Mile 169.3 Sterling Highway;
2. Pudgy's Meat & Grocers, Mile 2.4 East End Road;
3. Northern Enterprises Boat Yard, 42122 Kachemak Drive;
4. Homer City Hall, 491 East Pioneer Avenue;
5. State Courthouse, 3670 Lake Street;
6. United States Post Office, Sterling Highway;
7. Eagle Quality Center, Sterling Highway;
8. Lakeside Center Shopping Mall, 3858 Lake Street; and
9. Kachemak City Hall.

The City of Homer also made available for public review at the office of the Homer City Clerk and the Homer Public Library the Notice, draft agenda, law governing hearing procedures, law governing decisional procedures, and guidelines for comments.

Notice of the Commission's December hearing in Homer, draft agenda, law governing hearing procedures, law governing decisional procedures, and guidelines for comments at the hearing were posted to the LBC Website<sup>5</sup> on November 6, 2001.

On November 21, 2001, DCED released its *Final Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Final Report"). The timely comments regarding DCED's Preliminary Report were synopsisized in DCED's Final Report. The Final Report recommended annexation of approximately 3.9 square miles.

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<sup>4</sup> Some of the thirty-two individuals and organizations submitted multiple sets of comments. Each individual or organization that submitted comments is included only once in the tally of the number (32) who commented on the Preliminary Report. However, if multiple individuals submitted joint comments, for example, married couples submitting a single letter, they were counted separately in the tally.

<sup>5</sup> <http://www.dced.state.ak.us/mrn/LBC/lbcactivities.htm>

119 copies of DCED's Final Report were distributed on November 21, 2001, including sixty copies to the City of Homer for distribution to staff, office of the Homer City Clerk, and Homer Public Library. On that same date, DCED distributed an executive summary of the Final Report to 125 individuals and organizations.

On December 13, 2001, before the hearing, four currently appointed members of the Commission inspected the 25.64 square miles proposed for annexation by helicopter and automobile.

The Commission convened its public meeting on the City's annexation proposal on December 14, 2001 at the Mariner Theater in the Homer High School at approximately 9:00 a.m. The entire hearing was broadcast live on local radio station KBBI.

After introductory remarks by the Commission Chairman, DCED summarized its reports and recommendations concerning the Homer annexation proposal to the Commission.

The opening statement of the Petitioner followed DCED's summary. Gordon Tans, Attorney for the City of Homer, made the opening statement on behalf of the Petitioner. The City of Homer did not follow its opening statement with sworn testimony by witnesses.

After the Petitioner's opening statement, opening statements were made by the following respondents:<sup>6</sup>

1. Peter Roberts;
2. Alaskans Opposed to Annexation (Vi Jerrel);
3. Kenai Peninsula Borough (Colette Thompson, Borough Attorney);
4. Objective Annexation Review (Michael Kennedy);
5. The Crossman Ridge Neighborhood (Cris Rideout);
6. Abigail Fuller;
7. Steve and Margaret Seelye (Margaret Seelye);
8. Sallie Dodd Butters;
9. Raven Ridge Homeowners Association (Billy Pepper);
10. Mary Griswold; and
11. Citizens Concerned About Annexation (Peter Roberts).

The opening statements by respondents were followed by sworn testimony provided by five witnesses called by two respondents. Sallie Dodd Butters called Charles Davis as a sworn witness, while Citizens Concerned About Annexation called Abigail Fuller, Dennis Oakland, Milli Martin, and Lee Krumm as sworn witnesses.

The City of Homer did not call witnesses to provide sworn responsive testimony.

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<sup>6</sup> There are fourteen respondents; eleven of whom made opening statements. Vi Jerrel made an opening statement on behalf of Alaskans Opposed to Annexation but did not make an opening statement as a respondent in her own right. Respondents Bill Smith and Doris Cabana were not present.

Following the sworn testimony of witnesses called by the respondents, the hearing was opened for a period of comment by the general public. Public comment was received during that segment from the following individuals:

1. Laura Barton
2. Ed Cooley
3. Eileen Becker
4. Jim Reinhart
5. Lois H. Field
6. Mike Ryan
7. Paul Field
8. Terry Jones
9. Randel Jones
10. Linda Reinhart
11. Timothy Fuller
12. Patricia Brennan
13. Rick Harness
14. Charles Davis
15. Milli Martin
16. Mike Arno
17. Kari Arno
18. Roberta Harris
19. Roberta Highland
20. Patti Krumm
21. Diana Walrath
22. Billy Pepper
23. Rich Corazza
24. Sonja Corazza
25. Roy E. Hoyt, Jr.
26. Nancy Hillstrand
27. Daniel Boone
28. Rick Ladd
29. Joanne Gregory
30. Mary Deihl
31. Geo Beach
32. Carey Meyer
33. Poppy Benson
34. Daisy Lee Bitter
35. John Fowler
36. Douglas Frainan
37. Gary Lyon
38. Kurt Weichhan
39. Scott Adams
40. Diane Sedor
41. Leah Handley
42. Al Wadell
43. Ed Todd
44. Marilyn Hendren
45. Michael A. Lcmay
46. Madrene Hoyt
47. Rieta Walker
48. David Rowe
49. Anita Critchett
50. Gail Ammerman
51. Paul Seaton
52. Hellen Buckwalter
53. Hardin Terrell
54. Findlay Abbott

At the conclusion of the comments by Findlay Abbott, no one else came forward to speak under the comments from the general public segment of the hearing. Respondent Sallie

Dodd Butters requested and was granted permission to give her closing statement at that time.

After the closing statement from Sallie Dodd Butters, the Commission Chairman asked if anyone else from the general public wished to offer comment. The following two individuals came forward:<sup>7</sup>

55. Susan Jackson
56. Wendy Lefton

After the comments by Wendy Lefton, the Commission Chairman recessed the hearing at approximately 8:20 p.m. The hearing reconvened at the Mariner Theater on Saturday, December 15 at approximately 9:15 a.m. At the invitation of the Commission Chairman, the following seven individuals came forward to offer comments from the general public:<sup>8</sup>

57. Bob Barnett
58. Kathy Hill
59. Don Darnell
60. Mike Yourkowski
61. Michael Kennedy
62. Harry Wilson
63. Robert Archibald

Following the comments from Robert Archibald, the Petitioner presented its closing statement. Gordon Tans made the statement on behalf of the City of Homer.

The closing statement by the Petitioner was followed by closing statements from the following ten respondents:<sup>9</sup>

1. Peter Roberts;
2. Alaskans Opposed to Annexation (Vi Jerrel);
3. Vi Jerrel;
4. Objective Annexation Review (Michael Kennedy);
5. The Crossman Ridge Neighborhood (Cris Rideout);
6. Abigail Fuller;
7. Steve and Margaret Seelye (Margaret Seelye);
8. The Raven Ridge Homeowners Association (Billy Pepper);
9. Mary Griswold; and
10. Citizens Concerned About Annexation (Peter Roberts).

The hearing concluded at approximately noon on December 15. Following the hearing the Commission convened a decisional session lasting approximately two hours. Guided by the fourteen city annexation standards set out in State law, the Commission determined during the decisional session that it would be appropriate to limit the size of the annexation at this time to an area estimated to comprise 4.58 square miles. Accordingly, the Commission amended the petition to reduce the territory proposed for annexation from 25.64 square miles to an estimated 4.58 square miles. Section II of this Statement of Decision sets out the basis for the Commission's action. A legal description and a map of the 4.58 square miles approved for annexation are included in Section III of this Statement of Decision.

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<sup>7</sup> Numbering is continued sequentially from Findlay Abbott.

<sup>8</sup> Numbering is continued sequentially from Wendy Lefton.

<sup>9</sup> As noted previously, there were fourteen respondents in this proceeding. Respondent Sallie Dodd Butters made her closing statement on December 14. Respondents Kenai Peninsula Borough, Bill Smith, and Doris Cabana were not present at this segment of the hearing.

## SECTION II FINDINGS AND CONCLUSIONS

Based on the voluminous evidence<sup>10</sup> in this proceeding, which the Commission finds to be suitably complete to render a well-informed decision, the Commission reached the following findings and conclusions:

*A. Compatibility of the Character of the Territory Proposed for Annexation and the Area within the Existing Boundaries of the City.*

The compatible territory standard is in 3 AAC 110.100.<sup>11</sup> DCED addressed that standard on pages 161 – 200 of its Preliminary Report.

The 4.58 square miles approved for annexation by the Commission are more similar in character to the area within the existing boundaries of the City of Homer than is the 25.64 square miles petitioned for annexation.

Properties closest to the existing northern boundaries of the City of Homer and along the major roadways are generally divided into smaller parcels and are developed to a greater degree than the remainder of the territory petitioned for annexation. That is not to imply, however, that the entire 25.64 square miles petitioned for annexation is incompatible in character with the area inside the existing boundaries of the City of Homer.

Residential development is the predominant land use within the 25.64 square miles petitioned for annexation. The entire territory petitioned for annexation contains an estimated 870 housing units.

There is significant commercial development in portions of the territory petitioned for annexation, notably Millers Landing and the area along the Sterling Highway within the 4.58 square miles approved for annexation. The City estimated that \$14 million in annual taxable sales occur within the 25.64 square miles petitioned for annexation. However, that estimate reflects only 80% of the taxable sales reported in the territory (excluding Kenai Supply) for 1999 – actual taxable sales were approximately \$17.6 million in 1999.

The area within the existing boundaries of the City of Homer is the regional center for State, federal, and borough offices. However, there are also a number of governmental facilities within the 25.64 square miles petitioned for annexation along the Sterling

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<sup>10</sup> The evidence includes the Petition, Responsive Briefs of the fourteen respondents, written comments on the Petition from 168 correspondents, Reply Brief, Preliminary Report, written comments on the Preliminary Report from 32 correspondents, Final Report, observations made by the Commission during its December 13, 2001 helicopter and automobile tours of both the territory petitioned for annexation and the area within the City of Homer, and statements, testimony and comments made at the public hearing concerning this matter conducted by the Commission on December 14 and 15, 2001.

<sup>11</sup> 3 AAC 110.100 provides as follows:

The territory must be compatible in character with the annexing city. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) land use and subdivision platting;
- (2) suitability of land for residential, commercial, or industrial purposes;
- (3) population density;
- (4) cause of recent population changes; and
- (5) suitability of the territory for reasonably anticipated community purposes.

Highway, Diamond Ridge Road, and Skyline Drive. Many of those facilities lie within the 4.58 square miles approved for annexation by the Commission.

The 25.64 square miles petitioned for annexation is generally higher in elevation than the area within the current boundaries of the City of Homer. However, this distinction does not render the two areas incompatible. There is no shortage of property for sale in the 25.64 square miles petitioned for annexation or within the existing boundaries of the City of Homer.

The population density within the City of Homer (including both land and water) is 188 residents per square mile. Excluding water, the City of Homer population density is 359 residents per square mile. In comparison, the population density of the 25.64 square miles petitioned for annexation is eighty-six persons per square mile. The population density of the 4.58 square miles approved for annexation by the Commission is 196. The latter figure is 12.6% greater than the comparable figure for the average of all city governments in Alaska.

There has been significant development in the 25.64 square miles petitioned for annexation; more than \$25 million in taxable property improvements have been undertaken since 1995. Many of those improvements occurred within the 4.58 square miles approved for annexation.

The per capita value of taxable real property within the existing boundaries of the City of Homer is estimated to be \$58,527. In comparison, the per capita taxable value of real property in the 25.64 square miles petitioned for annexation is estimated to be \$60,238. The per capita taxable value of property in the 4.58 square miles approved for annexation by the LBC is estimated to be \$64,994. The per capita value for the 4.58 square miles approved for annexation is 7.9% greater than the comparable figure for the 25.64 square miles as a whole and 11.0% greater than the figure for the area within the City of Homer. These data show that the area approved for annexation encompasses valuable properties and substantial development.

Property taxes in the 25.64 square miles petitioned for annexation, except Millers Landing, are 2.75 mills lower than they are within the City of Homer. Property taxes in Millers Landing are 4.58 mills lower than they are in the City of Homer. Sales taxes throughout the territory petitioned for annexation are 2%; sales taxes within the City of Homer are 5.5%.

It is likely that residents of the 25.64 square miles petitioned for annexation travel throughout both the areas within the existing boundaries of the City and the territory petitioned for annexation for routine purposes such as those related to employment and to purchase of goods and services.

The record clearly demonstrates that the 25.64 square miles petitioned for annexation and the City of Homer are one organic community separated by the invisible corporate boundaries of the City of Homer.

The Commission concludes that both the 25.64 square mile territory petitioned for annexation by the City of Homer and the 4.58 square mile area approved for annexation by the Commission are compatible in character with the territory within the City's current boundaries. Thus, the standard set out in 3 AAC 110.100 is satisfied for both areas. Again, the 4.58 square mile area approved for annexation is more similar in character with the territory currently within the corporate boundaries of the City of Homer.

***B. Proposed New Boundaries of the City of Homer in Relation to Boundaries of other Existing Local Governments.***

The standard at issue is in 3 AAC 110.130(e).<sup>12</sup> DCED addressed this standard on pages 201-202 of its Preliminary Report.

The proposed expanded boundaries of the City of Homer are entirely within the corporate limits of the Kenai Peninsula Borough. Moreover, although the proposed expanded boundaries of the City of Homer adjoin the corporate limits of the City of Kachemak, they do not overlap the jurisdictional area of any existing city government.

The Commission concludes from the foregoing that the City of Homer annexation proposal (both with and without the boundary amendment by the Commission) clearly satisfies the overlapping boundary standard set out in 3 AAC 110.130(e).

***C. Contiguity of the Territory with the City of Homer.***

The contiguity standard is in 3 AAC 110.130(b).<sup>13</sup> DCED addressed this standard on pages 203 – 204 of its Preliminary Report.

The Commission finds that, with respect to this standard, the 25.64 square miles petitioned for annexation to the City of Homer is contiguous to the area within the existing boundaries of the City of Homer. The 4.58 square miles approved for annexation by the Commission are also contiguous to the current corporate boundaries of the City of Homer.

The Commission concludes from the simple facts relating to this standard that the Petition plainly satisfies the requirement of 3 AAC 110.130(b), as does the territory approved for annexation by the Commission.

***D. Effects of Annexation on Civil and Political Rights.***

The civil and political rights standards are in 3 AAC 110.910, 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1.<sup>14</sup> DCED addressed this standard on pages 204 – 213, 363, and 364 of its Preliminary Report and pages 23 – 26 and 34 of DCED's Final Report.

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<sup>12</sup> 3 AAC 110.130(e) provides as follows:

If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the overlapping region from the existing organized borough, unified municipality, or city. The commission will consider and treat the annexation petition to the existing organized borough, or a detachment petition from the existing organized borough, unified municipality, or city.

<sup>13</sup> 3 AAC 110.130(b) provides as follows:

Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing city does not meet the minimal standards required for annexation

<sup>14</sup> 3 AAC 110.910 provides that:

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting, because of race, color, creed, sex, or national origin.

42 U.S.C., § 1973 provides that:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,

The anticipated effects of annexation on civil and political rights include the following:<sup>15</sup>

Right	Effect	Area Affected
To hold appointed office as a member of the board of supervisors of the Kenai Peninsula Borough Road Service Area	Loss of right	All annexed areas
To hold elected office as a member of the board of supervisors of the Kenai Peninsula Borough Kachemak Emergency Service Area	Loss of right	All annexed areas excluding Millers Landing
To hold office as a member of the Kachemak Bay Advisory Planning Commission	Loss of right	All annexed areas excluding Millers Landing

Table continued on next page

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or in contravention of the guarantees set forth in section 19.3b(1)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

28 C.F.R. PART 51.1 provides that:

(a) Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by Section 4(b) of the Act, 42 U.S.C. 1973b(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission. Additionally, State law provides with respect to annexation that, "A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin."

<sup>15</sup> Black's Law Dictionary (Revised Fourth Edition) defines "civil rights" and "political rights" as follows:

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all of its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof.

Political rights consist in the power to participate, directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right to petition.

Table continued from previous page

Right	Effect	Area Affected
To propose and enact laws of the City of Homer through the initiative process	Gain of right	All annexed areas
To approve or reject laws of the City of Homer through the referendum process	Gain of right	All annexed areas
To vote on propositions (e.g., bonds) submitted to the voters of the City of Homer	Gain of right	All annexed areas
To hold any appointed office (e.g., Planning Commission) of the City of Homer*	Gain of right	All annexed areas
To hold any elected office (i.e., mayor or city council) of the City of Homer	Gain of right	All annexed areas

The most significant effect of annexation in terms of political rights is that resident voters in the annexed area will be granted the right to participate in future elections regarding electing City officials and other City matters. The hundreds of voters in the territory approved for annexation will be a major political force in the expanded City of Homer.

Further, residents of 25.64 square miles petitioned for annexation generally pay sales taxes to the City. In addition, the City of Homer has great influence on the daily lives of many in the territory petitioned for annexation in other matters such as the availability of water, public health and safety, and commerce. Annexation would enfranchise such residents and, therefore, provide them with a direct and tangible voice in determining City policies.

Evidence does not show that annexation will affect any civil or political right of any person within the territory petitioned for annexation "because of race, color, creed, sex, or national origin."<sup>16</sup> Moreover, annexation will not result in the imposition or application of voting qualifications, voting prerequisites, or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group.

Therefore, the Commission concludes that the requirements of 3 AAC 110.910; 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1 are satisfied by the City of Homer's annexation proposal (both with and without the boundary amendment made by the Commission).

In addition to matters relating to the standards set out in 3 AAC 110.910, 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1, three other prominent "political rights" issues were raised in this proceeding.

First, a number of those who provided written comments and testimony expressed the view that it is a basic civil and political right to vote on annexation. However, such is not the case. In 1962, the Alaska Supreme Court held that the legislative review process for

<sup>16</sup> Respondent Sallie Dodd Butters testified during the hearing that, "My spiritual and rural lifestyle is my creed, so I contend I am being discriminated against." The Commission prefers the more generally accepted definition of "creed" set out as follows in Black's Law Dictionary (Revised Fourth Edition):

The word "creed" has been defined as "confession or articles of faith," "formal declaration of religious belief," "any formula or confession of religious faith," and "a system of religious belief."

annexation – the same one employed in this proceeding by the City of Homer – does not infringe upon or deprive rights protected by the Fourteenth Amendment of the U.S. Constitution.<sup>17</sup> Specifically, the Court stated as follows in *Fairview Public Utility District Number One v. City of Anchorage*, 368 P.2d 540, 545 (Alaska 1962):

Appellants next contend that their constitutional rights were violated when they were not permitted to hold an election and vote as to whether annexation should take place. They rely specifically on the due process clause of the Fourteenth Amendment, and on the Fifteenth Amendment as applied in the recent case of *Gomillion v. Lightfoot*.<sup>18</sup>

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of 'liberty, or property, without due process of law.'<sup>19</sup> The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation.<sup>20</sup> The state may permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.<sup>21</sup> There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

The Fifteenth Amendment and the Supreme Court's decision in the *Gomillion*<sup>22</sup> case are not pertinent. They are concerned with the denial of a citizen's right to vote because of his race or color. That factor is not involved in this case.

The more recent ruling of the Alaska Supreme Court in *Area G Home and Landowners Organization, Inc., v. Anchorage*, 927 P 2d 728 (Alaska 1996) is also relevant to this issue. That case lends further support to the Commission's view that that courts would disagree with the proposition espoused by some in this proceeding that there is a constitutionally or statutorily recognized right to vote on annexation which would effectively grant voters the right to veto the pending annexation proposal.

Additionally, in 1881, the U.S. Supreme Court ruled in *Kelly v. City of Pittsburgh*, 104 U.S. 78 (1881), that a taxpayer whose land had been annexed without his vote, was not deprived of due process of law. Specifically, the court said:

What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. ... Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most usual and ordinary subjects of State legislation.

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<sup>17</sup> § 1, Amendment XIV of the U.S. Constitution provides as follows:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

<sup>18</sup> 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

<sup>19</sup> U.S.Const. amend. XIV, § 1.

<sup>20</sup> *Kelly v. City of Pittsburgh*, 104 U.S. 78, 81, 26 L.Ed. 658, 659 (1881); *Antieau, Municipal Corporation Law* § 1.15 at 30 (1958).

<sup>21</sup> Cf. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907); *Mount Pleasant v. Beckwith*, 100 U.S. 514, 524-525, 25 L.Ed. 699, 701 (1880).

<sup>22</sup> *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

The second prominent political rights issue involves a statutory right of voters in certain service areas to ratify any adjustment to the boundaries of those service areas under AS 29.35.450(c).<sup>23</sup> In this case, the service areas in question consist of the Kenai Peninsula Borough Road Service Area (hereinafter "KPBRSA") and the Kenai Peninsula Borough Kachemak Emergency Service Area (hereinafter "KESA").

The Commission, DCED, and the State Attorney General's Office are in accord that AS 29.35.450(c) does not apply to a legislative review annexation on the basis of principles set out in Alaska's Constitution, including those addressed in the *Fairview* and *Area G Home and Landowners Organization* cases noted above.<sup>24</sup> If AS 29.35.450(c) applied to a legislative review annexation, it could result in a circumstance in which two local governments – in this case the City of Homer and the Kenai Peninsula Borough – were exercising the identical powers in the same territory. Such would contravene principles in Alaska's Constitution, particularly those set out in Article X, § 1, which promote "a minimum of local government units" and "prevent duplication of tax-levying jurisdictions."

In the landmark *Fairview* case, the Alaska Supreme Court held in a similar circumstance that although State statutes expressly provided that a public utility district could be dissolved only upon approval of the voters, annexation of the territory to a city would also result in dissolution of the district. Specifically, the Court stated (at 545):

Appellants contend that the District was not dissolved when annexation took place; that this could be accomplished only by the election procedure set forth by statute.<sup>25</sup> We disagree. This would defeat the chief purpose of annexation, which was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos.<sup>26</sup> When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city.<sup>27</sup>

It is the view of the Commission that annexation of territory to the City of Homer will, as a matter of law, result in the detachment of any such area within KPBRSA and KESA from those respective service areas of the Kenai Peninsula Borough.

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<sup>23</sup> AS 29.35.450(c) states as follows:

If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent and would add no more than 1,000 residents.

<sup>24</sup> See the December 12, 2001 memorandum from Marjorie Vandor, Assistant Attorney General (File Number 663-02-0091), and the November 7, 2001 memorandum from Debby Sedwick, Commissioner of DCED, requesting the opinion.

<sup>25</sup> Section 49-2-13 ACLA Cum.Supp.1957, supra note 8.

<sup>26</sup> In re Annexation to City of Anchorage, 15 Alaska 504, 509, 129 F.Supp. 551, 554 (D.Alaska 1955).

<sup>27</sup> In re Sanitary Board of East Fruitvale Sanitary Dist., 158 Cal. 453, 111 P. 368, 370 (1910); *Dickson v. City of Carlsbad*, 119 Cal.App.2d 809, 260 P.2d 226 (1953).

The third additional prominent civil and political rights issue relates to truncation of terms of incumbent elected officials of the City of Homer. A number of those who provided written comments and testimony advocated truncation of terms of incumbent elected officials of the City of Homer as a condition of annexation.

The issue of truncation of terms of incumbent elected officials was addressed on pages 210 – 213, 363, and 364 of the Preliminary Report and on pages 23 – 26 and 34 of the Final Report. As outlined below, the terms of three of the seven incumbent elected officials of the City of Homer – 43% of the total – will expire approximately seven months after the presumed effective date of annexation (mid-March 2002). The terms of two others will expire nineteen months after annexation, while the terms of the remaining two incumbents will expire thirty-one months after annexation.

INTERVAL BETWEEN ANNEXATION OF EXPIRATION OF TERMS OF INCUMBENT ELECTED OFFICIALS		
Occurrence	Date	Interval Since Annexation
Assumed effective date of annexation	March 2002	
Expiration of current term of Mayor Cushing	October 2002	7 months
Expiration of current term of Council member Marquardt	October 2002	7 months
Expiration of current term of Council member Cue	October 2002	7 months
Expiration of current term of Council member Kranich	October 2003	19 months
Expiration of current term of Council member Ladd	October 2003	19 months
Expiration of current term of Council member Fenske	October 2004	31 months
Expiration of current term of Council member Yourkowski	October 2004	31 months

There are two essential questions with respect to the matter of truncation of terms. The first is whether the Commission has the authority, absent express statutory or regulatory provisions, to require truncation of terms as a condition of annexation. The second is – assuming the Commission has such authority – whether the facts in this proceeding warrant the imposition of such a condition.

Taking up the latter question first, the Commission acknowledges, in a broad sense, that the arguments for truncation of terms of elected officials of an annexing municipality hold some attraction. It is less than ideal that residents of newly annexed areas may, for varying periods, be represented at the local municipal level by officials they did not elect. The Commission notes, however, that the same occurrence results from a variety of reasons other than annexation (e.g., citizens reaching the age of eighteen, individuals relocating to a new local government jurisdiction, and the appointment of an individual to serve in a position vacated by an elected official).

The Commission, however, disagrees with certain fundamental characterizations made by advocates for truncation in this case. For example, despite characterizations to the contrary, newly annexed citizens would clearly not lack representation by the incumbents. Incumbent elected officials, all of whom are elected and serve at large, would represent all citizens of the City of Homer, including every newly annexed citizen.

The Commission is unaware of any precedent for the truncation of terms of incumbent elected local government officials as a result of annexation. Given such, prudence is warranted on the part of the Commission in addressing the matter. The Commission notes that the fundamental argument for truncation of terms applies whether one citizen is annexed or, as in this case, several hundred citizens may be annexed. Moreover, a similar argument could be made regarding municipal detachment, where citizens are excluded from a municipality. For example, citizens of the remnant municipality could ask, "Why should anyone who is no longer a citizen of a municipality have had a voice in determining who is going to govern us for the next two and one-half years?" Truncation of the terms of incumbent elected officials for annexation or detachment of any inhabited property, regardless of the size of the population, is impractical.

The Commission does not consider the specific facts in this case to warrant the extraordinary and unprecedented step of truncating terms of elected officials, particularly with respect to the 4.58 square mile area approved for annexation. Limiting the size of the annexation to the 4.58 square miles approved by the Commission would increase the population of the City of Homer by an estimated 898 residents. Those individuals would constitute 18.5% of the post-annexation population of the City of Homer. In contrast, if the proposal to annex 25.64 square miles were approved, the estimated 2,204 residents therein would comprise 35.8% of the population of the expanded City. In the latter case, arguments favoring truncation of terms of incumbent elected officials would be much stronger.

Because the facts in this proceeding do not warrant the extraordinary and unusual step of truncation of terms, the Commission declines to address the question of whether the Commission has the authority to impose such a condition in the absence of a statute or regulation which addresses truncation of terms.<sup>28</sup>

*E. Inclusion of Geographical Regions and Large Unpopulated Areas.*

The relevant standard is found in 3 AAC 110.130(d).<sup>29</sup> DCED's analysis and conclusions regarding this standard are set out on pages 213 – 219 of its Preliminary Report. Additional information relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED's Final Report.

The City of Homer is currently the eleventh most populous city government in Alaska. The existing City of Homer ranks forty-fifth among Alaska's 146 cities in terms of the area within its corporate boundaries. Excluding water, the City of Homer ranks sixty-first among all city governments in Alaska.

If all 25.64 square miles were annexed to the City of Homer, it would become the nineteenth highest ranked city in terms of area. Excluding water, it would rank twentieth in total area. However, again, its ranking in terms of population would exceed its ranking in terms of area, given that it would then become the fifth most populous city in Alaska.

The population within the expanded City of Homer boundaries approved by the Commission is estimated to be 4,844. That would make the enlarged City of Homer the seventh most populous city government in Alaska. With approximately 15.58 square miles of land and ten square miles of water within its expanded corporate boundaries, the City of Homer would rank as the sixty-first largest city in Alaska. Excluding water, the expanded City of Homer would rank as the forty-eighth largest city in Alaska. Clearly,

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<sup>28</sup> Nevertheless, the Commission notes that State Assistant Attorney General Marjorie Vandor issued a memorandum dated December 12, 2001 (File Number 663-02-0090) concluding that "... the LBC does not, absent regulations, have discretionary authority to require truncation of terms of the city council of Homer as a condition to approving the petition for annexation presently being considered."

<sup>29</sup> 3 AAC 110.130(d) states as follows:

The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.130.

the area within the expanded corporate boundaries of the City of Homer approved by the Commission is modest in relation to its population compared to other city governments in Alaska.

Portions of the 25.64 square miles petitioned for annexation to the City of Homer encompass large parcels. Moreover, several portions of the territory are uninhabited. However, the extent of such in the 4.58 square miles approved for annexation is substantially less than the remnant territory petitioned for annexation. Moreover, the standard set out in 3 AAC 110.040(c) is aimed at prohibiting the annexation of a vast borough-type region to a city government. The standard does not preclude city governments from annexing territory that is only partially inhabited. Neither does 3 AAC 110.040(c) preclude the annexation of territory encompassing undivided parcels of land.

Under these circumstances, the Commission concludes that the standard found in 3 AAC 110.130(d) is satisfied by the Petition, particularly with respect to the 4.58 square mile area approved for annexation by the Commission.

*F. Size and Stability of Population.*

The population size and stability standard is in 3 AAC 110.120.<sup>30</sup> DCED's analysis and conclusions regarding this standard are set out on pages 219 – 226 of its Preliminary Report.

3,946 individuals lived in the City of Homer at the time of the 2000 census. As noted with respect to the immediately preceding standard, the City of Homer currently ranks as the eleventh most populous city government in Alaska.

DCED estimated that 2,204 residents inhabited the 25.64 square miles petitioned for annexation at the time of the last census. That population is equivalent to the twentieth most populated city in Alaska.

The 4.58 square miles approved for annexation by the Local Boundary Commission are estimated to be inhabited by 898 people based on 2000 census data. That area alone is populated by a number of residents sufficient to render it the twenty-seventh most populous city government in Alaska if it were incorporated. Thus, the territory approved for annexation encompasses a substantial population in its own right.

As noted above, annexation of the 4.58 square miles approved by the Commission would boost the ranking of the City of Homer to the seventh most populous city government in Alaska.

The Commission notes that the population of the expanded boundaries of the City of Homer as now approved is larger than the population of all first class city governments in Alaska, except the City of Wasilla.

The percentage of residents in households and the percentage of owner-occupied housing suggest that the population both in the City of Homer and the 25.64 square miles petitioned for annexation (including the 4.58 square miles approved for annexation by the Commission) is well established.

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<sup>30</sup> 3 AAC 110.120 provides as follows:

- The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission will, in its discretion, consider relevant factors, including:
- (1) total census enumeration;
  - (2) duration of residency;
  - (3) historical population patterns;
  - (4) seasonal population changes; and
  - (5) age distributions.

The record shows that the area in and around Homer experienced very substantial growth in population during the 1970s and 1980s. Although it still grew during the 1990s, the rate of population increase in and around Homer moderated considerably compared to the two previous decades.

Many communities in Alaska, particularly those in which tourism and commercial fishing are major segments of the economy, experience substantial seasonal population fluctuations. There is no indication in this proceeding that the Homer City government is unable to manage the circumstances surrounding the seasonal population changes in the greater community.

Although there are slight deviations in the age distribution patterns of the areas in and around Homer, the record does not demonstrate the presence of an unstable population.

The Commission concludes that the population within the expanded boundaries of the City of Homer as approved by the Commission is sufficiently large and stable to support the extension of city government. As such, the City of Homer's annexation proposal satisfies the standard set out in 3 AAC 110.120.

#### *G. Human and Financial Resources.*

The standard is found in 3 AAC 110.110.<sup>31</sup> DCED's analysis and conclusions regarding this standard are set out on pages 227 - 244 and 357 - 359 (footnote 85) of its Preliminary Report, and page 33 of its Final Report.

Based on the entire 25.64 square mile proposal, the Petition projects that the City of Homer's operating expenditures would increase by \$414,463 annually. The Petition proposes to fund anticipated capital expenses through the sale of general obligation bonds subject to approval by the voters. The Petition indicates that debt service on a \$1.2 million ten-year general obligation bond would be \$166,966 annually. The City's cost projections are considered by the Commission to be reasonable.

The City estimates that annexation of the 25.64 square miles would increase its property tax revenues by \$696,163 annually. The City based its property tax revenue estimates on the certified real property assessed values provided by the Kenai Peninsula Borough. The City also estimates that annexation will increase its sales tax revenue by \$493,600 each year. The estimate of sales tax revenues was derived from data provided by the Kenai Peninsula Borough; the City reduced the figure provided by the Borough in order to base its proposal on a conservative figure.

No sources of additional revenue other than property taxes and sales taxes were included in the City's revenue estimates. The City's total projected annual increase in revenue amounts to \$1,189,763, but the record suggests that \$1,539,950 would be a more realistic estimate of the anticipated increase in City revenues.

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<sup>31</sup> 3 AAC 110.110. Resources provides as follows:

- The economy within the proposed boundaries of the city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the:
- (1) reasonably anticipated functions of the city in the territory being annexed;
  - (2) reasonably anticipated new expenses of the city;
  - (3) actual income and the reasonably anticipated ability to collect local revenue and income from the territory;
  - (4) feasibility and plausibility of the anticipated operating budget of the city through the third full fiscal year of operation after annexation;
  - (5) economic base of the territory after annexation;
  - (6) property valuations in the territory proposed for annexation;
  - (7) land use in the territory proposed for annexation;
  - (8) existing and reasonably anticipated industrial, commercial, and resource development;
  - (9) personal income of residents in the territory and in the city; and
  - (10) need for and availability of employable skilled and unskilled people.

Based on estimates provided in DCED's Final Report, supplemented by information about the nine parcels added to that area by the Commission, it is reasonably estimated that annexation of 4.58 square miles would generate slightly more than \$950,000 in additional annual revenues for the City of Homer.<sup>32</sup> It is projected that annexation of 4.58 square miles will require the City to incur additional expenditures of approximately \$354,000 to serve the territory. Projected additional revenues exceed projected additional expenditures by about \$600,000 annually.

While respondents disputed estimates of revenues and expenditures by the City of Homer and DCED, even the testimony of Abigail Fuller as an expert witness on behalf of Citizens Concerned About Annexation during the December 14 - 15 hearing indicated that anticipated new revenues from annexation would exceed anticipated new expenses.

The anticipated ability of the City to collect the revenue in question is substantial since all of the projected revenues stem from long-established sources. Given its long-established nature, size and scope of its operations, competency of its staff, and good financial reputation, the City's projections of revenues and expenditures for the existing City of Homer appear to be credible.

The existing and projected revenue and expenditure data represent a feasible and plausible anticipated operating budget for the proposed expanded City of Homer. The budget should remain feasible and plausible through the third full fiscal year of operation after annexation absent notable changes in the: (1) population of the City of Homer (apart from that due to annexation), (2) powers and duties of the Homer city government, (3) rate of inflation, (4) local economic conditions, and (5) levels of State financial aid to local governments. While the population of the Homer area is growing, significant changes to the other four factors are not anticipated. It can be reasonably expected that any increased costs associated with future population growth will likely be offset with increased property tax and sales tax revenues.

The 25.64 square miles petitioned for annexation encompass a substantial economic base. There were forty commercial properties within the territory petitioned for annexation generating taxable sales of \$17.6 million in 1999.<sup>33</sup> The territory petitioned for annexation comprises about 15.2% of the economy (based on taxable sales) of the proposed expanded City of Homer. The vast majority of those commercial facilities lie within the 4.58 square miles approved for annexation by the Commission.

The economic base of the area within the City of Homer's current boundaries, as reflected by reported taxable sales, has exhibited steady growth over a period exceeding the past decade.

Contemporary personal income figures at the community level are not yet available. 1990 figures indicated that median household income in the City of Homer was \$36,652. Figures for the surrounding area were even higher. For example, the figures for Anchor Point and Fritz Creek were, respectively, \$42,847 and \$45,143. The comparable figure for the State of Alaska as a whole was \$41,408.

Based on the foregoing, the Commission concludes that the economy within the expanded boundaries of the City as approved by the Commission includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard set out in 3 AAC 110.110 is satisfied by annexation of the 4.58 square miles approved for annexation by the Commission.

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<sup>32</sup> The nine parcels added by the Commission to the 3.9 square miles recommended for annexation by DCED in the Final Report have an assessed value of \$295,300. The nine parcels are undeveloped and uninhabited. There are no locally maintained roads within the nine parcels. Thus, the only impact that the inclusion of the nine parcels will have on City of Homer revenues and expenditures is limited to an increase in property tax revenues. At the current rate of 5.5 mills, the increase would amount to \$1,624.15 annually.

<sup>33</sup> The figure excludes sales from Kenai Supply, which has since closed.

## *H. Transition Plan for Extension of City Services*

A transition plan is required by 3 AAC 110.900.<sup>34</sup> DCED's analysis and conclusions regarding the transition standard are set out on pages 244 – 253 of its Preliminary Report.

The Commission emphasizes that the standards relating to transition plans are written in a broad fashion to pertain to all existing and prospective city and borough governments that come before the Commission. These range from relatively basic institutions of local government such as the City of Kupreanof, a second class city in the unorganized borough with a population of twenty-three, to large and complex local governments such as the Municipality of Anchorage, a unified home rule borough with a population of 260,283.

The intent of 3 AAC 110.900(a) is to require each petitioner to demonstrate that it has given forethought to the manner in which it will extend services to the territory proposed for annexation. It must also demonstrate the petitioner's good faith to extend services.

The City of Homer is clearly one of the more substantial and sophisticated city governments in Alaska. Its resources and staff capabilities are superior to the majority of its 145 counterparts in the state.

While the nine-page transition plan presented by the City of Homer in its Petition lacks minutiae regarding the manner in which services are proposed to be extended, the law does not require a petitioner to provide a detailed comprehensive plan for the extension of services. Again, each petitioner need only provide evidence that it has given forethought to what it must do to deliver municipal services to the area proposed for annexation.

The City of Homer has clearly demonstrated that it has given consideration to the services to be extended to the territory proposed for annexation. Moreover, it has expressed its good faith intention to extend all services provided by the City of Homer, with the exception of water and sewer utilities, within the shortest practicable time following annexation. Given the substantial capital investment involved in water and

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<sup>34</sup> 3 AAC 110.900 TRANSITION provides as follows:

(a) A petition for incorporation, annexation, merger or consolidation must include a practical plan in which the municipal government demonstrates its intent and capability to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for detachment or dissolution must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment.

(b) A petition for a proposed action by the commission must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, service area, or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city or service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) A petition for a proposed action by the commission must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, service area or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, or service area affected by the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occurs without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission will, in its discretion, require that all affected boroughs, cities, service areas, or other entities execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

sewer utility extensions, the City of Homer plans to undertake such extensions over a long-term period, as demand and funding allow.

Based on the information provided by the City of Homer in its Petition and Reply Brief, analysis by DCED on pages 244 – 253 of its Preliminary Report, and statements by representatives of the City of Homer during the December 14-15, 2001 public hearing, the Commission concludes that the City of Homer has satisfied the intent of 3 AAC 110.900(a).

3 AAC 110.900(b) requires each petitioner to present a practical plan for the assumption of relevant powers, duties, rights, and functions presently being exercised by other service providers. In this case, the relevant responsibilities are principally limited to road maintenance, fire protection, and emergency medical service which are currently provided by the Kenai Peninsula Borough on a service area basis within the territory petitioned for annexation.<sup>35</sup> The Petition, Reply Brief, Preliminary Report, and statements during the December 14 – 15 public hearing clearly demonstrate that the requirements of 3 AAC 110.900(b) are plainly met. During the public hearing both Colette Thompson, Kenai Peninsula Borough Attorney, and Gordon Tans, City of Homer Attorney, expressed confidence that the two governments will amicably reach agreement as to the specific terms surrounding the transfer of road maintenance, fire protection, and emergency medical responsibilities from the Kenai Peninsula Borough to the City of Homer for the area in question.

3 AAC 110.900(c) requires each petitioner to provide a practical plan for the transfer and integration of relevant assets and liabilities. The Kenai Peninsula Borough Attorney testified that she contemplates no transfer of physical assets such as buildings or equipment as a result of annexation. Again, representatives from the Kenai Peninsula Borough and the City of Homer expressed confidence during the hearing that they will amicably agree to terms with respect to the transfer of assets and liabilities such as tax revenues and contracts for services. Given such, the Commission concludes that the requirements of 3 AAC 110.900(c) are satisfied.

The Commission notes here again that, as a matter of law, the area annexed to the City of Homer will be detached from the Kenai Peninsula Borough Road Service Area and the Kenai Peninsula Borough Kachmak Emergency Service Area. Details about such were addressed previously under the civil and political rights standard. In sum, it is the view of the Commission, DCED, and the State Attorney General's Office that the requirements of AS 29.35.450(c) are not applicable to city annexations, particularly legislative review annexations.<sup>36</sup>

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<sup>35</sup> The Kenai Peninsula Borough also provides port and harbors, tourism promotion, special assessment authority for utility line extensions, and economic development on a nonarea-wide basis. The City of Homer also provides those services within its corporate boundaries.

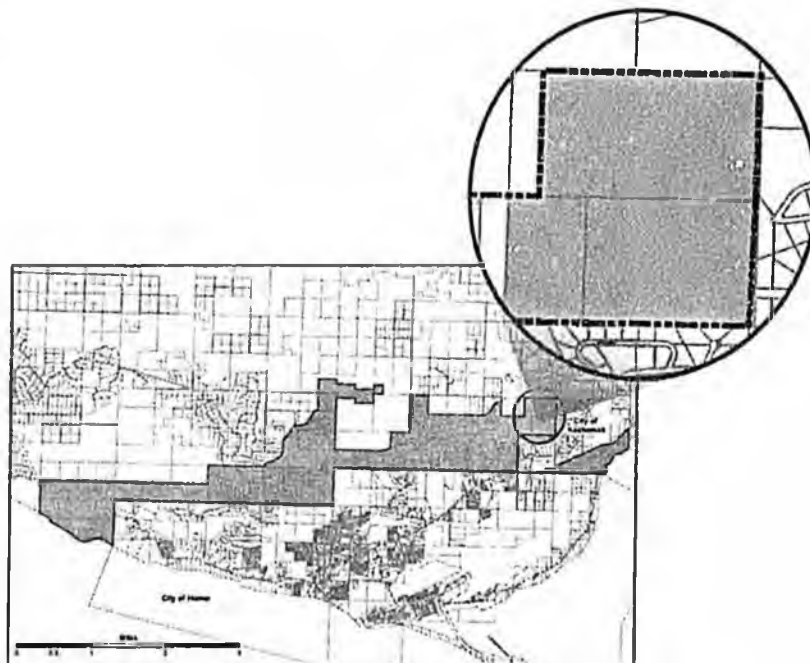
<sup>36</sup> Again, see the December 12, 2001 memorandum from Marjorie Vandor, Assistant Attorney General (File Number 663-02-0091), and the November 7, 2001 memorandum from DCED Commissioner Debby Sedwick, requesting the opinion.

***I. Inclusion of Areas Necessary to Provide Services on an Efficient, Cost-Effective Level***

The standard at issue is set out in 3 AAC 110.130(a).<sup>37</sup> DCED's analysis and conclusions regarding this standard are set out on pages 253 – 268 of its Preliminary Report. Additional information relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED's Final Report.

On its surface, the standard is typically applied to determine only whether the proposed expanded boundaries of a city are expansive enough to encompass "all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level." However, the standard can also be properly applied to determine whether parts of the territory proposed for annexation will hinder the efficient, cost-effective delivery of services if such are included within the expanded boundaries of the city.

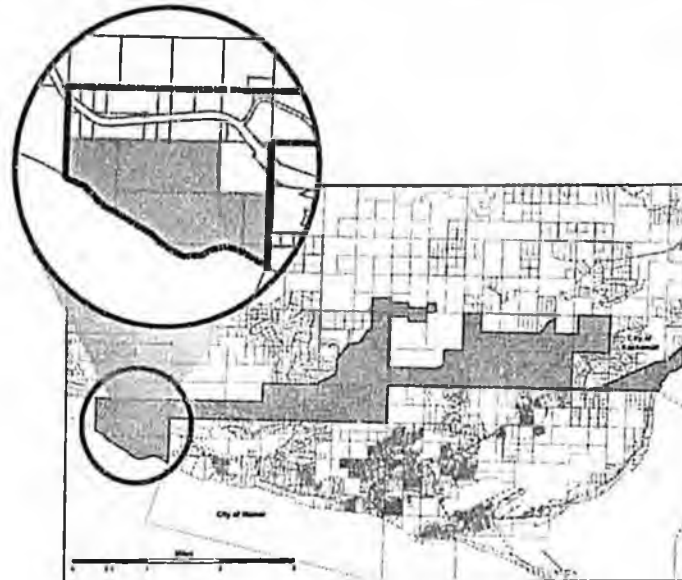
During the public hearing, requests were received from owners of three parcels adjoining the eastern portion of the so-called urban area recommended for annexation by DCED. Specifically, John Fowler requested the annexation of a 25.6-acre parcel and a 70.0-acre parcel that he owns. Additionally, Joseph L. Lester and Des Lester requested the annexation of their 54.4-acre parcel. Those parcels are depicted on the accompanying map.



<sup>37</sup> 3 AAC 110.130(a) provides as follows:

- The proposed boundaries of the city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including
- (1) land use and ownership patterns;
  - (2) population density;
  - (3) existing and reasonably anticipated transportation patterns and facilities;
  - (4) natural geographical features and environmental factors; and
  - (5) extraterritorial powers of cities.

Moreover, the Commission considered six parcels south of the Sterling Highway corridor recommended for annexation by DCED to warrant inclusion in the City of Homer at this time. Three of those parcels are owned by the State of Alaska. One of the State-owned parcels is 80 acres, another is 88.46 acres, and the third parcel consists of 9.09 acres. The other three parcels are privately owned. One is a 42.98-acre parcel owned by Cook Inlet Region, Incorporated, another is a 19.99-acre parcel owned by Charlene Wilkins, and the remaining property is a 5.58-acre parcel owned by James Murphy. None of the six parcels is developed. The six parcels in question are depicted on the accompanying map.



The 4.58 square mile area approved for annexation by the Commission consists of the 3.9 square miles recommended for annexation by DCED, the Fowler and Lester properties, and the six parcels south of the Sterling Highway corridor.

As noted in its analysis of this standard on pages 253 – 268 of the Preliminary Report, pages 5 – 19 of the Final Report, and pages 32 – 34 of the Final Report, the 3.9 square miles recommended for annexation by DCED has substantial residential, commercial and other development. Although the Fowler and Lester parcels are currently undeveloped, there are indications that those three parcels are likely to be subdivided and improved in the foreseeable future. The current assessed value of those three parcels is \$232,500. The six parcels south of the Sterling Highway corridor are also undeveloped but are vital to protection of the "viewshed" of the community. Annexation of those six parcels is warranted for reasons outlined in the October 30, 2001 written comments by the City regarding DCED's Preliminary Report and on the basis of testimony provided during the Commission's December 14 – 15 hearing. Only two of the six parcels are taxable. The current assessed value of those properties is \$62,800.

The population density of the 3.9 square miles recommended for annexation by DCED is approximately 230 persons per square mile. With the addition of the nine parcels added by the Commission, the 4.58 square mile area approved for annexation has a population density of 196 people per square mile. In comparison, the average population density of all cities in Alaska is approximately 174 persons per square mile.

There are seven principal roadways that link the territory petitioned for annexation to the area within the City of Homer. Six of the seven roads are within the 4.58 square miles approved for annexation by the Commission. Additionally, air and marine transportation facilities serving the territory proposed for annexation are within the City of Homer.

In addition to transportation ties, the two areas share strong social, cultural, and economic interests. Testimony and comments were offered by a number of individuals during the hearing that the territory petitioned for annexation and the City of Homer are part of the same community.

The Kenai Peninsula Borough has granted extraterritorial powers to the City of Homer for land use regulation in the Bridge Creek Watershed. The City of Homer is currently developing an ordinance under which the City would exercise that power. The grant of extraterritorial powers to regulate the watershed provides the City of Homer with full legal authority to enact technically sound and socially responsible regulations governing the use and development of the watershed. As such, the Bridge Creek Watershed per se is not essential to the efficient, cost-effective delivery of services by the City of Homer at this time.

Residents and property owners within the 25.64 square miles petitioned for annexation receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the City of Homer, whether rendered or received inside or outside the territory proposed for annexation. Such includes water utility service and bulk water sales, sewer utility service, fire protection service, and emergency medical service to limited parts of the 25.64 square miles petitioned for annexation. Emergency police services are provided to a broader area. Moreover, citizens living throughout the territory petitioned for annexation use facilities owned and operated by the City of Homer, such as the library, port, harbor, and airport.

The per capita assessed value of the 25.64 square miles petitioned for annexation is estimated to be \$60,238. In comparison, the per capita assessed value of the 4.58 square miles is approximately \$64,994.

Based on the foregoing, the Commission concludes that the standard set out in 3 AAC 110.130(a) is best met *at this particular* time if the expansion of the boundaries of the City of Homer is limited to the 4.58 square miles approved for annexation by the Commission.

However, the Commission notes that as the outlying territory continues to grow and develop, so too may the ability of the City of Homer to serve that territory efficiently and effectively. There are many individuals and organizations with overlapping interests regarding the future delivery of essential local government services in the area in question. They include the Homer and Kachemak city governments, the Kenai Peninsula Borough, and citizens of those three governments. All would be well served by recognition of their mutual interests in that regard so that better planning for future alterations of the structure of local government in the greater Homer area may occur in a productive manner.

***J. City Boundaries Limited to Community plus Ten Years' Growth.***

The standard at issue is set out in 3 AAC 110.130(c).<sup>38</sup> DCED's analysis and conclusions regarding this standard are addressed on pages 269 – 280 of its Preliminary Report. Additional information about boundaries that is relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED's Final Report.

The determination by the Commission whether the 4.58 square miles approved for annexation and the area within the existing corporate boundaries of the City of Homer comprise a local community must be made in light of a number of factors set out in 3 AAC 110.920.<sup>39</sup>

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<sup>38</sup> 3 AAC 110.130(c) provides as follows:

The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation of that city.

<sup>39</sup> 3 AAC 110.920 DETERMINATION OF COMMUNITY provides as follows:

(a) In determining whether a population comprises a community or social unit, the commission will, in its discretion, consider relevant factors, including whether the people  
(1) reside permanently in a close geographical proximity that allows frequent personal contacts and has a population density that is characteristic of neighborhood living;

The first factor is whether residents of the area within the existing corporate boundaries of the City of Homer as well as the 4.58 square miles approved for annexation generally have exhibited a long-term presence. The testimony of those who spoke to the Commission during the December 14 – 15 hearing, coupled with DCED's analysis and conclusions on the matter, generally indicate that this is clearly the case.

Second, the current residents of the City of Homer and the residents in the 4.58 square miles in question live in close geographic proximity to one another. In many cases, residents of the two areas live within blocks of one another. Given the close proximity of the two areas, it would be difficult for residents of one area to avoid frequent personal contacts with residents of the other, even if that were their wish.

Testimony by representatives of neighborhood homeowners' associations and others indicate that the patterns of development in the 4.58 square miles approved for annexation have evolved from that of remote and isolated homesteads to that of neighborhood living. The areas have become more integrated, such that they are now part of the same community.

Respondents Sallie Dodd Butters and Peter Roberts testified that residents the territory petitioned for annexation chose to live outside the City of Homer to avoid its jurisdiction or because they wanted nothing to do with the city government. However, respondents Michael Kennedy and Margaret Seelye testified that residents of the City of Homer and the entire 25.64 square miles petitioned for annexation are part of the same community. The Commission considers the testimony given by respondents Kennedy and Seelye to be better supported, more persuasive, and more pertinent on this point.

The Commission notes that residents of the 4.58 square miles in question visit the area within the corporate boundaries of the City of Homer on a regular basis for economic, social, and other occasions. As DCED indicated in its Preliminary Report, people in the 25.64 square miles petitioned for annexation and residents of the existing City of Homer generally utilize the same governmental offices and facilities, patronize the same library, shop at the same commercial facilities, attend the same clubs, associations, and churches, read the same newspapers, listen to the same radio stations, and utilize the same medical service facilities. Moreover, many of the area's major roads, such as the Sterling Highway, Diamond Ridge Road, Skyline Drive, West Hill Road, East Hill Road, East End Road, and Kachemak Drive bind portions of the territory petitioned for annexation with adjacent areas within the current City boundaries. All of those roads, with the exception of Diamond Ridge Road, pass through the 4.58 square miles approved for annexation by the Commission.

School enrollment is another factor that supports the conclusion that both areas are part of the same community. The Homer High School and Homer Middle School attendance area boundaries encompass all of the territory proposed for annexation and the City of Homer. Plainly, students who live in the City of Homer and the territory proposed for annexation generally attend the same schools.

Residents of the community are employed in a broad range of public and private sector jobs including fishing, fish processing, trade and service, and a considerable seasonal

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(Continued from previous page)

(2) residing permanently at a location are a discrete and identifiable unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the Commission will presume that a population does not constitute a community or social unit if

(1) public access to, or the right to reside at, the location of the population is restricted;

(2) the population is contiguous or closely adjacent to a community or social unit and is dependent upon that community or social unit for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

tourist industry. Evidence in the record indicates that a number of those who live in the Diamond Ridge, Millers Landing, Fritz Creek, and Anchor Point areas are employed within the corporate boundaries of the City of Homer.

The Commission's site visit by helicopter and automobile, coupled with the testimony and comments presented at the Commission's public hearing along with other evidence in the record, demonstrate that the places of residency in the territory petitioned for annexation are generally permanent and quite substantial.

The territory proposed for annexation is largely a residential extension of the area within the City of Homer. Moreover, Millers Landing and the Sterling Highway corridor within the territory approved for annexation encompass significant commercial development.

Several of those who testified at the public hearing indicated that they volunteer in a number of areas (e.g., fire protection, emergency medical services, animal control, museum, and library) for the betterment of the entire community. By their actions, they recognize that there is but one community encompassing both the area within the existing City of Homer and the territory petitioned for annexation.

The Commission notes that public access to the area petitioned for annexation is unrestricted. There is no evidence that the area is tied to another community or social unit. Additionally, there is no evidence that the 4.58 square miles approved for annexation by the Commission are generally inhabited by individuals who work in that area and are present as a condition of their employment.

The requirement that the 25.64 square miles sought for annexation by the Petition encompass reasonable predictable growth and development for the next ten years is demonstrably met. Reviews of aerial photographs, tours by the Commission, testimony of area residents as to development patterns, and physical proximity of the area suggests that a logical pattern of urban or suburban development is extending northward from the area within the City's present boundaries.

Homer serves as a trading and service center for nearly eleven thousand residents, including residents inhabiting the territory petitioned for annexation. The character of commercial establishments and other service providers in the territory proposed for annexation suggests that they are part of the greater community of Homer.

The area proposed for annexation is part of a reasonably compact city and immediately adjacent suburbs that together comprise the core of the greater Homer area. Corporate boundaries notwithstanding, the area proposed for annexation is, without question, part of the social and economic fabric of the greater Homer community.

Although the territory petitioned for annexation and the area within the City of Homer are divided by a now-obsolete political boundary, the record indicates that the de facto Homer community encompasses the entire territory petitioned for annexation. Since a larger area satisfies the standard, a more conservative approach would readily encompass the 4.58 square miles approved for annexation. If anything, the annexation initiative is tardy rather than premature. Given the facts in this matter, the 4.58 square miles approved for annexation clearly satisfies the standard set out in 3 AAC 110.130(c).

*K. Comparative Ability to Provide Essential Municipal Services*

3 AAC 110.090(b) provides that the Commission may approve annexation to the City of Homer only if the City is best able to provide essential city services to the territory proposed for annexation.<sup>40</sup> The phrase "essential city services" as used in 3 AAC 110.090(b) is defined in 3 AAC 110.990(8).<sup>41</sup> DCED's analysis and conclusions regarding this standard are set out on pages 280 – 313 of its Preliminary Report.

3 AAC 110.090(b) does not list specific factors for the Commission to consider in determining whether an annexing city is best able to provide services. However, it is relevant in this case to consider (1) proximity of other municipalities, (2) geographic features, (3) legal capacity of municipalities, (4) fiscal capacity, (5) existing capital facilities, and (6) staff capabilities.

Four municipal governments have jurisdiction wholly or partially within a twenty-five mile radius of the territory proposed for annexation. These are the Kenai Peninsula Borough, City of Homer, City of Kachemak, and City of Seldovia.

The considerable distance and lack of a road connection between the City of Seldovia and the territory petitioned for annexation render it impractical for the City of Seldovia to serve the territory petitioned for annexation.

If the Kenai Peninsula Borough were to extend services such as water utility service, sewer utility service, and police protection to the territory proposed for annexation, it would seem abundantly more reasonable and practical for it to do so on a service area basis rather than on an areawide or nonareawide basis. To do otherwise would require substantially greater resources. Approval by the voters in a far more expansive area than the territory petitioned for annexation would be required. Under those circumstances, voters in areas beyond the territory petitioned for annexation are less likely to accept a proposal to extend services that are arguably needed in the territory proposed for annexation, but perhaps may not be in all other parts of the Borough's areawide or nonareawide jurisdictions. It is unlikely to be reasonable or practical for the Borough to provide such services on an areawide or nonareawide basis.

Article X, § 5 of Alaska's Constitution and AS 29.35.450(b) place particular limitations on the creation of new service areas. Both express a preference for city annexation over the creation of a new service area. However, exceptions to the constitutional and statutory preference for a city government versus a borough service area generally exist in cases involving merger, consolidation, or unification of city and borough governments.

As a first class city, the City of Homer possesses slightly greater existing legal capacity than the City of Kachemak (a second class city) because the latter lacks the unilateral power of eminent domain under AS 29.35.030 and unilateral power to levy property taxes under AS 29.45.590.

Based on the foregoing, the City of Homer possesses the greatest legal capacity to extend services to the territory proposed for annexation. Because of the significant restrictions on its ability to create new service areas, the Kenai Peninsula Borough ranks last among

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<sup>40</sup> 3 AAC 110.090(b) provides that :

A territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough.

<sup>41</sup> 3 AAC 110.990(8) states:

"essential city services" means those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state...

the three municipalities in terms of its legal capacity to extend city-type services to the territory proposed for annexation.

The Kenai Peninsula Borough has the highest per capita value of taxable property among the three municipalities. However, that is based on areawide jurisdiction. Because it would generally be unreasonable or impractical to extend new borough services on an areawide or nonareawide basis to serve needs of the territory proposed for annexation for reasons already noted, it is more relevant to compare the assessed values of the City of Kachemak, City of Homer, and the Kachemak Emergency Service Area.

The City of Kachemak has the highest per capita assessed value of the three. The City of Homer is a close second in the ranking (3.3% less than the City of Kachemak). The Kachemak Emergency Service Area is a more distant third (11.1% less than the City of Kachemak).

By a wide margin, the City of Homer has the highest capacity of any of the areas examined to generate revenues from taxable sales. In per capita terms, the ability of the City of Homer to generate sales tax revenue is nearly twice that of the Kenai Peninsula Borough and nearly three times greater than that of the territory proposed for annexation. No figures are available for the City of Kachemak, but it is reasonably assumed, based on the record, that the sales tax generating capacity of the City of Kachemak would place it last in the rankings.

The 1999 per capita locally generated revenues of the City of Kachemak amounted to \$253. Only thirteen of Alaska's 145 cities in existence at that time had smaller per capita locally generated revenues. The statewide average per capita locally generated revenues for all 145 cities in Alaska during 1999 was \$2,365, more than nine times the level of the City of Kachemak. The City of Homer's per capita locally generated revenues in 1999 totaled \$2,508.

It is evident that the City of Homer has the superior fiscal capacity to provide services to the territory proposed for annexation. The City of Kachemak, by virtue of its relatively higher property values (compared to the Kachemak Emergency Service Area) ranks second. The Kenai Peninsula Borough's fiscal capacity to provide services on a service area basis follows closely behind the City of Kachemak.

The City of Homer has superior capacity to serve the territory proposed for annexation. In particular, the City has substantial capital investments with respect to facilities to provide water utility service, sewer utility service, fire protection, police protection, emergency medical services, jail, library, port, parks and recreation, road maintenance, and harbors. Altogether, the City has nearly \$80 million in fixed assets to provide public services.

Similarly, the City of Homer has superior existing staff resources needed to serve the territory proposed for annexation. The current budget of the City of Homer allocates funding for 90.3 full-time equivalent positions.

The fact that the City of Homer is currently providing a broad range of services and facilities that directly or indirectly benefit the territory petitioned for annexation is prima facie evidence of its greater capability to provide those services to the territory proposed for annexation.

The legal ability of the Kenai Peninsula Borough to provide services to the territory proposed for annexation is circumscribed by the provisions of Article X, § 5 of the Constitution of the State of Alaska and AS 29.35.450(b). Accordingly, no overriding significance is ascribed to the establishment of the Kachemak Emergency Service Area with respect to the capability of the Kenai Peninsula Borough to serve the territory proposed for annexation.

The City of Homer enjoys superior fiscal capacity, capital facilities, and staff resources to serve the territory petitioned for annexation as compared to other existing municipal governments. In sum, the record demonstrates that no other existing city government or organized borough can provide essential city-type services to the area petitioned for

annexation more efficiently or more effectively than the City of Homer. Thus, the City of Homer's annexation proposal satisfies the comparative ability standard set out in 3 AAC 110.090(b), both for the area petitioned for annexation and the area approved for annexation.

*L. Need for City Government*

3 AAC 110.090(a) specifies that an area may be annexed to a city provided, in part, that the LBC determines there is a reasonable need for city government in the area.<sup>42</sup> DCED's analysis and conclusions regarding this standard are set out on pages 314 – 331 of its Preliminary Report.

The Commission finds that it is clearly evident that extensive municipal services are already provided throughout the territory proposed for annexation, either by the Kenai Peninsula Borough or the City of Homer.

When the Petition for annexation was filed, formal arrangements for fire protection and emergency medical services were lacking in the territory proposed for annexation. The subsequent creation of the Kachemak Emergency Service Area provided such formal arrangements in the area petitioned for annexation, except Millers Landing. In other proceedings, the Local Boundary Commission has largely ignored increases in borough services within an area proposed for city annexation if the changes were made only recently and if they appeared to have been motivated, in part, by an effort to weaken the merits of an annexation proposal.

The lack of formal arrangements to provide fire protection and emergency medical services to Millers Landing clearly represents an economic problem for the City of Homer. The City of Homer is providing services to the area in question without compensation and the City lacks express extraterritorial authority to provide fire protection which may expose the City of Homer to certain liabilities.

The lack of formal arrangements for fire protection and emergency medical services is also an economic problem for the residents and property owners in Millers Landing. The City of Homer might abandon such services if the area is not annexed which would expose Millers Landing property owners and residents to risk of significant property loss. While Millers Landing could be added to the Kachemak Emergency Service Area, such action would raise issues relating to previously noted constitutional and statutory limits regarding service areas.

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<sup>42</sup> 3 AAC 110.090 NEEDS OF THE TERRITORY provides as follows:

(a) The territory must exhibit a reasonable need for a city government. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) existing or reasonably anticipated social or economic problems;
- (2) existing or reasonably anticipated health, safety, and general welfare problems;
- (3) existing or reasonably anticipated economic development;
- (4) adequacy of existing services; and
- (5) extraterritorial powers of adjacent municipalities.

The City of Homer makes bulk water sales to commercial water carriers. The City estimates that the bulk water carriers serve about 370 households outside the City, most of which are in the territory proposed for annexation. While those projections have been disputed, it is apparent that the lack of adequate sources of water has potential for severely limiting growth and development in the territory petitioned for annexation. As such, a shortage of potable water is an economic problem. Concerns on the part of officials of the City of Homer regarding the capacity of the City's existing water utility system led to the recent establishment of formal procedures for the cancellation of water sales for the area outside the City of Homer's "certificated service area" in times of need.

In addition to creating an economic problem, the lack of a public water utility can constitute a significant threat to public health, particularly in heavily developed areas. The Alaska Department of Environmental Conservation (hereinafter "DEC") was asked to review relevant aspects of the Homer annexation proposal. DEC noted that soil conditions in the Homer area sometimes preclude the use of conventional septic systems. In such cases, septic systems may have to be designed or engineered for specific site conditions that deal with "tight soils or slopes."

DEC noted further that the functional life of septic systems is affected by site conditions. DEC expressed the view that the territory petitioned for annexation can accommodate more individual septic systems if they are designed and installed properly. In prior proceedings, however, DEC has expressed the general view that growth and development can be constrained by the lack of water and sewer utilities. Additionally, DEC has previously expressed the general view that significant public health risks may arise in areas of concentrated development that lack water and sewer utilities.

The potential for conflicts over land use increases in proportion to the level of development. Since the level of development is substantially greater in the 4.58 square miles approved for annexation by Commission, the need for land use regulation can be reasonably expected to be greatest in that area. Land use conflicts might reasonably be considered to be both a social problem and an economic problem.

Population and development within the 4.58 square miles approved for annexation were addressed previously. Given its substantial population and level of development, the 4.58 square miles approved for annexation generate a significant demand for fire protection and emergency medical service response capability.

The number of emergency services calls outside the City of Homer has generally been rising. Last year had the highest reported number of emergency medical service responses by the City of Homer outside its boundaries. While some contend that the statistics cited in the record are erroneous or do not pertain definitively to the territory petitioned or approved for annexation, the population density and level of development reasonably suggest otherwise. Further, it is possible, even probable, that a number of the calls inside the City of Homer were made on behalf of residents of the territory approved for annexation who were working, shopping, or conducting other affairs within the City of Homer.

After a steady decline in the number of property crimes and violent crimes in Homer during the 1990s, the incidence of such crimes increased significantly in 2000. The State Troopers cannot provide twenty-four hour per day service in the southern Kenai Peninsula. Such would require a minimum of six Troopers. The Homer Trooper post is staffed with one sergeant and two troopers. A single trooper attached to the Ninilchik post is also available to serve Homer. The ratio of residents per trooper in the area served by the Homer-Ninilchik posts is on the order of 3,175 residents per trooper (3.1 troopers per ten thousand residents) – more than three times the ratio in E Detachment as a whole.

The current fiscal year budget of the City of Homer authorizes 9.6 full-time equivalent positions in its police department (excluding dispatchers and jail staff). The 1996 average number of full-time sworn local officers and primary State officers in Alaska (seventeen) and the entire nation (also seventeen) was 38.2% greater than the level available in the southern Kenai Peninsula area (12.3).

Bureau of Justice statistics also indicated that during 1996, sixty-one local police departments in Alaska employed 740 full-time sworn police officers. On average, those departments employed twelve full-time sworn officers for every ten thousand residents. In comparison, the national average was fifteen full-time local sworn officers for each ten thousand residents.

The City of Homer has authorized 9.6 full-time equivalent police officers to serve 3,946 residents (or 24.3 officers for every ten thousand residents). The City proposed to employ two additional officers following annexation of the 25.64 square miles petitioned for annexation. The City of Homer would then employ 11.6 officers to serve 6,150 residents (or 18.9 officers per ten thousand residents). Although higher than the state and national averages, the existing and proposed ratios of City of Homer police to residents appear reasonable given fundamental characteristics of the Homer economy. The City may choose to employ fewer than two additional officers as a result of the boundary amendment made by the Commission.

Bureau of Justice statistics indicated that in 1996, five primary sworn State police officers were employed for every ten thousand residents in Alaska. As noted above, the ratio in the southern Kenai Peninsula area is 3.2 troopers per ten thousand residents. The 1996 ratio of State troopers in Alaska is estimated to be 56.3% greater than the current ratio in the southern Kenai Peninsula.

Lieutenant Bowman of the Troopers said that annexation could reasonably be expected to facilitate faster police service to the annexed area, make more marked units visible with greater frequency in the annexed area, and thus be beneficial to delivery of law enforcement in the Homer area.

With its greater commercial development and more concentrated residential development, the greatest need for expanded police service exists in the 4.58 square miles approved for annexation by the Commission.

It is reasonably assumed that residents of the territory petitioned for annexation generally make use of City facilities and services such as the library, parks and recreation, and ports and harbors.

No extraterritorial powers of adjacent municipalities constitute an impediment to annexation by the City of Homer.

In sum, there is a clear need for city services in the 4.58 square mile area approved for annexation by the Commission. That area includes the 3.9 square miles recommended for annexation by DCED and the additional nine parcels added by the Commission. The need for city services in the remnant territory is markedly less. Thus, the standard set out in 3 AAC 110.090(a) is satisfied with respect to the 4.58 square mile area approved for annexation. The need for city government in the remnant territory, while not *de minimus*, generally exists to a noticeably lesser degree, particularly with respect to water and sewer utilities, land use regulation, and police service.

*M. Balanced Best Interests*

3 AAC 110.140 provides that the Commission may approve annexation to the City of Homer only if it is demonstrated that the boundary change is in the best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation.<sup>43</sup> DCED's analysis and conclusions regarding this standard are set out on pages 332 – 346 of its Preliminary Report.

No part of the territory proposed for annexation is an enclave. However, approval of the City of Homer's annexation proposal would effectively render the area within the corporate boundaries of the City of Kachemak an enclave within the boundaries of the City of Homer. The Commission views the prospect of altering the boundaries of the City of Homer in a manner that would create an enclave – particularly one encompassing another entire city government – to be inappropriate. Such a boundary configuration would contravene the fundamental constitutional policy against proliferation of local governmental units. It would also be counter to general and long-standing principles relating to the creation and alteration of municipal boundaries.<sup>44</sup>

The degree to which ground water and surface water is contaminated or threatened by contamination as a consequence of conditions existing or developing in the area proposed for annexation is open to argument. However, DEC has advised the Commission in prior proceedings that, generally, significant public health risks may arise in areas of concentrated development that lack sewer and water utilities.

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<sup>43</sup> 3 AAC 110.140 provides as follows:

Territory that meets all of the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including whether the

- (1) territory is an enclave surrounded by the annexing city;
- (2) health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;
- (3) extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;
- (4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;
- (5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city; and
- (6) territory is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners.

<sup>44</sup> Only two of Alaska's 162 municipal governments have enclaves. Those are the City of Palmer and the Haines Borough. The Commission and DCED have expressed public policy concerns about the existence of such enclaves in prior proceedings involving both of those governments. Moreover, the Commission has denied boundary proposals for other municipal governments that would have created enclaves.

Given the potential for serious contamination, it is evident that the City of Homer and portions of the area proposed for annexation, particularly the 4.58 square miles approved for annexation by the Commission, have a mutual interest in addressing water and sewer utility matters. The 4.58 square mile area generally has more concentrated development, smaller parcels, and greater population density compared to the remainder of the territory petitioned for annexation. Annexation of the 4.58 square miles in question would enable the City of Homer to regulate or control the detrimental effects of existing and potential conditions in those portions of the territory petitioned for annexation.

As noted previously, substantial commercial growth of the Homer community has occurred beyond the City of Homer's now-obsolete jurisdictional boundaries. This is particularly the case in Millers Landing and along the Sterling Highway corridor in the 4.58 square miles approved for annexation. Sales taxes are an especially significant element of the City of Homer's ability to fund essential services. The City of Homer's sales tax generates nearly three times more revenue than its property tax.

Unless its boundaries are expanded, the City of Homer will likely face the prospect of continued long-term erosion of its tax base as further commercial and residential development occurs adjacent to the City's present boundaries. The Petitioner's contention that the City of Homer delivers a range of services to residents in all or portions of the territory proposed for annexation is valid, particularly with respect to the 4.58 square miles approved for annexation by the Commission. Examples include fire protection and emergency medical service, jail, emergency dispatch services, back up to Alaska State Troopers, animal control, port and harbor services, economic development, parks, city roads, and public library.

Those who regularly patronize commercial establishments within the existing boundaries of the City of Homer contribute to the City of Homer's sales tax revenues. Moreover, citizens in the territory proposed for annexation contribute in other ways, such as donating their services to the City of Homer fire department, animal control, museum, and library. Notwithstanding, the City's argument about the lack of commensurate property tax contributions is legitimate. Tax inequality is evident in the status quo and annexation would be instrumental in relieving it.

Alternatives such as (1) new or higher user fees for City services, (2) transferring powers from the City of Homer to Kenai Peninsula Borough service areas, and (3) raising the City sales taxes are not viable alternatives.

The City of Homer currently imposes user fees in the traditional areas of water utilities, sewer utilities, boat harbor, and port. Imposing new user fees for services such as fire protection, emergency medical service, police service, or libraries is not considered practical or equitable. User fees in those areas are non-traditional among local governments in Alaska. User fees, by definition, are not taxes. They are voluntary and not comprehensive in scope. It is simply not realistic, for example, to suggest that the City of Homer would deny fire protection service or emergency medical service to any resident of Millers Landing in need of such services because they were not a "subscriber" to fire and emergency medical services. Neither is it realistic to suggest that the City would deny emergency backup to the Alaska State Troopers when called upon to assist in any portion of the territory proposed for annexation.

Moreover, the prospect of imposing user fees for certain fundamental services is widely criticized from a public policy standpoint because such would require those who earn less to utilize a greater percentage of their disposable income for the library, fire protection, police, and emergency medical services. Further, in many cases, user fees that cover both operating and capital costs would have to be greater than patrons would be willing to pay. Lastly, user fees would add to the City's operating costs. In contrast, the Kenai Peninsula Borough bears the cost of collecting sales taxes and property taxes levied by the City of Homer. The Borough remits the entire proceeds of taxes levied by the City of Homer to the City of Homer without any charge.

The alternative of transferring powers from the City of Homer to the Kenai Peninsula Borough for operation in service areas raises the same fundamental legal and policy issues that were addressed previously.

Moreover, the Kenai Peninsula Borough would be compelled to levy taxes in the service area to support new services. For example, the Borough recently imposed a 1.75 mill property tax to support the newly created Kachemak Emergency Service Area. As a result of that levy, the property tax differential between the City of Homer and the territory proposed for annexation has narrowed considerably.

It is conceivable that service areas could proliferate to the extent that overall property tax rates in those service areas would exceed the rates in the City of Homer. For example, in Kodiak, borough service areas have proliferated around the corporate limits of the City of Kodiak. Many residents of the area outside the City of Kodiak now pay higher property taxes for fewer services than their counterparts within the City of Kodiak. Additionally, rates charged for water and sewer utility services in the areas adjoining the City of Kodiak are 25% higher than they are within the City of Kodiak.

Increasing the City of Homer sales tax rate does not appear to be a practical and equitable alternative for the City over the long-term. Such could prove counterproductive since it might provide an incentive for businesses to locate immediately outside City boundaries to achieve a competitive advantage.

There have been several instances when the Commission has approved annexations, in large part, to address shifting tax bases. For example, the Commission approved the annexation of 6.5 square miles to the City of Haines that took effect in March 1999. The Commission approved that annexation, partly, to respond to concerns by the City of Haines that its property and sales tax bases were being eroded. The Commission noted as follows: (LBC decisional statement regarding annexation to the City of Haines, page 5) (Emphasis added)

... it is clear that the area proposed for annexation is part of the community of Haines. Giving the City full authority to exercise its jurisdiction in the area is in the City's best interest. Annexation will eliminate potential liabilities associated with the City of Haines providing police services in the territory proposed for annexation. It will also provide the City of Haines with suitable jurisdictional boundaries - without which the City is likely to face a significant decline in sales tax revenues as businesses continue to relocate to the area proposed for annexation. Additionally, annexation will allow the City to receive ad valorem taxes from property owners who receive direct and indirect benefit from City services and facilities. Further, annexation will give the City of Haines greater ability to address health and public safety needs of the community.

Annexation is the most appropriate means to ensure that the City of Homer acquires both the jurisdiction and enhanced financial ability necessary to deliver services that benefit the residents of both the City and the outlying areas. Empowering the City of Homer by expanding its jurisdiction is in the interests of the residents and property owners of the City as well as those in the territory proposed for annexation, particularly Millers Landing and the urban area. Absent annexation, the City faces the prospect of having to scale back essential services that have previously been made available to those living outside City boundaries. Such could degrade the quantity and quality of essential services available to a substantial number of residents of the territory proposed for annexation and place greater burdens on the Kenai Peninsula Borough and the State of Alaska.

As noted in earlier, the record clearly demonstrates that the territory petitioned for annexation, particularly the 4.58 square miles approved for annexation, has undergone substantial commercial and residential growth and that the area is reasonably anticipated to continue to grow and develop in the foreseeable future. Unless annexation of the 4.58 square miles approved by the Commission occurs, both the City and the area approved for annexation could be negatively affected because, absent planning, development detrimental to both areas will occur.

The record demonstrates that the area petitioned for annexation is populated to the degree that if it were a separate city, it would rank as the twentieth most-populous city in Alaska. However, development patterns in the 4.58 square miles approved for annexation

generally demonstrate much higher population densities and more commercial activities than the remnant area.

The record does not conclusively demonstrate that the territory proposed for annexation is extensively inhabited by persons who are not landowners.

Extending the City of Homer's jurisdiction to the 4.58 square miles approved for annexation would benefit the Kenai Peninsula Borough and the State of Alaska by relieving each of responsibility for the delivery of services assumed by the City. For the Borough, annexation would shift planning related functions, fire protection, emergency medical services, and responsibility for road maintenance within any territory added to the City of Homer. Annexation would also relieve the Alaska State Troopers of primary responsibility for serving those areas. The jurisdiction of Alaska State Troopers is, of course, statewide. Nevertheless, annexation of the 4.58 square miles approved for annexation would shift additional responsibility for local law enforcement duties in those areas to the City of Homer and to a limited extent relieve some of the burden of service delivery currently borne by the Alaska State Troopers.

