

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10499 SENATE COMMUNITY & REGIONAL AFFAIRS 344

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.⁴⁵ 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.

⁴⁵ 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;

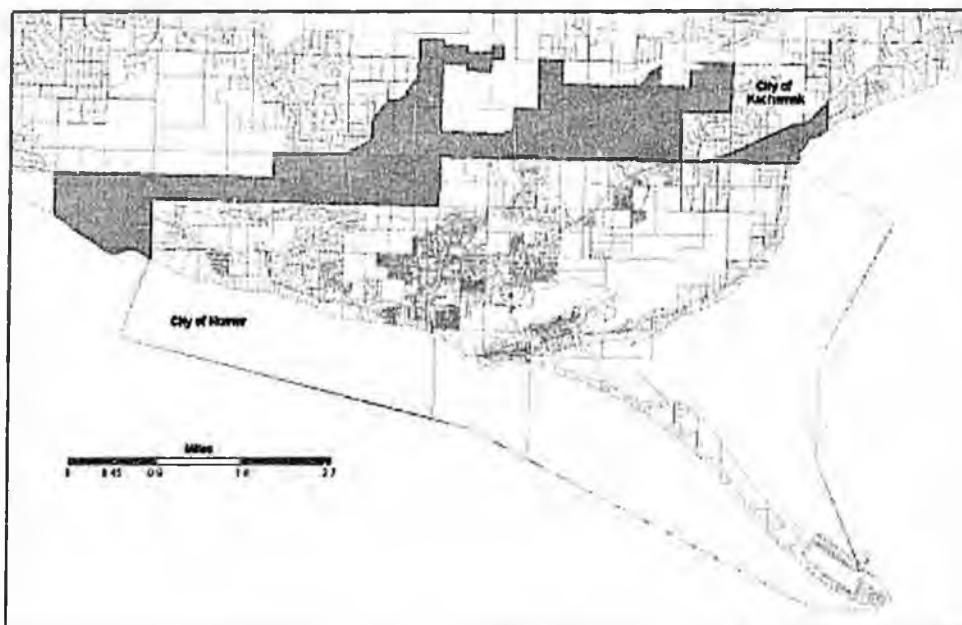
thence West along the line common to Sections 10 and 15 to the point of intersection with the centerline of the Right-of-Way of East End Road, said line being common with the Corporate Limits of the City of Homer;

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.



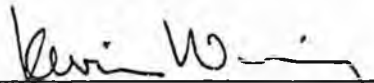
The Commission stipulates that, to the extent the 4.58 square miles approved for annexation to the City of Homer lies within the Kenai Peninsula Borough Road Service Area and the Kenai Peninsula Borough Kachemak Emergency Service Area, the annexed territory shall, under Article X, § 12 of the Constitution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

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.

②

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

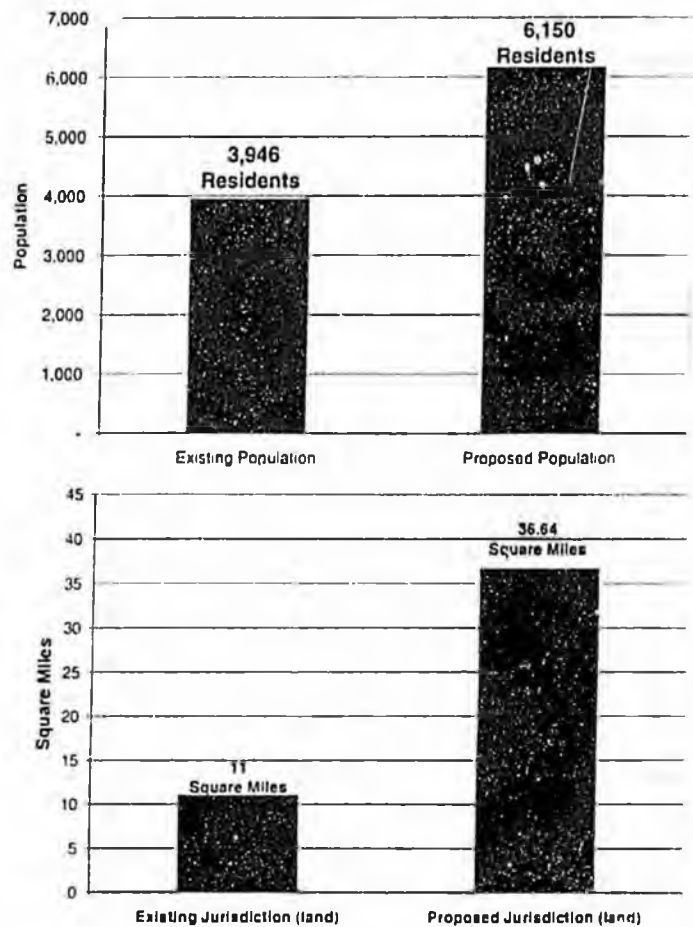
The Alaska Department of Community and Economic Development (DCED), which serves as staff to the independent Local Boundary Commission (LBC), has issued its Preliminary Report on the City of Homer's Petition to annex an estimated 25.64 square miles. DCED is required by law to prepare both a preliminary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



