

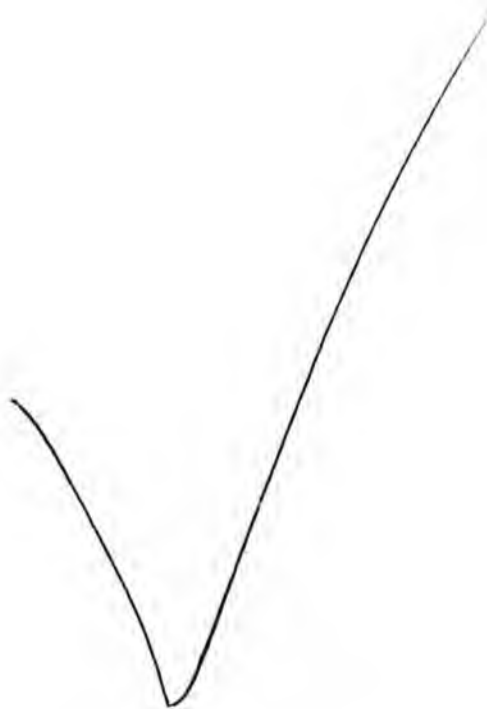
ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 00/2

10503 SENATE COMMUNITY & REGIONAL AFFAIRS

348

Results are reported by precinct and would provide useful data neighborhood by neighborhood. In city and out of city. Let's vote!

I don't believe the time has quite come for this annexation. By next year, after serious face-to-face discussions (perhaps facilitated by DCED) -- maybe. Forcing the parties to sit down together on a regular basis will get us restarted on working together. It is also within the realm of possibility that there are other and better solutions to the city dilemma. It would be a failure of policy-making imagination not to fully consider consolidation within a home rule borough. The direction, after all, in the state constitution is for regional government with local control of services without the added expense of supporting city governments. All annexations should be designed to be no impediment in the development of unified government.



Subject: annexation city of homer

Date: Sun, 10 Feb 2002 20:01:12 -0900

From: "grizzly" <grizzly@grizzlycharters.com>

To: <>

I would like to make a comment on the annexation the City of Homer is trying to get approved. As property owners we would much rather stay under the regulations of the borough and not the city.

My wife and I have lived here for 9 years and lived in the city limits until September of this year. We moved out of the city limits and bought a home with acreage on Westwood Ave. Plot 4 in the Westwood Estates subdivision which is now included in the annexation. We are also in the process of buying the adjoining lots. We have a newer home (1998) with a good well and DEC approved septic system. We have a pond for fighting fire (wild or home) and really don't need or use any of the city's convinces (library, fire dept., police, or city water and sewer).

My wife and I own three business in this area, Grizzly Charters (fishing charter with two boats)
Land Ends Marine (Kite sales and charters) and Grizzly Internet Services (web design and Hosting).

I don't agree with what the city is doing. I think if they want the land around the city reservoir they should buy it and not control it by annexation. If they don't want people out of the city limits using there library, fire dept., police then charge for the service. We will be happy to pay for an ambulance when that time comes.

We were against annexation when we lived in the city of Homer and haven't changed our minds now that we live outside the city.

Any Help you could gave us to stop this would be greatly appreciated.

Thanks

John & Jo Earls

Grizzly Charters

Lands Ends Marine

Grizzly Internet Services

PO Box 1664

Homer, Alaska 99603

toll free 888-948-4388

grizzly@grizzlycharters.com

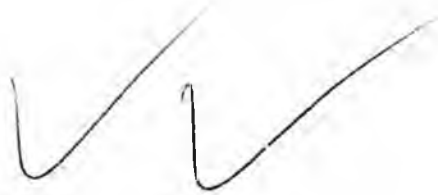
www.grizzlycharters.com/

www.alaskais.com/

webmaster@alaskais.com

www.grizzlyis.net

webmaster@grizzlyis.net



[Fwd: Annexation]

Subject: [Fwd: Annexation]

Date: Mon, 11 Feb 2002 12:23:53 -0900

From: Representative Drew Scalzi <Representative_Drew_Scalzi@legis.state.ak.us>

To: Mary_Jackson@legis.state.ak.us

Subject: Annexation

Date: Mon, 11 Feb 2002 11:02:42 -0900

From: "Deb Germano" <dgermano@acsalaska.net>

To: <Representative_Drew_Scalzi@legis.state.ak.us>

Senator Torgerson and Joint Committee,

Thanks for hearings on the important topic of Homer Annexation.

I have long been involved in Youth activities in the Homer area. I am frustrated with the discussion of where you live, in or out of the City before you can address whatever the issue is. I lived for many years outside the City but operated a business in the City and understand the frustration of the inability to vote on City issues that often affected the business community.

I wanted to express my concerns about both sides of the arguments.

I agree the City should have submitted a more realistic area for Annexation. I believe there should have been public hearings before the proposal was submitted. I do not agree with an area wide vote but as we see on a Statewide basis, who is willing to tax themselves? I applaud the work of the LBC work in coming up with a reasonable area.

I was unable to listen to the Sat hearing so I don't know what the Concerned Citizen group had to say, though I have a good idea.

I have talked with many people in the Homer area about Annexation. The main concern I hear is what this is doing to our community. We need to get past this and deal with the real issues.

The issue of representation seems simple, if the Annexation is approved those folks outside the area would be eligible to run for office and vote if they have met the residence of a City resident as an other current resident. They can't change the fact of their location and it seems Attorneys addressed that issue Thursday. I would expect to see some people run and be elected from the new area.

Some of the issues to me are issues like Local Improvement Districts. There is concern that small property owners can be left to pay for Utility extensions while large property owners can pay similarly and subdivide later. This would be a huge burden to some property owners. I have talked with the City about this and they understand the concern and say it is being addressed.

I want to move forward with Annexation also so we can deal with local recreation issues. We talk about improvements in facilities for our youth, let's get on with the conversation locally. It feels like Annexation has brought progress to a near stand still. We need to get past this for the good of the community.

I believe we need to put a good faith effort forward and if the City does not live up to its promises and deal with our local officials.

The opportunity to return to the LBC exists if the City does not meet its own proposals

I would like to see this Annexation approved so we can move forward to deal with the issues as a community.

Thank you,

Deb Germano

Subject: [Fwd: Homer annexation - PLEASE READ!]

Date: Mon, 11 Feb 2002 12:27:17 -0900

From: Representative Drew Scalzi <Representative_Drew_Scalzi@legis.state.ak.us>

**To: Mary Jackson <Mary_Jackson@legis.state.ak.us>,
Jane Alberts <Jane_Alberts@legis.state.ak.us>**

Subject: Homer annexation - PLEASE READ!

Date: Mon, 11 Feb 2002 09:27:57 -0900

From: Diana Sedor <dianate@alaska.net>

To: Representative_Drew_Scalzi@legis.state.ak.us

I know you've heard it all before, but I just have to get my two cents in and be officially on the record:

- I am not totally opposed to annexation. By looking at a map of Homer, the way the roads are laid out and the population distributed, it really makes sense that the areas currently selected for annexation should be part of the city. I live within that area.

- My tax increase will not be that significant ... not enough for me to get into a tizzy. However, being a part of the City of Homer, a government that I did NOT choose, did NOT elect and have no power over ... that is upsetting to me.

- If the City Council/City Manager had been forthright and honest, making public statements about the economic future of Homer, how desperately they need a bigger tax base, more grants, etc. in order to help the city grow, I would have accepted that. I have absolutely no problem with paying a little more in taxes to help. ✓

- The fact is that this area is becoming a retirement village. More and more people are buying homes down here after retiring from their jobs in Anchorage or Lower 48. They pay property taxes, but are only here during a few short weeks in the summer, so they contribute very little else to our economy. In my neighborhood, nearly half the houses are empty all winter, only used in the summer. It is still hard to find work in Homer, still hard to make a living and pay bills. The economic problems of this town should be addressed by bringing industry and employment here rather than annexing more and more people without justification.

- However, the City approached the annexation issue from a REPUGNANT public relations standpoint. They promised services that anyone with half a brain knows is IMPOSSIBLE for them to provide. I will NEVER see road service, water or sewer where I live ... or at least the city has yet to release any significant plan indicating how they could possibly do so. Instead, they repeatedly tell us, the to-be-annexed people, that we OWE THE CITY OF HOMER and that WE ARE NOT PAYING OUR FAIR SHARE! Councilman Rick Ladd actually got up at the public LBC hearing and said this. It is this approach that has riled and angered everybody involved, on both sides of the issue.

- By the way, some City Council members are saying the recent election and victory of pro- annexation candidates was proof that the people approve their plan. The fact is that the other candidates on the ballot were a pot head, a senile old man and a demented looney. Come on, this is Homer! The elections here are iffy at best. Besides, I think there was something like less than 20% voter turnout, which proves nothing except how apathetic and tired people are of all this BS.

[Fwd: Homer annexation - PLEASE READ!]

- Lastly, I just want to say that if annexation goes through and I become a resident of the City of Homer, then there HAS to be a new election. I just don't understand how LEGALLY and CONSTITUTIONALLY I can be taxed without electing my representatives? Isn't that what caused all those people to throw a bunch of tea in the harbor so many years ago? If we're annexed and don't get to have a voice, I hate to think what the people around here will think of to throw into the Homer Harbor.

P.S. One final thought from my personal perspective - I volunteer over 10 hours a week, 52 weeks a year, at the Homer Animal Shelter and doing animal shelter activities. My current pay rate (I work at South Peninsula Hospital) is about \$16/hour. If you equate that to my volunteer time, that's \$160/week or over \$8,000/year worth of my time that I provide to the City of Homer. Obviously I do it because I think it's important ... and there are many Homer residents who volunteer as well.

But the Homer Animal Shelter had to recently change its policy to ONLY accept/help animals from within the city boundaries because it simply does not have the staff, budget or space to handle animals from Anchor Point, and other outlying areas. The Animal Control Officer and Ron Drathman reached that decision this summer. Now, however, just a few months later, the annexation proposal will again open the shelter to a much larger area, a much larger population of animals, once again stressing the extremely limited capabilities of the shelter and its feeble staff.

THIS IS PERFECT EVIDENCE OF THE CONTRADICTION AND HYPOCRISY OF THE WAY THIS ANNEXATION PROPOSAL HAS BEEN HANDLED. I care about the animals and there is no doubt that they will suffer from this. It has already been evidenced in the cases of animal cruelty we have been dealing with. The Animal Control Officer is one person and she cannot handle the animal issues within the current city, let alone a growing city.

Thank you for keeping the record open ... I tried to get to the public testimony on Feb. 9, but was snowed in.

Diana Sedor
61511 Race Road
PO Box 1995
Homer, AK 99603
235-5177

Mon, Feb 11, 2002 12:38 PM

From: Daisy Lee <daisylee@xyz.net>
To: Senator John Torgerson <Senator_John_Torgerson@legis.state.ak.us>
Date: Monday, February 11, 2002 11:15 AM
Subject: Proposed Annexation

Dear Senator Torgerson,

Thank you for making it possible for those of us who were unable to get through the 4-6 foot drifts in our driveway on Saturday to testify now.

My 26 acres was in the original City of Homer's petition for annexation. The whole process or I probably should say LACK of due process for the people who were concerned both IN and OUT of the city bothers us as well as our many friends in other parts of Alaska.

The resulting polarity and the distrust of city officials would not have grown so high if they had been open about their dealings and taken the time to thoughtfully prepare the petition especially the area to be included. Grouping small subdivision lots with large acreages such as homesteads as in the case of Lawrence and Tapa Rogers certainly does not meet the standard of compatibility. This is not the sole standard that was not met.

Please do not endorse this lack of due process. It is not in the best interests of the people of the State of Alaska to fear that municipalities have the power to take actions that affect them so much and that they, as individuals, have to so little power to affect what happens to them.

Requiring separate majority votes of both the people inside the city and those outside the city should be required before approval. The situation in Homer certainly points out the need for changes in LEC procedures.

Thanks again for your willingness to listen to us.

Sincerely,

Daisy Lee Bitter
62479 E. Skyline Dr.
Homer, AK 99603-9301

*We just learned that this message did not go through on the above address which we obtained from the LIO. Please accept this FAX.
D.L. Bitter*

Please veto Homer's petition

Subject: Please veto Homer's petition

Date: Fri, 08 Feb 2002 09:07:14 -0900

From: Mary Griswold <mgrt@xyz.net>

To: Drew Scalzi <Representative_Drew_Scalzi@legis.state.ak.us>

Please veto Homer's petition for ~~annexation~~.

Homer filed an interest in expansion instead of a bona fide annexation petition, freely identified as a work in progress by city representatives. The city's petition may have been minimally legal but it was grossly irresponsible and profoundly disrespectful of the public process. The city never amended its petition after widespread public protest and DCED recommendations for a smaller area. The LBC should have sent Homer's petition back for refinement instead of accepting the DCED's efforts to create a real petition using the city's materials. The Alaska Administrative Code also allows the LBC to turn a legislative review petition into a local action petition if that would serve the community's and state's best interests. This option was never publicly reviewed.

The city proposed to annex 25 square miles of primarily undeveloped land, yet chose to exclude the 1.8 square mile neighboring community of Kachemak, some of whose residents enjoy more municipal services than some residents of Homer. The DCED felt it could not consider including this area because it was not in the original request.

The city does not have an adequate transition plan for assumption of services as required in 3 AAC 110.900 TRANSITION. There are significant questions relating to property tax accrual and allocation that should have been resolved before the petition was filed. The DCED recognized ambiguity in this matter in its Report to the Legislature 2000, but neglected to require consideration or resolution.

Homer is not facing a crisis. It is in the far better interests of all of us to allow for constructive dialogue among city and area residents and officials to guide the structure of our government. We have all learned a lot about government and municipal growing pains. The city has taken several steps since beginning this process to more responsibly allocate its resources, including policy changes in animal control and bulk water delivery. It is developing a master plan for water and sewer expansion and has hired a new planning director after over a year's vacancy. Please veto this annexation petition and let us participate in a public process for orderly expansion. Many of us are still willing to help even though we have been consistently rebuffed during the past two years.