As a fundamental public policy, empowerment of qualified local governments to assume greater responsibilities is appropriate when such local governments exhibit the willingness and capability to do so.

Actions taken by the Homer City government can have considerable effect (or the potential for such) upon residents beyond the corporate boundaries of the City. For example, the City of Homer has the authority to "restrict, interrupt, decrease, or terminate the sale of water for export or consumption outside the certificated service area whenever the city council determines it is in the best interest of the city to do so." There are a number of other aspects of the daily lives of residents in the territory proposed for annexation that are affected by decisions rendered by elected and appointed officials of the City of Homer (e.g., port and harbor tariffs, public safety issues, maintenance of streets where people shop, go to work, attend schools and churches, et cetera). Enfranchisement of those so directly affected by the City of Homer would be ideal.

Moreover, it is reasonably assumed that residents of the territory proposed for annexation generally shop at businesses within the existing boundaries of the City of Homer. Those individuals pay a 3.5% sales tax to the City of Homer on all taxable purchases made within the corporate boundaries of the City of Homer. However, they have no formal role in determining how those monies will be spent. In an informal sense, such amounts to "taxation without representation." Ideally, regularly recurring sales tax contributions should reasonably be reflected by direct participation of the taxpayers in the body politic of the City of Homer.

It would be preferable to enfranchise citizens of the territory proposed for annexation in order to provide them with a formal voice in the affairs of a local government that generally affects their daily lives.

If the City of Homer's boundaries are not adjusted, the demand for establishment of additional local governmental units (cities or borough service areas) to provide services in the territory proposed for annexation will likely grow as the area's population and level of development increases. One new borough service area encompassing most of the territory proposed for annexation was created during the course of this annexation proceeding. Additionally, DCED fielded an inquiry from one of the respondents in this proceeding about the prospects of forming a "City of Diamond Ridge."

Certain aspects of the foregoing analysis suggest that the balanced best interest standard would be satisfied if all 25.64 square miles were annexed to the City of Homer. For example, doing so would extend City of Homer citizenship to residents of an area who are part of the community of Homer, who already rely on the City of Homer for a number of essential services, and who are otherwise significantly affected by that local government. It would also address, in a more comprehensive fashion, concerns over the provision of services without commensurate local tax contributions.

However, a number of other aspects relating to the standard at issue weigh against expanding the boundaries to encompass all 25.64 square miles. For example, approving the City's annexation proposal would create an enclave encompassing another entire municipal government. Further, concerns over health, safety, and general welfare are more evident in the 4.58 square miles approved for annexation. Additionally, the threat of erosion of the City of Homer's sales tax base is limited largely to Millers Landing and the Sterling Highway corridor within the territory approved for annexation by the Commission.

The Commission concludes that the balanced best interest standard is satisfied in the most favorable manner *at this time* by limiting the expansion of the City of Homer's boundaries to the 4.58 square miles approved for annexation by the Commission. Such an annexation would clearly meet the requirements set out in 3 AAC 110.140.

#### *N. Best Interests of the State*

AS 29.06.040(a) provides that the Local Boundary Commission consider the best interests of the state when it acts on any proposed municipal boundary change.<sup>45</sup> DCED's analysis and conclusions regarding this standard are set out on pages 346 – 348 of its Preliminary Report.

This recently enacted statutory standard and the preceding long-standing regulatory standard are essentially redundant. The redundancy will be eliminated once regulations adopted by the Commission earlier this year take effect. Nonetheless, the Commission is compelled to address this standard separately.

The previous findings and conclusions reached with respect to the standard set out in 3 AAC 110.140 apply equally to the best interests of the best interests of the state standard set out in AS 29.06.040(a).

Moreover, maximum local self-government is fostered by the Alaska Constitution. Local self-government is often enhanced when it is most proximate to the constituents of the government. Decisions are now being made in Soldotna, the seat of the Kenai Peninsula Borough, that would be better made in Homer, particularly with respect to such fundamental local services such as land use planning, fire protection, emergency medical services and road maintenance.

Moreover, annexation would allow a favorable response to requests from John Fowler, Joseph L. Lester, and Des Lester who seek inclusion of their respective properties within the City of Homer's jurisdiction. Without annexation of the 3.9 square miles recommended for annexation by DCED, the Fowler and Lester properties would not be contiguous to the corporate boundaries of the City of Homer. For reasons outlined previously in this Statement of Decision, the Commission would be disinclined to approve annexation of non-contiguous territory to the City of Homer.

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<sup>45</sup> AS 29.06.040(a) provides that, "The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change.

Based on the foregoing, the Commission concludes that the "best interests of the state" as set out in AS 29.06.040(a) are served to the greatest degree if the expansion of the boundaries of the City of Homer is limited *at this time* to the 4.58 square miles approved for annexation.

### SECTION III ORDER OF THE COMMISSION

Based on the findings and conclusions set out in Section II of this Statement of Decision, the Local Boundary Commission notes that all of the relevant standards and requirements for annexation are satisfied (and are satisfied to the greatest degree) by the annexation to the City of Homer of the 4.58 square miles approved by the Local Boundary Commission. Accordingly, the Commission hereby amends the Petition to limit the territory approved for annexation of the following two areas described below.

#### Area Number One

Beginning at the Meander Corner of Sections 22 and 23, Township 6 South, Range 14 West, Seward Meridian;

thence Westerly along the 1917 GLO line of Mean High Water of Cook Inlet to the Meander Corner of Sections 15 and 22;

thence Northwesterly along the 1917 GLO line of Mean High Water of Cook Inlet to the Meander Corner of Sections 15 and 16;

thence North 2326 ft, more or less, along the line common to Sections 15 and 16 to the N 1/16 corner of Sections 15 and 16;

thence East 5280 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 14 and 15;

thence East 5280 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 13 and 14;

thence East 1320 ft, more or less, along the quarter section line to the NW 1/16 corner of Section 13;

thence North 1320 ft, more or less, along the quarter section line to the W 1/16 corner of Sections 12 and 13;

thence East 3960 ft, more or less, along the line common to Sections 12 and 13 to the common corner of Sections 12 and 13, Township 6 South, Range 14 West, and Sections 7 and 18, Township 6 South, Range 13 West;

thence North 100.39 ft, along the line common to said Sections 7 and 12 to the point intersecting with the North edge of the Right-of-Way of Diamond Ridge Road;

thence Northeasterly along the Northerly edge of the Right-of-Way of Skyline Drive to the west edge of its intersection with Crossman Ridge Road;

thence Northeasterly along the Northerly edge of the Right-of-Way of Crossman Ridge Road to the common corner of Lot 12 and Lot 13 Diamond Ridge Estates as per Plat No. 71-1238 HRD;

thence North 1220 ft, more or less, along the quarter section line to the E 1/16 corner of Sections 6 and 7;

thence North 990 ft, more or less, along the quarter section line to the C-N-S-SE 1/256 corner of Section 6;

thence East 1320 ft, more or less, to the N-S-S 1/256 corner of Sections 5 and 6;

thence South 330 ft, more or less, to the S-S 1/64 corner of Sections 5 and 6;

thence East 1320 ft, more or less, to the C-S-SW 1/64 corner of Section 5;

thence South 330 ft, more or less, along the quarter section line to the C-S-S-SW 1/256 corner of Section 5;

thence East 1320 ft, more or less, to the S-S-CS 1/64 corner of Section 5;

thence North 330 ft, more or less, along the N-S centerline of Section 5 to the S-CS 1/64 corner of Section 5;

thence East 660 ft, more or less, to the SW-SE 1/64 corner of Section 5;

thence South 660 ft, more or less, to the W-E 1/64 corner of Section 5;

thence West 660 ft, more or less, along the line common to Sections 5 and 8 to the 1/4 corner of Section 5 and Section 8;

thence South 660 ft, more or less, along the N-S centerline of Section 8 to the N-CN 1/64 corner of Section 8;

thence West 1320 ft, more or less, to the C-N-NW 1/64 corner of Section 8;

thence North 330 ft, more or less, to the C-N-N-NW 1/256 corner of Section 8;

thence West 1320 ft, more or less, to the N-N-N 1/256 corner of Sections 7 and 8;

thence South 3630 ft, more or less, along the line common to Sections 7 and 8 to the S 1/16 corner of Sections 7 and 8;

thence East 3363 ft, more or less, along the quarter section line to the point of intersection with the North edge of the Right-of-Way of Skyline Drive;

thence Northeasterly along the North edge of the Right-of-Way of Skyline Drive to the Southwest corner of Lot 14 Block 4 Bayview Gardens Subdivision Addition 1 as per Plat No. 76-104 HRD;

thence North 1049 ft, more or less, along the quarter section line to the CE 1/16 corner of Section 8;

thence East 1320 ft, more or less, along the E-W centerline of Section 8 to the 1/4 corner of Sections 8 and 9;

thence North 2640 ft, more or less, along the line common to Sections 8 and 9 to the common corner of Sections 4, 5, 8, and 9;

thence East 1320 ft, more or less, along the line common to Sections 4 and 9 to the W 1/16 corner of Sections 4 and 9;

thence South 1320 ft, more or less, along the quarter section line to the NW 1/16 corner of Section 9;

thence East 3960 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 9 and 10;

thence continuing East 138 ft, more or less, along the matching quarter section line in Section 10 to the point of intersection with the North edge of the Right-of-Way of Skyline Drive;

thence in a Northeasterly direction along the North edge of the Right-of-Way of Skyline Drive to the East Edge of its intersection with the half Right-of-Way of Woodman Lane, said point of intersection also being on the N-S quarter section line;

thence South 1062 ft, more or less, along the quarter section line to the NW 1/16 Corner of Section 10;

thence East 1320 ft along the quarter section line to the CN 1/16 corner of Section 10

thence East 330 ft, more or less, along the quarter section line to the C-W-E-NE 1/256 corner of Section 10, said corner being common with the Southwest corner of the Fowler Tract;

thence North 1320 ft, more or less, to the W-W-E 1/256 corner of Sections 3 and 10;

thence East 2310 ft, more or less, to the common corner of Sections 2, 3, 10, and 11, said corner being Corner 5 of Kachemak City;

thence South 2635.5 ft along the line common to Sections 10 and 11 to the 1/4 corner of Sections 10 and 11, said line being common with the Corporate Limits of Kachemak City;

thence West 2639.7 ft along the E-W Centerline of Section 10 to the Center 1/4 corner of Section 10, said E-W Centerline being common with the Corporate Limits of Kachemak City;

thence South along the N-S Centerline of Section 10 to the intersection point with the center of the Right-of-Way of East End Road, said N-S Centerline being common with the Corporate Limits of Kachemak City and said intersection point being the 1/4 corner of Sections 10 and 15 and a point on the northerly boundary of the Corporate Limits of the City of Homer;

thence West 2640 ft, more or less, along the line common to Sections 10 and 15 to the common corner of Sections 9, 10, 15, and 16, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the line common to Sections 9 and 16 to the common corner of Sections 8, 9, 16, and 17, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the line common to Sections 8 and 17 to the common corner of Sections 7, 8, 17, and 18, said line being common with the Corporate Limits of the City of Homer;

thence South 2640 ft, more or less, along the line common to Sections 17 and 18 to the 1/4 corner of Section 17 and 18, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 18 to the 1/4 corner of Section 18, Township 6 South, Range 13 West, and Section 13, Township 6 South, Range 14 West, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 13 to the 1/4 corner of Section 13 and 14, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 14 to the 1/4 corner of Section 14 and 15, said line being common with the Corporate Limits of the City of Homer;

thence South 2640 ft, more or less, along the line common to Sections 14 and 15 to the common corner of Sections 14, 15, 22, and 23, said line being common with the Corporate Limits of the City of Homer;

thence South 554 ft, more or less, along the line common to Sections 22 and 23 to the Meander Corner of Sections 22 and 23, said line being common with the Corporate Limits of the City of Homer and said corner the point of beginning;

all land located within the Homer Recording District, Third Judicial District, State of Alaska.

**Area Number Two**

Beginning at the Meander Corner of Sections 11 and 12, Township 6 South, Range 13 West, Seward Meridian, said corner being Corner 10 of the Corporate Limits of Kachemak City;

thence Southwesterly along the 1917 GLO mean high water line of Kachemak Bay to the meander corner of Sections 11 and 14;

thence West along the line common to Sections 11 and 14 the common corner of Sections 10, 11, 14, and 15, said line being common with the Corporate Limits of the City of Homer;

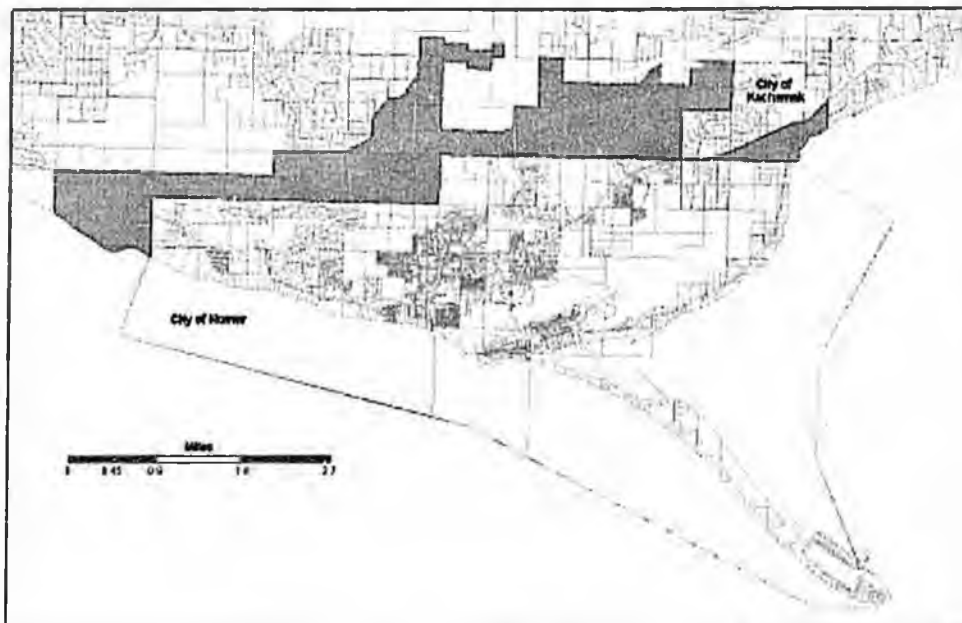
thence West along the line common to Sections 10 and 15 to the point of intersection with the centerline of the Right-of-Way of East End Road, said line being common with the Corporate Limits of the City of Homer;

thence Northeasterly along the centerline of the Right-of-Way of East End Road to its intersection with the line common to Sections 11 and 12, said portion of centerline being common with the Corporate Limits of Kachemak City and said point of intersection being Corner 9 of the Corporate Limits of Kachemak City;

thence South along the line common to Sections 11 and 12 to the Meander Corner of Sections 11 and 12, being the point of beginning;

all land located within the Homer Recording District, Third Judicial District, State of Alaska.

A map of the 4.58 square miles described above follows.



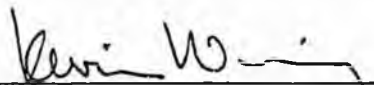
The Commission stipulates that, to the extent the 4.58 square miles approved for annexation to the City of Homer lies within the Kenai Peninsula Borough Road Service Area and the Kenai Peninsula Borough Kachemak Emergency Service Area, the annexed territory shall, under Article X, § 12 of the Constitution of the State of Alaska and other

principles of law, be detached from those borough service areas as a result of annexation of the territory to the City of Homer.

The Commission will submit a recommendation for the annexation of the 4.58 square miles in question to the Second Session of the Twenty-Second Alaska Legislature under Article X, Section 12 of the Constitution of the State of Alaska.

Approved in writing this 26th day of December 2001.

**LOCAL BOUNDARY COMMISSION**

  
By: Kevin Waring, Chairman

Attest:

  
Dan Bockhorst, Staff

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**RECONSIDERATION BY THE COMMISSION**

Within twenty days after this decision becomes final under 3 AAC 110.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within thirty days after the decision became final under 3 AAC 110.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the Petitioner or any respondents opposing the reconsideration will be allotted ten days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

**JUDICIAL APPEAL**

A judicial appeal of this decision may also be made under the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.

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EXECUTIVE  
SUMMARY OF  
THE PRELIMINARY  
REPORT -  
10/2001



# Executive Summary of the Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles

October 2001

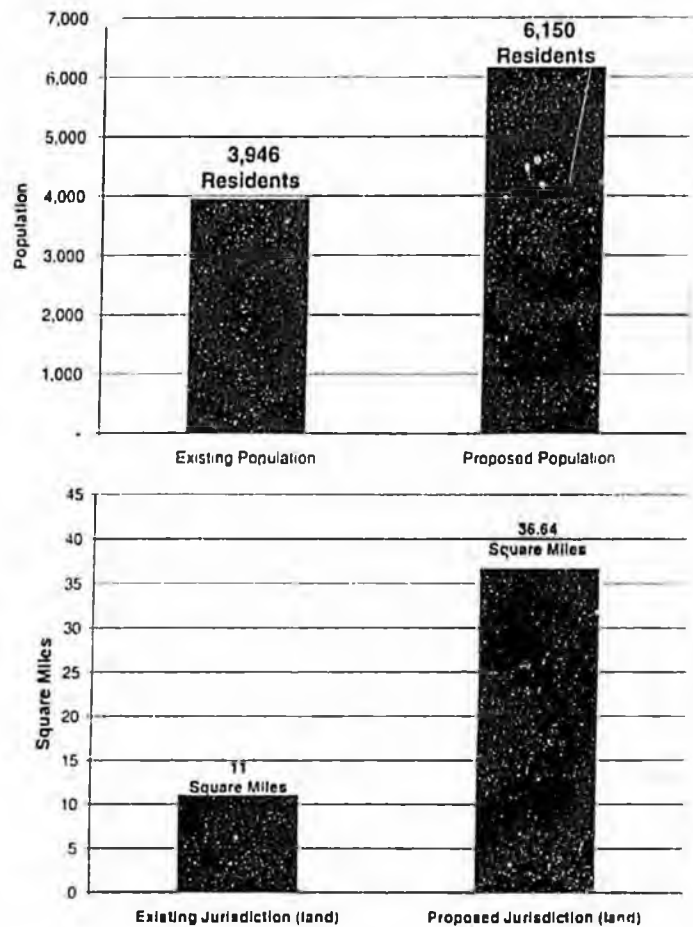
The Alaska Department of Community and Economic Development (DCED), which serves as staff to the independent Local Boundary Commission (LBC), has issued its Preliminary Report on the City of Homer's Petition to annex an estimated 25.64 square miles. DCED is required by law to prepare both a preliminary report and final report on the annexation proposal prior to a public hearing on the matter before the LBC.

Citing a number of circumstances, DCED indicates that a conservative approach to the City of Homer boundary proposal is warranted at this time. Accordingly, the DCED Preliminary Report recommends that the LBC reduce the territory proposed for annexation from an estimated 25.64 square miles to 3.3 square miles. The area recommended by DCED for annexation consists of Millers Landing (encompassing 0.26 square miles) and a 3.04 square mile "urban area" adjoining the existing boundaries of the City of Homer extending from the Sterling Highway to the City of Kachemak.

Although its recommendation for annexation is limited to 3.3 square miles, DCED notes that reasonable arguments can be made for adding two other areas comprising an additional 1.08 square miles. A map showing the 3.3 square miles recommended for annexation and the additional 1.08 square miles is provided on pages 2 and 3 of this Executive Summary.

While expressing confidence in the ability of City of Homer officials and residents of the prospective expanded City to manage change effectively, the expansive nature of the City's proposal is among the circumstances cited by DCED as the basis for its conservative recommendation. DCED notes, for example, that the City's proposal would expand its population by more than half and would increase the land within the City of Homer by a factor of 3.3. The population and tax base in the territory petitioned for annexation is greater than that found in most cities throughout Alaska.

Scope of Change Proposed by City of Homer



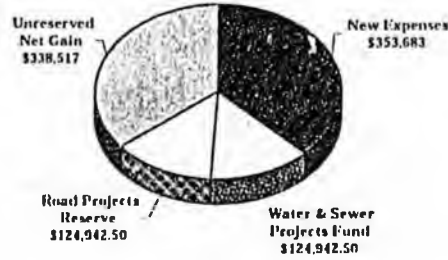
DCED also expresses concern that the City of Homer's annexation Petition would render the City of Kachemak an enclave surrounded by the City of Homer. The prospect of one city government surrounding another city government raises a number of fundamental public policy concerns.

DCED recognizes that legitimate issues pertaining to the local government structure in the greater Homer area remain unresolved by its recommendation (and would also remain unresolved by any alternative available to the LBC under the current proceedings). For that

reason, DCED encourages residents and property owners in the greater Homer area, along with officials of the City of Homer, City of Kachemak, and Kenai Peninsula Borough, to undertake constructive dialog regarding the ideal long-term structure for local government in the greater Homer area.

The 3.3 square miles recommended for annexation encompass the vast majority of the substantial commercial development within the 25.64 square miles petitioned for annexation. The 3.3 square miles recommended for annexation also include areas that are generally more heavily subdivided and more densely populated than the 22.34 square mile remnant portion of the territory petitioned for annexation. For example, DCED estimates that Millers Landing has a population density of 285 persons per square mile and that the 3.04 square mile urban area has a population density of 264 persons per square mile. Those figures are, respectively, 63% and 51% greater than the average population density of all city governments in Alaska. The population density of Millers Landing and the urban area is greater, for example, than is the case in the City of Kenai, City of Seward, and City of Kachemak. In contrast, the 22.34 square mile remnant portion of

### Allocation of \$942,085 Revenue Gain from DCED's Recommended Annexation



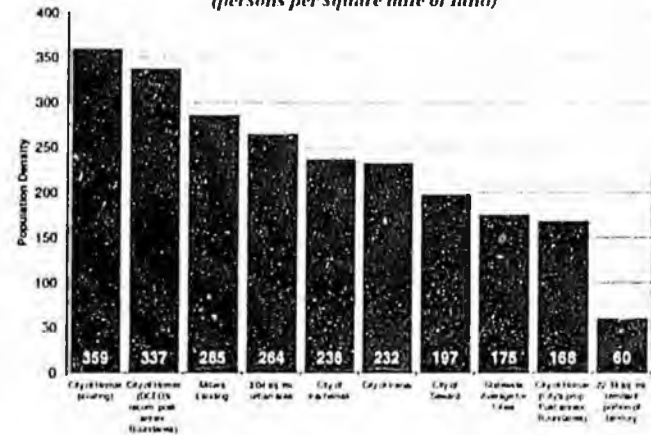
the territory petitioned for annexation has a population density of about 60 persons per square mile, roughly one-third of the average population density of Alaska's 146 city governments.

DCED estimates that revenues of the City of Homer will increase by \$942,085 annually based on DCED's boundary recommendation. Annual expenses of the City are projected to increase by

\$353,683, leaving an annual net gain of \$588,402. Of that, an estimated \$249,885 would have to be deposited into the City's reserve funds for the Homer Accelerated Road Program and the Homer Accelerated Water/Sewer Program, leaving a projected annual unreserved net gain of \$338,517.

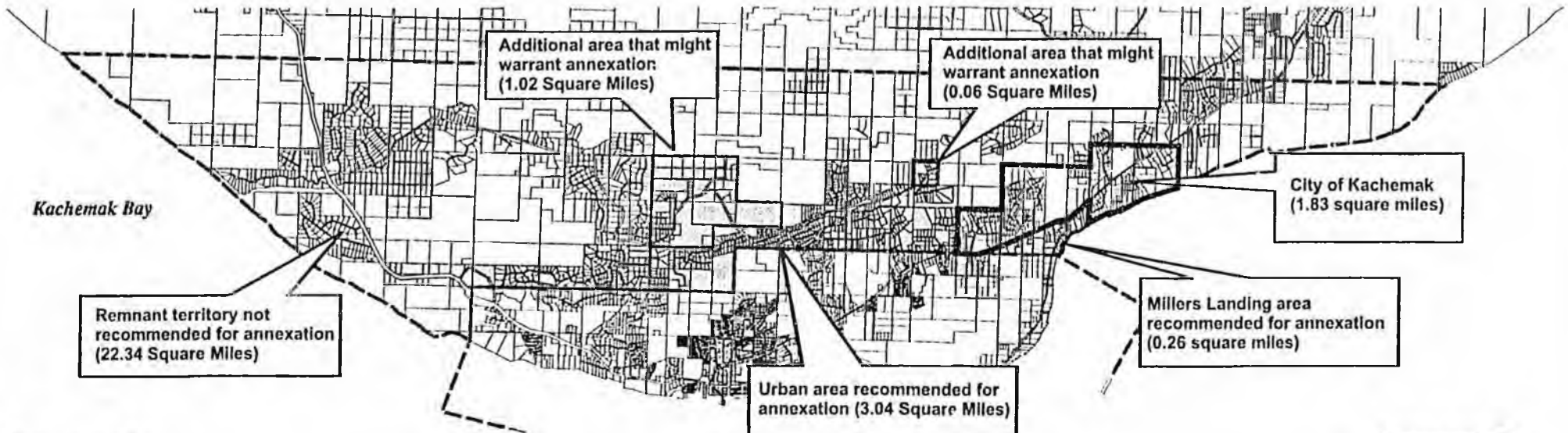
While stopping short of formally recommending that the City of Homer apply the projected unreserved net gain to property tax relief, DCED notes that the prospect of such is attractive for a number of reasons. First and foremost, it would achieve one of the implicit fundamental goals of the City with respect

Population Densities (persons per square mile of land)



to annexation — tax relief for property owners who have heretofore financed services available to a growing popula-

tion outside the City of Homer. It would also mute criticism — unfounded though it would be — that the City is making nearly a



six hundred thousand dollar "profit" from annexation. Tax relief might also mitigate concerns on the part of annexation critics by reducing the adverse financial effects on property owners in the annexed territory. Lastly, tax relief would diminish arguments for differential property tax zones in the annexed area.

The estimated \$338,517 annual unreserved net gain is equivalent to 1.16 mills of the estimated taxable value within the expanded City of Homer boundaries recommended by DCED. If the entire projected unreserved net gain were utilized for property tax relief throughout the expanded City of Homer, it would reduce the property tax differential between the City of Homer and the adjoining territory by forty-two percent, from 2.75 mills to 1.59 mills. The average taxable value of a home in the area recommended for annexation is \$129,003. The 1.59 mill tax differential on such would amount to \$205.11 annually, or \$17.09 per month.

Approximately one hundred twenty-five copies of DCED's Preliminary Report are being distributed for review. Recipients will include the Petitioner, each of the parties that filed formal Responsive Briefs, local media, and others. Multiple copies will also be provided to the Homer Public Library and the Homer City Clerk to be made available to the public. Additionally, the report is available to the public on compact disc from the Homer Public Library and Homer City Clerk. Further, the complete report will be available for public review on the Internet during the review period<sup>1</sup> at:

<http://www.dced.state.ak.us/mra/LBC/lbcactivities.htm>

The Preliminary Report consists of the following components:

- Chapter 1 – Background (pages 1 – 19);
- Chapter 2 – Proceedings to Date and Future Proceedings (pages 20 – 38);
- Chapter 3 – Synopsis of Views Expressed in the Petition, Responsive Briefs, and Reply Brief Concerning the Annexation Standards (pages 39 – 160);<sup>2</sup>
- Chapter 4 – Application of the Annexation Standards by DCED (pages 161 – 348);
- Chapter 5 – Recommendations to the Local Boundary Commission (pages 349 – 368); and
- Appendices (comprising 43 pages).

DCED stresses that its conclusions and recommendations in the Preliminary Report are subject to change. Moreover, DCED emphasizes that its recommendations are not binding on the independent Local Boundary Commission.

<sup>1</sup> Because of its size, there may be a slight delay in posting the Preliminary Report to the Internet. Materials may be posted incrementally (e.g., beginning with DCED's analysis [Chapter 4] and recommendation [Chapter 5]).

<sup>2</sup> The Petition, fourteen Responsive Briefs, and Reply brief comprise thousand<sup>2</sup> of pages (including exhibits).

**To be considered in development of DCED's final report, comments on the Preliminary Report must be received by 5 p.m., November 6, 2001 at:**

Local Boundary Commission Staff  
Department of Community & Economic Development  
550 West 7<sup>th</sup> Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
Fax: 907-269-4539  
e-mail: [Dan\\_Bockhorst@dced.state.ak.us](mailto:Dan_Bockhorst@dced.state.ak.us)

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## LEGAL OPINIONS

- LAA 1-29-02

- REQUEST 1-02-02 +  
LAA 1-09-02

- AG's: TRUNCATION  
+ SERVICE AREAS

- REQUEST 4-06-01  
+ LAA 4-09-01

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 29, 2002

**SUBJECT:** Legislative action on a Local Boundary Commission  
recommendation

**TO:** Senator John Torgerson, Chair  
Senate Community and Regional Affairs Committee  
Attn: Mary Jackson

**FROM:** Tamara Brandt Cook *TBC*  
Director

You have asked about the procedure that the legislature uses to take action on a recommended boundary change submitted by the Local Boundary Commission. Under Art. X, sec. 12 of the state constitution the LBC may present a "proposed local government boundary change to the legislature during the first ten days of any regular session." The change becomes effective unless the legislature, within 45 days after it is presented, disapproves the change "by a resolution concurred in by a majority of the members of each house."

Normally an LBC recommendation is referred to a committee, which holds hearings on the recommendation. If the committee decides that there are problems with the recommendation, it might decide to introduce a resolution disapproving the recommended change. However, any individual legislator may introduce such a resolution also. There is no requirement that the resolution state the reasons for disapproving the recommended change, and many resolutions that have been introduced in the past do not contain reasons for the disapproval. All that is necessary is that such a resolution identify the recommendation being disapproved and that the resolution be adopted in each house of the legislature.

TBC:lmb  
02-009.lmb



# ALASKA STATE LEGISLATURE

## SENATOR JOHN TORGERSON

- ◆ CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
- ◆ CHAIR, SENATE RESOURCES COMMITTEE
- ◆ CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:

State Capitol, Room 427, Juneau, AK 99801  
Telephone 907/465-2828 Fax 907/465-4779

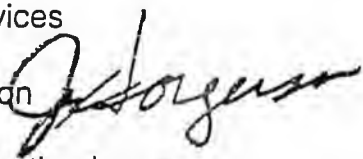
District:

45457 Kenai Spur Hwy. Suite 101A, Soldotna, AK 99669  
Telephone 907/260-3041 Fax 907/260-3044

### MEMORANDUM

DATE: January 2, 2002

TO: Tam Cook, Legal Services

FROM: Senator John Torgerson 

RE: Legal Opinion – Annexation Issues

The Local Boundary Commission (LBC) has issued a decision on the City of Homer's 2000 annexation petition of some 25 square miles – they reduced it to some 4.5 square miles.

At this point, I have four specific issues which I need clarified.

1. Does the newly adopted language in HB 13 (passed in 2001) apply to this "detachment"?<sup>1</sup>
2. When will the City be required to hold elections to provide representation for the newly annexed population? <sup>2</sup>
3. Is the LBC able to make a determination that will result in a City's receiving more tax funds than it will expend for services in the new area?<sup>3</sup>
4. Who is responsible for ensuring that the City of Homer complies with the service expansions and funding they have proposed to the LBC?

<sup>1</sup> As background, note that there are three service areas in the 4.58 detached area. One is a hospital service area, formed some 30 years ago, that affects all city and non-city residents in the lower peninsula. One is a road service area, formed some 20 years ago. The last is a fire service area, formed in 2000 as a direct reaction to the City's annexation petition.

<sup>2</sup> The population of the annexed area will increase the size of the municipal population by some 22%. Assuming the Legislative Review process is adopted according to the LBC determination, I believe the effective date is immediate. Discussion of issues like zoning, planning, road standards, and service provisions will presumably be undertaken by the City shortly after the effective date and without an election for city council, the newly annexed area will not have had the opportunity to determine representation.

<sup>3</sup> For example, assume that the new area is expected to generate \$1.5 million in taxes but the only municipal service that can be provided, roads, is expected to cost only \$0.5 million, generating a net of \$1.0 million in profit to the municipality.

### REPRESENTING THE KENAI PENINSULA

Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Früz Creek Happy Valley Halibut Cove Homer Hope Kachemak City Kachemak Selo  
Kusiluf Lowell Point Moose Pass Nunwatek Nikoluevak Ninitelik Port Graham Ruzdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka

TO: Tam Cook  
FROM: Senator Torgerson  
RE: Legal Opinion – Annexation Issues

As background information, I am providing these documents:

1. 11/7/01 Memorandum from Commissioner Sedwick (hand written as Legal Request #1) RE: Truncate Terms (5 pages)
2. 12/12/01 Memorandum from AG Marjorie Vandor as response to above, 5 pages total. (handwritten as Response to ... #1)
3. 11/7/01 Memorandum from Commissioner Sedwick (hand written as Legal Request #2) RE: AS 29.35.450(c) (7 pages)
4. 12/12/01 Memorandum from AG Marjorie Vandor as response to above, 1 page total. (handwritten as Response to ...#2)
5. 12/21/01 Letter from Erwin & Erwin RE: AB opinion above, 2 pages total.
6. I.B.C Statement of Decision – 12/26/01 (43 pages)

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 9, 2002

**SUBJECT:** City of Homer annexation (Work Order No. 22-LS1270)

**TO:** Senator John Torgerson, Chair  
Senate Community and Regional Affairs Committee

**FROM:** Tamara Brandt Cook  
Director

*TBC*

Along with other materials relating to the proposal, you have supplied me with a Statement of Decision by the Local Boundary Commission (LBC) in which the LBC has determined that it will submit a recommendation for the annexation of 4.58 square miles to the City of Homer to the legislature under Article X, sec. 12 of the state constitution. You also indicate that the area or portions of the area proposed for annexation are currently within three service areas: a hospital service area, a road service area, and a fire service area. The annexed area will increase the size of the city population by about 22 percent. You ask several questions about the proposed annexation.

(1) Does the newly adopted language in HB 13 (passed in 2001) apply to this "detachment"?

The LBC Statement of Decision notes on pages 41 and 42:

The Commission stipulates that, to the extent the 4.58 square miles approved for annexation to the City of Homer lies within the Kenai Peninsula Borough Road Service Area and the Kenai Peninsula Borough Kachemak Emergency Service Area, the annexed territory shall, under Article X, sec. 12 of the Constitution of the State of Alaska and other principles of law, be detached from those borough service areas as a result of annexation of the territory to the City of Homer.

The hospital service area already includes the City of Homer and will, apparently, continue to function as constituted so does not present an issue.

AS 29.35.450(c) was added by HB 13 (ch. 31, SLA 2001). That subsection prohibits the alteration of a service area that provides road or fire protection services unless the change is approved by the voters. However, AS 29.35.450(a) permits a borough to include a city in a service area only if the city agrees by ordinance. Furthermore, the LBC has a constitutional right to present any proposed local boundary change to the legislature and,

Senator John Torgerson  
January 9, 2002  
Page 2

therefore, cannot be prevented from proposing the annexation of property that is within a borough service area to a city. Therefore, I agree with the LBC that, under AS 29.35.450(a), the Homer annexation will have the affect of removing the annexed areas from the borough service areas. While the matter has not been considered by a court, I think that it is more likely that a court would find that AS 29.45.450(c) has no application when a change to a service area results from an annexation that is recommended by the LBC under its constitutional authority, Art. X, sec. 12. This result serves the purpose articulated under Art. X, sec. 1 of the state constitution of providing for "maximum local self-government with a minimum local government units..." and appears to be supported by the reasoning in Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962), appeal dismissed and cert. denied, 371 U.S. 5 (1962).

You suggest that the fire service area was formed in 2000 "as a direct reaction to the City's annexation petition." If so, that service area was probably invalidly established. Art. X, sec. 5 states in part: "A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city."

(2) When will the City be required to hold elections to provide representation for the newly annexed population?

There is nothing in state law that requires special elections as a result of annexation or that prevents the City from holding elections at the normal dates when the terms of members of the council expire. AS 29.20.080 sets out a system for reapportioning an assembly, but it has no application to a city council. It does not even apply to an assembly if the members are elected at large rather than by district. It is possible that a court would hold that the state or federal guarantee of equal protection requires that a special election be held, at least for those council seats with terms that will not expire reasonably quickly after the annexation, but this seems unlikely. Note that in the redistricting context, the Alaska Supreme Court has acknowledged that equal protection considerations can be sufficient to justify a decision to truncate terms (Groh v. Egan, 526 P.2d 863 (Alaska 1974) at 881), but the court has also acknowledged that stability and continuity may justify a decision not to truncate terms. (Kentopp v. Anchorage, 652 P.2d 453 (Alaska 1982) at 462.)

The federal Voting Rights Act of 1965 (42 U.S.C. 1973 et seq) applies to states and subdivisions of states, so it could come into play in some situations involving a municipal election. However, it appears that even under the Voting Rights Act, truncation of an existing term of office is not required following redistricting. (Gaona v. Anderson, 989 F.2d 299 (9th Cir. 1993).) If redistricting does not trigger an absolute duty to truncate the terms of individuals in office under the old districting plan, then it is unlikely that a court would hold that a municipality is required to truncate terms of council members and hold special elections because of the addition of population through annexation.

(3) Is the LBC able to make a determination that will result in a city receiving more tax funds than it will expend for the services in the new area?

There is nothing that prevents such a determination. Under AS 29.45.010 a borough may levy an areawide tax for areawide functions, a nonareawide tax for functions limited to the area outside cities, and a tax in a service area for functions limited to the service area. However, a city normally taxes and provides services on a city-wide basis unless it chooses to use differential tax zones to provide for services not generally provided in the city. (AS 29.45.580.)

(4) Who is responsible for ensuring that the City of Homer complies with the service expansions and funding it has proposed to the LBC?

It is not clear that Homer will have a legally binding duty to provide any particular level of services to the area annexed. The LBC Statement of Decision notes at page 21:

The intent of 3 AAC 110.900(a) is to require each petitioner to demonstrate that it has given forethought to the manner in which it will extend services to the territory proposed for annexation. It must also demonstrate the petitioner's good faith to extend services... While the nine-page transition plan presented by the City of Homer in its Petition lacks minutiae regarding the manner in which services are proposed to be extended, the law does not require a petitioner to provide a detailed comprehensive plan for the extension of services. Again, each petitioner need only provide evidence that it has given forethought to what it must do to deliver municipal services to the area proposed for annexation.

Consequently, it will probably be up to the political process in the city itself to ensure that services are provided to the area annexed. Of course, nothing prevents the LBC from proposing at a later date that the annexed area be detached from Homer if it becomes convinced that the city acted in bad faith in requesting the annexation and that the area is not receiving appropriate services.

TBC:pjc  
02-009.pjc


**MEMORANDUM****State of Alaska  
Department of Law**

To: The Honorable Deborah Sedwick  
Commissioner  
Department of Community &  
Economic Development

DATE: December 12, 2001

FILE NO.: 663-02-0090

TELEPHONE NO.: 465-3600

  
FROM: Marjorie Vandor  
Assistant Attorney General  
Governmental Affairs Section -  
Juneau

SUBJECT: Authority of Local Boundary  
Commission to require  
truncation of terms of  
governing body in annexation  
proceeding

You have asked for an opinion from this office as to whether the Local Boundary Commission (LBC) has the authority to require truncation of terms of elected officials of an annexing municipality. And, if so, can the LBC exercise such authority in the short-term absent regulations establishing standards and procedures for truncation of terms. In brief, it is our opinion that the LBC does not have the authority to require truncation of terms as a condition of approving a petition for annexation absent regulations establishing standards and procedures for truncation. However, it is our opinion that LBC has adequate constitutional and statutory authority to adopt such standards. The LBC also can recommend to the annexing city that it consider truncation of terms of the city council through passage of an appropriate ordinance if the LBC determines it to be appropriate.

1. Powers of the LBC --Annexation Petitions

Under AS 29.06.040, the LBC may consider any proposed municipal boundary change. The LBC may also amend the proposed change and may impose conditions on the proposed change. If the LBC determines that the proposed change, as amended or conditioned if approved, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Under AS 44.33.812(a)(2), the LBC is required to adopt regulations adopting standards and procedures for annexation.<sup>1</sup> The current standards for annexation to cities are set out in 3 AAC 110.090 -- 3 AAC 110.150.

<sup>1</sup> AS 44.33.812 (a)(2) reads: "The Local Boundary Commission shall . . . (2) adopt regulations providing standards and procedures for municipal in corporation, annexation, detachment, merger, consolidation, reclassification, and dissolution." (emphasis added).

The Honorable Deborah Sedwick, Commissioner  
Department of Community & Economic Development  
Re: Authority of LBC to truncate terms

December 12, 2001

Page 2

While population of the existing city and the territory proposed for annexation are listed as relevant factors the LBC may consider in annexation proceedings, there is no criteria in the regulations to guide the LBC as to when it may condition approval of a city annexation petition on truncation of terms of the city council to address an increase in population to the city. Such standards would conceivably address percentage of increase in population, date of the next general election, number of council seats up for election based on staggered terms, and whether council members are elected at-large or by another method (i.e., by district). These are variables which we believe a court would find should be established in regulation in order to provide the commission with standards as well as to promote informed, public participation in the annexation process.

The Alaska Supreme Court while determining that the Local Boundary Commission enjoys broad discretion with respect to whether it approves of a proposed boundary change, has also held that development of standards is a precondition to the commission's exercise of its discretion. *United States Smelting, R & M, Co. v. Local Boundary Com'n*, 489 P.2d 140, 143 (Alaska 1971) (before the commission held hearings and prior to submitting annexation proposal to legislature, it was obligated to comply with the requirement of (former) AS 44.19.260(a)(2)<sup>2</sup> that it develop standards for changing local boundary lines). Conditioning an annexation petition on a requirement that terms of existing city council members be truncated is a condition that we believe goes beyond the normal scope of the annexation standards currently considered by the LBC as set out in its own regulations.

On the issue of the LBC's broad discretionary powers, you cite several state reapportionment cases as a potential basis for finding authority of the LBC to require truncation in the instant proceeding. We have reviewed those cases, but do not believe that the LBC enjoys the same degree of discretion afforded the governor in reappropriation of legislative seats. See *Groh v. Egan*, 526 P.2d 863 (Alaska 1974); *Egan v. Hammond*, 502 P.2d 856 (Alaska 1972). In those cases, wherein the governor's reapportionment plan resulted in the truncation of several senate seats, the Court equated the governor's constitutional authority to reapportion the legislature<sup>3</sup> and truncate terms to a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations. *Groh*, 526 P.2d at 880-1; *Egan v. Hammond*, 502 P.2d at 873-4. The governor was not required to adopt

<sup>2</sup> Now AS 44.33.812(a)(2).

<sup>3</sup> Former Art. VI, secs. 3 -- 10 of the Alaska Const. (amended 1999; governor no longer adopts plan; current law provides for a plan adopted by a redistricting board consisting of members appointed by the three branches of government).

The Honorable Deborah Sedwick, Commissioner  
Department of Community & Economic Development  
Re: Authority of LBC to truncate terms

December 12, 2001

Page 3

regulations before exercising his authority under the constitutional provisions providing the power to adopt a reapportionment plan. In contrast, the LBC is an administrative agency that has been delegated authority to adopt regulations by the legislature and is actually mandated to do so in certain instances. See *U.S. Smelting*, 489 P.2d at 141-2. Notwithstanding the LBC's constitutional origin, it has been determined by the Alaska Supreme Court that the LBC's exercise of discretion in boundary changes must be based on developed standards as a precondition to exercising its discretion. *Id.* We believe a court would so hold here -- that development of standards for determining when truncation of terms of a city council is a condition for approving an annexation petition is prerequisite to exercising such discretion by the LBC.

2. At Large Representation: Power of City to Pass Ordinance to Truncate Terms

The City of Homer, like most first class cities, elects its six council members on an at-large basis. AS 29.20.130.<sup>4</sup> Assuming the annexation petition is approved, persons residing in the annexed territory will be represented by all members of the existing Homer city council. Then, in October 2002, based on the current staggered terms, the mayor and two council member seats will be up for election.<sup>1</sup> At that election, the people in the annexed territory will have the opportunity to run for office as well as vote for at least three city officials within the first seven months after annexation is effective.<sup>5</sup> While voters in the annexed territory may be considered to be temporarily disenfranchised since they did not have the opportunity to vote for any of the current members of the council, the disenfranchisement is temporary (i.e., 7 months). Further, considering that all current council members are elected at-large, they will assume the constituency living in the annexed territory on the effective date of the annexation.

In the event truncation remains an issue beyond the LBC proceedings, the city of Homer has the authority to provide, by ordinance, for election of members other than on an at-large basis for all members. AS 29.20.130. And, the city council may pass an ordinance to truncate terms of its current council members.<sup>6</sup> With the ability of the

<sup>4</sup> AS 29.20.130 reads: Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

<sup>5</sup> If the annexation petition is approved by the LBC and not disapproved by the Alaska Legislature, it will become effective in March 2002. AS 29.06.040(b).

<sup>6</sup> See AS 29.20.150 (term of office); AS 29.35.250 (powers of cities within boroughs); AS 29.35.100 (a liberal construction shall be given to all powers and functions of a municipality conferred in this title).

The Honorable Deborah Sedwick, Commissioner  
Department of Community & Economic Development  
Re: Authority of LBC to truncate terms

December 12, 2001

Page 4

city to address truncation of terms at the local level, the LBC may want to recommend that the city consider adopting such an ordinance, particularly if the approved annexation results in a substantial increase in population.

Lastly, we are mindful that the Homer city annexation petition has the potential of increasing the population of the city by an estimated 56% (if approved with the amount of territory sought in the original petition) or by an estimated 22% (if approved with the amount of territory recommended by DCED staff in its preliminary and final reports). And, while truncation may well be an appropriate tool to apply in conjunction with substantial population increases resulting from a boundary change, there are simply no provisions of law or regulation to guide the LBC in making such a determination. This differs greatly from the municipal charters and state statutes setting out when reapportionment of assemblies is to occur (AS 29.20.080 -- 29.20.120). Yet, even under an established reapportionment process, the Alaska Supreme Court has determined that when a governing body is composed of members elected in staggered terms, the temporary disenfranchisement of transferred voters is an inevitable consequence of the reapportionment and this does not constitute invidious discrimination in violation of the constitutional guarantee to equal representation. See *Kentopp v. Anchorage*, 652 P.2d 453, 461 (Alaska 1982) (although a substantial number of Anchorage voters were transferred into new districts, the resultant temporary disenfranchisement is, at worst, no greater than that generally imposed on residents who move into an Assembly district or who become of voting age shortly after an election has taken place). Further, it has been held that continuity and stability associated with a staggered schedule of elections, which would be lost if the terms of all members were truncated, supports a decision to reject truncation. *Id.* at 462.

### 3. Conclusion

In conclusion, it is our opinion that the LBC does not, absent regulations, have discretionary authority to require truncation of terms of the city council of Homer as a condition to approving the petition for annexation presently being considered. In the event the LBC determines that truncation of terms is appropriate, it may recommend to the city council that it pass an ordinance addressing the matter. Finally, it is our opinion that the LBC has the authority to promulgate regulations to establish standards and procedures dealing with truncation of terms to be applied in future boundary change petition reviews.

If you have questions regarding this advice, please do not hesitate to call.

The Honorable Deborah Sedwick, Commissioner  
Department of Community & Economic Development  
Re: Authority of LBC to truncate terms

December 12, 2001

Page 5

cc: The Honorable Drew Scalzi  
Alaska House of Representatives

Dan Bockhorst, Staff (LBC)

# MEMORANDUM

State of Alaska

## Department of Community & Economic Development

TO: Bruce M. Botelho  
Attorney General

DATE: November 7, 2001

THRU: Jim Ayers, Chief of Staff  
Office of the Governor

FILE NO:

TELEPHONE: 907-269-4580

FROM: Debby Sedwick, Commissioner

SUBJECT: Authority of LBC to truncate  
Terms of governing body

**Question:** Does the Local Boundary Commission have authority to require truncation of terms of elected officials of an annexing municipality? If so, can it exercise such authority in the short-term absent regulations establishing standards and procedures for such?

**Background:** The City of Homer has petitioned the Local Boundary Commission for annexation of nearly 26 square miles. Based on 2000 Census data, it is estimated that 2,204 individuals live within the territory proposed for annexation. The 2000 Census counted 3,946 individuals living within the existing boundaries of the City of Homer. Thus, annexation of the area proposed by the City of Homer would result in a nearly 56% increase in the population of the existing City of Homer. Stated differently, if the City of Homer's Petition is granted, residents of the annexed territory will comprise almost 36% of the population of the expanded City of Homer.

Last month, DCED published its *Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles*. The Preliminary Report recommends amendment of the City of Homer's Petition to limit annexation to 3.3 square miles. It is estimated that 875 individuals inhabit the territory recommended for annexation by DCED. If DCED's recommendation is implemented, the population of the City of Homer will increase by more than 22%. In that case, residents of the annexed territory will comprise just over 18% of the population of the expanded City of Homer.

Under either scenario, a relatively substantial number of individuals who did not have a voice in the selection of the incumbent elected officials of the City of Homer would become citizens of the City of Homer. In addition to lacking a vote in the selection of the incumbents, newly-annexed residents would not, of course, have had an opportunity to seek elective office with the City of Homer. Absent the truncation of terms of elected officials, such circumstances would remain in effect for various elective positions for as long as thirty-one months as outlined below.

Occurrence	Date	Time Since Annexation
Anticipated effective date of annexation if tacitly approved by 2002 Legislature	March 2002	
Expiration of current term of Mayor Cushing	October 2002	7 months
Expiration of current term of Council member Marquardt	October 2002	7 months
Expiration of current term of Council member Cue	October 2002	7 months
Expiration of current term of Council member Kranich	October 2003	19 months
Expiration of current term of Council member Ladd	October 2003	19 months
Expiration of current term of Council member Fenske	October 2004	31 months
Expiration of current term of Council member Yourkowski	October 2004	31 months

A number of residents of the territory proposed for annexation and the existing City of Homer have advocated truncation of terms of the elected City officials in the event of annexation. Doing so would allow qualified voters of any newly-annexed area to have the opportunity to elect members of the governing body and also to seek elective office without protracted delays.

We are unaware of any instance in Alaska where the terms of members of a governing body of a municipality have been truncated as a result of annexation. Neither did we find any reference to such in *McQuillin*. However, we are aware that the Alaska Supreme Court addressed what seems to be a somewhat analogous issue in *Egan v. Hammond*, 502 P.2d 856, 873 (Alaska 1972), with respect to reapportionment of the State legislature:

A need to truncate the terms of incumbents may arise when reapportionment results in a permanent change in district lines which either excludes substantial numbers of constituents previously represented by the incumbent or includes numerous other voters who did not have a voice in the selection of that incumbent. The discretionary authority to require mid-term elections when necessary is well established.<sup>1</sup> We accordingly hold that the Governor had the power to terminate Senate terms as incidental to his general reapportionment powers.<sup>2</sup>

<sup>1</sup> (footnote original) *Mann v. Davis*, 238 F.Supp. 458 (E.D. VA. 1964), *aff'd*, 379 U.S. 694, 85 S.Ct. 713, 13 L.Ed.2d 698 (1965); *Moss v. Burkhart*, 220 F.Supp. 149, 157 (W.D. Okl.1963), *aff'd sub nom.*, *Williams v. Moss*, 378 U.S. 558, 84 S.Ct. 1907, 12 L.Ed.2d 1026 (1964); *Sims v. Amos*, 336 F.Supp. 924, 940 (M.D.Ala.1972); *Butcher v. Bloom*, 420 Pa. 305, 216 A.2d 457, 459 (1966).

<sup>2</sup> (footnote original) In the interim plan promulgated by this court, Senate terms of incumbent Senators were not terminated. The interim plan did not contain the drastic reapportionment of the Anchorage Senatorial districts. We felt that it was preferable not to shorten the terms of Senators, particularly as this may become a necessity upon the formulation of a permanent plan. The additions or substitutions of geographical areas under the interim plan have not so materially changed the population base which elected each of the Senators as to prevent him from adequately representing his designated district. There is ample authority for permitting Senators to serve out their terms under an interim plan even when the boundaries of their districts have been changed. *Mann v. Davis*, 238 F.Supp. 458 (E.D. VA. 1964), *aff'd*, 379 U.S. 694, 85 S.Ct. 713, 13 L.Ed.2d 698 (1965); *Moss v. Burkhart*, 220 F.Supp. 149, 157 (W.D. Okl.1963), *aff'd sub nom.*, *Williams v. Moss*, 378 U.S. 558, 84

The Court held in *Egan* that the Governor's power to truncate terms of an incumbent legislator were incidental to his general reapportionment powers. We note that the Local Boundary Commission also has general powers with respect to the composition and apportionment of local governments regarding matters pending before the Commission. For example, former AS 29.06.130(a) expressly provided with respect to petitions for merger and consolidation of local governments that

. . . If the commission determines that the proposed boundaries or the composition and apportionment of the governing body can be altered to meet the standards, it may alter the proposal and accept the petition. . .

Former AS 29.06.130 was replaced with a very broad statement of authority for the Commission to alter merger and consolidation petitions and to impose conditions on such. Specifically, current AS 29.06.130(a) states:

The Local Boundary Commission may amend the petition and may impose conditions for the merger or consolidation. If the commission determines that the merger or consolidation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, the municipality after the merger or consolidation would meet the standards for incorporation under AS 29.05.011 or 29.05.031, and the merger or consolidation is in the best interests of the state, it may accept the petition. Otherwise, it shall reject the petition.

Similarly broad statutory language exists with respect to the Commission's power to act on petitions for city reclassification (AS 29.06.040[a]), incorporation (AS 29.05.100[a]), annexation and detachment (AS 29.06.040[ ]), and dissolution (AS 29.06.500[a]).

The existing statutory language providing broad powers to the Local Boundary Commission reflects the expansive authority granted to the Commission by the Constitution of the State of Alaska. For example, the Alaska Supreme Court has held that:

The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state . . .<sup>3</sup>

The special function of the Commission to undertake a broad inquiry into the desirability of creating a political subdivision of the state, makes us reluctant to impose an independent judicial requirement that findings be prepared.<sup>4</sup>

S.Ct. 1907, 12 L.Ed.2d 1026 (1964); *Sims v. Amos*, 336 F.Supp. 924, 940 (M.D. Ala. 1972); *Butcher v. Bloom*, 420 Pa. 305, 216 A.2d 457, 459 (1966).

<sup>3</sup> *Fairview Public Utility District, No. One v. City of Anchorage*, 368 P.2d 540, 545 (Alaska 1962).

A determination whether an area is cohesive and prosperous enough for local self-government involves broad judgments of political and social policy.<sup>5</sup>

... article X, section 3 of the Alaska Constitution necessarily vests the LBC with power to find non-compliance when the boundaries originally described in a petition for incorporation do not maximize common interests. Thus, although AS 29.05.100(a) requires a preliminary finding of non-compliance before the boundaries of a proposed borough may be altered, the LBC, in passing on the issue of compliance, has broad authority to decide what the most appropriate boundaries of the proposed borough would be.<sup>6</sup>

... the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions.<sup>7</sup>

Moreover, we note that the Department of Law has consistently recognized the broad authority of the Commission in a number of previous opinions. For example, well before the 1999 amendment of the statutory language to expressly provide the Commission with wide authority and the ability to impose conditions, the Department of Law opined that "[t]he legislature has provided full power to the Local Boundary Commission to resolve" whether a petition should be granted and under what conditions. (See May 30, 1984 memorandum from James L. Baldwin, file number 366-567-84).

If the truncation of terms by the Commission is permitted, and if the Commission deems such to be warranted in any particular case, we envision that truncation would occur so that no special election would be conducted. In the case of the pending Homer annexation proposal, this would presumably mean that the terms of all seven elected incumbent officials of the City would be truncated to end in October 2002.

If the Commission has authority to require truncation of terms, we believe that it would be ideal over the long-term to establish standards and procedures to implement such authority. Doing so would serve the same ends outlined by the Alaska Supreme Court

<sup>4</sup> *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97 (Alaska 1974); quoted in *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1247 (Alaska 1995).

<sup>5</sup> *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974); quoted in *Valleys Borough Support Committee v. Local Boundary Commission*, 863 P.2d 232, 234 (Alaska 1993).

<sup>6</sup> *Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Commission*, 900 P.2d 721, 726 (Alaska 1995).

<sup>7</sup> *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 99 (Alaska 1974); quoted in *Valleys Borough Support Committee v. Local Boundary Commission*, 863 P.2d 232, 234 (Alaska 1993) and in *Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Commission*, 900 P.2d 721, 729 (Alaska 1995).

with respect to the statutory duty (AS 44.33.812) of the Commission to adopt regulations providing standards and procedures for annexation and other matters that come before the Commission.<sup>8</sup>

We see three purposes underlying the statutory requirement of annexation standards. First, such standards expose the basic decision-making processes of the commission to public view and thus subject commission action to broad corrective legislation.<sup>9</sup> Second, the standards guide local governments in making annexation decisions and in preparing proposals for the commission. . . . Third, annexation standards objectify the criteria of decision-making and delineate the battleground for a public hearing.<sup>10</sup>

Of course, there are no existing regulations of the Commission dealing with truncation of terms of a governing body.

The Commission is scheduled to conduct a public hearing on the Homer annexation proposal beginning December 14, 2001. It would be appreciated if you would provide a legal opinion by that date indicating whether the Local Boundary Commission has authority to condition municipal annexation upon the truncation of terms of elected officials of the annexing municipality.

Please contact Dan Bockhorst at 269-4559 if we can provide further information concerning this matter.

cc: David Ramseur, Office of the Governor  
Kevin Waring, Chairman, Local Boundary Commission  
Kathleen S. Wasserman, Vice-Chairman, Local Boundary Commission  
Ardith Lynch, Local Boundary Commission member  
Allan Tesche, Local Boundary Commission member  
Dan Bockhorst, Local Boundary Commission staff  
Lamar Cotton, DCED

<sup>8</sup> Port Valdez Co., Inc. v. City of Valdez, 522 P.2d 1147, 1155 (Alaska 1974)

<sup>9</sup> (footnote original) Our Norne opinion focused upon the commission's failure to heed the legislature's commands in exercising the commission's jurisdiction and publicly accounting for its decisional process: To (hold) otherwise would be to condone the commission's nonobservance of a valid legislative prerequisite to the exercise of the commission's discretion in matters of local boundary changes. United States Smelting, Refining & Mining Co. v. Local Boundary Commission, 489 P.2d at 142.

<sup>10</sup> (footnote original) See Mukluk Freight Lines, Inc. v. Nabors Inc., 516 P.2d 408, 415 n. 23 (Alaska 1973).

# MEMORANDUM

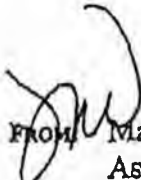
## State of Alaska Department of Law

To: The Honorable Deborah Sedwick  
Commissioner  
Department of Community &  
Economic Development

DATE: December 12, 2001

FILE NO.: 663-02-0091

TELEPHONE NO.: 465-3600

  
FROM: Marjorie Vandor  
Assistant Attorney General  
Governmental Affairs Section -  
Juneau

SUBJECT: Effect of city annexation on  
borough service area under  
AS 29.35.450(c)

We have reviewed your November 7, 2001 opinion request for the Local Boundary Commission (LBC) which addresses whether the requirements of the recently amended statute, AS 29.35.450(c), apply to a service area of a borough that is to be included in the territory proposed to be annexed to a city located within that borough. The Local Boundary Commission will soon be dealing with a petition to annex territory to the City of Homer, a first class city in the Kenai Peninsula Borough that raises these issues. The Homer annexation petition is a legislative review annexation petition under Art. X, sec. 12 of the Alaska Constitution and AS 29.06.040(a) and (b), not an annexation by local action petition under AS 29.06.040(c).

In the opinion request, you specifically analyze the history of annexations by legislative approval in Alaska, the application of the constitutional requirements to annexations and the LBC's discretion afforded thereby, court cases applicable to annexations, as well as the legislative history of the recently amended service area statute, AS 29.35.450. Based upon your review of these sources, it is your belief that the requirements of AS 29.35.450(c) are not applicable to city annexations, particularly legislative review annexations. We concur with your opinion.

Due to time constraints, this office will not issue its own legal opinion on this matter. We believe the analysis and conclusion of your November 7, 2001 memorandum, is the correct legal conclusion.

If questions arise during your deliberations on the Homer annexation petition that the LBC would like us to address, they are welcome to call me.

cc: Dan Bockhorst, LBC Staff

# MEMORANDUM

State of Alaska

Department of Community & Economic Development

TO: Bruce M. Botelho  
Attorney General

DATE: November 7, 2001

THRU: Jim Ayers, Chief of Staff  
Office of the Governor

FILE NO:

TELEPHONE: 907-269-4580

FROM: Debby Sedwick, Commissioner

SUBJECT: Affect of City Annexation on  
Borough Service Area

**Question:** Is a borough service area adjoining a city altered, as a matter of law, by annexation of all or part of that service area to that city, particularly if annexation is effected pursuant to Article X, Section 12 of the Constitution of the State of Alaska?

**Background:** The City of Homer is proposing to annex approximately 26 square miles pursuant to Article X, Section 12 of the Constitution of the State of Alaska. All of the territory proposed for annexation is within the Kenai Peninsula Borough Road Service Area. Additionally, all but one-quarter square mile of the territory proposed for annexation is within the Kenai Peninsula Borough Kachemak Emergency Service Area, which was formed to provide fire protection and emergency medical services.<sup>1</sup>

Notwithstanding constitutional and statutory limits on the creation of service areas, the Kachemak Emergency Service Area was created after the City of Homer filed its pending petition for annexation.<sup>2</sup> It is noteworthy that the City of

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<sup>1</sup> The boundaries of the Road Service Area and the Kachemak Emergency Service Area extend well beyond the territory proposed for annexation. The Road Service Area encompasses the entire Kenai Peninsula Borough except the area within the boundaries of city governments and the unincorporated community of Halibut Cove. A map of the Kachemak Emergency Service Area and the territory proposed for annexation is attached to provide a perspective of the size and configuration of those areas.

<sup>2</sup> Alaska's Constitution and statutes place specific limits on the creation of new service areas. Specifically, Article X, Section 5 of the Constitution states:

Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Additionally, AS 29.35.450(b) provides:

A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

Homer had provided fire protection and emergency medical service on an informal basis without compensation to the area in question for many years prior to the formation of the Kachemak Emergency Service Area. It is even more noteworthy that, after the service area was created, the City of Homer has contracted with the Kenai Peninsula Borough to formally provide fire protection and emergency medical services to the area within the Kachemak Emergency Service Area.

Road maintenance and fire protection are two of the more fundamental and substantial services proposed to be extended by the City upon annexation. For

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The intent of the constitutional convention delegates regarding Article X, Section 5 is addressed in Borough Government in Alaska (at 42), a leading treatise on Alaska's unique form of regional government (footnotes omitted):

The stated purpose of preventing duplication of tax levying jurisdictions and providing for a minimum of local government units was directly responsible for the constitutional provision that "A new service area shall not be established if . . . the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city." The committee's objective was to avoid having "a lot of separate little districts set up . . . handling only one problem . . ."; instead, services were to be provided wherever possible by other jurisdictions capable of doing so. Moreover, an amendment to eliminate the preference given to city incorporation or annexation over establishment of new service areas was defeated by the convention.

In 1995, the Alaska Supreme Court examined Article X, Section 5 of the Constitution and AS 29.35.450(b) in the context of a proposal to incorporate a new city within an organized borough. The Court stated as follows in *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 (Alaska 1995) (footnotes omitted):

It is reasonable to interpret AS 29.35.450(b) and article X, section 5 as preferring incorporation of a city over the creation of new service areas. This interpretation is supported by legislative history and is not inconsistent with article X, section 1 of the Alaska Constitution. Constructing a barrier to approving an excessive number of government units does not prohibit the creation of them when they are necessary. Whether a service area or a city is established, another government unit is created. If numerous service areas are set up supplying only one or two services each, there is the potential for an inefficient proliferation of service areas. In contrast, once a city is established, it can provide many services, and other communities can annex to the city in the future. Although the framers entertained the idea of unified local governments, they realized that the need for cities still existed.

Based on the above discussion, we interpret AS 29.05.021(b) as follows: when needed or desired services can be reasonably and practicably provided on an areawide or nonareawide basis by the borough, they should be. As discussed *supra*, this inquiry is not limited to an evaluation of service areas. When it is established that the services cannot be provided reasonably or practicably, then the LBC is required to consider other available options. We also clarify that there is a statutory and constitutional preference for incorporation of cities over the establishment of new service areas. We believe these to be reasonable and practical interpretations of the Alaska Constitution in accordance with common sense. See *Arco Alaska*, 824 P.2d at 710.

Based on the plain language in both Article X, Section 5 and AS 29.35.450(b), DCED believes it is reasonable to extend the Court's holding in *Keane* to reflect a preference for city annexation over the creation of a new service area. (Note: DCED takes the view that exceptions to the constitutional and statutory preference for a city government versus a borough service area generally exist in cases involving merger, consolidation, or unification of city and borough governments. See *Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough*, p 42-45, DCED [December 2000]. See also, *Statement of Decision in the Matter of the Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough*, p 19-20, LBC [June 7, 2001]).

example, the City's petition states that the City will spend \$234,000 annually for those services (more than 56% of the City's total projected annual operating costs of extending services to the territory proposed for annexation). The petition also indicates that the City plans to invest nearly \$955,000 in capital improvements to extend road maintenance and fire protection services to the territory proposed for annexation (nearly 88% of the total capital expenditures projected by the City for the territory proposed for annexation).

Given the characteristics noted above, road maintenance and fire protection are key components in the debate over annexation to the City of Homer.<sup>3</sup> Questions have arisen during this proceeding whether recently enacted State laws concerning alteration and abolition of road maintenance and fire protection service areas apply to the City of Homer's annexation proposal. Specifically, AS 29.35.450(c) states as follows:

If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent and would add no more than 1,000 residents.

It is DCED's belief that AS 29.35.450(c) does not apply to city annexations (particularly legislative review annexations). DCED believes that annexation to the City of Homer will effect the detachment of all annexed areas from the Kenai Peninsula Borough Road Service Area and Kachemak Emergency Service Area and that voter approval of such is not necessary.<sup>4</sup>

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<sup>3</sup> If AS 29.35.450(c) applies to changes to service areas as a result of city annexations, there will be less certainty associated with the Commission's deliberations on those matters. For example, if the Commission is unable to accurately forecast whether the City of Homer is actually going to assume powers for fire protection and road maintenance in the territory proposed for annexation, the Commission's determinations about the need for city government under 3 AAC 110.090 and the resources of the city to provide services under 3 AAC 110.110 will be less certain.

<sup>4</sup> DCED takes a similar position with respect to city incorporations. In addition to the arguments presented here, AS 29.05.130 states that "A service area in a newly incorporated municipality shall be integrated into the

As noted above, the City of Homer seeks to annex territory pursuant to Article X, Section 12 of the Constitution of the State of Alaska, which provides as follows:

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

The plain language of the second sentence indicates that the Local Boundary Commission "may consider any proposed local government boundary change." Boroughs can (and most boroughs do) have three types of jurisdictional boundaries. These are (1) corporate boundaries encompassing areawide jurisdiction, (2) boundaries encompassing nonareawide jurisdiction, and (3) boundaries encompassing service area jurisdictions.<sup>5</sup>

By definition, any annexation to a city within a borough will alter the nonareawide jurisdictional boundaries of the borough (see AS 29.71.800[14]). Similarly, *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962) seems to provide ample legal authority for the proposition that a service area will be deemed altered, as a matter of law, upon the effective date of annexation of the territory in question to a city.

In 1960, the Local Boundary Commission approved the annexation of the Fairview Public Utility District Number One to the City of Anchorage. The action was tacitly approved by the 1960 Legislature pursuant to Article X, Section 12 of the Constitution. The City of Anchorage sought a declaratory judgment asking the court to determine that the Fairview Public Utility District had been dissolved.

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municipality within two years after the date of incorporation . . . Yet, if AS 29.35.450(c) applied to a city incorporation, it would forbid integration unless voters in the entire service area approve such a proposition.

<sup>5</sup> In the context of Article X, § 1 of Alaska's Constitution, the phrase "local government unit" has been construed by the Alaska Supreme Court to include borough service areas. (See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 [Alaska 1995].) Moreover, Vic Fischer, an expert in Alaska local government and a former Constitutional Convention delegate, also construes borough service areas to be local government units in the context of Article X, §§ 1 and 5. (See letter dated September 29, 1997 from Victor Fischer)

The principal defense relied upon by annexation opponents was that "annexation could not effect the dissolution of the District, since a dissolution could be validly effected only by the consent of the voters within the District pursuant to an election held in accordance with statute." (at 541). The court disagreed (at 545).

Appellants contend that the District was not dissolved when annexation took place; that this could be accomplished only by the election procedure set forth by statute.<sup>5</sup> We disagree. This would defeat the chief purpose of annexation, which was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos.<sup>7</sup> When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city.<sup>8</sup>

Our conclusion is not refuted by a 1957 statute which provides for dissolution with consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city."<sup>9</sup> This has application only where annexation takes place under the petition-election procedure<sup>10</sup> which was the only means of annexation in effect prior to the time the state constitution became effective.<sup>11</sup> It has no application where annexation takes place under the different method established by Article X, section 12 of the constitution.

Similar to the Court's holding in the *Fairview* case, any assertion that the Kenai Peninsula Borough Road Service Area and Kachemak Emergency Service Area cannot be altered unless voters of the service areas agree would defeat the chief purpose of annexation and foster "multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos."<sup>12</sup>

<sup>5</sup> (footnote original) Section 49-2-13 ACLA Cum.Supp.1957, supra note 8.

<sup>7</sup> (footnote original) *In re Annexation to City of Anchorage*, 15 Alaska 504, 509, 129 F.Supp. 551, 554 (D.Alaska 1955).

<sup>8</sup> (footnote original) *In re Sanitary Board of East Fruitvale Sanitary Dist.*, 158 Cal. 453, 111 P. 368, 370 (1910); *Dickson v. City of Carlsbad*, 119 Cal.App.2d 809, 260 P.2d 226 (1953).

<sup>9</sup> (footnote original) SLA 1957, ch. 130 (§ 49-2-13, First, ACLA Cum.Supp.1957).

<sup>10</sup> (footnote original) SLA 1957, ch. 183 (§§ 16-1-29-2<sup>an</sup> ACLA Cum.Supp.1957).

<sup>11</sup> (footnote original) The state constitution went into effect on January 3, 1959.

<sup>12</sup> For example, Article X, § 1 of Alaska's Constitution discourages, if not prohibits, the exercise of an identical power in the same area simultaneously by a city and borough government. It states that the purpose of the local government article of Alaska's Constitution is, in part, "to prevent duplication of tax-levying jurisdictions." However, it is conceivable that conflicts will arise in cases where a city and borough attempt to exercise the identical power over the same area. AS 29.35.250 provides that "A city inside a borough may exercise any power not otherwise prohibited by law." (AS 29.35.250(b) expressly prohibits a city from exercising an areawide power adopted by the borough, but has no similar express prohibition against service area powers.)

Indeed, there are strong indications that the Kachemak Emergency Service Area was created, in large part, in an attempt to weaken the arguments for the pending proposal for annexation to the City of Homer.

If AS 29.35.450(c) applied to annexations, any time citizens of an area proposed for annexation to a city wanted to thwart annexation, they could simply initiate efforts to create a borough service area. Doing so would contravene the intention of the Constitutional Convention delegates as discussed by the Supreme Court in the *Fairview* case (at 543):

Article X was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.<sup>13</sup> The advantage of the method proposed, in the words of the committee –

\* \* \* lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.

DCED notes further that AS 29.35.450(a) provides that a city government or its residents must expressly authorize the inclusion of a city in a service area. Specifically, AS 29.35.450(a) states: ". . . The borough may include a city in a service area if (1) the city agrees by ordinance; or (2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city." By that statute, a borough has no authority to exercise service area powers within a city without that city's approval. There are no qualifiers to suggest it matters whether the service area precedes the city in the area concerned.

The Commission is scheduled to conduct a public hearing on the Homer annexation proposal beginning December 14, 2001. It would be appreciated if you would render a legal opinion by that date indicating whether a borough service area adjoining a city is altered, as a matter of law, by annexation of all or part of that service area to the city.

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<sup>13</sup> (footnote original) Alaska Constitutional Convention Minutes of Committee on Local Government, Nov. 28 and Dec. 4, 1955. (This and all subsequent statements and quotes concerning proceedings of the Alaska Constitutional Convention refer to Records of the Alaska Constitutional Convention, now in the custody of the Secretary of State, Juneau, Alaska.)

Bruce M. Botelho  
November 7, 2001  
Page 7

Please contact Dan Bockhorst at 269-4559 if we can provide further information concerning this matter.

Attachments:

- Map of the Kachemak Emergency Service Area
- Map of the territory proposed for annexation to the City of Homer
- Copy of letter dated September 29, 1997 from Victor Fischer

cc: David Ramseur, Office of the Governor  
Kevin Waring, Chairman, Local Boundary Commission  
Kathleen S. Wasserman, Vice-Chairman, Local Boundary Commission  
Ardith Lynch, Local Boundary Commission member  
Allan Tesche, Local Boundary Commission member  
Dan Bockhorst, Local Boundary Commission staff  
Lamar Cotton, DCED

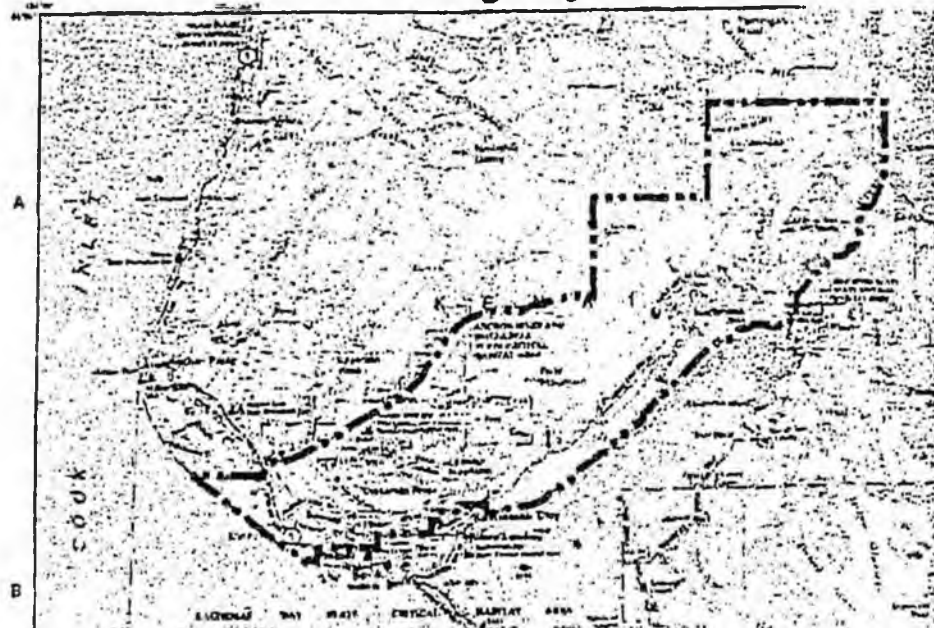
The City's transition plan was prepared prior to the creation of the Kachemak Emergency Service Area (KESA). KESA was created by the Kenai Peninsula Borough to provide fire protection and emergency medical services. As shown in Figure 4-AU, the KESA boundaries encompass all of the territory proposed for annexation except Millers Landing. The City of Homer provides fire protection and emergency medical services to the Kachemak Emergency Service Area pursuant to a contract with the Kenai Peninsula Borough.

The City's transition plan describes the City's intent and capability to extend essential city services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed change. The plan is summarized as follows.

**Fire Protection.** Fire suppression service will be enhanced "over a period of no more than two years" with financing from the issuance of general obligation bonds or general fund revenues as described earlier in this chapter. The plan states that:

246

**Figure 4-AU  
Boundaries of the  
Kachemak Emergency Service Area**



Chapter 1 provides background information about the pending annexation Petition. Included is an outline of the changes that annexation would bring about if the proposal is approved by both the Local Boundary Commission ("LBC" or "Commission") and the legislature. Additionally, information is provided about the Local Boundary Commission and the legal standards that govern annexation of territory to cities in Alaska.