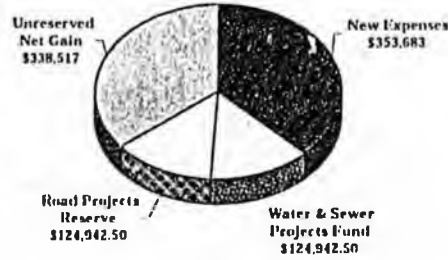
DCED also expresses concern that the City of Homer's annexation Petition would render the City of Kachemak an enclave surrounded by the City of Homer. The prospect of one city government surrounding another city government raises a number of fundamental public policy concerns.

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



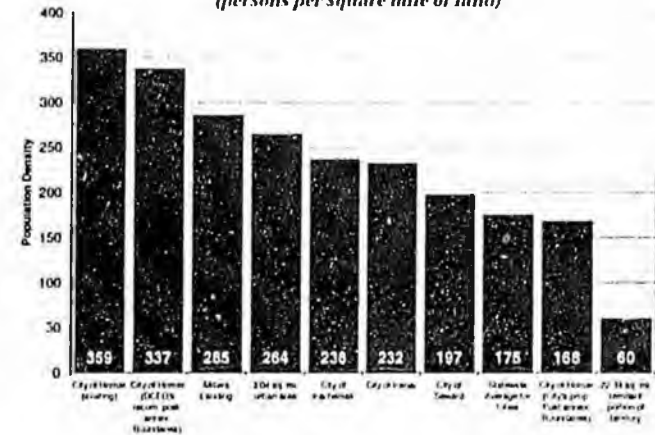
the territory petitioned for annexation has a population density of about 60 persons per square mile, roughly one-third of the average population density of Alaska's 146 city governments.

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.

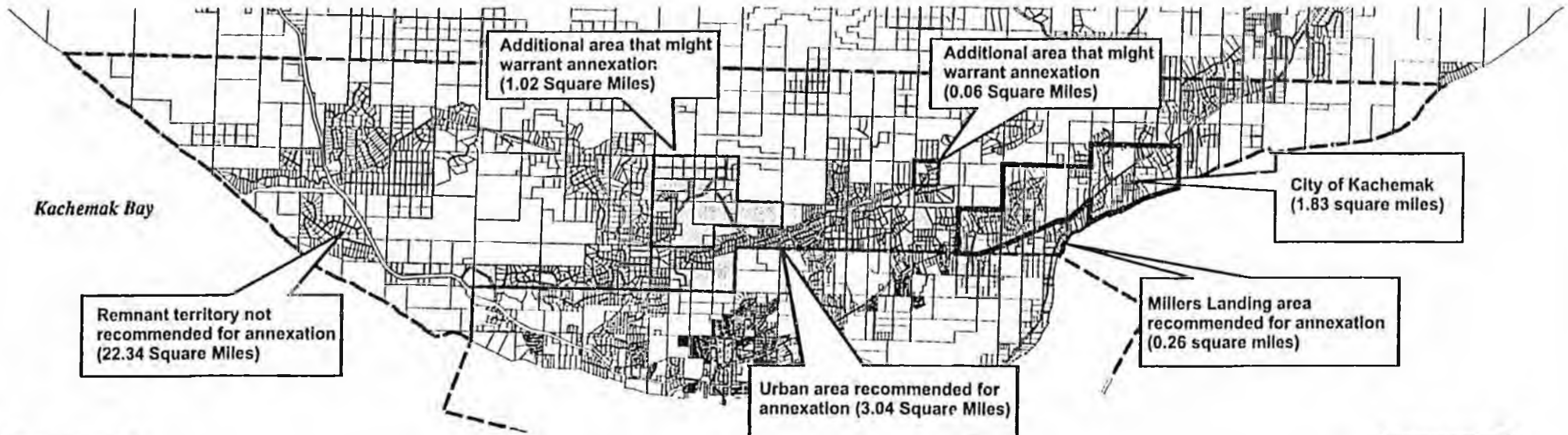
While stopping short of formally recommending that the City of Homer apply the projected unreserved net gain to property tax relief, DCED notes that the prospect of such is attractive for a number of reasons. First and foremost, it would achieve one of the implicit fundamental goals of the City with 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 period¹ 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);²
- 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.