Thank you. Mary Griswold P.O. Box 1417 Homer, AK 99603

Subject: Homer annexation

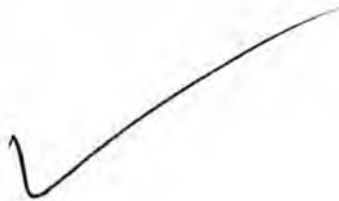
Date: Fri, 08 Feb 2002 12:24:15 -0900

From: Nancy Lord <nlord@xyz.net>

To: <Representative_Drew_Scalzi@legis.state.ak.us>

Hello Drew. I left a message with Pat but thought I'd e-mail as well. I appreciate you taking a close look at the annexation issues, but I hope that when you're done you'll agree that the annexation is the right and necessary thing to do. Maybe the city's process could have been better, but the people opposed to annexation I don't think would have been satisfied with any process or outcome other than status quo. I do think the Local Boundary Commission did an excellent job. As they've pointed out, Homer waited too long to grow its boundaries, and a lot of the pain and opposition is a result of that. But we need the annexation more than ever now to make things more equitable and to grow as a community. I hate to think of the consequences if the Legislature should disapprove the annexation. Thanks for all your work on this--

Nancy Lord



Subject: ~~homer annexation~~

Date: Fri, 08 Feb 2002 11:15:07 -0900

From: Dennis Leach <leach@homernet.net>

To: Representative_Drew_Scalzi@legis.state.ak.us

Dear legislators

I own three parcels of land, totaling five acres, in the proposed annexation area. I do not feel that the city of Homer has acted improperly in any way. I strongly SUPPORT the annexation. I want to have

the right to extend water and sewer lines to my property. I want to be able to call for emergency services and have response from Homer which is two miles away, not from Fritz Creek or beyond, (eight miles or more), which seems to be the long term intent of the emergency services area.

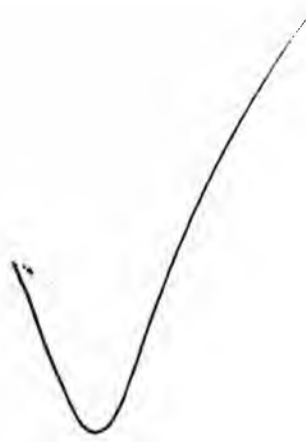
I want to support the library, museum, and harbor with my property taxes as well as sales taxes, as the citizens within city limits already

do and have done for years.

In recent history, state legislative decisions are resulting in less road maintainance, reductions in our school systems ability to educate, and pressured transfers of state owned and operated infrastructure, ie roads and harbors, to already struggling municipalities.

I am assuming that the State of Alaska is not planning to offer road, water, sewer, rapid response fire and emergency medical, library, or harbor facilities to me or anyone else in this area. Please do not stop the city of Homer from doing so.

Dennis F Leach
Po Box 1414
Homer Alaska
235-5649



Subject: Homer Annexation

Date: Sun, 10 Feb 2002 22:41:47 -0900

From: "Michael Hawfield" <hawfield@alaska.net>

To: <Representative_Drew_Scalzi@legis.state.ak.us>

Dear Representative Scalzi,

I was unable to attend the live testimony on Saturday, but I wish to strongly encourage you to endorse the report of the Local Boundary Commission and vote for approval of the annexation petition by the City of Homer.

I do not live in Homer (I am on the Old Sterling Hwy), but do work in Homer and do all manner of other business and cultural, educational, and recreational activities there. It is a highly valued part of my life and it is central to the healthy and vitality of this part of the southern Kenai Peninsula, indeed, of the overall peninsula. It is extremely important to me that the city be healthy, vital, and sustainable in every way, and this means, in the end, that the city has the financial foundations with which it may carry out its municipal functions. With the huge increase in population in the areas immediately adjacent to the city in the past decade, the demands put on the city to maintain its basic-services infrastructure and to sustain the region-wide services that it does (police, harbor, parks and recreation, cultural and human services, and the economic stability of the business climate) has become an intolerable strain and without expanding its tax base the city will surely falter and all will suffer.

Although nearly everyone is agreed (including several City Council members) that the process pursued by the city might well have been carried out with greater care for the input and sensitivities of those liable for annexation, the city is clearly within its right to petition for annexation, has made a convincing case that it should annex, and that it will be able to provide the expanded services necessary after annexation. Annexation is, as you are well aware, a normal (if often painful) process for urban centers as they grow and try to carry out good government in behalf of all citizens, even those beyond formal boundary lines. The LBC report is a masterfully and thorough testimony and has revised the city's original petition in ways that will make the proposed annexation strong and fair; it certainly assures that the greatest possible consideration has been given to the petition.

Thus, I strongly urge you to support the petition by the City of Homer to annex according to the particulars outlined in the report of the LBC.

Thank you for your hard work in our behalf

Michael Hawfield

Mile 3.5 Old Sterling Hwy

PO Box 2609

Homer, AK 99603

907 235-6078



homer annexation

Subject: homer annexation

Date: Sun, 10 Feb 2002 17:22:43 -0800

From: "W." <william.slone@acsalaska.net>

To: <Representative_Drew_Scalzi@legis.state.ak.us>

I don't see enough of a compelling reason, financial or otherwise, for the city of Homer to force annexation on its surrounding area. If the potential annexees are satisfied with their current level of services, then the city has no justification for forcing itself upon them.

W.L.Slone

Homer



Alaska State Legislature
Public Opinion Messages

Mako K Haggerty,
Po Box 2001
Po Box 2001
Homer, AK 99603
Phone: -
E-mail:

Constituency: C
Distribution: 12
Affiliation:
Reg Voter: Y

Subject/Bill BOUNDARIES

I have lived outside the Homer City limits for the twenty years I have called Homer my home. Please support annexation so I can help support my town. Please support annexation so this community won't have to suffer another move to annex in a year or two from now.
Date Sent: 02/11/2002

Michael A Lemay,
57480 Clover Ave
57480 Clover Ave
Homer, AK 99603
Phone: -
E-mail:

Constituency: C
Distribution: 12
Affiliation:
Reg Voter: Y

Subject/Bill BOUNDARIES

I live in the original 25 mile area but my property has now been deleted. I'm still opposed in particular to the Miller's Landing area. I listened to the City Council's testimony and they attested they were simply after the tax money without there being commensurate services delivered.
Date Sent: 02/11/2002

Mrs. Georgina Weaver,
PO Box 1312
Homer, AK 99603
Phone: -
E-mail:

Constituency: C
Distribution: 12
Affiliation:
Reg Voter: U

Subject/Bill BOUNDARIES

I'm opposed to the Homer Annexation. I do not live in the proposed area to be annexed.
Date Sent: 02/11/2002

David F Becker,
Po Box 109
Po Box 109
Homer, AK 99603
Phone: -
E-mail:

Constituency: C
Distribution: 12
Affiliation:
Reg Voter: Y

Subject/Bill BOUNDARIES

The Kachemak Emergency Service Area will be negatively impacted by the annexation and it's contrary to recently passed law to change it without a vote. Process was flawed without public input in terms of voting on the proposal. The city should be required to resubmit proposal based on the 84 percent reduced area.
Date Sent: 02/11/2002

**Alaska State Legislature
Public Opinion Messages**

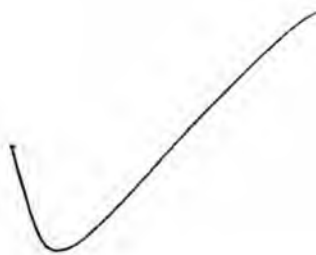
Michael D Ryan,
Po Box 726
Po Box 726
Homer, AK 99603-0726
Phone: -
E-mail:

Constituency: C
Distribution: 12
Affiliation:
Reg Voter: Y

Subject/Bill BOUNDARIES

I strongly oppose annexation. This council belongs to the free lunch crowd. Cowards willing to take what another man has worked for. Ravens on a gutpile without care or concern how it impacts many lives against their will. No one has stood on our behalf. Please consider doing so now. Thanks.

Date Sent: 02/11/2002



Subject: Homer Annex

Date: Sat, 09 Feb 2002 10:18:49 -0900

From: Steve and Claudia <gandh@xyz.net>

To: <Representative_Drew_Scalzi@legis.state.ak.us>

To Drew Scalzi-

I currently live in the proposed area to be annexed and have lived in the area outside city limits for 14yrs. I am against annexation for several reasons. By allowing annexation other Alaskan cities will be encouraged to "grab" outlying areas for increased revenue. Also, the process has divided and angered many people. The services the city claims to have provided for "free" to those of us outside the city are mainly the library and Parks and Recreation. User fees could easily subsidize these services. People outside the city contribute to the city in many ways without the benefits of the city. Volunteers for the fire dep., radio station, Hospice....etc. live outside the city. Sales tax also more than covers services provided to "outsiders". The city needs to provide better services to its own residents before expanding. Finally, if annexation is approved please require all council members and the mayor to vacate their offices and hold new elections.

Thank You

Steve Glasman
Box 2000
Homer, Ak 2000
907-235-9042

61500 cottonwood



Subject: annexation hearings

Date: Sat, 9 Feb 2002 12:08:41 -0900

From: "Rich Kleinleder" <leder@xyz.net>

To: <Representative_Drew_Scalzi@legis.state.ak.us>

Hi Drew,

9 Feb 2002

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

I was going to go into the LIO this morning to testify on the annexation issue but I am snowed in! So please accept this brief memo as my input. I would really appreciate it if you could forward this to the other members of the committee. Thanks!

Rich Kleinleder, P.O.Box 367, Homer, AK 99603

235-8702, leder@xyz.net

Testimony regarding the annexation proposal by the City of Homer:

I live in the Bluff Point subdivision, an area that was included in the City's original request but was excluded from the Boundary commission's recommendation. I am very disappointed that we were left out of the annexation area. Why? Because whenever anybody asks us where we live, we say "Homer". Not "outside Homer". The reason we bought land and built our house where we did had everything to do with the view and the neighborhood and nothing to do with trying to avoid taxes and land-use regulations. Our house may be a mile over the line but our "home" is squarely in the middle of Homer. The sense of community is very strong in Homer, as anyone who has watched his neighbors rally around in time of crisis can attest, and being willing to support that community financially is not only a responsibility but also a point of pride. I work hard for a living and enjoy deciding how to spend my money as much as anyone. However, I am one of those very odd ducks that does not mind paying my fair share of taxes for government services. The City of Homer does a lot of essential, little noticed but very valuable things for my neighbors and family and I appreciate it enough to be willing to contribute in a regular way.

The most important issue to me is not taxes or services. It is representation. I've heard a lot of complaints that annexation is unfair because the people being

annexed don't get to vote. I have some sympathy for that concern because that is the way I feel about it every time there is a City Council election. I don't get to vote because I happen to live over the line, even though the issues the council works on are vital to my well-being. Every time I want to testify before the council I have to remind them, and everyone else, that I don't live in the City. They listen and accept my comments but I always feel that my views are somehow less valuable than those of a resident. And why shouldn't they be. I am not really one of their constituents. Furthermore, there are a lot of bright, talented people in our community who would be willing to serve their neighbors on the City Council and various committees but are precluded from that contribution because of an artificial line on the map. So I want fair representation. Annex me!

Thanks for your time in considering this issue. I urge you to let the annexation proceed. I will not be lucky enough to be brought into the fold this time but I'll be here for the next logical extension of Homer's boundaries.

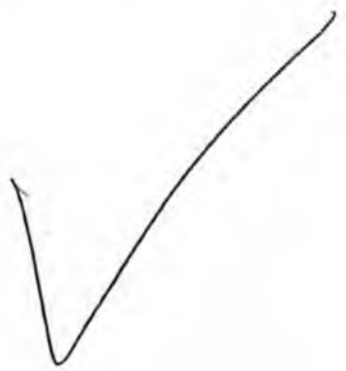
Rep, Drew Scalzi
Rm 13
Fax 907 465 3472

Subject Homer Annexation

My wife Paula and I are very much in favor of the plan of annexation as it is currently proposed by the Local Boundary Comm.!!!!!!!!!!!!!! It makes good sense and will in time save all involved money. Please support the City on this!

Brad and Paula Dickey
1137 Seabreeze Ct
Homer Ak
fax 235 7953 ph 235 7934 e mail bdickey449@AOL.com

Thank you!
Brad



February 11, 2002

Representative Drew Scalzi

Re: Homer Annexation

Good Morning Drew,

Debated phoning, but know how busy you are. Hopefully you'll have time to scan these thoughts, which are, I think, clearer than those expressed Saturday.

As you know, we were dumped on Friday night by 2 ft. + snow. There were many folks who were not able to testify because of that. You will be hearing from many of them via email or FAX. I was amazed at how many did make it, and the excellent comments expressed.

In my comments, I said I was a part of the greater Homer Community. As you well know, that greater community, including the City of Homer, has traditionally worked together. We knew we had no representation on the Council, they knew that too, but respected our contributions (via doing business there and paying sales tax, volunteering, etc.) to the community and extended the courtesy of listening to us. As Leroy Crumm stated, it was a symbiotic relationship.

Sadly, this petition, and the way it has been handled, has badly wounded that special relationship. To now approve the annexation will not generate healing, but only foster more resentment. For true healing to occur, it all needs to be turned down and the city required to go back and start over. People need to be treated with respect. If the City would extend the same methods as used for the Beach Task Force, or the Bridge Creek zoning, it would bring people on board and give them ownership. And that is needed. (And I've begged for that since day one!)

I understand and empathize that you seek a win-win solution to this situation. But, because of the way this has all been handled, I do not believe that is possible. There are simply too many greater ramifications.

Yes, the city has followed the letter of the law. But, is it morally right? We both know the answer is no. My other big concern is the precedent that would be set by approving this annexation now. You will be encouraging land grabs by other municipalities. Is that truly in the State's best interest? Again, I think we know the answer is no. In a way the LBC has set a bad example too, in that I think they should have required a new petition based on the smaller area they were willing to accept. Again, what they did was within the law, but was it right?

Drew, please, support a resolution opposing the Homer annexation.

Sincerely,



Milli Martin

*I will be home most of day. If any questions
235-6652*

W. J. Marley, D.D.S.
183 W. Bayview Ave.
Homer, Alaska 99603
(907) 235-8987
FAX: (907) 235-8517

Feb. 10, 2002

Representative Drew Scalzi

Dear Sir:

We would like to state that we are abundantly in support of the annexation proposal as set forth by the Legislative Boundaries Commission (LBC) for the City of Homer. In our opinion the issue is clear and very justified.

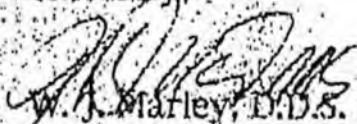
Although it may be stated by a small vocal group that their democratic rights have been abridged, it, nevertheless, appears to us that there have been endless opportunities for those concerned to express themselves through legal channels as well as the LBC's laborious, considerate process. Conceptually, it is very hard to perceive how an area to be annexed could have the exclusive vote to that process. The only real alternative to the annexation process would be to have a multitude of very small communities with commensurate governments and services in a geographic area which would ultimately be destructive to the whole concept of community as well as its efficiencies.

Homer has changed greatly in the 35 years that we have lived here and will certainly continue to change in the future.

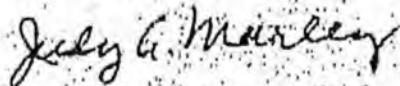
While many things about the annexation process could have been less disturbing, nevertheless, it is extremely doubtful that the final conclusion would be one bit different if the process were to take place again. If it is not appropriate now to annex this area then when will it ever be?

But, the City of Homer must also recognize that while there are certain advantages to the annexation of the 4.57 square miles to the City there are likewise responsibilities that the City will have to the newly annexed area. In particular are the areas of sewer, water and roads.