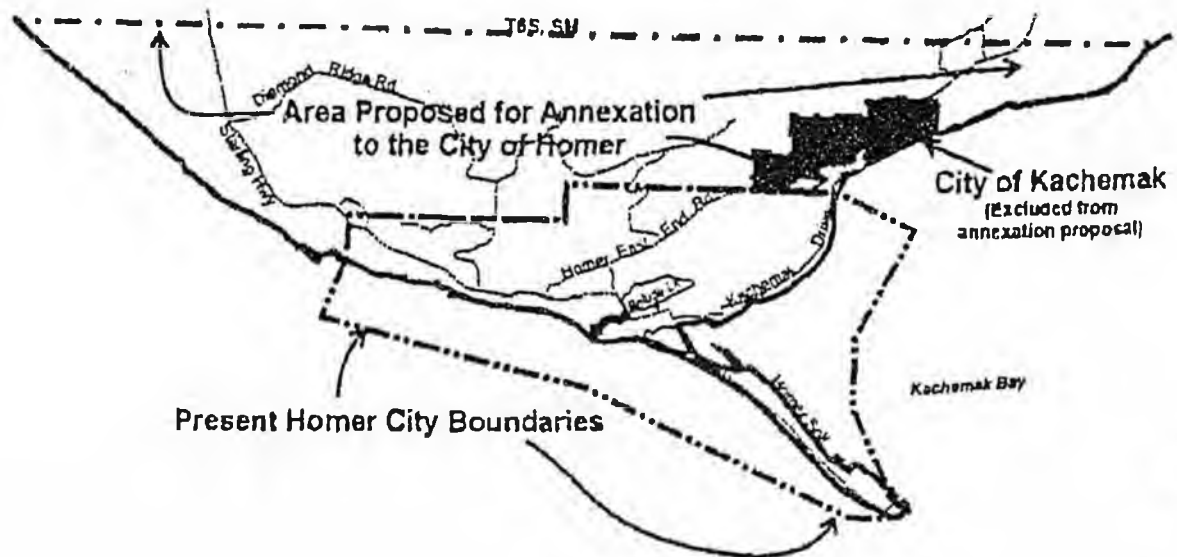
Appendix A provides a glossary of terms used in this report that have particular meaning in the context of the Homer annexation Petition.

## 1.1 Effects of Annexation

The following summarizes the effects of the proposed annexation on the structure of local government in Homer if the Local Boundary Commission and the legislature approve the annexation proposal.

If implemented, the proposed annexation will more than double the size of the area within the City of Homer's jurisdiction, from 21 square miles to 46.58 square miles, according to the Petitioner's estimate. Annexation would expand the combined

**Figure 1-A**  
**Territory Proposed for Annexation, Current City of Homer and City of Kachemak Boundaries**



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RECEIVED  
OCT 1 1997  
Local Boundary Commission  
DCRA/MRAD

September 29, 1997

Local Boundary Commission Staff  
333 West 4th Avenue, Suite 220  
Anchorage, Alaska 99501

Re: City of Haines Annexation Petition

I have reviewed the DCRA draft report on the City of Haines' petition for annexation. While many interesting issues are discussed in the report, I will here address only those issues raised by the various parties that are pertinent to provisions of Article X, Local Government, of the Constitution of the State of Alaska.

1. The Section 1 purpose of providing for a *minimum of local government units* was definitely meant to cover service areas and other types of single or multiple service districts. The Local Government Committee Minutes and Constitutional Convention Proceedings make it perfectly clear that the delegates sought to avoid the multiplicity of special districts that characterized most American urban areas (e.g., Chicago) and then already developing around the City of Anchorage.

Note in this connection that Section 2 states that *All local government powers shall be vested in boroughs and cities*. It clearly does not state that cities and boroughs shall be the only local government units. This means that other local government units (e.g., REAA's and other service areas) can exist, but they are not vested with local government powers -- they can exist only as a creature of a borough as set forth in Section 5. (This should be clear enough without going into definitions of "local government" by the U.S. Census and other authorities.)

2. The purpose of minimizing the number of local government units could not have been clearer reflected in the constitution than it is in Section 5:

A new service area shall not be established if, consistent with the purposes of this article the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

In the Haines case, I would go further than the City's argument that creation of service areas is "inconsistent" with Section 5 of the constitution -- I believe it violates both the intent and specific language of this section.

3. The position that establishment of new service areas is the constitutionally preferred alternative to city annexation or on par with cities is completely wrong, it's nonsense. There is no basis whatsoever to support that view. All provisions of Article X make it

totally obvious that there are two preferred types of local government units under Alaska's constitution: cities and boroughs. Service areas are subsidiary units of boroughs. Section 5 unequivocally establishes that annexation is a preferred alternative to creation of a new service area.

4. The arguments by the Borough and HBCAA that there is no need for city services or that they City cannot extend them is irrelevant to the establishment of new service areas. The only pertinent question is: can the new service be provided an existing service area or by annexation; incorporation of a new city is obviously not relevant here.

5. Your quotation of the Alaska Supreme Court's 1962 ruling and the Judge George Folta quotes are very pertinent. As Anchorage Planning Director, I was personally involved in the annexations that led to Folta's 1955 decision and gave expert testimony on the issues covered by his opinion. As the Supreme Court assumes and as a member of the Alaska Constitutional Convention, I can assure you that delegates were quite aware of all the problems and issues of the case before Judge Folta and were very sensitive to the need to facilitate annexation even if there is not agreement to such action by area residents.

6. The Section 12 provision for a local boundary commission was designed to make this approach to making local government boundary changes the preferred method for annexation and other actions. You will note that the authorization for change by local option is simply an add-on, an option for the commission.

Conclusions. I believe that the proposed annexation is appropriate and proper from the standpoint of Article X of the Alaska Constitution. I furthermore agree with your finding that the service areas adjacent to the City of Haines were established in violation of the constitution.

Best wishes,



Victor Fischer



# ALASKA STATE LEGISLATURE

## SENATOR JOHN TORGERSON

- ◆ CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
- ◆ CHAIR, SENATE RESOURCES COMMITTEE

Session:

State Capitol, Room 427, Juneau, AK 99801  
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669  
Telephone 907/260-3042 Fax 907/260-3044

DATE: April 6, 2001  
TO: Tam Cook, Legal  
FROM: Mary Jackson *MJ*  
RE: Local Boundary Commission – Constitutional Standing

Senator Torgerson has received a letter from a group of citizens in Homer regarding the current process for annexation. They have posed several remedies but we are uncertain as to the viability of those suggestions because of the constitutional standing of the LBC. I would appreciate your providing a legal opinion in response to the below comments.

Legislative Review. The best way to change this would be to amend the Constitution to remove the Legislative Review method entirely. Another, less drastic, solution would be to put into statute that no petition could be submitted to the LBC until it had been voted on by the affected citizens. The Legislature could also veto any petition sent to them that does not have the consent of the people.

Thank you for your time and consideration.

### REPRESENTING THE KENAI PENINSULA

Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Itilbit Cove Homer Hope Kachemak City Kachemak Selo  
Kasilof Lowell Point Moose Pass Nanwalek Nikolaevsk Nuihlchik Port Graham Ruzdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 9, 2001

**SUBJECT:** Annexations and the Local Boundary Commission  
(Work Order No. 22-LS0899)

**TO:** Senator John Torgerson, Chair, Senate Community and Regional  
Affairs Committee  
Attn: Mary Jackson

**FROM:** Tamara Brandt Cook  
Director

You have asked me to comment on the following comments regarding procedures for annexations of land to existing municipalities:

The best way to change this would be to amend the constitution to remove the legislative review method entirely. Another, less drastic, solution would be to put into statute that no petition could be submitted to the LBC until it had been voted on by the affected citizens. The legislature could also veto any petition sent to them that does not have the consent of the people.

The Local Boundary Commission was established in and exercises its power under Art. X, sec. 12, of the state constitution which states:

SECTION 12. Boundaries. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

The purpose behind this provision in the state constitution was to ensure that local boundary issues are resolved at the state rather than at the local level to avoid local controversy and the chance that a small, self-interested group can stand in the way of boundary changes that are in the larger public interest. (Oesau v. City of Dillingham, 439

Senator John Torgerson

April 9, 2001

Page 2

P.2d 180 (Alaska 1968); City of Douglas v. City of Juneau, 484 P.2d 1040 (Alaska 1971); Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974)) The state constitution ensures that the LBC may "consider any proposed local government boundary change" and "present proposed changes to the legislature," therefore, a statute that requires a vote of the people on all annexations cannot prevent the LBC from acting under its constitutional authority to submit a change even without a vote. The legislature is, of course, free to disapprove an LBC proposal for any reason it chooses, including the lack of consent or support for the proposal by local residents.

With respect to the suggestion that the constitution be amended to "remove the legislative review method entirely", I can only say that I do not understand what would replace it. In any event, yes, the legislature may propose an amendment to Art. X, sec. 12 or even repeal of that section. Its power to propose the amendment would be limited only to the extent that a court might find the result constitutes a sweeping change of the type that may only be accomplished by revising the constitution itself through the holding of a constitutional convention. (Bess v. Ulmer, 985 P.2d 979 (Alaska 1999))

TBC:jhb

01-020.jhb

④

# HISTORICAL INFORMATION

- LBC RECOMMENDATIONS
- 1989 FAIRBANKS  
RESOLVE

## LBC Recommendations Rejected by the Legislature<sup>1</sup>

1971 - recommendation for annexation to the City of Cordova denied by House Joint Resolution No. 21.

1972 - recommendation for annexation to the City of Nome denied by House Joint Resolution No. 93.

1972 - recommendation for annexation to the City of Kodiak denied by House Joint Resolution No. 96.

1979 - recommendation for annexation to the City of Kodiak denied by Legislative Resolve No. 3.

1981 - recommendation for annexation to the City of Nome denied by Legislative Resolve No. 2.

1984 - recommendation for annexation to the City of Haines denied by Legislative Resolve No. 35.

1984 - recommendation for annexation to the City of Hoonah denied by Legislative Resolve No. 37.

1987 - recommendation for annexation to the City of Dillingham denied by Legislative Resolve No. 6.

1989 - recommendation for annexation to the Fairbanks North Star Borough denied by Legislative Resolve No. 6.

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<sup>1</sup> Provided by LBC staff 1/15/2002

## LBC Recommendations to the Legislature<sup>2</sup>

### *1960*

- Recommendation for annexation of a portion of Government Hill and a portion of the Railroad Reserve to the City of Anchorage.
- Recommendation for annexation of the Fairview Public Utility District to the City of Anchorage.
- Annexation of the Kodiak Watershed Reserve, Near Island, Uski Island, Gull Island, Holiday Island, Crooked Island, and Popof Island to the City of Kodiak.

### *1961*

records missing; review legislative journals

### *1962*

- Exclusion of certain territory on the south side of the Kenai River from the City of Kenai.
- Redefinition of the corporate boundaries of the City of Fairbanks and annexation of two areas adjacent to the City of Fairbanks.

### *1963*

- Annexation of territory to the City of Ketchikan
- Annexation of the Island Homes area and a portion of the Graehl area to the City of Fairbanks.
- Annexation of the sanitary landfill area to the City of Fairbanks.
- Annexation of Birch Hill Cemetery to the City of Fairbanks.
- Redefinition of the corporate boundaries of the City of Fairbanks and annexation of two areas adjacent to the City of Fairbanks.

### *1964*

- Annexation of territory to and detachment of territory from the North Star Borough.
- Redefinition of the corporate boundaries of the City of Pelican.
- Annexation of "South Juneau" to the City of Juneau.
- Exclusion of Section 33, T6S, R8W Fairbanks Base from the City of Anderson.

### *1965*

- Detachment of Goat Creek from the Greater Anchorage Area Borough and annexation of the same territory to the Matanuska-Susitna Borough.
- Dissolution of the City of Wood River.

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<sup>2</sup> Provided by LBC Staff 1/15/2002

## *1966*

- Exclusion of territory from and annexation of territory to the City of Seward.
- Redefinition of the corporate boundaries of the Matanuska-Susitna Borough, Greater Anchorage Area Borough, and the Kenai Peninsula Borough.

## *1967*

- Annexation of territory to the City of Douglas.
- Annexation of territory to the City of Bethel.
- Annexation of territory to the City of Unalaska.

## *1968*

- Detachment of Cantwell from the Matanuska-Susitna Borough.
- Annexation to the City of Nome.

## *1969*

- Annexation of territory to the City of Nenana.

## *1970*

- Redefinition of the corporate boundaries of the Greater Anchorage Area Borough and the Kenai Peninsula Borough.
- Redefinition of the corporate boundaries of the City of Girdwood.
- Annexation to the City of Fairbanks.
- Annexation of Port Chilkoot and adjacent territory to the City of Haines.
- Annexation of Port Valdez and adjoining territory to the City of Valdez.
- Redefinition of the corporate boundaries of the City of Stebbins.
- Redefinition of the corporate boundaries of the City of Lower Kalskag.

## *1971*

- Redefinition of the corporate boundaries of the City of Fairbanks.
- Redefinition of the corporate boundaries of the City of Togiak.
- Redefinition of the corporate boundaries of the Matanuska-Susitna Borough.
- Annexation to the City of Barrow.
- Annexation to the City of Cordova.

## *1972*

- Annexation to the City of Nome.
- Annexation to the City of Kotzebue.
- Annexation to the City of Cordova.
- Annexation to the City of Kodiak.
- Dissolution of the Town of Chena.
- Annexation to the City of Barrow.
- Redefinition of the corporate boundaries of the City of Ambler.

### *1973*

- Annexation to the City of Craig.
- Annexation to the City of Whittier.
- Annexation to the City of Anchorage.

### *1974*

- Dissolution of the City of Basher.
- Dissolution of the City of Donnelly
- Reclassification of the City of Pelican.
- Dissolution of the City of Bay City

Records may be incomplete; review January 21, 1974 House Journal Supplement.

### *1975*

- Annexation of territory to the City of Wrangell.
- Annexation of territory to the Haines Borough.
- Dissolution of the City of Long Island.

### *1976*

- Redefinition of the corporate boundaries of the City of Chuathbaluk.
- Redefinition of the corporate boundaries of the City of Nuiqsut.
- Redefinition of the corporate boundaries of the City of Selawik.
- Redefinition of the corporate boundaries of the City of Shungnak.
- Annexation to the City of Yakutat.

### *1977*

- Annexation to the City of Palmer.
- Annexation to the City of Seward.

### *1978*

- Annexation to the City of Skagway.
- Annexation to the Haines Borough.
- Annexation to the City of Petersburg.

### *1979*

- Annexation to the City of Kodiak.
- Redefinition of the corporate boundaries of the Kenai Peninsula Borough.

### *1980*

- Annexation to the City of Skagway.

### *1981*

- Annexation to the City of St. Mary's.
- Annexation to the City of King Cove.
- Annexation to the City of Nome.

### *1982*

- Annexation to the City of Nome.
- Annexation to the Kodiak Island Borough.
- Annexation to the City of Kodiak.

### *1983*

- Annexation to the Fairbanks North Star Borough.
- Annexation to the City of Port Lions.
- Annexation to the City of Haines.

### *1984*

- Annexation of 8.11 square miles to the City of Haines.
- Annexation 0.3 square miles to the City of Ketchikan.
- Annexation of 3.03 square miles to the City of Point Hope.
- Annexation of 9.68 square miles to the City of Hoonah.
- Annexation of 10.92 acres to the City of Kodiak.
- 

### *1985*

- Annexation of 117 acres to the City of Fairbanks
- Annexation of 183 square miles to the City of Togiak

### *1986*

- Annexation of 30.14 square miles to the City of Angoon
- Annexation of 515.62 acres to the City of Ketchikan
- Annexation of 58.609 acres to the City of Ketchikan
- Annexation of 48.30 acres to the City of Ketchikan
- Annexation of 121.31 acres to the City of Ketchikan
- Annexation of 1.14 square miles to the City of North Pole
- Annexation of 194 square miles to the City of St. Paul
- Annexation of 214 square miles to the City of Unalaska
- Detachment of 3,298 square miles from the North Slope Borough

### *1987*

- Annexation of 40 square miles to the City of Dillingham
- Annexation of 164 acres to the City of Fairbanks
- Annexation of 21 acres to the City of Fairbanks
- Annexation of 8.58 acres to the City of Kodiak
- Annexation of 268 acres to the City of Pelican

### *1988*

- Annexation of 421.25 square miles to the City of Dillingham
- Annexation of 48 square miles to the City of Kake

### *1989*

- Annexation of 12,343 sq. miles to the Kodiak Island Borough
- Annexation of 216 sq. miles to the Fairbanks North Star Borough

### *1990*

- Annexation of 5.9 acres to the City of North Pole

### *1992*

- Annexation of 140 square miles to the City and Borough of Juneau

### *1993*

- Annexation of 7.25 square miles to the City of Hoonah
- Annexation of 4.75 square miles to the City of Haines
- Annexation of 7 square miles to the City of Haines
- Annexation of 68.23 square miles to the City of Cordova
- Annexation of 7.5 acres to the City of Palmer

### *1994*

- Annexation of 21 square miles to the City of King Cove
- Annexation of 42.8 acres to the City of Seldovia
- Annexation of 1.8 acres to the City of Seldovia

### *1995*

- Dissolution of the City of Atmautluak
- Dissolution of the City of Kasigluk
- Dissolution of the City of Newtok
- Dissolution of the City of Tuluksak
- Dissolution of the City of Tununak

### *1996*

- Detachment of 252 sq. miles from the Matanuska-Susitna Borough
- Annexation of 83.71 acres to the City of Wasilla

### *1997*

- Detachment of 13 acres from the City of Fairbanks
- Annexation of territory to the City and Borough of Yakutat

***1998***

- No Submission

***1999***

- Annexation of 6.5 square miles to the City of Haines

***2000***

- Annexation of 24.29 Square Miles to the City of Aleknagik
- Annexation of 1.2 Square Miles to the City of Ketchikan

***2001***

- No Submission

HJR021

HJR 21

2/3/89

Community & Regional Affairs and Finance

BY WALLIS

HOUSE JOINT RESOLUTION NO. 21

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Disapproving the Local Boundary Commission recommendation for annexation of territory to the Fairbanks North Star Borough.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS, under art. X, sec. 12, Constitution of the State of Alaska, the Local Boundary Commission has presented to the legislature its recommendation dated January 18, 1989, entitled "Annexation to the Fairbanks North Star Borough"; and WHEREAS a recommendation of the Local Boundary Commission presented to the legislature becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by the majority of the members of each house;

BE IT RESOLVED by the Alaska State Legislature that the recommendation of the Local Boundary Commission dated January 18, 1989, and entitled "Annexation to the Fairbanks North Star Borough" is disapproved.

5

CONSTITUTION:

ARTICLE X:

LOCAL GOVERNMENT

Alaska Constitution

Article X

Local Government

SECTION 1. PURPOSE AND CONSTRUCTION. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions. A liberal construction shall be given to the powers of local government units.

SECTION 2. LOCAL GOVERNMENT POWERS. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

SECTION 3. BOROUGHES. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

SECTION 4. ASSEMBLY. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

SECTION 5. SERVICE AREAS. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

SECTION 6. UNORGANIZED BOROUGHES. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

SECTION 7. CITIES. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

SECTION 8. COUNCIL. The governing body of a city shall be the council.

SECTION 9. CHARTERS. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

SECTION 10. EXTENDED HOME RULE. The legislature may extend home rule to other boroughs and cities.

SECTION 11. HOME RULE POWERS. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

SECTION 13. AGREEMENTS; TRANSFER OF POWERS. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

SECTION 14. LOCAL GOVERNMENT AGENCY. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

SECTION 15. SPECIAL SERVICE DISTRICTS. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

⑥

TITLE 29,  
CHAPTER 6,  
ARTICLE 2

ANNEXATION +  
DETACHMENT

**Sec. 29.05.210. Transitional assistance to boroughs and unified municipalities.** (a) Within 30 days after the date of incorporation of a borough or unified municipality incorporated after December 31, 1985, the department shall determine the population of the borough or unified municipality.

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

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

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

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

*Effect of amendments.* — The 1994 amendment, effective August 23, 1994, inserted "or unified municipality" in two places in subsection (a) and in one place in paragraphs (b)(1) and (b)(2), inserted "and unified municipality" in the introductory language of subsection (b), and added "that occupies the area formerly occupied by a borough" at the end of subsection (c).

## Chapter 06. Alteration of Municipalities.

### Article

1. Change of Name (Sec. 29.06.010)
2. Annexation and Detachment (§§ 29.06.040 - 29.06.060)
3. Merger and Consolidation (§§ 29.06.090 - 29.06.170)
4. Unification of Municipalities (§§ 29.06.190 - 29.06.420)
5. Dissolution (§§ 29.06.450 - 29.06.530)

### Article 1. Change of Name.

#### Section

#### 010. Change of municipal name

**Sec. 29.06.010. Change of municipal name.** (a) A municipality may change its official name by adopting an ordinance for the purpose that is ratified by the voters and filing the ordinance with the office of the lieutenant governor. Upon receipt of an ordinance ratified by the voters, the lieutenant governor shall issue an order to the municipality changing its name. The name change shall become effective on a date fixed in the order and occurring within 45 days after receipt of the ordinance. A copy of the order shall be transmitted to the department.

(b) If an ordinance adopted under (a) of this section that results in a change of the municipal name is subsequently repealed, the lieutenant governor shall issue an order reinstating the former name within 45 days after the date of the order, unless a different name is adopted as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, a civil or criminal suit, application, petition, hearing or other proceeding to which the municipality is a party and that is pending at or brought after the date the name change takes effect

shall proceed in the municipal name as changed by the order.

(d) This section applies to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

**Article 2. Annexation and Detachment.**

**Section**

- 040. Local Boundary Commission      060. Application
- 050. Annexation of military  
reservations

**Sec. 29.06.040. Local Boundary Commission.** (a) The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under the AS 44.62 (Administrative Procedure Act).

(b) The Local Boundary Commission may present a proposed municipal boundary change to the legislature during the first 10 days of a regular session. The change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(c) In addition to the regulations governing annexation by local action adopted under AS 44.33.812, the Local Boundary Commission shall establish procedures for annexation and detachment of territory by municipalities by local action. The procedures established under this subsection must include a provision that

(1) a proposed annexation and detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached;

(2) municipally owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body.

(d) A boundary change effected under (a) and (b) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 5 ch 74 SLA 1985; am § 14 ch 58 SLA 1994; am § 36 ch 30 SLA 1996; am § 29 ch 58 SLA 1999; am § 3 ch 86 SLA 1999)

*Effect of amendments.* The 1994 amendment, effective August 22, 1994, in subsection (a), in the second sentence, substituted "amend" for "alter the boundaries" and deleted "as altered" at the end.

The 1996 amendment, effective May 16, 1996, inserted "must" in the second sentence of subsection (c).

The first 1999 amendment, effective July 1, 1999, substituted AS 44.33.812 for AS 44.47.567 in the first part of subsection (c). The second 1999 amendment, effective September 28, 1999, made changes to subsection (a).

**Sec. 29.06.050. Annexation of military reservations.** A military reservation may be annexed to a municipality in the same manner as prescribed for other territory under AS 29.06.040. If a city in a borough annexes a military reservation under this section, the area encompassing the military reservation automatically is annexed to the borough in which the city is located. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.060. Application.** AS 29.06.040 - 29.06.060 apply to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

### Article 3. Merger and Consolidation.

#### Section

090. Merger and consolidation	140. Election
100. Petition	150. Succession to rights and liabilities
110. Review	160. Transition
120. Hearing	170. Application
130. Decision	

**Sec. 29.06.090. Merger and consolidation.** (a) Two or more municipalities may merge or consolidate to form a single general law or home rule municipality, except a third class borough may not be formed through merger or consolidation.

(b) Two methods may be used to initiate merger or consolidation of municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.06.100 — 29.06.160. (§ 5 ch 74 SLA 1985; am § 15 ch 58 SLA 1994)

*Effect of amendments.* — The 1994 amendment, effective August 22, 1994, inserted "general law or home rule" in subsection (a).

**Sec. 29.06.100. Petition.** (a) Residents of two or more municipalities may file a merger or consolidation petition with the department. The petition must be signed by a number of voters of each existing municipality equal to at least 25 percent of the number of votes cast in each municipality's last regular election.

(b) The petition includes

(1) the name and class of each existing municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the governing body;

(4) maps, documents, and other information that shows that the proposed municipality meets the standards for municipal incorporation;

(5) for a home rule municipality, a proposed home rule charter. (§ 5 ch 74 SLA 1985; am § 16 ch 58 SLA 1994)

*Effect of amendments.* — The 1994 amendment, effective August 22, 1994, added paragraph (b)(5) and made a related stylistic change.

**Sec. 29.06.110. Review.** (a) The department shall review a merger or consolidation petition for content and signatures and shall return a deficient petition for correction or completion.

(b) If the petition contains the required information and signatures, the department shall investigate the proposal.

(c) The department shall report its findings to the Local Boundary Commission with its recommendations regarding the merger or consolidation. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.120. Hearing.** After receipt of the report by the department on a merger or consolidation petition, the Local Boundary Commission shall hold at least one public hearing in each of the existing municipalities included in the petition, unless officials of the municipalities agree to a single hearing. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.130. Decision.** (a) The Local Boundary Commission may amend the petition and may impose conditions for the merger or consolidation. If the commission determines that the merger or consolidation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, the municipality after the merger or consolidation would meet the standards for incorporation under AS 29.05.011 or 29.05.031, and the merger or consolidation is in the best interests of the state, it may accept the petition. Otherwise, it shall reject the petition.

(b) A Local Boundary Commission decision under this section may be appealed under the AS 44.62 (Administrative Procedure Act). (§ 5 ch 74 SLA 1985; am § 17 ch 58 SLA 1994; am §4 ch 86 SLA 1999)

*Effect of amendments.* — The 1999 amendment, effective September 28, 1999, rewrote subsection (a). The 1994 amendment, effective August 22, 1994, in subsection (a), substituted "may accept the petition or amend" for "shall accept the petition" in the second sentence, deleted "If the commission determines that the proposed boundaries or the composition and apportionment of the governing body can be altered to meet the standards, it may alter the proposal" preceding "and accept the petition" in the former third sentence, and made a related stylistic change.

**Sec. 29.06.140. Election.** (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a merger or consolidation petition. Within 30 days after notification, the director of elections shall order an election in the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election shall be held not less than 30 or more than 90 days after the election order. A voter who is a resident of the area to be included in the proposed municipality may vote.

(b) A home rule charter in a merger or consolidation petition submitted under AS 29.06.100(b)(5) is part of the merger or consolidation question. The charter is adopted if the voters approve the merger or consolidation. The director of elections shall supervise the election in the general manner prescribed by the AS 15 (Election Code). The state shall pay all election costs.

(c) The director of elections shall certify the election results. If merger or consolidation is approved, the director of elections shall, within 10 days, set a date for election of officials of the new municipality. The election date shall be not less than 60 or more than 90 days after the election order and it is the effective date for the merger or consolidation. (§ 5 ch 74 SLA 1985; am § 18 ch 58 SLA 1994)

*Effect of amendments.* — The 1994 amendment, effective August 22, 1994, added the present first and second sentences in subsection (b).

**Sec. 29.06.150. Succession to rights and liabilities.** (a) When two or more municipalities merge, one succeeds to the rights, powers, duties, assets, and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets, and liabilities of the consolidated municipalities. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.160. Transition.** After merger or consolidation, the ordinances, resolutions, regulations, procedures, and orders of the former municipalities remain in force in their respective territories until superseded by the action of the new municipality. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.170. Application.** AS 29.06.090 - 29.06.170 apply to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

#### Article 4. Unification of Municipalities.

Section	
190. Unification of municipalities authorized	320. Charter provisions
200. Unification petition	330. Public hearings
210. Petition requirements	340. Filing of proposed charter
220. Review of petition	350. Publication and posting of proposed charter
230. Duties of charter commission	360. Election on charter
240. Composition of charter commission	370. Effect of the charter after ratification
250. Charter commission nominations	380. Succession to assets and liabilities; bonded indebtedness
260. Qualifications of candidates	390. Transition
270. Election of charter commission	400. Right to state and federal aid
280. Requirements for approval of formation and election of charter commission	410. Powers of a unified municipality
290. Charter commission organization and procedure	420. Application
300. Vacancies	
310. Per diem	

**Sec. 29.06.190. Unification of municipalities authorized.** (a) A borough and all cities in the borough may unite to form a single unit of home rule government by complying with AS 29.06.190 — 29.06.410.

(b) An area that is not incorporated as a borough, including any cities in the area, may incorporate as a unified municipality under AS 29.05.031. (§ 5 ch 74 SLA 1985; am § 19 ch 58 SLA 1994)

*Effect of amendments.* — The 1994 amendment, effective August 22, 1994, added subsection (b).

**Sec. 29.06.200. Unification proposed.** (a) Formation of a charter commission to prepare a unification charter shall be proposed by resolution of the assembly or by petition. The question of formation of a charter commission may be submitted to the voters not more often than once every 24 months.

(b) An assembly, a council, or a person living in the area proposed for unification may initiate a unification petition.

(c) In a general law borough, a unification petition shall be prepared by the borough clerk upon receipt of an application meeting the requirements of AS 29.26.110, except that instead of containing an ordinance or resolution the application shall contain the question under AS 29.06.210(a). The petition shall be prepared in accordance with AS 29.26.120, except material required under (a)(1) and (2) of that section shall be replaced with the question under AS 29.06.210(a). The signature requirements of AS 29.26.130(a), (c), and (d) apply to a unification petition. The completed petition shall be submitted to the clerk who shall deliver it to the assembly with a report of the number of valid signatures determined by the clerk to be on the petition. (§ 5 ch 74 SLA 1985; am § 2 ch 80 SLA 1989; am § 1 ch 93 SLA 1989)

*Effect of Amendments.* — The first 1989 amendment, effective August 30, 1989, added subsection (c). The

second 1989 amendment, effective September 1, 1989, substituted "The question of" for "A resolution to propose," "submitted to the voters" for "adopted," and "24 months" for "12 months" in the second sentence of subsection (a).

**Sec. 29.06.210. Petition requirements.** (a) A unification petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER. We, the undersigned, qualified voters of the borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified municipality as authorized by law? Yes [ ] No [ ]'"

		Inside First	Outside First
		Class or	Class or
Signature	Address	Home Rule City [ ]	Home Rule City [ ]"

(b) The petition shall be signed by at least

(1) the number of voters residing outside all home rule and first class cities in the borough equal to 25 percent of the votes cast in that area in the last regular borough election; and

(2) the number of voters residing in each home rule and first class city in the borough equal to 25 percent of the votes cast in each of these cities in the last regular borough election. (§ 5 ch 74 SLA 1985; am § 2 ch 93 SLA 1989)

Effect of Amendments. — The 1989 amendment, effective September 1, 1989, rewrote paragraph (2) of subsection (b).

**Sec. 29.06.220. Review of petition.** The assembly shall review a unification petition within 15 days to determine whether it complies with AS 29.06.210. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.230. Duties of charter commission.** The charter commission shall prepare, adopt, and submit to the voters for approval or rejection a proposed home rule charter for the area to be unified. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.240. Composition of charter commission.** The charter commission shall consist of 11 voters, three of whom are residents elected at large from the borough and eight of whom, proportionate to the population as determined by the department, are

(1) residents of and elected from the area outside all home rule and first class cities in the borough; or.

(2) residents of and elected from home rule or first class cities in the borough. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.250. Charter commission nominations.** (a) If the assembly determines that a unification petition meets the requirements of AS 29.06.210, or the assembly by its resolution proposes an election on formation of a charter commission, the assembly shall issue a call for the nomination of commission candidates, specifying the filing deadline and the procedure for making nominations.

(b) Charter commission candidates shall be nominated by petition signed by at least 50 voters of the area from which the candidate seeks election, or by a number of voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(c) Nomination petitions shall be filed with the borough clerk at least 30 days after notice of the call for nominations has been given and on or before a date fixed by the assembly.

(d) If at least one nomination of a qualified charter commission candidate for each available seat is not filed, the unification petition or resolution to propose formation of a charter commission is void and an election on the question may not be held. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.260. Qualifications of candidates.** A person is eligible to be nominated as a candidate for the charter commission if that person is a voter of the area from which election is sought and has been a voter of the area for at least one year immediately preceding the date the nomination petition is filed. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.270. Election of charter commission.** (a) After receipt of a valid unification petition or adoption of an assembly resolution to propose formation of a charter commission, the assembly shall submit to the voters the question of whether a charter commission shall be formed to prepare a proposed unification charter. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the petition or adoption of the resolution. The ballot shall be worded exactly as in AS 29.06.210(a).

(b) The election of charter commission members shall take place at the same time as the election on the question of formation of the commission.

(c) All costs incurred in conducting an election under AS 29.06.190 - 29.06.410 shall be paid by the borough. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.280. Requirements for approval of formation and election of charter commission.** (a) The votes on the question of formation of a charter commission shall be tabulated in separate classifications. If the question is approved by majority vote in each home rule and first class city in the borough and by a majority vote in the area of the borough outside of all home rule or first class cities, the question is approved. If the question is not approved by majority vote in each home rule and first class city, a favorable vote by at least 55 percent of all the voters voting on the question in home rule and first class cities and by a majority of the voters outside those cities constitutes approval of the question.

(b) If formation of a charter commission is approved, the candidates who received the highest number of votes from their respective areas shall serve as members of the commission. (§ 5 ch 74 SLA 1985; am § 3 ch 93 SLA 1989)

*Effect of amendments.* — The 1989 amendment, effective September 1, 1989, rewrote subsection (a)

**Sec. 29.06.290. Charter commission organization and procedure.** (a) The charter commission shall hold its first meeting within 30 days after certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. A decision of the commission is not valid or binding unless approved by the number of members necessary to constitute a quorum.

(c) The charter commission may elect other officials from among its membership, adopt rules

governing its procedures that are consistent with AS 29.06.190 - 29.06.410 and hire and discharge employees.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and made available for public inspection at the borough office. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.300. Vacancies.** (a) Vacancies on the charter commission shall be filled by a majority vote of the commission, except the assembly shall appoint members to fill vacancies if, after a proposed charter is rejected by the voters, more than one-half of the members resign.

(b) A person who fills a vacancy on the charter commission must be a voter of the same area as the person succeeded and must have been a voter of that area for at least one year immediately preceding the date the vacancy is filled. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.310. Per diem.** The assembly may grant a per diem allowance to members of the charter commission and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by AS 29.06.190 - 29.06.410. Costs, fees, and other expenses incurred by the commission are a debt of the borough and shall be paid upon proper verification. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.320. Charter provisions.** The charter must include

(1) provision for

(A) the adjustment of existing bonded indebtedness and other obligations in a manner that will assure a fair and equitable burden of taxation for debt service, subject to AS 29.06.380;

(B) the establishment of service areas;

(C) if election of members of the governing body is not area-wide, the establishment of districts for the election of members of the governing body of the proposed unified municipality and procedures by which to reapportion the election districts;

(D) the reapportionment of districts if they are established;

(E) nonpartisan government, and the selection, organization, authority, and responsibilities of the governing body and its executive and administrator;

(F) the transfer or other disposition of property and other rights, claims, assets, and franchises of the municipalities to be unified under the charter;

(G) the exercise of the rights of initiative and referendum in accordance with AS 29.10.030;

(H) amending the charter in accordance with AS 29.10.100;

(2) the date on which the charter, if approved at the charter election, is effective;

(3) designation of the proposed unified municipality's official name; and

(4) other charter provisions that may be included in a home rule charter. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.330. Public hearings.** Both before and after drafting the proposed home rule charter, the charter commission shall hold a public hearing in each area represented on the assembly. Other public hearings may be held by the commission as it considers necessary. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.340. Filing of proposed charter.** Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy of the charter with

ge signatures affixed shall also be filed with the clerk of each city in the borough. (§ 5 ch 74 SLA 1985)

of e. **Sec. 29.06.350. Publication and posting of proposed charter.** Within 10 days after filing the proposed home rule charter, the borough clerk shall have it published. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places in each city and each unincorporated community in the borough. Copies of the proposed charter shall be made available by the assembly to the public at both the office of the borough clerk and the office of the clerk of each city in the borough. The clerk shall have notice of the publication, posting, and availability of the proposed charter published. (§ 5 ch 74 SLA 1985)

is ly **Sec. 29.06.360. Election on charter.** (a) The proposed home rule charter adopted by the charter commission shall be submitted to the voters at a borough election held within 60 days of the date of publication and posting of the proposed charter. The borough clerk shall prepare the ballots for use in the election and shall give notice of the election by radio and television in a manner intended to apprise the entire borough population of the election. The election shall be conducted under procedures applicable to regular elections.

ie ie A (b) A person who is a voter of the borough may vote in the election on the proposed charter.

it (c) If the charter is approved by a majority of the votes in each home rule and first class city in the borough and the charter is approved by a majority of all the votes in the area of the borough outside all home rule or first class cities, the charter is ratified. If the charter is not approved by a majority of the votes in each home rule and first class city, the charter is ratified only if at least 55 percent of all the voters voting on the question in home rule and first class cities approve it and if a majority of the voters outside those cities approve it. If the charter is ratified, election results shall be certified to the commission and two copies of the charter shall be filed with

- of d s (1) the lieutenant governor;  
(2) the department;  
(3) the district recorder for the area of the borough;  
(4) the clerk of the borough;  
(5) the clerk of each city in the borough.

d ) (d) If a proposed charter is rejected, the charter commission shall prepare, adopt, and submit another proposed charter to the voters at a borough election held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved. (§ 5 ch 74 SLA 1985; am § 4 ch 93 SLA 1989)

*Effect of amendments.* — The 1989 amendment, effective September 1, 1989, in subsection (c), rewrote the first sentence and added the second sentence.

e A **Sec. 29.06.370. Effect of the charter after ratification.** Upon ratification, the home rule charter of a unified municipality operates to dissolve all municipalities in the area unified in accordance with the charter. (§ 5 ch 74 SLA 1985)

e d h **Sec. 29.06.380. Succession to assets and liabilities; bonded indebtedness.** A unified municipality shall succeed to all the assets and liabilities of the municipalities it unified. A bonded indebtedness or other debt incurred before unification remains the tax obligation of the area that contracted the debt, except that by ordinance the tax obligation may be assumed by a larger area if the governing body determines that the asset for which the bonded indebtedness or other debt was

incurred benefited the larger area before unification, or benefits the larger area after unification. However, bonded indebtedness or other debt for sewage collection systems, water distribution systems, and streets, even if determined to be benefiting a larger area than that which incurred the debt, remains the tax obligation of the area that incurred the debt. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.390. Transition.** Within two years after ratification of the home rule charter, the unified municipality shall revise, repeal, or reaffirm all municipal ordinances, resolutions, and orders in effect in the area of the unified municipality on the date of unification. Each ordinance, resolution, regulation, or order in effect on the date of unification remains in effect until superseded by action of the unified municipality. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.400. Right to state and federal aid.** All provisions of law authorizing aid from the state or federal government to a former municipality that was in the area of a unified municipality remain in effect after unification. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.410. Powers of a unified municipality.** A municipality unified under AS 29.06.190 - 29.06.410 has all powers

- (1) not prohibited by law or charter; and
- (2) granted to a home rule borough. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.420. Application.** AS 29.06.190 - 29.06.420 apply to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

#### Article 5. Dissolution.

##### Section

450. Methods of dissolution	500. Decision
460. Petition	510. Election
470. Standards	520. Succession
480. Review	530. Application
490. Report and hearing	

**Sec. 29.06.450. Methods of dissolution.** (a) Two petition methods may be used to initiate dissolution of a municipality:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.06.460 - 29.06.510.

(b) The department shall investigate a municipality that it considers to be inactive and shall report to the Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in art. X, sec. 12 of the state constitution.

(c) A borough is dissolved when its entire territory is included in a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.460. Petition.** (a) Voters of a municipality may file a dissolution petition with the department in the form prescribed by the department. The petition must be signed by a number of

voters equal to at least 25 percent of the number of votes cast in the last regular election in that municipality.

(b) The petition must include

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.470. Standards.** (a) Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) the municipality no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.18.030 if it is a third class borough;

(2) the municipality ceases to use each of its mandatory powers; or

(3) the dissolution petition filed under AS 29.06.460 is signed by a number of voters of the municipality proposed to be dissolved greater than 50 percent of the number of votes cast in the last regular election in that municipality.

(b) Voters of a city in a borough may petition for dissolution of the city if the borough consents to assume the city's rights, powers, duties, assets, and liabilities. The consent must be ratified by a majority of borough voters voting on the question. (§ 5 ch 74 SLA 1985; am § 1 ch 35 SLA 1988; am § 20 ch 58 SLA 1994)

*Effect of Amendments.* — The 1994 amendment, effective August 22, 1994, substituted "last regular election" for "last general election" in paragraph (a)(3). The 1988 amendment, in subsection (a), substituted "the municipality" for "it" in paragraph (1), deleted "or" at the end of paragraph (1), added "or" at the end of paragraph (2), and added paragraph (3).

**Sec. 29.06.480. Review.** (a) The department shall review a dissolution petition for content and signatures, and shall return a deficient petition for correction or completion.

(b) If the petition contains the required information and signatures, the department shall investigate the proposal. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.490. Report and hearing.** (a) The department shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution of a municipality.

(b) The Local Boundary Commission shall hold at least one public hearing in the municipality proposed to be dissolved. (§ 5 ch 74 SLA 1985)

**Sec. 29.06.500. Decision.** (a) The Local Boundary Commission may amend the petition and may impose conditions for the dissolution. If the commission determines that the dissolution, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for dissolution under AS 29.06.470, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

(b) A Local Boundary Commission decision under this section may be appealed under AS 44.62 (Administrative Procedure Act). (§ 5 ch 74 SLA 1985; am § 2 ch 35 SLA 1988; am § 21 ch 58 SLA 1994; am § 5 ch 86 SLA 1999)

*Revisor's Notes* — In 1988, preceding the phrase "meets the standards" in the third sentence of (a) of this section, the word "petition" was substituted for "municipality" to correct a manifest error in ch. 35, SLA 1988.

*Effect of amendments.* — The 1999 amendment, effective September 28, 1999, rewrote subsection (a). The 1988 amendment, in subsection (a), inserted "under AS 29.06.470(a)(1) or (2)" in the second sentence and added the

third sentence. The 1994 amendment, effective August 22, 1994, in subsection (a), deleted the former second sentence, relating to municipality standards under AS 29.06.470(a)(1) or (2), made a section reference substitution in the present second sentence, and added the last sentence.

**Sec. 29.06.510. Election.** (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order unless such timing would cause the election to be held between May 1 and November 1. If the director of elections receives notification after April 1, but before October 1, the election shall be held within 60 days after November 1. A person who is a voter of the municipality may vote in the dissolution election.

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

(c) The director of elections shall certify the election results. If dissolution is approved by a number of voters greater than 50 percent of the number of people registered to vote in the municipality, the director of elections shall declare that the municipality is dissolved effective on the date of certification. (§ 5 ch 74 SLA 1985; am §§ 3, 4 ch 35 SLA 1988)

*Effect of amendments.* — The 1988 amendment inserted "by a number of voters greater than 50 percent of the number of people registered to vote in the municipality" in the second sentence in subsection (c) and, in subsection (a), added "unless such timing would cause the election to be held between May 1 and November 1" at the end of the third sentence and inserted the fourth sentence.

**Sec. 29.06.520. Succession.** A municipality succeeding to a dissolved municipality succeeds to all rights, powers, duties, assets, and liabilities of the dissolved municipality. Otherwise, the state succeeds to those rights, powers, duties, assets, and liabilities. If the state succeeds to a dissolved municipality, the state may enter into a contract for the performance of duties or powers in the area of the dissolved municipality. However, a contract with an organization for the performance of duties or powers entered into under this section does not constitute recognition by the state of governmental powers of that organization. (§ 5 ch 74 SLA 1985; am § 5 ch 35 SLA 1988; am § 22 ch 58 SLA 1994)

*Effect of amendments.* — The 1994 amendment, effective August 22, 1994, inserted "rights, powers, duties" in the first and second sentences and made related stylistic changes.

The 1988 amendment added the last three sentences and rewrote the first sentence, which read "The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities."

**Sec. 29.06.530. Application.** AS 29.06.450 - 29.06.530 apply to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

## Chapter 10. Home Rule Municipalities.

### Article

1. Charters (§§ 29.10.010 — 29.10.100)
2. Home Rule Limitations (§ 29.10.200)

### Article 1. Charters.

#### Section

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|---------------------------------|-----------------------------|
| 010. Municipal charter adoption | 060. Preparation of charter |
|---------------------------------|-----------------------------|

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REGULATIONS:

3 AAC PART 15:  
LBC

• CURRENT

• PROPOSED DRAFT

## PART 15. LOCAL BOUNDARY COMMISSION.

### Chapter

110. Municipal Boundary Changes (3 AAC 110.010 — 3 AAC 110.990)

### CHAPTER 110. MUNICIPAL BOUNDARY CHANGES.

#### Article

1. Standards for Incorporation of Cities (3 AAC 110.010 — 3 AAC 110.04)
2. Standards for Incorporation of Boroughs (3 AAC 110.045 — 3 AAC 110.060)
3. Standards for Annexation to Cities (3 AAC 110.090 — 3 AAC 110.150)
4. Standards for Annexation to Boroughs or Unified Municipalities (3 AAC 110.160 — 3 AAC 110.210)
5. Standards for Merger of Municipalities (3 AAC 110.220 — 3 AAC 110.230)
6. Standards for Consolidation of Municipalities (3 AAC 110.240 — 3 AAC 110.250)
7. Standards for Detachment from Cities (3 AAC 110.260)
8. Standards for Detachment from Boroughs or Unified Municipalities (3 AAC 110.270)
9. Standards for Dissolution of Cities (3 AAC 110.280 — 3 AAC 110.300)
10. Standards for Dissolution of Boroughs or Unified Municipalities (3 AAC 110.310 — 3 AAC 110.330)
11. Standards for Reclassification of Cities (3 AAC 110.340 — 3 AAC 110.370)
12. Procedures for Petitioning (3 AAC 10.400 — 3 AAC 10.660)
13. General Provisions (3 AAC 10.900 — 3 AAC 10.990)

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**Editor's note:** As of Register 151 (October 1999), the provisions of former 3 AAC 110, in accordance with ch. 58, 19 AAC 10 were relocated by the regulations attorney under AS 44.62.125(b)(6) to 3 AAC 110, in accordance with ch. 58, SLA 1999.

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#### ARTICLE 1. STANDARDS FOR INCORPORATION OF CITIES.

##### Section

10. Need  
20. Resources

##### Section

30. Population  
40. Boundaries

**3 AAC 110.010. NEED.** (a) In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government. In this regard, the commission will, in its discretion, consider relevant factors including

- (1) existing or reasonably anticipated social or economic problems;
- (2) existing or reasonably anticipated health, safety and general welfare problems;
- (3) existing or reasonably anticipated economic development; and
- (4) adequacy of existing services.

(b) In accordance with AS 29.05.021, a community may not incorporate as a city if essential city services can be provided more efficiently

or more effectively by annexation to an existing city, or can be provided more efficiently or more effectively by an existing organized borough. (Eff. 7/31/92, Register 123)

Authority:	AS 29.05.011	AS 44.33.816	AS 44.33.822
	AS 29.05.012	AS 44.33.818	AS 44.33.826
	AS 44.33.812	AS 44.33.820	AS 44.33.828
	AS 44.33.814		

**3 AAC 110.020. RESOURCES.** (a) In accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) reasonably anticipated functions of the proposed city;
- (2) reasonably anticipated expenses of the proposed city;
- (3) reasonably anticipated income and ability of the proposed city to generate and collect local revenue and income;
- (4) feasibility and plausibility of the anticipated operating budget of the proposed city through its third full fiscal year of operation;
- (5) economic base of the proposed city;
- (6) property valuations for the proposed city;
- (7) land use for the proposed city;
- (8) existing and reasonably anticipated industrial, commercial, and resource development for the proposed city;
- (9) personal income of residents of the proposed city;
- (10) need for and availability of employable skilled and unskilled persons to serve the proposed city; and
- (11) reasonably predictable level of commitment and interest of the residents in sustaining a city. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 44.33.814	AS 44.33.822
	art. X, sec. 12	AS 44.33.816	AS 44.33.826
	AS 29.05.011	AS 44.33.818	AS 44.47.980
	AS 44.33.812	AS 44.33.820	

**3 AAC 110.030. POPULATION.** (a) In accordance with AS 29.05.011 the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumeration;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(b) To become a first class city, the territory proposed for incorporation must have a population of at least 400 permanent residents. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 44.33.814	AS 44.33.822
	art. X, sec. 12	AS 44.33.816	AS 44.33.826
	AS 29.05.011	AS 44.33.818	AS 44.33.828
	AS 44.33.812	AS 44.33.820	

**3 AAC 110.040. BOUNDARIES.** (a) In accordance with AS 29.05.011, the boundaries of a proposed city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

(b) The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation of that city.

(c) The boundaries of the proposed city must not include entire geographical regions or large unpopulated areas, except when such boundaries are justified by the application of the standards in 3 AAC 110.010 — 3 AAC 110.040.

(d) If a petition for incorporation of a proposed city describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for incorporation must also address and comply with all standards and procedures for either annexation of the new city to the existing borough, or detachment of the overlapping region from the existing borough, unified municipality, or city. The commission will consider and treat such an incorporation petition as also being either an annexation petition to the existing borough, or a detachment petition from the existing borough, unified municipality, or city. (Eff. 7/3/92, Register 123)

Authority:	Alaska Const.,	AS 44.33.814	AS 44.33.822
	art. X, sec. 12	AS 44.33.816	AS 44.33.826
	AS 29.05.011	AS 44.33.818	AS 44.33.828
	AS 44.33.812	AS 44.33.820	

## ARTICLE 2. STANDARDS FOR INCORPORATION OF BOROUGHES.

Section  
45. Community of interests  
50. Population

Section  
55. Resources  
60. Boundaries

**3 AAC 110.045. COMMUNITY OF INTERESTS.** (a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) the compatibility of urban and rural areas within the proposed borough;
- (2) the compatibility of economic lifestyles, and industrial or commercial activities;
- (3) the existence throughout the proposed borough of customary and simple transportation and communication patterns; and
- (4) the extent and accommodation of spoken language differences throughout the proposed borough.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed borough.

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) transportation schedules and costs;
- (2) geographical and climatic impediments;
- (3) telephonic and teleconferencing facilities; and
- (4) public electronic media.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient unless all communities within a proposed borough are either connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications. (Eff. 10/12/91, Register 120)

<b>Authority:</b> Alaska Const.,	AS 44.33.812	AS 44.33.820
art. X, Sec. 12	AS 44.33.814	AS 44.33.822
AS 29.05.031	AS 44.33.816	AS 44.33.826
AS 29.05.100	AS 44.33.818	AS 44.33.828

**3 AAC 110.050. POPULATION.** (a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and

(5) age distributions.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough. (Eff. 10/12/91, Register 120)

Authority: Alaska Const.,	AS 44.33.812	AS 44.33.820
art. X, Sec. 12	AS 44.33.814	AS 44.33.822
AS 29.05.031	AS 44.33.816	AS 44.33.826
AS 29.06.100	AS 44.33.818	AS 44.33.828

**3 AAC 110.055. RESOURCES.** The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) the reasonably anticipated functions of the proposed borough;
- (2) the reasonably anticipated expenses of the proposed borough;
- (3) the reasonably anticipated income of the proposed borough, and its ability to collect revenue;
- (4) the feasibility and plausibility of the anticipated operating budget through the third full fiscal year of operation;
- (5) the economic base of the proposed borough;
- (6) property valuations;
- (7) land use;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents;
- (10) the need for and availability of employable skilled and unskilled people; and
- (11) the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation. (Eff. 10/12/91, Register 120)

Authority: Alaska Const.,	AS 44.33.812	AS 44.33.820
art. X, Sec. 12	AS 44.33.814	AS 44.33.822
AS 29.05.031	AS 44.33.816	AS 44.33.826
AS 29.05.100	AS 44.33.818	AS 44.33.828

**3 AAC 110.060. BOUNDARIES.** (a) The boundaries of a proposed borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;

- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond the model borough boundaries adopted by the commission.

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of the Department of Education and Early Development, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough.

(d) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough or unified municipality, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough or unified municipality. The commission will consider and treat such an incorporation petition as also being a detachment petition. (Eff. 10/12/91, Register 120)

Authority:	Alaska Const.,	AS 44.33.812	AS 44.33.820
	art. X, Sec. 12,	AS 44.33.814	AS 44.33.822
	AS 29.05.031	AS 44.33.816	AS 44.33.826
	AS 29.05.100	AS 44.33.818	AS 44.33.828

### ARTICLE 3. STANDARDS FOR ANNEXATION TO CITIES.

Section	Section
90. Needs of the territory	130. Boundaries
100. Character	140. Legislative review
110. Resources	150. Local action
120. Population	

**3 AAC 110.090. NEEDS OF THE TERRITORY.** (a) The territory must exhibit a reasonable need for a city government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) existing or reasonably anticipated social or economic problems;
- (2) existing or reasonably anticipated health, safety, and general welfare problems;
- (3) existing or reasonably anticipated economic development;
- (4) adequacy of existing services; and
- (5) extraterritorial powers of adjacent municipalities.

(b) A territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.100. CHARACTER.** The territory must be compatible in character with the annexing city. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) land use and subdivision platting;
- (2) salability of land for residential, commercial, or industrial purposes;
- (3) population density;
- (4) cause of recent population changes; and
- (5) suitability of the territory for reasonably anticipated community purposes. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.110. RESOURCES.** The economy within the proposed boundaries of the city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) reasonably anticipated functions of the city in the territory being annexed;
- (2) reasonably anticipated new expenses of the city;
- (3) actual income and the reasonably anticipated ability to collect local revenue and income from the territory;
- (4) feasibility and plausibility of the anticipated operating budget of the city through the third full fiscal year of operation after annexation;
- (5) economic base of the territory after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents in the territory and in the city; and
- (10) need for and availability of employable skilled and unskilled people. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const., art. X, sec. 12 AS 29.06.040 AS 44.33.812	AS 44.33.814 AS 44.33.816 AS 44.33.818 AS 44.33.820	AS 44.33.822 AS 44.33.826 AS 44.33.828
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**3 AAC 110.120. POPULATION.** The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumeration;
- (2) duration of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const., art. X, sec. 12 AS 29.06.040 AS 44.33.812	AS 44.33.814 AS 44.33.816 AS 44.33.818 AS 44.33.820	AS 44.33.822 AS 44.33.826 AS 44.33.828
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**3 AAC 110.130. BOUNDARIES.** (a) The proposed boundaries of the city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

(b) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing city does not meet the minimal standards required for annexation.

(c) The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation of that city.

(d) The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by the application of the standards in 3 AAC 110.090 — 3 AAC 110.130.

(e) If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the overlapping region from the existing organized borough, unified municipality, or

city. The commission will consider and treat the annexation petition to the existing organized borough, or a detachment petition from the existing organized borough, unified municipality, or city. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.140. LEGISLATIVE REVIEW.** Territory that meets all of the annexation standards specified in 3 AAC 110.090 — 3 AAC 110.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including whether the

- (1) territory is an enclave surrounded by the annexing city;
- (2) health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;
- (3) extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;
- (4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;
- (5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city; and
- (6) territory is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

3 AAC 110.150. LOCAL ACTION. Territory contiguous to the annexing city, that meets the annexation standards specified in 3 AAC 110.090 — 3 AAC 110.130 and has been approved for local action annexation by the commission, may be annexed to a city by

- (1) city ordinance if the territory is wholly owned by the annexing city;
- (2) city ordinance and a petition signed by all of the voters and property owners of the territory; or
- (3) a majority of voters residing in the territory. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const., art. X, sec. 12 AS 29.06.040 AS 44.33.812	AS 44.33.814 AS 44.33.816 AS 44.33.818 AS 44.33.820	AS 44.33.822 AS 44.33.826 AS 44.33.828
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ARTICLE 4. STANDARDS FOR ANNEXATION TO BOROUGHs OR UNIFIED MUNICIPALITIES.

<b>Section</b>	<b>Section</b>
160. Community of interests	190. Boundaries
170. Population	200. Legislative review
180. Resources	210. Local action

3 AAC 110.160. COMMUNITY OF INTERESTS. (a) The social, cultural, and economic characteristics and activities of the people in the territory must be interrelated and integrated with the characteristics and activities of the people in the existing borough or unified municipality. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) compatibility of urban and rural areas within the proposed borough or unified municipality boundaries;
- (2) compatibility of economic lifestyles and industrial or commercial activities within the proposed borough or unified municipality boundaries;
- (3) existence of customary and simple transportation and communication patterns throughout the proposed borough or unified municipality boundaries; and
- (4) extent and accommodation of spoken language differences throughout the proposed borough or unified municipality boundaries.

(b) The communications media and the land, water, and air transportation facilities throughout the proposed borough or unified municipality boundaries must allow for the level of communications and exchange necessary to develop an integrated borough or unified municipality government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) transportation schedules and costs;
- (2) geographical and climatic impediments;

- (3) telephonic and teleconferencing facilities; and
- (4) electronic media for use by the public. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.170. POPULATION.** The population of the proposed borough or unified municipality after annexation must be sufficiently large and stable to support the resulting borough or unified municipal government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.334.812	AS 44.33.820	

**3 AAC 110.180. RESOURCES.** The economy within the proposed borough or unified municipality boundaries must include the human and financial resources necessary to provide essential borough or municipal services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) reasonably anticipated functions of the borough or unified municipality;
- (2) reasonably anticipated new expenses of the borough or unified municipality;
- (3) actual income and the reasonably anticipated ability of the borough or unified municipality to generate and collect local revenue and income from the new territory;
- (4) feasibility and plausibility of the anticipated operating budget of the borough or unified municipality through the third year of operation after annexation;
- (5) economic base of the borough after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;
- (8) existing and reasonably anticipated industrial, commercial, and resource development in the borough or unified municipality;
- (9) personal income of residents in the territory to be annexed and in the borough or unified municipality; and

(10) the need for and availability of employable skilled and unskilled people. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.190. BOUNDARIES.** (a) The proposed boundaries of the borough or unified municipality must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough or municipal services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing borough or unified municipality does not meet the minimal standards required for annexation.

(c) Absent a specific and persuasive showing to the contrary, the commission, in its discretion, will not approve a proposed borough or unified municipality with boundaries extending beyond the model borough boundaries adopted by the commission and identified in the 1992 Interim Report on Model Borough Boundaries.

(d) The commission will consult with the Department of Education and Early Development in the process of balancing all standards for annexation to a borough or unified municipality.

(e) If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for annexation must also address and comply with the standards and procedures for detachment of the overlapping region from the existing organized borough, unified municipality, or city. The commission will consider and treat such an annexation petition as also being a detachment petition from the existing organized borough, unified municipality, or city. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**Editor's note:** Copies of the 1992 Interim Report on Model Borough Boundaries may be obtained by writing the Local Boundary Commission Staff, Dept. of Com-

munity and Economic Development, 550  
W. 7th Ave., Suite 1770, Anchorage, AK  
99501.

**3 AAC 110.200. LEGISLATIVE REVIEW.** Territory that meets the annexation standards specified in 3 AAC 110.160 — 3 AAC 110.190 may be annexed to a borough or unified municipality by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including whether the

(1) territory manifests a reasonable need for borough or municipal government that can be met most efficiently and effectively by the annexing borough or unified municipality;

(2) territory is an enclave surrounded by the annexing borough or unified municipality;

(3) health, safety, or general welfare of borough or unified municipality residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the borough or unified municipality to regulate or control the detrimental effect of those conditions;

(4) extension of borough or unified municipality services or facilities into the territory is necessary to enable the borough to provide adequate services to borough or unified municipality residents, and it is impossible or impractical for the borough or unified municipality to extend the facilities or services unless the territory is within the boundaries of the borough or unified municipality;

(5) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough or unified municipal government without commensurate tax contributions, whether these benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(6) annexation of the territory will enable the borough or unified municipality to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the borough or unified municipality; and

(7) territory is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.210. LOCAL ACTION.** Territory that meets the annexation standards specified in 3 AAC 110.160 — 3 AAC 110.190 and has been approved for local action annexation by the commission, may be annexed to a borough or unified municipality by the following action:

- (1) borough or unified municipality ordinance if the territory is wholly owned by the annexing borough or unified municipality;
- (2) borough or unified municipal ordinance and a petition signed by all of the voters and property owners of the territory approving of the annexation; or
- (3) approval by a majority of voters residing in the territory voting on the question at an election held. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

#### ARTICLE 5. STANDARDS FOR MERGER OF MUNICIPALITIES.

**Section**

220. Standards

230. Local option

**3 AAC 110.220. STANDARDS.** (a) Two or more municipalities may merge if, upon completion of the merger, the remaining municipality meets the standards for incorporation of cities specified in 3 AAC 110.010 — 3 AAC 110.040, or boroughs specified in 3 AAC 110.045 — 3 AAC 110.060.

(b) Separate proceedings are not required for dissolution of a municipality that is being merged with another municipality. The dissolution occurs automatically at the time of the merger. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.230. LOCAL OPTION.** Municipalities that meet the merger standards required under 3 AAC 110.220, and are approved by the commission for local option merger, may merge if the petition for merger is submitted by the number of voters required under AS 29.06.100(a), and if a majority of the voters in the remaining municipality vote in favor of the merger in a subsequent election. The election must be held in accordance with AS 29.06.140. (Eff. 7/31/92, Register 123)

3 AAC 110.240                      COMMUNITY AND ECON. DEV.                      3 AAC 110.260

Authority: Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.090	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**ARTICLE 6. STANDARDS FOR CONSOLIDATION OF MUNICIPALITIES.**

**Section**  
240. Standards  
250. Local option

**3 AAC 110.240. STANDARDS.** (a) Two or more municipalities may consolidate to form a new municipality if the new municipality meets the standards for incorporation of cities specified in 3 AAC 110.010 — 3 AAC 110.040, or boroughs specified in 3 AAC 110.045 — 3 AAC 110.060.

(b) Separate proceedings are not required for dissolution of the consolidating municipalities. The dissolutions occur automatically at the time of the consolidation. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.090	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.250. LOCAL OPTION.** Municipalities that meet the consolidation standards required under 3 AAC 110.240, and are approved by the commission for local option consolidation, may consolidate if the petition for consolidation was submitted by the number of voters required under AS 29.06.100(a), and if a majority of the voters in the remaining proposed new municipality vote in favor of the consolidation in a subsequent election. The election must be held in accordance with AS 29.06.140. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**ARTICLE 7. STANDARDS FOR DETACHMENT FROM CITIES.**

**Section**  
260. Standards

**3 AAC 110.260. STANDARDS.** (a) In addition to the requirements of AS 29.06, territory may be detached from a city if the commission determines that the detachment will serve the balanced best interests of the state, the territory to be detached, and the political subdivisions affected by the detachment. In this regard, the commission will, in its discretion, consider relevant factors, including

(1) the health, safety and general welfare of the city and the territory after detachment;

(2) the ability of the city or other governmental entity to efficiently and effectively provide reasonably necessary facilities and services to the territory after detachment;

(3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;

(4) the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory;

(5) the historical pattern of cooperation and shared commitment between the people of the city and the people of the territory;

(6) the extent to which detachment might enhance or diminish the ability of the remaining city to meet the standards for incorporation required under AS 29.05 and 3 AAC 110.010 — 3 AAC 110.040;

(7) the extent to which a transition plan of a previous annexation has been implemented and is effective;

(8) the effect of the proposed detachment on the long-term stability of the finances of the remaining city, other municipalities, and the state;

(9) whether the proposed detachment will promote local self-government with a minimum number of governmental units; and

(10) whether the territory's requirements for local government services will be adequately met following detachment.

(b) If, to fulfill the requirements of (a)(10) of this section, petitioners have proposed, or the commission requires, incorporation of the territory into a new municipality, the commission will, in its discretion, condition the approval of the detachment upon voter approval of the incorporation. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 44.33.814	AS 44.33.822
	art. X, sec. 12	AS 44.33.816	AS 44.33.826
	AS 29.06.040	AS 44.33.818	AS 44.33.828
	AS 44.33.812	AS 44.33.820	

## ARTICLE 8. STANDARDS FOR DETACHMENT FROM BOROUGH OR UNIFIED MUNICIPALITIES.

Section  
270. Standards

**3 AAC 110.270. STANDARDS.** (a) In addition to the requirements of AS 29.06, territory may be detached from a borough or unified municipality if the commission determines that the detachment will serve the balanced best interests of the state, the territory to be detached, and the political subdivisions affected by the detachment. In

this regard, the commission will, in its discretion, consider relevant factors, including

(1) the health, safety and general welfare of the borough or unified municipality and the territory after detachment;

(2) the ability of the borough, unified municipality, or other governmental entity to efficiently and effectively provide reasonably necessary facilities and services to the territory after detachment;

(3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;

(4) the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory;

(5) the historical pattern of cooperation and shared commitment between the people of the borough or unified municipality and the people of the territory;

(6) the extent to which detachment might enhance or diminish the ability of the remaining borough or unified municipality to meet the standards for incorporation contained in the Alaska Constitution and AS 29.05 and 3 AAC 110.045 — 3 AAC 110.060;

(7) the extent to which a transition plan of a previous annexation has been implemented and is effective;

(8) the effect of the proposed detachment on the long-term stability of the finances of the remaining borough or unified municipality, other municipalities, and the state;

(9) whether the proposed detachment will promote local self-government with a minimum number of governmental units; and

(10) whether the territory's requirements for local government services will be adequately met following detachment.

(b) If, to fulfill the requirements of (a)(10) of this section, petitioners have proposed, or the commission requires, incorporation of the territory into a new municipality, the commission will, in its discretion, condition the approval of the detachment upon voter approval of the incorporation. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.040	AS 44.33.818	AS 44.33.823
AS 44.33.812	AS 44.33.820	

#### ARTICLE 9. STANDARDS FOR DISSOLUTION OF CITIES.

**Section**  
280. Commission standards  
290. Local option standards

**Section**  
300. Best interests of state

**3 AAC 110.280. COMMISSION STANDARDS.** (a) After filing a petition under AS 29.06.450(a)(1), a city may dissolve if the commission determines that

- (1) dissolution of the city is in the best interests of the state;
- (2) the city is free of debt or has satisfied every creditor with a method of repayment; and
- (3) the city

(A) no longer meets the standards for incorporation established under AS 29.05 and 3 AAC 110.010 — 3 AAC 110.040; or

(B) has ceased to exercise each of its mandatory powers.

(b) The commission will, in its discretion, determine whether its decision favoring dissolution of a city should be submitted for legislative review in accordance with Art. X, sec. 12 of the Alaska Constitution.

(c) Except as otherwise provided in this subsection, in determining whether a city is free of debt or has satisfied every creditor with a method of repayment, the commission will require an audit identifying all assets and liabilities of the city. For the proposed dissolution of a home rule or first class city, and for the proposed dissolution of a second class city that has undergone an audit in each of the three years immediately preceding the petition for dissolution, the audit must be performed by an independent certified public accountant. For the proposed dissolution of a second class city that has not undergone an audit in each of the three years immediately preceding the petition for dissolution, the department will submit a written report identifying all assets and liabilities of that city. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.450	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.290. LOCAL OPTION STANDARDS.** (a) A city may be dissolved using the local option method identified in AS 29.06.450(a)(2) if the voters of the city file a petition for dissolution under AS 29.06.460 and the commission determines that the city qualifies for dissolution under AS 29.06.470(a) or AS 29.06.470(b). The commission will deny or accept a petition in accordance with AS 29.06.

(b) Except as otherwise provided in this subsection in determining, under AS 29.06.470, whether a city is free of debt or has satisfied every creditor with a method of repayment, the commission will require an audit identifying all assets and liabilities of the city. For the proposed dissolution of a home rule or first class city, and for the proposed dissolution of a second class city that has undergone an audit in each of the three years immediately preceding the petition for dissolution, the audit must be performed by an independent certified public accountant. For the proposed dissolution of a second class city that has

not undergone an audit in each of the three years immediately preceding the petition for dissolution, the department will submit a written report identifying all assets and liabilities of that city proposed for dissolution. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.500	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.06.450	AS 44.33.814	AS 44.33.826
AS 29.06.460	AS 44.33.816	AS 44.33.828
AS 29.06.470	AS 44.33.818	

**3 AAC 110.300. BEST INTERESTS OF STATE.** In determining, under AS 29.06.500(a) or 3 AAC 110.280, whether dissolution of a city is in the best interests of the state, the commission will, in its discretion, consider relevant factors, including

(1) the extent to which the city is providing services, receiving revenue, and incurring debt;

(2) whether a government or organization other than the state is willing and able to provide all services and facilities necessary to meet the needs of the community;

(3) whether dissolution of the city is likely to endanger the health, safety, or general welfare of residents in or near the city proposed for dissolution;

(4) the effect that the proposed dissolution will have on the harmony of relations among residents of the city proposed for dissolution, and between the residents of the city and others residing near the city;

(5) the social and economic impacts of the proposed dissolution on other communities in the state;

(6) the effect of the proposed dissolution on the long-term stability of the finances of other municipalities and the state; and

(7) circumstances identified by the commission reflecting the legal standards and principles that guide commission action in furthering the development of local self-government with a minimum number of governmental units. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.812	AS 44.33.820
art. X, sec. 12	AS 44.33.814	AS 44.33.822
AS 29.06.450	AS 44.33.816	AS 44.33.826
AS 29.06.500	AS 44.33.818	AS 44.33.828

#### ARTICLE 10. STANDARDS FOR DISSOLUTION OF BOROUGH OR UNIFIED MUNICIPALITIES.

Section  
310. Commission standards  
320. Local option standards

Section  
330. Best interests of state

**3 AAC 110.310. COMMISSION STANDARDS.** (a) After filing a petition under AS 29.06.450(a)(1), a borough or unified municipality may dissolve if the commission determines that

(1) dissolution of the borough or unified municipality is in the best interests of the state;

(2) the borough or unified municipality is free of debt or has satisfied every creditor with a method of repayment; and

(3) the borough or unified municipality

(A) no longer meets the standards for incorporation established under AS 29.05 and 3 AAC 110.045 — 3 AAC 110.060; or

(B) has ceased to exercise each of its mandatory powers.

(b) The commission will, in its discretion, determine whether its decision favoring dissolution of a borough or unified municipality should be submitted for legislative review in accordance with Art. X, sec. 12 of the Alaska Constitution.

(c) Except as otherwise provided in this subsection, in determining whether a borough or unified municipality is free of debt or has satisfied every creditor with a method of repayment, the commission will require an audit to be performed by an independent certified accountant identifying all assets and liabilities of the borough or unified municipality. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 44.33.814	AS 44.33.822
art. X, sec. 12	AS 44.33.816	AS 44.33.826
AS 29.06.450	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.320. LOCAL OPTION STANDARDS.** (a) A borough or unified municipality may be dissolved using the local option method identified in AS 29.06.450(a)(2) if the voters of the borough or unified municipality file a petition for dissolution under AS 29.06.460 and the commission determines that the borough or unified municipality qualifies for dissolution under AS 29.06.470(a) or AS 29.06.470(b). The commission will deny or accept a petition in accordance with AS 29.06.

(b) In determining, under AS 29.06.470, whether a borough or unified municipality is free of debt or has satisfied every creditor with a method of repayment, the commission will require an audit performed by an independent certified public accountant identifying all assets and liabilities of the borough or unified municipality. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.500	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.06.450	AS 44.33.814	AS 44.33.826
AS 29.06.460	AS 44.33.816	AS 44.33.828
AS 29.06.470	AS 44.33.818	

**3 AAC 110.330. BEST INTERESTS OF STATE.** In determining, under AS 29.06.500(a) or 3 AAC 110.280, whether dissolution of a borough or unified municipality is in the best interests of the state, the commission will, in its discretion, consider relevant factors, including

(1) the extent to which the borough or unified municipality is providing services, receiving revenue, and incurring debt;

(2) whether a government or organization other than the state is willing and able to provide all services and facilities necessary to meet the needs of the community;

(3) whether dissolution of the borough or unified municipality is likely to endanger the health, safety, or general welfare of residents in or near the borough or unified municipality proposed for dissolution;

(4) the effect that the proposed dissolution will have on the harmony of relations among residents of the borough or unified municipality proposed for dissolution, and between the residents of the borough or unified municipality and others residing near the borough or unified municipality;

(5) the social and economic impacts of the proposed dissolution on other communities in the state;

(6) the effect of the proposed dissolution on the long-term stability of the finances of other municipalities and the state; and

(7) circumstances identified by the commission reflecting the legal standards and principles that guide commission action in furthering the development of local self-government with a minimum number of governmental units. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 44.33.912	AS 44.33.820
	art. X, sec. 12	AS 44.33.814	AS 44.33.822
	AS 29.06.450	AS 44.33.816	AS 44.33.826
	AS 29.06.500	AS 44.33.818	AS 44.33.828

#### ARTICLE 11. STANDARDS FOR RECLASSIFICATION OF CITIES.

Section	Section
340. Application of incorporation standards	360. Best interests standard for a proposed first class city in the unorganized borough
350. Best interests standard for a proposed second class city in the unorganized borough	370. Best interests standard for cities within an organized borough

**3 AAC 110.340. APPLICATION OF INCORPORATION STANDARDS.** In determining, under AS 29.04.040(a), whether a city satisfies the incorporation standards for the class of city to which it is proposed to be reclassified, the commission will consider the applicable standards under AS 29.05.011, 29.05.021, and 3 AAC 110.010 — 3 AAC 110.040. (Eff. 11/27/96, Register 140)

Authority:	Alaska Const. art. X.	AS 44.33.814	AS 44.33.822
	§ 12	AS 44.33.816	AS 44.33.826
	AS 29.04.040	AS 44.33.818	AS 44.33.828
	AS 44.33.812	AS 44.33.820	

**3 AAC 110.350. BEST INTERESTS STANDARD FOR A PROPOSED SECOND CLASS CITY IN THE UNORGANIZED BOROUGH.** (a) In determining, under AS 29.04.040(a), whether reclassification of a home rule city or first class city to a second class city in the unorganized borough is in the best interests of the state, the commission will, in its discretion, consider relevant factors, including the

(1) reasonably anticipated fiscal impact to the state from the elimination of local contributions to the city school district under AS 14.17.025, reduced single site school district funding, changes in the area cost differential under AS 14.17.051, changes in funding under PL 81-874, and other effects;

(2) reasonably anticipated impacts on education from combining the city school district and the regional educational attendance area;

(3) ability of the city to provide essential city services, meet its financial and contractual obligations, and otherwise function under the more limited authority of a second class city to levy a property tax;

(4) reasonably anticipated need for mandatory planning, platting, and land use regulation within the boundaries of the city;

(5) reasonably anticipated need for the city to exercise the power of eminent domain; and

(6) likelihood that reclassification may promote formation of an organized borough in the region.

(b) The commission will, in its discretion, consult with the commissioner of the Department of Education and Early Development, the superintendent and school board of the city school district, and the superintendent, school board, and advisory school boards established under AS 14.08.115 of the regional educational attendance area in considering the factors in (a)(1) and (a)(2) of this section.

(c) The commission will, in its discretion, make a determination that reclassification is in the state's best interest, subject to legislative review in the manner provided by Alaska Const., art. X, sec. 12. In such circumstances, legislative review of a reclassification proposal does not eliminate the requirement for voter approval of a reclassification proposal under AS 29.04.040.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that it is not in the best interests of the state for a city to reclassify if reclassification will result in the transfer of the city's debt to the state for educational facilities. (Eff. 11/27/96, Register 140)

Authority: Alaska Const. art. X,	AS 44.33.814	AS 44.33.822
§ 12	AS 44.33.816	AS 44.33.826
AS 29.04.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.360. BEST INTERESTS STANDARD FOR A PROPOSED FIRST CLASS CITY IN THE UNORGANIZED BOROUGH.** (a) In determining, under AS 29.04.040(a), whether reclassification of a second class city to a first class city in the unorganized borough is in the best interests of the state, the commission will, in its discretion, consider relevant factors, including

(1) the reasonably anticipated fiscal impact to the state from the imposition of local contributions to the city school district under AS 14.17.025, increased single site school district funding, changes in the area cost differential under AS 14.17.051, changes in funding under PL 81-874, and other effects;

(2) the reasonably anticipated impacts on education resulting from the creation of a new city school district;

(3) whether the requirements of AS 14.12.025, concerning the formation of new school districts, have been met;

(4) the need for the city to have greater authority to levy a property tax in order to provide essential city services;

(5) the need for mandatory planning, platting, and land use regulation within the boundaries of the city;

(6) the need for the city to exercise the power of eminent domain; and

(7) the likelihood that reclassification will diminish incentives or opportunities to form an organized borough.

(b) The commission will, in its discretion, consult with the commissioner of the Department of Education and Early Development and the superintendent, school board, and advisory school boards established under AS 14.08.115 of the regional educational attendance area in considering the factors in (a)(1) — (a)(3) of this section.

(c) The commission will, in its discretion, make a determination that reclassification is in the state's best interest, subject to legislative review in the manner provided by Alaska Const., art. X, sec. 12. In such circumstances, legislative review of a reclassification proposal does not eliminate the requirement for voter approval of a reclassification proposal under AS 29.04.040. (Eff. 11/27/96, Register 140)

Authority: Alaska Const. art. X,	AS 44.33.814	AS 44.33.822
§ 12	AS 44.33.816	AS 44.33.826
AS 29.04.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

**3 AAC 110.370. BEST INTERESTS STANDARD FOR CITIES WITHIN AN ORGANIZED BOROUGH.** (a) In determining, under AS 29.04.040(a), whether reclassification of a city within an organized borough is in the best interests of the state, the commission will, in its

discretion, consider relevant factors, including the

(1) fiscal impact to the state;

(2) need for the city to have authority to levy a property tax, and at what rate, to provide essential city services; and

(3) need for the city to exercise the power of eminent domain.