¹ 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]).

² The Petition, fourteen Responsive Briefs, and Reply brief comprise thousand² 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 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Fax: 907-269-4539
e-mail: 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
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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

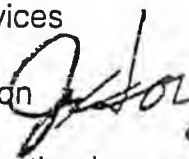
Session:

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"?¹
2. When will the City be required to hold elections to provide representation for the newly annexed population? ²
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?³
4. Who is responsible for ensuring that the City of Homer complies with the service expansions and funding they have proposed to the LBC?

¹ 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.

² 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.

³ 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
Kusilof Lowell Point Moose Pass Nunatak Nikolaevak Nintehik 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)

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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.¹ The current standards for annexation to cities are set out in 3 AAC 110.090 -- 3 AAC 110.150.

¹ 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

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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)² 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 reapportionment 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 legislature³ 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

² Now AS 44.33.812(a)(2).

³ 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
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Re: Authority of LBC to truncate terms

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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 29.20.130.⁴ 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.¹ 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.⁵ 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.⁶ With the ability of the

⁴ 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.

⁵ 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).

⁶ 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

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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

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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.¹ We accordingly hold that the Governor had the power to terminate Senate terms as incidental to his general reapportionment powers.²

¹ (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).

² (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 . . .³

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.⁴

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).

³ *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.⁵

... 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.⁶

... 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.⁷

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

⁴ *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).

⁵ *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).

⁶ *Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Commission*, 900 P.2d 721, 726 (Alaska 1995).

⁷ *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.⁸

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.⁹ 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.¹⁰

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

⁸ Port Valdez Co., Inc. v. City of Valdez, 522 P.2d 1147, 1155 (Alaska 1974)

⁹ (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.

¹⁰ (footnote original) See Mukluk Freight Lines, Inc. v. Nabors Inc., 516 P.2d 408, 415 n. 23 (Alaska 1973).

MEMORANDUM

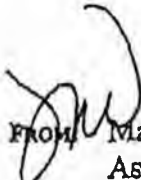
State of Alaska Department of Law

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.¹

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.² It is noteworthy that the City of

¹ 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.

² 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

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.³ 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.⁴

³ 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.

⁴ 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.⁵

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.

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.

⁵ 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.⁵ 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.⁷ When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city.⁸

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."⁹ This has application only where annexation takes place under the petition-election procedure¹⁰ which was the only means of annexation in effect prior to the time the state constitution became effective.¹¹ 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."¹²

⁵ (footnote original) Section 49-2-13 ACLA Cum.Supp.1957, supra note 8.

⁷ (footnote original) *In re Annexation to City of Anchorage*, 15 Alaska 504, 509, 129 F.Supp. 551, 554 (D.Alaska 1955).

⁸ (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).

⁹ (footnote original) SLA 1957, ch. 130 (§ 49-2-13, First, ACLA Cum.Supp.1957).

¹⁰ (footnote original) SLA 1957, ch. 183 (§§ 16-1-29-2^{an} ACLA Cum.Supp.1957).

¹¹ (footnote original) The state constitution went into effect on January 3, 1959.

¹² 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.¹³ 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.

¹³ (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

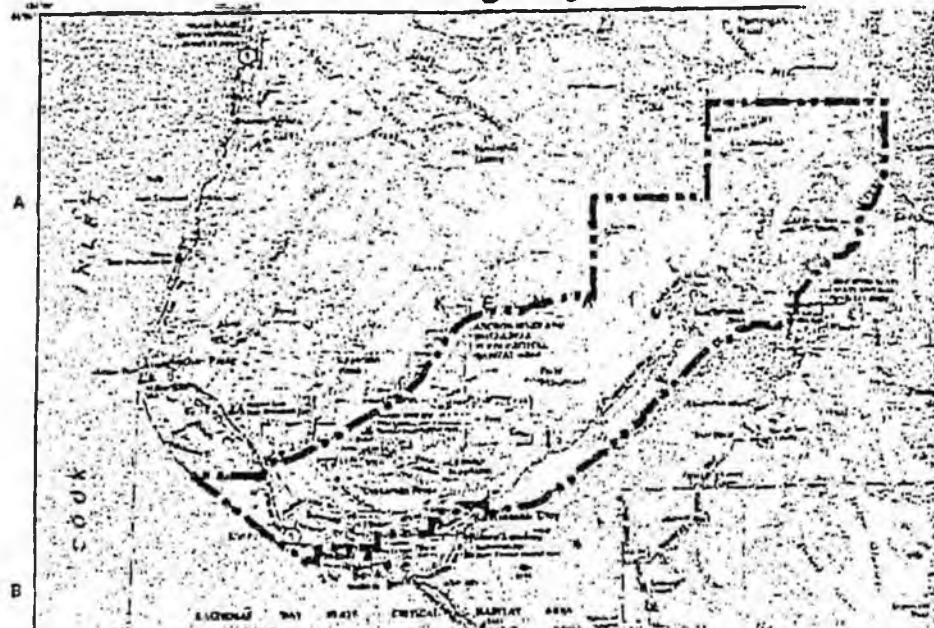
The City's transition plan was prepared prior to the creation of the Kachemak Emergency Service Area (KESA). KESA was created by the Kenai Peninsula Borough to provide fire protection and emergency medical services. As shown in Figure 4-AU, the KESA boundaries encompass all of the territory proposed 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:

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**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.

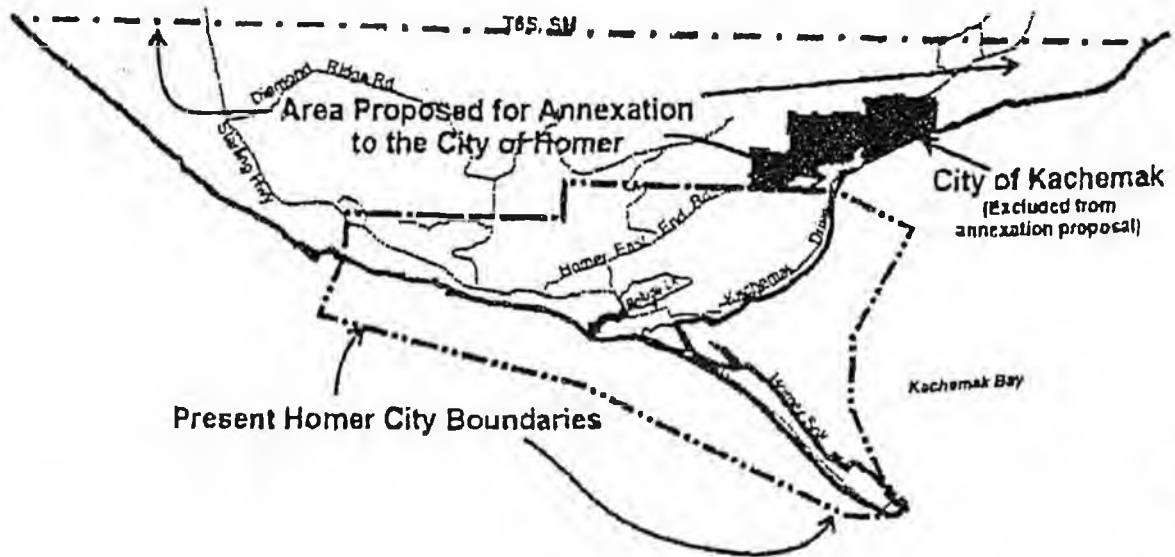
Appendix A provides a glossary of terms used in this report that have particular meaning in the context of the Homer annexation Petition.

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 Halibut Cove Homer Hope Kachemak City Kachemak Selo
Kasilof Lowell Point Moose Pass Nanwalek Nikolaevsk Ninilchik Port Graham Rauldona 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
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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

TBC

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 RECOMMENDA-
TIONS

• 1989 FAIRBANKS

RESOLVE

LBC Recommendations Rejected by the Legislature¹

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.

¹ Provided by LBC staff 1/15/2002

LBC Recommendations to the Legislature²

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.

² 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.

DETACHMENT

ANNEXATION +

ARTICLE 2

CHAPTER 6,

TITLE 29,

⑥

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

signatures affixed shall also be filed with the clerk of each city in the borough. (§ 5 ch 74 SLA 1985)

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)

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.

(b) A person who is a voter of the borough may vote in the election on the proposed charter.

(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

- (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) 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.

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)

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)

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.

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)

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 110.050. 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 44.33.814 AS 44.33.816	AS 44.33.822 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 4. STANDARDS FOR ANNEXATION TO BOROUGHES OR UNIFIED MUNICIPALITIES.

Section	Section
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)

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 110.170. 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)

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 44.334.812	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)

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 110.190. 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)

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	

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)

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 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)

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 110.230. 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