Sincerely,



W. J. Marley, D.D.S. and Judy A. Marley



2/10/02

Dear Representative Drew Scalzi,

I am writing you to express my opinion against the City of Homer's annexation proposal. I was unable to attend the public comment period due to weather and family responsibilities. I am a resident of Diamond Ridge Road. I was originally included in the City of Homer's annexation proposal. The manner in which the annexation process was initiated was secretive and undemocratic. The lack of transparency and large area of land involved concerned me.

The state laws governing annexations need to be changed to protect all interested parties in the annexation. The current state rules allow for cities to conduct annexation proceedings in poor faith. This violates the rights and personhood values of rural residents around the state of Alaska.

The idea of local governments is sound but our democracy is not perfect. One can influence local government to suit their own personal interest. I am concerned that this is taking place in Homer. The city of Homer has conducted itself in a irresponsible way. They have limited economic growth by not taking advantage of all resources and economic activity available. The over reliance on the visitor industry and adversarial attitude to other economic pursuits has created the City of Homer's financial problems. While the state of Alaska shared the oil money of the past, it allowed the City of Homer to develop spending habits not supported by the local commerce.

I think the City of Homer's current annexation is a way for the city to access wealth not provided in the local economy but money made on the North Slope, Bering Sea, or other industrialized areas of the state. Many families in the area work away from the Homer area. When the state of Alaska will not subsidize the spending habits of the City of Homer, it will get to wealth through taxing the greater residential area. I do not think that it is good government to allow unsound financial practices. If the City of Homer doesn't want to develop all resources available to them that is fine. But they should change their spending habits to allow for the reduction in revenue.

The City of Homer has influenced other government bodies in the past by restricting access to resources in the greater area and limiting the economic development of the southern Kenai Peninsula.

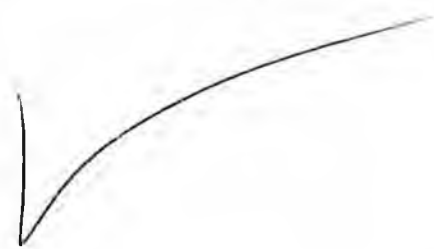
The City of Homer has lobbied successfully against the development of state and federal resource development. The state of Alaska's buy back of timber land on the south side of Kachemak Bay to create a Park, the cancellation of Cook Inlet oil and Gas leases, and the recent cancellation of on shore state Oil and Gas leases for exploration are a few of the City of Homer's activities that has caused the State of Alaska to lose large economic benefits.

I ask the legislature to reject the City of Homer's current proposal and amend the state laws that govern annexation. The current annexation system doesn't provide for a democratic vote, or a positive problem solving environment to create good public policy. The current system that allows a city to conduct itself in an antagonistic manner and should be changed.

Thank You for considering my needs,

Sincerely,

Mark Restad
PO Box 2744
Homer, AK 99603 (907) 235-1294



Feb 10, 02

Dear Representative Scalzi,

Thank you for hearing the concerns of your constituents in the Homer area. I am writing to strongly oppose the Homer annexation proposal. I am quite familiar with the laws, the boundary commission, and arguments on both sides. I agree with the statements you have heard from representatives of CCAA, and in general would like to emphasize my concerns on the following points.

First, it is plain disrespectful for any governing body to attempt to procure land for the city without regard for those residents' desires. In spite of any law allowing for annexation, it does not show community spirit or respect for one's neighbors to forcibly annex residents of the surrounding area.

Second is the question of the Alaskan way of life and what that means to different people. It should be possible for those who choose to maintain an old Alaskan lifestyle to do so in some areas. If the City of Homer should extend our boundaries to include our home on Diamond Ridge, it WOULD affect our way of life. We, like others, bought land outside the city limits intentionally, based on our lifestyle and goals. We prefer to provide our own well and sewer, and we are very happy with the road maintenance provided by the state and borough. We are willing to pay user fees for library, etc. should that prove to be an actual economic burden on the city.

It seems to me that as people move to Alaska from other parts of the U.S., they unmeaningly bring along the ways of these other places and try to implement them. I feel this is happening now.

If annexation seems to be a wise move, at least, please give those of them in the proposed area the vote regarding joining or not joining the municipality. It is the only ethical, fair thing to do.

Thank you.

Sincerely,



Ann Restad, PA-C
64575 Diamond Ridge Road
P.O. Box 2744
Homer, AK 99603
(907)235-1294

9

LBC ADDITIONAL
MATERIALS 2-5-02

REMARKS DATED
2-7-02

MAP - LAND USE
HOMER AREA

**Remarks to the Senate and House Community & Regional Affairs
Committees of the Second Session of the 22nd Alaska Legislature
February 7, 2002 – 8:00 a.m.**

**by
Kevin Waring, Chair, Local Boundary Commission**

Introduction

Good morning. I am Kevin Waring, Chair of the Local Boundary Commission. I appreciate the opportunity to address you in person. Another member of the Commission, Allan Tesche, of Anchorage, from the Third Judicial District is with me today.

The other sitting member of the Commission is Ardith Lynch, of Fairbanks. She is appointed from the Fourth Judicial District. Other commitments prevented her from being here today.

At this time, there are two vacant positions on the Commission. One is the designated seat for the First Judicial District – Southeast – and the other is the seat for the Second Judicial District – Northern and Northwestern Alaska.

Annual Report Filed

The Local Boundary Commission filed its annual report with the Legislature on January 23rd of this year. A copy was provided to each member of the House and Senate. The Commission's report addresses three principal areas.

- Chapter 1 provides an overview of the Commission;
- Chapter 2 summarizes the Commission's activities last year along with pending proposals; and
- Chapter 3 discusses several important public policy issues concerning local government in Alaska.

I will speak briefly about those topics, recognizing that the Committee wishes to focus its attention today on the Commission's recommendation for annexation of 4.58 square miles to the City of Homer.

Overview

Alaska's Constitution established the Local Boundary Commission to ensure that proposals to create cities and boroughs or alter their boundaries would be dealt with objectively and from a statewide perspective.

The Commission's responsibilities include judging proposals for:

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

- reclassification of cities;
- dissolution of cities and boroughs; and
- merger and consolidation of cities and boroughs.

The Commission has other powers and obligations established in law, including a duty to make studies of local government boundary issues.

The Commission has five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed at-large and serves as chair. The Governor appoints members for overlapping five-year terms. Members serve at the pleasure of the Governor.

Commission members donate their time as a public service. We receive no compensation for the time we contribute to Commission activities.

The Department of Community and Economic Development provides staff support to the Commission.

Boundary Decisions During 2001

The Commission met fifteen times in 2001. To minimize costs, the Commission tries to deal with several issues at each meeting, and conducts meetings by teleconference when practical.

Collectively, Commission members spent many hundreds of hours reviewing and analyzing documents filed in proceedings and on other Commission business.

During 2001, the Commission approved proposals for:

- consolidation of the City of Ketchikan and the Ketchikan Gateway Borough;
- consolidation of the City of Fairbanks and the Fairbanks North Star Borough;
- incorporation of the City of Talkeetna as a home rule city; and
- annexation to the City of Homer.

Voters in Ketchikan and Fairbanks did not approve the consolidation proposals.

Talkeetna residents will decide by local election on March 19 of this year whether to incorporate the City of Talkeetna.

Finally, the Commission approved an annexation to the City of Homer, after reducing the area to be annexed from the City's proposed 25.64 square miles to 4.58 square miles – about one-sixth of the area originally sought by the City.

The Commission has presented its formal recommendation to the Legislature for the Homer annexation under Article X, Section 12 of the Constitution of the State of Alaska. As provided by the Constitution, "The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house."

Also, in April 2001, following the Commission's approval in 2000 of a city incorporation petition, Adak residents voted to incorporate as a second class city.

Historically, Commission decisions have frequently been challenged by litigation. Thus, I am pleased to report for the fifth year in a row that there is no outstanding litigation of any Commission decision.

Changes to the Regulations of the Local Boundary Commission

During the past two years, the Commission has worked to update and revise its regulations in Title 3 of the Alaska Administrative Code. The last comprehensive review of the Commission's regulations occurred more than ten years ago. Since then, there have been many changes in State statutes that govern the Commission. The regulatory changes proposed by the Commission also address ambiguities in current regulations and streamline procedures for non-controversial proposals. The Commission has also proposed a new requirement for a local public hearing on legislative review annexation proposals before they are submitted to the Local Boundary Commission.

The Commission held public work sessions on the proposed changes in April, May, June, and October 2000. Last year, the Commission published notice of the proposed revisions to the regulations and invited public comment. The Commission held two public meetings last year on the proposed regulations.

In July, the Commission approved proposed regulatory changes and they are now undergoing final review by the Alaska Department of Law.

Pending Activities of the Commission

Several petitions are now pending before the Commission:

- consolidation of the City of Haines and the Haines Borough;
- dissolution of the City of Skagway and concurrent incorporation of a Skagway Borough; and
- annexation by local action of 314 acres by the City of Wasilla.

Introduction to Policy Issues

Next, I will turn to three public policy issues that the Commission raised in its Report to the Legislature. In raising these issues, the Commission is fulfilling its duty to address local government boundary problems.

These issues concern:

- the unorganized borough's failure to meet constitutional requirements, and existing disincentives for borough incorporation and annexation;
- ambiguity in State law about the authority of newly-incorporated municipal governments to levy property taxes during the initial assessment year after incorporation and uncertainty over the authority of municipalities to levy property taxes in newly annexed areas during the initial assessment year after annexation; and
- the unintended adverse impact of AHFC's Small Communities Housing Loan Program on some municipal boundary proposals.

The Unorganized Borough's Failure to Meet Constitutional Requirements, and Existing Disincentives for Borough Incorporation and Annexation

As it has done previously, the Commission calls to the Legislature's attention to the fact that the unorganized borough as now configured does not conform to Alaska's constitution. Article X, Section 3 of the Constitution provides that:

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

In 1960, the Local Boundary Commission recommended to the Legislature that the Commission be directed by legislative resolution to divide the whole of Alaska into boroughs, organized or unorganized, and that its proposed division be presented to the next Legislature. Instead, in 1961, the Legislature implemented Article X, Section 3 by placing all unorganized regions of Alaska into a single unorganized borough.

From the outset, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests sought by the constitution. Today, the contrasts between various parts of the unorganized borough are striking. As now configured, the unorganized borough contains about 374,843 square miles, 57 percent of Alaska's area. It stretches in piecemeal fashion from the southernmost point of Alaska (at Adak) to 150 miles

above the Arctic Circle, and from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands.

The unorganized borough:

- encompasses portions of each of Alaska's four judicial districts;
- wholly encompasses eleven census areas;
- encompasses all or portions of nine state house election districts;
- wholly encompasses nineteen regional education attendance areas;
- encompasses all or portions of ten of Alaska's twelve regional Native corporations formed under the Alaska Native Claims Settlement Act;
- partly encompasses model borough territory for five existing organized boroughs; and
- wholly encompasses model borough territory for 19 unorganized regions.

Greater compliance with the Common Interests Clause of Article X, Section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions. Senate Bill 48 (*CSSB 48(FIN) am*), passed last year by the Senate and now in the House Community & Regional Affairs Committee, would accomplish this result. The Commission urges its consideration.

As part of this same issue, the Local Boundary Commission has for many years also called the Legislature's attention to the substantial disincentives that now deter borough incorporation and annexation.

The authors of the local government article of Alaska's Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable to assume the responsibilities of local government. The founders recognized that the Legislature would have widely divergent alternatives available to carry out its duty to prescribe methods for borough formation. Delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they recognized that, for success, a voluntary approach must be coupled with inducements to establish boroughs.

Instead, in the course of adopting worthwhile programs to meet local community needs, the Legislature has coincidentally created substantial disincentives to borough incorporation. These disincentives impede continuing development of borough government as envisioned by the framers of the Alaska Constitution. Senate Bill 48, which would reform state law governing borough incorporation and annexation of areas that are ready and capable of operating boroughs, would neutralize these disincentives. The Commission respectfully urges its consideration by the House.

Finally, Alaska statutes now authorize borough feasibility studies. Unfortunately, funds have never been appropriated for such studies. The Commission is aware of two regions that have recently stated an interest in conducting borough feasibility studies. Those are the Prince of Wales Island region and the Delta Greely region. The Commission recommends that the Legislature appropriate at least \$50,000 annually to facilitate local borough study efforts.

These issues are addressed in detail on pages 20 - 27 and page 32 of our annual report to the Legislature.

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

State statutes are unclear about municipal authority to levy property taxes during the period immediately following incorporation, boundary change, dissolution, and reclassification. Specifically, AS 29.45.110(a) and AS 29.45.120(a) do not clearly authorize or prohibit municipal governments that incorporate or change boundaries after January 1 to levy and collect property taxes in the area of change during that calendar year.

This matter is addressed in detail on pages 28 and 29 of the Commission's Annual Report. There, the Report also presents draft language for legislation to eliminate these ambiguities.

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

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

. . . all Borough residents inside and outside the City will lose their eligibility for rural financing if we consolidate, because our combined population will exceed 1600. This means paying up to 1% more in interest on housing loans after consolidation.

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

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

reasonable to suppose that the Haines consolidation would have been approved if the impacts on the housing loan program had been neutralized.

Last year, the AHFC Board of Directors adopted regulations that resolved this issue as it may affect merger and consolidation proposals, but did not address annexation and incorporation proposals. At this time, we continue to search with AHFC for a solution to the latter issues that will not adversely affect the finances of the State or AHFC.

Conclusion

Thank you. That concludes my prepared remarks. If you have questions on any of these matters, I will do my best to respond.



SUMMARY OF LBC RECOMMENDATION FOR HOMER ANNEXATION

(Prepared by Local Boundary Commission, February 7, 2002)

City annexations are a constitutionally-endorsed means of fulfilling the purpose of Article X, Section 1 of Alaska's Constitution at the community level:

... to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.

The City of Homer petitioned for annexation of 25.64 square miles. Instead, the Local Boundary Commission unanimously recommends annexation of 4.58 square miles to the City of Homer.

There are three elements to an annexation decision by the Local Boundary Commission:

1. the process defined by law and regulations;
2. the standards in law; and
3. the facts as documented in the official record of the proceedings.

1. THE ANNEXATION PROCESS WAS LENGTHY AND THOROUGH. ALL PROCEDURAL REQUIREMENTS WERE MET OR EXCEEDED.

Attachment A summarizes key steps in the Homer annexation proceedings.

2. COMMISSION DECISIONS ON CITY ANNEXATIONS ARE GOVERNED BY STANDARDS IN LAW.

The Commission's evaluation of city annexation proposals is governed by fourteen formal standards established in law. Generally, those standards relate to such factors as:

- Character of territory proposed for annexation
- Suitability of proposed boundaries
- Need for local government services
- Capability of local governments to provide needed services
- Broad public interest

Attachment B lists the fourteen standards applicable to city annexations, and their basis in statute and regulation.