(b) The commission will, in its discretion, make a determination that reclassification is in the state's best interest, subject to legislative review in the manner provided by Alaska Const., art. X, sec. 12. In such circumstances, legislative review of a reclassification proposal does not eliminate the requirement for voter approval of a reclassification proposal under AS 29.04.040. (Eff. 11/27/96, Register 140)

Authority: Alaska Const. art. X,	AS 44.33.814	AS 44.33.822
§ 12	AS 44.33.816	AS 44.33.826
AS 29.04.040	AS 44.33.818	AS 44.33.828
AS 44.33.812	AS 44.33.820	

## ARTICLE 12. PROCEDURES FOR PETITIONING.

Section	Section
400. Applicability	550. Commission public hearing
410. Petitioners	560. Commission hearing procedures
420. Petition	570. Decisional meeting
430. Consolidation of petitions	580. Reconsideration
440. Technical review of petition	590. Local action boundary changes
450. Notice of petition	600. Local action/local option elections
460. Service of petition	610. Legislative review
470. Proof of notice and service	620. Judicial review
480. Responsive briefs	630. Effective date and certification
490. Reply brief	640. Scheduling
500. Limitations on advocacy	650. Resubmittals and reversals
510. Informational sessions	660. Purpose of procedural regulations; relaxation or suspension of procedural regulation
520. Departmental public meetings	
530. Departmental report	
540. Amendments and withdrawal	

**3 AAC 110.400. APPLICABILITY.** Except as provided in 3 AAC 110.590, 3 AAC 110.410 — 3 AAC 110.660 apply to all petitions for incorporation under AS 29.05 and all alterations to municipalities under AS 29.06. However, a petition filed under a local action or local option method, provided for in AS 29.06, may only need to comply with certain sections of 3 AAC 110.410 — 3 AAC 110.660 as identified in 19 AAC 10.590. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.450	AS 44.33.818
art. X, sec. 12	AS 29.06.460	AS 44.33.820
AS 29.05.060	AS 44.33.812	AS 44.33.822
AS 29.06.040	AS 44.33.814	AS 44.33.826
AS 29.06.090	AS 44.33.816	AS 44.33.828
AS 29.06.100		

**3 AAC 110.410. PETITIONERS.** (a) A petition for a proposed action by the commission under this chapter may be initiated by

(1) the Alaska Legislature,

- (2) the commissioner,
- (3) the staff of the commission or a person designated by the commission,
- (4) a political subdivision of the state,
- (5) at least 10 percent of the persons registered to vote in a political subdivision; those registered voters must be permanent residents of that subdivision;
- (6) at least 10 percent of the persons registered to vote in a territory proposed for annexation or detachment; those registered voters must be permanent residents of that territory, or
- (7) the number of qualified voters required under AS 29.06 for a local option or local action petition.

(b) If a statute requires that the petition be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition.

(c) The signature requirements of (a)(5) — (7) of this section shall not be construed to apply to a petition submitted by a petitioner under the discretionary petition process of the commission.

(d) The staff of the commission or a person designated by the commission may initiate a petition after the commission has determined that the action proposed will promote the standards established under AS 29.05, AS 29.06, and this chapter, and the commission has directed the staff or designated person to prepare a petition by a motion approved by a majority of the appointed membership of the commission.

(e) The person or entity initiating a petition is designated as the petitioner, except that a petition initiated by qualified voters must include a designation of one person as representative of all petitioners. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.450	AS 44.33.815
art. X, sec. 12	AS 29.06.460	AS 44.33.820
AS 29.05.060	AS 44.33.812	AS 44.33.822
AS 29.06.040	AS 44.33.814	AS 44.33.826
AS 29.06.090	AS 44.33.816	AS 44.33.828
AS 29.06.100		

**3 AAC 110.420. PETITION.** (a) A proposal for one or more actions by the commission under this chapter is initiated by filing a petition and a supporting brief with the department.

(b) A petition must be filed on a form approved by the commission and provided by the department. The petition must be accompanied by all exhibits required by the department.

(c) A supporting brief must address relevant constitutional, statutory and regulatory standards applicable to the proposed action, and

include a detailed explanation of how the standards apply to the proposed action. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.450	AS 44.33.818
art. X, sec. 12	AS 29.06.460	AS 44.33.820
AS 29.05.060	AS 44.33.812	AS 44.33.822
AS 29.06.040	AS 44.33.814	AS 44.33.826
AS 29.06.090	AS 44.33.816	AS 44.33.828
AS 29.06.100		

**3 AAC 110.430. CONSOLIDATION OF PETITIONS.** If two or more petitions pending action by the commission affect contiguous territory or any portion of the same territory, the chairperson of the commission will, in the chairperson's discretion, consolidate the informational session, department, report, commission, meeting, hearing, briefing schedule, decisional meeting, or other procedure under this chapter for one or more of those petitions. The commission will, in its discretion, consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.450	AS 44.33.818
art. X, sec. 12	AS 29.06.470	AS 44.33.820
AS 29.05.060	AS 44.33.812	AS 44.33.822
AS 29.06.040	AS 44.33.814	AS 44.33.826
AS 29.06.090	AS 44.33.816	AS 44.33.828
AS 29.06.100		

**3 AAC 110.440. TECHNICAL REVIEW OF PETITION.** (a) The department will review the petition, exhibits, and brief to determine whether the required information has been submitted and, when applicable, whether the petition contains the legally required number of valid signatures.

(b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides in a territory, and the number of persons who voted in the territory during the last election.

(c) If the department determines that the petition or brief is deficient in form or content, the defective petition or brief will be returned to the petitioner for correction or completion. If the department determines that the petition and brief are in substantial compliance with AS 29.05, AS 29.06, and this chapter, the petitioner will be notified that the petition and brief have been accepted for filing and the department will file the petition. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.480	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.05.070	AS 44.33.814	AS 44.33.826
AS 29.06.040	AS 44.33.816	AS 44.33.828
AS 29.06.110	AS 44.33.818	

**3 AAC 110.450. NOTICE OF PETITION.** (a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall

(1) publish a public notice of the filing of the petition at least once each week for three consecutive weeks in newspapers of general circulation designated by the department that are printed in a display ad format of no less than six inches long by two columns wide;

(2) post a notice of the filing of the petition in at least three public and prominent locations within the territory proposed for change and other locations designated by the department that remain posted for at least 14 consecutive days; and

(3) hand-deliver or mail, postage prepaid, a copy of the notice posted in accordance with (2) of this subsection, correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department.

(b) The department will specify the wording of the public notices required in (a) of this section. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.500	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.05.100	AS 44.33.814	AS 44.33.826
AS 29.06.040	AS 44.33.816	AS 44.33.828
AS 29.06.130	AS 44.33.818	

**3 AAC 110.460. SERVICE OF PETITION.** (a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department.

(b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a)(1), through the last date available for reconsideration of the final decision under 3 AAC 110.580, the petitioner shall make a full set of petition documents, including responsive and reply briefs and department reports, available for review by the public at a central and convenient location such as a city hall or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents, and the hours when the documents can be reviewed. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.500	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.05.100	AS 44.33.814	AS 44.33.826
AS 29.06.040	AS 44.33.816	AS 44.33.828
AS 29.06.130	AS 44.33.818	

**3 AAC 110.470. PROOF OF NOTICE AND SERVICE.** No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department six complete sets of petition documents, a sworn affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 — 3 AAC 110.460 have been satisfied. Maps and other exhibits submitted with copies of the petition shall conform to the original in color and other distinguishing characteristics. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.500	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.05.100	AS 44.33.814	AS 44.33.826
AS 29.06.040	AS 44.33.816	AS 44.33.828
AS 29.06.130	AS 44.33.818	

**3 AAC 110.480. RESPONSIVE BRIEFS.** (a) Any interested person or entity may file with the department a responsive brief containing facts and analyses favorable or adverse to the original petition.

(b) The responsive brief, and any companion exhibits, must be filed with a sworn affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by a sworn affidavit of service of the brief on the petitioner by regular mail, postage prepaid, or by hand-delivery. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.130	AS 44.33.818
art. X, sec. 12	AS 29.06.480	AS 44.33.820
AS 29.05.080	AS 29.06.500	AS 44.33.822
AS 29.05.100	AS 44.33.812	AS 44.33.826
AS 29.06.040	AS 44.33.814	AS 44.33.828
AS 29.06.110	AS 44.33.816	

**3 AAC 110.490. REPLY BRIEF.** The petitioner may file one reply brief in response to all responsive briefs filed timely under 3 AAC 110.480. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be accompanied by a sworn affidavit of service of the brief on all

respondents by regular mail, postage prepaid, or by hand-delivery. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.130	AS 44.33.818
art. X, sec. 1.	AS 29.06.480	AS 44.33.820
AS 29.05.080	AS 29.06.500	AS 44.33.822
AS 29.05.100	AS 44.33.812	AS 44.33.826
AS 29.06.040	AS 44.33.814	AS 44.33.828
AS 29.06.110	AS 44.33.816	

**3 AAC 110.500. LIMITATIONS ON ADVOCACY.** (a) Unless otherwise ordered by the chairperson of the commission, for good cause shown, no document, letter or brief will be accepted for filing and consideration by the department or the commission except in accordance with the procedures, timeframes, hearings and meetings specified in 3 AAC 110.400 — 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date available for the commission's reconsideration. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.130	AS 44.33.818
art. X, sec. 12	AS 29.06.480	AS 44.33.820
AS 29.05.080	AS 29.06.500	AS 44.33.822
AS 29.05.100	AS 44.33.812	AS 44.33.826
AS 29.06.040	AS 44.33.814	AS 44.33.828
AS 29.06.110	AS 44.33.816	

**3 AAC 110.510. INFORMATIONAL SESSIONS.** (a) If the department determines that persons affected by a proposed change have not had an adequate opportunity to be informed about the scope, benefits and detriments of the proposed change, the department will, in its discretion, require the petitioner to conduct informational sessions, and to submit a recording, transcription, or summary of those sessions to the department.

(b) The department will not proceed with the processing of the petition until the petitioner has certified, by sworn affidavit, that the informational session requirements of this section have been met. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.130	AS 44.33.818
art. X, sec. 12	AS 29.06.480	AS 44.33.820
AS 29.05.080	AS 29.06.500	AS 44.33.822
AS 29.05.100	AS 44.33.812	AS 44.33.826
AS 29.06.040	AS 44.33.814	AS 44.33.828
AS 29.06.110	AS 44.33.816	

**3 AAC 110.520. DEPARTMENTAL PUBLIC MEETINGS.**  
(a) During its investigation and analysis of a petition for incorpora-

tion, the department will convene at least one public meeting in the territory proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department will, in its discretion, convene at least one public meeting in or near the territory proposed for change.

(b) Notice of the date, time and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to all respondents at least 15 days before the public meetings. The notice will be published by the department at least once each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people in the affected territory. The petitioner shall post the same notice in at least three public and prominent locations in or near the territory proposed for change, and at the same location the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner shall submit to the department a sworn affidavit certifying that the posting requirements of this subsection have been met.

(c) Staff assigned to the commission will preside at the public meeting. Written materials submitted at the public meeting will, in the discretion of the presiding staff person, be accepted with due regard to prior public notice and opportunity to submit written briefs. Except in extraordinary circumstances, the petitioner and the respondents will not be permitted to submit further written materials at the meeting. The public meeting will be recorded, and summarized in the report and recommendations of the department, prepared under 3 AAC 110.530.

(d) The department will, in its discretion, postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting, if the meeting is relocated within the same community or territory, and is rescheduled no more than 72 hours after the originally scheduled time. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 29.06.480	AS 44.33.818
	art. X, sec. 12	AS 29.06.490	AS 44.33.820
	AS 29.05.060	AS 44.33.812	AS 44.33.822
	AS 29.06.040	AS 44.33.814	AS 44.33.824
	AS 29.06.090	AS 44.33.816	AS 44.33.826
	AS 29.06.110		

**3 AAC 110.530. DEPARTMENTAL REPORT.** (a) The department will investigate and analyze a petition filed with the department under this chapter, and will submit to the commission a written report of its findings and recommendations regarding the petition.

(b) The department will mail to the petitioner and respondents a proposed draft of its report and recommendations before submitting final report and recommendations to the commission. Within 24 hours

of receipt of the draft report and recommendations, the petitioner shall place a copy of the report with the petition documents available for review.

(c) The petitioner, respondents, and other interested persons may submit, to the department, written comments pertaining directly to the draft report and recommendations. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(d) The final written report and recommendations of the department will include due consideration of written comments addressing the draft report and recommendations. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.490	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.05.080	AS 44.33.814	AS 44.33.826
AS 29.06.040	AS 44.33.816	AS 44.33.828
AS 29.06.110	AS 44.33.818	

**3 AAC 110.540. AMENDMENTS AND WITHDRAWAL.** (a) A petitioner may amend or withdraw the original petition at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. If the signatures of voters were required by AS 29.05 or AS 29.06 in the original petition,

(1) the amending petition must contain the dated signatures of the same number of voters in the manner required for the original petition, and must include the dated signatures of at least a majority of the same voters who signed the original petition; and

(2) a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing in the area of the proposed change, and must include at least a majority of the same voters who signed the original petition.

(b) A petitioner shall serve the amending petition on each person and entity designated by the department, and by 3 AAC 110.400 — 3 AAC 110.660 to receive the original petition, and on the respondents to the original petition. A petitioner shall place a copy of the amending petition with the original petition documents, post the public notice of the amending petition, and submit a sworn affidavit of service and notice in the same manner required for the original petition.

(c) The chairperson of the commission will, in the chairperson's discretion, determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.400 — 3 AAC 110.660. Additional informational sessions, meetings, briefings, or other step or process will be conducted in accordance with the procedures specified in 3 AAC 110.400 — 3 AAC 110.660 for the processing of the original petition, except that the timing may be shortened in the chairperson's discretion.

(d) A petitioner may not amend or withdraw the original petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition, except upon a clear showing to the commission that the public interest of the state and of the population affected by the proposed change is best served by allowing the proposed amendment or withdrawal. A petition for amendment or withdrawal allowed under this subsection, must include the same signature requirements specified in (a) of this section. Unless modified by an order of the chairperson of the commission, the procedures of 3 AAC 110.400 — 3 AAC 110.660 for the processing of an original petition apply to an amending petition or statement of withdrawal. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.450	AS 44.33.818
art. X, sec. 12	AS 29.06.460	AS 44.33.820
AS 29.05.060	AS 44.33.812	AS 44.33.822
AS 29.06.040	AS 44.33.814	AS 44.33.826
AS 29.06.090	AS 44.33.816	AS 44.33.828
AS 29.06.100		

**3 AAC 110.550. COMMISSION PUBLIC HEARING.** (a) The commission will convene one or more public hearings at convenient locations in or near the territory of the proposed change as required under AS 29.05, AS 29.06, AS 44.33.810 — 44.33.828, and this chapter.

(b) Notice of the date, time, place and subject of the hearing will be

(1) mailed, postage prepaid, by the department to the petitioner and to all respondents;

(2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than six inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people in the territory; and

(3) posted by the petitioner in at least three public and prominent locations in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

(c) The department will submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving the area of the proposed change and request that it be announced as frequently as possible during the 21 days preceding the date of the hearing.

(d) The commission will, in its discretion, postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time. (Eff. 7/31/92, Register 123)

Authority: Alaska Const., art. X, sec. 12 AS 29.05.090 AS 29.06.040 AS 29.06.120	AS 29.06.490 AS 44.33.812 AS 44.33.814 AS 44.33.816 AS 44.33.818	AS 44.33.820 AS 44.33.822 AS 44.33.826 AS 44.33.828
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### 3 AAC 110.560. COMMISSION HEARING PROCEDURES.

(a) The chairperson of the commission will preside at the hearing, and will regulate the time and the content of testimony to exclude irrelevant or repetitious testimony. The hearing must be recorded and the tapes preserved by the department. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) A hearing will, in the commission's discretion, include

- (1) a report with recommendations from the department;
- (2) an opening statement by the petitioner, not to exceed 10 minutes in length;
- (3) a period of public comment by interested persons, not to exceed five minutes for each person;
- (4) sworn testimony of witnesses called by the petitioner;
- (5) sworn testimony of witnesses called by respondents who have filed briefs under 3 AAC 110.480;
- (6) sworn responsive testimony of witnesses called by the petitioner;
- (7) a closing statement by the petitioner, not to exceed 10 minutes in length;
- (8) a closing statement by the respondents who testified under (5) of this subsection, not to exceed 10 minutes in length for each respondent; and
- (9) a reply by the petitioner, not to exceed five minutes in length.

(c) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission will, in its discretion, call additional witnesses.

(d) A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the report and recommendations of the department.

(e) The commission will, in its discretion, amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the commission's ability to make an informed decision. (Eff. 7/31/92, Register 123)

Authority: Alaska Const., art. X, sec. 12 AS 29.05.090 AS 29.06.040 AS 29.06.120	AS 29.06.490 AS 44.33.812 AS 44.33.814 AS 44.33.816 AS 44.33.818	AS 44.33.820 AS 44.33.822 AS 44.33.826 AS 44.33.828
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**3 AAC 110.570. DECISIONAL MEETING.** (a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. No new evidence, testimony or briefing will be received during the decisional meeting, however, the chairperson may ask the department or by some other person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change should be altered to meet the standards established contained in the Alaska Constitution, AS 29.05, AS 29.06, or this chapter, the commission will, in its discretion, alter the proposed change and accept the petition as altered. If the commission determines that a petitioner must satisfy a certain requirement before the proposed change can take effect, the commission will include that precondition in its decision.

(d) If the commission determines that a proposed change fails to meet the standards established contained in the Alaska Constitution, AS 29.05, AS 29.06, or this chapter, the commission must reject the proposed change by a majority vote of the presently appointed membership. If the commission determines that a proposed change meets the standards established contained in the Alaska Constitution, AS 29.05, AS 29.06, or this chapter, or can be altered to meet those standards, the commission must accept the proposed or altered change by a majority vote of the presently appointed membership.

(e) The commission must keep written minutes of all decisional meetings. All votes taken by the commission must be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, to all respondents, and to other interested persons requesting a copy.

(g) A decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents. The department will execute and file a sworn affidavit of mailing as a part of the public record of the proceedings. (Eff. 7/31/92, Register 123)

<b>Authority:</b>	Alaska Const. art. X,	AS 29.06.500	AS 44.33.820
	sec. 12	AS 44.33.812	AS 44.33.922
	AS 29.05.100	AS 44.33.814	AS 44.33.826
	AS 29.06.040	AS 44.33.816	AS 44.33.828
	AS 29.06.130	AS 44.33.818	

**3 AAC 110.580. RECONSIDERATION.** (a) Within 20 days after a decision of the commission is final under 3 AAC 110.570(g),

(1) a person may file a request for reconsideration of that decision, describing in detail the facts and analyses that support the request for reconsideration; or

(2) the commission will, in its discretion, order reconsideration of all or part of its decision on its own motion.

(b) If the commission has taken no action on a request for reconsideration within 30 days after the decision became final under 3 AAC 110.570(g), the request is automatically denied. If the commission grants a request for reconsideration within 30 days after the final decision under 3 AAC 110.570(g), a petitioner or respondent opposing the reconsideration is allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.500	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.05.100	AS 44.33.814	AS 44.33.826
AS 29.06.040	AS 44.33.816	AS 44.33.828
AS 29.06.130	AS 44.33.818	

**3 AAC 110.590. LOCAL ACTION BOUNDARY CHANGES.**

(a) Except as otherwise provided in this section, if a petition is filed with the department under a local action or local option method provided for in AS 29.06, for dissolution, annexation, detachment, merger, or consolidation, only the following procedures specified in 3 AAC 110.400 — 3 AAC 110.660 are required:

- (1) filing a petition under 3 AAC 110.420;
- (2) technical review of the petition under 3 AAC 110.440;
- (3) notice and service of the petition under 3 AAC 110.450 — 3 AAC 110.470;
- (4) departmental report under 3 AAC 110.530;
- (5) commission's public hearing under 3 AAC 110.550;
- (6) decisional meeting under 3 AAC 110.570.

(b) The commission will, in its discretion, expand local action or local option procedures to include other requirements of 3 AAC 110.400 — 3 AAC 110.660, such as additional notice and service, briefing, informational sessions, and public meetings and hearings, if the commission determines that the best interests of the state are enhanced by expanded public participation.

(c) The commission will, in its discretion, relax, reduce, or eliminate the notice and service requirements of 3 AAC 110.450 — 3 AAC 110.470 if the commission determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

(d) The commission, in its discretion, will not require the commission public hearing under 3 AAC 110.550, and will modify the departmental report requirement under 3 AAC 110.530, for a petition proposing annexation of adjacent municipally owned property, or for a petition proposing annexation of adjacent property by unanimous consent of voters and property owners.

(e) If the commission determines that the balanced best interests of the locality and the state are enhanced by statewide participation, the commission will, in its discretion convert a local action or local option petition to a legislative review petition. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 44.33.812	AS 44.33.820
	art. X, sec. 12	AS 44.33.814	AS 44.33.822
	AS 29.06.040	AS 44.33.816	AS 44.33.826
	AS 29.06.090	AS 44.33.818	AS 44.33.828
	AS 29.06.450		

**3 AAC 110.600. LOCAL ACTION/LOCAL OPTION ELECTIONS.** (a) In accordance with AS 29.05 and AS 29.06, the commission will notify the director of elections of its acceptance of a local action or local option petition proposing incorporation, dissolution, merger, or consolidation. The director of elections will conduct and certify the elections in accordance with AS 15 and AS 29.05 — AS 29.06.

(b) If AS 29.06 requires a local election for a proposed annexation or detachment, the commission will notify the clerk of the affected municipality of the commission's acceptance of a local option petition. The election must be administered by the affected municipality at its own cost, and in the manner prescribed by its municipal election code, except that the commission will, in its discretion, specify the wording of the ballot measure and broaden the election notice requirements. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 29.06.140	AS 44.33.818
	art. X, sec. 12	AS 29.06.510	AS 44.33.820
	AS 29.05.110	AS 44.33.812	AS 44.33.822
	AS 29.05.120	AS 44.33.814	AS 44.33.826
	AS 29.06.040	AS 44.33.816	AS 44.33.828

**3 AAC 110.610. LEGISLATIVE REVIEW.** (a) The commission may determine during the course of proceedings that a legislative review petition should be amended and considered as a local action or local option petition, if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

(b) If the commission determines that a decision of the commission as requires legislative review, the commission will present the petition to the legislature during the first 10 days of the next regular session. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.812	AS 44.33.820
art. X, sec. 12	AS 44.33.814	AS 44.33.822
AS 29.06.040	AS 44.33.816	AS 44.33.826
AS 29.06.090	AS 44.33.818	AS 44.33.828
AS 29.06.450		

**3 AAC 110.620. JUDICIAL REVIEW.** A final decision of the commission made under AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62). (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.500	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.05.100	AS 44.33.814	AS 44.33.826
AS 29.06.040	AS 44.33.816	AS 44.33.828
AS 29.06.130	AS 44.33.818	

**3 AAC 110.630. EFFECTIVE DATE AND CERTIFICATION.**

(a) Except as provided in (b) of this section, a final decision of the commission is effective when

(1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;

(2) certification of the legally required voter approval of the commission's final decision is received from the director of the division of elections or the appropriate municipal official; and

(3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.

(b) The effective date of a merger or consolidation is the date set by the director of the division of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.

(c) When the requirements in (a) of this section have been met, the department will issue a certificate describing the effective change. The department will hand-deliver or mail, postage prepaid, a copy of the certificate to all municipalities affected by the change, and will file a copy of the certificate in each recording district of all territory affected by the change. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 29.06.510	AS 44.33.820
art. X, sec. 12	AS 44.33.812	AS 44.33.822
AS 29.05.120	AS 44.33.814	AS 44.33.826
AS 29.06.040	AS 44.33.816	AS 44.33.828
AS 29.06.140	AS 44.33.818	

**3 AAC 110.640. SCHEDULING.** (a) The chairperson of the commission will issue an order setting or amending a formal schedule for action on a petition.

(b) A schedule under (a) of this section will allow at least

(1) 49 days from the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief;

(2) 14 days from the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner;

(3) 28 days from the date of mailing of a departmental draft report and recommendation to the petitioner for receipt of written summary comments to the department;

(4) 21 days between the date of mailing of a final report and recommendation by the department to the petitioner and the commission hearing on the petition.

(c) The commission will, in its discretion, postpone proceedings on a petition for the purpose of allowing concurrent consideration and action on another existing or anticipated petition that will pertain to some or all of the same territory. A competing petition must be received by the department no later than 90 days after the date of the first posting of notice of the earlier petition under 3 AAC 110.410. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.110	AS 44.33.816
art. X, sec. 12	AS 29.06.120	AS 44.33.818
AS 29.05.080	AS 29.06.480	AS 44.33.820
AS 29.05.090	AS 29.06.490	AS 44.33.822
AS 29.06.040	AS 44.33.812	AS 44.33.826
AS 29.06.090	AS 44.33.814	AS 44.33.828

**3 AAC 110.650. RESUBMITTALS AND REVERSALS.** Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

(1) is substantially similar to a petition denied by the commission, rejected by the legislature, or rejected by the voters during the immediately preceding 24 months; or

(2) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months. (Eff. 7/31/92, Register 123)

<b>Authority:</b> Alaska Const.,	AS 29.06.450	AS 44.33.818
art. X, sec. 12	AS 29.06.500	AS 44.33.820
AS 29.05.100	AS 44.33.812	AS 44.33.822
AS 29.06.040	AS 44.33.814	AS 44.33.826
AS 29.06.090	AS 44.33.816	AS 44.33.828
AS 29.06.130		

**3 AAC 110.660. PURPOSE OF PROCEDURAL REGULATIONS; RELAXATION OR SUSPENSION OF PROCEDURAL REGULATION.** 3 AAC 110.400 — 3 AAC 110.660 are procedural regulations designed to facilitate the business of the commission, and shall be construed to secure the reasonable, speedy and inexpensive

determination of every action and proceeding. Unless a requirement is strictly provided for in the Alaska Constitution, AS 29, or AS 44.33.810 — 44.33.849, the commission will, in its discretion, relax or suspend a procedural regulation if the commission determines that a strict adherence to the regulation would work injustice or result in a substantially uninformed decision. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 29.06.450	AS 44.33.820
	art. X, sec. 12	AS 44.33.812	AS 44.33.822
	AS 29.05.100	AS 44.33.814	AS 44.33.826
	AS 29.06.040	AS 44.33.816	AS 44.33.828
	AS 29.06.090	AS 44.33.818	

### ARTICLE 13. GENERAL PROVISIONS.

<b>Section</b>	<b>Section</b>
900. Transition	920. Determination of community
910. Statement of non-discrimination	990. Definitions

**3 AAC 110.900. TRANSITION.** (a) A petition for incorporation, annexation, merger or consolidation must include a practical plan in which the municipal government demonstrates its intent and capability to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for detachment or dissolution must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment.

(b) A petition for a proposed action by the commission must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, service area, or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city or service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) A petition for a proposed action by the commission must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, service area or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, or service area affected by the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occurs without loss of

value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission will, in its discretion, require that all affected boroughs, cities, service areas, or other entities execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities. (Eff. 7/31/92, Register 123)

Authority: Alaska Const., art. X, sec. 12 AS 29.05.130 AS 29.05.140 AS 29.06.040 AS 29.06.090	AS 29.06.150 AS 29.06.160 AS 44.33.812 AS 44.33.814 AS 44.33.816	AS 44.33.818 AS 44.33.820 AS 44.33.822 AS 44.33.826 AS 44.33.828
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**3 AAC 110.910. STATEMENT OF NON-DISCRIMINATION.** A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. (Eff. 7/31/92, Register 123)

Authority: Alaska Const., art. X, sec. 12 AS 44.33.812 AS 44.33.814	AS 44.33.816 AS 44.33.818 AS 44.33.820	AS 44.33.822 AS 44.33.826 AS 44.33.828
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**3 AAC 110.920. DETERMINATION OF COMMUNITY.** (a) In determining whether a population comprises a community or social unit, the commission will, in its discretion, consider relevant factors, including whether the people

(1) reside permanently in a close geographical proximity that allows frequent personal contacts and has a population density that is characteristic of neighborhood living;

(2) residing permanently at a location are a discrete and identifiable unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community or social unit if

(1) public access to or the right to reside at, the location of the population is restricted;

(2) the population is contiguous or closely adjacent to a community or social unit and is dependent upon that community or social unit for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who

do not consider the place to be their permanent residence. (Eff. 7/31/92, Register 123)

Authority: Alaska Const.,	AS 44.33.816	AS 44.33.822
art. X, sec. 12	AS 44.33.818	AS 44.33.826
AS 44.33.812	AS 44.33.820	AS 44.33.828
AS 44.33.814		

**3 AAC 110.990. DEFINITIONS.** Unless the context indicates otherwise, in this chapter

(1) "borough" means a general law borough, a home rule borough, or a unified municipality;

(2) "commission" means the Local Boundary Commission;

(3) "commissioner" means the commissioner of the Department of Community and Economic Development;

(4) a "community" is a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;

(5) "contiguous" means territories and properties that are adjacent, adjoining, and touching each other;

(6) "department" means the Department of Community and Economic Development;

(7) "essential borough services" means those mandatory and discretionary activities and facilities that are determined by the commission to be reasonably necessary to the territory and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; "essential borough services" may include

(A) assessing and collecting taxes;

(B) providing primary and secondary education;

(C) planning, platting, and land use regulation; and

(D) other services that the commission considers reasonably necessary to meet the borough governmental needs of the territory;

(8) "essential city services" means those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; "essential city services" may include

(A) assessing, levying, and collecting taxes;

(B) providing primary and secondary education in first class and home rule cities in an unorganized borough;

(C) public safety protection;

(D) planning, platting and land use regulation; and

(E) other services that the commission considers reasonably necessary to meet the local governmental needs of the community;

(9) "mandatory power" means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; "mandatory power" may include

- (A) assessing, levying, and collecting taxes;
- (B) providing education, public safety, public health, and sanitation services;
- (C) planning, platting and land use regulation;
- (D) conducting elections; and
- (E) other acts, duties, or obligations required by law to meet the local governmental needs of the community;

(10) "permanent residence" means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the commission;

(11) "political subdivision" means a borough, unified municipality, city, regional educational attendance area, or coastal resource service area organized and operated under state law;

(12) "property owner" means a legal person holding a vested fee simple interest in the surface or subsurface estate of any real property including submerged lands; lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, and holders of unvested interests in land are not "property owners" for purposes of this chapter. (Eff. 7/31/92, Register 123)

Authority:	Alaska Const.,	AS 44.33.816	AS 44.33.822
	art. X, sec. 12	AS 44.33.818	AS 44.33.826
	AS 44.33.812	AS 44.33.820	AS 44.33.828
	AS 44.33.814		

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Register \_\_\_\_\_, \_\_\_\_\_ 200\_\_

COMMUNITY AND ECON. DEV.

**ARTICLE 01 - STANDARDS FOR INCORPORATION OF CITIES**

3 AAC 110 is amended by adding a new section to read:

**3 AAC 110.005 COMMUNITY.** An area proposed for incorporation as a city must encompass a community as defined in 3 AAC 110.990. (Eff. / / , Register )

Authority: AS 29.05.011	AS 44.33.812	AS 44.33.826
AS 44.33.814	AS 44.33.816	AS 44.33.820
AS 44.33.822	AS 44.33.828	AS 44.33.818

3 AAC 110.010 is amended to read:

**3 AAC 110.010 NEED.** (a) In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government. In this regard, the commission will, in its discretion, consider relevant factors including

(1) existing or reasonably anticipated social or economic conditions

[PROBLEMS];

(2) existing or reasonably anticipated health, safety, and general welfare

conditions [PROBLEMS];

(3) existing or reasonably anticipated economic development; and

(4) adequacy of existing services.

\* received from LBC JAN. 2002; MAJ

(b) In accordance with AS 29.05.021, a community may not incorporate as a city if essential city services can be provided more efficiently or more effectively by annexation to an existing city, or can be provided more efficiently or more effectively by an existing organized borough on an areawide basis or non-areawide basis, or through an existing borough service area. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: AS 29.05.011	[AS 29.05.011]	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.020 is amended to read:

**3 AAC 110.020 RESOURCES.** (a) In accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to allow [PROVIDE] essential city services on an efficient, cost-effective level. In this regard, the commission shall consider (1) - (8) of this subsection and will, in its discretion, consider other relevant factors, including (9) - (11) of this subsection [THE]

- (1) reasonably anticipated functions of the proposed city;
- (2) reasonably anticipated expenses of the proposed city;
- (3) reasonably anticipated income and ability of the proposed city to generate

and collect local revenue and income;

(4) feasibility and plausibility of the anticipated operating and capital budgets [BUDGET] of the proposed city through its third full fiscal year of operation;

(5) economic base of the proposed city;

(6) property valuations for the proposed city;

(7) [LAND USE FOR THE PROPOSED CITY;]

[8] existing and reasonably anticipated industrial, commercial, and resource development for the proposed city;

(8) [9] personal income of residents of the proposed city;

(9) land use for the proposed city:

(10) need for and availability of employable skilled and unskilled persons to serve the proposed city; and

(11) reasonably predictable level of commitment and interest of the residents in sustaining a city. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12] AS

29.05.011

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

3 AAC 110.030 is amended to read:

**3 AAC 110.030 POPULATION.** (a) In accordance with AS 29.05.011, the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumeration;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(b) To become a first class or home rule city, the territory proposed for incorporation must have a population of at least 400 permanent residents. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.05.011	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110 is amended by adding a new section to read:

**3 AAC 110.035 BEST INTERESTS OF STATE.** In determining whether incorporation of a city is in the best interests of the state under AS 29.05.100(a), the commission will, in its discretion, consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units;
- (3) will relieve the state government of the responsibility of providing local services; and
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the city in the event of its dissolution. (Eff. / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.05.100

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.040 is amended to read.

**3 AAC 110.040 BOUNDARIES.** (a) In accordance with AS 29.05.011, the boundaries of a proposed city must include all land and water necessary to allow for [PROVIDE] the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;

- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

(b) The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation [OF THAT CITY].

(c) The boundaries of the proposed city must not include entire geographical regions or large unpopulated areas, except when such boundaries are justified by the application of the standards in 3 AAC 110.005-3 AAC 110.046 [3 AAC 110.010 - 3 AAC 110.040].

(d) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential city services on an efficient, cost-effective level.

(e) If a petition for incorporation of a proposed city describes boundaries overlapping the boundaries of an existing organized borough [, UNIFIED MUNICIPALITY,] or city, the petition for incorporation must also address and comply with all standards and procedures for either annexation of the new city to the existing borough, or detachment of the overlapping region from the existing borough [, UNIFIED MUNICIPALITY,] or city. The commission will consider and treat such an incorporation petition as also being either an annexation petition to the existing borough, or a detachment petition from the existing borough [, UNIFIED MUNICIPALITY,] or city. (Eff. 7/3/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.05.011

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.823

**ARTICLE 02 - STANDARDS FOR INCORPORATION OF BOROUGH**

3 AAC 110.045 is amended to read:

**3 AAC 110.045 COMMUNITY OF INTERESTS.** (a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) the compatibility of urban and rural areas within the proposed borough;
- (2) the compatibility of economic lifestyles, and industrial or commercial activities;
- (3) the existence throughout the proposed borough of customary and simple transportation and communication patterns; and
- (4) the extent and accommodation of spoken language differences throughout the proposed borough.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed borough.

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) transportation schedules and costs;
- (2) geographical and climatic impediments;
- (3) telephonic and teleconferencing facilities; and
- (4) public electronic media.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient unless all communities within a proposed borough are either connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, regular ferry service on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications. (Eff. 10/12/91, Register 120; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.05.031	AS 29.05.100	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.050 is amended to read:

**3 AAC 110.050 POPULATION.** (a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

(Eff. 10/12/91, Register 120; am / / , Register)

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.05.031

AS 29.06.100

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.055 is amended to read:

**3 AAC 110.055 RESOURCES.** The economy of a proposed borough must include the human and financial resources necessary to allow [PROVIDE] essential borough services on an efficient, cost-effective level. In this regard, the commission shall consider (1) - (9) of this subsection and will, in its discretion, consider other relevant factors, including (10) - (11) of this subsection

(1) the reasonably anticipated functions of the proposed borough;

(2) the reasonably anticipated expenses of the proposed borough;

(3) the reasonably anticipated income of the proposed borough, and its ability to collect revenue;

(4) the feasibility and plausibility of the anticipated operating and capital budgets [BUDGET] through the third full fiscal year of operation;

(5) the economic base of the proposed borough;

(6) property valuations;

(7) land use;

(8) existing and reasonably anticipated industrial, commercial, and resource development;

(9) personal income of residents;

(10) the need for and availability of employable skilled and unskilled people;

and

(11) the reasonably predictable level of commitment and interest of the population in sustaining a borough government [MUNICIPAL CORPORATION]. (Eff. 10/12/91, Register 120; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- AS 29.05.031 AS 29.05.100 AS 44.33.812
- AS 44.33.814 AS 44.33.816 AS 44.33.818
- AS 44.33.820 AS 44.33.822 AS 44.33.826
- AS 44.33.828

3 AAC 110.060 is amended to read:

**3 AAC 110.060 BOUNDARIES.** (a) The boundaries of a proposed borough must conform generally to natural geography, and must include all land and water necessary to allow for [PROVIDE] the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond the model borough boundaries adopted by the commission.

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of the Department of Education and Early Development, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough.

(d) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level.

(e) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough [OR UNIFIED MUNICIPALITY], the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough [OR UNIFIED MUNICIPALITY]. The commission will consider and treat such an incorporation petition as also being a detachment petition. (Eff. 10/12/91, Register 120; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.05.031	AS 29.05.100	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110 is amended by adding a new section to read:

**3 AAC 110.065 BEST INTERESTS OF STATE.** In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100(a), the commission will, in its discretion, consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units;
- (3) will relieve the state government of the responsibility of providing local services; and
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of its dissolution.

(Eff. / / , Register )

Authority: Art. X, sec. 12, Ak Const.	AS 29.05.100	AS 44.33.812
	AS 44.33.814	AS 44.33.816
	AS 44.33.816	AS 44.33.818
	AS 44.33.820	AS 44.33.822
	AS 44.33.822	AS 44.33.826
	AS 44.33.826	AS 44.33.828
	AS 44.33.828	

**ARTICLE 03 - STANDARDS FOR ANNEXATION TO CITIES**

3 AAC 110.090 is amended to read:

**3 AAC 110.090 NEEDS OF THE TERRITORY.** (a) The territory must exhibit a reasonable need for [A]city government. In this regard, the commission will, in its discretion, consider relevant factors, including

(1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city [PROBLEMS];

(2) existing or reasonably anticipated health, safety, and general welfare conditions [PROBLEMS];

(3) existing or reasonably anticipated economic development;

(4) adequacy of existing services: [AND]

(5) extraterritorial powers of the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and [ADJACENT MUNICIPALITIES.]

(6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.

(b) **Territory** [A TERRITORY] may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough on an areawide basis or non-areawide basis, or through an existing borough service area. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.100 is amended to read:

**3 AAC 110.100 CHARACTER.** The territory must be compatible in character with the annexing city. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) land use and subdivision platting;
- (2) salability of land for residential, commercial, or industrial purposes;
- (3) population density;
- (4) cause of recent population changes; and
- (5) suitability of the territory for reasonably anticipated community purposes.

(Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
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AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.110 is amended to read:

**3 AAC 110.110 RESOURCES.** The economy within the proposed boundaries of the city must include the human and financial resources necessary to allow [PROVIDE] essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the

(1) reasonably anticipated functions of the city in the territory being annexed;

(2) reasonably anticipated new expenses of the city that would result from

annexation;

(3) actual income and the reasonably anticipated ability to collect local

revenue and income from the territory;

(4) feasibility and plausibility of those aspects of the city's anticipated

operating and capital budgets that would be affected by annexation [BUDGET OF THE

CITY] through the third full fiscal year of operation after annexation;

(5) economic base of the territory after annexation;

(6) property valuations in the territory proposed for annexation;

(7) land use in the territory proposed for annexation;

(8) existing and reasonably anticipated industrial, commercial, and resource

development;

(9) personal income of residents in the territory and in the city; and

(10) need for and availability of employable skilled and unskilled people.

(Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.120 is amended to read:

**3 AAC 110.120 POPULATION.** The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission will, in its discretion, consider relevant factors, including

(1) total census enumeration;

(2) duration of residency;

(3) historical population patterns;

(4) seasonal population changes; and

(5) age distributions. (Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.130 is amended to read:

**3 AAC 110.130 BOUNDARIES.** (a) The proposed boundaries of the city must include all land and water necessary to allow for [PROVIDE] the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

(b) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the full development of essential city services on an efficient, cost-effective level [DOES NOT MEET THE MINIMAL STANDARDS REQUIRED FOR ANNEXATION].

(c) The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation [OF THAT CITY].

(d) The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.130.

(e) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, [UNIFIED MUNICIPALITY OR CITY,] the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city

describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities

[OVERLAPPING REGION FROM THE EXISTING ORGANIZED BOROUGH, UNIFIED MUNICIPALITY, OR CITY. THE COMMISSION WILL CONSIDER AND TREAT THE ANNEXATION PETITION TO THE EXISTING ORGANIZED BOROUGH, OR A DETACHMENT PETITION FROM THE EXISTING ORGANIZED BOROUGH, UNIFIED MUNICIPALITY, OR CITY]. (Eff. 7/31/92, Register 123: am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110 is amended by adding a new section to read:

**3 AAC 110.135 BEST INTERESTS OF STATE.** In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission will, in its discretion, consider relevant factors, including whether annexation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units; and
- (3) will relieve the state government of the responsibility of providing local

services. (Eff. / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12].

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.140 is amended to read:

**3 AAC 110.140 LEGISLATIVE REVIEW.** Territory that meets all of the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.130 may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists [ANNEXATION WILL SERVE THE BALANCED BEST INTERESTS OF THE STATE, THE TERRITORY TO BE ANNEXED, AND ALL POLITICAL SUBDIVISIONS AFFECTED BY THE ANNEXATION. IN THIS REGARD,

THE COMMISSION WILL, IN ITS DISCRETION, CONSIDER RELEVANT FACTORS, INCLUDING WHETHER THE]

(1) the territory is an enclave surrounded by the annexing city;

(2) the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;

(3) the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;

(4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;

(6) annexation of the territory will promote local self-government with a minimum number of governmental units; [TERRITORY IS SO SPARSELY INHABITED, OR SO EXTENSIVELY INHABITED BY PERSONS WHO ARE NOT

LANDOWNERS, THAT A LOCAL ELECTION WOULD NOT ADEQUATELY REPRESENT THE INTERESTS OF THE MAJORITY OF THE LANDOWNERS.]

(7) annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of a city; or

(8) the commission determines that other reasons exist for annexation of the territory by the legislative review process.

(Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110 150 is amended to read:

**3 AAC 110.150 LOCAL ACTION.** Territory contiguous to the annexing city, that meets the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.130 and has been approved for local action annexation by the commission, may be annexed to a city by the following action

(1) city ordinance if the territory is wholly owned by the annexing city;

(2) city ordinance and a petition signed by all of the voters and property

owners of the territory; [OR]

(3) approval by a majority of voters residing in the territory voting on the question at an election;

(4) approval by a majority of the combined voters who vote on the question within the area proposed for annexation and the annexing city; or

(5) approval by a majority of the voters who vote on the question within the annexing city if the territory is uninhabited. (Eff. 7/31/92, Register 123; am / / ,

Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

**ARTICLE 04 - STANDARDS FOR ANNEXATION TO BOROUGHES [OR UNIFIED MUNICIPALITIES]**

3 AAC 110.160 is amended to read:

**3 AAC 110.160 COMMUNITY OF INTERESTS.** (a) The social, cultural, and economic characteristics and activities of the people in the territory must be interrelated and integrated with the characteristics and activities of the people in the existing borough [OR UNIFIED MUNICIPALITY]. In this regard, the commission will, in its discretion, consider relevant factors, including the

(1) compatibility of urban and rural areas within the proposed borough [OR UNIFIED MUNICIPALITY] boundaries;

(2) compatibility of economic lifestyles and industrial or commercial activities within the proposed borough [OR UNIFIED MUNICIPALITY] boundaries;

(3) existence of customary and simple transportation and communication patterns throughout the proposed borough [OR UNIFIED MUNICIPALITY] boundaries; and

(4) extent and accommodation of spoken language differences throughout the proposed borough [OR UNIFIED MUNICIPALITY] boundaries.

(b) The communications media and the land, water, and air transportation facilities throughout the proposed borough [OR UNIFIED MUNICIPALITY] boundaries must allow for the level of communications and exchange necessary to develop an integrated borough [OR UNIFIED MUNICIPALITY] government. In this regard, the commission will, in its discretion, consider relevant factors, including

(1) transportation schedules and costs;

(2) geographical and climatic impediments;

(3) telephonic and teleconferencing facilities; and

(4) electronic media for use by the public. (Eff. 7/31/92, Register 123; am /

/ , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.170 is amended to read:

**3 AAC 110.170 POPULATION.** The population of the proposed borough [OR UNIFIED MUNICIPALITY] after annexation must be sufficiently large and stable to support the resulting borough [OR UNIFIED MUNICIPAL GOVERNMENT]. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.180 is amended to read:

**3 AAC 110.180 RESOURCES.** The economy within the proposed borough [OR UNIFIED MUNICIPALITY] boundaries must include the human and financial resources necessary to provide essential borough [OR MUNICIPAL] services on an efficient, cost-

effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the

(1) reasonably anticipated functions of the borough [OR UNIFIED MUNICIPALITY];

(2) reasonably anticipated new expenses of the borough [OR UNIFIED MUNICIPALITY];

(3) actual income and the reasonably anticipated ability of the borough [OR UNIFIED MUNICIPALITY] to generate and collect local revenue and income from the new territory;

(4) feasibility and plausibility of those aspects of the borough's anticipated operating and capital budgets that would be affected by annexation [BUDGET OF THE BOROUGH OR UNIFIED MUNICIPALITY] through the third year of operation after annexation;

(5) economic base of the borough after annexation;

(6) property valuations in the territory proposed for annexation;

(7) land use in the territory proposed for annexation;

(8) existing and reasonably anticipated industrial, commercial, and resource development in the borough [OR UNIFIED MUNICIPALITY];

(9) personal income of residents in the territory to be annexed and in the borough [OR UNIFIED MUNICIPALITY]; and

(10) the need for and availability of employable skilled and unskilled people.

(Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.190 is amended to read:

**3 AAC 110.190 BOUNDARIES.** (a) The proposed boundaries of the borough [OR UNIFIED MUNICIPALITY] must conform generally to natural geography, and must include all land and water necessary to allow for [PROVIDE] the full development of essential borough [OR MUNICIPAL] services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing borough, or that

would create enclaves in the annexing borough. does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level [UNIFIED MUNICIPALITY DOES NOT MEET THE MINIMAL STANDARDS REQUIRED FOR ANNEXATION].

(c) Absent a specific and persuasive showing to the contrary, the commission, in its discretion, will not approve annexation of territory to a borough [A PROPOSED BOROUGH OR UNIFIED MUNICIPALITY WITH BOUNDARIES] extending beyond the model borough boundaries adopted by the commission [AND IDENTIFIED IN THE 1992 INTERIM REPORT ON MODEL BOROUGH BOUNDARIES].

(d) The commission shall [WILL] consult with the Department of Education and Early Development in the process of balancing all standards for annexation to a borough [OR UNIFIED MUNICIPALITY].

(e) If a petition for borough annexation describes boundaries overlapping the boundaries of an existing organized borough, [UNIFIED MUNICIPALITY, OR CITY,] the petition for annexation must also address and comply with the standards and procedures for detachment of the overlapping region from the existing organized borough [, UNIFIED MUNICIPALITY, OR CITY. THE COMMISSION WILL CONSIDER AND TREAT SUCH AN ANNEXATION PETITION AS ALSO BEING A DETACHMENT PETITION FROM THE EXISTING ORGANIZED BOROUGH, UNIFIED MUNICIPALITY, OR CITY]. (Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110 is amended by adding a new section to read:

**3 AAC 110.195 BEST INTERESTS OF STATE.** In determining whether annexation to a borough is in the best interests of the state under AS 29.06.040(a), the commission will, in its discretion, consider relevant factors, including whether annexation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units; and
- (3) will relieve the state government of the responsibility of providing local

services. (Eff. / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.200 is amended to read:

**3 AAC 110.200 LEGISLATIVE REVIEW.** Territory that meets the annexation standards specified in 3 AAC 110.160 - 3 AAC 110.190 may be annexed to a borough [OR UNIFIED MUNICIPALITY] by the legislative review process if the commission also

determines that any one of the following circumstances exist [ANNEXATION WILL SERVE THE BALANCED BEST INTERESTS OF THE STATE, THE TERRITORY TO BE ANNEXED, AND ALL POLITICAL SUBDIVISIONS AFFECTED BY THE ANNEXATION. IN THIS REGARD, THE COMMISSION WILL, IN ITS DISCRETION, CONSIDER RELEVANT FACTORS, INCLUDING WHETHER THE]

(1) the territory manifests a reasonable need for borough [OR MUNICIPAL] government that can be met most efficiently and effectively by the annexing borough [OR UNIFIED MUNICIPALITY];

(2) the territory is an enclave surrounded by the annexing borough [OR UNIFIED MUNICIPALITY];

(3) health, safety, or general welfare of borough [OR UNIFIED MUNICIPALITY] residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the borough [OR UNIFIED MUNICIPALITY] to regulate or control the detrimental effect of those conditions;

(4) extension of borough [OR UNIFIED MUNICIPALITY] services or facilities into the territory is necessary to enable the borough to provide adequate services to borough [OR UNIFIED MUNICIPALITY] residents, and it is impossible or impractical for the borough [OR UNIFIED MUNICIPALITY] to extend the facilities or services unless the territory is within the boundaries of the borough [OR UNIFIED MUNICIPALITY];

(5) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of borough [OR UNIFIED

MUNICIPALITY] government without commensurate tax contributions, whether these benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(6) annexation of the territory will enable the borough [OR UNIFIED MUNICIPALITY] to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the borough [OR UNIFIED MUNICIPALITY]; [AND]

(7) annexation of the territory will promote local self-government with a minimum number of governmental units; [TERRITORY IS SO SPARSELY INHABITED, OR SO EXTENSIVELY INHABITED BY PERSONS WHO ARE NOT LANDOWNERS, THAT A LOCAL ELECTION WOULD NOT ADEQUATELY REPRESENT THE INTERESTS OF THE MAJORITY OF THE LANDOWNERS.]

(8) annexation of the territory will enhance the extent to which the existing borough meets the standards for incorporation of a borough; or

(9) the commission determines that other reasons exist for annexation of the territory by the legislative review process. (Eff. 7/31/92, Register 123; am / / ,

Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110 210 is amended to read:

**3 AAC 110.210 LOCAL ACTION.** Territory that meets the annexation standards specified in 3 AAC 110.160 - 3 AAC 110.190 and has been approved for local action annexation by the commission, may be annexed to a borough [OR UNIFIED MUNICIPALITY] by the following action:

(1) borough [OR UNIFIED MUNICIPALITY] ordinance if the territory is wholly owned by the annexing borough [OR UNIFIED MUNICIPALITY];

(2) borough [OR UNIFIED MUNICIPAL] ordinance and a petition signed by all of the voters and property owners of the territory approving of the annexation; [OR]

(3) approval by a majority of voters residing in the territory voting on the question at an election; [HELD.]

(4) approval by a majority of the combined voters who vote on the question within the area proposed for annexation and the annexing borough; or

(5) approval by a majority of the voters who vote on the question within the annexing borough if the territory is uninhabited. (Eff. 7/31/92, Register 123; am / /

, Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 19.06.040

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

**ARTICLE 05 - STANDARDS FOR MERGER OF MUNICIPALITIES**

3 AAC 110.220 is amended to read:

**3 AAC 110.220 STANDARDS.** (a) Two or more municipalities may merge if, upon completion of the merger, the remaining municipality meets the standards for incorporation of cities specified in 3 AAC 110.005 - 3 AAC 110.040 [3 AAC 110.010 - 3 AAC 110.040], or boroughs specified in 3 AAC 110.045 - 3 AAC 110.065 [3 AAC 110.045 - 3 AAC 110.060].

(b) Separate proceedings are not required for dissolution of a municipality that is being merged with another municipality. [THE DISSOLUTION] Dissolution occurs automatically at the time of [THE] merger. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.230 is amended to read:

**3 AAC 110.230 LOCAL OPTION.** Municipalities that meet the merger standards required under 3 AAC 110.220, and are approved by the commission for local option merger,

may merge if the petition for merger is submitted by the number of voters required under AS 29.06.100(a), and if a majority of the voters in the remaining municipality vote in favor of the merger in a subsequent election. The election shall [MUST] be held in accordance with AS 29.06.140.

(Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.090	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

**ARTICLE 06 - STANDARDS FOR CONSOLIDATION OF MUNICIPALITIES**

3 AAC 110.240 is amended to read:

**3 AAC 110.240 STANDARDS.** (a) Two or more municipalities may consolidate to form a new municipality if the new municipality meets the standards for incorporation of cities specified in 3 AAC 110.005 - 3 AAC 110.040 [3 AAC 110.010 - 3 AAC 110.040], or boroughs specified in 3 AAC 110.045 - 3 AAC 110.065 [3 AAC 110.045 - 3 AAC 110.060].

(b) Separate proceedings are not required for dissolution of the consolidating municipalities. Dissolution occurs [THE DISSOLUTIONS OCCUR] automatically at the time of [THE] consolidation. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.090	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.250 is amended to read:

**3 AAC 110.250 LOCAL OPTION.** Municipalities that meet the consolidation standards required under 3 AAC 110.240, and are approved by the commission for local option consolidation, may consolidate if the petition for consolidation was submitted by the number of voters required under AS 29.06.100(a), and if a majority of the voters in the [REMAINING] proposed new municipality vote in favor of the consolidation in a subsequent election. The election shall [MUST] be held in accordance with AS 29.06.140. (Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

**ARTICLE 07 - STANDARDS FOR DETACHMENT FROM CITIES**

3 AAC 110.260 is amended to read:

**3 AAC 110.260 BEST INTERESTS OF STATE.** (a) In determining whether detachment from a city is in the best interests of the state under AS 29.06.040, [ADDITION TO THE REQUIREMENTS OF AS 29.06, TERRITORY MAY BE DETACHED FROM A CITY IF THE COMMISSION DETERMINES THAT THE DETACHMENT WILL SERVE THE BALANCED BEST INTERESTS OF THE STATE, THE TERRITORY TO BE DETACHED, AND THE POLITICAL SUBDIVISIONS AFFECTED BY THE DETACHMENT. IN THIS REGARD] the commission will, in its discretion, consider relevant factors, including

- (1) the health, safety and general welfare of the city and the territory after detachment;
- (2) the ability of the city [OR OTHER GOVERNMENTAL ENTITY] to efficiently and effectively provide reasonably necessary facilities and services to the remnant city [TERRITORY] after detachment;
- (3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;
- (4) the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory;
- (5) the historical pattern of cooperation and shared commitment between the people of the city and the people of the territory;

(6) the extent to which detachment might enhance or diminish the ability of the remnant [REMAINING] city to meet the standards for incorporation required under AS 29.05 and 3 AAC 110.005 - 3 AAC 110.040 [3 AAC 110.010 - 3 AAC 110.040];

(7) the extent to which a transition plan of a previous annexation has been implemented and is effective;

(8) the effect of the proposed detachment on the long-term stability of the finances of the remnant [REMAINING] city, other municipalities, and the state;

(9) whether the proposed detachment will promote local self-government with a minimum number of governmental units; and

(10) whether the territory's requirements for local government services will be adequately met following detachment.

(b) If, to fulfill the requirements of (a)(10) of this section, petitioners have proposed, or the commission requires, incorporation of the territory into a new municipality, the commission will, in its discretion, condition the approval of the detachment upon voter approval of the incorporation.

(c) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory proposed for detachment that would create non-contiguous parts of the city or enclaves within the city does not meet the standards for detachment.

(d) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory proposed for detachment from a city in an

unorganized borough is a diminution of local self-government and does not meet the standards for detachment. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040 AS 44.33.812 AS 44.33.814

AS 44.33.816 AS 44.33.818 AS 44.33.820

AS 44.33.822 AS 44.33.826 AS 44.33.828

**ARTICLE 08 - STANDARDS FOR DETACHMENT FROM BOROUGHES [OR UNIFIED MUNICIPALITIES]**

3 AAC 110.270 is amended to read:

**3 AAC 110.270 STANDARDS.** (a) In determining whether detachment from a borough is in the best interests of the state under AS 29.06.040. [ADDITION TO THE REQUIREMENTS OF AS 29.06, TERRITORY MAY BE DETACHED FROM A BOROUGH OR UNIFIED MUNICIPALITY IF THE COMMISSION DETERMINES THAT THE DETACHMENT WILL SERVE THE BALANCED BEST INTERESTS OF THE STATE, THE TERRITORY TO BE DETACHED, AND THE POLITICAL SUBDIVISIONS AFFECTED BY THE DETACHMENT. IN THIS REGARD] the commission will, in its discretion, consider relevant factors, including

(1) the health, safety and general welfare of the remnant borough [OR UNIFIED MUNICIPALITY] and the territory after detachment;

(2) the ability of the remnant borough [UNIFIED MUNICIPALITY, OR OTHER GOVERNMENTAL ENTITY] to efficiently and effectively provide reasonably necessary facilities and services [TO THE TERRITORY] after detachment;

(3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;

(4) the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies [IN THE TERRITORY];

(5) the historical pattern of cooperation and shared commitment between the people of the borough [OR UNIFIED MUNICIPALITY] and the people of the territory;

(6) the extent to which detachment might enhance or diminish the ability of the remnant [REMAINING] borough [OR UNIFIED MUNICIPALITY] to meet the standards for incorporation contained in the Alaska Constitution and AS 29.05 and 3 AAC 110.045 - 3 AAC 110.065 [3 AAC 110.045 - 3 AAC 110.060];

(7) the extent to which a transition plan of a previous annexation has been implemented and is effective;

(8) the effect of the proposed detachment on the long-term stability of the finances of the remnant [REMAINING] borough [OR UNIFIED MUNICIPALITY], other municipalities, and the state;

(9) whether the proposed detachment will promote local self-government with a minimum number of governmental units; and

(10) whether the territory's requirements for local government services will be adequately met following detachment.

(b) If, to fulfill the requirements of (a)(10) of this section, petitioners have proposed, or the commission requires, incorporation of the territory into a new municipality, the commission will, in its discretion, condition the approval of the detachment upon voter approval of the incorporation.

(c) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory proposed for detachment that would create non-contiguous parts of the borough or enclaves within the borough does not meet the standards for detachment.

(d) Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory proposed for detachment from an organized borough to an unorganized borough is a diminution of local self-government and does not meet the standards for detachment. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

ARTICLE 09 - STANDARDS FOR DISSOLUTION OF CITIES

3 AAC 110.280 is amended to read:

**3 AAC 110.280 COMMISSION STANDARDS.** (a) After filing a petition under AS 29.06.450(a)(1), a city may dissolve if the commission determines that

(1) dissolution of the city is in the best interests of the state;

(2) the city is free of debt or has satisfied every creditor with a method of repayment; and

(3) the city

(A) no longer meets the standards for incorporation established under AS 29.05 and 3 AAC 110.005 - 3 AAC 110.040 [3 AAC 110.010 - 3 AAC 110.040]; or

(B) has ceased to exercise each of its mandatory powers.

(b) The commission will, in its discretion, determine whether its decision favoring dissolution of a city will [SHOULD] be submitted for legislative review in accordance with art. X, sec. 12, Constitution of the State of Alaska [ART. X, SEC. 12 OF THE ALASKA CONSTITUTION].

(c) Except as otherwise provided in this subsection, in determining whether a city is free of debt or has satisfied every creditor with a method of repayment, the commission will require an audit identifying all assets and liabilities of the city. For the proposed dissolution of a home rule or first class city, and for the proposed dissolution of a second class city that has undergone an audit in each of the three years immediately preceding the petition for

dissolution, the audit must be performed by an independent certified public accountant. For the proposed dissolution of a second class city that has not undergone an audit in each of the three years immediately preceding the petition for dissolution, the department will submit a written report identifying all assets and liabilities of that city. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.450	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.290 is amended to read:

**3 AAC 110.290 LOCAL OPTION STANDARDS.** (a) A city may be dissolved using the local option method identified in AS 29.06.450 (a)(2) if the voters of the city file a petition for dissolution under AS 29.06.460 and the commission determines that the city qualifies for dissolution under AS 29.06.470(a) or AS 29.06.470(b). The commission will deny or accept a petition in accordance with AS 29.06.

(b) Except as otherwise provided in this subsection in determining [, UNDER AS 29.06.470,] whether a city is free of debt or has satisfied every creditor with a method of repayment under AS 29.06.470, the commission will require an audit identifying all assets and liabilities of the city. For the proposed dissolution of a home rule or first class city, and for the proposed dissolution of a second class city that has undergone an audit in each of the

three years immediately preceding the petition for dissolution, the audit must be performed by an independent certified public accountant. For the proposed dissolution of a second class city that has not undergone an audit in each of the three years immediately preceding the petition for dissolution, the department will submit a written report identifying all assets and liabilities of that city proposed for dissolution. (Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.06.450

AS 29.06.460

AS 29.06.470

AS 29.06.500

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.300 is amended to read:

**3 AAC 110.300 BEST INTERESTS OF STATE.** In determining [, UNDER AS 29.06.500(a) OR 3 AAC 110.280,] whether dissolution of a city is in the best interests of the state under AS 29.06.500(a) or 3 AAC 110.280, the commission will, in its discretion, consider relevant factors, including

(1) the extent to which the city is providing services, receiving revenue, and incurring debt;

(2) whether a government or organization other than the state is willing and able to provide all services and facilities necessary to meet the needs of the community;

(3) whether dissolution of the city is likely to endanger the health, safety, or general welfare of residents in or near the city proposed for dissolution;

(4) the effect that the proposed dissolution will have on the harmony of relations among residents of the city proposed for dissolution, and between the residents of the city and others residing near the city;

(5) the social and economic impacts of the proposed dissolution on other communities in the state;

(6) the effect of the proposed dissolution on the long-term stability of the finances of other municipalities and the state; and

(7) circumstances identified by the commission reflecting the legal standards and principles that guide commission action in furthering the development of local self-government with a minimum number of governmental units. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.450

AS 29.06.500

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

**ARTICLE 10 - STANDARDS FOR DISSOLUTION OF BOROUGHES [OR UNIFIED MUNICIPALITIES]**

3 AAC 110.310 is amended to read:

**3 AAC 110.310 COMMISSION STANDARDS.** (a) After filing a petition under AS 29.06.450(a)(1), a borough [OR UNIFIED MUNICIPALITY] may dissolve if the commission determines that

(1) dissolution of the borough [OR UNIFIED MUNICIPALITY] is in the best interests of the state;

(2) the borough [OR UNIFIED MUNICIPALITY] is free of debt or has satisfied every creditor with a method of repayment; and

(3) the borough [OR UNIFIED MUNICIPALITY]

(A) no longer meets the standards for incorporation established under AS 29.05 and 3 AAC 110.045 - 3 AAC 110.065 [3 AAC 110.045 - 3 AAC 110.060];

or

(B) has ceased to exercise each of its mandatory powers.

(b) The commission will, in its discretion, determine whether its decision favoring dissolution of a borough [OR UNIFIED MUNICIPALITY] will [SHOULD] be submitted for legislative review in accordance with art. X, sec. 12. Constitution of the State of Alaska [ART. X, SEC. 12 OF THE ALASKA CONSTITUTION].

(c) Except as otherwise provided in this subsection, in determining whether a borough [OR UNIFIED MUNICIPALITY] is free of debt or has satisfied every creditor with a method of repayment, the commission will require an audit to be performed by an independent

Register \_\_\_\_\_, \_\_\_\_\_ 200\_\_ COMMUNITY AND ECON. DEV.

certified accountant identifying all assets and liabilities of the borough [OR UNIFIED

MUNICIPALITY]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.450

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.320 is amended to read:

**3 AAC 110.320 LOCAL OPTION STANDARDS.** (a) A borough [OR UNIFIED MUNICIPALITY] may be dissolved using the local option method identified in AS 29.06.450(a)(2) if the voters of the borough [OR UNIFIED MUNICIPALITY] file a petition for dissolution under AS 29.06.460 and the commission determines that the borough [OR UNIFIED MUNICIPALITY] qualifies for dissolution under AS 29.06.470(a) or AS 29.06.470(b). The commission will deny or accept a petition in accordance with AS 29.06.

(b) In determining [, UNDER AS 29.06.470,] whether a borough [OR UNIFIED MUNICIPALITY] is free of debt or has satisfied every creditor with a method of repayment under AS 29.06.470, the commission will require an audit performed by an independent certified public accountant identifying all assets and liabilities of the borough [OR UNIFIED MUNICIPALITY]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.450	AS 29.06.460	AS 29.06.470
AS 29.06.500	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.330 is amended to read:

**3 AAC 110.330 BEST INTERESTS OF STATE.** In determining [, UNDER AS 29.06.500(a) OR 3 AAC 110.280,] whether dissolution of a borough [OR UNIFIED MUNICIPALITY] is in the best interests of the state under AS 29.06.500(a) or 3 AAC 110.310, the commission will, in its discretion, consider relevant factors, including

- (1) the extent to which the borough [OR UNIFIED MUNICIPALITY] is providing services, receiving revenue, and incurring debt;
- (2) whether a government or organization other than the state is willing and able to provide all services and facilities necessary to meet the needs of the community;
- (3) whether dissolution of the borough [OR UNIFIED MUNICIPALITY] is likely to endanger the health, safety, or general welfare of residents in or near the borough [OR UNIFIED MUNICIPALITY] proposed for dissolution;
- (4) the effect that the proposed dissolution will have on the harmony of relations among residents of the borough [OR UNIFIED MUNICIPALITY] proposed for dissolution, and between the residents of the borough [OR UNIFIED MUNICIPALITY] and others residing near the borough [OR UNIFIED MUNICIPALITY];

(5) the social and economic impacts of the proposed dissolution on other communities in the state;

(6) the effect of the proposed dissolution on the long-term stability of the finances of other municipalities and the state; and

(7) circumstances identified by the commission reflecting the legal standards and principles that guide commission action in furthering the development of local self-government with a minimum number of governmental units. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- AS 29.06.450                      AS 29.06.500                      AS 44.33.812
- AS 44.33.814                      AS 44.33.816                      AS 44.33.818
- AS 44.33.820                      AS 44.33.822                      AS 44.33.826
- AS 44.33.828

**ARTICLE 11 - STANDARDS FOR RECLASSIFICATION OF CITIES**

3 AAC 110.340 is amended to read:

**3 AAC 110.340 APPLICATION OF INCORPORATION STANDARDS.** In determining [, UNDER AS 29.04.040(a),] whether a city satisfies the incorporation standards for the class of city to which it is proposed to be reclassified under AS 29.04.040 (a), the commission will consider the applicable standards under AS 29.05.011, 29.05.021, and 3

AAC 110.005 - 3 AAC 110.040 [3 AAC 110.010 - 3 AAC 110.040]. (Eff. 11/27/96,

Register 140; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.350 is amended to read:

**3 AAC 110.350 BEST INTERESTS STANDARD FOR A PROPOSED SECOND CLASS CITY IN THE UNORGANIZED BOROUGH.** (a) In determining [, UNDER AS 29.04.040(a),] whether reclassification of a home rule city or first class city to a second class city in the unorganized borough is in the best interests of the state under AS 29.04.040(a), the commission will, in its discretion, consider relevant factors, including the

(1) reasonably anticipated fiscal impact to the state from the elimination of local contributions to the city school district under AS 14.17.410, [14.17.025, REDUCED SINGLE SITE SCHOOL DISTRICT FUNDING,] changes in the district cost factors under AS 14.17.460 [AREA COST DIFFERENTIAL UNDER AS 14.17.051], changes in funding under PL 81-874, and other effects;

(2) reasonably anticipated impacts on education from combining the city school district and the regional educational attendance area;

(3) ability of the city to provide essential city services, meet its financial and contractual obligations, and otherwise function under the more limited authority of a second class city to levy a property tax;

(4) reasonably anticipated need for mandatory planning, platting, and land use regulation within the boundaries of the city;

(5) reasonably anticipated need for the city to exercise the power of eminent domain; and

(6) likelihood that reclassification may promote formation of an organized borough in the region.

(b) The commission shall [WILL, IN ITS DISCRETION,] consult with the commissioner of the Department of Education and Early Development, the superintendent and school board of the city school district, and the superintendent, school board, and advisory school boards established under AS 14.08.115 of the regional educational attendance area in considering the factors in (a)(1) and (a)(2) of this section.

(c) The commission will, in its discretion, make a determination that reclassification is in the state's best interest, subject to legislative review in the manner provided by [ALASKA CONST.,] art. X, sec. 12. Constitution of the State of Alaska. In such circumstances, legislative review of a reclassification proposal does not eliminate the requirement for voter approval of a reclassification proposal under AS 29.04.040.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that it is not in the best interests of the state for a city to reclassify if reclassification

will result in the transfer of the city's debt to the state for educational facilities. (Eff.

11/27/96, Register 140; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.360 is amended to read:

**3 AAC 110.360 BEST INTERESTS STANDARD FOR A PROPOSED FIRST CLASS CITY IN THE UNORGANIZED BOROUGH.** (a) In determining [, UNDER AS 29.04.040(a),] whether reclassification of a second class city to a first class city in the unorganized borough is in the best interests of the state under AS 29.04.040(a), the commission will, in its discretion, consider relevant factors, including

(1) the reasonably anticipated fiscal impact to the state from the imposition of local contributions to the city school district under AS 14.17.410, [14.17.025, INCREASED SINGLE SITE SCHOOL DISTRICT FUNDING,] changes in the district cost factors under AS 14.17.460 [AREA COST DIFFERENTIAL UNDER AS 14.17.051], changes in funding under PL 81-874, and other effects;

(2) the reasonably anticipated impacts on education resulting from the creation of a new city school district;

(3) whether the requirements of AS 14.12.025, concerning the formation of new school districts, have been met;

(4) the need for the city to have greater authority to levy a property tax in order to provide essential city services;

(5) the need for mandatory planning, platting, and land use regulation within the boundaries of the city;

(6) the need for the city to exercise the power of eminent domain; and

(7) the likelihood that reclassification will diminish incentives or opportunities to form an organized borough.

(b) The commission shall [WILL, IN ITS DISCRETION,] consult with the commissioner of the Department of Education and Early Development and the superintendent, school board, and advisory school boards established under AS 14.08.115 of the regional educational attendance area in considering the factors in (a)(1) - (a)(3) of this section.

(c) The commission will, in its discretion, make a determination that reclassification is in the state's best interest, subject to legislative review in the manner provided by [ALASKA CONST.,] art. X, sec. 12, Constitution of the State of Alaska. In such circumstances, legislative review of a reclassification proposal does not eliminate the requirement for voter approval of a reclassification proposal under AS 29.04.040. (Eff. 11/27/96, Register 140; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.370 is amended to read:

**3 AAC 110.370 BEST INTERESTS STANDARD FOR CITIES WITHIN AN ORGANIZED BOROUGH.** (a) In determining [, UNDER AS 29.04.040 (a),] whether reclassification of a city within an organized borough is in the best interests of the state under AS 29.04.040(a), the commission will, in its discretion, consider relevant factors, including the

(1) fiscal impact to the state;

(2) need for the city to have authority to levy a property tax, and at what rate, to provide essential city services; and

(3) need for the city to exercise the power of eminent domain.

(b) The commission will, in its discretion, make a determination that reclassification is in the state's best interest, subject to legislative review in the manner provided by [ALASKA CONST.,] art. X, sec. 12, Constitution of the State of Alaska. In such circumstances, legislative review of a reclassification proposal does not eliminate the requirement for voter approval of a reclassification proposal under AS 29.04.040. (Eif. 11/27/96, Register 140; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

**ARTICLE 12 - PROCEDURES FOR PETITIONING**

3 AAC 110.400 is amended to read:

**3 AAC 110.400 APPLICABILITY.** Except as provided in 3 AAC 110.590, 3 AAC 110.410 - 3 AAC 110.660 apply to all petitions for city reclassification under AS 29.04, incorporation under AS 29.05, and [ALL] alterations to municipalities under AS 29.06. However, an annexation [A] petition filed under a local action [OR LOCAL OPTION] method[,] provided for in AS 29.06.040(c)(2) or (c)(3) [AS 29.06,] may [ONLY] need to comply only with certain sections of 3 AAC 110.410 - 3 AAC 110.660 as identified in 3 AAC 110.590. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.060	AS 29.06.040
AS 29.06.090	AS 29.06.100	AS 29.06.450
AS 29.06.460	AS 44 33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.410 is amended to read:

**3 AAC 110.410 PETITIONERS.** (a) A petition for a proposed action by the commission under this chapter may be initiated by

- (1) the Alaska Legislature,
- (2) the commissioner,
- (3) the staff of the commission or a person designated by the commission,
- (4) a political subdivision of the state, regional educational attendance area,

or coastal resource service area,

(5) at least 10 percent of the persons registered to vote in a political subdivision, regional educational attendance area, or coastal resource service area may petition for alterations of municipalities under AS 29.06. [; THOSE REGISTERED VOTERS MUST BE PERMANENT RESIDENTS OF THAT SUBDIVISION;]

(6) at least 10 percent of the persons registered to vote in a territory proposed for annexation by election pursuant to AS 29.06.040(c)(1) or by legislative review pursuant to AS 44.33.812(b)(2), [; OR DETACHMENT; THOSE REGISTERED VOTERS MUST BE PERMANENT RESIDENTS OF THAT TERRITORY; OR]

(7) at least 25 percent of the persons registered to vote in a territory proposed for detachment by election pursuant to AS 29.06.040(c)(1) or by legislative review pursuant to AS 44.33.812(b)(2), or

(8) [(7)]the number of qualified voters required under AS 29.04.040 for reclassification of cities, AS 29.05.060 for municipal incorporation, and AS 29.06 for a local option or local action petition.

(b) If a statute requires a [THAT THE] petition for merger or consolidation to be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition. The number of borough voters required to sign the petition must be based on the number of registered voters or the number of votes cast in the area of the borough outside any city or cities joining the petition.

(c) The provisions of (a)(8) of this section may [SIGNATURE REQUIREMENTS OF (a)(5) – (7) OF THIS SECTION SHALL] not be construed to apply to petition procedures established by the commission pursuant to AS 44.33.812(a)(2) or to the petition procedures established by the commission pursuant AS 29.06.040(c) for annexation and detachment, AS 29.06.090(b)(1) for merger and consolidation, and AS 29.06.450(a)(1) for dissolution [A PETITION SUBMITTED BY A PETITIONER UNDER THE DISCRETIONARY PETITION PROCESS OF THE COMMISSION].

(d) The staff of the commission or a person designated by the commission may initiate a petition after the commission has determined that the action proposed will likely promote the standards established under the Alaska Constitution, AS 29.04, AS 29.05, AS 29.06, or [AND] this chapter, and the commission has directed the staff or designated person

to prepare a petition by a motion approved by a majority of the appointed membership of the commission.

(e) The [PERSON OR] entity or group initiating a petition under (a) of this section is [DESIGNATED AS] the petitioner. A petition [, EXCEPT THAT A PETITION INITIATED BY QUALIFIED VOTERS] must include a designation of one person as representative of the petitioner [ALL PETITIONERS]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.060

AS 29.06.040

AS 29.06.090

AS 29.06.100

AS 29.06.450

AS 29.06.460

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.420 is amended to read:

**3 AAC 110.420 PETITION.** (a) A proposal for one or more actions by the commission under this chapter is initiated by filing a petition and [A] supporting materials [BRIEF] with the department.

(b) A petition must be filed on forms [A FORM APPROVED BY THE COMMISSION AND] provided by the department. The petition must be accompanied by all exhibits required by the department. The petitioner shall provide the department with a

copy of the petition and supporting materials in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the petitioner.

(c) The petition must include a supporting brief that provides a detailed explanation of how the proposal satisfies all [A SUPPORTING BRIEF MUST ADDRESS] relevant constitutional, statutory, and regulatory standards applicable to the proposed action [, AND INCLUDE A DETAILED EXPLANATION OF HOW THE STANDARDS APPLY TO THE PROPOSED ACTION]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.060

AS 29.06.040

AS 29.06.090

AS 29.06.100

AS 29.06.450

AS 29.06.460

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110 is amended by adding a new section to read:

**3 AAC 110.425 LEGISLATIVE REVIEW ANNEXATION PETITIONS. (a)**

Before a petition for annexation by the legislative review process may be submitted to the department under 3 AAC 110.420, the prospective petitioner shall prepare a complete draft of

the annexation petition and a summary of the draft; the prospective petitioner shall also conduct a public hearing on the annexation proposal.

(b) The draft petition required under (a) of this section shall be prepared using forms provided by the department under 3 AAC 110.420. The summary required under (a) of this section shall include a map of the territory proposed for annexation, synopsis of the views of the prospective petitioner regarding the application of applicable annexation standards to the proposed annexation, summary of the reasonably anticipated effects of annexation, and an abstract of the transition plan required under 3 AAC 110.900.

(c) The draft petition and summary shall be made available to the public on or before the first publication or posting of the notice of the hearing required under (e) of this section. The prospective petitioners shall make one copy of the draft petition available for public review at one or more convenient locations in or near the territory proposed for annexation for every 500 individuals reasonably estimated to reside in the territory proposed for annexation; except that the petitioner shall not be required to provide more than 5 copies of the petition for public review regardless of the population of the territory proposed for annexation. The summary of the annexation proposal shall be made available by the prospective petitioner for distribution to the public without charge at one or more convenient locations in or near the territory proposed for annexation.

(d) The hearing required under (a) of this section shall address appropriate annexation standards and their application to the annexation proposal, legislative review annexation procedures, the reasonably anticipated effects of the proposed annexation, and the

proposed transition plan required under 3 AAC 110.900. The hearing shall be held at a convenient location in or near the territory proposed for annexation. The hearing shall allow a period for comment on the proposal from members of the public. If the prospective petitioner is a municipal government, the governing body shall conduct the hearing.

(e) Public notice of the hearing required under (a) of this section shall be given by the prospective petitioner in the manner provided for a hearing of the Local Boundary Commission under 3 AAC 110.550. The department shall specify the wording of the public notice of the hearing. Evidence of compliance with the public notice requirements for the hearing, a written summary or transcript of the hearing, and an audio recording of the hearing shall be provided to the department when the petition is filed with the department.

(f) The chairperson of the commission will, in the chairperson's discretion, waive any or all of the requirements under (a)-(e) of this section if the territory proposed for annexation is uninhabited or sparsely inhabited, and if the chairperson determines that persons or entities within or proximate to the territory proposed for annexation have had adequate opportunity to be informed about the scope, benefits, and detriments of the proposed annexation. (Eff. / / , Register )

Authority: Art. X, sec. 12, Ak Const.

AS 29.06.040

AS 44.33.812

3 AAC 110.430 is amended to read:

**3 AAC 110.430 CONSOLIDATION OF PETITIONS.** If two or more petitions pending action by the commission affect all or some [CONTIGUOUS TERRITORY OR

ANY] portion of the same territory, the chairperson of the commission will, in the chairperson's discretion, consolidate the informational session, [DEPARTMENT, REPORT, COMMISSION, MEETING, HEARING,] briefing schedule, department reports, commission hearing, decisional meeting, or other procedure under this chapter for one or more of those petitions. The commission will, in its discretion, consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.060

AS 29.06.040

AS 29.06.090

AS 29.06.100

AS 29.06.450

AS 29.06.470

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.440 is amended to read:

**3 AAC 110.440 TECHNICAL REVIEW OF PETITION.** (a) The department shall review the petition and supporting materials [, EXHIBITS, AND BRIEF] to determine whether they include a plausible budget, complete and proper transition plan, and other required information. When [THE REQUIRED INFORMATION HAS BEEN SUBMITTED AND, WHEN] applicable, the department shall also determine whether the petition contains the legally required number of valid signatures. The technical review of

the petition shall be completed by the department within 45 days of the receipt of the petition, except that the chairperson of the commission, for good cause, may grant the department additional time to complete its technical review.

(b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides in a territory, and the number of persons who voted in the territory during the last election.

(c) If the department determines that the petition or supporting materials are [BRIEF IS] deficient in form or content, it shall consult with the chairperson of the commission. With the concurrence of the commission chairperson, the department shall return the defective petition or supporting materials [BRIEF WILL BE RETURNED] to the petitioner for correction or completion. The department, with the concurrence of the commission chairperson, shall determine whether the deficiencies in the petition are significant enough to require new authorization for the filing of the corrected or completed petition. The technical review of any corrections or materials needed to complete the petition shall be concluded by the department within 30 days of the receipt of such materials, except that the chairperson of the commission, for good cause, may grant the department additional time to complete its technical review of the supplemental materials. If the department determines that the petition and brief are in substantial compliance with applicable provisions of AS 29.04, AS 29.05, AS 29.06, and

this chapter, the petitioner will be notified that the petition and brief have been accepted for filing and the department will file the petition.

**(d) A determination by the department under (c) of this section that a petition is deficient in form and content or that new authorization will be required for the filing of a corrected or completed petition may be appealed by the petitioner to the commission.**

(Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.070

AS 29.06.040

AS 29.06.110

AS 29.06.480

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.450 is amended to read:

**3 AAC 110.450 NOTICE OF PETITION.** (a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall

(1) publish [A] public notice of the filing of the petition **in a display ad format of no less than six inches long by two columns wide** at least once each week for three consecutive weeks in **one or more** newspapers of general circulation designated by the department; **if the department determines that there is no newspaper of general circulation in the territory that is published at least once a week, the department will**

require the petitioner to provide notice through other means designed to reach the public in lieu of publishing the notice in the manner outlined in this subsection [THAT ARE PRINTED IN A DISPLAY AD FORMAT OF NO LESS THAN SIX INCHES LONG AND TWO COLUMNS WIDE];

(2) post public [A] notice of the filing of the petition in at least three [PUBLIC AND] prominent locations in or near [WITHIN] the territory proposed for change and other locations designated by the department that remain posted through the deadline set by the commission chairperson for the filing of responsive briefs; [FOR AT LEAST 14 CONSECUTIVE DAYS; AND]

(3) hand-deliver or mail, postage prepaid, public notice of the filing of the petition [A COPY OF THE NOTICE PROPOSED IN ACCORDANCE WITH (2) OF THIS SUBSECTION], correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department; and

(4) submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving the area of the proposed change and request that it be announced for the following 14 days.

(b) The department will specify the wording of the public notices and public service announcement required in (a) of this section. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.100

AS 29.06.040

AS 29.06.130

AS 29.06.500

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.460 is amended to read:

**3 AAC 110.460 SERVICE OF PETITION.** (a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department. **Copies of the petition, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics.**

(b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a)(1), through the last date **on which the petition may be subject to action by the commission, including that which might result from proceedings ordered by a court of competent jurisdiction,** [AVAILABLE FOR RECONSIDERATION OF THE FINAL DECISION UNDER 3 AAC 110.580] the petitioner shall make a full set of petition documents, including **public notices,** responsive **briefs,** [AND] reply **brief** [BRIEFS], and department reports, available for review by the public at a central and convenient location

such as a municipal office [CITY HALL] or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents and the hours when the documents can be reviewed. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- AS 29.04.040 AS 29.05.100 AS 29.06.040
- AS 29.06.130 AS 29.06.500 AS 44.33.812
- AS 44.33.814 AS 44.33.816 AS 44.33.818
- AS 44.33.820 AS 44.33.822 AS 44.33.826
- AS 44.33.828

3 AAC 110.470 is amended to read:

**3 AAC 110.470 PROOF OF NOTICE AND SERVICE.** No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department five additional [SIX] complete sets of petition documents and [,] a sworn affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied. Copies of the petition, including maps and other exhibits, must [MAPS AND OTHER EXHIBITS SUBMITTED WITH COPIES OF THE PETITION SHALL] conform to the original in color,

size, and other distinguishing characteristics. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.100

AS 29.06.040

AS 29.06.130

AS 29.06.500

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.480 is amended to read:

**3 AAC 110.480 RESPONSIVE BRIEFS AND WRITTEN COMMENTS.**

(a) Any interested person, [OR] entity, or group of persons with the capacity to sue or be sued may file with the department an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the [ORIGINAL] petition. The department will, in its discretion, waive the requirement for the respondent to provide five copies of the responsive brief if such would impose a hardship on the respondent. If the respondent is a group of persons, the group shall designate one person to represent the group. Copies of the responsive briefs, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics. The respondent shall provide the department with a copy of the responsive brief in a digital format approved by the department, unless the

department waives this requirement because such would impose a hardship on the respondent.

(b) The responsive brief and companion exhibits, must be filed with a sworn affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by a sworn affidavit of service of two copies of the brief on the petitioner by regular mail, postage prepaid, or by hand-delivery.

(d) Any interested person or entity may file with the department written comments supporting or opposing the petition. The correspondent shall provide a copy of the written comments to the petitioner by hand delivery, e-mail, facsimile, or postage-prepaid mail on the same date the comments were submitted to the department. If the written comments, including attachments, exceed 20 pages or if they include colored materials or materials larger than 11-inches by 17-inches, the correspondent shall provide an additional five complete sets of the written comments to the department. Copies of the written comments, including attachments, must conform to the original in color, size, and other distinguishing characteristics. The department will, in its discretion, waive the requirement for the correspondent to provide five copies of the

written comments if such would impose a hardship on the correspondent. Written comments must be received by the department in a timely manner in accordance with 3

AAC 110.640. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.080	AS 29.05.100
AS 29.06.040	AS 29.06.110	AS 29.06.130
AS 29.06.480	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44 33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.490 is amended to read:

**3 AAC 110.490 REPLY BRIEF.** The petitioner may file an original and five copies of a single [ONE] reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480. The petitioner shall provide the department with a copy of the reply brief in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the petitioner. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be accompanied by a sworn affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.080	AS 29.05.100
AS 29.06.040	AS 29.06.110	AS 29.06.130
AS 29.06.480	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.500 is amended to read:

**3 AAC 110.500 LIMITATIONS ON ADVOCACY.** (a) Unless otherwise ordered by the chairperson of the commission, for good cause shown, no document, letter, or brief will be accepted for filing and consideration by the department or the commission except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the commission, including that which might result from proceedings ordered by a court of competent jurisdiction [AVAILABLE FOR THE

Register \_\_\_\_\_, \_\_\_\_\_ 200\_\_

COMMUNITY AND ECON. DEV.

COMMISSION'S RECONSIDERATION]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.080	AS 29.05.100
AS 29.06.040	AS 29.06.110	AS 29.06.130
AS 29.06.480	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.510 is amended to read:

**3 AAC 110.510 INFORMATIONAL SESSIONS.** (a) If the department determines that persons or entities within or proximate to the area of the [AFFECTED BY A] proposed change have not had [AN] adequate opportunity to be informed about the scope, benefits, and detriments of the proposed change, the department will, in its discretion, require the petitioner to conduct informational sessions and to submit a recording, transcription, or summary of those sessions to the department.

(b) The department will not proceed with the processing of the petition until the petitioner has certified, by sworn affidavit, that the informational session requirements of this section have been met. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.080

AS 29.05.100

AS 29.06.040

AS 29.06.110

AS 29.06.130

AS 29.06.480

AS 29.06.500

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.520 is amended to read:

**3 AAC 110.520 DEPARTMENTAL PUBLIC MEETINGS.** (a) During its investigation and analysis of a petition for incorporation, the department will convene at least one public meeting in the territory proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department will, in its discretion, convene at least one public meeting in or near the territory proposed for change.

(b) Notice of the date, time, and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to all respondents at least 15 days before the public meeting [MEETINGS]. The notice will be published by the department at least once each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people and entities within or proximate to the area of the proposed change [IN THE AFFECTED TERRITORY]. If the department determines that there is no newspaper of general circulation in the territory that is published at least once a week, the

department will provide notice through other means designed to reach the public in lieu of publishing the notice in the manner outlined in this subsection. The petitioner shall post [THE SAME] notice of the meeting in at least three [PUBLIC AND] prominent locations readily accessible to the public in or near the territory proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner shall submit to the department a sworn affidavit certifying that the posting requirements of this subsection have been met.

(c) Staff assigned to the commission will preside at the public meeting. Written materials submitted at the public meeting will, in the discretion of the presiding staff person, be accepted with due regard to prior public notice and opportunity to submit written briefs. Except in extraordinary circumstances, the petitioner and the respondents will not be permitted to submit further written materials at the meeting. The public meeting will be recorded [,] and summarized in the report with [AND] recommendations of the department [,] prepared under 3 AAC 110.530.

(d) The department will, in its discretion, postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting, if the meeting is relocated within the same community or territory, and is rescheduled no more than 72 hours after the originally scheduled time. (Eff. 7/31/92, Register 123; am / / Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.080

AS 29.06.040

AS 29.06.090

AS 29.06.110

AS 29.06.480

AS 29.06.490

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.530 is amended to read:

**3 AAC 110.530 DEPARTMENTAL REPORT.** (a) The department will investigate and analyze a petition filed with the department under this chapter, and will submit to the commission a written report of its findings and recommendations regarding the petition.

(b) The department will mail to the petitioner and respondents its preliminary report with [A PROPOSED DRAFT OF ITS REPORT AND] recommendations before submitting its final report with [AND] recommendations to the commission. Within 24 hours of receipt of the preliminary [DRAFT] report with [AND] recommendations, the petitioner shall place a copy of the report with the petition documents available for review.

(c) The petitioner, respondents, and other interested persons may submit, to the department, written comments pertaining directly to the preliminary [DRAFT] report with [AND] recommendations. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(d) The final written report with [AND] recommendations of the department will include due consideration of written comments addressing the preliminary [DRAFT] report with [AND] recommendations. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- AS 29.04.040 AS 29.05.080 AS 29.06.040
- AS 29.06.110 AS 29.06.490 AS 44.33.812
- AS 44.33.814 AS 44.33.816 AS 44.33.818
- AS 44.33.820 AS 44.33.822 AS 44.33.826
- AS 44.33.828

3 AAC 110.540 is amended to read:

**3 AAC 110.540 AMENDMENTS AND WITHDRAWAL.** (a) A petition [PETITIONER] may be amended [AMEND] or withdrawn [WITHDRAW THE ORIGINAL PETITION] at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the amendment or withdrawal must be filed with the department. The petitioner shall provide the department with a copy of the amended petition and supporting materials in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the petitioner. If the original petition was initiated by voters [IF THE SIGNATURES OF VOTERS WERE REQUIRED BY AS 29.05 OR AS 29.06 IN THE ORIGINAL PETITION],

(1) the amended [AMENDING] petition must contain the dated signatures of the same number of voters [IN THE MANNER] required by AS 29.04, AS 29.05, AS 29.06, or this chapter for the original petition, and must include the dated signatures of at least a majority of the same voters who signed the original petition; and

(2) a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing in the area of the proposed change, and must include at least a majority of the same voters who signed the original petition.

(b) A petitioner shall serve the amended [AMENDING] petition on each person and entity designated by the department, and by 3 AAC 110.400 - 3 AAC 110.660 to receive the original petition, and on the respondents to the original petition. A petitioner shall place a copy of the amended [AMENDING] petition with the original petition documents, post the public notice of the amended [AMENDING] petition, and submit a sworn affidavit of service and notice in the same manner required for the original petition.

(c) The chairperson of the commission will, in the chairperson's discretion, determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.400 - 3 AAC 110.660. Additional informational sessions, meetings, briefings, or other step or process will be conducted in accordance with the procedures specified in 3 AAC 110.400 - 3 AAC 110.660 for the processing of the original petition, except that the timing may be shortened in the chairperson's discretion.

(d) A petitioner may not amend or withdraw the original petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition, except upon a clear showing to the commission that the public interest of the state and of the persons and entities within or proximate to the area of [POPULATION AFFECTED BY] the proposed change is best served by allowing the proposed amendment or withdrawal. [A PETITION FOR AMENDMENT OR WITHDRAWAL ALLOWED UNDER THIS SUBSECTION, MUST INCLUDE THE SAME SIGNATURE REQUIREMENTS SPECIFIED IN (A) OF THIS SECTION. UNLESS MODIFIED BY AN ORDER OF THE CHAIRPERSON OF THE COMMISSION, THE PROCEDURES OF 3 AAC 110.400 - 3 AAC 110.660 FOR THE PROCESSING OF AN ORIGINAL PETITION APPLY TO AN AMENDING PETITION OR STATEMENT OF WITHDRAWAL.] (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.060

AS 29.06.040

AS 29.06.090

AS 29.06.100

AS 29.06.450

AS 29.06.460

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.550 is amended to read:

**3 AAC 110.550 COMMISSION PUBLIC HEARING.** (a) The commission will convene one or more public hearings at convenient locations in or near the territory of the proposed change as required under AS 29.04, AS 29.05, AS 29.06, AS 44.33.810 - 44.33.828, and this chapter.

(b) Notice of the date, time, place, and subject of the hearing will be

(1) mailed, postage prepaid, by the department to the petitioner and to all respondents;

(2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three [SIX] inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people in the territory; if the department determines that there is no newspaper of general circulation in the territory that is published at least once a week, the department will provide notice through other means designed to reach the public in lieu of publishing the notice in the manner outlined in this subsection; and

(3) posted by the petitioner in at least three [PUBLIC AND] prominent locations readily accessible to the public in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

(c) The department will submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving the

area of the proposed change and request that it be announced [AS FREQUENTLY AS POSSIBLE] during the 21 days preceding the date of the hearing.

(d) The commission will, in its discretion, postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time.

(e) At least 14 days prior to the hearing, the petitioner and each respondent shall submit to the department a list of witnesses that each respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits its witness list to the department, the petitioner shall provide a copy of its witness list to each respondent by hand delivery or postage prepaid mail. On the same date that a respondent submits its witness list to the department, the respondent shall provide a copy of its witness list to the petitioner and all other respondents by hand delivery or postage prepaid mail. (Eff. 7/31/92, Register: 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.090

AS 29.06.040

AS 29.06.120

AS 29.06.490

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.560 is amended to read:

**3 AAC 110.560 COMMISSION HEARING PROCEDURES.** (a) The chairperson of the commission will preside at the hearing, and will regulate the time and the content of testimony to exclude irrelevant or repetitious testimony. The hearing must be recorded and the recording [TAPES] preserved by the department. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) A hearing will, in the commission's discretion, include

(1) a report with recommendations from the department;

(2) an opening statement by the petitioner, not to exceed 10 minutes [IN LENGTH];

(3) an opening statement by a respondent who filed a brief under 3 AAC 110.480, not to exceed 10 minutes [A PERIOD OF PUBLIC COMMENT BY INTERESTED PERSONS, NOT TO EXCEED FIVE MINUTES FOR EACH PERSON];

(4) sworn testimony of witnesses with expertise in matters relevant to the proposed change called by the petitioner;

(5) sworn testimony of witnesses with expertise in matters relevant to the proposed change called by the respondent [RESPONDENTS];

(6) sworn responsive testimony of witnesses with expertise in matters relevant to the proposed change called by the petitioner;

(7) a period of public comment by interested persons, not to exceed three minutes for each person:

(8) [(7)] a closing statement by the petitioner, not to exceed 10 minutes [IN LENGTH];

(9) [(8)] a closing statement by the respondent [RESPONDENTS WHO TESTIFIED UNDER (5) OF THIS SUBSECTION], not to exceed 10 minutes [IN LENGTH FOR EACH RESPONDENT]; and

(10) [(9)] a reply by the petitioner, not to exceed five minutes [IN LENGTH].

(c) If there is more than one respondent, the commission chairperson will, at least 14 days prior to the hearing, establish time limits on the opening and closing statements for each respondent.

(d) [(C)] A member of the commission may question a person appearing for public comment or as a sworn witness. The commission will, in its discretion, call additional witnesses.

(e) [(D)] A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the report with [AND] recommendations of the department.

(f) [(E)] The commission will, in its discretion, amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency

Register \_\_\_\_\_, \_\_\_\_\_ 200\_\_

COMMUNITY AND ECON. DEV.

without detracting from the commission's ability to make an informed decision. (Eff.

7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.090

AS 29.06.040

AS 29.06.120

AS 29.06.490

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.570 is amended to read:

**3 AAC 110.570 DECISIONAL MEETING.** (a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. No new evidence, testimony, or briefing will be received during the decisional meeting, however, the chairperson may ask the department or [BY] some other person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change should be altered to meet the standards contained [ESTABLISHED] in the Alaska Constitution, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission will, in its discretion, alter the proposed change and

accept the petition as altered. If the commission determines that a [PETITIONER MUST SATISFY A] certain requirement must be satisfied before the proposed change can take effect, the commission will include that precondition in its decision. A motion to amend, impose conditions, or approve a proposed change requires at least three votes by commission members to constitute approval.

(d) If the commission determines that a proposed change fails to meet the standards contained [ESTABLISHED] in the Alaska Constitution, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission shall [MUST] reject the proposed change. If a motion to grant a proposed change receives fewer than three votes by commission members, the proposed change is rejected [BY A MAJORITY VOTE OF THE PRESENTLY APPOINTED MEMBERSHIP. IF THE COMMISSION DETERMINES THAT A PROPOSED CHANGE MEETS THE STANDARDS ESTABLISHED CONTAINED IN THE ALASKA CONSTITUTION, AS 29.05, AS 29.06, OR THIS CHAPTER, OR CAN BE ALTERED TO MEET THOSE STANDARDS, THE COMMISSION MUST ACCEPT THE PROPOSED OR ALTERED CHANGE BY A MAJORITY VOTE OF THE PRESENTLY APPOINTED MEMBERSHIP].

(e) The commission shall [MUST] keep written minutes of all decisional meetings. All votes taken by the commission must be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy

of the statement will be mailed to the petitioner, [TO ALL] respondents, and [TO] other interested persons requesting a copy.

(g) A decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents. The department will execute and file a sworn affidavit of mailing as a part of the public record of the proceedings. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

- AS 29.04.040 AS 29.05.100 AS 29.06.040
- AS 29.06.130 AS 29.06.500 AS 44.33.812
- AS 44.33.814 AS 44.33.816 AS 44.33.818
- AS 44.33.820 AS 44.33.822 AS 44.33.826
- AS 44.33.828

3 AAC 110.580 is amended to read:

**3 AAC 110.580 RECONSIDERATION.** (a) Within 20 days after a decision of the commission is final under 3 AAC 110.570(g), a person or entity may file an original and five copies of a request for reconsideration of that decision, describing in detail the facts and analyses that support the request for reconsideration [(1) A PERSON MAY FILE A REQUEST FOR RECONSIDERATION OF THAT DECISION, DESCRIBING IN DETAIL THE FACTS AND ANALYSES THAT SUPPORT THE REQUEST FOR RECONSIDERATION; OR

(2) THE COMMISSION WILL, IN ITS DISCRETION, ORDER RECONSIDERATION OF ALL OR PART OF ITS DECISION ON ITS OWN MOTION].

(b) A person or entity filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the person or entity requesting reconsideration. A request for reconsideration must be accompanied by a sworn affidavit of service of the request for reconsideration on the petitioner and all respondents by regular mail, postage prepaid, or by hand-delivery. The affidavit must also state that the request for reconsideration was formed after reasonable inquiry, is founded in fact, and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) If the request for reconsideration is filed by a group or organization, the request must identify a representative of the group or organization.

(d) The commission will, in its discretion, reconsider a decision if

(1) there was a substantial procedural error in the original proceeding;

(2) the original vote was based on fraud or misrepresentation;

(3) the Commission failed to address a material issue of fact or a controlling principle of law; or

(4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

(e) [B] If the commission has not acted [TAKEN NO ACTION] on a request for reconsideration within 30 days after the decision became final under 3 AAC 110.570(g), the request is automatically denied. If the commission grants a request for reconsideration within 30 days after the final decision under 3 AAC 110.570 (g), a petitioner or respondent supporting or opposing the reconsideration is allotted 10 days from the date the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration. The petitioner or respondent shall provide the department with a copy of the responsive brief in a digital format approved by the department, unless the department waives this requirement because such would impose a hardship on the petitioner.

(f) The commission will, in its discretion, order reconsideration of all or part of its decision on its own motion as long as the proposed change at issue remains within the jurisdiction of the commission.

(g) Only the provisions of this section, not AS 44.62.540, govern reconsideration by the commission. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05 100	AS 29.06.040
AS 29.06.130	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.590 is amended to read:

**3 AAC 110.590 CERTAIN LOCAL ACTION ANNEXATIONS [LOCAL ACTION BOUNDARY CHANGES].** (a) Except as otherwise provided in this section, if a petition is filed with the department under a local action [OR LOCAL OPTION] method provided for in AS 29.06.040(c)(2) or (3) [AS 29.06,] for [DISSOLUTION] annexation of adjacent municipally owned property or adjacent property by unanimous consent of voters and property owners [, DETACHMENT, MERGER, OR CONSOLIDATION,] only the following procedures specified in 3 AAC 110.400 - 3 AAC 110.660 are required:

- (1) filing a petition under 3 AAC 110.420;
- (2) technical review of the petition under 3 AAC 110.440;
- (3) notice and service of the petition under 3 AAC 110.450 - 3 AAC 110.470;
- (4) responsive briefs and comments under 3 AAC 110.480, except that the

commission chairperson will, in the chairperson's discretion, limit the time allowed under 3 AAC 110.640 for the filing of responsive briefs and comments to 14 days from the date of first publication of the notice of filing of the petition;

(5) reply brief under 3 AAC 110.490, except that the commission chairperson will, in the chairperson's discretion, limit the time allowed under 3 AAC 110.640 for the filing of a reply brief to 7 days from the date that the petitioner received the responsive brief.

(6) [(4)] departmental report under 3 AAC 110.530, except that the department shall issue only one report concerning the local action annexation proposal at least 21 days prior to the public hearing under 3 AAC 110.550, interested persons may submit written comments to the department on its report up to 7 days prior to the public hearing;

(7) [(5)] commission's public hearing under 3 AAC 110.550, except that the hearing will, in the discretion of the commission, be conducted by teleconference;

(8) [(6)] decisional meeting under 3 AAC 110.570; and

(9) reconsideration under 3 AAC 110.580.

(b) The commission will, in its discretion, expand local action [OR LOCAL OPTION] procedures to include other requirements of 3 AAC 110.400 - 3 AAC 110.660, such as [ADDITIONAL NOTICE AND SERVICE,] briefing, informational sessions, [AND] public meetings and hearings, and reconsideration if the commission determines that the best interests of the state are enhanced by such [EXPANDED PUBLIC PARTICIPATION].

(c) The chairperson of the commission will, in the chairperson's [ITS] discretion, relax, reduce, or eliminate the notice and service requirements of 3 AAC 110.450 - 3 AAC 110.470 if the chairperson [COMMISSION] determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

[(D) THE COMMISSION, IN ITS DISCRETION, WILL NOT REQUIRE THE COMMISSION PUBLIC HEARING UNDER 3 AAC 110.550 , AND WILL MODIFY THE DEPARTMENTAL REPORT REQUIREMENT UNDER 3 AAC 110.530 , FOR A

PETITION PROPOSING ANNEXATION OF ADJACENT MUNICIPALLY OWNED PROPERTY, OR FOR A PETITION PROPOSING ANNEXATION OF ADJACENT PROPERTY BY UNANIMOUS CONSENT OF VOTERS AND PROPERTY OWNERS.]

(d) [(E)] If the commission determines that the balanced best interests of the locality and the state are enhanced by statewide participation, the commission will, in its discretion, convert a local action [OR LOCAL OPTION] petition to a legislative review petition. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040

AS 29.06.090

AS 29.06.450

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.600 is amended to read:

**3 AAC 110.600 LOCAL ACTION/LOCAL OPTION ELECTIONS.** (a) In accordance with AS 29.04, AS 29.05, and AS 29.06, the commission will notify the director of elections of its acceptance of a local action or local option petition proposing city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal dissolution, merger, or consolidation under AS 29.06. The director of elections will conduct and certify the elections in accordance with AS 15 and AS 29.04 - AS 29.06 [AS 29.05 - AS 29.06].

(b) If AS 29.06 requires a municipal [LOCAL] election for a proposed annexation or detachment, the commission will notify the clerk of the [AFFECTED] municipality proposed for change of the commission's acceptance of a local option petition. The election must be administered by the [AFFECTED] municipality proposed for change at its own cost, and in the manner prescribed by its municipal election code, except that the commission will, in its discretion, specify the wording of the ballot measure and broaden the election notice requirements.

(c) Pursuant to AS 29.06.040(c) and AS 44.33.812(a)(2), the commission may approve a petition for annexation subject only to approval by a majority of the combined voters who vote on the question within the area proposed for annexation and the annexing municipality. If the territory proposed for annexation is uninhabited, the commission may approve a petition for annexation of that territory subject only to approval by a majority of the voters who vote on the question within the annexing municipality.

(Eff. 7/31/92, Register 123: am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.110	AS 29.05.120
AS 29.06.040	AS 29.06.140	AS 29.06.510
AS 44.33.812	AS 44.33.814	AS 44.33.816
AS 44.33.818	AS 44.33.820	AS 44.33.822
AS 44.33.826	AS 44.33.828	

3 AAC 110.610 is amended to read:

**3 AAC 110.610 LEGISLATIVE REVIEW.** (a) The commission may determine during the course of proceedings that a legislative review petition should be amended and considered as a local action or local option petition, if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

(b) If [THE COMMISSION DETERMINES THAT] a decision of the commission [AS] requires legislative review, the commission will present a recommendation for the decision [THE PETITION] to the legislature during the first 10 days of a [THE NEXT] regular session in accordance with art. X, sec. 12, Constitution of the State of Alaska.

(Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 29.06.040

AS 29.06.090

AS 29.06.450

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.620 is amended to read:

**3 AAC 110.620 JUDICIAL REVIEW.** A final decision of the commission made under AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in

accordance with the Administrative Procedure Act (AS 44 62). (Eff. 7/31/92, Register 123;  
am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.100	AS 29.06.040
AS 29.06.130	AS 29.06.500	AS 44.33.812
AS 44.33.814	AS 44.33.816	AS 44.33.818
AS 44.33.820	AS 44.33.822	AS 44.33.826
AS 44.33.828		

3 AAC 110.630 is amended to read:

**3 AAC 110.630 EFFECTIVE DATE AND CERTIFICATION.** (a) Except as provided in (b) or (c) of this section, a final decision of the commission is effective when

(1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;

(2) certification of the legally required voter approval of the commission's final decision is received from the director of the division of elections or the appropriate municipal official; and

(3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.

(b) The effective date of a merger or consolidation is the date set by the director of the division of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.

(c) The commission will, in its discretion, defer the effective date of a city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal annexation, detachment, merger, consolidation, or dissolution under AS 29.06 for a period of no more than two years.

(d) [(C)] When the requirements in (a) of this section have been met, the department will issue a certificate describing the effective change. The department will hand-deliver or mail, postage prepaid, a copy of the certificate to the municipality that has been changed [ALL MUNICIPALITIES AFFECTED BY THE CHANGE], and will file a copy of the certificate in each recording district of all territory within the municipality that has been changed [AFFECTED BY THE CHANGE]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 29.04.040

AS 29.05.120

AS 29.06.040

AS 29.06.140

AS 29.06.510

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.640 is amended to read:

**3 AAC 110.640 SCHEDULING.** (a) The chairperson of the commission will set or amend the [ISSUE AN ORDER SETTING OR AMENDING A FORMAL] schedule for action on a petition.

(b) Except as provided by 3 AAC 110.590 for certain local action annexations, a [A] schedule under (a) of this section will allow at least

(1) 49 days from the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief or written comments concerning the petition;

(2) 14 days from the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner;

(3) 28 days from the date of mailing of a departmental preliminary [DRAFT] report with [AND] recommendation to the petitioner for receipt of written summary comments to the department;

(4) 21 days between the date of mailing of a final report with [AND] recommendation by the department to the petitioner and the commission hearing on the petition.

(c) The commission will, in its discretion, postpone proceedings on a petition that has been accepted for filing to allow [FOR THE PURPOSE OF ALLOWING] concurrent consideration and action on another [EXISTING OR ANTICIPATED] petition that pertains [WILL PERTAIN] to some or all of the same territory and that has either been accepted

for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated [ . A ] competing petition only if the anticipated competing petition is [MUST BE] received by the department no later than 90 days after the date of the first publication [POSTING] of notice of the earlier petition under 3 AAC 110.450 [3 AAC 110.410]. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.080	AS 29.05.090
AS 29.06.040	AS 29.06.090	AS 29.06.110
AS 29.06.120	AS 29.06.480	AS 29.06.490
AS 44.33.812	AS 44.33.814	AS 44.33.816
AS 44.33.818	AS 44.33.820	AS 44.33.822
AS 44.33.826	AS 44.33.828	

3 AAC 110.650 is amended to read:

**3 AAC 110.650 RESUBMITTALS AND REVERSALS.** Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

(1) is substantially similar to a petition denied by the commission, rejected by the legislature, or rejected by the voters during the immediately preceding 24 months; or

(2) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months.

(Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.100	AS 29.06.040
AS 29.06.090	AS 29.06.130	AS 29.06.450
AS 29.06.500	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.660 is amended to read:

**3 AAC 110.660 PURPOSE OF PROCEDURAL REGULATIONS;  
RELAXATION OR SUSPENSION OF PROCEDURAL REGULATION.** 3 AAC  
110.400 - 3 AAC 110.660 are procedural regulations designed to facilitate the business of the  
commission, and are to [SHALL] be construed to secure the reasonable, speedy, and  
inexpensive determination of every action and proceeding. Unless a requirement is strictly  
provided for in the Alaska Constitution, AS 29, or AS 44.33.810 - 44.33.849, the commission  
will, in its discretion, relax or suspend a procedural regulation if the commission determines  
that a strict adherence to the regulation would work injustice, [OR] result in a substantially  
uninformed decision, or would not serve relevant constitutional principles and the broad  
public interest. (Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.100	AS 29.06.040
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AS 29.06.090

AS 29.06.450

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

### ARTICLE 13 - GENERAL PROVISIONS

3 AAC 110.900 is amended to read:

**3 AAC 110.900 TRANSITION.** (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that [IN WHICH THE MUNICIPAL GOVERNMENT] demonstrates the capacity of the municipal government [ITS INTENT AND CAPABILITY] to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) All petitions [A PETITION FOR A PROPOSED ACTION BY THE COMMISSION] must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and [OR] other appropriate entity located in the

territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough [OR] service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) All petitions [A PETITION FOR PROPOSED ACTION BY THE COMMISSION] must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough [OR] service area wholly or partially included in the area proposed for [AFFECTED BY] the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur [OCCURS] without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission will, in its discretion, require that all [AFFECTED] boroughs, cities, unorganized borough service areas, or other entities wholly or partially within the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

<u>AS 29.04.040</u>	AS 29.05.130	AS 29.05.140
AS 29.06.040	AS 29.06.090	AS 29.06.150
AS 29.06.160	AS 44.33.812	AS 44.33.814
AS 44.33.816	AS 44.33.818	AS 44.33.820
AS 44.33.822	AS 44.33.826	AS 44.33.828

3 AAC 110.910 is amended to read:

**3 AAC 110.910 STATEMENT OF NON-DISCRIMINATION.** A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. (Eff. 7/31/92, Register 123; am / / , Register)

Authority: Art. X, sec. 12, Ak Const. [ALASKA CONST., ART. X, SEC. 12]

AS 44.33.812	AS 44.33.814	AS 44.33.816
AS 44.33.818	AS 44.33.820	AS 44.33.822
AS 44.33.826	AS 44.33.828	

3 AAC 110.920 is amended to read:

**3 AAC 110.920 DETERMINATION OF COMMUNITY.** (a) In determining whether a population comprises a community [OR SOCIAL UNIT], the commission will, in its discretion, consider relevant factors, including whether [THE PEOPLE]

**(1) the settlement is inhabited by at least twenty-five individuals:**

**(2)** [(1)] **the inhabitants** reside permanently in a close geographical proximity that allows frequent personal contacts and **comprise** [HAS] a population density that is characteristic of neighborhood living;

**(3)** [(2)] **the inhabitants** residing permanently at a location are a discrete and identifiable **social** unit [,] as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community [OR SOCIAL UNIT] if

(1) public access to or the right to reside at [,] the location of the population is restricted;

(2) the population is [CONTIGUOUS OR CLOSELY] adjacent to a community [OR SOCIAL UNIT] and is dependent upon that community [OR SOCIAL UNIT] for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. (Eff. 7/31/92, Register 123; am / / , Register )

Authority: **Art. X, sec. 12, Ak Const.** [ALASKA CONST., ART. X, SEC. 12]

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

3 AAC 110.990 is amended to read:

**3 AAC 110.990 DEFINITIONS.** Unless the context indicates otherwise, in this chapter

(1) "best interests of the state" means the broad policy benefit to the public statewide; the concept is applied by the Local Boundary Commission on a case-by-case basis; a determination of the best interests of the state is substantially guided by the applicable provisions of the Alaska Constitution, Alaska Statutes, and Alaska Administrative Code to reflect the exigencies of any petition as is necessary to develop appropriate local government boundaries which, in turn, serve the balanced interests of citizens in the area proposed for change, affected local governments, and other public interests which the Local Boundary Commission, in its discretion, considers to be relevant;

(2) [(1)] "borough" means a general law borough, a home rule borough, or a unified municipality;

(3) [(2)] "commission" means the Local Boundary Commission;

(4) [(3)] "commissioner" means the commissioner of the Department of Community and Economic Development;

(5) [(4)] a "community" is a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;

(6) [(5)] "contiguous" means territories and properties that are adjacent, adjoining, and touching each other;

(7) [(6)] "department" means the Department of Community and Economic Development;

(8) [(7)] "essential borough services" means those mandatory and discretionary powers [ACTIVITIES] and facilities that are determined by the commission to be reasonably necessary to the territory and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; "essential borough services" may include

(A) assessing and collecting taxes;

(B) providing primary and secondary education;

(C) planning, platting, and land use regulation; and

(D) other services that the commission considers reasonably necessary

to meet the borough governmental needs of the territory;

(9) [(8)] "essential city services" means those mandatory and discretionary powers [LEGAL ACTIVITIES] and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; "essential city services" may include

(A) levying taxes:

(B) [(A)] assessing, [LEVYING,] and collecting taxes for a city in an unorganized borough:

(C) [(B)] providing primary and secondary education in first class and home rule cities in an unorganized borough;

(D) [(C)] public safety protection;

(E) [(D)] planning, platting, and land use regulation; and

(F) other services that the commission considers reasonably necessary to meet the local governmental needs of the community;

(10) [(9)] "mandatory power" means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; "mandatory power" may include

(A) assessing, levying, and collecting taxes;

(B) providing education, public safety, public health, and sanitation services;

(C) planning, platting, and land use regulation;

(D) conducting elections; and

(E) other acts, duties, or obligations required by law to meet the local governmental needs of the community;

(11) "model borough boundaries" mean those boundaries adopted by the commission on file with the Local Boundary Commission Staff, Dept. of Community and Economic Development, 550 W. 7th Ave., Suite 1770, Anchorage, AK 99501-3510.

(12) [(10)] "permanent resident [RESIDENCE]" means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the commission;

(13) [(11)] "political subdivision" means a borough or [, UNIFIED MUNICIPALITY,] city [, REGIONAL EDUCATIONAL ATTENDANCE AREA, OR COASTAL RESOURCE SERVICE AREA] organized and operated under state law;

(14) [(12)] "property owner" means a legal person holding a vested fee simple interest in the surface [OR SUBSURFACE] estate of any real property including submerged lands; lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, and holders of unvested interests in land are not "property owners" for purposes of this chapter.

(15) "witnesses with expertise in matters relevant to the proposed change" means persons who are specialists in relevant subjects such as municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or persons who are long-standing members of the community or region that are directly familiar with social, cultural, economic, geographic, and other

Register \_\_\_\_\_, \_\_\_\_\_ 200\_\_

COMMUNITY AND ECON. DEV.

characteristics of the community or region. (Eff. 7/31/92, Register 123; am / / , Register

)

Authority: Art. X, sec. 12, Ak Const.

[ALASKA CONST., ART. X, SEC. 12]

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.818

AS 44.33.820

AS 44.33.822

AS 44.33.826

AS 44.33.828

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## PUBLIC TESTIMONY

- CCAA

- INDIVIDUAL

LETTERS, POMS,  
EMAIL

## ***Citizens Concerned About Annexation***

PO Box 1715 HOMER, AK 99603

Never before in the history of Alaska has this broad a legislative review annexation been attempted. The legislature should only approve it if it's really necessary for better government. This process has not been a sterling example of good government, and we believe it is time to consider changing the way annexations are handled in Alaska.

- I. The City has excluded the public from any meaningful dialog on annexation and has hidden any documents that might cast doubt on the veracity of the petition. Page 2.
- II. The City's basic premise is wrong. The City claims we are using city services and not paying for them, when in fact our sales tax contributions pay for those non-fee-based services that we actually use 3 or 4 times over. Page 5.
- III. People have a right to vote on issues that will have a major impact on their lives. There are several related voting issues that have arisen in this annexation. Page 7.
- IV. The LBC was wrong to find all 14 standards were met when there were many that the City had not shown they met. On some standards they accepted the City's statements without proof, on others they abused their discretion. Page 9.
- V. CCAA is prepared to pursue the legal issues in court, but we ask you to veto so we will not have to spend thousands of dollars on legal fees that could be better spent in the local economy, nor drag out this battle for three years or more. Page 17.
- VI. The entire process has been flawed from the beginning, made worse by the LBC's bias in favor of the City. Page 20.

For all of these reasons we believe this annexation should be vetoed. We are not opposed to annexation of people who wish to be annexed, but are adamantly opposed to an annexation that completely tramples on the basic rights and freedoms that are the birthright of every American. The Alaska Constitution clearly says you may veto an annexation for any reason, the following pages should give you plenty of reasons. This legislative review annexation may have been legal, but it wasn't right. We are asking you to do what is right and veto Homer's annexation. Help restore our faith in government.

The City brought up the subject of annexation in 1998. After a major public outcry and finding the numbers didn't pan out they quietly dropped the idea. But it didn't go away, it just went underground. In late 1999 a resolution to ask the City Manager to come up with a work plan and time line was approved with little notice in the wee hours of the morning after a long grueling City Council meeting to deal with the budget. It was not mentioned in the press.

No one suspected a thing until a "secret" memo was leaked, a memo from the City Manager to the department heads assigning them specific tasks for the work plan, and asking them to "support annexation". (Requests for the department head memos written in response, from which the petition was allegedly drafted, were denied by a claim of "privilege", see below.) Instead of a "work plan and time line", the City suddenly had a complete petition to annex, all ready to send to the LBC. No public meetings, no public input, no public discussion of any sort. Not even with the city's own residents.

They had planned to release this petition on a Friday and vote on it the following Monday, but public outcry forced an earlier release, by one week. Had they succeeded it would have been in the hands of the LBC before anyone knew about it! CCAA had to file an injunction to try to slow things down, just to make sure the word got out before the vote. We lost the suit but gained the needed publicity, and an extra week.

The LBC was sufficiently concerned with the lack of public notice or hearing to write new regulations to require a public hearing, with 30 days notice, prior to submitting a petition for a legislative review annexation. With a start this bad, this annexation should never have made it this far.

Then there is the difficulty we have had getting information from the City about this annexation. An initial request for all documents concerning annexation resulted in the release of only three documents -- two that had been specifically named and the Resolution that approved the petition. So a more specific request was submitted, a 67 item list, many of which were denied. Most significantly, anything that might support (or not) the cost estimates in the Petition were denied by the city manager claiming the "deliberative process privilege".

We appealed to the City Council but they backed the city manager, so we filed an appeal in court. It took months just to get a list of the documents being withheld, 25 department head memos that Mr. Drathman says he relied on when drafting the Petition. They are now in the hands of the Alaska Supreme Court and we will probably not get a decision until next Fall. Meanwhile, we are required by the City to make any records requests through our attorney. This slowed the process down enough to prevent us from getting some requested information in time to use it when commenting on the Preliminary Report.

This sort of background information should not be withheld. We have no way of checking the validity of the cost estimates of annexation without this material. The DCED and LBC accepted the City's estimates on the assumption that the department heads were experienced and would do a good job on the estimates. However, there is no proof that the numbers in the Petition match the ones the department heads came up with. In fact, there is quite a bit of circumstantial evidence that they do not. This was pointed out to the DCED and LBC, and they were provided with all the relevant documentation, yet they dismissed it all as a mere "difference of opinion"!!

Clearly the City did not want us to know what they were up to, or what they had been up to. They also did not care to know what we thought about the whole mess. They claim to have had over fifty-five meetings and forums in which we were given opportunity to express our wishes about annexation. This claim might be technically accurate, if they are including every City Council meeting they've held in the last two years. However, the way in which these meetings were conducted and the manner in which we were treated left us totally without voice before the Homer City Administration. They allowed us to speak but did not listen and never engaged in a dialog.

One entire set of annexation forums was conducted by different city councilmen in turn. It is difficult to determine the purpose of these forums, because we were told that if we expressed opposition to the city's plans the meetings would be adjourned. As a result, after the first meeting, attendance was poor except for city employees.

Attendance at City Council meetings in which annexation issues were on the agenda was quite good. We who opposed annexation were given opportunity to speak. There

was never one time when the response to what we said was more than, "Thank you. Next?" However, there were times when we were gaveled and threatened with expulsion if we spoke with too much conviction or passion. There were instances of the police showing up after particularly emotional speech, not a very friendly move on the City's part.

One entire worksession was devoted to a discussion between the councilmen about which areas they would be willing to have the LBC deny them. I do not think any testimony was heard at this meeting.

In this entire debacle, there was only one time when Councilman Kranich made an unsuccessful attempt to "buck the tide" of his fellow councilmen by calling for a reconsideration of his vote. He also introduced a resolution for an advisory vote within the city on annexation, after a citizen initiative for the same was shot down by City Hall, but with some discrete arm-twisting he was coerced into withdrawing it.

Perhaps there actually were fifty-five meetings or forums in which they talked about annexation, and in many of those we were permitted an opportunity for limited testimony. However, in *not one single one* were we listened to or responded to except in a negative way. There has *never* been any useful dialogue between the city and the annex area about the merits of annexation.

All these meetings and they still have no plan for how they will deal with annexation, if it actually goes through. The much ballyhooed forums were an attempt to get our input into how to handle the implementation, that's not what we wanted to discuss. The gist of what did come out of these forums was "we don't know" and "we'll figure it out later". What a way to run a city!

Then to top it all off they threatened to shut off the bulk water sales. Fortunately there was one Council member, Rick Ladd, who had enough spark of a conscience to feel shutting off people's water was going too far, and insisted the City Code they were rewriting still had to require a reason before shutting off bulk water sales.

This annexation should be denied to insure that Homer does not get rewarded for behaving badly, and to discourage other cities from acting in this manner. Allowing municipalities to trample on the state's citizens is not in the state's interest.

The City's basic premise is false. We are not using services without paying for them. The City of Homer claimed in their Petition that the following services are being provided to outlying areas, without being paid for: Fire and EMS, police, sewer (including septic refuse disposal), water (including bulk water sales), library, recreational, animal control, port and harbor, voter services, non-profit support.

- Fire and EMS are the only ones we actually wanted. These had been provided by a non-profit volunteer fire dept until 1991, when the city took it over, with an agreement to continue providing coverage outside the city. Several past attempts at forming a borough fire service area had been squashed by the city well before they could be put to a vote or even brought to the attention of the people. A fresh start on forming a fire and EMS service area was launched just before the Homer annexation petition was filed. The result is KESA, which is paying the city for services provided while working to enhance the level of service provided to the entire area. The city, instead of being happy with this arrangement, is questioning the legality of its forming.
- Police services are provided through the Alaska State Troopers. The city provides assistance to the Troopers and claims this as a provision of service, while failing to mention that the Troopers assist them in return. Dispatch services are paid for by the State and Borough.
- Sewer is provided to a few lots outside the city limits, this does not justify annexing a huge area, or even the reduced 4.58 square miles. The city does not accept septic refuse, all such is trucked up the road. Both water and sewer are paid for by the users.
- Water, again, is provided to a few properties just outside city limits, this was a contract arrangement in exchange for a right-of-way for the city's main line. Water is sold in bulk quantities to commercial resellers, the location of these businesses' customers does not justify annexation.
- Animal control was provided only to the extent of accepting animals from outside the city at the shelter for a "donation", and they have ceased doing this. Actual animal control patrols were never provided.
- The Port and Harbor is supported by user fees. The city may own it, but it was a recent gift from the State. The service is provided only at the Port and Harbor, not outside Homer. The City claims harbor users live outside the City, which they do, including many in Anchorage and other parts of Alaska.
- Voter support is not provided to non-residents. The city used to cooperate with the Borough but no longer does. This was peanuts anyway.
- That leaves the library (which does charge a fee for library cards), recreation, and non-profit support. The city has also claimed to provide economic development, so we can throw this in too. These few services are amply provided for through what we pay in sales taxes, which were originally intended to cover these services, along with fire and police. (see next page for explanation)

Our sales tax dollars also pay for city road improvements, the city sewer plant, and city water and sewer improvements, through dedicated taxes. They do not give us credit for this. Instead of using services we do not pay for, we are in fact subsidizing the city residents, and this hostile annexation is the thanks we get!

The truth about Homer's sales taxes:

In 2000 the City collected \$3,457,312 in sales taxes (figure from Financial Report). Vern Johnson, CPA and past auditor of the City, estimated 61.28% of this revenue came from non-residents. (exhibit 64 with CCAA's Responsive Brief) I don't know where he came up with this and made my own estimates based on population figures in the Preliminary Report. The DCED estimated a population of 9000 for what they called the school service area. Homer is reported to be a commercial hub for 12000 people. These estimates were 56-67%. I used a conservative 50% for sales tax contribution and 70% for service use in the chart below, although even the Library only claims 55% of use is by nonresidents (from the entire Kachemak Bay area and beyond). I excluded Fire and EMS because KESA pays for these services.

City sales tax collection for 2000	3,457,312	X 50%	=	
Amount paid in by non-residents				1,728,656

Services the City claims we use, that we actually may use  
(all figures from 2001 city budget)

Library	304,319	
Airport terminal (expense minus revenue)	44,458	
Non-profits	100,920	
Parks and rec, and cemetery	307,059	
Recreation center	60,040	
Economic Development	<u>31,800</u>	
Total costs	848,596	
X 70% =		594,017

Net profit to city from nonresident sales tax contribution	1,134,639
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The LBC brushed this aside because tourists pay some of the taxes. According to the Kenai Peninsula Borough's Year End Report, the visitor industry generates \$426,646 in city sales tax revenue. If you subtract that from the net profit above there is still \$707,993, so we are still subsidizing the city.

What upsets everyone the most about this annexation is the lack of a vote. There is no need of this forced annexation anymore. It was devised in the early days of the state when there was little local government and fast growth. Things are more settled now, we are not lacking local government in the organized boroughs. There is no need to deprive people of a real voice in their destiny. The creation of Kachemak Emergency Services Area proves that we will indeed vote to tax ourselves when we want the services the taxes will pay for. We will vote for annexation when we are ready for it, meanwhile, there is no crisis that needs to be dealt with, we have basic services. It is time to seriously consider changing the way local government changes are handled in this state.

There are several other issues that have arisen in this annexation that are voting related. One is the new statute (last year's HB 13) that requires a vote before the boundaries of a service area can be changed, AS 29.35.450(c). Homer's annexation is by the Legislative Review Method, which means there is no vote. The LBC has dealt with this conflict by stating that as a matter of law, this statute does not apply to Legislative Review annexations. Our interpretation is that an annexation cannot be done by Legislative Review if it affects one or more service areas covered by AS 29.35.450(c).

There are several legal opinions floating around regarding the LBC's claim that AS 29.35.450(c) does not apply to Legislative Review annexations, but none answer the basic question of whether borough service areas are units of local government. This is an important question and perhaps one the courts will have to answer. The LBC's stance is based on a claim that they have jurisdiction over changes to service area boundaries, but do they? Only if service areas are units of local government! If they are, all service area boundary changes would have to be submitted to the LBC for approval or denial. If they are not, the LBC does not have jurisdiction. The state constitution says that boroughs can set up service areas, so it would seem to be unconstitutional to have them be local governments. The only way to resolve this without creating a tangled mess is to not allow Legislative Review annexations when service areas would be affected.

Complicating this issue is the City's claim that the forming of KESA was illegal. The state constitution says a new service area cannot be formed if the service can be provided by annexation to a city, incorporation as a city, or by another existing service area. The last two are not possibilities here, it is annexation that the City claims should

have prevented the formation of KESA. However, annexation could not provide the service, because the area served is at least four times larger than the proposed original area, and even most of that was not approved by the LBC. A new service area was the only way to go. The City also claims that KESA was formed solely to thwart annexation, but that is also not true. The City made it very clear that they wanted to be paid for the services they were providing, and we felt that was only fair, so we did what needed to be done and formed a service area to do so. KESA is paying the City a king's ransom for the service they were providing for "free" (ignoring our sales tax contributions), 35% of the City's fire department budget even though only 22% of calls are outside of City limits. The City proved to be extremely difficult to negotiate with, they seemed to prefer that KESA fail than that they actually get what they said they wanted, to be paid for services rendered.

Somewhere in all this the Millers Landing area was inadvertently left out of KESA. They were intended to be included in KESA from the get-go, and the Borough has just voted to correct that error. The City fought that tooth and nail as well. Perhaps they have been a bit less than truthful about what they really want?

The other issue is truncation of terms of elected officials. This annexation will bring nearly 900 people into a city of under 4000. There is concern that the new residents will not have elected representation unless new elections are held for all elected offices (City Council and Mayor). The LBC may have the authority to require this as a condition of annexation, but is reluctant to exercise such authority "in the absence of a statute or regulation" addressing truncation of terms. They concluded that the scale of this annexation was not large enough to warrant truncation, yet the Kenai Peninsula Borough requires truncation of terms for Assembly members if their districts change by 10% or more. The proposed population change for the City is 22%! Considering that one of the reasons people do not want to become part of the City of Homer is their distaste for the current crop of elected officials, certainly they deserve a chance to vote in a new council, especially since they are being deprived of a vote on the annexation itself.

The Legislature can protect our right to vote, and defend HB 13, by vetoing this annexation.

The LBC bases their decision on fourteen standards that have their origin in regulations that they draft. We showed repeatedly that this annexation did not meet the standards, yet they found that they did, without logical reasons given. By failing to require the City of Homer to prove its claims in all fourteen standards the LBC failed to follow their own guidelines and failed to follow the laws under which they are required to operate. If *any one* of these standards is unmet, the LBC *must* deny the city's petition. Our attempts to show evidence of this failure to the LBC were brushed aside as a mere "difference of opinion". A synopsis of this failure is given below. More detailed evidence is available upon request.

Some standards might only be resolvable by litigation:

**Standard #2.** *"The territory does not overlap the boundaries of another local government"* is true only if borough service areas are not units of local government, yet elsewhere the LBC claims service areas are local governments. Whether service areas are local governments is a legal question that needs to be resolved, especially because of its effect on AS 29.35.450(c).

Some standards are very subjective:

**Standard #1.** *"The territory is compatible in character with the City of Homer."* Obviously, we deliberately chose to live outside the city to enjoy a more rural lifestyle. This is more important to some than to others, but many testified that their rural lifestyle is *very* important to them. However, how does one judge "compatibility"? It is certain, though, that any compatibility we once enjoyed has been seriously diminished as a result of this hostile annexation.

**Standards #13 and #14** deal with annexation *meeting the best interests* of the state, the territory to be annexed, Kachemak City, the Kenai Peninsula Borough, and the City of Homer. Certainly the additional revenue brought to the City of Homer by annexation will swell its coffers and increase its ability to indebt itself, yet they are also taking on additional responsibility, it is not clear this is in their interest. Taking bites out of Borough Service Areas is not in the Borough's best interest. Just how tearing a community apart is in the best interests of the State is not explained. Certainly it is *not* in the best interests of those to be annexed, and they *are* one of the groups Standard #13 specifically lists. It boggles the mind how a handful of strangers can waltz in and determine what is in our best interest, do they presume we are too dumb to know? Standards #13 and #14 are clearly unmet.

Some standards were clearly not met, but the LBC said they were:

**Standard #7:** *"together, the City of Homer and the territory have the human and financial resources to provide essential city services on an efficient, cost-effective level"* is the standard leading to the documents lawsuit. The city, instead of revealing the information leading to their conclusions, invokes a questionable "executive privilege" and hides this information. This behavior should raise a red flag to you. When the hidden costs are combined with a serious error in the revenue estimates that the DCED and LBC failed to correct, despite it being pointed out three times to them, there is no way this standard is met.

**Standard #8:** "*The City of Homer has provided a practical plan for the extension of services into the territory*" is clearly unmet. In testimony before the LBC, Borough Attorney Colette Thompson testified that the City of Homer had made no plan for the transfer of responsibilities from the borough to the city. Councilman Ray Kranich commented in a council meeting that he expected it would take at least two years to plan how to serve the area. The LBC found the city met this standard because they demonstrated they had "thought about the future", yet 3 AAC 110.900 clearly says they must submit a practical plan. Obviously, merely saying, "We'll do the planning in the future" does not meet this standard.

**Standard #11:** "*the City of Homer is best able to provide essential city services to the territory*" raises the question, "What are 'essential city services'?" We have definitely shown that the services city residents consider "essential" are very different from what we consider "essential". They consider water and sewer from the city "essential" and many city residents feel strongly that for the city to undertake the serving of additional territory before they provide for those already in the city is not right. We foreigners do not consider city water and sewer a service we want or need and have so testified repeatedly. Yet City Councilman Rick Ladd dares to accuse us in public testimony of *asking* for free water and sewer from the city! (This is "compatibility"?) Services we do want and need are road maintenance and fire/EMS services, which are very adequately addressed with our borough service areas. Policing, what little we need, is provided by State Police at a fraction of the cost of city protection. The City of Homer is not better able to provide us with the services *we* consider essential. The LBC's decision that the city was best able was based on proximity not on financial health. There was no basis for their assuming the City could provide these services more efficiently and cost effectively than the Borough or State. It is difficult and expensive to provide city services to rural areas.

**Standard #12:** "*a reasonable need for city government exists in the territory proposed for annexation*" is obviously not true. If we needed city government, obviously we would be the petitioners, for either annexation or incorporation. The city has totally failed to show in what way *we* need city government. Their petition is based solely on how badly *they* need *our* money.

Remember, if *any one* of these standards is unmet, the petition *should have been denied* by the LBC.

For more discussion of these standards, see the "Comments on the LBC's Decisional Statement", attached.

Comments on the LBC's Decisional Statement on Homer's Annexation  
by Abigail Fuller, on behalf of Citizens Concerned About Annexation

On page 9, very first paragraph, the Commission refers to voluminous evidence and finds it sufficient for them to reach a decision, yet they do not have the memos, without which the city's Petition is mere speculation. They also ignored nearly all of the evidence provided by anyone opposing annexation when making their decision.

Towards the bottom of the same page they refer to sales taxes. The city's estimate of taxable sales is NOT 80% of reported sales for the territory, as there ARE NO reported sales figures for the territory. The only available reported sales figures are for the entire 99603 zip code, excluding Homer and Seldovia, which is considerably larger than the territory. Homer arrived at their figures by subtracting the businesses that are outside the territory and could reasonably be assumed to not have reportable sales occurring inside the territory. (Homer was allowed access to records showing the reported taxable sales for each business.) Then they reduced that figure 20% to allow for other sales not being within the territory. The difficulty with determining taxable sales figures occurs because sales are taxed at the point of sale, and for some sales that is not the same as the place of business. Utilities for example are taxed at the point of delivery, such as a residence, not the location of the home office. So an exact figure can not be computed without examining in detail each business' own records. The Borough finance department told me the only way to know how much sales tax would be generated by annexation was to do it and see how much was collected, after the fact. They also felt Homer's estimate was reasonable. There is no justification for the DCED's arbitrary increase of the sales tax revenue estimate, which was based on a misunderstanding of assessment methods. The statement that the real figure was approximately \$17.6 million is false, and this error runs through the whole decision.

On page 10, middle paragraph, the LBC refers to per capita taxable value of real estate. This is an example of playing with statistics until you get something that proves your point. The 4.58 sq mile area has a lot of high value view property, which causes a statistical distortion. The areas farther from town have less people combined with lower value, which ends up creating a similar per capita figure, but says nothing about the actual level of development or whether the two areas are actually similar.

The next paragraph contains an error, they used the square mile figure for the mill rate difference, the actual number is 5.5.

On page 12, footnote 15 describes political rights as "the power to participate, directly or indirectly, in the establishment or administration of government". This is the crux of our objection to Legislative Review annexations. An annexation involves the establishment of city government over some group of people, without their participation! This one in particular we have been shut out of. We've been allowed to "scream and holler" (the City's words), but not actually participate. Our words have fallen on deaf ears, City and LBC both.

Page 13 shows great concern for enfranchising voters, while ignoring the vote that is of the most concern to these same voters -- a vote on annexation. The LBC cites a 1962 Alaska Supreme Court decision that ruled there was no right to vote under the 14th Amendment. However, that ruling was based on the Appellants failure to list which basic rights (life, liberty, property) were being infringed. In other words, if it were shown which rights were being infringed, the court could rule there was a right to vote. The citation (pg 14) goes on to say that "The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community." This can clearly be read to mean it is not the concern just of the state, but also of the local community. It is the community's concern that has not been included in this annexation. The decision on the Petition (which was written "in house", ie with no public input or even knowledge of what was going on) was made by 5 people on the City Council (with 2 others pushing them), and 4 on the LBC. The community had no say at all! The City actually squashed an initiative attempt by city residents to have an advisory vote on this annexation.

The right to vote issue (pg 14) has also not been to Federal Court, where they may see things differently than the Alaska Supreme Court. A right to vote on annexation would not be merely a "right to veto", it would also be a right to approve, depending on the will of the voters.

The citation to *Kelly v City of Pittsburgh* (pg 14) clearly shows the Legislature has the power and authority to veto a proposed annexation for any reason they chose. It also questions the authority of an administrative agency that is part of the executive branch (the LBC) to make boundary decisions.

On page 15 the LBC tries to establish that a statute the legislature approved last year does not apply to Legislative Review annexations. The stronger argument is that the effect is the other way around -- that AS 29.35.450(c) means that Legislative Review cannot be used for any annexation that would affect a service area (as defined in the statute). If the annexation and the change in the service area had to have voter approval before the annexation could take effect that would avoid the situation the LBC fears would occur.

The *Fairview* case cited clearly says the chief purpose of annexation is to avoid having two governments in one community, but that will not occur here. No matter where the line is drawn, there will still be a city government, and a borough government with the same number of service areas.

On page 17, the LBC considers the issue of truncation of terms for elected city officials. Their argument against is disingenuous, as there is clear precedent that one new resident is not enough to require truncation of terms. The state requirement on redistricting is "significant change" and the Kenai Peninsula Borough, on reapportionment, requires new elections if there is a 10% change. Detachments are not comparable, and are irrelevant. They do not give a reason why they think a 22% increase does not warrant new elections. (The 18.5% figure is based on post-annexation total population, the increase based on current city population is 22%) The LBC says the new residents would have representation, while ignoring that it would not be elected representation. It might be a good idea for a statute regarding this issue, as the last line before section E suggests.

Section G, which starts on page 19, covers the standard concerning whether the City has the human and financial resources to handle annexation. Footnote 31 contains the pertinent regulation, of particular concern are parts 2 and 4. Part 2 concerns expense projections, which we wanted to verify when we requested the information that was denied, particularly the department head memos that are the subject of our Alaska Supreme Court Appeal. Part 4 concerns the feasibility of a 3 yr operating budget, which the City has not even produced!

The hidden memos would show whether or not the cost projections are as reasonable as the LBC assumes they are. In fact the record shows the City's projections for road maintenance were only a third of reasonable! Yet the LBC considers the City's cost projections to be reasonable, ignoring all indications to the contrary. The commissioners do not have the experience to truly judge these figures without evidence: two are from Anchorage, which is so much bigger than Homer that they cannot use their experience to compare to what it might cost Homer to annex; one is from a very small city, same problem from the other end, and the other deals with boroughs. So they cannot judge the reasonableness of the estimates without the memos that the city has refused to release. Why is the City so determined to NOT provide any evidence to back up their cost estimates? Something smells fishy here and it's not the Fish Dock.

The last two paragraphs on page 19 bring in the sales tax error again. In particular, the statement that \$1,539,950 would be a more realistic estimate is incorrect and based solely on the misunderstanding about the sales taxes explained above.

On page 20, they compound this sales tax error into projecting a \$600,000 surplus from annexing the 4.58 sq mile area. My projections make that about \$100,000; if the city's estimate isn't high and if none of the triangle businesses go out of business after annexation. That's not much of a cushion and not enough to reduce city property taxes (which they will never do anyway). Which is the point I was making in my testimony yet all the LBC picked up on is that it still pencils out! It may not if there were accurate numbers available all the way through, the costs were pure guesswork at this stage.

In the fourth paragraph down of page 20, they accept these questionable revenue and expense estimates as a reasonable three year operating budget. They also do not anticipate any changes in the local economy, despite evidence provided to the contrary. There are serious questions about the future of the fishing and tourist industries, which Homer rely's heavily on.

The next paragraph contains the sales tax error again. According to the DCED, 27 out of 40 commercial facilities are within the reduced area, I think it's a little misleading to call that a "vast majority".

The statement about Homer's sales tax revenues contradicts statements elsewhere in the decision that the tax base is eroding due to outside development.

At the bottom of this page, the LBC draws their conclusion based on erroneous revenue data and unproven (and questionable) expense estimates. This alone should be reason to veto this annexation.

Section H, starting on page 21, discusses the City's transition plan. The regulations are listed in the footnote, and are fairly specific. After stating that the City of Homer "is clearly one of the more substantial and sophisticated city governments in Alaska", they forgive them for not providing an actual plan, and accept that they only need to have "given forethought" to providing services. Even that is stretching it. The City's transition plan consists of a five year road maintenance plan, which it had to toss aside in it's Reply Brief when it was pointed out that their plan was nowhere close to what the Borough was spending, and a vague promise to "extend all other city services". The LBC accepts that the City has "expressed its good faith intention" to extend services. Yet throughout this whole ordeal the City has done nothing but demonstrate bad faith! From trying to ship the Petition off to the LBC without public notice to hiding the dept. head memos to refusing to discuss the petition at its "Annexation Forums", there has been no demonstration of good faith.

Parts b and c of the regulations pertaining to transition plans says the City "must include a practical plan" for transfer of responsibilities and assets and debts, etc. from the Borough and service areas to the City. And it must be "prepared in consultation with the officials" of each entity. This was not done. Yet the LBC accepted a polite statement from the KPB attorney that an agreement could be reached, while ignoring that she was telling them it had not been done, as sufficient to meet this standard. If anything will meet the standards, why have them at all? As for the promise of amicably reaching agreement, if the history of negotiations with KESA are any guide, it won't happen. More to the point, there is a clear lack of evidence that this part of the standard has been met.

The next section, starting on page 23, determines whether the territory to be annexed contains all the land and water necessary to provide essential services on an efficient, cost-effective level. Try as I might, I cannot figure out how they construe this to allow annexation of property to protect the City's "viewshed"! Perhaps more importantly, the LBC did not determine whether or not there is enough water in the reservoir to provide for an expanded City, which they should have as the question was brought up along with some evidence indicating there might not be enough water.

They also, on page 25, bring in discussion of services we are alleged to receive from Homer, although I fail to see where it falls under this standard. As usual, the list includes bulk water sales, although these are a commercial transaction that take place within the City. Where the water gets hauled after it is sold is not the City's, nor the LBC's, business or concern. Water and Sewer are provided to a very small fraction of the area. Fire and emergency services are provided through KESA (which was intended to cover Miller's Landing as well). Emergency police services are not provided. The City police and the Troopers assist each other from time to time, this does not constitute emergency police services. Then it goes on to say that citizens in the area use facilities owned by the City, such as the Library, Port and Harbor, and the Airport. The City does not own or operate the Airport (they own the terminal building). It was given the Port and Harbor, which was transferred after the annexation process was started. These are a few examples of the misrepresentation rampant in the City's Petition and Reply Brief.

The last paragraph in this section describes what we believe should have been done prior to this annexation. This one should be vetoed so we can all start over, and plan together for what is best for the area as a whole.

On page 26, fourth paragraph, Sallie and Pete were telling the truth here. The LBC twisted Mike's and Margaret's statements; they were explaining the difference between city community and area community. The LBC does not seem to be able to understand this distinction, even though Mike clearly said "Kachemak Bay community". Just because Homer is a commercial hub does not make everyone who

enters the City a member of the same community! No one would try to claim the Russian Orthodox communities are part of Homer, yet they shop in Homer, use the hospital and Harbor, etc. It is not unusual in this country for people to live in one community and work and shop in another.

On page 27, fifth full paragraph, the LBC assumes that growth has been extending outward from Homer. This is not true and cannot be determined from a map. The area has grown as a whole, as scattered homesteads have been divided up. There was no testimony from residents supporting the LBC's conclusion.

Same page, second paragraph from the bottom, here the LBC admits a greater area community exists, yet tries to claim the annexed area is part of the city core. A decent plat map disputes this claim, and shows that the actual urban core is within the current boundaries.

On page 28, the LBC did not truly compare the City's fiscal ability with the Borough's fiscal ability. They arbitrarily limited consideration of the Borough's finances to the value of property within the KESA area. This ignores the Borough's financial health, and is certainly not a fair comparison for road services, as that service area is much larger!

On page 29, towards the bottom, they give KESA the brush-off, as they do repeatedly. This is how they deal with anything that suggests annexation is not needed! They have not, under this section, considered what really are the "essential city services", as opposed to general services that might well be more efficiently and effectively provided by a service area.

On page 30, under section L, Need for City Government, the LBC does two things objectionable. First they fail to distinguish between city and borough services. Certainly if the borough is providing a service there is no need for a city to come along and provide the same one! Second they give KESA the brush-off again, based solely on their own habit of ignoring service areas that are formed to try and avert an annexation. They ignored evidence that an emergency services area has been sought for some time here, such as the Strategic Fire Planning Group Report (an exhibit with CCAA's Responsive Brief). It is also worth noting that KESA has been in existence for over a year, has been collecting taxes since July, and has acquired equipment. It is not just a vague promise like the City's annexation proposal!

Further down on page 30, the LBC points out that Miller's Landing isn't in KESA. It was supposed to be and this is being remedied. In the last paragraph the LBC suggests the City might stop providing fire and EMS services to this area, but there is no evidence of that.

On page 31 the LBC addresses water issues, assuming that because some people chose to buy bulk water that there is a lack of water that could seriously limit growth. It hasn't yet, or the City wouldn't be so eager to annex! So there is no economic problem from a shortage of water, this is another assumption that has no evidence behind it.

In the third paragraph, they rely on views expressed by the DEC in prior proceedings. This does not constitute evidence in this proceeding, and cannot be used for making a decision. The next paragraph on land use describes only a potentiality, no evidence was ever presented showing any land use conflicts in the area.

The description in the paragraph on emergency services ignores the evidence provided to the LBC with CCAA's comments on the Preliminary Report, the HVFD monthly reports. There is no evidence for their conclusion that population density means their assumptions are correct and that our explanations are wrong! Our statements are based on the facts. The assumption in the last sentence comes from the City's line of bullshit and has no basis in fact whatsoever!

In the last paragraph they are misrepresenting the truth again. The crime rate in Homer (and note that is within the city) did rise slightly -- back to 1998 levels, not a "significant" increase. It shows either 1999 was unusually low or that the decreased staffing level of the Homer Police Department is having a negative effect. Why this relates to Trooper staffing is not explained. If anything it suggests the Homer police cannot handle more territory.

On page 32, fourth paragraph from the bottom, the LBC assumes a need for policing that has not been demonstrated. Crime rates for any of the territory were never provided, beyond an admission that it was very low.

Next paragraph makes a similar unsupported assumption, that residents of the territory generally use city facilities. The city refused to release a list of Harbor users, but based on their own statistics and population, only slightly less than 4% of annex area residents use the Harbor. The Library claims 55% percent of users are from outside the City, but that includes the entire greater area from Ninilchik south and all of East End Rd. No one knows on the parks and rec numbers, but most parks usage is by nearby residents, not people who would have to drive into town first. No mention here of the sales tax contributions of non-residents who shop in Homer, which more than pays for services used.

The section concerning Balanced Best Interests starts on page 33. This section should consider all issues that don't fit under the other standards, otherwise how can a third party determine what's in our best interest? But they have considered only 3 AAC 110.140, which defines when the Legislative Review procedure can be used. However, they didn't actually consider all 6 points, made no determination whether this annexation could indeed be done by Legislative Review, and decided all but the first point without any evidence to back up their determination.

Point one is straightforward, no part of the territory is an enclave. Point two covers health and safety issues, and the LBC determined there is an issue here because of DEC's advice in prior proceedings that health issues might arise without city water and sewer. In other words, there is no evidence of any problem, in this proceeding. (And elsewhere in this decision they admit that Homer won't be providing water and sewer any time soon.) They conclude that "annexation of the 4.58 square miles in question would enable the City of Homer to regulate or control the detrimental effects of existing and potential conditions in those portions of the territory petitioned for annexation." Homer has no such regulations or controls in place, hence there is no evidence to back up this conclusion.

Point three is extension of services or utilities into the territory is necessary in order to serve the city. This is not addressed at all, probably because there is no such necessity.

Continuing on page 34, the LBC refers to continued erosion of the tax base, again without evidence. The tax figures show steady growth for Homer's revenue. They then go on to list services the City claims to provide, yet the list is not accurate. Jail, emergency dispatch, back up to Troopers, are all paid for by the state or borough. Animal control is not provided. Port and harbor is paid for by the users. City road maintenance is not provided outside the city. That leaves fire and EMS, which is now paid for by KESA with the exception of Miller's Landing, an oversight that is being remedied; and economic development, parks, and the Library. These last and any other incidentals are paid for 3-4 times over by our sales tax contributions, with enough surplus to cover emergency services to Miller's Landing for that matter.

The LBC ignored the sales tax reality by accepting the City's illogic that there is still a disparity because outsiders do not pay property taxes. But outsiders do not receive all the services that city residents receive. The services (police and road maintenance for example) that city folk receive are not fully paid for by what they pay extra in property taxes. City property taxes do not even fully cover city police, let alone road maintenance, or fire and ems for city calls, etc. We are subsidizing the City with our sales taxes!

The standard supports annexation IF non-residents are using services they are not paying for, not simply because there is an unequal tax burden. The whole discussion of alternatives is not needed, as we are already more than paying our share. The LBC's conclusion is not based on any evidence, in fact is contrary to the evidence.

On page 35 the LBC refers to the possibility of new service areas being created. There is no indication this will happen anytime soon, and if it did any new service area would be formed whether annexation occurs or not. If in the long run enough service areas formed to create a tax burden higher than within the City, then people might be willing to be annexed. There is no harm done by waiting.

Same page, below the quote, the LBC assumes it will be in everyone's interest to empower the City of Homer. This may be true for the City's power structure but it would be detrimental to everyone else, including the Borough. In the last full paragraph the LBC guesses that the area could experience development that was detrimental, again without evidence. There is no indication that future development will be detrimental to the City or the outlying area.

On page 36, a little over half-way down, the LBC is concerned again with our being able to vote within the City but remains totally unconcerned with our being able to vote on whether or not to do so! In the next to last paragraph, they again show concern over new service areas forming (KESA was needed whether annexation occurs or not) or new cities. The greater area will need or not need additional service areas or even cities regardless of whether the boundary gets adjusted as proposed. The LBC does not seem to have looked at the greater picture here, which is what this standard is intended for. The last sentence on the page repeats the fallacy that we are not paying for services we receive.

Under section N, page 37, Best Interests of the State, the state really should consider whether fostering serious animosity within a community, or between a community and outside areas, is really in the state's interest. Even if there are reasons to consider annexation, it does not justify aggressively cramming it down everyone's throat.

The LBC thinks decisions that affect us would be better made in Homer than Soldotna (the Borough seat), yet in fact our government in Soldotna listens to us much better than the government in the city. Someday that may change and that someday might be time to consider annexation. There is no evidence that supports their conclusion, only their own preference for "local". But local governments can be more tyrannical, rather than more responsive; you cannot assume the closer one is always better.

In the last paragraph on this page, they use the requests of 2 property owners to justify the forced annexation of property belonging to over 450 other people! Surely this is not in the state's interest, to trample the rights of hundreds for the benefit of a few.

The Local Boundary Commission's Decision is seriously flawed and should be vetoed.

Brooks W. Chandler, Ak. Bar No. 8310109  
 HICKS, BOYD, CHANDLER & FALCONER, LLP  
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 Anchorage, Alaska 99501  
 (907) 272-8401  
 Attorneys for appellants

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

Kachemak Area Coalition, Inc. d/b/a Citizens Concerned About Annexation	)	
	)	
Appellants,	)	DRAFT
	)	
vs.	)	
	)	
State of Alaska Local Boundary Commission,	)	DRAFT
	)	
Appellee.	)	
<hr/>		
<b>In the matter of the March 20, 2000 Petition By the City of Homer For Annexation of Approximately 25.64 Square Miles</b>	)	DRAFT
	)	
	)	
	)	

STATEMENT OF POINTS ON APPEAL

1. The failure of the Local Boundary Commission ("the Commission") to require Commissioner Tesche to recuse himself despite an apparent conflict of interest is reversible error voiding the decision pursuant to the doctrine set forth in Griswold v. Homer, \_\_\_ P.2d \_\_\_ (1999).

2. The failure of the Commission to require truncation of terms of sitting Homer City Council members violates the constitutional and statutory rights of persons in the

annexed area to vote for their elected representatives, thereby requiring reversal of the Commission.

3. AS 29.35.450( c )required the change to the boundaries of the Kenai Peninsula Borough Kachemak Emergency Service Area to be approved by a majority of the voters of the Kachemak Emergency Service Area. Accordingly, the Commission's decision to recommend that annexation proceed pursuant to the Legislative Review method was incorrect as a matter of law.

4. The Commission's determination that the economy within the annexed area as approved by the Commission includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level is not supported by substantial evidence in the record.

5. The City of Homer petition did not include the transition plan required by 3 AAC 110.900. The Commission's determination that Homer had satisfied the intent of 3 AAC 110.900 is incorrect as a matter of law and is also not supported by substantial evidence in the record.