3. BASED ON THE FACTS IN RECORD, THE COMMISSION FOUND THAT THE RECOMMENDED ANNEXATION OF 4.58 SQUARE MILES SATISFIED ALL LEGAL STANDARDS.

Some key background for the recommended annexation:

- The City of Homer's upland boundaries have not changed since its incorporation in 1964.
- Since 1964, the City of Homer's population has grown about four-fold. Greater Homer area's population has grown about ten-fold.
- The City of Homer now ranks 11th in population and 61st in terms of land area among Alaska's 146 city governments. After annexation, the City would rank 7th in population and 48th in terms of land area.
- The City of Homer already provides services used by residents of the area recommended for annexation: fire protection, EMS, library, parks and recreation, bulk water supply, water/sewer service to select areas, and transportation facilities (marine port, boat harbor, airport).
- Annexation will increase real property taxes in the annexed area by 2.75 mills and extend the city sales tax to it.

The record of the Homer annexation proceeding stands 14 inches high and weighs 35 pounds. It consists of

- the City of Homer's Petition;
- 14 Responsive Briefs;
- written comments on the petition by 168 parties;
- the City of Homer's reply brief;
- DCED's Preliminary Report and written comments on it by 32 parties;
- DCED's Final Report; and
- statements, testimony, and public comments made at the local public hearing.

In addition to the printed record, the Commission obtained first hand observations through a tour of the area proposed by the City for annexation by automobile and helicopter.

Based on its evaluation of the record in view of the standards in law, the Commission found that:

1. The 4.53 square miles proposed for annexation are similar in character to the City of Homer.
2. The proposed boundaries do not overlap boundaries of another city government or more than one borough.
3. The area proposed for annexation is contiguous to the City of Homer.
4. Annexation will not abridge or deny civil or political rights based on race, color, creed, sex, or national origin.
5. The area proposed for annexation does not include entire geographical regions or large unpopulated areas.

6. The population in the expanded boundaries approved by the Commission is large and stable enough to support the extension of city government.
7. The economy within the boundaries approved by the Commission has the human and financial resources to provide essential city services on an efficient, cost-effective level.
8. The City of Homer has provided a suitable transition plan for extension of City services.
9. The boundaries approved by the Commission include all areas necessary to provide essential city services on an efficient, cost-effective level.
10. The boundaries approved by Commission include only the existing local community, plus area for growth during the next 10 years.
11. The City of Homer can provide essential city services to the territory more efficiently and more effectively than the City of Kachemak or the Kenai Peninsula Borough.
12. The proposed annexed area needs city services, some of which are already being provided by the City of Homer.
13. & 14. The proposed annexation is in the broad public interest.

Finally, the Commission addressed two significant legal issues raised during the annexation proceedings:

1. **Application of AS 29.35.450(c) to LBC decisions.** The Commission concluded that AS 29.35.450(c), requiring voter approval for modification of certain service areas, did not nullify the Commission's authority to approve the annexation and alter affected service area boundaries. The Commission's conclusion is uniformly supported by Article X, Section 12 of the Alaska Constitution, AS 29.06.040(a), AS 44.33.812(3), four Alaska Supreme Court decisions (*Fairview v. City of Anchorage*; *Oesau v. City of Dillingham*; *City of Douglas v. City & Borough of Juneau, Lake and Peninsula Borough v. LBC*), the Department of Law, and Legislative Legal and Research Services.
2. **Truncation of terms of elected local officials.** The Commission declined to take the unprecedented step of truncating the terms of City of Homer elected officials, and requiring election of a new mayor and city council. Relevant facts the Commission considered were:
 - All Council members are elected and serve at-large; and
 - Terms of the Mayor and two Council members will expire in October 2002, two more Council terms in October 2003, and the last 2 Council terms in October 2004.

Moreover, the Commission noted the lack of statutory authority or regulations for truncation of terms of elected officials. The Commission's position is consistent with state and federal case law, and supported by the Department of Law, as well as the Legislative Legal and Research Services.

SUMMARY OF HOMER ANNEXATION PROCEEDINGS

- 03/13/00 – City Council adopted resolution authorizing petition to annex nearly 26 square miles (annexation was considered for several years and addressed at 4 Council meetings in 1999 and 2 in 2000; annexation opponents were unsuccessful in 3/13/00 bid to have superior court block adoption of resolution).
- 03/20/00 – City submitted petition to DCED (annexation opponents were unsuccessful in 3/19/00 bid to have superior court block submission of petition).
- 03/29/00 – Petition accepted for filing.
- 04/03/00 – Steps initiated for extensive public notice of petition.
- 04/17/00 – DCED met with various local groups to discuss annexation. DCED also met with local groups on four subsequent occasions (4/18/00; 5/02/00; 6/14/00; 8/24/00).
- 05/05/00 – Deadline for responsive briefs/comments on petition (time allowed was nearly 30% greater than that required by law). Fourteen responsive briefs and 168 letters received.
- 08/03/01 – At DCED/LBC direction, City Council held public work sessions to consider responsive briefs and comments before replying. City Council also held work sessions or special meetings regarding reply brief on 8/21/00 and 8/31/00. In addition, Annexation was also addressed at 15 other meetings of the Council in 2000 and at 12 meetings in 2001. The topic was also addressed at 11 meetings of City boards and commissions during 2000 and at 2 such meetings in 2001.
- 09/11/00 – City filed brief replying to 14 responsive briefs and 168 letters.
- 07/31/01 – DCED conducted two public informational meetings in Homer.
- 10/05/01 – DCED released preliminary report for public review – recommended reducing annexation to 3.3 square miles.
- 11/05/01 – Steps initiated for extensive public notice of 12/14/01 LBC hearing
- 11/06/01 – Deadline for comment on DCED preliminary report – 32 individuals submitted comments.
- 11/21/01 – DCED released final report – supports annexation of 3.9 square miles.
- 12/13/01 – LBC toured 26 square miles petitioned for annexation.
- 12/14/01 – LBC convened hearing in Homer – opening statements by 12 parties; sworn testimony by 5 witnesses, public comment by 63 individuals, closing statements by 12 parties.
- 12/15/01 – Hearing completed, LBC deliberated for 2 hours. Guided by 14 legal standards, LBC approved annexation of 4.58 square miles (3.9 square miles recommended by DCED, 150 acres added at request of property owners; and six parcels along Sterling Highway).
- 12/26/01 – LBC adopted 42 page statement explaining basis for decision.
- 01/16/02 – LBC asked to reconsider its decision by 7 individuals or organizations.
- 01/17/02 – LBC denied requests for reconsideration.
- 01/23/02 – LBC presented recommendation for annexation to Legislature.

SUMMARY OF LEGAL STANDARDS GOVERNING ANNEXATION TO CITIES

1. The territory proposed for annexation must be similar in character to the annexing city. (3 AAC 110.100)
2. The proposed expanded city boundaries do not overlap boundaries of another city government or more than one borough. (3 AAC 110.130[e])
3. The area proposed for annexation is contiguous to the annexing city. (3 AAC 110.130[b])
4. Annexation will not abridge or deny civil or political rights based on race, color, creed, sex, or national origin.
5. The area proposed for annexation does not include entire geographical regions or large unpopulated areas. (3 AAC 110.130[d])
6. The population in the expanded boundaries is large and stable enough to support the extension of city government. (3 AAC 110.120)
7. The economy within the expanded boundaries has the human and financial resources to provide essential city services on an efficient, cost-effective level. (3 AAC 110.110)
8. The annexing city has provided a suitable transition plan for extension of city services.
9. The expanded boundaries include all areas necessary to provide essential city services on an efficient, cost-effective level. (3 AAC 110.130[a])
10. The expanded boundaries include only the existing local community, plus area for growth during the next 10 years. (3 AAC 110.130[c])
11. The annexing city can provide essential city services to the territory more efficiently and more effectively than another existing city or organized borough. (3 AAC 110.090[b])
12. There is a need for city government in the territory approved for annexation (3 AAC 110.090[a])
13. Annexation is in the balanced best interests of the state, territory proposed for annexation and affected local governments. (3 AAC 110.140)
14. The proposed annexation is in the broad public interest. (AS 29.06.040[a])



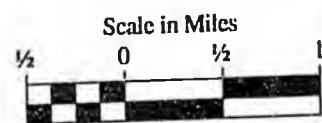
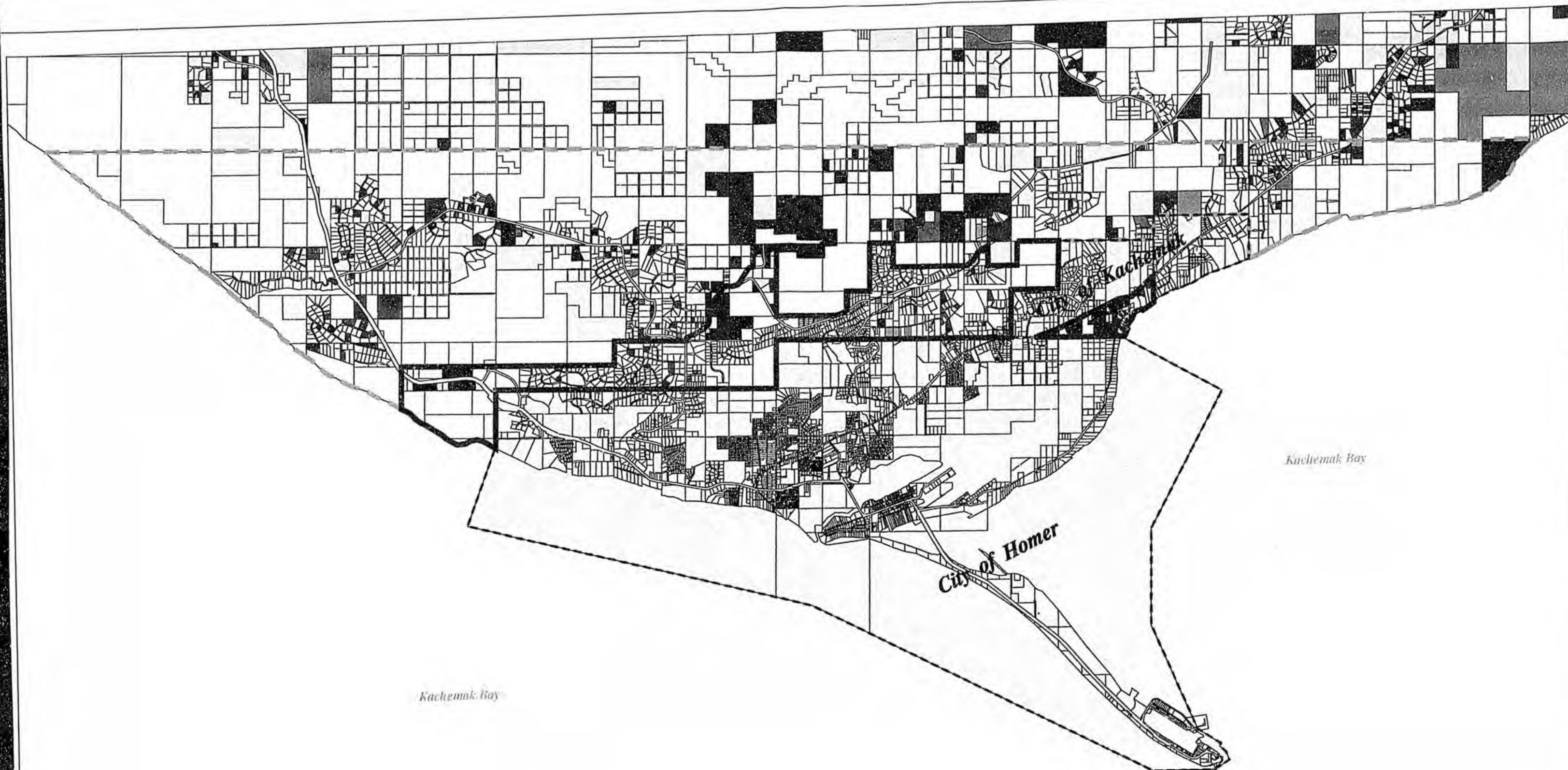
Legend

- Homer City Limits
- - - - Kachemak City Limits
- Proposed Annexation Area

- DCED Recommended Annexation Area
- ▨ Area Added to DCED Recommendation by Local Boundary Commission

Scale: 1" = 1 Mile

**AERIAL PHOTO (1999) SHOWING 4.58
SQUARE MILES RECOMMENDED FOR
ANNEXATION TO THE CITY OF HOMER
AND ADJOINING AREAS**



Legend

- | | | | | | |
|---------------------|--------------|---------------------|--------------|-----------------------------|--------------------------|
| Vacant | Tidelands | Accessory Buildings | Churches | Industrial | City Limits |
| Residential | Commercial | Institutional | Gravel Pits | School | Proposed Annexation Area |
| Recreational/Cabins | Mobile Homes | Farm/Agriculture | Parking Lots | Recommended Annexation Area | |

**LAND USE CHARACTERISTICS
 OF 4.58 SQUARE MILES RECOMMENDED
 FOR ANNEXATION TO THE CITY OF HOMER
 AND ADJOINING AREAS**

Errata Sheet – Homer Annexation

1. Please correct Table Of Contents #3:
 - a. LAA 1/29/01 to read 1/29/02
2. You are receiving a separate blue binder with information from the City of Homer.
3. We will hand out the public comments later; we are still receiving faxes, emails, etc. on that and will hand them out for insertion in **Section 8**. (Public testimony is on Saturday)
4. We have two different sets of table of contents. Some of the folders have 10 and some have 15. Please provide the Legislator with the "10" binder – it is easier to read the table of contents section.
5. The LBC sent this office some inserts regarding SB 48 that they wanted handed out. I have not done that because we have not noticed SB 48 for any hearing before this joint committee. Thus, there should not be any discussion regarding that bill and I have advised the LBC staff accordingly.

for binders passed out on Tuesday

1. PLEASE INSERT the information from the LBC, listed below & attached:
 - Remarks to the Senate & House C&RA Committees ...
 - Local Boundary Commission – Summary of LBC Recommendation
 - map¹ (place it in the clear sleeve with the other one)

Please Insert in **Section 9** – LBC Additional Materials 2/5/02

and note on your table of contents.

2. Please insert the Comments from CCAA in **SECTION 8**.

Mary Jackson
Senate CRA Committee
2/6/02

¹ The LBC sent two maps. But ... we did not receive enough copies of either of the maps from the LBC! We have tried to make certain that the legislator's binders have both maps – when we receive more maps, we will hand them out to the staff.

Subject: SJR34

Date: Mon, 18 Feb 2002 20:07:29 -0900

From: Mary Griswold <mgrt@xyz.net>

To: Senator_John_Torgerson@legis.state.ak.us

Dear Senator Torgerson,

Thank you for your efforts on our behalf.