6. The failure of the Commission to require Homer to have executed an agreement with the Kenai Peninsula Borough and the Kachemak Emergency Service Area for the assumption of powers, duties, rights, and functions and for the transfer and integration of assets and liabilities was an abuse of discretion.

7. The Commission's determination that Homer could more efficiently and effectively provide essential city services to the area to be annexed than the Kenai Peninsula Borough is not supported by substantial evidence in the record.

8. The Commission's determination that the area approved for annexation exhibited a reasonable need for city government is not supported by substantial evidence in the record.

9. The "balanced best interests" test of 3 AAC 110.140 and the "best interests" standard of AS 29.06.040(a) are unconstitutionally vague because they fail to provide sufficient notice and an opportunity to be heard to those opposing legislative review annexation and because they provide an administrative body with unfettered discretion to decide if legislative review annexation is appropriate.

10. The Commission's determination that legislative review annexation serves the balanced best interests of the state, the territory to be annexed, Kachemak City, the Kenai Peninsula Borough, and the City of Homer, and is in the best interests of the State, is not supported by substantial evidence in the record, and is incorrect as a matter of law.

HICKS, BOYD, CHANDLER &  
FALCONER, LLP

By: \_\_\_\_\_  
Brooks W. Chandler  
State Bar No. 8310109

This process is inherently flawed. The Legislative Review method of annexation was designed to allow Anchorage to annex the neighboring Public Utility Districts. One of the main architects of this dictatorial system was Anchorage's Planning Director, or he at least had been during past attempts to annex these PUDs. If this isn't a conflict of interest I don't know what is. It is not clear whether this soviet style top-down annexation method was truly needed, or just desired by those who like to control things. But even if it was needed then, it is wrong to let us suffer from it now, in a situation where it is not needed.

These planners devised a system that was designed to put the decision in the hands of an objective third party. This does not work well when the third party is far from objective. The LBC has shown a strong bias in favor of the City from day one. Here the City submitted the largest Legislative Review annexation ever attempted, and the LBC only allowed just barely over two months for filing Responsive Briefs. We spent the first month figuring out what the heck we were doing and how the process worked, then the second one trying to extract useful information from the City. We requested more time for preparing responses but were denied. We had about 5 days to actually write responsive briefs, but 14 people did so. And that was spontaneous, not an organized cooperative effort. That and 164 written comments were the most response the LBC has ever had.

The City was then asked, how much time do you need for your Reply Brief (normally about two weeks)? They didn't respond, but took about 3 1/2 months to file. There never was a deadline set, in violation of the regulations, but the LBC accepted it anyway. That Reply Brief had so many inaccurate statements in it that we requested a chance to respond. Again we were denied. The reason both times was because the LBC had a duty to consider the petition in a "timely manner". That was in September, and late the next spring, when there was no sign of the Preliminary Report being done in a timely manner, we requested an opportunity for further briefing. If had been over a year since the start and there was a need for updated information. The LBC has allowed this in other proceedings but we were denied.

Eventually the Preliminary Report came out, over 400 pages worth. Four weeks was allowed for commenting on it, but that was not enough for us to get information from the City to help with our response, due to their requirement (without legal basis) that we make all requests via our attorney. Also the public copies sent to the library were delayed for two weeks, reason unknown, leaving little time for members of the public to digest over 400 pages and comment on it. We requested more time, and were denied.

At the Hearing, there were time limits established for everyone. Things ran smoothly despite the commissioners tendency to nod off, but, after enforcing time limits all the way through, they asked the City if they would need more time for their reply. They didn't, but why was it even offered? No one else was offered more time.

As for the decision itself, that's been covered elsewhere. It is worth noting that the only interest the commissioners displayed was when one person stood up and said "I want my land annexed". Why did they ignore nearly 100 people all saying "don't annex my land?" Because their minds were made up long before the Hearing, making the whole thing a farce. We did not get a fair hearing.

To: Alaska State Legislature  
Community and Regional  
Affair Committee  
Alaska State Senate and  
House of Representatives  
Greetings!

In Juneau  
From: Dr. Vi Jenrel Ph.D.  
Alaskans Opposed  
to Annexation  
P.O. Box 438, Homer, Alaska 99603  
Ph. (907) 235-2281  
Feb. 6, 2002

We are Alaskans Opposed to Annexation.  
I am Vi Jenrel, Ph.D. I am here in Juneau  
to attend the CRA joint session meetings,  
to oppose the secret, no vote of the people,  
no hearings of the people in the areas  
that city of Homer proposed to annex  
the secret annexation petition by city of Homer.

Our attorney, who is opposing the annexation  
petition, by city of Homer, is Attorney Mr.  
Robert C. Erwin, Erwin and Erwin, Suckavage,  
a former Alaska Supreme Court Justice. Please  
see some of the attached filings of opposition  
by Attorney Mr. Erwin, to the LBC. Please read  
Mr. Robert Erwin's 2-page legal opinion, dated Dec. 21,  
2001, written by Mr. Erwin after the mid-Dec. LBC hearing.  
Signatures of opposition attached are only some of  
the names. There are hundreds more of signatures  
informing our Kachemak Emergency Service Area also.

(Continued on page 2)

(Page 1 of 2 pages)

Page 2  
Continued

To: CRA Committee  
Alaska State Legislature  
Joint Session of Senate  
and House

In Juneau

From: Feb. 6, 2005  
Dr. Vi Jenvel, Ph.D.,  
and  
Alaskans Opposed  
to Annexation

We respectfully request that  
the Legislators of the joint session of  
the CRA Committee come forth with  
a Resolution to the Legislature, to have  
the legislature veto, disapprove, and  
vote down and out the LBC proposal  
of annexation by city of Homer.

Also, my information is that there  
is a previous legal opinion by Tam Cook  
(senator's secretary, Tongersons office)  
from legislative legal affairs, which opinion  
states that the legislature can veto  
for any reason the legislature wants.

The legislature has the authority  
to veto and vote down the secret and  
wrongful annexation petition by city of  
Homer, which was signed by Homer city  
manager, Ronald William Drathman.

We thank you.  
See attached pages.

Respectfully submitted,  
Dr. Vi Jenvel, Ph.D.

Page 2 of 2 Dr. Vi Jenvel, Ph.D.

**KENAI PENINSULA BOROUGH**

144 N. PINKLEY - SOLDOTNA, ALASKA - 99669-7599  
BUSINESS (907) 262-4441 FAX (907)262-1892

DALE BAGLEY  
MAYOR

February 4, 2002

The Honorable John Torgerson  
Alaska State Senator  
State Capitol, Room 427  
Juneau, AK 99801-1182

Dear Senator Torgerson:

Over the past two years the annexation issue has been at the forefront of almost all issues in the Homer area. I have received numerous phone calls, petitions, and letters against this annexation process.

The method that the City of Homer used to annex this area is legal, but there are other methods that Homer could have used that would have required a vote of the effected area. With approximately 900 residents in the proposed area I feel that a vote is essential. I also feel that the Boundary Commission should have recommended that all of Homer's City Council run for election this year, since voters in the annexed area would not be able to vote on all the council members for two more years.

You will hear people say that this is not a Borough issue and that the Borough should stay out of this fight, however, Assembly Member Milli Martin and I have had many of our constituents talk to us about this issue. The Kenai Peninsula Borough is their government, which is why they came to us for help.

At its regular meeting of January 22, 2002, the Kenai Peninsula Borough Assembly failed to pass Resolution 2002-102,

**A RESOLUTION REQUESTING THE STATE LEGISLATURE TO DISAPPROVE BY  
RESOLUTION THE BOUNDARY CHANGE PROPOSED BY THE CITY OF HOMER AND  
RECOMMENDED BY THE LOCAL BOUNDARY COMMISSION**

by a vote of 4 YES, 5 NO.

The Assembly is on record as not wanting to get involved in this annexation battle, however, there is a motion for reconsideration that the assembly will be addressing again on February 5.

I have never seen an issue that is so one-sided, with the majority of people both inside and outside Homer so against the proposed annexation and the method used. Nevertheless, the City of Homer continues to go forward with it. Please restore the faith people have in government and the democratic process by disapproving the Homer Annexation Plan, and please take a hard look at removing the Legislative Review option when so many people are affected.

Sincerely,

Dale Bagley  
Kenai Peninsula Borough Mayor

Alaskans Opposed  
To Annexation

V. J. Ph.D. #235-2281.  
P.O. Box 938,  
Homer, Alaska 99603

Law Offices of

**ERWIN & ERWIN, LLC**

733 W. 4<sup>th</sup> Avenue, Suite 400  
Anchorage, Alaska 99501  
Telephone (907) 276-3125  
Facsimile (907) 276-4125  
e-mail: erwinllc@alaska.net

From the Desk of: Robert C. Erwin

Robert C. Erwin  
Kathleen C. Erwin

December 21, 2001

Dan Blockhorst  
State of Alaska, Local Boundary Commission  
Municipal and Regional Assistance Division  
Department of Community and Economic Development  
550 West 7<sup>th</sup> Ave., Suite 1790  
Anchorage, AK 99501

Re: Homer Annexation  
Effect of City Annexation on Borough Service Area under AS 29.35.405(e)  
Our File No.: JERV-03

Dear Mr. Blockhorst:

I have reviewed the plain language of recently passed AS 29.35.450(e) requiring a vote of people when there is an attempt to alter or reduce the size of a properly designated service area for roads, fire protection, or parks and recreation services.

The opinion of the Attorney General's office which takes the position that the specific statutory language requiring a vote of the residents of the service area affected does not apply when the service area is to be annexed to the City of Homer appears questionable from a legal standpoint. The Attorney General's office does not cite any legal authority for the exception claimed, but attempts to argue that the fact a vote was never taken in the past in the area to be annexed to a city indicates that the State does not need to do so now.

This legal conclusion simply ignores the new statute and its purpose to preserve a previously created service area which was constructed in the past to provide needed services. Generally the old service area required the purchase of equipment and possible staff which was supported by taxation of the service area members. The elimination of a substantial number of the members from the service area without a vote and a decision of

Dan Blackhorst  
December 21, 2001  
Page 2

how future services and present debts will be provided and/or paid can provide a substantial hardship.

Each enactment of the Alaska Legislature is presumed to be constitutional and it will not be set aside unless the provisions show a substantial and plain violation of Alaska Constitutional law. See, *Siber v. Alaska State Bond Committee*, 414 P.2d 546, 557 (Alaska 1966); *Sheldon Jackson College v. State*, 599 P.2d 127, 130 (Alaska 1979).

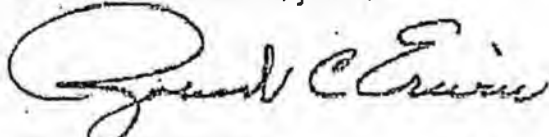
The claim that the Executive Branch of the State government is not bound by a statute passed by the Alaska Legislature is clearly incorrect. The statute is valid until declared invalid by the Court.

Such a statute is valid under the Constitutional Doctrine of separation of government power. The doctrine of separation of powers is implicit in the Alaska Constitution and the purpose of the doctrine is to preclude the exercise of arbitrary power by any one branch of government. *State v. Fairbanks North Star Borough*, 736 P.2d 1140, 1142 (Alaska 1987). This doctrine also requires the court to construe a properly passed statute to avoid constitutional infirmity where possible. *State v. Fairbanks North Star Borough*, at 1142.

Here there is no clear constitutional violation affecting a properly passed statute of the Alaska Legislature which was signed into law by the Governor. Thus, there is no legal basis to ignore its provisions which are to protect existing service areas from destruction without a vote of those people who helped create them in the first place.

Very truly yours,

ERWIN & ERWIN, LLC



Robert C. Erwin  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

RCE:la  
cc: Vi Jerrel  
Doris Cabana

# MEMORANDUM

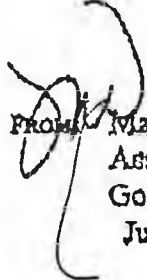
## State of Alaska Department of Law

To: The Honorable Deborah Sedwick  
Commissioner  
Department of Community &  
Economic Development

DATE: December 12, 2001

FILE NO.: 663-02-0091

TELEPHONE NO.: 465-3600

From:  Marjorie Vandor  
Assistant Attorney General  
Governmental Affairs Section -  
Juneau

SUBJECT: Effect of city annexation on  
borough service area under  
AS 29.35.450(c)

We have reviewed your November 7, 2001 opinion request for the Local Boundary Commission (LBC) which addresses whether the requirements of the recently amended statute, AS 29.35.450(c), apply to a service area of a borough that is to be included in the territory proposed to be annexed to a city located within that borough. The Local Boundary Commission will soon be dealing with a petition to annex territory to the City of Homer, a first class city in the Kenai Peninsula Borough that raises these issues. The Homer annexation petition is a legislative review annexation petition under Art. X, sec. 12 of the Alaska Constitution and AS 29.06.040(a) and (b), not an annexation by local action petition under AS 29.06.040(c).

In the opinion request, you specifically analyze the history of annexations by legislative approval in Alaska, the application of the constitutional requirements to annexations and the LBC's discretion afforded thereby, court cases applicable to annexations, as well as the legislative history of the recently amended service area statute, AS 29.35.450. Based upon your review of these sources, it is your belief that the requirements of AS 29.35.450(c) are not applicable to city annexations, particularly legislative review annexations. We concur with your opinion.

*Homer* Due to time constraints, this office will not issue its own legal opinion on this matter. We believe the analysis and conclusion of your November 7, 2001 memorandum, is the correct legal conclusion.

If questions arise during your deliberations on the Homer annexation petition that the LBC would like us to address, they are welcome to call me.

cc: Dan Bockhorst, LBC Staff

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In the Matter of the March 20, 2000 Petition )  
By the City of Homer for Annexation of )  
Approximately 25.64 square miles )  
\_\_\_\_\_)

PETITION FOR RECONSIDERATION

COMES NOW, Alaskans Opposed to Annexation, Doris Cabana and Vi Jerrel, by and through their counsel of record, Erwin & Erwin, LLC, and timely petitions the Local Boundary Commission for reconsideration of the Decision of the Commission dated December 26, 2001 with regard to the Annexation to the City of Homer.

The Local Boundary Commission has ignored the effect of AS 29.35.450(e) which was validly enacted by the Alaska Legislature and in effect at the time the decision on Homer Annexation was made on December 26, 2001.

Alaska Statute 29.35.450(e) requires a vote of the people effected in eliminating a substantial portion of a borough service area established for roads, fire protection, parks or recreational services. "It is presumed that whenever the Legislature enacts a provision, it has in mind previous statutes relating to the same subject matter, and all should be construed together." *Hafling v. Inland Boatman's Union of Pacific*, 585 P.2d 870, 877 (Alaska 1978).

Further, there is no problem with the language of the statute which appears to fall within the "plain meaning" rule or its progeny which does require interpretation. *See*, dissent Justice Rabinowitz, *Matter of City of Nome, Alaska*, 78 P.2d 363, 368 n. 3 (Alaska 1989).

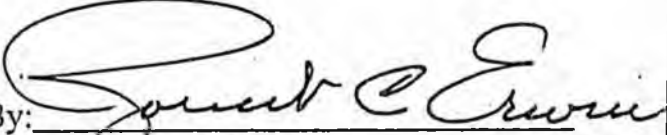
When you couple these rules of statutory construction with the legal doctrine that each enactment of the Alaska Legislature is presumed to be constitutional, (*see, Suber v. Alaska State Bond Committee*, 414 P.2d 546, 557 (Alaska 1966); *Sheldon Jackson College v. State of Alaska*, 599 P.2d 127, 130 (Alaska 1979), it appears to be a legal error to ignore the requirements of the statute. The Legislature is clearly aware of the requirements of annexation and the obvious fact that service areas are likely to be destroyed by annexation to a local government unit. The Legislature specifically intended to deal with the problem of destruction of service areas and what the remainder thereof can do when its taxing base is to be changed. Can any service area survive without such consideration?

This annexation process has been ongoing for almost 18 months with the first public hearings taking place in Homer on December 14 and 15, 2001, some two weeks before the final report was issued on December 26, 2001. Certainly the future vote of the service area to be destroyed cannot either change the legal power of the Boundary Commission or the power of the Legislature to consider its proposal; but it will permit

the orderly transfer of functions for roads and EMTs to permit the realignment of the financial burden to those who remain in the service area and need the service.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 1-14-02

By:   
Robert C. Erwin  
ABA # 6101004

CERTIFICATE OF SERVICE

I hereby certify that on the 14<sup>th</sup> day of January 2002, I caused a true and correct copy of the foregoing to be mailed via U.S. mail on the following:

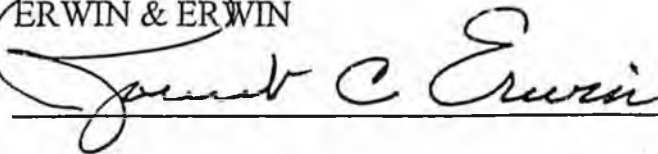
Brooks Chandler  
Hicks, Boyd, Chandler & Falconer  
825 W. 8<sup>th</sup> Avenue, Suite 200  
Anchorage, AK 99501

Perkins Coie, LLP  
Attorneys for City of Homer  
1029 W. 3<sup>rd</sup> Avenue, Suite 300  
Anchorage, AK 99501

and by hand delivery to:

Dan Blockhorst  
State of Alaska, Local Boundary Commission  
Municipal and Regional Assistance Division  
Department of Community and Economic Development  
550 West 7<sup>th</sup> Ave., Suite 1790

ERWIN & ERWIN

  
\_\_\_\_\_

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In Re: Opposition to Homer Annexation )  
\_\_\_\_\_ )

**RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT  
REGARDING CITY OF HOMER'S PROPOSAL FOR ANNEXATION**

Alaskan's Opposed to Annexation strongly agree that the proposal for annexation by the City of Homer should be sharply limited in size to those areas where there is a realistic hope that the property owners in the area to be annexed will get services from the City of Homer. The preliminary report demonstrates how the geographic contours of the Homer area have a profound effect on the delivery of services such as sewer and water which should be carefully weighed in reaching the final decision on the annexation issue.

I. RECOMMENDATION NO. 1. Area to be annexed.

The preliminary report recommends annexation of adjoining areas to Homer where there is some commercial development. There are primarily the areas of Miller's Landing and the Sterling Highway area starting at Mile 165.7. Clearly, these areas would provide taxable property, however, there is little attempt to establish how the homeowner's would benefit from or would actually obtain services from the City of Homer.

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

Page 1

The Sterling Highway area recommended to be annexed has in fact little private land and primarily consists of Borough land, University land, State land and Native land, all of which is not taxable, (*see*, attached Exhibit A) and is subject to control and use inconsistent with the control sought by the City of Homer.

Further, in the Sterling Highway area there is no proposal for the extension of sewer and water at any time in the next five years. (*See*, Exhibit B, Homer capital improvement program 2000 – 2005.) The area presently receives its road maintenance and policing from the State of Alaska and the Kenai Peninsula Borough. There is no plan to change this process and to meet the requirements of 3 AAC 110.990(8) which defines essential City Services necessary to support annexation.

The Miller's Landing area is more difficult to analyze because it provides a concentration of commercial business which is the greatest in the area outside the City of Katchemack and the City of Homer. This area probably will be the first priority for any city services which the City of Homer can provide. They would have the basic political clout to demand such services with a tax base to support any demands. Further, it is more geographically accessible than the Sterling Highway area for sewer, water and other city services because the elevation above the City of Homer is substantially less than the Sterling Highway area even though the property owners would be charged at least 50% of the cost of sewer and water services. (The problem again is the capital

*Read*  
expenditures and annual costs to maintain services. The City of Homer has seriously underestimated the costs of such services and overestimated their ability to provide such services.

*Read*  
Section 17 of the City of Homer's annexation petition states that they plan to provide the following services to the new territory upon annexation:

- water and sewer services as quickly as residents and funding permit;
- bulk sales of potable water to commercial water carriers will continue;
- processing of septic waste from the area will continue;
- enhanced fire and emergency medical services;
- police;
- dispatch services [911, fire, AST, police];
- jail;
- animal control support and animal shelter;
- continued support assistance for the State Trooper post;
- library services;
- City parks;
- recreational services through City facilities and City funded community schools program;
- improved road maintenance;

Road

land use planning services;

City Clerk services including voter services and information support services;

grant management; and

general government services.

The total projected increased cost to the City of Homer's operating expenses for all these services is projected at \$414,463.00 annually plus another \$1,089,600.00 in capital expenses to perform such services. Alaskan's Opposed to Annexation have extensively questioned the cost projections by the City of Homer in its initial filing dated June 5, 2000.

Clearly, such a plan provides its emphasis "on providing the services as quickly as funding permits." Such an open ended promise is no promise at all. The services will be provided when Homer gets around to it. The annexation residents get what services they now have and they get to pay substantial additional tax on their property to get them and a "promise" for new services sometime in the future when they can be afforded.

II. RECOMMENDATION NO. 2. Truncation of terms of City officials.

No objection.

III. RECOMMENDATION NO. 3. Differential property taxation.

No objection.

IV. RECOMMENDATION NO. 4. Consent of City of Homer.

No objection.

V. CONCLUSION.

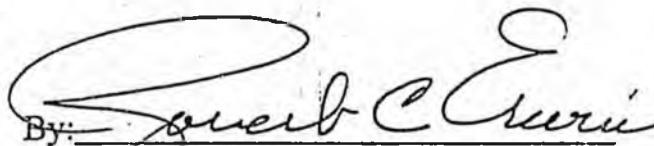
It is suggested that the City of Homer be ordered to amend its petition for annexation to show the reduced area and to present a plan for the implementation of services to that area so reasonable comments can be focused on that area.

The huge size of the initial area requested and the obvious problems of providing services to such an area have prevented those who question the annexation to focus on the proposed smaller area now suggested. Basic fairness would appear to require the Local Boundary Commission to order further proceedings if the Commission agrees

with the preliminary analysis.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 11-5-01

By: 

Robert C. Erwin  
ABA # 6101004

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKANS OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

Page 6

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In Re: Opposition to Homer Annexation )  
\_\_\_\_\_ )


REQUEST FOR ADDITIONAL TWO WEEKS TO PERMIT COMMENTS ON PRELIMINARY  
REPORT

Alaskan's Opposed to Annexation requests the Local Boundary Commission extend the time for filing response to the Preliminary Report herein by two weeks from November 5, 2001 in order to permit comment from the Homer area.

Copies of the preliminary report were sent to the City of Homer for placement in the Homer Library (around October 10) to be reviewed by the citizens. However, these copies somehow went astray and additional copies were not available to the citizens of the Homer area for almost two weeks after the preliminary report was originally made available to the City of Homer. Any public hearing in the Homer area should be also scheduled with such a change in mind.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 11-5-01

By:   
Robert C. Erwin  
ABA # 6101004



# CITY of HOMER



Capital Improvement Program

2000 to 2005


STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In Re: Opposition to Homer Annexation )  
\_\_\_\_\_ )

OPPOSITION TO CITY OF HOMER'S PETITION FOR ANNEXATION  
BY ALASKANS OPPOSED TO ANNEXATION

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 6-5-2000

By:   
Robert C. Erwin  
ABA # 6101004

considered by the boundary commission the City of Homer should be made to account for all the above discrepancies.

**f. CAPITAL IMPROVEMENTS**

The Petition for Annexation discusses capital improvements on pages 9 and 10 and reaches the conclusions that only \$1,089,000.00 worth of capital improvements will be needed in the next five years because of the annexed area and more than one half of that amount (\$585,000.00) would be extended for streets and roads.

The expenditure for two new policemen for various vehicles and radios would be \$114,600.00 and a new fire station and vehicle would be \$170,000.00. There was anticipated no capital expenditures for water and sewer.

All of these capital expenditures were to be paid for by the sale of general obligation bonds of \$1,200,000.00 requiring a debt service of \$166,966.00 per year.

This is in contrast to the 1998 estimate of needed capital expenditures of \$250,400.00 for police, \$1,130,000.00 for fire and a potential library expansion for one million plus. (See, Exhibit A)

The City of Homer in December of 1999 adopted a five year capital improvement program (See, Exhibit E) for the years 2000 – 2005. That program lists as urgent priorities several million dollars worth of projects including the need to replace the existing library and the Fire and Ambulance Station. (Petition for Annexation, pp. 3 – 4). In

March of 2000 the City of Homer published a list of immediate capital improvement funding needs which does not list fire, police, library or road capital improvements in the area to be annexed.

The lack of an interim plan to provide the capital improvements absolutely necessary for police and fire protection in the area to be annexed is glaringly apparent. The property owners will be taxed, the bonds will be sold and at some unknown time in the future service will begin.

**SECTION THREE - LEGAL ISSUES**

Due process of law is guaranteed to each citizen of Alaska under both the State and Federal Constitutions. The concept is articulated in both state and federal cases with little attempt to describe its true parameters. The argument herein of the Alaskans Opposed to Annexation that they were denied due process of law is made under both constitutions because the State was the actor herein.

Under both constitutions in order to change or eliminate the property rights of citizens, the State must exercise due process of law. See, *Bartlett v. State of Alaska*, 948 P.2d 987, 990 (Alaska 1997); *State of Alaska v. Bowen*, 953 P.2d 888, 889 (Alaska 1998); *City of Homer v. State of Alaska*, 566 P.2d 1314, 1319-20 (Alaska 1977); *Nichols v. Eckert*, 504 P.2d 1359, 1365 (Alaska 1973).

The explanation of the concept of due process of law is outlined and its antecedents noted by the United State Supreme Court in *Fuentes v. Shevin*, 407 U.S. 67, 80, 32 L.Ed.2d 556, 569 (1972) as follows:

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference. See Lynch v. Household Finance Corp., 405 U.S. 538, 552, 31 L.Ed.2d 424, 435, 92 S.Ct. 1113.

The requirement of notice and an opportunity to be heard raises no impenetrable barrier to the taking of a person's possessions. But the fair process of decision making that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say substantively unfair and simply mistaken deprivations of property interests can be prevented. It has long been recognized that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights....And no better instrument has been devised for arriving at truth to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170-172, 95 L.Ed. 817, 853, 71 S.Ct. 624  
(Frankfurter, J., concurring).

In this case, the property owners in the area to be annexed have never been given reasonable notice of the claims of the City of Homer or a reasonable opportunity to be heard with regard to the City of Homer's Petition for Annexation.

### CONCLUSION

While the Petition for Annexation proposes to expand the boundaries of the City of Homer to encompass an additional 25 square miles and an estimated 2,687 people, there was only 10 days notice concerning the consideration of the Petition for Annexation by the Homer City Council. Furthermore, the action of the Council was taken by Resolution rather than Ordinance which did not require a public hearing under the Ordinances of the City of Homer, and the State of Alaska statutes. (See, AS 29.04.030 and 29.05.011, *et seq.*)

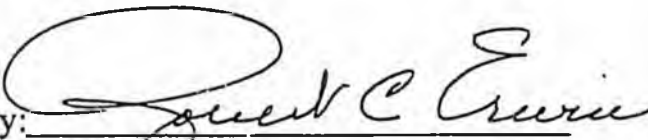
The original notice of the Homer resolution was given on March 3, 2000 and was to be heard by the Homer City Council on March 13, 2000. There was a slight delay in taking final action by the Homer City Council until March 20, 2000 because of the lawsuit filed by the Citizens Concerned About Annexation (Case No. 3HO-00-032 CI, filed in Homer Superior Court).

The 49 page Petition for Annexation is a complex document with changes in taxation rates, new taxation, city services or lack thereof, proposed capital expenditures, and proposals to change police protection, fire protection, and public works, etc.

All of these have a profound effect on the 2,687 people who are to be annexed to the City of Homer. In the absence of time to reasonably review the Petition for Annexation and to have a hearing on the Petition, there is clearly a due process issue herein.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 6-5-2000

By:   
Robert C. Erwin  
ABA # 6101004

# ALASKA STATE LEGISLATURE



Senator John Torgerson, Chair  
Senator Gary Wilken, Vice Chair  
Senator Alan Austerman  
Senator Randy Phillips  
Senator Georgianna Lincoln

STATE CAPITOL, Room 427  
JUNEAU, AK 99801-1182  
Phone: (907) 465-4989  
FAX: (907) 465-4779

35477 Kenai Spur Hwy.  
Suite 101BB  
Soldotna, Ak. 99669  
Phone: (907) 260-3041  
Fax: (907) 260-3044

## SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Mon. Feb. 11

● PUBLIC TESTIMONY  
RECEIVED AS result  
of time extension  
due to inclement  
weather conditions.

● WMA

1-55

**Subject: Homer Annexation**

**Date:** Sun, 10 Feb 2002 22:39:17 -0900

**From:** "Michael Hawfield" <hawfield@alaska.net>

**To:** <Senator\_John\_Torgerson@legis.state.ak.us>

Dear Senator Torgerson,

I was unable to attend the live testimony on Saturday, but I wish to strongly encourage you to endorse the report of the Local Boundary Commission and vote for approval of the annexation petition by the City of Homer.

I do not live in Homer (I am on the Old Sterling Hwy), but do work in Homer and do all manner of other business and cultural, educational, and recreational activities there. It is a highly valued part of my life and it is central to the healthy and vitality of this part of the southern Kenai Peninsula, indeed, of the overall peninsula. It is extremely important to me that the city be healthy, vital, and sustainable in every way, and this means, in the end, that the city has the financial foundations with which it may carry out its municipal functions. With the huge increase in population in the areas immediately adjacent to the city in the past decade, the demands put on the city to maintain its basic-services infrastructure and to sustain the region-wide services that it does (police, harbor, parks and recreation, cultural and human services, and the economic stability of the business climate) has become an intolerable strain and without expanding its tax base the city will surely falter and all will suffer.

Although nearly everyone is agreed (including several City Council members) that the process pursued by the city might well have been carried out with greater care for the input and sensitivities of those liable for annexation, the city is clearly within its right to petition for annexation, has made a convincing case that it should annex, and that it will be able to provide the expanded services necessary after annexation. Annexation is, as you are well aware, a normal (if often painful) process for urban centers as they grow and try to carry out good government in behalf of all citizens, even those beyond formal boundary lines. The LBC report is a masterfully and thorough testimony and has revised the city's original petition in ways that will make the proposed annexation strong and fair; it certainly assures that the greatest possible consideration has been given to the petition.

Thus, I strongly urge you to support the petition by the City of Homer to annex according to the particulars outlined in the report of the LBC.

Thank you for your hard work in our behalf

Michael Hawfield

Mile 3.5 Old Sterling Hwy

PO Box 2609

Homer, AK 99603

907 235-6078

**Subject: opposition to Homer annexation proposal**

**Date:** Mon, 11 Feb 2002 07:13:24 EST

**From:** DevonyL@aol.com

**To:** <Senator\_John\_Torgerson@legis.state.ak.us>,  
<Representative\_Drew\_Scalzi@legis.state.ak.us>

To John Torgerson and Drew Scalzi,

We jointly own 27 acres within Homer city limits and 18 acres in the proposed annexation area. We are contacting you to express our opposition to the annexation proposal presented to the Legislative Boundary Commission by the city of Homer, as well as to the proposal now before the legislature.

We oppose the current annexation proposal because many issues we and others tried to raise throughout this process were ignored. Of particular concern to us is that we never received an adequate response to our questions concerning how annexation will affect those of us who are trying to maintain large, unsubdivided parcels as community open space. The only response we received, at one of those Kafka-esque city counsel information sessions where the public was invited to observe but not to participate in any substantive way, was that the issue would be addressed after annexation. It was not the least bit reassuring to hear, in essence, "give us control over your future without any assurance that we will respect your efforts or intentions and develop tools you can use to pursue your goals."

In our opinion, a government process that disenfranchises the majority of those to be served is so fatally flawed that its results should be set aside. Although we do not object to annexation in principal, the current proposal was developed through a process that seemed to us to utterly lack the level of openness, integrity, and community involvement needed for government to be responsive and effective. The principal result of the current process has been to alienate thousands of people. Because of the way this annexation process has been handled, we feel strongly that the current proposal should be set aside so that a new, open, responsive, and genuinely participatory process can be initiated. In our opinion, significant planning issues raised by concerned citizens should be considered and addressed BEFORE an annexation proposal is brought to the LBC and legislature.

Thank you for this opportunity to comment.

Devony Lehner and Thomas Taffe

NO ANNEXATION!!!

**Subject: NO ANNEXATION!!!**

**Date: Mon, 11 Feb 2002 11:05:36 -0500**

**From: savekbbi@netscape.net**

**To: Senator\_John\_Torgerson@legis.state.ak.us**

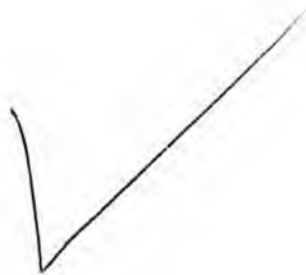
John, I live and vote in the city of Homer. I'm strongly opposed to annexation and urge you to VOTE AGAINST IT!!! Please.

Deronda Fay Somers  
468 Rainbow Ct.  
Homer, Alaska 99603  
email deronda7@yahoo.com  
907 235 4745  
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**Subject: Homer Annexation**

**Date:** Mon, 11 Feb 2002 08:53:32 -0900

**From:** "Driftwood Inn and RV Park" <driftinn@xyz.net>

**To:** <Senator\_John\_Torgerson@legis.state.ak.us>

My view of the 25 sq. mile annexation for the City of Homer, when first mentioned, was "out of line". The reduced area of 4+ sq. miles is reasonable. Any community, as it grows, must plan ahead to incorporate certain parcels of land into the city. One of the most important aspects of this is the sewer and water connections to the new developing areas to maintain the cleanliness and health for the community. I think that the present annexation area specifically addresses these issues. It is inevitable that in time more land will need to be annexed, and a timetable and planning for this should be drawn up. Sincerely,

Merlin Cordes

Owner, Driftwood Inn & RV Park

Homer, Alaska

The Driftwood Inn & RV Park  
135 West Bunnell Avenue  
Homer, Alaska 99603  
(907) 235-8019  
[www.thedrftwoodinn.com](http://www.thedrftwoodinn.com)



**Subject: Homer annexation - PLEASE READ!**

**Date:** Mon, 11 Feb 2002 09:27:08 -0900

**From:** Diana Sedor <dianate@alaska.net>

**To:** Senator\_John\_Torgerson@legis.state.ak.us

I know you've heard it all before, but I just have to get my two cents in and be officially on the record:

- I am not totally opposed to annexation. By looking at a map of Homer, the way the roads are laid out and the population distributed, it really makes sense that the areas currently selected for annexation should be part of the city. I live within that area.

- My tax increase will not be that significant ... not enough for me to get into a tizzy. However, being a part of the City of Homer, a government that I did NOT choose, did NOT elect and have no power over ... that is upsetting to me.

- If the City Council/City Manager had been forthright and honest, making public statements about the economic future of Homer, how desperately they need a bigger tax base, more grants, etc. in order to help the city grow, I would have accepted that. I have absolutely no problem with paying a little more in taxes to help.

- The fact is that this area is becoming a retirement village. More and more people are buying homes down here after retiring from their jobs in Anchorage or Lower 48. They pay property taxes, but are only here during a few short weeks in the summer, so they contribute very little else to our economy. In my neighborhood, nearly half the houses are empty all winter, only used in the summer. It is still hard to find work in Homer, still hard to make a living and pay bills. The economic problems of this town should be addressed by bringing industry and employment here rather than annexing more and more people without justification.

- However, the City approached the annexation issue from a REPUGNANT public relations standpoint. They promised services that anyone with half a brain knows is IMPOSSIBLE for them to provide. I will NEVER see road service, water or sewer where I live ... or at least the city has yet to release any significant plan indicating how they could possibly do so. Instead, they repeatedly tell us, the to-be-annexed people, that we OWE THE CITY OF HOMER and that WE ARE NOT PAYING OUR FAIR SHARE! Councilman Rick Ladd actually got up at the public LBC hearing and said this. It is this approach that has riled and angered everybody involved, on both sides of the issue.

- By the way, some City Council members are saying the recent election and victory of pro-annexation candidates was proof that the people approve their plan. The fact is that the other candidates on the ballot were a pot head, a senile old man and a demented looney. Come on, this is Homer! The elections here are iffy at best. Besides, I think there was something like less than 20% voter turnout, which proves nothing except how apathetic and tired people are of all this BS.

- Lastly, I just want to say that if annexation goes through and I become a resident of the City of Homer, then there HAS to be a new election. I just don't understand how LEGALLY and CONSTITUTIONALLY I can be taxed without electing my representatives? Isn't that what caused all those people to throw a bunch of tea in the harbor so many years ago? If we're annexed and can't get to have a voice, I hate to think what the people around here will think of to throw into the Homer Harbor.

P.S. One final thought from my personal perspective - I volunteer over 10 hours a week, 52 weeks a year, at the Homer Animal Shelter and doing animal shelter activities. My current pay rate (I work at South Peninsula Hospital) is about \$16/hour. If you equate that to my volunteer time, that's \$160/week or over \$8,000/year worth of my time that I provide to the City of Homer. Obviously I do it because I think it's important ... and there are many Homer residents who volunteer as well.

But the Homer Animal Shelter had to recently change its policy to ONLY accept/help animals from within the city boundaries because it simply does not have the staff, budget or space to handle animals from Anchor Point, and other outlying areas. The Animal Control Officer and Ron Drathman reached that decision this summer. Now, however, just a few months later, the annexation proposal will again open the shelter to a much larger area, a much larger population of animals, once again stressing the extremely limited capabilities of the shelter and its feeble staff.

THIS IS PERFECT EVIDENCE OF THE CONTRADICTION AND HYPOCRISY OF THE WAY THIS ANNEXATION PROPOSAL HAS BEEN HANDLED. I care about the animals and there is no doubt that they will suffer from this. It has already been evidenced in the cases of animal cruelty we have been dealing with. The Animal Control Officer is one person and she cannot handle the animal issues within the current city, let alone a growing city.

Thank you for keeping the record open ... I tried to get to the public testimony on Feb. 9, but was snowed in.

Diana Sedor  
61511 Race Road  
PO Box: 1995  
Homer, AK 99603  
235-5177

**Subject:** Hearing&.doc

**Date:** Sat, 9 Feb 2002 15:34:44 -0900

**From:** "Bill Smith" <bill.smith@acsalaska.net>

**To:** "Representative Andrew Halcro" <Representative\_Andrew\_Halcro@legis.state.ak.us>, "Representative Beth Kerttulla" <Representative\_Beth\_Kerttulla@legis.state.ak.us>, "Representative Carl Morgan" <Representative\_Carl\_Morgan@legis.state.ak.us>, "Representative Drew Scalzi" <Representative\_Drew\_Scalzi@legis.state.ak.us>, "Representative Gretchen Guess" <Representative\_Gretchen\_Guess@legis.state.ak.us>, "Representative Kevin Meyer" <Representative\_Kevin\_Meyer@legis.state.ak.us>, "Representative Lisa Murkowski" <Representative\_Lisa\_Murkowski@legis.state.ak.us>, "Senator Alan Austerman" <Senator\_Alان\_Austerman@legis.state.ak.us>, "Senator Georgianna Lincoln" <Senator\_Georgianna\_Lincoln@legis.state.ak.us>, "Senator John Torgerson" <Senator\_John\_Torgerson@legis.state.ak.us>, "Senator Pete Kelly" <Senator\_Pete\_Kelly@legis.state.ak.us>, "Senator Randy Phillips" <Senator\_Randy\_Phillips@legis.state.ak.us>

Members of the Committee on Community & Regional Affairs:

To conclude my remarks I did not have time for in the public testimony;

Further regarding the Citizens Concerned About Annexation meetings I attended: The CCAA asked for donations on the basis that any delay of annexation was a delay in higher property tax rates, and the savings would be well worth the investment in CCAA. The appeal was well received.

In May of 2000, I wrote to the newspaper that the City should not withdraw the annexation petition. Due to the challenges of serving a growing community, the organized opposition and the consequences of delay, it was not prudent to withdraw the petition. Had any group engaged the City in discussion of boundaries, it would have seen a response and incorporation in the final position of the City. If the City had withdrawn the petition, the creation of the Fire/EMS Service Area would predate the petition and would be used as an argument why annexation was not necessary. The ploy of the CCAA to pressure the City to withdraw the petition and start over is crucial to the strategy to get the Fire/EMS Area ahead of any annexation petition. Borough Assembly Member Milli Martin was closely involved in the development of this strategy, and is actively working to enhance this effort. Criticism of the City of Homer about process has unfairly ignored the environment in which the City has had to operate.

The DCED/LBC rules of public notice mean that any petition may not be increased in size, but may be reduced during review. These rules may lead annexation petitioners to over-reach. The penalty for over-reaching is a close scrutiny and rational adjustment. The reduction of area by the LBC was the expected result. The Decision of the LBC to limit their recommendation to 4.8 Sq Miles is actually a punishment administered to the City because of the local controversy. As stated in the recommendations of the DCED report and the LBC, this is a conservative annexation that only takes in areas already

developed to City density. This really does not meet the LBC standard of taking in areas to allow for 10 years of expansion. The opponents of annexation should be grateful the City did not use a more thorough process prior to filing the Petition. If the City had, we may have seen a much larger area approved for annexation.

The Homer Advisory Planning Commission considered and voted support for the final recommendations of the DCED. Please see attached action minute excerpts. Homer is a small land bound community and the task of making room for more development is impeded by the level of existing developments. Homer needs room to grow. We need room for residential, commercial and industrial development. The decision of the LBC is inadequate to allow for our 10 year needs.

To describe this annexation as a land grab is unfair and prejudicial. If this is a land grab, then the opponents of annexation are tax evaders. Drew, let's avoid this sort of language. The City of Homer is attempting to serve the community.

With regard to establishing a one-to-one relationship between services delivered and taxation; John, this is an unfair position and is only appropriate to service areas, not municipal or state government. Any person involved in government is aware of the many indirect services that government must maintain. The State of Alaska, Kenai Peninsula Borough and other cities are not held to this standard. If the legislature insists on this direct linkage, I am sure this will be great news to the oil companies. Expect to see their lobbyists before nightfall.

We Americans live in a representative democracy. We have no expectation of being able to vote on all important issues. Witness both reapportionment and refusal of the Legislature to put subsistence on the ballot. Selectively applying "everybody votes on every thing important" is unfair and unreasonable. Legislative annexation has been the law of the land since the birth of the State. Those people who move into a city, borough or State are recognized to have voted with their feet and voluntarily joined the existing political and legal system. On this basis, it is obvious that consciously or not, current residents have voluntarily agreed to the system of reapportionment and to legislative review annexation. As a pre-statehood resident, the constitution was voted on and approved, and I am bound by this democratic decision. I freely concede that most all annexations will fail to be approved by voters in the annex area. This would freeze cities at their present boundaries. The solution to this local government problem, as devised by the writers of the constitution, is fair and balanced and removes the process from self-interested locals on both sides. Please consider the ramifications of inserting local politics into this annexation.

The annexation petition of the City of Homer had flaws. Some of the flaws were not evident during the development of the petition, nor was the City warned by the DCED which was being closely consulted during the development. We have all learned, and well intentioned community members will get better. The LBC has well compensated for those flaws with their decision. A balanced view of this process

would concede that a veto by the legislature is not warranted.

Please support the LBC decision to annex territories to the City of Homer.

Thank you very much

Bill Smith

Chair, Homer Advisory Planning Commission

PO Box 150

Homer AK 99603

907-235-8932

[bill.smith@acsalaska.net](mailto:bill.smith@acsalaska.net)

Pages following:

Copy of CCAA Vice-President Abigail Fuller web page

Attached excerpts from minutes of December 5, 2001 Homer Advisory Planning Commission meeting.

Was the Kachemak Emergency Services illegally formed to thwart annexation?

Read what is posted on the web by CCAA vice-president Abigail Fuller at

<http://www.homernet.net/~fuller/CCAA.html>

Citizens Concerned About Annexation written by Abigail Fuller

Read our latest fundraising letter here.

Read our latest Newsletter here.

CCAA, as the group is usually known, was formed in response to Homer's attempt to annex outlying areas. In addition to preparing a brief for the LBC, they have gone to court twice so far. The first time in an attempt to stop or slow down Homer's sending the petition on to the Local Boundary Commission. They gained a week, which was enough time to galvanize the public. Currently they are seeking release of memoranda that Mr Drathman has refused to allow access to. An appeal to the City Council failed and so they have appealed to the court.

CCAA has also put the wheels in motion to form a Borough Fire/EMS Service Area, in an effort to remove one of Homer's best arguments for annexation. Success will also make it more difficult for Homer to annex any areas in the future as well.

They have incorporated as a non-profit, under the name Kachemak Area Coalition. A general membership meeting with elections is scheduled for November 15th.


Donations are needed to keep going in the fight against annexation! Send to:

CCAA

PO Box 1715

Homer, AK 99603

Membership form here! Only \$10 a year makes you a voting member.

 <u>120501M pg5&amp;6.DOC</u>	<b>Name:</b> 120501M pg5&6.DOC <b>Type:</b> WINWORD File (application/msword) <b>Encoding:</b> base64 <b>Download Status:</b> Not downloaded with message
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[Fwd: DON'T ANNEX]

**Subject:** [Fwd: DON'T ANNEX]

**Date:** Mon, 11 Feb 2002 13:47:17 -0900

**From:** Representative Drew Scalzi <Representative\_Drew\_Scalzi@legis.state.ak.us>

**To:** Mary Jackson <Mary\_Jackson@legis.state.ak.us>

---

**Subject:** DON'T ANNEX

**Date:** Mon, 11 Feb 2002 17:14:30 -0500

**From:** savekbbi@netscape.net

**To:** Representative\_Drew\_Scalzi@legis.state.ak.us

Hi Drew, Hope you're having a good time down there. I live right down town, at 468 Rainbow Ct. and I want to urge you to vote AGAINST annexation. And while I've got your ear, we're trying very hard to retain what's left of the LOCAL voice on KBBI Public Radio. Some staff (G.M.Susan Kernes) wants to replace Breakfast Special and most of Afternoon Freeform (and the local non-profit information spots, like Homer Council on the Arts, Pratt, animal shelter, library, etc, that go within those shows) with CANNED TALK and CANNED MUSIC. Kbbi supporters are uniting to stop that move. Would you like to have me send you board of director and staff email addresses?

Thanks Drew!

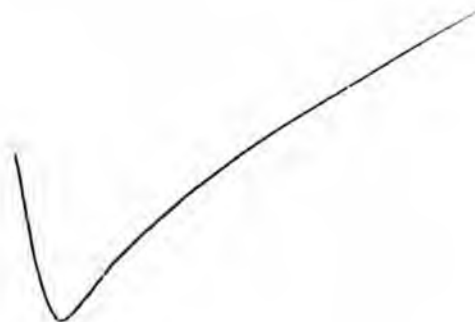
Randi Somers

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Get your own FREE, personal Netscape Mail account today at <http://webmail.netscape.com/>



**Subject: Annexation**

**Date:** Sat, 09 Feb 2002 08:57:36 -0900

**From:** Dave and Molly Brann <brann@alaska.net>

**To:** Senator\_John\_Torgerson@legis.state.ak.us, Representative\_Drew\_Scalzi@legis.state.ak.us

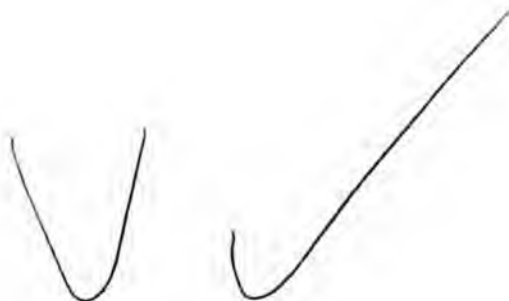
Dear Senator Torgerson and Representative Scalzi,  
Please do not take our message at less value because it is an email.  
Just because communication is easy and efficient should not diminish its worth.

Dave had planned on attending the hearings this morning in Homer about annexation. Friday night it snowed and drifted snow significantly. Dave started packing trails at 8:00 AM so Nordic Kids Lessons could take place at 2:00 and the general public could have the pleasure of skiing this weekend. He also needs to repack and regroom the planned trail for the wine and cheese tour which takes place Sunday. Trails are his top priority and he is working on them today. He is helping Kenton and many other volunteers with the Nordic Kids Lessons this afternoon.

The City of Homer has been very supportive of the Kachemak Nordic Ski Club and their efforts to maintain the wonderful ski trails we have in Homer. They have done what they can to help the skiers of Homer have good ski and hiking trails in the areas outside the city limits. They know that the residents use the trails and they enhance the quality of life in Homer. Just as the City has an interest in the area outside the city limits, the citizens outside the city should have an interest in the health of the City of Homer.

Dave and I have both felt that annexing a reasonable amount of land adjacent to the city makes sense to the economy and the efficiency of our city government. We expect the city will continue to support the creation of skiing and hiking trails in and around Homer. Having areas of land that are adjacent to the Bay Crest Ski and Hiking trails within the city limits should facilitate the creation of more access spots to the trails and improvements to the existing and proposed trail heads. I hope we can all turn this annexation into a win win situation for residents inside and outside the city limits.

Sincerely,  
Dave Brann  
Molly Brann

A handwritten signature in black ink, appearing to be 'Dave Brann', written in a cursive style.

**Subject: Homer annexation**

**Date: Sat, 09 Feb 2002 13:29:39 EST**

**From: TTaffe22@aol.com**

**To: <Senator\_John\_Torgerson@legis.state.ak.us>**

This email is being sent on behalf of Roberta Highland by Tom Taffe and Devony Lehner (who also object to the current annexation process).

My name is Roberta Highland. My husband Robert Archibald and I own 35 acres in the annexation boundaries. We strongly oppose the annexation and the process used by the city.

The process chosen has been adversarial and contentious, rather than cooperative. I am in the medical profession and would like to compare their choice to surgery without anesthesia. Sure it can be done, but why cause the person so much pain? Especially when there are so many other choices available.

I hold the LBC at fault also. They could have sent the petition back, requesting community discussion with an exchange of ideas on even ground. Cooperation rather than chaos and hostility, could have ensued.

In my first written comments to the LBC I wrote, "I do think this process needs changing. I think a requirement should be enacted that requires a city council to have some time of meaningful dialogue with the people in the potential annexed area; before they can present a petition to the boundary commission.

In my opinion should take about a year. I know I would be feeling a lot better about this painful process and would at least feel I been a part of the decision made, which is going to affect me so strongly. Please let me know what I need to do to have a requirement such as this enacted; I never received an answer.

The city council seemed to think meetings with discussions about how annexation would affect us was the equivalent of a public hearing; why not pour a little gas on the fire?

I literally feel there has been two different annexations; one that I have been experiencing, and judging from the council's comments; a totally different one for them. I wonder how this happened?

I would say when Homer incorporated in 1964, it took a big bite; from the very beginning. Many of the people still do not have services and they have paid increased taxes for a long time. To me a city is a place with shops and services and in-city dwellers. There are sidewalks, street lights, small lots, city sewer and water, etc. It is a place where people choose to live. Then there are the people who choose to live outside city limits, who shop in and support the city in many ways including volunteering, supporting non-profits, working in the business, etc.

When I heard comments to the effect that when the LBC was flying above Homer, much of the area proposed for annexation was similar to Homer already. Well, just maybe, the part of my subdivision, which is in city limits doesn't belong there. We do not look anything like my definition of a city. We are all on two acres or more (not city lots), we have well and septic, we have space, and we have horses and as I mentioned before, we own 35 acres. Our tax increase will be substantial. We chose to live outside city limits. I asked you not to reward the city for their atrocious behavior by annexing us. If the process was legal then we need to change that process now!

I've had a lot of time to consider this annexation animal. I'm questioning it from every angle. I think a more fair way for the city to increase their revenue is to increase the city sales tax. This would actually get all the users, not just the four square miles. It would include the 20 milers, across the bay, and the tourists, etc. Then add some user fees.

Homer annexation

Please do the right thing and veto the annexation and send us back to the drawing board.

Roberta Highland (235-8214)

\*\*\*\*\*

Thomas Taffe and Devony Lehner (235-4212)

**Subject: Homer annexation**

**Date: Sat, 09 Feb 2002 09:40:07 -0900**

**From: Steve and Claudia <gandh@xyz.net>**

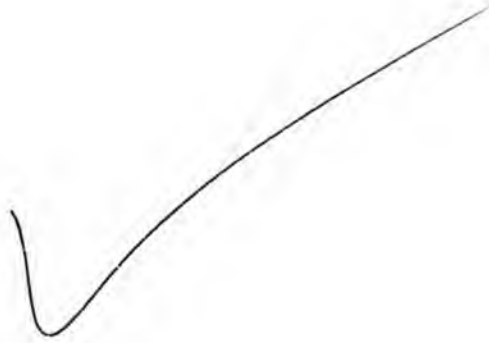
**To: <Senator\_John\_Torgerson@legis.state.ak.us>**

Senator Torgerson- I just want to be counted as another person against annexation. I have lived in the general area for 14 yrs and currently live in the proposed area to be annexed. I believe this is a money grab by the city council and Ron Drathman. The city council initially chose a 25mi area knowing that the boundary commission would settle for a smaller area. This fractured this area like I have never seen. Please send a message to city governments across the state that this is not the way to do this. It breeds hate. If annexation does occur please require new elections.

Thank You

Steve Glasman  
Box 2000  
Homer, AK  
99603  
907-235-9042

51600 Cottonwood



**Subject: City of Homer - annexation.**  
**Date: Sat, 9 Feb 2002 11:28:37 -0900**  
**From: "Aderhold" <aderhold@xyz.net>**  
**To: <Senator\_John\_Torgerson@legis.state.ak.us>**

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

I am a resident of the city of Homer since 1977, although the first property I purchased (and still own a portion of) was outside the City (approximately 13 miles out East Rd.). I currently work for the Kenai Peninsula Borough – Major Projects, as a project manager.

I am in agreement with the recommendation of the LBC for the annexation of additional lands by the City of Homer.

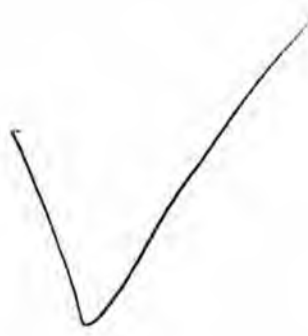
I do not agree with everything that the City Council, the Mayor and City Manager do, but I do have the choice of participating and there is a process.

In 1977 I quickly learned how well things go in the "unorganized" areas of the Borough and it was not pretty – because there was not a democratic process for spreading the financial participation in the day-to-day chores related to the maintenance of common property. For this reason, I quickly chose to establish myself at the very center of town, and picked a lot that already had water & sewer (but not much of the great view and "peace & quiet" that others seemed to put as a top priority). The City of Homer cannot solve every problem instantly, but they are the best chance we have and the most local arena .....the best way to attempt to solve problems fairly is to combine this area under one roof and work on them together.

If you move to deny the City's petition and consider altering the annexation process to make it "more democratic", you will be voting to increase the discord so common to the "inside the city" vs "outside the city" debate that has existed here (I'm told) since the formation of the City in 1964. We need to move this area toward a single, local government.

I agree with Jim Hornaday's unemotional and well-constructed testimony: DON'T TINKER WITH THE PROCESS – FOLLOW THE LEGAL ADVICE YOU'VE RECEIVED, AND FOLLOW THE CONSTITUTION, as it's currently written.

Wayne Aderhold  
350 Grubstake Ave.  
Homer, AK 99603



**Subject: City of Homer - Annexation**

**Date: Sat, 9 Feb 2002 12:26:56 -0900**

**From: "Aderhold" <aderhold@xyz.net>**

**To: <Senator\_John\_Torgerson@legis.state.ak.us>**

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

I am a resident of the city of Homer since 1977, although the first property I purchased (and still own a portion of) was outside the City (approximately 13 miles out East Rd.). I currently work for the Kenai Peninsula Borough – Major Projects, as a project manager.

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If you move to deny the City’s petition and consider altering the annexation process to make it “more democratic”, you will be voting to increase the discord so common to the “inside the city” vs “outside the city” debate that has existed here (I’m told) since the formation of the City in 1964. We need to move this area toward a single, local government.

I agree with Jim Hornaday’s unemotional and well-constructed testimony: **DON’T TINKER WITH THE PROCESS – FOLLOW THE LEGAL ADVICE YOU’VE RECEIVED, AND FOLLOW THE CONSTITUTION**, as it’s currently written.

Wayne Aderhold

350 Grubstake Ave.

Homer, AK 99603

# FAX COVER SHEET

*Homer Legislative Information Office*  
345 W. Sterling Hwy, #102A  
Homer, AK 99603  
(907) 235-7878 FAX: (907) 235-4008

Date: 2-9-02

No. of pages including this one: //

To: Sen. Torgerson

Fax No. 465-4779

Comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# Alaska State Legislature

Please enter into the record my testimony to the JCRA  
committee name  
 committee on Annexation, dated 2-9-09  
bill/subject

*9 copies of testimony in favor of  
 ANNEXATION of 4.58 sq mi City of  
 Homer.*

*Alex Flynn (Willie)*  
 Signed: Alex Flynn (Willie)  
Testifier

Self  
Representing (Optional)

267 W. Cityview Ave Homer  
Address

907-235-7812  
Phone No.



The Alaska State Legislature will be considering the Homer annexation Petition this week.

The Legislature will take public testimony, telephonically,  
from Homer at the Legislative Information Office  
[located at the old Trailside Mall, Pioneer & Sterling Highway]  
Saturday from 9:00am until the last person testifies.  
Testimony is limited to 3 minutes per person.

*This may be the last opportunity you have to tell the Legislature what you think  
before they make their decision.*

**Your opinion really matters!**



*City of Homer*  
491 East Pioneer Avenue  
Homer, Alaska 99603  
907-235-8121

### *Homer Annexation Considerations*

The City of Homer initiated the annexation process by filing a petition with the Alaska Local Boundary Commission to annex 25± square miles of surrounding territory. After two years of public hearings and forums, the City and the Department of Community and Economic Development agreed upon an annexation area of about 4.57 square miles. This area, while smaller, includes the bulk of the commercial and residential development on the borders of the city. Both the City and the Local Boundary Commission recognize annexation as a good idea whose time has come. We hope to demonstrate why annexation will be beneficial to all and why it will help create a more cohesive and economically stronger community.

First, consider the current state of affairs. While Homer city limits have not changed since incorporation in 1964, the City serves an area much greater than its boundaries. Homer residents and many of their nonresident neighbors use a host of services offered by the city and paid for, in the main, by taxes and user fees. While we all pay sales taxes when shopping in Homer, contributing greatly to the city's revenue stream, only city residents also pay a 5.5 mill property tax; an expense not shared by service users living outside Homer. The 5.5 mill property tax raises about 26 percent of the revenue used by the city's General Fund. While user fees support the city's port and harbor, sewer and water systems, which operate as enterprise funds, the General Fund is available as a financing alternative for these funds.

Here is a brief overview of some of the services enjoyed by folks living in the city and in the greater Homer area.

#### Library

Tens of thousands of people walk through the doors of the Homer Public Library each year – 98,100 this year alone. They come to read, research, use public-access computers and check out books, magazines and videos. In 2000, the library recorded a circulation of 104,000, up 5,000 from the year before.

The library's interlibrary loan program provides local residents access to a huge body of literature and research material from across the nation. Children, especially, benefit from the Homer Public Library. Last year, more than 1,600 youngsters attended weekly pre-school story hours. Public access computers allow residents and nonresidents access to the Internet through the city's high-speed server. This service is so popular that the library now requires sign-up sheets and has to set time limits because of space limitations.

Library data clearly demonstrates that many of the facility's most frequent users live beyond the city limits. More than 50% of the library cards presently issued are to outside city resident. In the present annexation area recommended by the Department of Community and Economic Development, there are more than 360 library card-holders in a population of 898.

Unfortunately, the small building on Pioneer Avenue is woefully inadequate for current demand, much less the growth expected in the next couple of decades. Cramped into that small space are nearly 34,000 volumes. That's a lot, but the number could be much bigger in a larger facility. Libraries need to

accommodate more than just books. Homer lacks the funds to construct a new library to house the many library services the community deserves. The additional tax base annexation will provide will help forward this project.

### Police

It is simply a fact of life; we don't live in a perfect world. That we are as safe a community as we are is due in no small part to the dedicated men and women of the Homer Police Department. In a time of need, their rapid response to crime or danger is a blessing. Homer officers do their work primarily within the city boundaries, but often are called to aid the law enforcement efforts of the Alaska State Troopers outside Homer. The HPD will immediately respond to any life threatening called received by 911 dispatch. Additionally, HPD responds to all requests made by the Alaska State Troopers for assistance outside city limits.

In fact, the Homer Police Department is much more than patrol officers rolling to crime scenes or ensuring the safety of city streets. It is part of a linked network of agencies. City dispatchers perform their task for City police, the Homer Volunteer Fire Department, the Alaska Fish and Wildlife Protection Service, the Alaska State Troopers, the Alaska State Parks, various search and rescue and civil defense teams, as well as for other fire, rescue and emergency medical services south of Ninilchik, including in Seldovia, Port Graham, Nanwalek, Kachemak Bay Wilderness State Park and the outlying Russian villages from Anchor Point to the head of Kachemak Bay.

During 2001, Homer Police responded to 5,971 incidents including 735 on the Spit and 119 outside city limits. Police data does not indicate the ratio of city to non-city residents involved in those incidents. In all, the Homer Police Department received 6,242 requests for services of all kinds during 2001. There were 462 arrests made and 640 charges filed. Police investigated 436 property crimes - vandalism, criminal mischief, theft, embezzlement, burglary, vehicle theft and arson. They also investigated 83 violent crimes, including sex offenses, robbery, assault and kidnapping. Police responded to 121 motor vehicle accidents that included 15 injuries and issued 1,019 traffic & animal citations and court summonses in 2001. These are not all City of Homer residents, nor are the victims.

The city of Homer provides jail services for Homer, and under an agreement with the State of Alaska, to the wider area as well. That means that residents and non-residents who are arrested must be housed in the City of Homer facility.

In 2001, there were 312 people jailed for City of Homer offenses, while another 174 were state prisoners. The Homer District Court sentenced 118 people to short-term stays in the Homer. In all, 604 prisoners spent time in the Homer Jail in 2001, serving a total of 1,562 prisoner-days.

The department not only investigates major crimes and operates the Homer Jail it also operates the Homer Animal Shelter which is addressed below.

Maintaining the peace is expensive. Annexation will help cover those costs and permit the department to expand services to the new territory by adding personnel and equipment. Homer residents need their neighbors to help ensure the continued effectiveness of this vital public safety service.

### Homer Volunteer Fire Department

Few things are as frightening as a fire or dire medical emergency. They strike with little or no warning, and often leave their victims helpless. Like the arrival of police, it is reassuring indeed to hear and see the fire trucks and ambulances roll. And roll they do, not only within the boundaries of Homer, but virtually as far as emergencies demand, very often into the proposed annexation area to fight forest, grass and structure fires, protect surrounding property and save lives. The Homer department provides emergency services to Kachemak City, has mutual-aid agreements with Anchor Point and memorandums of understanding for assistance with Seldovia, Port Graham and Nanwalek. Firefighters and emergency medical technicians have gone to the Russian villages at the head of Kachemak Bay and responded to

fires as far away as the central Kenai Peninsula at the request of state or federal fire officials, well beyond the proposed annexation area.

Homer is proud of its fire and emergency medical teams. Not only do department staff members and the host of volunteers respond in emergencies, they participate in prevention programs designed to make life safer for all of us. The department sponsors and teaches classes for a Fire Science Degree program through Kenai Peninsula College, provides fire prevention materials to the public and area schools. It co-sponsors the annual Homer Bike Rodeo in conjunction with the Safe Kids Fair. Those folks you see distributing and adjusting helmets for young riders are fire and EMS volunteers who work with the local Safe Kids Coalition and its bicycle helmet program. They can also be found instructing parents how to use child car seats properly.

Homer volunteers participate in the PRIDE program, which offers safety training to people with mental disabilities. When fans at Homer High School cheer their Mariners to victory on the gridiron, volunteer emergency medical technicians are there, standing by.

All that expertise comes from hours of training and practice provided by the City of Homer.

In reaction to the City of Homer Annexation petition, the Kenai Peninsula Borough recently created a fire and EMS service area on the south Kenai peninsula. Presently, the only way the Borough can deliver these services is through contract with the City of Homer.

### Public Works

Visit a city park, cheer on the youngsters at a Little League game or dash to the fence yourself and snag a fly ball. Take your toddler to play on the seesaw or ride the slide, pitch a tent or park your RV in one of several city campgrounds, drop your child off at the Homer Boys & Girls Club, or just stroll along the broad, open city beaches at low tide. Then thank the Homer Public Works Department for seeing that those parks and recreational areas are built, maintained and safe. General fund monies finance the operation of these amenities as well as a new adult softball complex expected to be constructed during 2002.

Walking along Pioneer Avenue, one can't help but notice how it blooms with color each spring and summer. Mother Nature gets a lot of help from Public Works crews and volunteers who are busy planting and pruning from May to September. Of course, not all of the department's duties are so eye-catching – or, for that matter, particularly obvious.

Frankly, the Homer Public Works Department greases the City of Homer's gears, without which several critical systems would cease to function. The department is responsible for operating the city water and sewer system. City water is available to many nonresidents because the city provides access to that water to commercial bulk water haulers. Many homes outside Homer could not have been financed or occupied had city water not been made available. In 1990 5.3 million gallons of city water was sold to bulk water haulers and by 2000 this had increased to 17 million gallons.

A change in the funding formula for expanding city water and sewer lines to reflect reduced state spending will permit the construction of five new water/sewer districts this summer. In the future, the city enterprise funds will contribute 25% of these costs and property owners 75%. Under the new city tax structure, the city will be able to create a million dollars worth of line extensions each year if neighborhoods vote to do so.

Public Works crews are also responsible for maintaining city streets and keeping them cleared of snow in winter. No matter the weather, city maintained streets are open. Through the use of private contractors with local coordination and Public Works crews, the condition of roads in the annexation area will improve.

Non-city residents use many of these city facilities daily. It is time to more equitably share the expense by becoming part of the City of Homer.

## Port & Harbor

The beauty and bounty of Kachemak Bay and Cook Inlet make Homer's port and harbor a Mecca for recreation and enterprise. The Homer Small Boat Harbor fills to capacity in the warm months with every size and variety of vessel. Still, the demand for space exceeds available moorage. The harbor is a 48-acre basin with 772 reserved slips, 4,000 lineal feet of transient floats. The City is presently engaged in a project to add 140 new slips and 800 feet of transient moorage.

The port and harbor provides those boat owners a host of services. The wood and steel grids make repairs easier. Homer's load and launch ramp is a vital link to the sea for recreational and commercial boaters alike. Fishing season means a steady parade of commercial vessels to the Homer Fish Dock, where crews use city cranes to unload their harvest and sell it to dockside buyers. The dock has 483 feet of vessel berthing and eight public cranes. The City of Homer's ice plant can produce 100 tons of flake ice per day. The cold storage facility provides valuable space to commercial fishermen. All of these facilities are publicly owned and available to all.

Recreational anglers use fish-cleaning stations provided by the city to clean their catch, depositing the waste in containers provided at city expense. Scores of charter outfits thrive thanks to the Port and Harbor and the private-sector enterprise it fosters. Indeed, marine businesses have sprung up from one end of Homer to the other and beyond into the proposed annexation area, all because the port and harbor exist.

Meanwhile, Homer's port is attracting an increasing amount of commercial marine traffic. Wood chip ships, log transport vessels and even cruise ships regularly visit the Deep Water Dock. Container barges, the U.S. Coast Guard vessel *Sedge* and the Alaska State Ferry use the city's Main Dock. A new \$11 million dock is presently being constructed to replace the main dock. The new dock was originally named the Kachemak Bay Multi-Purpose Dock, but has been renamed the Pioneer Dock. When this project is complete during the summer of 2002, the dock will be able to accommodate roll-on, roll-off vessels and handle larger container vessels. The dock will be able to accommodate the state ferry *Tustumena* and the larger new ferries. The dock will also accommodate the new larger Coast Guard vessel scheduled to replace the Coast Guard vessel *Sedge*, which is a true Alaska Pioneer vessel. Homer will continue to be Alaska's premiere ice-free port.

All of this has an enormous impact on Homer's economy and, clearly, to the economy of the larger area. More halibut are landed in Homer than any other port in the world. Without the port and harbor, much of Homer's entrepreneurial spirit likely would go unfulfilled.

## Clerk's Office

Homer's city clerk's office provides the general public with access to public records, notice of meetings and other city events. Clerk Mary Calhoun attends Homer City Council meetings and records the minutes and her office coordinates the meetings of city commissions, boards, other panels and maintains information kiosks in the City. Her office helps coordinate the sister-city programs for Homer's sister cities Teshio, Japan, and Yelisovo, Russia.

When voters from the Anchor Point to the Kachemak Bay precincts head to their polling places for statewide elections, it is the Homer City Clerk's office that coordinates ballot collection and compiles the local results. In city races, the clerk notifies residents of filing periods and candidates and runs the elections.

When residents seek to work together to improve utilities or roads in their neighborhoods, the city has a procedure for this purpose called the Local Improvement District coordinated through the clerk's office. The clerk's office draws up a petition complete with the names of property owners and the locations and values of their holdings. Once technical issues have been addressed by Public Works, the clerk gives the petition to the petitioners who then collect the necessary signatures. If enough signatures are collected, the clerk's office prepares an LID resolution for the council. The clerk's office is the face the public sees throughout the process of improving neighborhood water service, sewers and roads.

### Planning

A crucial element of the city's ability to function efficiently is its capacity to plan for the future. For a city of several thousand independent-minded citizens to run smoothly, there must be ways to avoid land-use conflicts or help resolve them when they arise. Through written guidelines and permits, city planners promote safety, protect public health and help guide development. Planning is best done locally, by neighbors who live with the results.

Planning personnel also develop policy recommendations, provide staff support for the Homer Advisory Planning and Zoning Commission, aid in the processing of conditional use permits and variances, work on revisions of the city's Comprehensive Plan and help neighborhoods plan for the future.

Good planning can prevent a lot of heartache. With that in mind, Homer has divided the city into zones where specific types of activities are encouraged and others prohibited. That's why you won't find junkyards in residential neighborhoods or industrial shops amid office complexes in the City of Homer, except where those conditions predated the city's zoning ordinance and hence, enjoy grandfather status.

Other city requirements prevent water sources from being spoiled, protect the integrity of streams beds and ensure that development meets minimum standards.

This year the City will complete a GIS center at City Hall which will be a tremendous planning aid for all departments. The City of Homer will have the same technology resources as the Kenai Peninsula Borough, 85 miles to the north.

### Animal Shelter

The city is working to find the funds and build a new animal shelter. The current facility is completely inadequate. Indeed, if city officials could snap their fingers and provide a better animal shelter overnight, they would. While desperately needed, unfortunately, a new animal shelter is not the only vital project the city needs to complete.

Despite its inadequacies, the small facility on the Homer Sterling Highway is shelter for lost, abandoned or turned-in cats and dogs from throughout the entire lower Kenai Peninsula. Looking at the recent statistics, between January and August of 2001, the shelter received 86 strays from inside Homer, 80 from outside. Some 94 Homer resident owners turned in animals, 150 did so from beyond city limits. The shelter also boards animals, reunites lost critters with their owners and finds new owners for those with no homes without regard to residency.

The point is, the Homer Animal Shelter provides a service to the entire area. It would help, as the Kenai Peninsula Borough does not fund animal control services, if Homer had a broader tax base to operate this vital program.

An architect has been retained to start working on the design of the facility with the help of a volunteer design committee. Hopefully, funding will be in place for construction this year.

### City Support of Area-wide Organizations

Since 1992, the City of Homer has spent in excess of \$1.5 million to help fund non-profit organizations such as the Pratt Museum, Homer Council of the Arts, Kachemak Ski Club, Kachemak Nordic Ski Club, Homer Food Pantry, Bunnell Street Gallery, Homer Head Start, Snomads Snow Machine Club, The Homer Foundation, Pier 1 Theatre, Community Schools, Homer Hockey Association, Kachemak Gun Club, Homer Little League, Women's Services and the Homer Boy's & Girl's Club. These are the organizations that provide education, recreation, cultural activities and a helping hand on the Southern Kenai Peninsula. At least fifty percent of those benefiting from these activities and

programs live outside City limits. The City of Homer budgeted an additional \$45,000 to support the Homer Chamber of Commerce. \$30,000 of this is used to promote the Homer area and its businesses and \$15,000 is to partially fund the Business Development Center.

All of these organizations are open to area-wide residents; however, only City residents support them through property taxes.

**Conclusion**

While this is a fairly impressive list of services, it is just an overview. The fact is, though we get a lot for our money, a broader tax base is necessary to help keep it that way. Contrary to what many believe, the added property taxes new residents would pay wouldn't amount to a great individual expense.

Today, non-city residents in the annexation area who own real property pay a combined 11.35 mills in real property taxes:

|  |                                |
|--|--------------------------------|
| Borough                                  | 7.00 mills                     |
| Road Service Area                        | 1.00 mill                      |
| Hospital                                 | 1.50 mills                     |
| Kenai Pen. College                       | 0.10 mill                      |
| Kachemak Emergency Services [Fire & EMS] | 1.75 mills = 11.35 mills total |

Meanwhile, city residents pay a combined 14.10 mills:

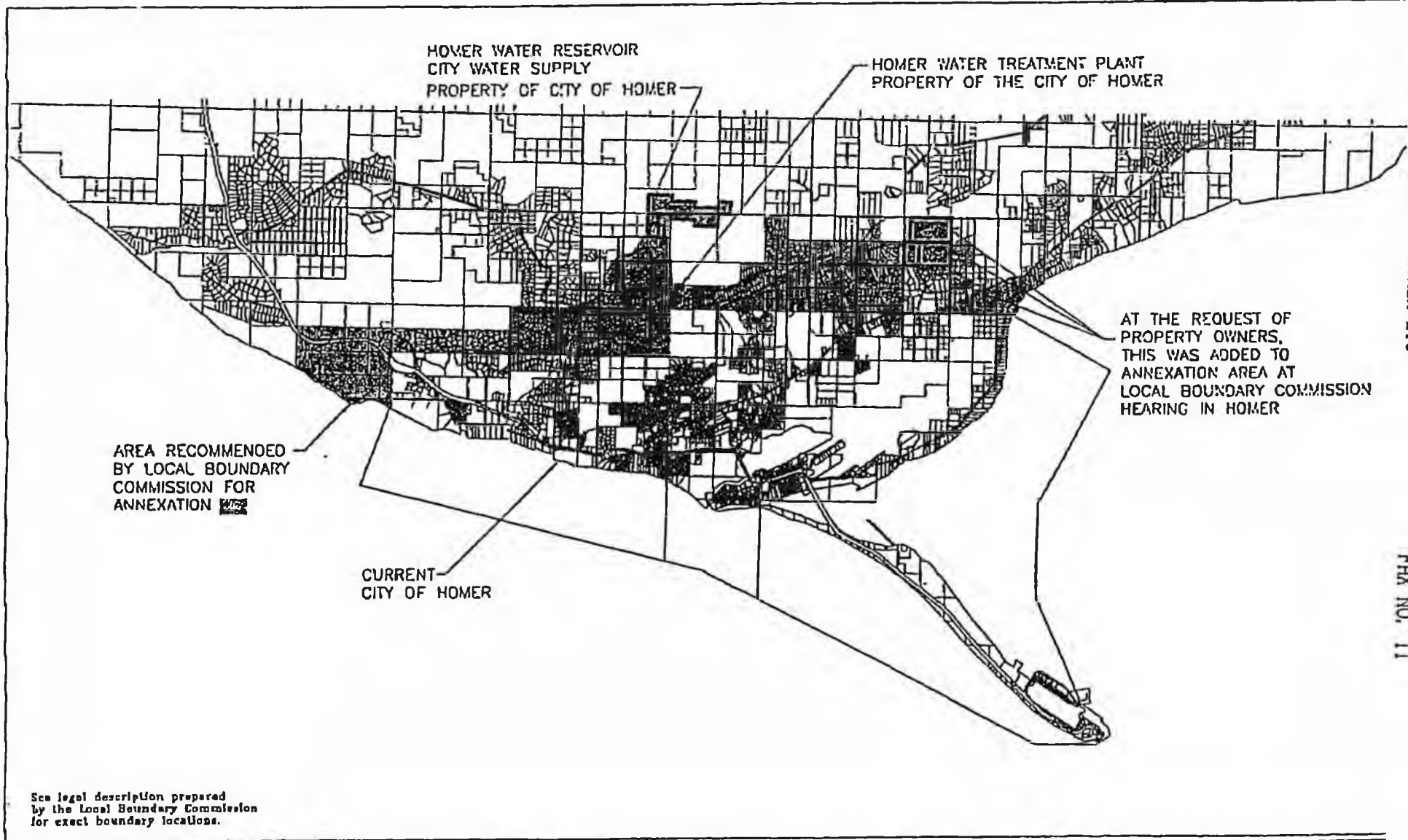
|                    |                               |
|--------------------|-------------------------------|
| City of Homer      | 5.50 mills                    |
| Borough            | 7.00 mills                    |
| Hospital           | 1.50 mills                    |
| Kenai Pen. College | 0.10 mills = 14.1 mills total |

If non-city property owners are annexed and become city taxpayers, they would cease paying the 1 mill for the borough road service area and the 1.75 mills for the fire service area, but instead would pay the 5.5 mills levied by the city.