I would greatly appreciate your continued leadership in collecting support for SJR34 disapproving Homer's annexation petition. I support orderly municipal expansion and offered to serve on a committee to develop a good approach for Homer when the city council directed its manager to devise a plan and time line two years ago. The manager told me he would prepare a plan for the public to review. Unfortunately we never got to review any plan. Instead, the city filed its petition with the LBC. You have heard the rest of the story.

I accept legislative review annexation, but I do not accept annexation without an opportunity to participate in the planning process. Please let us have a voice in determining the direction of our local government. The new LBC regulations will require this opportunity before any future annexation petitions can be filed as a result of Homer's rebuff of the public process. I am still willing to help Homer grow in a responsible manner if you will give me the chance.

Thank you,

Mary Griswold
P.O. Box 1417
Homer, AK 99603

AFTER CLOSE DATE/TIME,
— mgf

Subject: Homer annexation

Date: Thu, 21 Feb 2002 08:31:00 -0900

From: "Michael Hawfield" <hawfield@alaska.net>

To: <Senator_John_Torgerson@legis.state.ak.us>

Dear Senator Torgerson,

Thank you for all your work on the Homer annexation issue as it has come to the joint House & Senate Regional Affairs Committees and now heads later today to the Senate C&R A Committee.

I won't belabor the point, but simply urge you support Homer's petition to annex in accordance with the LBC recommendation and thus not to approve the resolution calling for disapproval of the LBC recommendation.

With the retreat of state assistance to cities, our communities need to strengthen their tax base in the orderly fashion that annexation allows. Please help our core communities – our cities – remain viable for the benefit of all, including all those not within corporate boundaries.

Thank you,

Michael Hawfield

PO Box 2609

Homer, AK 99603

907 235-6078

Subject: Homer Annexation Petition

Date: Thu, 14 Feb 2002 13:30:13 -0900

From: "Linda Reinhart" <reinhart@xyz.net>

To: "Senator John Torgerson" <Senator_John_Torgerson@legis.state.ak.us>

Senator Torgerson;

My wife Linda and I were in Juneau last week and testified to urge a VETO of Homer's annexation petition. We were so impressed with the friendly attention we got from everyone. We remain adamantly opposed for a long list of reasons. I'll mention just a few.

LBC Statement of Decision, December 26, 2001 estimates that annexing 898 people (page 18) will add \$950,000 in revenue (page 20). That equals \$1,059 per person per year or \$3,177 per year per family of 3 - this is indeed the price of a college education for one child in each family in each generation. In an undated, untitled fact sheet inserted in the Homer News last week the City continues its fuzzy math approach. We saw this insert in Juneau. In the second to last paragraph it talks about 76 cents per day and \$275. per year in typically disingenuous context.

I want to respond to claims made by the City in another recent "Fact Sheet" submitted to you by the City.

Claim 2 - "Intensive growth surrounding city".

Fact - Probably less than 3,000 people live within a 10 mile radius of present city borders. Compare this with real growth as in Anchorage bowl and Matsu valley.

Claim 3 - "Population density in city of 188 per square mile"

Fact - Each family of 3 has average of 10 acres. 1990 Homer population - 3695. Year 2000 Homer population 3964. A growth rate of less than 1

Claim 9 - "City's Port and Harbor"

Fact - Harbor infrastructure funded almost entirely by state and US for benefit of entire area. Enterprize fund maintains it - users from all over world fund it, not city taxes as implied.

Claim 11 - "Re-elected by annex supporters"

Fact - None re-elected by more than about 600 total votes - less than 25% of eligible voters.

There is no need for Homer to annex anything, certainly not by use of such disingenuous, divisive rhetoric as is being employed by the City. Homer needs to be better, not bigger. The bigger will happen spontaneously once the better is achieved. Please vote to VETO this petition.

Jim Reinhart, Homer, Ak, 99603 (907) 235-8650 PO Box 834

Subject: Homer annexation

Date: Mon, 18 Feb 2002 15:29:49 -0900

From: Tim and Abby Fuller <fuller@homernet.net>

To: Senator_John_Torgerson@legis.state.ak.us, Senator_Alان_Austerman@legis.state.ak.us, Senator_Pete_Kelly@legis.state.ak.us, Senator_Randy_Phillips@legis.state.ak.us, Senator_Georgianna_Lincoln@legis.state.ak.us, Representative_Drew_Scalzi@legis.state.ak.us, Representative_Kevin_Meyer@legis.state.ak.us, Representative_Carl_Morgan@legis.state.ak.us, Representative_Andrew_Halcro@legis.state.ak.us, Representative_Lisa_Murkowski@legis.state.ak.us, Representative_Gretchen_Guess@legis.state.ak.us, Representative_Beth_Kerttula@legis.state.ak.us

Dear legislator;

Please consider this follow-up to everything we've already said about Homer's annexation. We know you have a lot of material already but it is a complex and difficult issue, it cannot be summarized on one page.

The real question here is not what is legal, or should Homer grow, but will the Legislature support city government over the citizens? We have here a process that is legal under state law but completely contrary to the founding principles of this country -- most notably the consent of the governed.

When you start with a system that favors the convenience of local government over the rights of the citizen, then add a local government acting in bad faith, and an LBC that is NOT unbiased and objective, the result is an act of tyranny. If you care about freedom and democracy, veto this annexation, then change the process, so others cannot abuse it like Homer has.

Legal aspects:

As for this process being legal, there are enough legal problems with the final decision that we have filed an appeal, you already have a copy. We also believe the initial petition is fraudulent, which would make the whole thing illegal. We will not know for sure until we get the memos that are in the hands of the Alaska Supreme Court. However, there is circumstantial evidence that the cost estimates in the petition were fictitious. As a very short summary (please ask if you want more details), Homer's city manager says in a sworn affidavit that he relied on information provided by the department heads. We asked for this information and were denied, went to court, and the city manager eventually provided a list of 26 department head memos he says are the ones he relied on. City briefs filed with the Superior and Supreme courts during our appeal describe the contents of these memos as "policy suggestions not followed" and "recommendations not adopted". IE, these memos do not contain any information providing a foundation for the cost estimates in the petition. The city has said there are no other documents, so either the petition's cost estimates are based on nothing, or the city lied to the courts. Judge Brown, after viewing the memos, agreed with the city; this indicates that the petition's cost estimates have no foundation, they were made up. The LBC ignored this issue, which they should not have.

It is not in the state's interest to allow a city to make false statements in its petition to annex, and then be successful in that annexation. There have been comments made that the LBC "punished" the city by reducing the area, but this amounts to tossing the rabbit into the briar patch, the reduced area is the part the city most wanted. (When they wanted a little bit more than the area proposed by the DCED it was quickly given to them.) The city expected to get less than what they had asked for. They are in fact being rewarded, not punished. Rewarding them for for the way they handled this annexation will

encourage them and others to trample on the citizens rights in the future.

The LBC was NOT unbiased.

The process does not work if they are not completely objective and unbiased. It needs checks and balances, and the legislature provides those checks and balances.

The resolution to disallow this annexation states, "Whereas the legislature recognizes the constitutional authority of the Local Boundary Commission as a disinterested third party tasked with objective review of boundary changes". Part of our objection to this annexation stems from the fact that the LBC was not a "disinterested third party" nor did they give this annexation an "objective review".

Commissioner Tesche had business relations with the city and should have been recused. The commission found his connection not substantial enough to be a conflict, but they looked only at immediate dollars and not at the overall picture. It is our understanding that Tesche's firm gets most of it's business from Perkins Coie, the firm Homer contracts with for their city attorney, Gordon Tans. This is not "disinterested".

The rest of the commissioners may not have a direct connection but all have a municipal background. The perhaps bigger problem here is that the LBC relies on the work done by the DCED to wade through the briefs and evidence and make a recommendation. The DCED is charged with assisting communities, a duty they interpret as helping municipal governments. They are staff for the LBC but are by no means a disinterested third party, nor are they anywhere near objective. The DCED disingenuously points out that the LBC is not obligated to follow their recommendation, but in this case they did. It was clear to those of us who were paying close attention that the LBC had made up their minds well before the Hearing.

A disinterested third party would have treated both sides equally, and this did not happen. We were denied additional time for filing responsive briefs, which we really could have used, as two months was not enough time to figure out what the heck we were doing and then get information from the city, especially when they did their darndest to not release anything useful. Then the city was asked how much time did they need? They took three months for a reply brief when we'd had only two for our responsive briefs!

We asked for a chance to respond to the city's reply brief, which is desperately needed, and were denied. The next spring, when the DCED had not yet started work on this annexation, we asked for a chance for additional briefing. This has been granted in other procedures, but was denied. We were told we would have additional chances to "express our opinion" -- we were trying to present facts, not opinions!

When the next chance came, comments on the preliminary report, the deadline was set at the bare minimum required by law, despite the report being 420 pages long. This report ignored some significant points brought up in the responsive briefs and totally ignored points brought up in the written comments. 168 comments were summarized on one page! CCAA sent in 20 pages of comments on the Preliminary Report -- not to cause extra work but because we found that many flaws in the report (and we found a few more later). The Final Report ignored them all!! It spent many pages giving extra bits of land to the city, but then appeared to address only those comments that were received well before the deadline, and not those received just before-- this is not right. We had requested additional time, as 4 weeks was not enough to carefully review a 420 page document. Especially since the copies for the library did not show up on time, so that the public only had 8 days to prepare comments!

The same occurred at the Hearing, everyone was kept to time limits (three minutes for public comments, when the regulations allow up to five) until the City's chance to reply at the end, when Chairman Waring asked the city how much

time they needed! The regulations clearly state the reply will be no more than 5 minutes, yet the city was offered more, without even asking for it.

Our complaints about being ignored are not merely that our opinions were dismissed. The LBC repeatedly ignored factual evidence we presented that called into question statements made by the City; this evidence was dismissed as "differences of opinion". They did not require the city to substantiate any of their statements, even after we raised significant questions.

The LBC failed to consider, or perhaps relied on the DCED who failed to consider, evidence submitted to them in the course of the proceeding. For example, they were provided with evidence that the city's sewer plant fails every time the area gets heavy rains, which " " at least once a year. Until this is corrected, the city cannot handle more hoxups to the sewer plant, yet this was ignored. They accepted the city's assurance that they were at half capacity, without proof. This is just one of many examples, yet all of our factual statements were brushed aside as "opinions".

Legally the LBC has the discretionary power to accept or reject anything submitted to them, but to show this level of bias is wrong. They are failing to make an objective decision and failing to properly decide the Balanced Best Interests of ALL the interested parties. They did not address the interests of the citizens or the impact on the Borough service areas. This is not in the state's interest, to ignore the best interests of everyone but the city.

All of our statements were brushed aside no matter how well we had substantiated them, while all of the city's statements were accepted at face value. There were several places where they found a standard was met based on the LBC's past policy in other annexations! That is not "objective", instead much of their decision is very subjective, as are their standards.

Perhaps the most subjective standard is the one concerning "balanced best interests" in which they are supposed to balance the interests of the annexed territory, the city, other municipalities, and the state. Somewhere this should be construed as including the best interests of the people, yet the LBC does not take the interests of the citizens into account at all. Or if they do, they make up what our interests are instead of listening to what we tell them our interests are. Certainly the interests of the state should be the interests of the state's citizens, or else why do we have a state?

Contrary to Commissioner Waring's statement, we did not get 5/6 of what we wanted. He's looking at territory, but we never asked for reduced territory -- we asked for either a vote or no annexation. Only 1300 out of 2200 people got what they wanted, they are now outside the area being annexed, that's not 5/6. It's less than 2/3. The remaining 900 people are still having their rights trampled on, still have no vote.

The people's choice and local control:

The legal issues can be decided by the courts, that's their job. The Legislature's job is to set policy, and with HB13 your policy was clearly one of local control. Local control is what's missing here, the local community was completely shut out of the loop at the local level. Sure there was opportunity to be heard at the state level, but that was too little too late, plus we were not listened to. (see above)

The service area issue is one of policy more than legality, this is a question of local control and citizen sovereignty. Our local choice was to start a service area to provide the one service that is truly necessary that the city was providing without being directly reimbursed. Never mind that part of the city sales tax was intended to pay for the fire dept and the library. Never mind that the fire dept was a private non-profit until 1991 and when the city took it over part of the agreement was a promise of continued service to all areas. We wanted this service and wanted to fulfill our obligation to pay for it. It should perhaps also be pointed out that KESA covers an area many many times

larger than the proposed annexation and the vote was 75% in favor of a service area. Many people voted to tax themselves for this service who were not affected by annexation. Our choice is a service area, not city government. To force city government on us by the decision of a state commission is NOT local control!

This has some similarities to what was done to the Hillside, except even that had a vote, rigged as it was, here there is none. HB13 was pushed through in response to that, to support more local control, and the lack of local control is what we are complaining about here. What we most want is a vote but short of that we want the opportunity to participate in the decision-making process. Being able to voice our objections to a third party that then brushes all those objections aside, without judging their merit, is not participation.

Policy concerns:

The city planned this annexation in secret, refused to have any public dialog, and withheld supporting documents. This process has excluded the citizens. At the LBC level the citizens were ignored. The policy question here is--- is it OK to have a process that, especially when abused, completely excludes the people?

Our system of government was set up with checks and balances, so that any one branch would not become too powerful and trample on the rights of the citizens. Agencies and commissions are likewise set up with checks on their power, and the Legislature is the Constitutionally established check on the LBC. The LBC consists of a handful of people who are as human as the rest of us, they are not all wise and all knowing. Someone needs to evaluate their work from time to time and tell them when they are going astray in their responsibilities, and that someone is you.

The justification for legislative review annexation is a theory that if put to a vote all annexations will fail. This has not been put to the test. The city would have you believe that there is a silent majority out there that supports this annexation. If that is really true, why are they afraid of a vote? Even the most vocal of opponents have all said they would abide by the results of a vote, either way. The advantages of putting annexation to a vote are; 1) it avoids the adversarial nature inherent in a legislative review annexation, thus doing less harm to the community, 2) it requires the city to do a better job of selling the reasons for annexation, thus being less hostile about the whole thing, and 3) it requires the city to have a real plan to actually provide services to the area they want to annex. No one will approve an annexation that results solely in an increase in taxes, but if it also means an increase in services, it will have support. Certainly these reasons show that having annexations put to a vote is in the state's interests. As other states have already figured this out, they have a vote.

The city of Homer usually uses a public process for complex issues that affect the public. They either form task forces, like the Beach Policy Task Force that drafted regulations for use of the beaches around Homer, or let the Advisory Planning Commission have it for awhile, and they hold public meetings. The appropriate step here would have been to form a task force to work out a draft plan, let the administration work up a petition from there, then send the draft annexation petition to the APC to hold public hearings. Instead the city tried to avoid dealing with controversy by dumping the whole thing in the state's lap. This only angered everyone and created a lot of animosity, causing lasting harm to the greater community. This is not in the state's interest. A veto will send a message to other municipalities that this is not acceptable. Annexations need to be worked out locally, and only when a well-developed plan has been generally accepted should it then be sent to the LBC for final approval.

This annexation was not suitable for the use of the legislative review method. Cities should not have the option to use this method at whim, it is a flawed process and it is easily abused. There may be situations for which it is needed, but the situation for which it was designed no longer exists. It was designed to allow Anchorage to annex the plentiful Public Utility Districts, which were not recognized under the new state Constitution. The use of the legislative review

method needs to be curtailed, it does not respect the rights of the citizens. It needs guidelines established as to when its use is appropriate, and the LBC must be encouraged to enforce those guidelines by having to make a finding that the city's choice of method is appropriate. They have the power now to require a different method be used but fail to exercise it.

There has been some concern that if this is vetoed we'll just have to go through it all over again. The reason we want a veto is so we WON'T have to go through this again. We want a message sent to the city, and all cities, that annexations cannot be handled as if they are battles to be fought against the future citizens. An annexation should not bring a community to the brink of war. There is sure to be another Homer annexation in the near future either way, and we want a kinder gentler one with an extensive public process at the beginning, and if at all possible a vote. This will reduce the contentiousness and ease the burden on the LBC. The city will have to wait two years before they can bring forward a petition to annex any of the territory proposed for this one. This two year wait will allow tempers to cool and give a chance for all interested parties to sit down and try to draw up a reasonable plan for local government for this area, one that will be acceptable to the majority. Two years will also provide time to try and change this process, to fix some of its flaws, so the citizens can't get steamrolled by a city government. The concept of establishing the LBC was to reduce controversy over annexations, but the opposite has been the result, it's time to change the system.

Accountability:

We expected the LBC would hold the city accountable for it's claims in it's petition and subsequent reply brief, but they did not. The city was not expected to prove it's cost estimates, even though we seriously questioned them. Our attempt to get the city to prove their cost estimates is still in court (the memo Appeal), certainly the least the LBC could have done was wait until the court issues a decision. Or, they could have demanded some proof from the city that these estimates were valid. We were only able to check one -- the road maintenance costs -- for which the Borough records showed the city's estimate was half of the realistic cost.

The LBC did not hold the city accountable for a realistic transition plan, saying that the city only has to show they "thought about the future". How is the city actually going to implement annexation? How will it affect the annexees? Can or will the city follow through with it's vague promises? No one knows! Who will hold the city accountable after this goes through? The LBC put no requirements on them at all, not even the one suggested in their own regulations, an agreement with the Borough for the transfer of responsibilities. Our only recourse will be to file for a detachment, two years down the road, if the city doesn't follow through. That's not much reassurance, that we can come back to the agency that failed us the first time. They will look solely at the population density and say "you need city government, work it out politically".

Who will hold the LBC accountable? You, that's why there is a legislative review in this process. They don't need to have broken the law for you to find they have made a poor decision. Your veto can hold the LBC accountable for their actions, or inactions. They have failed to hold the city accountable and have failed to take the interests of the citizens into account, that should be enough for a veto.

Sincerely;

Abigail Fuller
Vice President, CCAA
(hard copy to follow)

Subject:

Date: Wed, 20 Feb 2002 10:20:52 -0900

From: "Pete Roberts" <coyote@homernet.net>

To: <Representative_Drew_Scalzi@legis.state.ak.us>

CC: <Senator_John_Torgerson@legis.state.ak.us>

From: Pete Roberts, Pres.

Citizens Concerned About Annexation

Box 1134

Homer Ak. 99603

Re: Disapproval of Homer's Annexation Feb.20, 2002

Dear Representative ,

This annexation by the City of Homer is a political hijacking— allowed by a flawed LBC process that is neither "DUE PROCESS" (called that by LBC staff mem. Dan Bockhorst to jnt. CRA hearing 2/12) nor is it objective by a disinterested nonpolitical third party. The city wanted to be given control over 2200 then 900 citizens without their say in the matter and without any binding promises but a higher tax bill! That is HIJACKING. For just this reason this is before you. 23 states no longer allow annexation by decree. Then a city **has** to make an annexation palatable — to get people to agree. And that would be the maximum of local control and democracy.

In a democratic process, such as ours, the governing group has to be sensitive to the wishes of the people — not ignore or side step them. Appearances are everything in politics — and Annexation by Leg. Review cancels the people out and encourages a city to be heavy handed. And Homer was heavy handed— they developed their annexation petition completely behind closed doors, used the one council meeting approach by resolution to rush it off to the state for an LBC decree and to wash their hands of it and the public. There was no public involvement, they hidden pertinent city documents (that is in the Ak Supreme Court now), They refused to have a city referendum vote on the annexation (6/29/00) or do a poll of the city. Their annexation idea could not even stand the light of day with Homer residents and they knew it. They did not even run it by their own planning comm., even though it is the biggest land-use issue ever in the Homer area. This amounts to an end run around the people and we need you to stop this travesty. This is a hijacking!

The LBC was set up to take local politics out of annexation — but their insensitivity to the people, unbiased support for municipal govt. and lack of fairness inflamed this annexation. And that generated the biggest fray the LBC has ever had to deal with — 18" of submitted documents from 174 people, and 4 organizations. Their actions were repeatedly questioned by the opponents and may be the subject of a law suit because of the unfairness if this annexation stands. The city had unlimited time for all their filings — we were always denied time extensions we requested. We were not allowed the same number of filings as the city or to submit new info and documents as it became available. The official LBC hearing at the end was suppose to be for finding of final fact. But obviously was really never intended to effect the LBC process — they have their minds made up by then. **They had prepared statements** for each of the 14 standards, that comm. members read, at the decisional session immediately

following the hearing. They visibly paid no attention to opposition testimony -- 13 hours of it -- asked not one question of the opponents. But when the supporters spoke they leaned forward, paid attention, asked questions and got excited when some never heard of land owners wanted to add ~300 acres to the annexation. No problem from our perspective if someone wants to be annexed. But people know when they are being disregarded, blown off and ignored – this does not say much for a fair or balanced process that is very far from being Due Process. Especially when their decisions on the "14 Standards" where pre-written at the end of the hearing and any parcels to be added was gleefully accepted (like uninhabitable parcels) and nothing was dropped. They obviously completely paid no attention the opposition – now is that a fair and unbiased process (we can document everything I have alleged)? Can you support the city and LBC in t in good conscience? Any reasonable person would say veto this…

There is no lack of government in the annex area, they have all the essential services, there is no problem out there and they pay handsomely for fire and EMS. The city is no where near a financial crunch or short fall – like all of us they would like more to spend. But that needs to be done with the consent of the voters, not by hijacking. The LBC standard about the "need for city type government" is **not met in this case**. We have appealed in superior court this and several other standards that were not proven or reasonably demonstrated by the city and the LBC findings. You have been provided a copy of that appeal. This annexation would not get past a court jury if it was handled that way or by a vote of the people. There is something wrong when an issue can **not** pass a muster of the people. The fire service area did pass by an overwhelming majority and it was at least 6 times larger than the original 25 sq. mi. annex area. So much for the "slogan" that people will not vote to tax themselves.

The city pushed the limits with their conduct of the annexation. But the real problem, the **state wide problem**, is the lack of fairness and equalness of the LBC conducting this annexation. The checks and balances are not there in practice – the LBC regulations (self promulgated) basically lean too heavily in favor of a city, there are no built in protections for the non city residents. This not about territory as the LBC would have you believe, but about a population a city wants to control and tax. There is no advocate or protections built into the "LBC process" for those non-city residents. It is a very flawed process and needs to be modernized. It may have been necessary in that critical time of state organization, that is long past and not appropriate now. The world and Alaska has changed and this procedure needs changing.

The city has lost all credibility and respect with this hijacking and so has the LBC! The LBC simply is not impartial and they do not believe in local control. Surprise, but not everyone wants city government. One size does not fit all – that is what this country was founded on. Veto this annexation and empower the people.

We need your help. Thank you.

Pete Roberts, Pres. CCAA (representing 200 or so families)

SENATE JOINT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Disapproving the Local Boundary Commission recommendation regarding the**
2 **annexation of territory to the City of Homer.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** under art. X, sec. 12, Constitution of the State of Alaska. the Local
5 Boundary Commission has presented to the legislature its recommendation regarding the
6 annexation of territory to the City of Homer; and

7 **WHEREAS** the recommendation was received on January 23, 2002; and

8 **WHEREAS** a recommendation of the Local Boundary Commission presented to the
9 legislature becomes effective 45 days after presentation or at the end of the session, whichever
10 is earlier, unless disapproved by a resolution concurred in by the majority of the members of
11 each house; and

12 **WHEREAS** the legislature recognizes the constitutional authority of the Local
13 Boundary Commission as a disinterested third party tasked with objective review of boundary
14 changes; and

15 **WHEREAS** the legislature recognizes the need for the legislative review process as a
16 tool for local governments to address growth but believes that this tool is one that should be

1 used as a final process and with as much participation of all affected populations as possible;
2 and

NO
GUESS
HARCO

3 WHEREAS the legislature's support of the 2001 amendment to AS 29.35.450
4 indicates its intent to enable residents of a service area to have a voice in changes to the
5 service area they have voted to support; and

HB13

6 WHEREAS the legislature is concerned about the issue of truncation of terms of
7 incumbent elected municipal officers in a situation where adding the population of the
8 annexed area results in a substantial percentage increase in the municipal population; and

9 WHEREAS the legislature is concerned about a process involving an annexation
10 proposal that initially encompassed an area with some 2,300 people and was reduced to an
11 area with some 890 people, a process that resulted in the unnecessary inclusion of 1,400
12 people over a two-year time frame; and

GUESS
HARCO

13 WHEREAS the legislature is concerned that the transition plan submitted by the City
14 of Homer encompassed the original 25 square miles and that it does not seem appropriate to
15 consider the same transition plan as being applicable for the final 4.5 square mile area
16 recommended by the Local Boundary Commission, obviously a substantially reduced area;
17 and

"POLICY"

GUESS
HARCO

18 WHEREAS the legislature is concerned about a process that does not provide for
19 direct input by the affected public of the municipality that proposes the annexation by way of
20 either a binding or advisory vote, particularly when the proposed area would result in such a
21 significant percentage change in the number of registered voters;

22 BE IT RESOLVED by the Alaska State Legislature that the recommendation of the
23 Local Boundary Commission received January 23, 2002, regarding the annexation of territory
24 to the City of Homer, is disapproved.

3-5
7-11
18-21

Phillips Line 3-21 delete

NO OBJECTION TO #1

Motion to INTRODUCE: PHILLIPS ^{RESO.} ^{ASCPA} ^{BLIS}
HOUSE ^{ESSENTIAL}
Jurisdiction

Annex – Pro and Con¹

Support

- Municipal Assistance and Revenue Sharing cutbacks: The state has cut these programs and the city must have the ability to legislatively annex properties to maintain and create new services for growth.
- The Kenai Peninsula Borough zoning process has taken steps from what was considered a "no zone" thought process to one that recognizes there are restrictive measures needed for sound development regarding land use. Yet there is more demand in the surrounding Homer area for more stringent land use planning.
- There are amenities within the City of Homer that are provided without cost to non-city residents such as recreation and libraries, and maintaining existing infrastructure difficult to equate in cost sharing formulas.
- There should be a positive state-wide message sent to municipalities that yes, we understand the declining municipal revenue sharing to be a problem and yes, we continue to endorse the legislative require annexation process as a needed tool for the expanse of city services.
- The Homer City Council and Mayor point out that they, with the exception of one council member, will all either be up for re-election or resign and run again. This is a demonstration of good faith that the voters in the area as a whole will have a fair and equal opportunity to new representation.
- The City Attorney points out that they were not aware of a concern about a one-year residency requirement for candidates and that it was never the intent of the City to prohibit citizens from the newly annexed area from running in 2002; further, the City has taken steps to introduce an ordinance to that affect to clarify the issue.
- The City Mayor noted that the City is routinely and frequently asked to be involved in various area-wide issues, and specified them in his letter of February 4.
- The City was incorporated in 1964 and has not extended its 21 square miles of boundary since incorporation.
- The City estimates that 25% of the water customers live outside City limits.

¹ Prepared 2/11/02: D. Scalzi & M. Jackson

- An economic engine of the area, the port and harbor facility, is a City asset available to all in the area.
- Sales tax is paid by resident and non-resident alike, while the 5.5 property tax is paid by only the resident and those revenues combined are the funds that are used for services provided to all.
- Recent re-election of those council members that supported annexation indicates the city resident support for annexation.

Opposition

- Some current City residents argue that they don't have all the services of the City and they believe the City should concentrate on providing services to existing properties before focusing on new properties.
- The residents of the City of Homer have never spoken on whether they support annexation; an issue of import when the informal "poll" results are considered. A local group indicated that their informal poll suggested that 75% of the residents believed people should be allowed to vote on the issue.
- Modifying a plan from 25 square miles to 4.58 square miles should have an affect on the mil rate, but the transition plan submitted by the City necessarily was targeted to the larger area; a plan for the revised area was not required.
- An amended petition of this magnitude should have a longer period of public review; the argument that the opponents got "5/6ths" of what they wanted because of the reduced area presumes that the full area submittal was appropriate from the origin.
- The magnitude of the amended petition resulted in removing some 1,400 people from the proposed annexation area; a substantial reduction from the 2,300 initially proposed. An opposing point is that the process failed from the origin because it was too big and unnecessarily involved some 1,400 people in over two years of public dispute. Many of the original "inclusions" are still protesting the annexation because of the process.
- Accepting the recommendation would send a message to other municipalities that they do not have to come to a reasonable conclusion before they submit their petitions for the legislative review process; that the LBC will figure it out for them, without benefit of any public process.
- Arguments regarding sales tax payment for city and non-city residents should include the information regarding the 1983 and 1984 sales tax initiative.

Specifically, the October 1983 vote was turned down by 11 votes. The council held a special election in April of 1984 that included a 2% sales tax increase to provide revenues for area wide services AND a 6 mil rate cap for city property owners; effectively a reduction of the existing mill rate. To date, the City may not exceed that 6 mil rate cap or they forfeit the 2% sales tax revenues.

- The Port and Harbor and the Water and Sewer are enterprise funds that are supported by user fees that are paid for by resident and non-resident alike.
- The provision of police services outside city limits is subject to contractual obligations between the City of Homer and the State of Alaska for jail space and office space. Suggestions that the City currently provides police service has not compared those contractual obligations and revenues with the costs of the service provision.
- Service provision has not been identified on a one to one ratio and in fact, the LBC Chair noted that the statutes did not require that; they did not conduct a dollar-to-dollar comparison. Rather the LBC reviewed whether the City was able to provide services at a level to be developed locally and they determined that the City was able to provide services. (NOTE: there are no statutory obligations for this process, it is all outlined in regulations promulgated by the LBC.)
- The issue of truncation of terms remains unresolved, although it was notable that the majority of the City Council members indicated their willingness to resign. The LBC Chair indicated they were not certain that they had the authority to provide for this and in this case, they did not consider the arguments in support to be compelling enough.
- The assertion that people are unwilling to pay for services is not appropriate when you consider that the Fire and E.M.S. service area was overwhelming approved at a 1.75 mil tax rate.