The difference between what city and non-city residents now pay amounts to just 2.75 mills. That is \$275 a year for a \$100,000 home. Looked at a different way, for all the services and opportunities listed above, being part of Homer would cost the new resident tax payer less than \$.76 cents a day for every \$100,000 worth of real property they own. This is within a few pennies of the cost of a daily newspaper.

The new revenues generated by property taxes in the proposed annexation area are estimated at roughly \$313,000. Sales tax revenues from this area should generate approximately \$484,000. This means the city can strengthen its current services and broaden their availability in the larger area. Facilities can be upgraded and then perhaps taxes can be lowered. Thus, annexation will be beneficial not only to Homer's newest residents, but to its current residents as well.

*Annexation in Homer represents value and fairness!*



See legal description prepared by the Local Boundary Commission for exact boundary locations.

GRAPHIC SCALE

| NO. | DATE | REVISION | BY | CHKD. |
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**CITY OF HOMER, ALASKA  
PUBLIC WORKS DEPARTMENT**  
3575 HEATH STREET  
HOMER, ALASKA 99603  
PHONE: (907) 235-3170  
FAX: (907) 235-3145

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**PROPOSED ANNEXATION AREA**  
Drawing Status: Updated: 2/2002

## **We Cannot Remain Silent. Please Come Forward. It's Time!**

The Joint Legislative Senate and House Community and Regional Affairs Committee will receive testimony on the City's proposed 4.58 square mile annexation report at the Homer Legislative Information Office, Saturday, February 9, between 9:00 a.m. and noon. This is Homer's opportunity to inform the Legislature that annexation serves to strengthen and preserve our quality of life. Homer residents have the highest level of taxes on the Peninsula, and tax relief is needed. The fact sheet below supports the need for annexation. Please express your position to legislators in Juneau by either testifying on Saturday, or forwarding a fax statement to the joint legislative committee, fax: 465-4779. Thank you.

*Paid by Rick Ladd, Homer City Councilman*

### **Fact Sheet Supporting Homer Annexation of 4.58 Square Miles**

- As the only municipality in the Southern Kenai Peninsula, the City of Homer absorbs the financial costs for services such as library, police, port and harbor, water and more, but offers and shares these services with areawide community residents.
- The City of Homer was incorporated in 1964 and its 21 square mile boundaries have not been extended since incorporation. Uncontrolled development and intensive growth surrounding City limits necessitates extending the 1964 boundaries.
- Population per square mile in Homer is 188 citizens. Within the proposed 4.58 square mile annexation territory the square mile population is 196 individuals. This is greater than that within the City.
- The City of Homer is the only Kenai Peninsula Borough municipal government that is able to provide all Fire and Emergency Services to residents of the 4.58 square mile area recommended for annexation by the LBC.
- Increasing the tax base, at a time of decreasing State Revenue Sharing, will enable the City to better sustain and further develop the Homer's infrastructure of services.
- It is estimated that 25 percent of City water customers live outside the City limits. Water, the very commodity that allows area properties to be financed easier, insured, and ADEC approved, has been available without distinction for years to the areawide community.
- Since 1992, the City of Homer has budgeted in excess of 1.5 million dollars to areawide, non-profit organizations that support education, recreation and cultural activities in the Southern Peninsula. Fifty percent of those receiving benefit from these activities and programs live outside City limits.
- The City of Homer continues to support the Chamber of Commerce and the Community School programs. These organizations are open to areawide residents; however, only City residents support each through a local mil rate tax assessment.
- The City's port and harbor, a \$100,000,000 asset, is clearly an economic engine for the South Peninsula, and it is available to all without discrimination.
- Annexation and the implementation of planning and development standards, will limit uncontrolled growth and territorial sprawl that presently devalue and denigrate property contiguous to the City.
- Homer's annexation proposal follows the Constitution and the Legislative process as previously done in over 100 municipal boundary changes since statehood.

**FAX COVER SHEET**

THE FOREMAN'S, INC. and FOREMAN FAMILY LIMITED PARTNERSHIP dba THE FOREMAN'S PROPERTIES

1241 HILLCREST DRIVE ANCHORAGE, AK 99503  
P. O. BOX 91576 ANCHORAGE, AK 99509-1576TELEPHONE (907) 279-1736  
FAX (907) 272-9521

February 11, 2002

To: All Members, Alaska State Senate and House of Representatives

FROM: Helen G. Foreman, 58-year Alaskan, 47-year Secretary-Treasurer, Electrical Contracting Corporation among first group of Alaska-licensed Electrical Construction Contractors supported by our President's original-group Electrical Administrator's license and General Partner, Limited Family Partnership with housing rentals

Subject: Fiscal Gap and attendant problems

Transmission consists of this cover page and 0 additional page(s).**CONFIDENTIALITY STATEMENT**

The information in this facsimile is confidential and is intended only for the recipient named above. If the reader of this information is not the intended recipient, or the employee or agent responsible for delivery of this information to the intended recipient, you are hereby notified that this is not a waiver of privilege and any dissemination or copying of this information is strictly prohibited. If you have received this information in error, please notify the sender immediately by telephone and return the original information to the sender by U.S. Postal Service to the sender's address above.

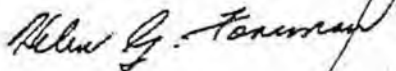
Respectfully urge this Second Session require:

1. Equal percentage across-the-board state budget reductions.
2. Mandate ORGANIZATION of UNORGANIZED portions of the state. One hundred percentage (100%) dependence on others by UNORGANIZED areas must cease.
3. RESPONSIBILITY; officials, first; then, persons must be required to assume responsibility individually and for the entities providing their services.
4. NO SALES TAX! No vendors/servicers State Tax Collectors.
5. Aggressive elimination of enticement, promotion, and expectation of and dependence on sizeable Permanent Fund Dividend.
6. Promotion and encouragement of Bush cottage industry.

Then:

Later Alaska Legislature Sessions can review prior reductions, looking for further reductions and realignments. Later, using considered judgment on degrees of reinstatement of school, gross business license, and income tax for systematic incremental return to fiscal responsibility.

Please write, call, or FAX if we can help.



01/31/2002 07:12 19072352009

RT ENTERPRISES

PAGE 02

Dear Legislators,

I thank you for giving us this added opportunity to speak into the annexation issue. I want to state that I am opposed to annexation that is done against the will of the people. It is like a marriage with one unwilling partner. It is a bad marriage from start to finish.

I heard Susan Cushing (the Homer mayors wife) say that "those people" that are against annexation would oppose any sort of growth by the city no matter how they went about it. This is not true, if the majority of the people to be annexed and the majority of the people inside the city want us to be annexed then no matter how it would affect our business and lives I would "bow out". But this is not what I am hearing from our community so I would like to see it put before the people for a vote.

My wife and I have known Jack and Susan Cushing ever since they came to the Homer area. They bought a piece of property from my father and built a home in our neighborhood. At that time I remember they did not even like anyone stirring up the dust around their property let alone forcing them to do something with it that they didn't want to do. Oh how time changes things and opinions. It makes a lot of difference if the property in question belongs to you or your neighbor.

She also mentioned death threats and the referral to Nazi death camps. When things are not put to a vote of the people they feel like they have no voice in what is happening to them and it reminds them of what happened during the Second World War. I don't know how many people I have heard in the last two years make the statement... "It would be good to fight this because the government already has its mind made up... so we might as well accept it." Is that the kind of government you want to be a part of?

I also heard that the silent majority is afraid to stand up in the face of such fierce opposition and say that they are for annexation. You don't have to face any one to send a fax or letter. But the true way to settle this issue is to put it before the people both inside the city and in the area proposed for annexation.

I have lived in this area since 1956, my wife and I own a business in the to be annexed area, and I have never seen anything divide our community like

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RT ENTERPRISES

PAGE 03

this has. I know that Ron Drathman is a knowledgeable lawyer so I'm sure all the I's are dotted and all the T's are crossed, I'm sure the letter of the law has been followed... but I ask you has the intent of the law been met. This is government at it's worst.

Please put a stop to this annexation and let the people in this area begin the healing process that needs to take place. If you break the back of the small business owners with taxes, regulations and cost of service extensions it will be very bad for this community.

Thank you for your time and consideration of this matter.

Sincerely,



01/31/2002 07:12 19072352009

RT ENTERPRISES

PAGE 04

Dear Legislators,

I am writing to ask you to stop the proposed annexation of 4.58 square miles in the Homer area. I am opposed to any form of forced annexation. It needs to be put before the people for a vote.

I personally have lived and worked in the Homer/Anchor Point area all my life. This annexation will drastically effect my family and many others in the area. I have worked for Kachemak Auto Body and Paint for the last 12 years. My wife has also worked there for the last 3 years. This the only source of income for ourselves and our two children. As employees of a business that will be greatly effected by this annexation, our entire household income may very well come to a complete halt. My family is only 1 of many effected by this decision. Some will loose their businesses and in the end this may cause them to loose their homes.

Please stop this annexation.

Thank you for your time and consideration of this matter.

Sincerely

*Steven King*  
*Rita King*

lois field

---

**From:** lois field <field@xyz.net>  
**To:** John Torgerson - Senator, John\_Torgerson@legis.state.ak.us  
**Sent:** Saturday, February 09, 2002 10:13 PM  
**Subject:** Homer Annexation

To Missrs. Torgerson and Scaizi. Members of the House and Senate. Community and Regional Affairs Committee. There is little point in going into the endless details about how people down here have suffered with Homer's Annexation Attempt. From a public relations point of view, it was bungled badly from the beginning by Mayor Cushing, the city council and Mr Drathman! The end result, as of now, is that there are hundreds of people down here who are justifiedly frustrated and seething mad !!! There has been almost no one in over 2 years of process who has spoken in favor of annexation except the members of the city council themselves, former council members and their relatives! Most of those have only appeared in the last few days. Most of us are completely convinced that there is no urgent reason, that we know of, for Homer to need to annex us !! This is a very exploitive, "MONEY GRAB", which if allowed to go through, will ultimately by increasing Homer's income, compound the real problem Homer seems to have trouble with, namely-- uncreative management, lack of advance planning, waste, and trying to support too many non-profits when they really cannot afford these items. The Homer City Council keeps reminding us that the annexation is all perfectly legal. OK---so its legal, we agree !! The problem is that it is also an immoral act of aggression allowed only by some bad old laws being left on the books!! Hopefully soon those laws will be overturned!! As members of The Senate and the House of Representatives it is " URGENT " that you immediately take the moral high ground on this issue and do something permanent and necessary for the citizens of Alaska by vetoing Homer's Annexation Petition and return it to them unapproved! Annexation by Legislative Review should also be outlawed---it is grossly unfair.  
Respectfully yours, Paul Field, Box 1617 Homer Alaska 99603

*Paul Field*

2/9/02

2/11/02

Dear Senator Torgerson and Representative Scalzi,

My name is Stephen Field and I live inside the City of Homer. I am opposed to the annexation and urge you to veto it. Our city council needs to learn how to manage the revenue they currently receive. Shouldn't they provide services to all city residents before annexing new ones? Perhaps they could if they weren't in the arts and entertainment business. Here's an example.

Almost weekly, we see thousands spent on special interest and non-profit organizations. Take the Pratt Museum. Aside from lucrative fund raising events, the museum charges admission and runs a gift shop. Why should local government support them as well, when there are people in town without water and sewer service? (Maybe the Museum is as poorly managed as our city!) Incidentally, busloads of tourists used to visit the Pratt Museum before the council attempted to charge passengers "by the head" in a former "money grab." We don't get cruise ships anymore.

Wasn't it impressive to see five council members, the mayor and their attorney attend your hearings in Juneau this week? Couldn't a single spokesperson adequately express their point of view? It's my guess public funds were spent on their travel, meals and lodging!

If Homer is in good financial shape, as our local government contends, why are they so desperate to annex this area? A matter of principle? Something is fishy.

Households, legislatures and cities all need to operate within their budgets. Annexing this area will only fuel Homer's "spending spree."

Again, PLEASE VETO this underhanded coup and amend the state constitution to prevent other communities from expanding their borders, rather than managing their money.

Sincerely,  
Stephen Field  
PO Box 128

Alaska State Legislature  
Public Opinion Messages

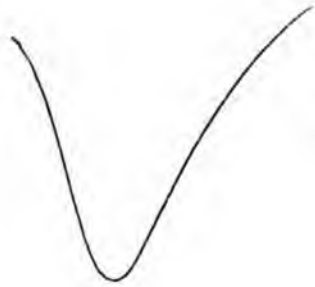
Viola M Jerrel,  
Po Box 938  
Po Box 938  
Homer, AK 99603  
Phone: -  
E-mail:

Subject/Bill BOUNDARIES

I am opposed to the City of Homer secret no vote annexation petition. I ask the Community & Regional Affairs to submit a joint resolution to the legislature to have the legislature veto the Homer Annexation Petition. The legislature has the authority to veto for any reason the legislature wants to veto.

Date Sent: 02/11/2002

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

A large, handwritten mark resembling a stylized 'V' or a checkmark, drawn in black ink on the white paper.

Alaska State Legislature  
Public Opinion Messages

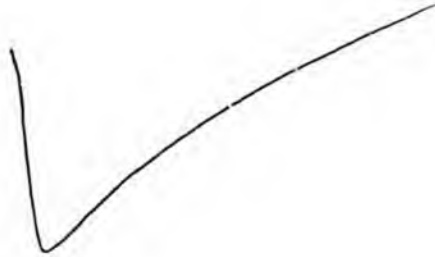
John J Polster,  
6 Ocean Dr  
6 Ocean Dr  
Homer, AK 99603  
Phone: -  
E-mail:

Subject/Bill BOUNDARIES

Opposed to annexation. Issue absolutely lacks merit. Secondly forced marriages are primitive mentality. Civilized people allow possible participants in marriage to have a say in that possibility. I am a Homer resident.

Date Sent: 02/11/2002

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y



Senator John Toynson

Att: Mary Jackson.

465-4989

FAX 465-4779

Could you give this information  
to all your senate & representatives  
on committees or anyone else  
interested. Thank you

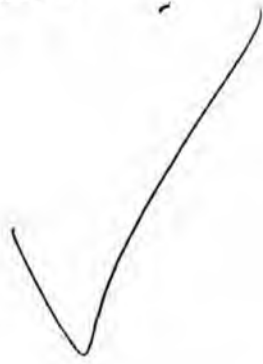
Doris Cabana

Box 607

Ames, Ak. 99603

(907) 235-6081

FAX (907) 235-1311



Law Offices of

**ERWIN & ERWIN, LLC**

*From the Desk of: Robert C. Erwin*

733 W. 4<sup>th</sup> Avenue, Suite 400  
Anchorage, Alaska 99501  
Telephone (907) 276-3125  
Facsimile (907) 276-4125  
e-mail: erwinllc@alaska.net

Robert C. Erwin  
Roberta C. Erwin

December 21, 2001

Dan Blockhorst  
State of Alaska, Local Boundary Commission  
Municipal and Regional Assistance Division  
Department of Community and Economic Development  
550 West 7<sup>th</sup> Ave., Suite 1790  
Anchorage, AK 99501

Re: Homer Annexation  
Effect of City Annexation on Borough Service Area under AS 29.35.405(e)  
Our File No.: JERV-03

Dear Mr. Blockhorst:

I have reviewed the plain language of recently passed AS 29.35.450(e) requiring a vote of people when there is an attempt to alter or reduce the size of a properly designated service area for roads, fire protection, or parks and recreation services.

The opinion of the Attorney General's office which takes the position that the specific statutory language requiring a vote of the residents of the service area affected does not apply when the service area is to be annexed to the City of Homer appears questionable from a legal standpoint. The Attorney General's office does not cite any legal authority for the exception claimed, but attempts to argue that the fact a vote was never taken in the past in the area to be annexed to a city indicates that the State does not need to do so now.

This legal conclusion simply ignores the new statute and its purpose to preserve a previously created service area which was constructed in the past to provide needed services. Generally the old service area required the purchase of equipment and possible staff which was supported by taxation of the service area members. The elimination of a substantial number of the members from the service area without a vote and a decision of

Dan Blockhorst  
December 21, 2001  
Page 2

how future services and present debts will be provided and/or paid can provide a substantial hardship.

Each enactment of the Alaska Legislature is presumed to be constitutional and it will not be set aside unless the provisions show a substantial and plain violation of Alaska Constitutional law. See, *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 557 (Alaska 1966); *Sheldon Jackson College v. State*, 599 P.2d 127, 130 (Alaska 1979).

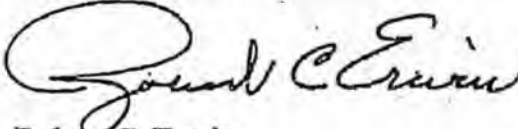
The claim that the Executive Branch of the State government is not bound by a statute passed by the Alaska Legislature is clearly incorrect. The statute is valid until declared invalid by the Court.

Such a statute is valid under the Constitutional Doctrine of separation of government power. The doctrine of separation of powers is implicit in the Alaska Constitution and the purpose of the doctrine is to preclude the exercise of arbitrary power by any one branch of government. *State v. Fairbanks North Star Borough*, 736 P.2d 1140, 1142 (Alaska 1987). This doctrine also requires the court to construe a properly passed statute to avoid constitutional infirmity where possible. *State v. Fairbanks North Star Borough*, at 1142.

Here there is no clear constitutional violation affecting a properly passed statute of the Alaska Legislature which was signed into law by the Governor. Thus, there is no legal basis to ignore its provisions which are to protect existing service areas from destruction without a vote of those people who helped create them in the first place.

Very truly yours,

ERWIN & ERWIN, LLC



Robert C. Erwin  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

RCE:la

cc: Vi Jerrel  
.Doris Cabana

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In the Matter of the March 20, 2000 Petition )  
By the City of Homer for Annexation of )  
Approximately 25.64 square miles )  
\_\_\_\_\_ )

PETITION FOR RECONSIDERATION

COMES NOW, Alaskans Opposed to Annexation, Doris Cabana and Vi Jerrel, by and through their counsel of record, Erwin & Erwin, LLC, and timely petitions the Local Boundary Commission for reconsideration of the Decision of the Commission dated December 26, 2001 with regard to the Annexation to the City of Homer.

The Local Boundary Commission has ignored the effect of AS 29.35.450(e) which was validly enacted by the Alaska Legislature and in effect at the time the decision on Homer Annexation was made on December 26, 2001.

Alaska Statute 29.35.450(e) requires a vote of the people effected in eliminating a substantial portion of a borough service area established for roads, fire protection, parks or recreational services. "It is presumed that whenever the Legislature enacts a provision, it has in mind previous statutes relating to the same subject matter, and all should be construed together." *Hafling v. Inland Boatman's Union of Pacific*, 585 P.2d 870, 877 (Alaska 1978).

Further, there is no problem with the language of the statute which appears to fall within the "plain meaning" rule or its progeny which does require interpretation. See, dissent Justice Rabinowitz, *Matter of City of Nome, Alaska*, 78 P.2d 363, 368 n. 3 (Alaska 1989).

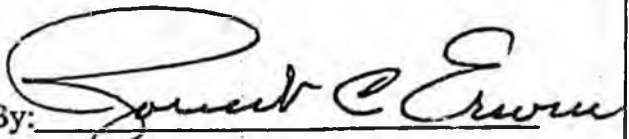
When you couple these rules of statutory construction with the legal doctrine that each enactment of the Alaska Legislature is presumed to be constitutional, (see, *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 557 (Alaska 1966); *Sheldon Jackson College v. State of Alaska*, 599 P.2d 127, 130 (Alaska 1979), it appears to be a legal error to ignore the requirements of the statute. The Legislature is clearly aware of the requirements of annexation and the obvious fact that service areas are likely to be destroyed by annexation to a local government unit. The Legislature specifically intended to deal with the problem of destruction of service areas and what the remainder thereof can do when its taxing base is to be changed. Can any service area survive without such consideration?

This annexation process has been ongoing for almost 18 months with the first public hearings taking place in Homer on December 14 and 15, 2001, some two weeks before the final report was issued on December 26, 2001. Certainly the future vote of the service area to be destroyed cannot either change the legal power of the Boundary Commission or the power of the Legislature to consider its proposal; but it will permit

the orderly transfer of functions for roads and EMTs to permit the realignment of the financial burden to those who remain in the service area and need the service.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 1-14-02

By:   
Robert C. Erwin  
ABA # 6101004

CERTIFICATE OF SERVICE

I hereby certify that on the 14<sup>th</sup> day of January 2002, I caused a true and correct copy of the foregoing to be mailed via U.S. mail on the following:

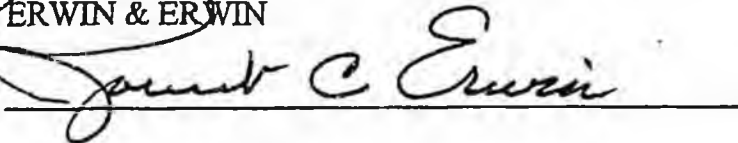
Brooks Chandler  
Hicks, Boyd, Chandler & Falconer  
825 W. 8<sup>th</sup> Avenue, Suite 200  
Anchorage, AK 99501

Perkins Coie, LLP  
Attorneys for City of Homer  
1029 W. 3<sup>rd</sup> Avenue, Suite 300  
Anchorage, AK 99501

and by hand delivery to:

Dan Blockhorst  
State of Alaska, Local Boundary Commission  
Municipal and Regional Assistance Division  
Department of Community and Economic Development  
550 West 7<sup>th</sup> Ave., Suite 1790

ERWIN & ERWIN



Law Offices of

**ERWIN & ERWIN, LLC**

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e-mail: [erwinllc@alaska.net](mailto:erwinllc@alaska.net)

Robert C. Erwin  
Roberta C. Erwin

November 5, 2001

Vi Jerrel  
P.O. Box 938  
Homer, Alaska 99603

Doris Cabana  
P.O. Box 23  
Homer, Alaska 99603

Re: *City of Homer Annexation*  
Our File No.: JERV-03

Ladies:

Here is a copy of the opposition to the preliminary report and a request for continuance filed on Monday, November 5, 2001. We have not received any other comments either from the City or the other group.

Very truly yours,

ERWIN & ERWIN, LLC



Robert C. Erwin

RCE:la  
Enclosures

Attorney-Client ♦ ♦ **PRIVILEGED** ♦ ♦ Attorney Work-Product

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In Re: Opposition to Homer Annexation )  
\_\_\_\_\_ )


REQUEST FOR ADDITIONAL TWO WEEKS TO PERMIT COMMENTS ON PRELIMINARY  
REPORT

Alaskan's Opposed to Annexation requests the Local Boundary Commission extend the time for filing response to the Preliminary Report herein by two weeks from November 5, 2001 in order to permit comment from the Homer area.

Copies of the preliminary report were sent to the City of Homer for placement in the Homer Library (around October 10) to be reviewed by the citizens. However, these copies somehow went astray and additional copies were not available to the citizens of the Homer area for almost two weeks after the preliminary report was originally made available to the City of Homer. Any public hearing in the Homer area should be also scheduled with such a change in mind.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 11-5-01

By:   
Robert C. Erwin  
ABA # 6101004

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

In Re: Opposition to Homer Annexation )  
\_\_\_\_\_ )

**RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT  
REGARDING CITY OF HOMER'S PROPOSAL FOR ANNEXATION**

Alaskan's Opposed to Annexation strongly agree that the proposal for annexation by the City of Homer should be sharply limited in size to those areas where there is a realistic hope that the property owners in the area to be annexed will get services from the City of Homer. The preliminary report demonstrates how the geographic contours of the Homer area have a profound effect on the delivery of services such as sewer and water which should be carefully weighed in reaching the final decision on the annexation issue.

I. RECOMMENDATION NO. 1. Area to be annexed.

The preliminary report recommends annexation of adjoining areas to Homer where there is some commercial development. There are primarily the areas of Miller's Landing and the Sterling Highway area starting at Mile 165.7. Clearly, these areas would provide taxable property, however, there is little attempt to establish how the area homeowner's would benefit from or would actually obtain services from the City of Homer.

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

The Sterling Highway area recommended to be annexed has in fact little private land and primarily consists of Borough land, University land, State land and Native land, all of which is not taxable, (*see*, attached Exhibit A) and is subject to control and use inconsistent with the control sought by the City of Homer.

Further, in the Sterling Highway area there is no proposal for the extension of sewer and water at any time in the next five years. (*See*, Exhibit B, Homer capital improvement program 2000 - 2005.) The area presently receives its road maintenance and policing from the State of Alaska and the Kenai Peninsula Borough. There is no plan to change this process and to meet the requirements of 3 AAC 110.990(8) which defines essential City Services necessary to support annexation.

The Miller's Landing area is more difficult to analyze because it provides a concentration of commercial business which is the greatest in the area outside the City of Kachemack and the City of Homer. This area probably will be the first priority for any city services which the City of Homer can provide. They would have the basic political clout to demand such services with a tax base to support any demands. Further, it is more geographically accessible than the Sterling Highway area for sewer, water and other city services because the elevation above the City of Homer is substantially less than the Sterling Highway area even though the property owners would be charged at least 50% of the cost of sewer and water services. The problem again is the capital

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

Page 2

expenditures and annual costs to maintain services. The City of Homer has seriously underestimated the costs of such services and overestimated their ability to provide such services.

Section 17 of the City of Homer's annexation petition states that they plan to provide the following services to the new territory upon annexation:

- water and sewer services as quickly as residents and funding permit;
- bulk sales of potable water to commercial water carriers will continue;
- processing of septic waste from the area will continue;
- enhanced fire and emergency medical services;
- police;
- dispatch services [911, fire, AST, police];
- jail;
- animal control support and animal shelter;
- continued support assistance for the State Trooper post;
- library services;
- City parks;
- recreational services through City facilities and City funded community schools program;
- improved road maintenance;

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

Page 3

land use planning services;

City Clerk services including voter services and information support services;

grant management; and

general government services.

The total projected increased cost to the City of Homer's operating expenses for all these services is projected at \$414,463.00 annually plus another \$1,089,600.00 in capital expenses to perform such services. Alaskan's Opposed to Annexation have extensively questioned the cost projections by the City of Homer in its initial filing dated June 5, 2000.

Clearly, such a plan provides its emphasis "on providing the services as quickly as funding permits." Such an open ended promise is no promise at all. The services will be provided when Homer gets around to it. The annexation residents get what services they now have and they get to pay substantial additional tax on their property to get them and a "promise" for new services sometime in the future when they can be afforded.

II. RECOMMENDATION NO. 2. Truncation of terms of City officials.

objection.

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKAN'S OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

Page 4

III. RECOMMENDATION NO. 3. Differential property taxation.

No objection.

IV. RECOMMENDATION NO. 4. Consent of City of Homer.

No objection.

V. CONCLUSION.

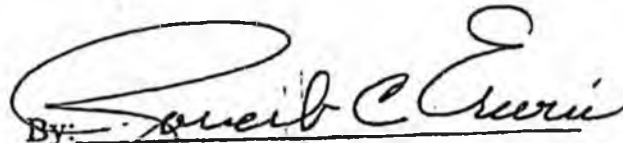
It is suggested that the City of Homer be ordered to amend its petition for annexation to show the reduced area and to present a plan for the implementation of services to that area so reasonable comments can be focused on that area.

The huge size of the initial area requested and the obvious problems of providing services to such an area have prevented those who question the annexation to focus on the proposed smaller area now suggested. Basic fairness would appear to require the Local Boundary Commission to order further proceedings if the Commission agrees

with the preliminary analysis.

ERWIN & ERWIN, LLC  
Attorneys for Vi Jerrel, Doris Cabana and  
Alaskans Opposed to Annexation

DATED: 11-5-01

By:   
Robert C. Erwin  
ABA # 6101004

In Re: Opposition to Homer Annexation  
RESPONSE OF ALASKANS OPPOSED TO ANNEXATION TO PRELIMINARY REPORT REGARDING CITY OF  
HOMER'S PROPOSAL FOR ANNEXATION

Page 6

Box 832  
Homer, AK 99603  
Feb 9, 2002

Sirs:

My name is Donald E. Ronda. I am a 40-year resident of Homer, AK, and live at 4445 East Hill Road. I have served in a variety of public offices in this community including multiple terms as a member of the Homer Advisory Planning Commission, the Homer Port and Harbor Commission, the Homer Airport Commission, and the Parks and Recreation Committee. I also served two terms on the Homer City Council.

I fully agree with comments made by Homer City Councilman Alan Parks who during the February 9 Senate/House Community and Regional Affairs Committee Hearing said that he strongly favored annexation. I do also.

Most actions of government are taken in response to problems perceived by the electorate or its elected or contracted officials. In this instance elected city council members noted problems affecting the city which seem generated by the actions of those living adjacent to, but outside of, city boundaries.

A proposed solution to some of these problems involved the annexation of presently unincorporated neighboring areas. The original proposal involved approximately 25 square miles adjacent to the city, south of an established governmental survey line.

The city then followed State Law in attempting to enact this proposal. There immediately followed a public uproar on the part of those owning property within the proposed annexation area. This was to be expected as those who reside in such neighboring areas generally move to those locations to avoid governmental controls and taxes. However, uncontrolled population increases on previously undeveloped land frequently creates new problems which impact the lives of those living in an adjacent organized area.

It has now been approximately 38 years since the city of Homer was incorporated within its present boundaries as a first class city. Many changes have since occurred, not the least being a tremendous increase in the regional population outside of town.

Homer exists along the base of a bluff. Unfortunately the development of the area above town is not now controlled by appropriate planning and zoning laws. This creates problems.

After study, the city publicly expressed its intention to annex this area giving reasons for so doing. Those opposed to such did so as well. This resulted in almost two years of hearings, confrontations and discussions, the process following guidelines intended to insure impartiality.

The final solution to any problem usually involves compromises. The proposal before you now consists of only 4.58 square miles to be annexed. It includes an area along the upper southern face of the Kachemak Bay Bluffs, from its top edge to the existing city boundary, the area currently most affecting the existing city. This would seem to be a reasonable compromise resulting from thorough consideration of points brought up by opponents trying to solve perceived problems.

Nevertheless, there has been considerable public criticism such as the following:

"Public input has been ignored." Hardly a legitimate complaint given the public discussions involved.

The "public should have voted on this matter". Which public? Those who elected the council members now acting on their behalf, or those living outside existing city boundaries in the area to be annexed, or perhaps those living in neither entity (which seems to include some of the most outspoken opponents).

"Those living outside of the city boundaries already pay city taxes in the form of sales taxes." True, but so do those living inside the city, plus their property taxes, the major source of governmental funds used to provide services required by all members of the community whether full time residents or only part-time users. Approximately \$1.5 million of these city funds are currently spent on services provided outside city boundaries.

Other comments seem based on inadequate knowledge of our city government. For example, "The city doesn't currently provide services such as paved roads, sewers, or water for its present residents. Why should we be forced to join it if we won't benefit from improvements such as these services provide?" The facts are that City residents, like other responsible citizens, enjoy the benefits they pay for. If residents want such services they form "Improvement Districts" by which the majority of those to be served volunteer to pay individual assessments in addition to normal property taxes to provide money for the construction of the required service facilities. Governmental action or inaction regarding services is thereby initiated by a vote of the affected property owners, not by the electorate at large.

Somewhat beside the point one comment given at the February 9th hearing was that "The city does not provide swimming, boating, and other waterborne recreational areas on Beluga Lake which should be developed as a city park." Beluga Lake is part of the Homer Airport...it's a Seaplane Base. All non-aviation waterborne recreational activities, are prohibited except within a prescribed area during the winter freezeup.

Another was, "The harbor was built by the State and given to the city which now makes all kinds of revenue from it. Use those funds." Yeah, and how about the costs of harbor operation? The facts are that the State transferred harbor ownership to the city to reduce the state budget and avoid having to pay necessary maintenance costs. The Homer harbor is available to all Alaskans, whether city residents or not, and benefits all. Unfortunately, a city revenue producer it is not.

There are other objections to annexation, many of which are equally flawed. The facts seem to be that people move to remote areas to avoid governmental control and taxes. One can't expect them to favor what they're seeking to avoid. But, as time passes, remote areas don't remain remote and the larger number of people living there require governmental controls and services which they should expect to pay for, just like their neighbors.

Please approve the Homer Annexation Proposal now before this committee.

Sincerely,

  
Donald E. Ronda

February 11, 2002

Senator John Torgerson

Re: Homer Annexation

Good Morning ,

As you know, the Homer area was dumped on Friday night by 2 ft. + snow. There were many folks who were not able to testify at the hearing because of that. You will be hearing from many of them via email or FAX, and I wish to extend my sincere thanks to you for allowing this additional comment period. I was amazed at how many folks did make it, and the excellent comments expressed.

In my own comments, I said I was a part of the greater Homer Community. That greater community, including the City of Homer, has traditionally worked together. We knew we had no representation on the Council, they knew that too, but respected our contributions to the community (via doing business there and paying sales tax, volunteering, etc.,) and extended the courtesy of listening to us. As Leroy Crumm stated, it was a symbiotic relationship.

Sadly, this petition, and the way it has been handled, has badly wounded that special relationship. To now approve the annexation will not generate healing, but only foster more resentment. For true healing to occur, it all needs to be turned down and the city required to go back and start over. People need to be treated with respect. If the City would extend the same methods as used for the Beach Task Force, or the Bridge Creek zoning, it would bring people on board and give them ownership. And that is needed. (And I've begged for that since day one!)

Yes, the city has followed the letter of the law. But, is it morally right? I believe the answer is no. My other big concern is the precedent that would be set by approving this annexation now. It will encourage land grabs by other municipalities. Is that truly in the State's best interest? Again, in my view the answer is no. In a way the LBC has set a bad example too, in that I think they should have required a new petition based on the smaller area they were willing to accept. Again, what they did was within the law, but was it right?

Please support a resolution opposing the Homer annexation.

Sincerely,

Milli Martin  
P.O., Box 2652  
Homer, Alaska 99603  
907-235-6652

02/11/02 CCAA

## CCAA'S RESPONSE TO "HOMER ANNEXATION CONSIDERATIONS"

Homer's letter starts by admitting they initiated the annexation by filing a petition. They skipped a very important step – public discussion of the issues prior to submitting a petition to the LBC. The LBC themselves feel this is a sufficiently important step that they have written new regulations requiring a hearing prior to submission in the hopes that it will encourage a bare minimum of public discussion.

The city is correct that city residents pay 5.5-mil property tax that non-residents do not pay. They neglect to mention that those taxes go towards services that non-residents do not use. Non-residents pay a 1-mil road use tax and a 1.75-mil fire/ems tax to the borough through service areas. City residents pay the 5.5 city property tax for those and other services. If you allocate 2.75 mil of the 5.5 mil for road maintenance and fire/ems, the remainder pays about 1/3 of the city police budget. Sales taxes, paid by all, make up most of the difference.

It's important to note regarding the city's discussion of the services enjoyed by the greater Homer area, that the area proposed for annexation is a small part of the greater Homer area. We're talking about approximately 900 out of the 6,000+ people who may be presumed to get some benefit from city services. Homer's complaints will not be solved by this annexation.

Library – Homer is assuming there will be additional tax revenues available after covering the costs of providing services to the annexed area. This has not been proven, there have been no cost estimates or budget for the 4.58 square mile area. Meanwhile they are having trouble providing the service.

Police – The city fails to mention that the state and borough pay for dispatch services. The state pays to operate the jail. Very little crime occurs outside city limits. The residency of the victims and offenders is irrelevant – the service is provided in town except for assistance to the troopers, who reciprocate.

HVFD – KESA was formed to do two things: 1) Fulfill the city's stated desire to be paid for services delivered outside the city (only 22% of all calls are to the area outside, and nearly all are to areas beyond that proposed for annexation). 2) Improve services to all areas, but particularly those further from town, through building satellite stations and acquiring equipment. Annexation will reduce KESA's tax base, and their ability to improve area-wide services.

Page two

Public Works – Homer has no data on who uses the city parks. Common sense would indicate that the rest vast majority are city residents, as rural dwellers do not need to drive into the city for recreation.

Water and sewer are enterprise funds, paid for by the users. That includes the excess water that is sold to bulk water dealers, who supply many city residents as well as non-city residents from Ninilchik to the end of East End Road.

Under the new funding formula for water and sewer LID's, it is unlikely that many neighborhoods will vote to form them as the cost is prohibitive for the average property owner.

The claim that roads in the annexed area will be better maintained is not supported by the proposed budget for annexation. Most of the city roads used by non-residents are state maintained roads (the state pays the city to maintain Pioneer Ave.). Non-resident use of city roads is incidental compared to resident use. Or would the city prefer that we not drive into Homer to spend our money?

The state built Port & Harbor does have an enormous impact on Homer's economy. It is also a fee-based enterprise fund. What it has to do with annexation is unclear. There are no Port & Harbor services being provided in the annex area.

Clerk's Office – What access to public records? The city doesn't believe anything should be public anymore, although that seems to be the city manager's fault, not the clerks.

Planning – again the city doesn't explain what this has to do with annexation, it's not a service non-residents are using; we have KPB planning to the extent wanted.

Animal Shelter – the city has not taken in animals from outside the city limits for a good many months. They have had the money on hand to build the new shelter for at least a year, for some reason they have not located land to build on. This is another of those questions that will not be solved by annexing a tiny fraction of the area they claim to serve.

Non-profit funding – the city government has chosen to fund a number of non-profits with tax dollars to benefit friends and family of various city officials. All such "donations" are funneled through the Homer Foundation, of which the Mayor's wife is a board member and chair of the committee that decides which organizations get how much. One beneficiary is a council member's wife's gallery, another is owned by a past council-member. The city has refused to allow a citizen vote on this issue.

Letter 5

Conclusion – the City wants new residents to give up their daily newspaper in order to pay for the city to provide services they are now getting from the borough. The city has not provided a budget demonstrating that the new tax revenues will pay for anything more than the cost of extending services into the newly annexed areas.

## Corrections to "Fact Sheet Supporting Homer Annexation of 4.58 Sq. Miles"

Submitted by CCAA

Homer is not the "only municipality"; the Kenai Peninsula Borough is a municipality and provides services and Kachemak City is right next door.

Homer annexed 10 square miles of tidelands in 1984, which was an appropriate use of legislative review method of annexation.

The population per square mile figures are based on the total area within Homer, including the tidelands. It's about twice that if you figure in only the actual land.

The city provides fire/ems services through a contract with Kachemak Emergency Services Area, that includes the entire greater homer area, not just the annexed area.

Although KESA was formed in reaction to the city's annex plans, discussions to form such a service area had been taking place for years. The city squashed all previous attempts; there were never any public votes.

Homer has not promised to do anything with any "profit" from annexation – which there may not be any of in the first place.

The 25% figure for water customers is only true IF the city counts the bulk water hauler's customers as their own. The city has for years considered it to be in their interest to sell excess water to commercial businesses who haul the water to the greater area, from Ninilchik to the end of East End Road. Most of the proposed annexed area is on top of the bluff where good water is available.

The city council has chosen to give some of the taxpayer's dollars to various non-profits for their own political reasons. They have refused to have a citywide vote to determine whether they should do this. The 50% figure is a guess and fails to make clear that figures covers all areas outside Homer.

The Chamber of Commerce and Community Schools are supported from the General Fund, not the implied property tax. The amount contributed to the city by non-residents through sales tax more than pays for the entire budget for all the services the city claims we don't pay for.

The city's port and harbor was given to them by the state and is fully supported by user fees – it is also an enterprise fund.

Current growth outside the city does not devalue and denigrate any property. It is well known that attempts to control growth will result in limiting growth and harming the local economy.

The re-elected city officials did not campaign on a platform of pro-annexation. They ran against un-electable opponents and were re-elected for many reasons having nothing to do with annexations.

Homer's annexation was handled very badly and constitutes an abuse of the legislative review method of annexation. It is bad policy to let this stand.

## CCAA'S RESPONSE TO MAYOR CUSHINGS LETTER

The city claims to have brought issues of dwindling state funding to the local area to consider. They made no such effort beyond a couple of articles in the newspaper – we all waited to see what they would do next. The step they should have taken was to set up a task force, as they have done for beach policy and parking, and invited participation from all interested parties. Instead, they chose stealth annexation and kept it secret until a petition was nearly ready for filing.

City did NOT EVER request a fire/ems service area – they repeatedly squashed efforts to start even the discussion of one. Their own study in 1998 that recommended a service area was hidden on a back shelf rather than put out for public review. There are two reasons why the city fire department continued to respond outside the city, (1) because the majority of the volunteers are from outside and would have quit if they were restricted to the city limits, and (2) when the city took over the non-provide fire department in 1991, part of the agreement was to continue to provide services to all areas.

This annexation will not address the various city versus greater area concerns that Homer claims as reasons to annex. The greater area that Homer serves as a hub for includes several hundred square miles and 6,000 residents, compared to 4.58 square miles and 898 residents.

From: DALE OLSGARD  
BX 999  
HOMER ALASKA 99603

20 + YEAR RESIDENT

I LIVE OUTSIDE THE  
4+ SQUARE MILE AREA

> I AM AGAINST THIS  
ANNEXATION.

> Let's START OVER AND  
DO THIS IN AN ORGANIZED  
VOTED FASHION, ANSWERING  
THE QUESTIONS AND MAKING  
PLANS AS WE WORK OUR  
WAY THRU THIS ISSUE AS  
A Community.



FAX TO: 465-4779

# Tempest ≈ media productions

## FACSIMILE TRANSMISSION

DATE: >MON 11 FEB 02

FROM:

TO:

ORG: >TEMPEST MEDIA

> SEN JOHN TORGERSON OFC

FAX: > 907-235-1212

>907-465-4779

### \*\*\* ROUTING SHEET \*\*\*

NAME: >GEO BEACH

>MARY JACSON

DEPT: >

>CRA Joint Committee

VOICE: >907-235-1212

>907-465-4989

EMAIL: >tempest@xyz.net

>mary\_jackson@legis.state.ak.us

MISC: > Dear Mary,

The 3-minute limit on oral testimony reduces some things to soundbites. Here's the complete text of my testimony, for inclusion in the official public record. Please insure that Alan, Pete, Randy, Georgianne, Carl, Kevin, Andrew, Lisa, Gretchen, and Beth receive it as well as John and Drew. Also, I do formally request my commentary on the Thursday Committee hearings with the LBC and my exegesis of Homer's "Considerations" which I email as Word .doc attachments last week be printed and included in the official public record for all members. Thanks!

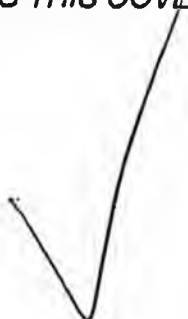
Best! **geo**

NUMBER OF PAGES FOLLOWING THIS COVER SHEET:

> 02

907-235-1212 fax

tempest@xyz.net



My name is Geo Beach. I live at 41980 Lookout Drive in Diamond Cape, Alaska.

Lately, there's been a lot of high and mighty talk from a small group of special interest politicians from Homer about Alaska's Constitution and the Local Boundary Commission and Annexation. And most of it has been ill-informed.

Nearly 50 years ago when the Alaska Constitutional Convention convened – and oh, yes, the people were able to VOTE FOR their delegates to that Convention – it was a different Century, and a different World.

Alaska was still a Territory, not yet a State. And Homer was not yet a City – it was before the residents of the area had VOTED FOR THEMSELVES to make it a City.

The 1950s were a different time and a different world, and the warm glow some people want you to feel when they invoke the Constitution was more like hellfire for many people.

Here I'm going to have to use some words that we don't use in our home – it's not how we raise our daughters in the Alaska of the 21<sup>st</sup> Century. But I've watched the Homer City Council sleep through this process and I've watched the Commissioners of the LBC sleep through this process and I've watched half of the Borough Assembly sleep through this process and it is crucial now that the Legislature of the State of Alaska be wide awake to the dangers this Annexation attempt threatens our State with.

When Alaska's constitution was written, in the 1950s, there were words some people thought were fine to say: *Nip, Nig, Nate.*

*Nips.* Japanese Americans who had been herded into Concentration Camps during the Second World War, along with Aleuts – the very first Americans. That was OK by the US Constitution.

*Nigs.* African Americans who were subject to the cruelest kind of segregation – American Apartheid – to the rule of Jim Crow, and poll taxes which disenfranchised them – no vote. That was OK by the US Constitution and the Constitutions of many states and was vehemently upheld by the Executive Branch nationally and in the states.

*Nates.* In Alaska there were signs on business establishments that read "No Dogs or Natives Allowed". That was OK by the Alaska Constitution.

Look, a Constitution is a piece of paper that describes how things are put together, how they're constituted to begin with. It's not magic and nothing about it makes right injustices which are clearly wrong — morally, ethically, spiritually wrong. And how a thing is put together to begin with doesn't make it immutable. A child should grow up to be an adult.

You can add another word to that odious list of *Nips, Nigs, Nates, Nuts* — that's what Homer's small group of special interest politicians would have you think about folks who live outside the City. Well, they not Nuts, they're Neighbors, and they're Good Neighbors. Homer's City Manager calls them "Foreigners". They're not Foreigners. They're Alaskans and Americans. Think about how they should be treated.

It's a New Day and a New World in the 21<sup>st</sup> Century in Alaska. I'm thankful we think differently about Japanese Americans and African Americans and Native Americans. I'm thankful they're all allowed to vote.

And for that, *I'm thankful to Legislators — real Statesman* — who changed the old ways because they were wrong. The various Constitutions, and Executive Branches, and Judicial Branches cowardly supported the old ways. They hired lots of lawyers to explain away what any human being and citizen of the United States could see was just plain wrong.

It's a New Day now, the 21<sup>st</sup> Century in the State with the motto "North to the Future!" The Alaska Legislature has the opportunity to be forward-looking Statesmen, to do what is Best for the State. To do the Right Thing, the Good Thing for the State.

Vote down this Annexation.

Alaska State Legislature  
Public Opinion Messages

Robert O Lucas,  
Box 3808  
Box 3808  
Homer, AK 99603-3808  
Phone: -  
E-mail:

Subject/Bill BOUNDARIES

I'm opposed to the City of Homer Annexation. I live in the originally larger proposed area to be annexed.  
Date Sent: 02/11/2002

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y



Alaska State Legislature  
Public Opinion Messages

John D Kosch,  
Po Box 3555  
Po Box 3555  
Homer, AK 99603-3555  
Phone: -  
E-mail:

Subject/Bill BOUNDARIES

I'm opposed to the Homer Annexation because the process employed by the city is tainted in my mind. I further feel services throughout the city will suffer for five to ten years and consequently hold down property values. I also think both sides of this issue should vote. I'm a city resident.

Date Sent: 02/11/2002

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y



February 11, 2002

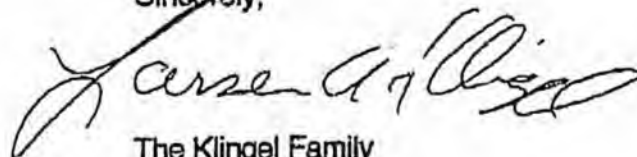
The snowstorm on Saturday completely blocked us in and we were not able to get down to town to testify on annexation.

We were just notified that E-Mails would be accepted until noon today.

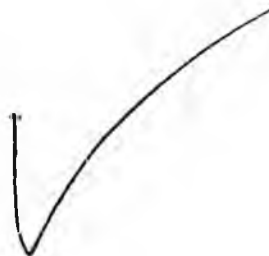
The points we wanted to make were stated in our previous FAX to your office.

1. We are definitely opposed to annexation that is done without any timely and serious input from people outside the city.
2. There are many issues involved in the process of annexation that need to be addressed. We were denied due process in addressing our concerns before the issue was brought before the Local Boundary Commission.
3. We need zoning which the city or borough can provide, but the issue was presented by the city as if we were not paying our fair share of the expenses of running a city and thus seemed to the people to be annexed as a tax grab.
4. To annex in this manner will create a lot of dissention because the law has been changed to prevent this type of annexation in the future.
5. This is too important an issue to be treated casually and needs serious input from all people involved. New ideas need to be presented and we need to look at how the problems we face are dealt with in other areas.
6. We look to you to heal the divisiveness this issue has caused because of the cavalier attitude of the Homer City Council. There are good minds with ideas outside the city of Homer that need to be heard from. There are many more issues to be considered than just increasing taxes to solve the revenue problems of Homer.

Sincerely,



The Klingel Family  
Box 937, Homer



Alaska State Legislature  
Public Opinion Messages

Jennie L Hargrove,  
Po Box 3883  
Po Box 3883  
Homer, AK 99603-3883  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

Subject/Bill BOUNDARIES

I'm opposed to the City of Homer's Annexation Petition. I live in the area proposed to be annexed as is my husband's business.  
Date Sent: 02/11/2002

Holly M Maryott,  
Po Box 1672  
Po Box 1672  
Homer, AK 99603-1672  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

Subject/Bill BOUNDARIES

I'm opposed to the City of Homer's Annexation. I'm a homeowner and a business owner which will both be annexed.  
Date Sent: 02/11/2002

Delores A Connelly,  
59217 East End Rd  
59217 East End Rd  
Homer, AK 99603  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

Subject/Bill BOUNDARIES

I'm opposed to the City of Homer Annexation. I live in Kachemak City which is not in the proposed area to be annexed.  
Date Sent: 02/11/2002

Mary F Deihl,  
Po Box 3808  
Po Box 3808  
Homer, AK 99603-3808  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

Subject/Bill BOUNDARIES

I live in the original 25 square mile annexation area and I'm opposed to the annexation of any territory by the City of Homer. I don't use any of Homer's alleged services and the city gets a lot of my money in the form of sales taxes.  
Date Sent: 02/11/2002

FROM : GEORGE'S STORAGE

FAX NO. : 907-235-8571

Feb. 11 2002 12:53PM P1

*Senate & House CRA*

My name is Karen Hamm, I am opposed to the annexation because I lived in the city limits for 7 years. During that time the street that I lived on was graded/plowed twice a year. Once in the winter and once in the summer. I shopped exclusively in Homer, and paid the 5 1/2 % tax on everything, I called and complained about our street and nothing ever came of it. Since I moved out East End Rd., the borough plow trucks have kept our road plowed, if there is a hole they fill it, and I have had much fewer car repairs. One day a friend invited me to go to Kenai with her, and while there I happened to notice that an 8 piece chicken bucket a Carrs was \$4.99. The price in Homer at Carrs was \$8.99. When I asked my boss (I worked at Carrs) why, he said "shipping etc. It is the cost of doing business. Now I do the majority of my shopping in Anchorage. One night I went to a city meeting to listen in and they voted in a city license for the businesses. That caused the cost of doing business in Homer even more. It also means that someone is going to have to be employed to take care of that program which means more bureaucracy. When I lived in town I went to the Pratt museum one time. I paid a fee to get in. I have not been to it since. However I am the secretary/treasurer for an organization whose total assets will go to the Pratt museum in the event of dissolution. I know several people outside of the city limits who have contributed a great deal to the museum, both monetary as well as historical items. When I lived in town I never went to the library. Since then I have been twice and I paid a dollar an hour to use the typewriter. My husband has a very large collection of boat building books that will some day be donated to the library and I presently have about 300 plants ready to donate to the plant sale in April. As for the water, when I lived in town, my water was yellowish and smelled bad. One day I was up near the reservoir and saw people and animals swimming in the city water supply. When I lived in town my water bill was about \$30-35 per month. I now pay upwards of \$110, \$69 of it is for water delivered, \$42 of it is for drinking water. We have enough buildings around here that we could easily convert to rain water off the roofs. People pay dearly for ambulance service, if we ever have a fire, it would take too long to get help any way, so I doubt that we would even bother to call, and the state troopers are good enough for me. If some one offered you a tender cut of steak for \$10.00 per pound and a tough cut of steak for \$5.50, which would you choose. If the city was run in an inviting manner, I would ask to be annexed. We aren't stupid. The city just voted Ron Drathman a raise in pay, and this is the man who has put how many cities into bankruptcy?

Thank You. Mrs. Karen Hamm

*PO Box 2223, Homer 99603*

Senate & House  
Community Affairs

L

2-11-02

HAVING BEEN A RESIDENT OF THE CITY OF HOMER SINCE, AS THE SAYING GOES, IT WAS ONLY A GLEAM IN ITS FATHERS' EYES I EXPECT THAT MY OPINION IS AT LEAST AS VALID AS ANY OTHER THAT HAS BEEN HEARD.

IN SPITE OF ALL THE CLAMOR THERE ARE SEVERAL FACTS THAT REMAIN INSUFFICIENTLY AIRED. ONE, PEOPLE WHO OBJECT TO JOINING THAT WHICH THEY ARE ALREADY ARE A PART OF ARE REALLY OBJECTING TO PAYING THE TAXES THEY HAVE THUS FAR AVOIDED. ~~THE~~ THE REASON ANNEXATIONS ARE NOT VOTED ON BY THE FEAR SOULS ABOUT TO BE ANNEXED IS BECAUSE THE OUTCOME IS IN ALL CASES A FOREGONE CONCLUSION. NO ONE WANTS TO PAY MORE TAXES AND WILL VOTE ACCORDINGLY. THUS WE HAVE LOCAL BOUNDARY COMMISSIONS AND LEGISLATIVE REVIEW. THE ALTERNATIVE BEING SO MUCH MORE DISTASTEFULL THAT WILL NOT CHANGE.

THE PURPOSE OF THIS IS NOT TO DEFEND THE CITY ~~MANAGER~~ MANAGER OR THE CITY COUNCIL OR TO CASTIGATE THEM EITHER. WHEN IT COMES TO DUMB OR ANY OTHER HUMAN VICE OUR MANAGER AND COUNCIL RUN ABOUT NECK AND NECK WITH THE GOVERNOR AND THE LEGISLATURE AND PERHAPS A STEP AHEAD OF THE BOROUGH ASSEMBLY.

2

LET US IMAGINE FOR A MOMENT THAT THE CITY OF HOMER DOES NOT EXIST AND EVERYONE IN THE COMMUNITY IS AWARE OF THE SUCCESS OTHER CITIES HAVE ENJOYED AT FINDING TREASURES NOT THEIR OWN. THE WHINING AND CRYING WOULD BE AUDIBLE HALFWAY ACROSS THE CONTINENT. THOSE CRYING THE LOUDEST TO INCORPORATE A CITY WOULD BE THE SAME FOLKS NOW CRYING THE LOUDEST TO STAY OUT.

THE BOUNDRIES OF SUCH A NEW CITY WOULD LIE BEYOND THE CURRENT OFFERING OF 4+ SQUARE MILES BUT SHORT OF THE GREEDILY ASKED FOR 25 SQUARE MILES. SUCH AN INITIATIVE WOULD PASS AS HANDILY AS DID THE ONE CREATING THE CITY OF HOMER NEARLY FOUR DECADES AGO.

Steve Vonderbrink  
PO BOX 1236  
HOMER AK 99603



22 LS1393\C  
J. Auterbach  
2/8/02

CS FOR SENATE BILL NO. 274( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR OLSON

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to issuance of a locum tenens permit for a physician or osteopath; and  
2 providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 08.64.275(a) is amended to read:

5 (a) A member of the board or its executive secretary may grant a temporary  
6 permit to a physician or osteopath for the purpose of

7 (1) substituting for another physician or osteopath licensed in this  
8 state; or

9 (2) being temporarily employed by a physician or osteopath  
10 licensed in this state while that physician or osteopath evaluates the permittee for  
11 permanent employment [. THE PERMIT IS VALID FOR 60 CONSECUTIVE  
12 DAYS. IF CIRCUMSTANCES WARRANT, AN EXTENSION OF THE PERMIT  
13 MAY BE GRANTED BY THE BOARD OR ITS DESIGNEE].

14 \* Sec. 2. AS 08.64.275(e) is amended to read:

A necessarily brief review because of time constraints:

LBC Commissioners are supposed to be "objective" and disinterested. But of the four concerned with the Homer matter, ALL were associated with CITIES, TWO were lawyers, one may have had a CONFLICT OF INTEREST.

In CRA hearings, Commissioners later admitted their findings were "subjective".

Gordon Tans, an attorney hired to represent the case of the City of Homer, said in public hearings December 14, 2001:

Yet the people who live outside the City do benefit in many ways from the very presence of the City and the City Government here. Just a few examples I might cite. They drive the roads to **City Schools...**

*Mein Kampf*, Chapter 10, talked about how to manipulate people:

The great masses of the people will more easily fall victim to a Big Lie than to a small one.

A corollary, from the Goebels School of Propaganda, is to *Repeat* the Big Lie, and people will become convinced.

So, within a half hour of Mr Tans talking about Homer City Schools, KBB1 News Director Alex<sup>1</sup> Rubenstein stated on-air that he was broadcasting "from **Homer City High School.**"

At the conclusion of those public hearings December 15, 2001, in confirming that "Standard 10" (also know in LBC parlance as "J, City Boundaries Limited to Community plus Ten Years' Growth" and "Determination Of Community") dealing with "community" and that the 10-year time frame had been met, Commissioner Tesche said, in part:

The location has to be that of a discrete and identifiable unit. Factors that are considered here are school enrollment. Plainly, children that do go to school most likely attend the **Homer Public Schools**. They do not attend schools to any large degree outside of those boundaries.

Representatives and Senators, Legislators – Statesmen and Stateswomen:

These are not factual findings. They constitute *mere assertions* by the Commissioners, unsubstantiated by objective fact, much less the informed testimony of the Public.

**Subject:** annexation comments

**Date:** Sun, 10 Feb 2002 19:40:42 -0900

**From:** "Pam Brodie" <pbrodie@xyz.net>

**To:** <Representative\_Drew\_Scalzi@legis.state.ak.us>,  
<Senator\_John\_Torgerson@legis.state.ak.us>

February 10, 2002

To: Senator Torgerson

Representative Scalzi

From: Larry Smith, a resident of the whole state, living in the City of Homer

Re: Homer Annexation should not proceed without preconditions:

1. Face to face negotiations between the city and affected parties.
2. Full enfranchisement of territory residents simultaneous with annexation.
3. An enforceable agreement to provide specific services by a date certain.

Thank you for your scrutiny of this issue. If the Alaska Local Boundary Commission had done as thorough a review and questioning of state and local officials as you have, we would be closer to a reasonable conclusion. Senator, you are quite right to hold the DCED and the LBC responsible for a lamentable process which they at least encouraged. Although LBC commissioners often invoke their constitutional mandate, they rather obviously lack the independence of some boards and commissions. But I don't agree with the observer who calls Bockhorst 'the puppet master.' To me, this reduces the LBC to just a part of just another state agency, while giving staff inordinate influence. I also applaud your concern that the newly annexed get something certain for their money. I see the city as deriving a great benefit from those who have gone before and created schools, museums and libraries, harbors and hospitals, trash and tax collection, police, fire and emergency medical departments, and roads to run the trucks on. We use the city to administer some of these services and, best of all, as a city resident I have equal access to the benefits provided by pooling resources with the greater area.

Representative Scalzi, your focus on providing the rights and privileges of citizenship simultaneously with the obligations is vital to rebuilding our deteriorated working relationships. Thank you for getting the CCAA to say they had spent \$50,000 opposing this annexation. (If you can please find out from the City of Homer what it has spent; this would be appreciated.)

The legal opinions I have seen on truncation stop short in basic respects. The LBC is said to have, in the absence of regulations, an unusable authority to order truncation. Generally,

common law standards can be applied if specific standards have not been promulgated. An agency may be compelled by a court of competent jurisdiction to execute its responsibilities. Or the legislature can statutorily create criteria and direct the agency to apply them. Or, pursuant to the Voting Rights Act the US Department of Justice may intervene. In addition, either a state or federal court has both jurisdiction and enforceable authority regarding elections.

Although we have waited these forty years for the LBC to meet its responsibility to use its apparent authority and fulfill its constitutional mandate, I advocate allowing them forty-one and give them one more year to construct a regulatory package for truncation which includes criteria, public hearings and methods of application, decision and appeal.

I think the DCED/LBC annexation proposal is basically reasonable in its demographic scope. In fact, it is just what the group of four city residents Objective Annexation Review (OAR) advocated in its responsive brief. OAR was an advocate of voting and discussion to restore the peace. We disbanded when our expectation that we could, with a little effort, help set the stage for a meaningful dialogue for the common good proved to be wrong. After two years and \$2,000 we had gotten involved in a lot more effort than we signed up together, to do. Individually, we continue to commit acts of citizenship.

I believe, as it has done elsewhere recently, that the LBC could prudently have

stayed the effect of its annexation approval until DCED had facilitated negotiations between parties and all electoral options had been dealt with.

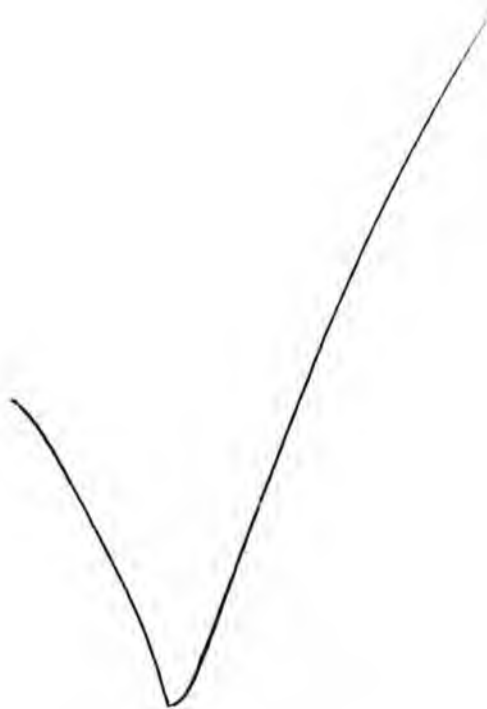
Thanks to local public radio, KBBI, I have been able to listen in to your hearings and the proceedings of the boundary commission. I would like to comment on some things that have been discussed.

I believe that city voters would turn down annexation on the grounds that it might actually dilute their services and raise their taxes and because of discomfort (going back through several administrations) with the idea that the city will ever amount to much. Homer city departments from clerk to works often do a fine job despite a context of confusion and controversy.

But, while Homer City voters would likely vote directly against annexation, it is just another issue when these voters elect council members. Just as the issue has had little effect on council elections, among city voters it will also have little effect on representation on the Borough Assembly or in the Legislature. It is different in the surrounding area however. The passionate feelings about the perceived denial of due process will have a significant, perhaps determinant effect in future elections. Intemperate annexation has been met with an exaggerated response which is just as polarizing as the behavior of government officials. Both sides are, at bottom, honest in their beliefs about what is best for the rest of us. Both are guilty of propaganda. To answer the question of how much support there is for the present proposal, I suggest an advisory vote in the next borough election in the Homer area districts.

Results are reported by precinct and would provide useful data neighborhood by neighborhood. In city and out of city. Let's vote!

I don't believe the time has quite come for this annexation. By next year, after serious face-to-face discussions (perhaps facilitated by DCED) -- maybe. Forcing the parties to sit down together on a regular basis will get us restarted on working together. It is also within the realm of possibility that there are other and better solutions to the city dilemma. It would be a failure of policy-making imagination not to fully consider consolidation within a home rule borough. The direction, after all, in the state constitution is for regional government with local control of services without the added expense of supporting city governments. All annexations should be designed to be no impediment in the development of unified government.



**Subject: annexation city of homer**

**Date: Sun, 10 Feb 2002 20:01:12 -0900**

**From: "grizzly" <grizzly@grizzlycharters.com>**

**To: <>**

I would like to make a comment on the annexation the City of Homer is trying to get approved. As property owners we would much rather stay under the regulations of the borough and not the city.

My wife and I have lived here for 9 years and lived in the city limits until September of this year. We moved out of the city limits and bought a home with acreage on Westwood Ave. Plot 4 in the Westwood Estates subdivision which is now included in the annexation. We are also in the process of buying the adjoining lots. We have a newer home (1998) with a good well and DEC approved septic system. We have a pond for fighting fire (wild or home) and really don't need or use any of the city's convinces (library, fire dept., police, or city water and sewer).

My wife and I own three business in this area, Grizzly Charters ( fishing charter with two boats)  
Land Ends Marine ( Kite sales and charters) and Grizzly Internet Services ( web design and Hosting ).

I don't agree with what the city is doing. I think if they want the land around the city reservoir they should buy it and not control it by annexation. If they don't want people out of the city limits using there library, fire dept., police then charge for the service. We will be happy to pay for an ambulance when that time comes.

We were against annexation when we lived in the city of Homer and haven't changed our minds now that we live outside the city.

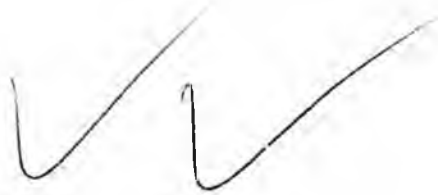
Any Help you could gave us to stop this would be greatly appreciated.

Thanks

John & Jo Earls  
Grizzly Charters  
Lands Ends Marine  
Grizzly Internet Services  
PO Box 1664  
Homer, Alaska 99603  
toll free 888-948-4388  
[grizzly@grizzlycharters.com](mailto:grizzly@grizzlycharters.com)  
[www.grizzlycharters.com/](http://www.grizzlycharters.com/)

[www.alaskais.com/](http://www.alaskais.com/)  
[webmaster@alaskais.com](mailto:webmaster@alaskais.com)

[www.grizzlyis.net](http://www.grizzlyis.net)  
[webmaster@grizzlyis.net](mailto:webmaster@grizzlyis.net)



[Fwd: Annexation]

**Subject:** [Fwd: Annexation]

**Date:** Mon, 11 Feb 2002 12:23:53 -0900

**From:** Representative Drew Scalzi <Representative\_Drew\_Scalzi@legis.state.ak.us>

**To:** Mary\_Jackson@legis.state.ak.us

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**Subject:** Annexation

**Date:** Mon, 11 Feb 2002 11:02:42 -0900

**From:** "Deb Germano" <dgermano@acsalaska.net>

**To:** <Representative\_Drew\_Scalzi@legis.state.ak.us>

Senator Torgerson and Joint Committee,

Thanks for hearings on the important topic of Homer Annexation.

I have long been involved in Youth activities in the Homer area. I am frustrated with the discussion of where you live, in or out of the City before you can address whatever the issue is. I lived for many years outside the City but operated a business in the City and understand the frustration of the inability to vote on City issues that often affected the business community.

I wanted to express my concerns about both sides of the arguments.

I agree the City should have submitted a more realistic area for Annexation. I believe there should have been public hearings before the proposal was submitted. I do not agree with an area wide vote but as we see on a Statewide basis, who is willing to tax themselves? I applaud the work of the LBC work in coming up with a reasonable area.

I was unable to listen to the Sat hearing so I don't know what the Concerned Citizen group had to say, though I have a good idea.

I have talked with many people in the Homer area about Annexation. The main concern I hear is what this is doing to our community. We need to get past this and deal with the real issues.

The issue of representation seems simple, if the Annexation is approved those folks outside the area would be eligible to run for office and vote if they have met the residence of a City resident as an other current resident. They can't change the fact of their location and it seems Attorneys addressed that issue Thursday. I would expect to see some people run and be elected from the new area.

Some of the issues to me are issues like Local Improvement Districts. There is concern that small property owners can be left to pay for Utility extensions while large property owners can pay similarly and subdivide later. This would be a huge burden to some property owners. I have talked with the City about this and they understand the concern and say it is being addressed.

I want to move forward with Annexation also so we can deal with local recreation issues. We talk about improvements in facilities for our youth, let's get on with the conversation locally. It feels like Annexation has brought progress to a near stand still. We need to get past this for the good of the community.

I believe we need to put a good faith effort forward and if the City does not live up to its promises and deal with our local officials.

The opportunity to return to the LBC exists if the City does not meet its own proposals

I would like to see this Annexation approved so we can move forward to deal with the issues as a community.

Thank you,

Deb Germano

**Subject: [Fwd: Homer annexation - PLEASE READ!]**

**Date: Mon, 11 Feb 2002 12:27:17 -0900**

**From: Representative Drew Scalzi <Representative\_Drew\_Scalzi@legis.state.ak.us>**

**To: Mary Jackson <Mary\_Jackson@legis.state.ak.us>,  
Jane Alberts <Jane\_Alberts@legis.state.ak.us>**

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**Subject: Homer annexation - PLEASE READ!**

**Date: Mon, 11 Feb 2002 09:27:57 -0900**

**From: Diana Sedor <dianate@alaska.net>**

**To: Representative\_Drew\_Scalzi@legis.state.ak.us**

I know you've heard it all before, but I just have to get my two cents in and be officially on the record:

- I am not totally opposed to annexation. By looking at a map of Homer, the way the roads are laid out and the population distributed, it really makes sense that the areas currently selected for annexation should be part of the city. I live within that area.

- My tax increase will not be that significant ... not enough for me to get into a tizzy. However, being a part of the City of Homer, a government that I did NOT choose, did NOT elect and have no power over ... that is upsetting to me.

- If the City Council/City Manager had been forthright and honest, making public statements about the economic future of Homer, how desperately they need a bigger tax base, more grants, etc. in order to help the city grow, I would have accepted that. I have absolutely no problem with paying a little more in taxes to help. ✓

- The fact is that this area is becoming a retirement village. More and more people are buying homes down here after retiring from their jobs in Anchorage or Lower 48. They pay property taxes, but are only here during a few short weeks in the summer, so they contribute very little else to our economy. In my neighborhood, nearly half the houses are empty all winter, only used in the summer. It is still hard to find work in Homer, still hard to make a living and pay bills. The economic problems of this town should be addressed by bringing industry and employment here rather than annexing more and more people without justification.

- However, the City approached the annexation issue from a REPUGNANT public relations standpoint. They promised services that anyone with half a brain knows is IMPOSSIBLE for them to provide. I will NEVER see road service, water or sewer where I live ... or at least the city has yet to release any significant plan indicating how they could possibly do so. Instead, they repeatedly tell us, the to-be-annexed people, that we OWE THE CITY OF HOMER and that WE ARE NOT PAYING OUR FAIR SHARE! Councilman Rick Ladd actually got up at the public LBC hearing and said this. It is this approach that has riled and angered everybody involved, on both sides of the issue.

- By the way, some City Council members are saying the recent election and victory of pro- annexation candidates was proof that the people approve their plan. The fact is that the other candidates on the ballot were a pot head, a senile old man and a demented looney. Come on, this is Homer! The elections here are iffy at best. Besides, I think there was something like less than 20% voter turnout, which proves nothing except how apathetic and tired people are of all this BS.

[Fwd: Homer annexation - PLEASE READ!]

- Lastly, I just want to say that if annexation goes through and I become a resident of the City of Homer, then there HAS to be a new election. I just don't understand how LEGALLY and CONSTITUTIONALLY I can be taxed without electing my representatives? Isn't that what caused all those people to throw a bunch of tea in the harbor so many years ago? If we're annexed and don't get to have a voice, I hate to think what the people around here will think of to throw into the Homer Harbor.

P.S. One final thought from my personal perspective - I volunteer over 10 hours a week, 52 weeks a year, at the Homer Animal Shelter and doing animal shelter activities. My current pay rate (I work at South Peninsula Hospital) is about \$16/hour. If you equate that to my volunteer time, that's \$160/week or over \$8,000/year worth of my time that I provide to the City of Homer. Obviously I do it because I think it's important ... and there are many Homer residents who volunteer as well.

But the Homer Animal Shelter had to recently change its policy to ONLY accept/help animals from within the city boundaries because it simply does not have the staff, budget or space to handle animals from Anchor Point, and other outlying areas. The Animal Control Officer and Ron Drathman reached that decision this summer. Now, however, just a few months later, the annexation proposal will again open the shelter to a much larger area, a much larger population of animals, once again stressing the extremely limited capabilities of the shelter and its feeble staff.

THIS IS PERFECT EVIDENCE OF THE CONTRADICTION AND HYPOCRISY OF THE WAY THIS ANNEXATION PROPOSAL HAS BEEN HANDLED. I care about the animals and there is no doubt that they will suffer from this. It has already been evidenced in the cases of animal cruelty we have been dealing with. The Animal Control Officer is one person and she cannot handle the animal issues within the current city, let alone a growing city.

Thank you for keeping the record open ... I tried to get to the public testimony on Feb. 9, but was snowed in.

Diana Sedor  
61511 Race Road  
PO Box 1995  
Homer, AK 99603  
235-5177

Mon, Feb 11, 2002 12:38 PM

**From:** Daisy Lee <daisylee@xyz.net>  
**To:** Senator John Torgerson <Senator\_John\_Torgerson@legis.state.ak.us>  
**Date:** Monday, February 11, 2002 11:15 AM  
**Subject:** Proposed Annexation

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Dear Senator Torgerson,

Thank you for making it possible for those of us who were unable to get through the 4-6 foot drifts in our driveway on Saturday to testify now.

My 26 acres was in the original City of Homer's petition for annexation. The whole process or I probably should say LACK of due process for the people who were concerned both IN and OUT of the city bothers us as well as our many friends in other parts of Alaska.

The resulting polarity and the distrust of city officials would not have grown so high if they had been open about their dealings and taken the time to thoughtfully prepare the petition especially the area to be included. Grouping small subdivision lots with large acreages such as homesteads as in the case of Lawrence and Tapa Rogers certainly does not meet the standard of compatibility. This is not the sole standard that was not met.

Please do not endorse this lack of due process. It is not in the best interests of the people of the State of Alaska to fear that municipalities have the power to take actions that affect them so much and that they, as individuals, have to so little power to affect what happens to them.

Requiring separate majority votes of both the people inside the city and those outside the city should be required before approval. The situation in Homer certainly points out the need for changes in LEC procedures.

Thanks again for your willingness to listen to us.

Sincerely,

Daisy Lee Bitter  
62479 E. Skyline Dr.  
Homer, AK 99603-9301

*We just learned that this message did not go through on the above address which we obtained from the LIO. Please accept this FAX.  
D.L. Bitter*

Please veto Homer's petition

**Subject:** Please veto Homer's petition

**Date:** Fri, 08 Feb 2002 09:07:14 -0900

**From:** Mary Griswold <mgrt@xyz.net>

**To:** Drew Scalzi <Representative\_Drew\_Scalzi@legis.state.ak.us>

Please veto Homer's petition for ~~annexation~~.

Homer filed an interest in expansion instead of a bona fide annexation petition, freely identified as a work in progress by city representatives. The city's petition may have been minimally legal but it was grossly irresponsible and profoundly disrespectful of the public process. The city never amended its petition after widespread public protest and DCED recommendations for a smaller area. The LBC should have sent Homer's petition back for refinement instead of accepting the DCED's efforts to create a real petition using the city's materials. The Alaska Administrative Code also allows the LBC to turn a legislative review petition into a local action petition if that would serve the community's and state's best interests. This option was never publicly reviewed.

The city proposed to annex 25 square miles of primarily undeveloped land, yet chose to exclude the 1.8 square mile neighboring community of Kachemak, some of whose residents enjoy more municipal services than some residents of Homer. The DCED felt it could not consider including this area because it was not in the original request.

The city does not have an adequate transition plan for assumption of services as required in 3 AAC 110.900 TRANSITION. There are significant questions relating to property tax accrual and allocation that should have been resolved before the petition was filed. The DCED recognized ambiguity in this matter in its Report to the Legislature 2000, but neglected to require consideration or resolution.

Homer is not facing a crisis. It is in the far better interests of all of us to allow for constructive dialogue among city and area residents and officials to guide the structure of our government. We have all learned a lot about government and municipal growing pains. The city has taken several steps since beginning this process to more responsibly allocate its resources, including policy changes in animal control and bulk water delivery. It is developing a master plan for water and sewer expansion and has hired a new planning director after over a year's vacancy. Please veto this annexation petition and let us participate in a public process for orderly expansion. Many of us are still willing to help even though we have been consistently rebuffed during the past two years.

Thank you. Mary Griswold P.O. Box 1417 Homer, AK 99603



**Subject: Homer annexation**

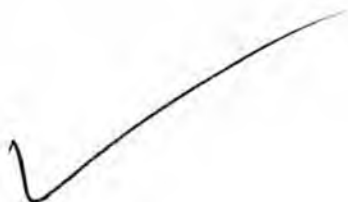
**Date: Fri, 08 Feb 2002 12:24:15 -0900**

**From: Nancy Lord <nlord@xyz.net>**

**To: <Representative\_Drew\_Scalzi@legis.state.ak.us>**

Hello Drew. I left a message with Pat but thought I'd e-mail as well. I appreciate you taking a close look at the annexation issues, but I hope that when you're done you'll agree that the annexation is the right and necessary thing to do. Maybe the city's process could have been better, but the people opposed to annexation I don't think would have been satisfied with any process or outcome other than status quo. I do think the Local Boundary Commission did an excellent job. As they've pointed out, Homer waited too long to grow its boundaries, and a lot of the pain and opposition is a result of that. But we need the annexation more than ever now to make things more equitable and to grow as a community. I hate to think of the consequences if the Legislature should disapprove the annexation. Thanks for all your work on this--

Nancy Lord



**Subject:** ~~homer annexation~~

**Date:** Fri, 08 Feb 2002 11:15:07 -0900

**From:** Dennis Leach <leach@homernet.net>

**To:** Representative\_Drew\_Scalzi@legis.state.ak.us

Dear legislators

I own three parcels of land, totaling five acres, in the proposed annexation area. I do not feel that the city of Homer has acted improperly in any way. I strongly SUPPORT the annexation. I want to have

the right to extend water and sewer lines to my property. I want to be able to call for emergency services and have response from Homer which is two miles away, not from Fritz Creek or beyond, (eight miles or more), which seems to be the long term intent of the emergency services area.