Tony Knowles, Governor



State of Alaska
Local Boundary Commission

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

February 21, 2002

The Honorable Kevin Meyer
The Honorable Carl Morgan
Co-Chairmen
House Community and Regional Affairs Committee
Juneau, Alaska

Subject: House Joint Resolution 39 and House Joint Resolution 18

Dear Chairmen Meyer and Morgan:

The Local Boundary Commission has provided the House Community and Regional Affairs Committee extensive materials in support of its recommendation to annex 4.58 square miles to the City of Homer. The Commission addressed the Committee on this matter for two hours on February 7, and also attended 5.5 hours of public comment and Committee deliberations on February 7, 9, and 12.

At this time, the circumstances of the City of Homer's annexation petition and of the Commission's action on it have been thoroughly reviewed by the Committee. Therefore, this testimony in opposition to HJR 39 will be brief and to the point.

First, the Commission believes that the City of Homer's annexation petition complied with applicable filing requirements. It was lawfully filed.

Second, the Commission maintains:

- a) its proceedings complied with all procedural requirements;
- b) its recommendation to annex 4.58 square miles to the City of Homer is supported by the record and the standards for city annexations; and
- c) its recommendation conforms with applicable Constitutional and statutory provisions.

The sole reason offered in HJR 39 for disapproving the Commission's recommendation is that the legislature "believes that this tool (legislative review annexation) is one that should be used as a final process and with as much participation of all affected populations as possible."

Members: Kevin Waring, Chairperson; _____, First Judicial District;
_____, Second Judicial District; Allan Tesche, Third Judicial District; Ardith Lynch, Fourth Judicial District

The Honorable Kevin Meyer
The Honorable Carl Morgan
February 20, 2002
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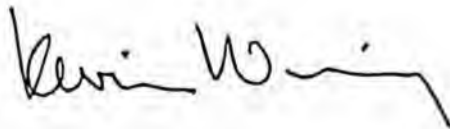
Article X, Section 12 of the Alaska Constitution expresses no preference for local action over legislative review annexations, nor does any statute, legislative resolution, or regulation sanction such a preference. To the contrary, AS 29.06.040(d) states that "A boundary change effected (by a legislative action annexation) prevails over a boundary change initiated by local action." The Commission believes it would be arbitrary to reject this legislative review annexation recommendation, after the fact, for a reason that has no basis in existing law or public policy.

Concerned Citizens Against Annexation, a respondent to the City of Homer's annexation petition, has filed a judicial appeal that contests all the points stated in paragraphs three and four above. If the Commission's annexation recommendation is not in accord with law, its error will be remedied by judicial review.

Moreover, judicial review can address several important constitutional and legal issues (applicability of AS 29.35.450(c); truncation of terms; adequacy of the transition plan) raised about the Commission's decision. HJR 39 leaves these issues unresolved for the Commission, Legislature, future petitioners, and the public. While the Commission does not ordinarily welcome litigation, in this case judicial review may be the most appropriate venue to resolve concerns that legislators and annexation opponents have articulated regarding the City of Homer annexation petition.

This annexation petition has been one of the more contentious annexation proposals in forty-two years of statehood. In the end, it was judged on its merits according to the process established by Article X, Section 12 of Alaska's Constitution and implementing statutes. With that perspective in mind, the Commission believes that legislative disapproval of the recommended annexation (HJR 39) is unwarranted, as is the proposed constitutional amendment to Article X, Section 12 of Alaska's Constitution in HJR 18.

Cordially,

A handwritten signature in black ink, appearing to read "Kevin Waring", written in a cursive style.

Kevin Waring
Chairman

**LOCAL
BOUND.
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HOMER
(File 2)**

LBC Homer Annexation

Materials Submitted by the City of Homer

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1. Mayor Jack Cushing letter dated 2/4/02
2. Overview Titled: Homer Annexation Considerations (not dated)
3. Perkins Coie LLP: Letter dated January 31, 2002
4. City of Homer Comprehensive Annual Financial Report (12/31/2000)
5. Transcripts – LBC Decisional Session 12/15/2001
6. City of Homer Annual Report 2000



Office of the Mayor

(907) 235-8121
Fax 235-3140

Jack Cushing

Homer City Hall 491 E. Pioneer Avenue • Homer, Alaska 99603-7624

February 4, 2002

Alaska Legislature
Joint Community and Regional Affairs Committee

Dear Co-Chairman Representative Kevin Meyer, Representative Carl Morgan, Senator John Torgerson, and Committee Members:

This letter is to give some insights, from my perspective, why we have this annexation issue before us today in the Homer Area.

The City of Homer is a service provider. The City of Homer and its citizens have traditionally been very generous to the lower peninsula. The City's port and harbor, a 100 million dollar asset, is clearly an economic engine of the area, and has been available to all without discrimination. Similarly, city water, the very commodity that allows area properties to be more easily **financed, insurable, and ADEC approvable**, has been available without distinction for years to any in the area. It is estimated that 25% of the city water customers are citizens outside of city limits, an important fact for an area with notoriously poor ground water. Until recently, Fire and Emergency Medical Services (EMS) were generously rendered in the same manner. These services are just the start. During the last decade, the City and its citizens and businesses have directly given moneys or support to the following organizations for the general area:

Animal services
Snomads Snowmachine Club
Homer Head Start
Playgrounds and picnic areas
Homer Food Pantry
Kachemak Ski Club (Olsen Mountain Rope Tow)
Bunnell Street Gallery
South Peninsula Women's Services
Homer Hockey Associatio..
Kachemak Gun Club
Homer Council on the Arts

Kachemak Nordic Ski Club (Baycrest, Olsen Mt., & McNeil Canyon areas)
Community Schools
Boys & Girls Club
Land for the South Peninsula Hospital
Homer Foundation
Girl's Softball
Little League, Tee Ball & Baseball
Adult Softball, New Fields
Pratt Museum

These organizations and facilities all serve the larger regional community. This year the City is funding \$45,000 of the Chamber of Commerce's budget, again a regional organization. This is in addition to the numerous times we are asked and willing to respond to requests for assistance with police protection and emergency road repairs or snow clearing.

We feel this generosity has been appreciated by the majority of this area's residents. Times have changed however, as State subsidies have diminished to a small fraction of what they were a decade ago but, there has been no less demand from this area for these services. In fact, the demand grows. The City of Homer had choices ranging from cutting services, to engaging more of the local area for greater participation in these services. We chose the present path in part, for the proven economic stimulus it provided the entire area, as well as our believe in the benefits these types of services provide to the area.

During the last decade, the City has brought these issues of dwindling state funding to the local area to consider. We felt many in the area chose to ignore or refused to participate in reaching solutions to mitigate these complex issues of an area which manifests greater needs, superimposed with decreasing state funds. Fire and emergency services are a classic example; nothing was initiated area-wide despite of City requests, until the annexation process was initiated. Meanwhile, it was unacceptable to us, in essence, to let our neighboring area's structures or businesses burn down, or allow threats life and property to go unanswered. The heart and soul of the City is to continue to make this an economically productive, safe, and great area to live.

Some maintain that many of these services have been brought to the area through State and Federal grants. True, but not without the countless hours

dedicated by elected and appointed officials, area volunteers, and City paid administration. The important point here is that this has been accomplished through the organization of a governmental entity. Greater costs and all risks are assumed by the residents and businesses within the boundary of that entity, the City of Homer. Most importantly, any area of Alaska with sufficient population has privilege to form a governmental entity and have their own access to State and Federal grants. But, they must step to the plate and form these entities. The Homer area has the apparent desire for these various services discussed. The City of Homer needs to grow correspondingly to continue to provide to the greater area.

An interesting item concerning process, is that prior to this annexation proposal, and the lack of public response to address service issues, the City was routinely and frequently asked to be involved in various area-wide issues, and in fact we still are. Some issues affect the entire area or economy, such as fisheries allocations, and are indisputably City issues. Some issues are clearly more local issues and have their greatest impact in that particular local area. The City Council has taken countless hours of testimony on these local area non-city issues, and has been implored to do anything we could, pleaded with to do anything we could, to help on these issues. Keep in mind, these are issues coming from the area proposed for annexation. A partial list of these include:

- The Kenai Peninsula Borough Solid Waste Facility's and associated stream water quality;
- Urban sprawl & development on top of Baycrest Hill;
- Air emissions from asphalt plant operations;
- Ski club trail facilities;
- Rural road reclassification to thorough fare use between West Hill Road and Skyline Drive;
- Moose corridors to wintering areas or hunting issues on private land;
- Log harvesting operations and watershed protection;
- Gravel mining issues including the trade of land for a gravel sorting/storage yard and concrete plant;
- Various oil and gas issues.

Many of these land use type issues ironically, were brought to the City Council by a few of the individuals who now oppose annexation. One could reason that this has all been a part of the process.

Eventually these growth issues will be settled and new ones will arise. It is important that the City of Homer be allowed to grow and continue to provide the high quality of services we have. To not do so, could possibly alter this areas current health and economic direction as well as our general area-wide quality of life. One must ask who would provide for these services if not the City of Homer? Can the Borough do it? Would the State be asked to provide these services?

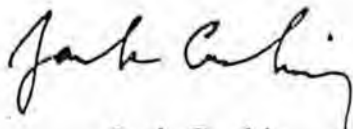
I believe, many people in the area, probably feel we will move forward in a quite civil manner. For example, the President of the Kachemak Nordic Ski Club, although being on the list of those opposed to annexation, has just written a Statewide letter to Nordic Ski Clubs touting the great work done by the City of Homer enabling the construction of ski facilities outside the current City boundaries. This is my experience with many in the area.

Five of the current seven elected offices have stood in support of annexation and won since this process started, and three will be up for re-election this Fall. All issues are being duly examined at the State level. The State Constitution and Regulations are being followed.

In conclusion, growth isn't necessarily easy. I believe the elected officials, have the best interest of the Homer area at heart. We are attempting to provide for what we believe are the services requested, based upon input we have heard from the larger community through out the years.

Thank you for your consideration of this matter tonight.

Sincerely,



Mayor Jack Cushing
City of Homer

From the City of Homer 2-5-02 MLY

Fact Sheet Supporting Homer Annexation of 4.58 Square Miles

- As the only municipality in the Southern Kenai Peninsula, the City of Homer absorbs the financial costs for services such as library, police, port and harbor, water and more, but offers and shares these services with area-wide community residents.
- The City of Homer was incorporated in 1964 and its 21 square mile boundaries have not been extended since incorporation. Uncontrolled development and intensive growth surrounding City limits necessitates extending the 1964 boundaries.
- Population per square mile in Homer is 188 citizens. Within the proposed 4.58 square mile annexation territory the square mile population is 196 individuals. This is greater than that within the City.
- The City of Homer is the only Kenai Peninsula Borough municipal government that is able to provide all Fire and Emergency Services to residents of the 4.58 square mile area recommended for annexation by the LBC. It has been suggested that the Kachemak Emergency Service Area was formed in 2000 "as a direct reaction to the City's annexation petition."
- Increasing the tax base, at a time of decreasing State Revenue Sharing, will enable the City to better sustain and further develop the Homer's infrastructure of services.
- It is estimated that 25% of City water customers live outside the City limits. Water, the very commodity that allows area properties to be financed easier, insured, and ADEC approved, has been available without distinction for years to the area-wide community.
- Since 1992, the City of Homer has budgeted in excess of 1.5 million dollars to area-wide non-profit organizations that support education, recreation, and cultural activities in the Southern Peninsula. Fifty percent of those receiving benefit from these activities and programs live outside City limits.
- The City of Homer continues to support the Chamber of Commerce and the Community Schools program. The organizations are open to area-wide residents; however, only City residents support each through a local mil rate tax assessment.
- The City's port and harbor, a \$100,000,000 asset, is clearly an economic engine for the South Peninsula, and it is available to all without discrimination.
- Annexation and the implementation of planning and development standards, will limit uncontrolled growth and territorial sprawl that presently devalue and denigrate property contiguous to the City.
- Since submitting the annexation proposal to the Local Boundary Commission, four City Councilmen and the Mayor, who announced support for annexation while seeking either election or re-election, have been voted into City office.
- Homer's annexation proposal follows the Constitution and the Legislative process as previously done in over 100 municipal boundary changes since statehood.



City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603
907-235-8121

Homer Annexation Considerations

The City of Homer initiated the annexation process by filing a petition with the Alaska Local Boundary Commission to annex 25± square miles of surrounding territory. After two years of public hearings and forums, the City and the Department of Community and Economic Development agreed upon an annexation area of about 4.57 square miles. This area, while smaller, includes the bulk of the commercial and residential development on the borders of the city. Both the City and the Local Boundary Commission recognize annexation as a good idea whose time has come. We hope to demonstrate why annexation will be beneficial to all and why it will help create a more cohesive and economically stronger community.

First, consider the current state of affairs. While Homer city limits have not changed since incorporation in 1964, the City serves an area much greater than its boundaries. Homer residents and many of their nonresident neighbors use a host of services offered by the city and paid for, in the main, by taxes and user fees. While we all pay sales taxes when shopping in Homer, contributing greatly to the city's revenue stream, only city residents also pay a 5.5 mill property tax; an expense not shared by service users living outside Homer. The 5.5 mill property tax raises about 26 percent of the revenue used by the city's General Fund. While user fees support the city's port and harbor, sewer and water systems, which operate as enterprise funds, the General Fund is available as a financing alternative for these funds.

Here is a brief overview of some of the services enjoyed by folks living in the city and in the greater Homer area.

Library

Tens of thousands of people walk through the doors of the Homer Public Library each year – 98,100 this year alone. They come to read, research, use public-access computers and check out books, magazines and videos. In 2000, the library recorded a circulation of 104,000, up 5,000 from the year before.

The library's interlibrary loan program provides local residents access to a huge body of literature and research material from across the nation. Children, especially, benefit from the Homer Public Library. Last year, more than 1,600 youngsters attended weekly pre-school story hours. Public access computers allow residents and nonresidents access to the Internet through the city's high-speed server. This service is so popular that the library now requires sign-up sheets and has to set time limits because of space limitations.

Library data clearly demonstrates that many of the facility's most frequent users live beyond the city limits. More than 50% of the library cards presently issued are to outside city resident. In the present annexation area recommended by the Department of Community and Economic Development, there are more than 360 library card-holders in a population of 898.