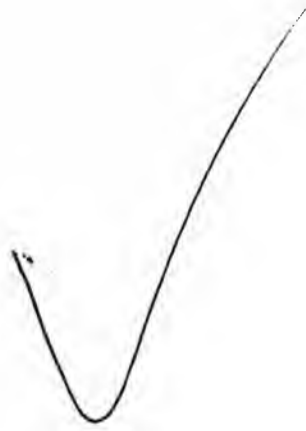
I want to support the library, museum, and harbor with my property taxes as well as sales taxes, as the citizens within city limits already

do and have done for years.

In recent history, state legislative decisions are resulting in less road maintainance, reductions in our school systems ability to educate, and pressured transfers of state owned and operated infrastructure, ie roads and harbors, to already struggling municipalities.

I am assuming that the State of Alaska is not planning to offer road, water, sewer, rapid response fire and emergency medical, library, or harbor facilities to me or anyone else in this area. Please do not stop the city of Homer from doing so.

Dennis F Leach  
Po Box 1414  
Homer Alaska  
235-5649



**Subject: Homer Annexation**

**Date: Sun, 10 Feb 2002 22:41:47 -0900**

**From: "Michael Hawfield" <hawfield@alaska.net>**

**To: <Representative\_Drew\_Scalzi@legis.state.ak.us>**

Dear Representative Scalzi,

I was unable to attend the live testimony on Saturday, but I wish to strongly encourage you to endorse the report of the Local Boundary Commission and vote for approval of the annexation petition by the City of Homer.

I do not live in Homer (I am on the Old Sterling Hwy), but do work in Homer and do all manner of other business and cultural, educational, and recreational activities there. It is a highly valued part of my life and it is central to the healthy and vitality of this part of the southern Kenai Peninsula, indeed, of the overall peninsula. It is extremely important to me that the city be healthy, vital, and sustainable in every way, and this means, in the end, that the city has the financial foundations with which it may carry out its municipal functions. With the huge increase in population in the areas immediately adjacent to the city in the past decade, the demands put on the city to maintain its basic-services infrastructure and to sustain the region-wide services that it does (police, harbor, parks and recreation, cultural and human services, and the economic stability of the business climate) has become an intolerable strain and without expanding its tax base the city will surely falter and all will suffer.

Although nearly everyone is agreed (including several City Council members) that the process pursued by the city might well have been carried out with greater care for the input and sensitivities of those liable for annexation, the city is clearly within its right to petition for annexation, has made a convincing case that it should annex, and that it will be able to provide the expanded services necessary after annexation. Annexation is, as you are well aware, a normal (if often painful) process for urban centers as they grow and try to carry out good government in behalf of all citizens, even those beyond formal boundary lines. The LBC report is a masterfully and thorough testimony and has revised the city's original petition in ways that will make the proposed annexation strong and fair; it certainly assures that the greatest possible consideration has been given to the petition.

Thus, I strongly urge you to support the petition by the City of Homer to annex according to the particulars outlined in the report of the LBC.

Thank you for your hard work in our behalf

Michael Hawfield

Mile 3.5 Old Sterling Hwy

PO Box 2609

Homer, AK 99603

907 235-6078



homer annexation

**Subject: homer annexation**

**Date:** Sun, 10 Feb 2002 17:22:43 -0800

**From:** "W." <william.slone@acsalaska.net>

**To:** <Representative\_Drew\_Scalzi@legis.state.ak.us>

I don't see enough of a compelling reason, financial or otherwise, for the city of Homer to force annexation on its surrounding area. If the potential annexees are satisfied with their current level of services, then the city has no justification for forcing itself upon them.

W.L.Slone

Homer



Alaska State Legislature  
Public Opinion Messages

Mako K Haggerty,  
Po Box 2001  
Po Box 2001  
Homer, AK 99603  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

Subject/Bill BOUNDARIES

I have lived outside the Homer City limits for the twenty years I have called Homer my home. Please support annexation so I can help support my town. Please support annexation so this community won't have to suffer another move to annex in a year or two from now.  
Date Sent: 02/11/2002

Michael A Lemay,  
57480 Clover Ave  
57480 Clover Ave  
Homer, AK 99603  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

Subject/Bill BOUNDARIES

I live in the original 25 mile area but my property has now been deleted. I'm still opposed in particular to the Miller's Landing area. I listened to the City Council's testimony and they attested they were simply after the tax money without there being commensurate services delivered.  
Date Sent: 02/11/2002

Mrs. Georgina Weaver,  
PO Box 1312  
Homer, AK 99603  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: U

Subject/Bill BOUNDARIES

I'm opposed to the Homer Annexation. I do not live in the proposed area to be annexed.  
Date Sent: 02/11/2002

David F Becker,  
Po Box 109  
Po Box 109  
Homer, AK 99603  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

Subject/Bill BOUNDARIES

The Kachemak Emergency Service Area will be negatively impacted by the annexation and it's contrary to recently passed law to change it without a vote. Process was flawed without public input in terms of voting on the proposal. The city should be required to resubmit proposal based on the 84 percent reduced area.  
Date Sent: 02/11/2002

Alaska State Legislature  
Public Opinion Messages

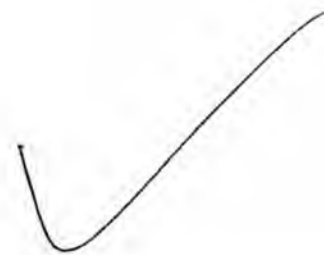
Michael D Ryan,  
Po Box 726  
Po Box 726  
Homer, AK 99603-0726  
Phone: -  
E-mail:

Constituency: C  
Distribution: 12  
Affiliation:  
Reg Voter: Y

Subject/Bill BOUNDARIES

I strongly oppose annexation. This council belongs to the free lunch crowd. Cowards willing to take what another man has worked for. Ravens on a gutpile without care or concern how it impacts many lives against their will. No one has stood on our behalf. Please consider doing so now. Thanks.

Date Sent: 02/11/2002



**Subject: Homer Annex**

**Date: Sat, 09 Feb 2002 10:18:49 -0900**

**From: Steve and Claudia <gandh@xyz.net>**

**To: <Representative\_Drew\_Scalzi@legis.state.ak.us>**

To Drew Scalzi-

I currently live in the proposed area to be annexed and have lived in the area outside city limits for 14yrs. I am against annexation for several reasons. By allowing annexation other Alaskan cities will be encouraged to "grab" outlying areas for increased revenue. Also, the process has divided and angered many people. The services the city claims to have provided for "free" to those of us outside the city are mainly the library and Parks and Recreation. User fees could easily subsidize these services. People outside the city contribute to the city in many ways without the benefits of the city. Volunteers for the fire dep., radio station, Hospice....etc. live outside the city. Sales tax also more than covers services provided to "outsiders". The city needs to provide better services to its own residents before expanding. Finally, if annexation is approved please require all council members and the mayor to vacate their offices and hold new elections.

Thank You

Steve Glasman  
Box 2000  
Homer, Ak 2000  
907-235-9042

61500 cottonwood



**Subject:** annexation hearings

**Date:** Sat, 9 Feb 2002 12:08:41 -0900

**From:** "Rich Kleinleder" <leder@xyz.net>

**To:** <Representative\_Drew\_Scalzi@legis.state.ak.us>

Hi Drew,

9 Feb 2002

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

I was going to go into the LIO this morning to testify on the annexation issue but I am snowed in! So please accept this brief memo as my input. I would really appreciate it if you could forward this to the other members of the committee. Thanks!

Rich Kleinleder, P.O.Box 367, Homer, AK 99603

235-8702, leder@xyz.net

Testimony regarding the annexation proposal by the City of Homer:

I live in the Bluff Point subdivision, an area that was included in the City's original request but was excluded from the Boundary commission's recommendation. I am very disappointed that we were left out of the annexation area. Why? Because whenever anybody asks us where we live, we say "Homer". Not "outside Homer". The reason we bought land and built our house where we did had everything to do with the view and the neighborhood and nothing to do with trying to avoid taxes and land-use regulations. Our house may be a mile over the line but our "home" is squarely in the middle of Homer. The sense of community is very strong in Homer, as anyone who has watched his neighbors rally around in time of crisis can attest, and being willing to support that community financially is not only a responsibility but also a point of pride. I work hard for a living and enjoy deciding how to spend my money as much as anyone. However, I am one of those very odd ducks that does not mind paying my fair share of taxes for government services. The City of Homer does a lot of essential, little noticed but very valuable things for my neighbors and family and I appreciate it enough to be willing to contribute in a regular way.

The most important issue to me is not taxes or services. It is representation. I've heard a lot of complaints that annexation is unfair because the people being

annexed don't get to vote. I have some sympathy for that concern because that is the way I feel about it every time there is a City Council election. I don't get to vote because I happen to live over the line, even though the issues the council works on are vital to my well-being. Every time I want to testify before the council I have to remind them, and everyone else, that I don't live in the City. They listen and accept my comments but I always feel that my views are somehow less valuable than those of a resident. And why shouldn't they be. I am not really one of their constituents. Furthermore, there are a lot of bright, talented people in our community who would be willing to serve their neighbors on the City Council and various committees but are precluded from that contribution because of an artificial line on the map. So I want fair representation. Annex me!

Thanks for your time in considering this issue. I urge you to let the annexation proceed. I will not be lucky enough to be brought into the fold this time but I'll be here for the next logical extension of Homer's boundaries.

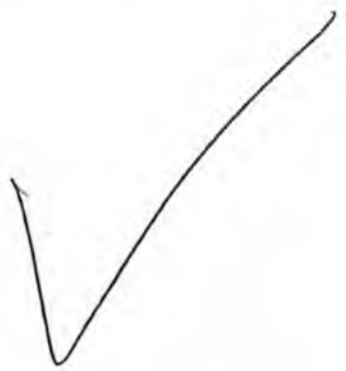
Rep, Drew Scalzi  
Rm 13  
Fax 907 465 3472

Subject Homer Annexation

My wife Paula and I are very much in favor of the plan of annexation as it is currently proposed by the Local Boundary Comm.!!!!!!!!!!!!!! It makes good sense and will in time save all involved money. Please support the City on this!

Brad and Paula Dickey  
1137 Seabreeze Ct  
Homer Ak  
fax 235 7953 ph 235 7934 e mail bdickey449@AOL.com

Thank you!  
Brad



February 11, 2002

Representative Drew Scalzi

Re: Homer Annexation

Good Morning Drew,

Debated phoning, but know how busy you are. Hopefully you'll have time to scan these thoughts, which are, I think, clearer than those expressed Saturday.

As you know, we were dumped on Friday night by 2 ft. + snow. There were many folks who were not able to testify because of that. You will be hearing from many of them via email or FAX. I was amazed at how many did make it, and the excellent comments expressed.

In my comments, I said I was a part of the greater Homer Community. As you well know, that greater community, including the City of Homer, has traditionally worked together. We knew we had no representation on the Council, they knew that too, but respected our contributions (via doing business there and paying sales tax, volunteering, etc.) to the community and extended the courtesy of listening to us. As Leroy Crumm stated, it was a symbiotic relationship.

Sadly, this petition, and the way it has been handled, has badly wounded that special relationship. To now approve the annexation will not generate healing, but only foster more resentment. For true healing to occur, it all needs to be turned down and the city required to go back and start over. People need to be treated with respect. If the City would extend the same methods as used for the Beach Task Force, or the Bridge Creek zoning, it would bring people on board and give them ownership. And that is needed. (And I've begged for that since day one!)

I understand and empathize that you seek a win-win solution to this situation. But, because of the way this has all been handled, I do not believe that is possible. There are simply too many greater ramifications.

Yes, the city has followed the letter of the law. But, is it morally right? We both know the answer is no. My other big concern is the precedent that would be set by approving this annexation now. You will be encouraging land grabs by other municipalities. Is that truly in the State's best interest? Again, I think we know the answer is no. In a way the LBC has set a bad example too, in that I think they should have required a new petition based on the smaller area they were willing to accept. Again, what they did was within the law, but was it right?

Drew, please, support a resolution opposing the Homer annexation.

Sincerely,



Milli Martin

*I will be home most of day. If any questions  
235-6652*

W. J. Marley, D.D.S.  
183 W. Bayview Ave.  
Homer, Alaska 99603  
(907) 235-8987  
FAX: (907) 235-8517

Feb. 10, 2002

Representative Drew Scalzi

Dear Sir:

We would like to state that we are abundantly in support of the annexation proposal as set forth by the Legislative Boundaries Commission (LBC) for the City of Homer. In our opinion the issue is clear and very justified.

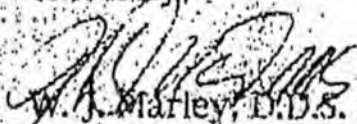
Although it may be stated by a small vocal group that their democratic rights have been abridged, it, nevertheless, appears to us that there have been endless opportunities for those concerned to express themselves through legal channels as well as the LBC's laborious, considerate process. Conceptually, it is very hard to perceive how an area to be annexed could have the exclusive vote to that process. The only real alternative to the annexation process would be to have a multitude of very small communities with commensurate governments and services in a geographic area which would ultimately be destructive to the whole concept of community as well as its efficiencies.

Homer has changed greatly in the 35 years that we have lived here and will certainly continue to change in the future.

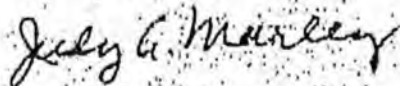
While many things about the annexation process could have been less disturbing, nevertheless, it is extremely doubtful that the final conclusion would be one bit different if the process were to take place again. If it is not appropriate now to annex this area then when will it ever be?

But, the City of Homer must also recognize that while there are certain advantages to the annexation of the 4.57 square miles to the City there are likewise responsibilities that the City will have to the newly annexed area. In particular are the areas of sewer, water and roads.

Sincerely,



W. J. Marley, D.D.S. and Judy A. Marley



2/10/02

Dear Representative Drew Scalzi,

I am writing you to express my opinion against the City of Homer's annexation proposal. I was unable to attend the public comment period due to weather and family responsibilities. I am a resident of Diamond Ridge Road. I was originally included in the City of Homer's annexation proposal. The manner in which the annexation process was initiated was secretive and undemocratic. The lack of transparency and large area of land involved concerned me.

The state laws governing annexations need to be changed to protect all interested parties in the annexation. The current state rules allow for cities to conduct annexation proceedings in poor faith. This violates the rights and personhood values of rural residents around the state of Alaska.

The idea of local governments is sound but our democracy is not perfect. One can influence local government to suit their own personal interest. I am concerned that this is taking place in Homer. The city of Homer has conducted itself in a irresponsible way. They have limited economic growth by not taking advantage of all resources and economic activity available. The over reliance on the visitor industry and adversarial attitude to other economic pursuits has created the City of Homer's financial problems. While the state of Alaska shared the oil money of the past, it allowed the City of Homer to develop spending habits not supported by the local commerce.

I think the City of Homer's current annexation is a way for the city to access wealth not provided in the local economy but money made on the North Slope, Bering Sea, or other industrialized areas of the state. Many families in the area work away from the Homer area. When the state of Alaska will not subsidize the spending habits of the City of Homer, it will get to wealth through taxing the greater residential area. I do not think that it is good government to allow unsound financial practices. If the City of Homer doesn't want to develop all resources available to them that is fine. But they should change their spending habits to allow for the reduction in revenue.

The City of Homer has influenced other government bodies in the past by restricting access to resources in the greater area and limiting the economic development of the southern Kenai Peninsula.

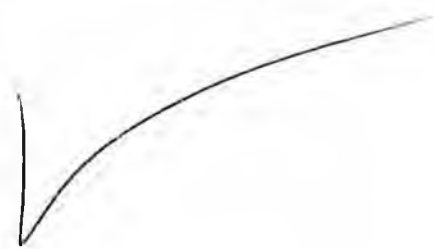
The City of Homer has lobbied successfully against the development of state and federal resource development. The state of Alaska's buy back of timber land on the south side of Kachemak Bay to create a Park, the cancellation of Cook Inlet oil and Gas leases, and the recent cancellation of on shore state Oil and Gas leases for exploration are a few of the City of Homer's activities that has caused the State of Alaska to lose large economic benefits.

I ask the legislature to reject the City of Homer's current proposal and amend the state laws that govern annexation. The current annexation system doesn't provide for a democratic vote, or a positive problem solving environment to create good public policy. The current system that allows a city to conduct itself in an antagonistic manner and should be changed.

Thank You for considering my needs,

Sincerely,

Mark Restad  
PO Box 2744  
Homer, AK 99603 (907) 235-1294



Feb 10, 02

Dear Representative Scalzi,

Thank you for hearing the concerns of your constituents in the Homer area. I am writing to strongly oppose the Homer annexation proposal. I am quite familiar with the laws, the boundary commission, and arguments on both sides. I agree with the statements you have heard from representatives of CCAA, and in general would like to emphasize my concerns on the following points.

First, it is plain disrespectful for any governing body to attempt to procure land for the city without regard for those residents' desires. In spite of any law allowing for annexation, it does not show community spirit or respect for one's neighbors to forcibly annex residents of the surrounding area.

Second is the question of the Alaskan way of life and what that means to different people. It should be possible for those who choose to maintain an old Alaskan lifestyle to do so in some areas. If the City of Homer should extend our boundaries to include our home on Diamond Ridge, it WOULD affect our way of life. We, like others, bought land outside the city limits intentionally, based on our lifestyle and goals. We prefer to provide our own well and sewer, and we are very happy with the road maintenance provided by the state and borough. We are willing to pay user fees for library, etc. should that prove to be an actual economic burden on the city.

It seems to me that as people move to Alaska from other parts of the U.S., they unmeaningly bring along the ways of these other places and try to implement them. I feel this is happening now.

If annexation seems to be a wise move, at least, please give those of them in the proposed area the vote regarding joining or not joining the municipality. It is the only ethical, fair thing to do.

Thank you.

Sincerely,



Ann Restad, PA-C  
64575 Diamond Ridge Road  
P.O. Box 2744  
Homer, AK 99603  
(907)235-1294

⑨

LBC ADDITIONAL  
MATERIALS 2-5-02

REMARKS DATED  
2-7-02

MAP - LAND USE  
HOMER AREA

**Remarks to the Senate and House Community & Regional Affairs  
Committees of the Second Session of the 22nd Alaska Legislature  
February 7, 2002 – 8:00 a.m.**

**by  
Kevin Waring, Chair, Local Boundary Commission**

**Introduction**

Good morning. I am Kevin Waring, Chair of the Local Boundary Commission. I appreciate the opportunity to address you in person. Another member of the Commission, Allan Tesche, of Anchorage, from the Third Judicial District is with me today.

The other sitting member of the Commission is Ardith Lynch, of Fairbanks. She is appointed from the Fourth Judicial District. Other commitments prevented her from being here today.

At this time, there are two vacant positions on the Commission. One is the designated seat for the First Judicial District – Southeast – and the other is the seat for the Second Judicial District – Northern and Northwestern Alaska.

**Annual Report Filed**

The Local Boundary Commission filed its annual report with the Legislature on January 23rd of this year. A copy was provided to each member of the House and Senate. The Commission's report addresses three principal areas.

- Chapter 1 provides an overview of the Commission;
- Chapter 2 summarizes the Commission's activities last year along with pending proposals; and
- Chapter 3 discusses several important public policy issues concerning local government in Alaska.

I will speak briefly about those topics, recognizing that the Committee wishes to focus its attention today on the Commission's recommendation for annexation of 4.58 square miles to the City of Homer.

**Overview**

Alaska's Constitution established the Local Boundary Commission to ensure that proposals to create cities and boroughs or alter their boundaries would be dealt with objectively and from a statewide perspective.

The Commission's responsibilities include judging proposals for:

- incorporation of cities and boroughs;
- annexation to cities and boroughs;
- detachment from cities and boroughs;

- reclassification of cities;
- dissolution of cities and boroughs; and
- merger and consolidation of cities and boroughs.

The Commission has other powers and obligations established in law, including a duty to make studies of local government boundary issues.

The Commission has five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed at-large and serves as chair. The Governor appoints members for overlapping five-year terms. Members serve at the pleasure of the Governor.

Commission members donate their time as a public service. We receive no compensation for the time we contribute to Commission activities.

The Department of Community and Economic Development provides staff support to the Commission.

#### **Boundary Decisions During 2001**

The Commission met fifteen times in 2001. To minimize costs, the Commission tries to deal with several issues at each meeting, and conducts meetings by teleconference when practical.

Collectively, Commission members spent many hundreds of hours reviewing and analyzing documents filed in proceedings and on other Commission business.

During 2001, the Commission approved proposals for:

- consolidation of the City of Ketchikan and the Ketchikan Gateway Borough;
- consolidation of the City of Fairbanks and the Fairbanks North Star Borough;
- incorporation of the City of Talkeetna as a home rule city; and
- annexation to the City of Homer.

Voters in Ketchikan and Fairbanks did not approve the consolidation proposals.

Talkeetna residents will decide by local election on March 19 of this year whether to incorporate the City of Talkeetna.

Finally, the Commission approved an annexation to the City of Homer, after reducing the area to be annexed from the City's proposed 25.64 square miles to 4.58 square miles – about one-sixth of the area originally sought by the City.

The Commission has presented its formal recommendation to the Legislature for the Homer annexation under Article X, Section 12 of the Constitution of the State of Alaska. As provided by the Constitution, "The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house."

Also, in April 2001, following the Commission's approval in 2000 of a city incorporation petition, Adak residents voted to incorporate as a second class city.

Historically, Commission decisions have frequently been challenged by litigation. Thus, I am pleased to report for the fifth year in a row that there is no outstanding litigation of any Commission decision.

### **Changes to the Regulations of the Local Boundary Commission**

During the past two years, the Commission has worked to update and revise its regulations in Title 3 of the Alaska Administrative Code. The last comprehensive review of the Commission's regulations occurred more than ten years ago. Since then, there have been many changes in State statutes that govern the Commission. The regulatory changes proposed by the Commission also address ambiguities in current regulations and streamline procedures for non-controversial proposals. The Commission has also proposed a new requirement for a local public hearing on legislative review annexation proposals before they are submitted to the Local Boundary Commission.

The Commission held public work sessions on the proposed changes in April, May, June, and October 2000. Last year, the Commission published notice of the proposed revisions to the regulations and invited public comment. The Commission held two public meetings last year on the proposed regulations.

In July, the Commission approved proposed regulatory changes and they are now undergoing final review by the Alaska Department of Law.

### **Pending Activities of the Commission**

Several petitions are now pending before the Commission:

- consolidation of the City of Haines and the Haines Borough;
- dissolution of the City of Skagway and concurrent incorporation of a Skagway Borough; and
- annexation by local action of 314 acres by the City of Wasilla.

### Introduction to Policy Issues

Next, I will turn to three public policy issues that the Commission raised in its Report to the Legislature. In raising these issues, the Commission is fulfilling its duty to address local government boundary problems.

These issues concern:

- the unorganized borough's failure to meet constitutional requirements, and existing disincentives for borough incorporation and annexation;
- ambiguity in State law about the authority of newly-incorporated municipal governments to levy property taxes during the initial assessment year after incorporation and uncertainty over the authority of municipalities to levy property taxes in newly annexed areas during the initial assessment year after annexation; and
- the unintended adverse impact of AHFC's Small Communities Housing Loan Program on some municipal boundary proposals.

#### **The Unorganized Borough's Failure to Meet Constitutional Requirements, and Existing Disincentives for Borough Incorporation and Annexation**

As it has done previously, the Commission calls to the Legislature's attention to the fact that the unorganized borough as now configured does not conform to Alaska's constitution. Article X, Section 3 of the Constitution provides that:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. . . Each borough shall embrace an area and population with common interests to the maximum degree possible . . .

In 1960, the Local Boundary Commission recommended to the Legislature that the Commission be directed by legislative resolution to divide the whole of Alaska into boroughs, organized or unorganized, and that its proposed division be presented to the next Legislature. Instead, in 1961, the Legislature implemented Article X, Section 3 by placing all unorganized regions of Alaska into a single unorganized borough.

From the outset, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests sought by the constitution. Today, the contrasts between various parts of the unorganized borough are striking. As now configured, the unorganized borough contains about 374,843 square miles, 57 percent of Alaska's area. It stretches in piecemeal fashion from the southernmost point of Alaska (at Adak) to 150 miles

above the Arctic Circle, and from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands.

The unorganized borough:

- encompasses portions of each of Alaska's four judicial districts;
- wholly encompasses eleven census areas;
- encompasses all or portions of nine state house election districts;
- wholly encompasses nineteen regional education attendance areas;
- encompasses all or portions of ten of Alaska's twelve regional Native corporations formed under the Alaska Native Claims Settlement Act;
- partly encompasses model borough territory for five existing organized boroughs; and
- wholly encompasses model borough territory for 19 unorganized regions.

Greater compliance with the Common Interests Clause of Article X, Section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions. Senate Bill 48 (*CSSB 48(FIN) am*), passed last year by the Senate and now in the House Community & Regional Affairs Committee, would accomplish this result. The Commission urges its consideration.

As part of this same issue, the Local Boundary Commission has for many years also called the Legislature's attention to the substantial disincentives that now deter borough incorporation and annexation.

The authors of the local government article of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable to assume the responsibilities of local government. The founders recognized that the Legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, for success, a voluntary approach must be coupled with inducements to establish boroughs.

Instead, in the course of adopting worthwhile programs to meet local community needs, the Legislature has coincidentally created substantial disincentives to borough incorporation. These disincentives impede continuing development of borough government as envisioned by the framers of the Alaska Constitution. Senate Bill 48, which would reform state law governing borough incorporation and annexation of areas that are ready and capable of operating boroughs, would neutralize these disincentives. The Commission respectfully urges its consideration by the House.

Finally, Alaska statutes now authorize borough feasibility studies. Unfortunately, funds have never been appropriated for such studies. The Commission is aware of two regions that have recently stated an interest in conducting borough feasibility studies. Those are the Prince of Wales Island region and the Delta Greely region. The Commission recommends that the Legislature appropriate at least \$50,000 annually to facilitate local borough study efforts.

These issues are addressed in detail on pages 20 - 27 and page 32 of our annual report to the Legislature.

### **Ambiguities in the Law Concerning Municipal Incorporation, Boundary Changes, Dissolution, and Reclassification**

State statutes are unclear about municipal authority to levy property taxes during the period immediately following incorporation, boundary change, dissolution, and reclassification. Specifically, AS 29.45.110(a) and AS 29.45.120(a) do not clearly authorize or prohibit municipal governments that incorporate or change boundaries after January 1 to levy and collect property taxes in the area of change during that calendar year.

This matter is addressed in detail on pages 28 and 29 of the Commission's Annual Report. There, the Report also presents draft language for legislation to eliminate these ambiguities.

### **Small Community Housing Mortgage Loan Program Adversely Impacts Certain Municipal Boundary Proposals**

Provisions in State law concerning AHFC's Small Communities Housing Assistance program (AS 18.56.400 - 18.56.600) have affected the outcome of certain important municipal boundary proposals. For example, in 1998, opponents of the proposal for consolidation of the City of Haines and the Haines Borough published advertisements stating, in part:

. . . all Borough residents inside and outside the City will lose their eligibility for rural financing if we consolidate, because our combined population will exceed 1600. This means paying up to 1% more in interest on housing loans after consolidation.

Because of these and many more reasons please vote no on consolidation November 3rd.

The 1998 proposition for consolidation of local governments in Haines was defeated by just three votes. Considering the close vote and widespread concern over the loss of eligibility to participate in the housing loan program, it is

reasonable to suppose that the Haines consolidation would have been approved if the impacts on the housing loan program had been neutralized.

Last year, the AHFC Board of Directors adopted regulations that resolved this issue as it may affect merger and consolidation proposals, but did not address annexation and incorporation proposals. At this time, we continue to search with AHFC for a solution to the latter issues that will not adversely affect the finances of the State or AHFC.

**Conclusion**

Thank you. That concludes my prepared remarks. If you have questions on any of these matters, I will do my best to respond.



## SUMMARY OF LBC RECOMMENDATION FOR HOMER ANNEXATION

(Prepared by Local Boundary Commission, February 7, 2002)

City annexations are a constitutionally-endorsed means of fulfilling the purpose of Article X, Section 1 of Alaska's Constitution at the community level:

**... to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.**

The City of Homer petitioned for annexation of 25.64 square miles. Instead, the Local Boundary Commission unanimously recommends annexation of 4.58 square miles to the City of Homer.

There are three elements to an annexation decision by the Local Boundary Commission:

1. the process defined by law and regulations;
2. the standards in law; and
3. the facts as documented in the official record of the proceedings.

### **1. THE ANNEXATION PROCESS WAS LENGTHY AND THOROUGH. ALL PROCEDURAL REQUIREMENTS WERE MET OR EXCEEDED.**

Attachment A summarizes key steps in the Homer annexation proceedings.

### **2. COMMISSION DECISIONS ON CITY ANNEXATIONS ARE GOVERNED BY STANDARDS IN LAW.**

The Commission's evaluation of city annexation proposals is governed by fourteen formal standards established in law. Generally, those standards relate to such factors as:

- Character of territory proposed for annexation
- Suitability of proposed boundaries
- Need for local government services
- Capability of local governments to provide needed services
- Broad public interest

Attachment B lists the fourteen standards applicable to city annexations, and their basis in statute and regulation.

### **3. BASED ON THE FACTS IN RECORD, THE COMMISSION FOUND THAT THE RECOMMENDED ANNEXATION OF 4.58 SQUARE MILES SATISFIED ALL LEGAL STANDARDS.**

Some key background for the recommended annexation:

- The City of Homer's upland boundaries have not changed since its incorporation in 1964.
- Since 1964, the City of Homer's population has grown about four-fold. Greater Homer area's population has grown about ten-fold.
- The City of Homer now ranks 11th in population and 61st in terms of land area among Alaska's 146 city governments. After annexation, the City would rank 7th in population and 48th in terms of land area.
- The City of Homer already provides services used by residents of the area recommended for annexation: fire protection, EMS, library, parks and recreation, bulk water supply, water/sewer service to select areas, and transportation facilities (marine port, boat harbor, airport).
- Annexation will increase real property taxes in the annexed area by 2.75 mills and extend the city sales tax to it.

The record of the Homer annexation proceeding stands 14 inches high and weighs 35 pounds. It consists of

- the City of Homer's Petition;
- 14 Responsive Briefs;
- written comments on the petition by 168 parties;
- the City of Homer's reply brief;
- DCED's Preliminary Report and written comments on it by 32 parties;
- DCED's Final Report; and
- statements, testimony, and public comments made at the local public hearing.

In addition to the printed record, the Commission obtained first hand observations through a tour of the area proposed by the City for annexation by automobile and helicopter.

Based on its evaluation of the record in view of the standards in law, the Commission found that:

1. The 4.53 square miles proposed for annexation are similar in character to the City of Homer.
2. The proposed boundaries do not overlap boundaries of another city government or more than one borough.
3. The area proposed for annexation is contiguous to the City of Homer.
4. Annexation will not abridge or deny civil or political rights based on race, color, creed, sex, or national origin.
5. The area proposed for annexation does not include entire geographical regions or large unpopulated areas.

6. The population in the expanded boundaries approved by the Commission is large and stable enough to support the extension of city government.
7. The economy within the boundaries approved by the Commission has the human and financial resources to provide essential city services on an efficient, cost-effective level.
8. The City of Homer has provided a suitable transition plan for extension of City services.
9. The boundaries approved by the Commission include all areas necessary to provide essential city services on an efficient, cost-effective level.
10. The boundaries approved by Commission include only the existing local community, plus area for growth during the next 10 years.
11. The City of Homer can provide essential city services to the territory more efficiently and more effectively than the City of Kachemak or the Kenai Peninsula Borough.
12. The proposed annexed area needs city services, some of which are already being provided by the City of Homer.
13. & 14. The proposed annexation is in the broad public interest.

Finally, the Commission addressed two significant legal issues raised during the annexation proceedings:

1. **Application of AS 29.35.450(c) to LBC decisions.** The Commission concluded that AS 29.35.450(c), requiring voter approval for modification of certain service areas, did not nullify the Commission's authority to approve the annexation and alter affected service area boundaries. The Commission's conclusion is uniformly supported by Article X, Section 12 of the Alaska Constitution, AS 29.06.040(a), AS 44.33.812(3), four Alaska Supreme Court decisions (*Fairview v. City of Anchorage*; *Oesau v. City of Dillingham*; *City of Douglas v. City & Borough of Juneau, Lake and Peninsula Borough v. LBC*), the Department of Law, and Legislative Legal and Research Services.
2. **Truncation of terms of elected local officials.** The Commission declined to take the unprecedented step of truncating the terms of City of Homer elected officials, and requiring election of a new mayor and city council. Relevant facts the Commission considered were:
  - All Council members are elected and serve at-large; and
  - Terms of the Mayor and two Council members will expire in October 2002, two more Council terms in October 2003, and the last 2 Council terms in October 2004.

Moreover, the Commission noted the lack of statutory authority or regulations for truncation of terms of elected officials. The Commission's position is consistent with state and federal case law, and supported by the Department of Law, as well as the Legislative Legal and Research Services.

SUMMARY OF HOMER ANNEXATION PROCEEDINGS

- 03/13/00 – City Council adopted resolution authorizing petition to annex nearly 26 square miles (annexation was considered for several years and addressed at 4 Council meetings in 1999 and 2 in 2000; annexation opponents were unsuccessful in 3/13/00 bid to have superior court block adoption of resolution).
- 03/20/00 – City submitted petition to DCED (annexation opponents were unsuccessful in 3/19/00 bid to have superior court block submission of petition).
- 03/29/00 – Petition accepted for filing.
- 04/03/00 – Steps initiated for extensive public notice of petition.
- 04/17/00 – DCED met with various local groups to discuss annexation. DCED also met with local groups on four subsequent occasions (4/18/00; 5/02/00; 6/14/00; 8/24/00).
- 05/05/00 – Deadline for responsive briefs/comments on petition (time allowed was nearly 30% greater than that required by law). Fourteen responsive briefs and 168 letters received.
- 08/03/01 – At DCED/LBC direction, City Council held public work sessions to consider responsive briefs and comments before replying. City Council also held work sessions or special meetings regarding reply brief on 8/21/00 and 8/31/00. In addition, Annexation was also addressed at 15 other meetings of the Council in 2000 and at 12 meetings in 2001. The topic was also addressed at 11 meetings of City boards and commissions during 2000 and at 2 such meetings in 2001.
- 09/11/00 – City filed brief replying to 14 responsive briefs and 168 letters.
- 07/31/01 – DCED conducted two public informational meetings in Homer.
- 10/05/01 – DCED released preliminary report for public review – recommended reducing annexation to 3.3 square miles.
- 11/05/01 – Steps initiated for extensive public notice of 12/14/01 LBC hearing
- 11/06/01 – Deadline for comment on DCED preliminary report – 32 individuals submitted comments.
- 11/21/01 – DCED released final report – supports annexation of 3.9 square miles.
- 12/13/01 – LBC toured 26 square miles petitioned for annexation.
- 12/14/01 – LBC convened hearing in Homer – opening statements by 12 parties; sworn testimony by 5 witnesses, public comment by 63 individuals, closing statements by 12 parties.
- 12/15/01 – Hearing completed, LBC deliberated for 2 hours. Guided by 14 legal standards, LBC approved annexation of 4.58 square miles (3.9 square miles recommended by DCED, 150 acres added at request of property owners; and six parcels along Sterling Highway).
- 12/26/01 – LBC adopted 42 page statement explaining basis for decision.
- 01/16/02 – LBC asked to reconsider its decision by 7 individuals or organizations.
- 01/17/02 – LBC denied requests for reconsideration.
- 01/23/02 – LBC presented recommendation for annexation to Legislature.

SUMMARY OF LEGAL STANDARDS GOVERNING ANNEXATION TO CITIES

1. The territory proposed for annexation must be similar in character to the annexing city. (3 AAC 110.100)
2. The proposed expanded city boundaries do not overlap boundaries of another city government or more than one borough. (3 AAC 110.130[e])
3. The area proposed for annexation is contiguous to the annexing city. (3 AAC 110.130[b])
4. Annexation will not abridge or deny civil or political rights based on race, color, creed, sex, or national origin.
5. The area proposed for annexation does not include entire geographical regions or large unpopulated areas. (3 AAC 110.130[d])
6. The population in the expanded boundaries is large and stable enough to support the extension of city government. (3 AAC 110.120)
7. The economy within the expanded boundaries has the human and financial resources to provide essential city services on an efficient, cost-effective level. (3 AAC 110.110)
8. The annexing city has provided a suitable transition plan for extension of city services.
9. The expanded boundaries include all areas necessary to provide essential city services on an efficient, cost-effective level. (3 AAC 110.130[a])
10. The expanded boundaries include only the existing local community, plus area for growth during the next 10 years. (3 AAC 110.130[c])
11. The annexing city can provide essential city services to the territory more efficiently and more effectively than another existing city or organized borough. (3 AAC 110.090[b])
12. There is a need for city government in the territory approved for annexation (3 AAC 110.090[a])
13. Annexation is in the balanced best interests of the state, territory proposed for annexation and affected local governments. (3 AAC 110.140)
14. The proposed annexation is in the broad public interest. (AS 29.06.040[a])



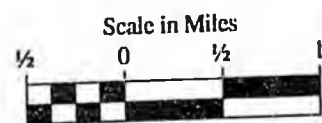
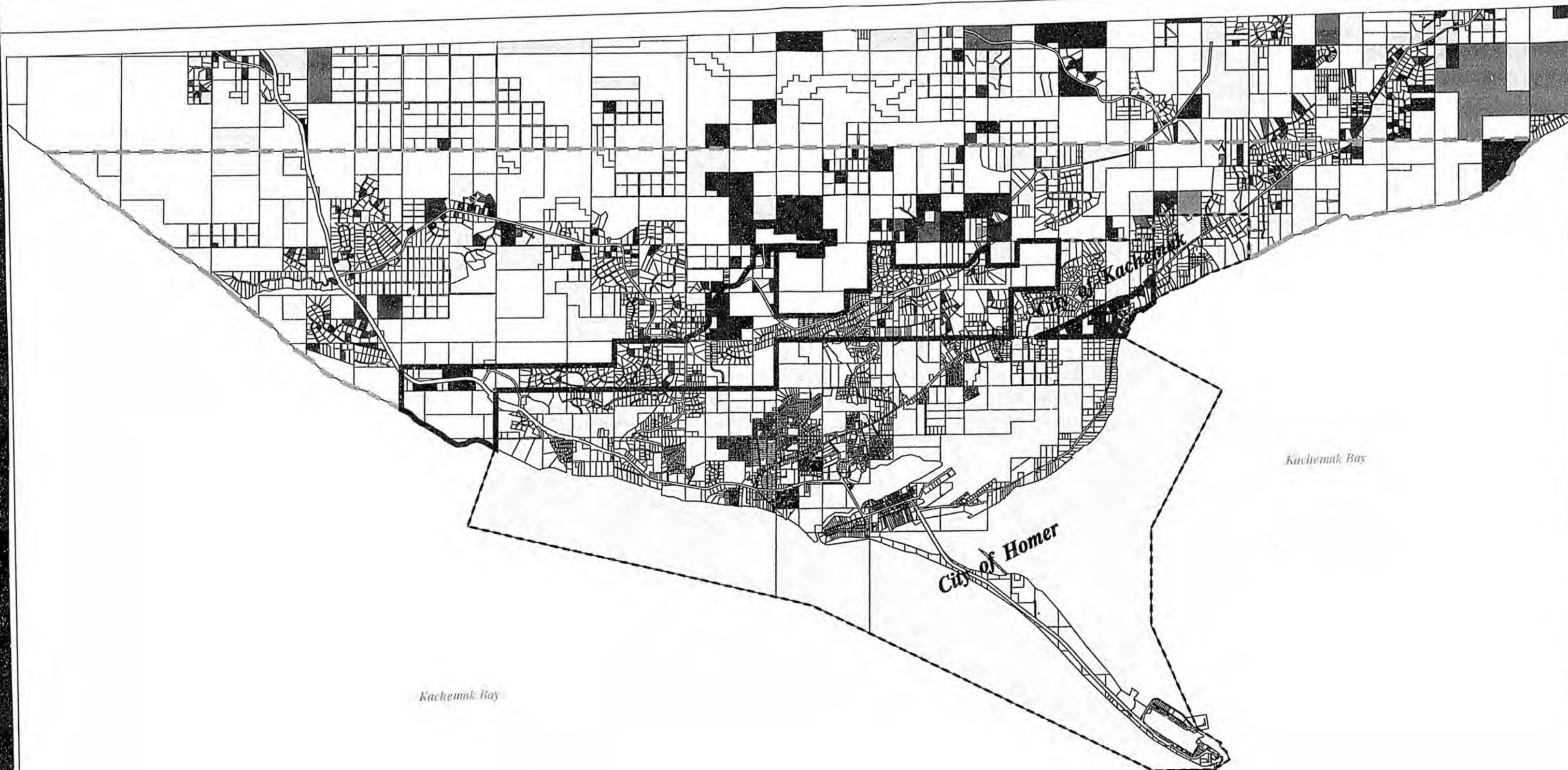
**Legend**

- Homer City Limits
- Kachemak City Limits
- Proposed Annexation Area

- DCED Recommended Annexation Area
- ▨ Area Added to DCED Recommendation by Local Boundary Commission

Scale: 1" = 1 Mile

**AERIAL PHOTO (1999) SHOWING 4.58  
SQUARE MILES RECOMMENDED FOR  
ANNEXATION TO THE CITY OF HOMER  
AND ADJOINING AREAS**



**Legend**

- |                     |              |                     |              |                             |                          |
|---------------------|--------------|---------------------|--------------|-----------------------------|--------------------------|
| Vacant              | Tidelands    | Accessory Buildings | Churches     | Industrial                  | City Limits              |
| Residential         | Commercial   | Institutional       | Gravel Pits  | School                      | Proposed Annexation Area |
| Recreational/Cabins | Mobile Homes | Farm/Agriculture    | Parking Lots | Recommended Annexation Area |                          |

**LAND USE CHARACTERISTICS  
OF 4.58 SQUARE MILES RECOMMENDED  
FOR ANNEXATION TO THE CITY OF HOMER  
AND ADJOINING AREAS**

## Errata Sheet – Homer Annexation

1. Please correct Table Of Contents #3:
  - a. LAA 1/29/01 to read 1/29/02
2. You are receiving a separate blue binder with information from the City of Homer.
3. We will hand out the public comments later; we are still receiving faxes, emails, etc. on that and will hand them out for insertion in **Section 8**. (Public testimony is on Saturday)
4. We have two different sets of table of contents. Some of the folders have 10 and some have 15. Please provide the Legislator with the "10" binder – it is easier to read the table of contents section.
5. The LBC sent this office some inserts regarding SB 48 that they wanted handed out. I have not done that because we have not noticed SB 48 for any hearing before this joint committee. Thus, there should not be any discussion regarding that bill and I have advised the LBC staff accordingly.

### for binders passed out on Tuesday

1. PLEASE INSERT the information from the LBC, listed below & attached:
  - Remarks to the Senate & House C&RA Committees ...
  - Local Boundary Commission – Summary of LBC Recommendation
  - map<sup>1</sup> (place it in the clear sleeve with the other one)

Please Insert in **Section 9** – LBC Additional Materials 2/5/02

and note on your table of contents.

2. Please insert the Comments from CCAA in **SECTION 8**.

Mary Jackson  
Senate CRA Committee  
2/6/02

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<sup>1</sup> The LBC sent two maps. But ... we did not receive enough copies of either of the maps from the LBC! We have tried to make certain that the legislator's binders have both maps – when we receive more maps, we will hand them out to the staff.

**Subject: SJR34**

**Date: Mon, 18 Feb 2002 20:07:29 -0900**

**From: Mary Griswold <mgrt@xyz.net>**

**To: Senator\_John\_Torgerson@legis.state.ak.us**

Dear Senator Torgerson,

Thank you for your efforts on our behalf.

I would greatly appreciate your continued leadership in collecting support for SJR34 disapproving Homer's annexation petition. I support orderly municipal expansion and offered to serve on a committee to develop a good approach for Homer when the city council directed its manager to devise a plan and time line two years ago. The manager told me he would prepare a plan for the public to review. Unfortunately we never got to review any plan. Instead, the city filed its petition with the LBC. You have heard the rest of the story.

I accept legislative review annexation, but I do not accept annexation without an opportunity to participate in the planning process. Please let us have a voice in determining the direction of our local government. The new LBC regulations will require this opportunity before any future annexation petitions can be filed as a result of Homer's rebuff of the public process. I am still willing to help Homer grow in a responsible manner if you will give me the chance.

Thank you,

Mary Griswold  
P.O. Box 1417  
Homer, AK 99603

AFTER CLOSE DATE/TIME,  
— mg

**Subject: Homer annexation**

**Date:** Thu, 21 Feb 2002 08:31:00 -0900

**From:** "Michael Hawfield" <hawfield@alaska.net>

**To:** <Senator\_John\_Torgerson@legis.state.ak.us>

Dear Senator Torgerson,

Thank you for all your work on the Homer annexation issue as it has come to the joint House & Senate Regional Affairs Committees and now heads later today to the Senate C&R A Committee.

I won't belabor the point, but simply urge you support Homer's petition to annex in accordance with the LBC recommendation and thus not to approve the resolution calling for disapproval of the LBC recommendation.

With the retreat of state assistance to cities, our communities need to strengthen their tax base in the orderly fashion that annexation allows. Please help our core communities – our cities – remain viable for the benefit of all, including all those not within corporate boundaries.

Thank you,

Michael Hawfield

PO Box 2609

Homer, AK 99603

907 235-6078

**Subject: Homer Annexation Petition**

**Date:** Thu, 14 Feb 2002 13:30:13 -0900

**From:** "Linda Reinhart" <reinhart@xyz.net>

**To:** "Senator John Torgerson" <Senator\_John\_Torgerson@legis.state.ak.us>

Senator Torgerson;

My wife Linda and I were in Juneau last week and testified to urge a VETO of Homer's annexation petition. We were so impressed with the friendly attention we got from everyone. We remain adamantly opposed for a long list of reasons. I'll mention just a few.

LBC Statement of Decision, December 26, 2001 estimates that annexing 898 people (page 18) will add \$950,000 in revenue (page 20). That equals \$1,059 per person per year or \$3,177 per year per family of 3 - this is indeed the price of a college education for one child in each family in each generation. In an undated, untitled fact sheet inserted in the Homer News last week the City continues its fuzzy math approach. We saw this insert in Juneau. In the second to last paragraph it talks about 76 cents per day and \$275. per year in typically disingenuous context.

I want to respond to claims made by the City in another recent "Fact Sheet" submitted to you by the City.

Claim 2 - "Intensive growth surrounding city".

Fact - Probably less than 3,000 people live within a 10 mile radius of present city borders. Compare this with real growth as in Anchorage bowl and Matsu valley.

Claim 3 - "Population density in city of 188 per square mile"

Fact - Each family of 3 has average of 10 acres. 1990 Homer population - 3695. Year 2000 Homer population 3964. A growth rate of less than 1

Claim 9 - "City's Port and Harbor"

Fact - Harbor infrastructure funded almost entirely by state and US for benefit of entire area. Enterprize fund maintains it - users from all over world fund it, not city taxes as implied.

Claim 11 - "Re-elected by annex supporters"

Fact - None re-elected by more than about 600 total votes - less than 25% of eligible voters.

There is no need for Homer to annex anything, certainly not by use of such disingenuous, divisive rhetoric as is being employed by the City. Homer needs to be better, not bigger. The bigger will happen spontaneously once the better is achieved. Please vote to VETO this petition.

Jim Reinhart, Homer, Ak, 99603 (907) 235-8650 PO Box 834

**Subject: Homer annexation**

**Date:** Mon, 18 Feb 2002 15:29:49 -0900

**From:** Tim and Abby Fuller <fuller@homernet.net>

**To:** Senator\_John\_Torgerson@legis.state.ak.us, Senator\_Alان\_Austerman@legis.state.ak.us, Senator\_Pete\_Kelly@legis.state.ak.us, Senator\_Randy\_Phillips@legis.state.ak.us, Senator\_Georgianna\_Lincoln@legis.state.ak.us, Representative\_Drew\_Scalzi@legis.state.ak.us, Representative\_Kevin\_Meyer@legis.state.ak.us, Representative\_Carl\_Morgan@legis.state.ak.us, Representative\_Andrew\_Halcro@legis.state.ak.us, Representative\_Lisa\_Murkowski@legis.state.ak.us, Representative\_Gretchen\_Guess@legis.state.ak.us, Representative\_Beth\_Kerttula@legis.state.ak.us

Dear legislator;

Please consider this follow-up to everything we've already said about Homer's annexation. We know you have a lot of material already but it is a complex and difficult issue, it cannot be summarized on one page.

The real question here is not what is legal, or should Homer grow, but will the Legislature support city government over the citizens? We have here a process that is legal under state law but completely contrary to the founding principles of this country -- most notably the consent of the governed.

When you start with a system that favors the convenience of local government over the rights of the citizen, then add a local government acting in bad faith, and an LBC that is NOT unbiased and objective, the result is an act of tyranny. If you care about freedom and democracy, veto this annexation, then change the process, so others cannot abuse it like Homer has.

Legal aspects:

As for this process being legal, there are enough legal problems with the final decision that we have filed an appeal, you already have a copy. We also believe the initial petition is fraudulent, which would make the whole thing illegal. We will not know for sure until we get the memos that are in the hands of the Alaska Supreme Court. However, there is circumstantial evidence that the cost estimates in the petition were fictitious. As a very short summary (please ask if you want more details), Homer's city manager says in a sworn affidavit that he relied on information provided by the department heads. We asked for this information and were denied, went to court, and the city manager eventually provided a list of 26 department head memos he says are the ones he relied on. City briefs filed with the Superior and Supreme courts during our appeal describe the contents of these memos as "policy suggestions not followed" and "recommendations not adopted". IE, these memos do not contain any information providing a foundation for the cost estimates in the petition. The city has said there are no other documents, so either the petition's cost estimates are based on nothing, or the city lied to the courts. Judge Brown, after viewing the memos, agreed with the city; this indicates that the petition's cost estimates have no foundation, they were made up. The LBC ignored this issue, which they should not have.

It is not in the state's interest to allow a city to make false statements in its petition to annex, and then be successful in that annexation. There have been comments made that the LBC "punished" the city by reducing the area, but this amounts to tossing the rabbit into the briar patch, the reduced area is the part the city most wanted. (When they wanted a little bit more than the area proposed by the DCED it was quickly given to them.) The city expected to get less than what they had asked for. They are in fact being rewarded, not punished. Rewarding them for for the way they handled this annexation will

encourage them and others to trample on the citizens rights in the future.

The LBC was NOT unbiased.

The process does not work if they are not completely objective and unbiased. It needs checks and balances, and the legislature provides those checks and balances.

The resolution to disallow this annexation states, "Whereas the legislature recognizes the constitutional authority of the Local Boundary Commission as a disinterested third party tasked with objective review of boundary changes". Part of our objection to this annexation stems from the fact that the LBC was not a "disinterested third party" nor did they give this annexation an "objective review".

Commissioner Tesche had business relations with the city and should have been recused. The commission found his connection not substantial enough to be a conflict, but they looked only at immediate dollars and not at the overall picture. It is our understanding that Tesche's firm gets most of it's business from Perkins Coie, the firm Homer contracts with for their city attorney, Gordon Tans. This is not "disinterested".

The rest of the commissioners may not have a direct connection but all have a municipal background. The perhaps bigger problem here is that the LBC relies on the work done by the DCED to wade through the briefs and evidence and make a recommendation. The DCED is charged with assisting communities, a duty they interpret as helping municipal governments. They are staff for the LBC but are by no means a disinterested third party, nor are they anywhere near objective. The DCED disingenuously points out that the LBC is not obligated to follow their recommendation, but in this case they did. It was clear to those of us who were paying close attention that the LBC had made up their minds well before the Hearing.

A disinterested third party would have treated both sides equally, and this did not happen. We were denied additional time for filing responsive briefs, which we really could have used, as two months was not enough time to figure out what the heck we were doing and then get information from the city, especially when they did their darndest to not release anything useful. Then the city was asked how much time did they need? They took three months for a reply brief when we'd had only two for our responsive briefs!

We asked for a chance to respond to the city's reply brief, which is desperately needed, and were denied. The next spring, when the DCED had not yet started work on this annexation, we asked for a chance for additional briefing. This has been granted in other procedures, but was denied. We were told we would have additional chances to "express our opinion" -- we were trying to present facts, not opinions!

When the next chance came, comments on the preliminary report, the deadline was set at the bare minimum required by law, despite the report being 420 pages long. This report ignored some significant points brought up in the responsive briefs and totally ignored points brought up in the written comments. 168 comments were summarized on one page! CCAA sent in 20 pages of comments on the Preliminary Report -- not to cause extra work but because we found that many flaws in the report (and we found a few more later). The Final Report ignored them all!! It spent many pages giving extra bits of land to the city, but then appeared to address only those comments that were received well before the deadline, and not those received just before-- this is not right. We had requested additional time, as 4 weeks was not enough to carefully review a 420 page document. Especially since the copies for the library did not show up on time, so that the public only had 8 days to prepare comments!

The same occurred at the Hearing, everyone was kept to time limits (three minutes for public comments, when the regulations allow up to five) until the City's chance to reply at the end, when Chairman Waring asked the city how much

time they needed! The regulations clearly state the reply will be no more than 5 minutes, yet the city was offered more, without even asking for it.

Our complaints about being ignored are not merely that our opinions were dismissed. The LBC repeatedly ignored factual evidence we presented that called into question statements made by the City; this evidence was dismissed as "differences of opinion". They did not require the city to substantiate any of their statements, even after we raised significant questions.

The LBC failed to consider, or perhaps relied on the DCED who failed to consider, evidence submitted to them in the course of the proceeding. For example, they were provided with evidence that the city's sewer plant fails every time the area gets heavy rains, which " " at least once a year. Until this is corrected, the city cannot handle more hoxups to the sewer plant, yet this was ignored. They accepted the city's assurance that they were at half capacity, without proof. This is just one of many examples, yet all of our factual statements were brushed aside as "opinions".

Legally the LBC has the discretionary power to accept or reject anything submitted to them, but to show this level of bias is wrong. They are failing to make an objective decision and failing to properly decide the Balanced Best Interests of ALL the interested parties. They did not address the interests of the citizens or the impact on the Borough service areas. This is not in the state's interest, to ignore the best interests of everyone but the city.

All of our statements were brushed aside no matter how well we had substantiated them, while all of the city's statements were accepted at face value. There were several places where they found a standard was met based on the LBC's past policy in other annexations! That is not "objective", instead much of their decision is very subjective, as are their standards.

Perhaps the most subjective standard is the one concerning "balanced best interests" in which they are supposed to balance the interests of the annexed territory, the city, other municipalities, and the state. Somewhere this should be construed as including the best interests of the people, yet the LBC does not take the interests of the citizens into account at all. Or if they do, they make up what our interests are instead of listening to what we tell them our interests are. Certainly the interests of the state should be the interests of the state's citizens, or else why do we have a state?

Contrary to Commissioner Waring's statement, we did not get 5/6 of what we wanted. He's looking at territory, but we never asked for reduced territory -- we asked for either a vote or no annexation. Only 1300 out of 2200 people got what they wanted, they are now outside the area being annexed, that's not 5/6. It's less than 2/3. The remaining 900 people are still having their rights trampled on, still have no vote.

The people's choice and local control:

The legal issues can be decided by the courts, that's their job. The Legislature's job is to set policy, and with HB13 your policy was clearly one of local control. Local control is what's missing here, the local community was completely shut out of the loop at the local level. Sure there was opportunity to be heard at the state level, but that was too little too late, plus we were not listened to. (see above)

The service area issue is one of policy more than legality, this is a question of local control and citizen sovereignty. Our local choice was to start a service area to provide the one service that is truly necessary that the city was providing without being directly reimbursed. Never mind that part of the city sales tax was intended to pay for the fire dept and the library. Never mind that the fire dept was a private non-profit until 1991 and when the city took it over part of the agreement was a promise of continued service to all areas. We wanted this service and wanted to fulfill our obligation to pay for it. It should perhaps also be pointed out that KESA covers an area many many times

larger than the proposed annexation and the vote was 75% in favor of a service area. Many people voted to tax themselves for this service who were not affected by annexation. Our choice is a service area, not city government. To force city government on us by the decision of a state commission is NOT local control!

This has some similarities to what was done to the Hillside, except even that had a vote, rigged as it was, here there is none. HB13 was pushed through in response to that, to support more local control, and the lack of local control is what we are complaining about here. What we most want is a vote but short of that we want the opportunity to participate in the decision-making process. Being able to voice our objections to a third party that then brushes all those objections aside, without judging their merit, is not participation.

Policy concerns:

The city planned this annexation in secret, refused to have any public dialog, and withheld supporting documents. This process has excluded the citizens. At the LBC level the citizens were ignored. The policy question here is--- is it OK to have a process that, especially when abused, completely excludes the people?

Our system of government was set up with checks and balances, so that any one branch would not become too powerful and trample on the rights of the citizens. Agencies and commissions are likewise set up with checks on their power, and the Legislature is the Constitutionally established check on the LBC. The LBC consists of a handful of people who are as human as the rest of us, they are not all wise and all knowing. Someone needs to evaluate their work from time to time and tell them when they are going astray in their responsibilities, and that someone is you.

The justification for legislative review annexation is a theory that if put to a vote all annexations will fail. This has not been put to the test. The city would have you believe that there is a silent majority out there that supports this annexation. If that is really true, why are they afraid of a vote? Even the most vocal of opponents have all said they would abide by the results of a vote, either way. The advantages of putting annexation to a vote are; 1) it avoids the adversarial nature inherent in a legislative review annexation, thus doing less harm to the community, 2) it requires the city to do a better job of selling the reasons for annexation, thus being less hostile about the whole thing, and 3) it requires the city to have a real plan to actually provide services to the area they want to annex. No one will approve an annexation that results solely in an increase in taxes, but if it also means an increase in services, it will have support. Certainly these reasons show that having annexations put to a vote is in the state's interests as other states have already figured this out, they have a vote.

The city of Homer usually uses a public process for complex issues that affect the public. They either form task forces, like the Beach Policy Task Force that drafted regulations for use of the beaches around Homer, or let the Advisory Planning Commission have it for awhile, and they hold public meetings. The appropriate step here would have been to form a task force to work out a draft plan, let the administration work up a petition from there, then send the draft annexation petition to the APC to hold public hearings. Instead the city tried to avoid dealing with controversy by dumping the whole thing in the state's lap. This only angered everyone and created a lot of animosity, causing lasting harm to the greater community. This is not in the state's interest. A veto will send a message to other municipalities that this is not acceptable. Annexations need to be worked out locally, and only when a well-developed plan has been generally accepted should it then be sent to the LBC for final approval.

This annexation was not suitable for the use of the legislative review method. Cities should not have the option to use this method at whim, it is a flawed process and it is easily abused. There may be situations for which it is needed, but the situation for which it was designed no longer exists. It was designed to allow Anchorage to annex the plentiful Public Utility Districts, which were not recognized under the new state Constitution. The use of the legislative review

method needs to be curtailed, it does not respect the rights of the citizens. It needs guidelines established as to when its use is appropriate, and the LBC must be encouraged to enforce those guidelines by having to make a finding that the city's choice of method is appropriate. They have the power now to require a different method be used but fail to exercise it.

There has been some concern that if this is vetoed we'll just have to go through it all over again. The reason we want a veto is so we WON'T have to go through this again. We want a message sent to the city, and all cities, that annexations cannot be handled as if they are battles to be fought against the future citizens. An annexation should not bring a community to the brink of war. There is sure to be another Homer annexation in the near future either way, and we want a kinder gentler one with an extensive public process at the beginning, and if at all possible a vote. This will reduce the contentiousness and ease the burden on the LBC. The city will have to wait two years before they can bring forward a petition to annex any of the territory proposed for this one. This two year wait will allow tempers to cool and give a chance for all interested parties to sit down and try to draw up a reasonable plan for local government for this area, one that will be acceptable to the majority. Two years will also provide time to try and change this process, to fix some of its flaws, so the citizens can't get steamrolled by a city government. The concept of establishing the LBC was to reduce controversy over annexations, but the opposite has been the result, it's time to change the system.

Accountability:

We expected the LBC would hold the city accountable for it's claims in it's petition and subsequent reply brief, but they did not. The city was not expected to prove it's cost estimates, even though we seriously questioned them. Our attempt to get the city to prove their cost estimates is still in court (the memo Appeal), certainly the least the LBC could have done was wait until the court issues a decision. Or, they could have demanded some proof from the city that these estimates were valid. We were only able to check one -- the road maintenance costs -- for which the Borough records showed the city's estimate was half of the realistic cost.

The LBC did not hold the city accountable for a realistic transition plan, saying that the city only has to show they "thought about the future". How is the city actually going to implement annexation? How will it affect the annexees? Can or will the city follow through with it's vague promises? No one knows! Who will hold the city accountable after this goes through? The LBC put no requirements on them at all, not even the one suggested in their own regulations, an agreement with the Borough for the transfer of responsibilities. Our only recourse will be to file for a detachment, two years down the road, if the city doesn't follow through. That's not much reassurance, that we can come back to the agency that failed us the first time. They will look solely at the population density and say "you need city government, work it out politically".

Who will hold the LBC accountable? You, that's why there is a legislative review in this process. They don't need to have broken the law for you to find they have made a poor decision. Your veto can hold the LBC accountable for their actions, or inactions. They have failed to hold the city accountable and have failed to take the interests of the citizens into account, that should be enough for a veto.

Sincerely;

Abigail Fuller  
Vice President, CCAA  
(hard copy to follow)

**Subject:**

**Date:** Wed, 20 Feb 2002 10:20:52 -0900

**From:** "Pete Roberts" <coyote@homernet.net>

**To:** <Representative\_Drew\_Scalzi@legis.state.ak.us>

**CC:** <Senator\_John\_Torgerson@legis.state.ak.us>

From: Pete Roberts, Pres.

Citizens Concerned About Annexation

Box 1134

Homer Ak. 99603

Re: Disapproval of Homer's Annexation Feb.20, 2002

Dear Representative ,

This annexation by the City of Homer is a political hijacking— allowed by a flawed LBC process that is neither "DUE PROCESS" ( called that by LBC staff mem. Dan Bockhorst to jnt. CRA hearing 2/12 ) nor is it objective by a disinterested nonpolitical third party. The city wanted to be given control over 2200 then 900 citizens without their say in the matter and without any binding promises but a higher tax bill! That is HIJACKING. For just this reason this is before you. 23 states no longer allow annexation by decree. Then a city **has** to make an annexation palatable — to get people to agree. And that would be the maximum of local control and democracy.

In a democratic process, such as ours, the governing group has to be sensitive to the wishes of the people — not ignore or side step them. Appearances are everything in politics — and Annexation by Leg. Review cancels the people out and encourages a city to be heavy handed. And Homer was heavy handed— they developed their annexation petition completely behind closed doors, used the one council meeting approach by resolution to rush it off to the state for an LBC decree and to wash their hands of it and the public. There was no public involvement, they hidden pertinent city documents ( that is in the Ak Supreme Court now ), They refused to have a city referendum vote on the annexation ( 6/29/00 ) or do a poll of the city. Their annexation idea could not even stand the light of day with Homer residents and they knew it. They did not even run it by their own planning comm., even though it is the biggest land-use issue ever in the Homer area. This amounts to an end run around the people and we need you to stop this travesty. This is a hijacking!

The LBC was set up to take local politics out of annexation — but their insensitivity to the people, unbiased support for municipal govt. and lack of fairness inflamed this annexation. And that generated the biggest fray the LBC has ever had to deal with — 18" of submitted documents from 174 people, and 4 organizations. Their actions were repeatedly questioned by the opponents and may be the subject of a law suit because of the unfairness if this annexation stands. The city had unlimited time for all their filings — we were always denied time extensions we requested. We were not allowed the same number of filings as the city or to submit new info and documents as it became available. The official LBC hearing at the end was suppose to be for finding of final fact. But obviously was really never intended to effect the LBC process — they have their minds made up by then. **They had prepared statements** for each of the 14 standards, that comm. members read, at the decisional session immediately

following the hearing. They visibly paid no attention to opposition testimony -- 13 hours of it -- asked not one question of the opponents. But when the supporters spoke they leaned forward, paid attention, asked questions and got excited when some never heard of land owners wanted to add ~300 acres to the annexation. No problem from our perspective if someone wants to be annexed. But people know when they are being disregarded, blown off and ignored &ndash; this does not say much for a fair or balanced process that is very far from being Due Process. Especially when their decisions on the "14 Standards" where pre-written at the end of the hearing and any parcels to be added was gleefully accepted ( like uninhabitable parcels ) and nothing was dropped. They obviously completely paid no attention the opposition &ndash; now is that a fair and unbiased process ( we can document everything I have alleged )? Can you support the city and LBC in t in good conscience? Any reasonable person would say veto this&hellip;

There is no lack of government in the annex area, they have all the essential services, there is no problem out there and they pay handsomely for fire and EMS. The city is no where near a financial crunch or short fall &ndash; like all of us they would like more to spend. But that needs to be done with the consent of the voters, not by hijacking. The LBC standard about the "need for city type government" is **not met in this case**. We have appealed in superior court this and several other standards that were not proven or reasonably demonstrated by the city and the LBC findings. You have been provided a copy of that appeal. This annexation would not get past a court jury if it was handled that way or by a vote of the people. There is something wrong when an issue can **not** pass a muster of the people. The fire service area did pass by an overwhelming majority and it was at least 6 times larger than the original 25 sq. mi. annex area. So much for the "slogan" that people will not vote to tax themselves.

The city pushed the limits with their conduct of the annexation. But the real problem, the **state wide problem**, is the lack of fairness and equalness of the LBC conducting this annexation. The checks and balances are not there in practice &ndash; the LBC regulations ( self promulgated ) basically lean too heavily in favor of a city, there are no built in protections for the non city residents. This not about territory as the LBC would have you believe, but about a population a city wants to control and tax. There is no advocate or protections built into the "LBC process" for those non-city residents. It is a very flawed process and needs to be modernized. It may have been necessary in that critical time of state organization, that is long past and not appropriate now. The world and Alaska has changed and this procedure needs changing.

The city has lost all credibility and respect with this hijacking and so has the LBC! The LBC simply is not impartial and they do not believe in local control. Surprise, but not everyone wants city government. One size does not fit all &ndash; that is what this country was founded on. Veto this annexation and empower the people.

We need your help. Thank you.

Pete Roberts, Pres. CCAA ( representing 200 or so families )

**SENATE JOINT RESOLUTION NO.**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**Introduced:**  
**Referred:**

**A RESOLUTION**

1 **Disapproving the Local Boundary Commission recommendation regarding the**  
2 **annexation of territory to the City of Homer.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** under art. X, sec. 12, Constitution of the State of Alaska. the Local  
5 Boundary Commission has presented to the legislature its recommendation regarding the  
6 annexation of territory to the City of Homer; and

7 **WHEREAS** the recommendation was received on January 23, 2002; and

8 **WHEREAS** a recommendation of the Local Boundary Commission presented to the  
9 legislature becomes effective 45 days after presentation or at the end of the session, whichever  
10 is earlier, unless disapproved by a resolution concurred in by the majority of the members of  
11 each house; and

12 **WHEREAS** the legislature recognizes the constitutional authority of the Local  
13 Boundary Commission as a disinterested third party tasked with objective review of boundary  
14 changes; and

15 **WHEREAS** the legislature recognizes the need for the legislative review process as a  
16 tool for local governments to address growth but believes that this tool is one that should be

1 used as a final process and with as much participation of all affected populations as possible;  
2 and

NO  
GUESS  
HACVO

3 WHEREAS the legislature's support of the 2001 amendment to AS 29.35.450  
4 indicates its intent to enable residents of a service area to have a voice in changes to the  
5 service area they have voted to support; and

HB13

6 WHEREAS the legislature is concerned about the issue of truncation of terms of  
7 incumbent elected municipal officers in a situation where adding the population of the  
8 annexed area results in a substantial percentage increase in the municipal population; and

9 WHEREAS the legislature is concerned about a process involving an annexation  
10 proposal that initially encompassed an area with some 2,300 people and was reduced to an  
11 area with some 890 people, a process that resulted in the unnecessary inclusion of 1,400  
12 people over a two-year time frame; and

GUESS  
HACVO

13 WHEREAS the legislature is concerned that the transition plan submitted by the City  
14 of Homer encompassed the original 25 square miles and that it does not seem appropriate to  
15 consider the same transition plan as being applicable for the final 4.5 square mile area  
16 recommended by the Local Boundary Commission, obviously a substantially reduced area;  
17 and

"POLICY"

GUESS  
HACVO

18 WHEREAS the legislature is concerned about a process that does not provide for  
19 direct input by the affected public of the municipality that proposes the annexation by way of  
20 either a binding or advisory vote, particularly when the proposed area would result in such a  
21 significant percentage change in the number of registered voters;

22 BE IT RESOLVED by the Alaska State Legislature that the recommendation of the  
23 Local Boundary Commission received January 23, 2002, regarding the annexation of territory  
24 to the City of Homer, is disapproved.

3-5  
4-11  
16-21  
Phillips Line 3-21 delete  
NO OBJECTION TO #1

Motion to INTRODUCE: PHILLIPS BILL  
HOUSE ESSENTIALS  
RESO.  
ASCPA  
BILLS  
Municipal Jurisdiction  
-2-

## Annex – Pro and Con<sup>1</sup>

### Support

- Municipal Assistance and Revenue Sharing cutbacks: The state has cut these programs and the city must have the ability to legislatively annex properties to maintain and create new services for growth.
- The Kenai Peninsula Borough zoning process has taken steps from what was considered a "no zone" thought process to one that recognizes there are restrictive measures needed for sound development regarding land use. Yet there is more demand in the surrounding Homer area for more stringent land use planning.
- There are amenities within the City of Homer that are provided without cost to non-city residents such as recreation and libraries, and maintaining existing infrastructure difficult to equate in cost sharing formulas.
- There should be a positive state-wide message sent to municipalities that yes, we understand the declining municipal revenue sharing to be a problem and yes, we continue to endorse the legislative require annexation process as a needed tool for the expanse of city services.
- The Homer City Council and Mayor point out that they, with the exception of one council member, will all either be up for re-election or resign and run again. This is a demonstration of good faith that the voters in the area as a whole will have a fair and equal opportunity to new representation.
- The City Attorney points out that they were not aware of a concern about a one-year residency requirement for candidates and that it was never the intent of the City to prohibit citizens from the newly annexed area from running in 2002; further, the City has taken steps to introduce an ordinance to that affect to clarify the issue.
- The City Mayor noted that the City is routinely and frequently asked to be involved in various area-wide issues, and specified them in his letter of February 4.
- The City was incorporated in 1964 and has not extended its 21 square miles of boundary since incorporation.
- The City estimates that 25% of the water customers live outside City limits.

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<sup>1</sup> Prepared 2/11/02: D. Scalzi & M. Jackson

- An economic engine of the area, the port and harbor facility, is a City asset available to all in the area.
- Sales tax is paid by resident and non-resident alike, while the 5.5 property tax is paid by only the resident and those revenues combined are the funds that are used for services provided to all.
- Recent re-election of those council members that supported annexation indicates the city resident support for annexation.

### Opposition

- Some current City residents argue that they don't have all the services of the City and they believe the City should concentrate on providing services to existing properties before focusing on new properties.
- The residents of the City of Homer have never spoken on whether they support annexation; an issue of import when the informal "poll" results are considered. A local group indicated that their informal poll suggested that 75% of the residents believed people should be allowed to vote on the issue.
- Modifying a plan from 25 square miles to 4.58 square miles should have an affect on the mil rate, but the transition plan submitted by the City necessarily was targeted to the larger area; a plan for the revised area was not required.
- An amended petition of this magnitude should have a longer period of public review; the argument that the opponents got "5/6ths" of what they wanted because of the reduced area presumes that the full area submittal was appropriate from the origin.
- The magnitude of the amended petition resulted in removing some 1,400 people from the proposed annexation area; a substantial reduction from the 2,300 initially proposed. An opposing point is that the process failed from the origin because it was too big and unnecessarily involved some 1,400 people in over two years of public dispute. Many of the original "inclusions" are still protesting the annexation because of the process.
- Accepting the recommendation would send a message to other municipalities that they do not have to come to a reasonable conclusion before they submit their petitions for the legislative review process; that the LBC will figure it out for them, without benefit of any public process.
- Arguments regarding sales tax payment for city and non-city residents should include the information regarding the 1983 and 1984 sales tax initiative.

Specifically, the October 1983 vote was turned down by 11 votes. The council held a special election in April of 1984 that included a 2% sales tax increase to provide revenues for area wide services AND a 6 mil rate cap for city property owners; effectively a reduction of the existing mill rate. To date, the City may not exceed that 6 mil rate cap or they forfeit the 2% sales tax revenues.

- The Port and Harbor and the Water and Sewer are enterprise funds that are supported by user fees that are paid for by resident and non-resident alike.
- The provision of police services outside city limits is subject to contractual obligations between the City of Homer and the State of Alaska for jail space and office space. Suggestions that the City currently provides police service has not compared those contractual obligations and revenues with the costs of the service provision.
- Service provision has not been identified on a one to one ratio and in fact, the LBC Chair noted that the statutes did not require that; they did not conduct a dollar-to-dollar comparison. Rather the LBC reviewed whether the City was able to provide services at a level to be developed locally and they determined that the City was able to provide services. (NOTE: there are no statutory obligations for this process, it is all outlined in regulations promulgated by the LBC.)
- The issue of truncation of terms remains unresolved, although it was notable that the majority of the City Council members indicated their willingness to resign. The LBC Chair indicated they were not certain that they had the authority to provide for this and in this case, they did not consider the arguments in support to be compelling enough.
- The assertion that people are unwilling to pay for services is not appropriate when you consider that the Fire and E.M.S. service area was overwhelming approved at a 1.75 mil tax rate.

Tony Knowles, Governor



State of Alaska  
**Local Boundary Commission**

550 West Seventh Avenue, Suite 1770 • Anchorage, AK 99501  
Telephone: 907-269-4560 • Fax: 907-269-4539

February 21, 2002

The Honorable Kevin Meyer  
The Honorable Carl Morgan  
Co-Chairmen  
House Community and Regional Affairs Committee  
Juneau, Alaska

**Subject: House Joint Resolution 39 and House Joint Resolution 18**

Dear Chairmen Meyer and Morgan:

The Local Boundary Commission has provided the House Community and Regional Affairs Committee extensive materials in support of its recommendation to annex 4.58 square miles to the City of Homer. The Commission addressed the Committee on this matter for two hours on February 7, and also attended 5.5 hours of public comment and Committee deliberations on February 7, 9, and 12.

At this time, the circumstances of the City of Homer's annexation petition and of the Commission's action on it have been thoroughly reviewed by the Committee. Therefore, this testimony in opposition to HJR 39 will be brief and to the point.

First, the Commission believes that the City of Homer's annexation petition complied with applicable filing requirements. It was lawfully filed.

Second, the Commission maintains:

- a) its proceedings complied with all procedural requirements;
- b) its recommendation to annex 4.58 square miles to the City of Homer is supported by the record and the standards for city annexations; and
- c) its recommendation conforms with applicable Constitutional and statutory provisions.

The sole reason offered in HJR 39 for disapproving the Commission's recommendation is that the legislature "believes that this tool (legislative review annexation) is one that should be used as a final process and with as much participation of all affected populations as possible."

The Honorable Kevin Meyer  
The Honorable Carl Morgan  
February 20, 2002  
Page 2

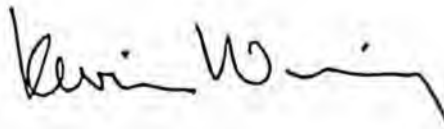
Article X, Section 12 of the Alaska Constitution expresses no preference for local action over legislative review annexations, nor does any statute, legislative resolution, or regulation sanction such a preference. To the contrary, AS 29.06.040(d) states that "A boundary change effected (by a legislative action annexation) prevails over a boundary change initiated by local action." The Commission believes it would be arbitrary to reject this legislative review annexation recommendation, after the fact, for a reason that has no basis in existing law or public policy.

Concerned Citizens Against Annexation, a respondent to the City of Homer's annexation petition, has filed a judicial appeal that contests all the points stated in paragraphs three and four above. If the Commission's annexation recommendation is not in accord with law, its error will be remedied by judicial review.

Moreover, judicial review can address several important constitutional and legal issues (applicability of AS 29.35.450(c); truncation of terms; adequacy of the transition plan) raised about the Commission's decision. HJR 39 leaves these issues unresolved for the Commission, Legislature, future petitioners, and the public. While the Commission does not ordinarily welcome litigation, in this case judicial review may be the most appropriate venue to resolve concerns that legislators and annexation opponents have articulated regarding the City of Homer annexation petition.

This annexation petition has been one of the more contentious annexation proposals in forty-two years of statehood. In the end, it was judged on its merits according to the process established by Article X, Section 12 of Alaska's Constitution and implementing statutes. With that perspective in mind, the Commission believes that legislative disapproval of the recommended annexation (HJR 39) is unwarranted, as is the proposed constitutional amendment to Article X, Section 12 of Alaska's Constitution in HJR 18.

Cordially,

A handwritten signature in black ink, appearing to read "Kevin Waring", written in a cursive style.

Kevin Waring  
Chairman