Unfortunately, the small building on Pioneer Avenue is woefully inadequate for current demand, much less the growth expected in the next couple of decades. Crammed into that small space are nearly

34,000 volumes. That's a lot, but the number could be much bigger in a larger facility. Libraries need to accommodate more than just books. Homer lacks the funds to construct a new library to house the many library services the community deserves. The additional tax base annexation will provide will help forward this project.

Police

It is simply a fact of life; we don't live in a perfect world. That we are as safe a community as we are is due in no small part to the dedicated men and women of the Homer Police Department. In a time of need, their rapid response to crime or danger is a blessing. Homer officers do their work primarily within the city boundaries, but often are called to aid the law enforcement efforts of the Alaska State Troopers outside Homer. The HPD will immediately respond to any life threatening called received by 911 dispatch. Additionally, HPD responds to all requests made by the Alaska State Troopers for assistance outside city limits.

In fact, the Homer Police Department is much more than patrol officers rolling to crime scenes or ensuring the safety of city streets. It is part of a linked network of agencies. City dispatchers perform their task for City police, the Homer Volunteer Fire Department, the Alaska Fish and Wildlife Protection Service, the Alaska State Troopers, the Alaska State Parks, various search and rescue and civil defense teams, as well as for other fire, rescue and emergency medical services south of Ninilchik, including in Seldovia, Port Graham, Nanwalek, Kachemak Bay Wilderness State Park and the outlying Russian villages from Anchor Point to the head of Kachemak Bay.

During 2001, Homer Police responded to 5,971 incidents including 735 on the Spit and 119 outside city limits. Police data does not indicate the ratio of city to non-city residents involved in those incidents. In all, the Homer Police Department received 6,242 requests for services of all kinds during 2001. There were 462 arrests made and 640 charges filed. Police investigated 436 property crimes – vandalism, criminal mischief, theft, embezzlement, burglary, vehicle theft and arson. They also investigated 83 violent crimes, including sex offenses, robbery, assault and kidnapping. Police responded to 121 motor vehicle accidents that included 15 injuries and issued 1,019 traffic & animal citations and court summonses in 2001. These are not all City of Homer residents, nor are the victims.

The city of Homer provides jail services for Homer, and under an agreement with the State of Alaska, to the wider area as well. That means that residents and non-residents who are arrested must be housed in the City of Homer facility.

In 2001, there were 312 people jailed for City of Homer offenses, while another 174 were state prisoners. The Homer District Court sentenced 118 people to short-term stays in the Homer. In all, 604 prisoners spent time in the Homer Jail in 2001, serving a total of 1,562 prisoner-days.

The department not only investigates major crimes and operates the Homer Jail it also operates the Homer Animal Shelter which is addressed below.

Maintaining the peace is expensive. Annexation will help cover those costs and permit the department to expand services to the new territory by adding personnel and equipment. Homer residents need their neighbors to help ensure the continued effectiveness of this vital public safety service.

Homer Volunteer Fire Department

Few things are as frightening as a fire or dire medical emergency. They strike with little or no warning, and often leave their victims helpless. Like the arrival of police, it is reassuring indeed to hear and see the fire trucks and ambulances roll. And roll they do, not only within the boundaries of Homer, but virtually as far as emergencies demand, very often into the proposed annexation area to fight forest, grass and structure fires, protect surrounding property and save lives. The Homer department provides emergency services to Kachemak City, has mutual-aid agreements with Anchor Point and memorandums

of understanding for assistance with Seldovia, Port Graham and Nanwalek. Firefighters and emergency medical technicians have gone to the Russian villages at the head of Kachemak Bay and responded to fires as far away as the central Kenai Peninsula at the request of state or federal fire officials, well beyond the proposed annexation area.

Homer is proud of its fire and emergency medical teams. Not only do department staff members and the host of volunteers respond in emergencies, they participate in prevention programs designed to make life safer for all of us. The department sponsors and teaches classes for a Fire Science Degree program through Kenai Peninsula College, provides fire prevention materials to the public and area schools. It co-sponsors the annual Homer Bike Rodeo in conjunction with the Safe Kids Fair. Those folks you see distributing and adjusting helmets for young riders are fire and EMS volunteers who work with the local Safe Kids Coalition and its bicycle helmet program. They can also be found instructing parents how to use child car seats properly.

Homer volunteers participate in the PRIDE program, which offers safety training to people with mental disabilities. When fans at Homer High School cheer their Mariners to victory on the gridiron, volunteer emergency medical technicians are there, standing by.

All that expertise comes from hours of training and practice provided by the City of Homer.

In reaction to the City of Homer Annexation petition, the Kenai Peninsula Borough recently created a fire and EMS service area on the south Kenai peninsula. Presently, the only way the Borough can deliver these services is through contract with the City of Homer.

Public Works

Visit a city park, cheer on the youngsters at a Little League game or dash to the fence yourself and snag a fly ball. Take your toddler to play on the seesaw or ride the slide, pitch a tent or park your RV in one of several city campgrounds, drop your child off at the Homer Boys & Girls Club, or just stroll along the broad, open city beaches at low tide. Then thank the Homer Public Works Department for seeing that those parks and recreational areas are built, maintained and safe. General fund monies finance the operation of these amenities as well as a new adult softball complex expected to be constructed during 2002.

Walking along Pioneer Avenue, one can't help but notice how it blooms with color each spring and summer. Mother Nature gets a lot of help from Public Works crews and volunteers who are busy planting and pruning from May to September. Of course, not all of the department's duties are so eye-catching – or, for that matter, particularly obvious.

Frankly, the Homer Public Works Department greases the City of Homer's gears, without which several critical systems would cease to function. The department is responsible for operating the city water and sewer system. City water is available to many nonresidents because the city provides access to that water to commercial bulk water haulers. Many homes outside Homer could not have been financed or occupied had city water not been made available. In 1990 5.3 million gallons of city water was sold to bulk water haulers and by 2000 this had increased to 17 million gallons.

A change in the funding formula for expanding city water and sewer lines to reflect reduced state spending will permit the construction of five new water/sewer districts this summer. In the future, the city enterprise funds will contribute 25% of these costs and property owners 75%. Under the new city tax structure, the city will be able to create a million dollars worth of line extensions each year if neighborhoods vote to do so.

Public Works crews are also responsible for maintaining city streets and keeping them cleared of snow in winter. No matter the weather, city maintained streets are open. Through the use of private contractors with local coordination and Public Works crews, the condition of roads in the annexation area will improve.

Non-city residents use many of these city facilities daily. It is time to more equitably share the expense by becoming part of the City of Homer.

Port & Harbor

The beauty and bounty of Kachemak Bay and Cook Inlet make Homer's port and harbor a Mecca for recreation and enterprise. The Homer Small Boat Harbor fills to capacity in the warm months with every size and variety of vessel. Still, the demand for space exceeds available moorage. The harbor is a 48-acre basin with 772 reserved slips, 4,000 lineal feet of transient floats. The City is presently engaged in a project to add 140 new slips and 800 feet of transient moorage.

The port and harbor provides those boat owners a host of services. The wood and steel grids make repairs easier. Homer's load and launch ramp is a vital link to the sea for recreational and commercial boaters alike. Fishing season means a steady parade of commercial vessels to the Homer Fish Dock, where crews use city cranes to unload their harvest and sell it to dockside buyers. The dock has 483 feet of vessel berthing and eight public cranes. The City of Homer's ice plant can produce 100 tons of flake ice per day. The cold storage facility provides valuable space to commercial fishermen. All of these facilities are publicly owned and available to all.

Recreational anglers use fish-cleaning stations provided by the city to clean their catch, depositing the waste in containers provided at city expense. Scores of charter outfits thrive thanks to the Port and Harbor and the private-sector enterprise it fosters. Indeed, marine businesses have sprung up from one end of Homer to the other and beyond into the proposed annexation area, all because the port and harbor exist.

Meanwhile, Homer's port is attracting an increasing amount of commercial marine traffic. Wood chip ships, log transport vessels and even cruise ships regularly visit the Deep Water Dock. Container barges, the U.S. Coast Guard vessel *Sedge* and the Alaska State Ferry use the city's Main Dock. A new \$11 million dock is presently being constructed to replace the main dock. The new dock was originally named the Kachemak Bay Multi-Purpose Dock, but has been renamed the Pioneer Dock. When this project is complete during the summer of 2002, the dock will be able to accommodate roll-on, roll-off vessels and handle larger container vessels. The dock will be able to accommodate the state ferry *Tustumena* and the larger new ferries. The dock will also accommodate the new larger Coast Guard vessel scheduled to replace the Coast Guard vessel *Sedge*, which is a true Alaska Pioneer vessel. Homer will continue to be Alaska's premiere ice-free port.

All of this has an enormous impact on Homer's economy and, clearly, to the economy of the larger area. More halibut are landed in Homer than any other port in the world. Without the port and harbor, much of Homer's entrepreneurial spirit likely would go unfulfilled.

Clerk's Office

Homer's city clerk's office provides the general public with access to public records, notice of meetings and other city events. Clerk Mary Calhoun attends Homer City Council meetings and records the minutes and her office coordinates the meetings of city commissions, boards, other panels and maintains information kiosks in the City. Her office helps coordinate the sister-city programs for Homer's sister cities Teshio, Japan, and Yelisovo, Russia.

When voters from the Anchor Point to the Kachemak Bay precincts head to their polling places for statewide elections, it is the Homer City Clerk's office that coordinates ballot collection and compiles the local results. In city races, the clerk notifies residents of filing periods and candidates and runs the elections.

When residents seek to work together to improve utilities or roads in their neighborhoods, the city has a procedure for this purpose called the Local Improvement District coordinated through the clerk's office. The clerk's office draws up a petition complete with the names of property owners and the

locations and values of their holdings. Once technical issues have been addressed by Public Works, the clerk gives the petition to the petitioners who then collect the necessary signatures. If enough signatures are collected, the clerk's office prepares an LID resolution for the council. The clerk's office is the face the public sees throughout the process of improving neighborhood water service, sewers and roads.

Planning

A crucial element of the city's ability to function efficiently is its capacity to plan for the future. For a city of several thousand independent-minded citizens to run smoothly, there must be ways to avoid land-use conflicts or help resolve them when they arise. Through written guidelines and permits, city planners promote safety, protect public health and help guide development. Planning is best done locally, by neighbors who live with the results.

Planning personnel also develop policy recommendations, provide staff support for the Homer Advisory Planning and Zoning Commission, aid in the processing of conditional use permits and variances, work on revisions of the city's Comprehensive Plan and help neighborhoods plan for the future.

Good planning can prevent a lot of heartache. With that in mind, Homer has divided the city into zones where specific types of activities are encouraged and others prohibited. That's why you won't find junkyards in residential neighborhoods or industrial shops amid office complexes in the City of Homer, except where those conditions predated the city's zoning ordinance and hence, enjoy grandfather status.

Other city requirements prevent water sources from being spoiled, protect the integrity of streams beds and ensure that development meets minimum standards.

This year the City will complete a GIS center at City Hall which will be a tremendous planning aid for all departments. The City of Homer will have the same technology resources as the Kenai Peninsula Borough, 85 miles to the north.

Animal Shelter

The city is working to find the funds and build a new animal shelter. The current facility is completely inadequate. Indeed, if city officials could snap their fingers and provide a better animal shelter overnight, they would. While desperately needed, unfortunately, a new animal shelter is not the only vital project the city needs to complete.

Despite its inadequacies, the small facility on the Homer Sterling Highway is shelter for lost, abandoned or turned-in cats and dogs from throughout the entire lower Kenai Peninsula. Looking at the recent statistics, between January and August of 2001, the shelter received 86 strays from inside Homer, 80 from outside. Some 94 Homer resident owners turned in animals, 150 did so from beyond city limits. The shelter also boards animals, reunites lost critters with their owners and finds new owners for those with no homes without regard to residency.

The point is, the Homer Animal Shelter provides a service to the entire area. It would help, as the Kenai Peninsula Borough does not fund animal control services, if Homer had a broader tax base to operate this vital program.

An architect has been retained to start working on the design of the facility with the help of a volunteer design committee. Hopefully, funding will be in place for construction this year.

City Support of Area-wide Organizations

Since 1992, the City of Homer has spent in excess of \$1.5 million to help fund non-profit organizations such as the Pratt Museum, Homer Council of the Arts, Kachemak Ski Club, Kachemak

Nordic Ski Club, Homer Food Pantry, Bunnell Street Gallery, Homer Head Start, Snomads Snow Machine Club, The Homer Foundation, Pier 1 Theatre, Community Schools, Homer Hockey Association, Kachemak Gun Club, Homer Little League, Women's Services and the Homer Boy's & Girl's Club. These are the organizations that provide education, recreation, cultural activities and a helping hand on the Southern Kenai Peninsula. At least fifty percent of those benefiting from these activities and programs live outside City limits. The City of Homer budgeted an additional \$45,000 to support the Homer Chamber of Commerce. \$30,000 of this is used to promote the Homer area and its businesses and \$15,000 is to partially fund the Business Development Center.

All of these organizations are open to area-wide residents; however, only City residents support them through property taxes.

Conclusion

While this is a fairly impressive list of services, it is just an overview. The fact is, though we get a lot for our money, a broader tax base is necessary to help keep it that way. Contrary to what many believe, the added property taxes new residents would pay wouldn't amount to a great individual expense.

Today, non-city residents in the annexation area who own real property pay a combined 11.35 mills in real property taxes:

| | |
|--|--------------------------------|
| Borough | 7.00 mills |
| Road Service Area | 1.00 mill |
| Hospital | 1.50 mills |
| Kenai Pen. College | 0.10 mill |
| Kachemak Emergency Services [Fire & EMS] | 1.75 mills = 11.35 mills total |

Meanwhile, city residents pay a combined 14.10 mills:

| | |
|--------------------|-------------------------------|
| City of Homer | 5.50 mills |
| Borough | 7.00 mills |
| Hospital | 1.50 mills |
| Kenai Pen. College | 0.10 mills = 14.1 mills total |

If non-city property owners are annexed and become city taxpayers, they would cease paying the 1 mill for the borough road service area and the 1.75 mills for the fire service area, but instead would pay the 5.5 mills levied by the city.

The difference between what city and non-city residents now pay amounts to just 2.75 mills. That is \$275 a year for a \$100,000 home. Looked at a different way, for all the services and opportunities listed above, being part of Homer would cost the new resident tax payer less than \$.76 cents a day for every \$100,000 worth of real property they own. This is within a few pennies of the cost of a daily newspaper

The new revenues generated by property taxes in the proposed annexation area are estimated at roughly \$313,000. Sales tax revenues from this area should generate approximately \$484,000. This means the city can strengthen its current services and broaden their availability in the larger area. Facilities can be upgraded and then perhaps taxes can be lowered. Thus, annexation will be beneficial not only to Homer's newest residents, but to its current residents as well.

Annexation in Homer represents value and fairness!

HOMER WATER RESERVOIR
CITY WATER SUPPLY
PROPERTY OF CITY OF HOMER

HOMER WATER TREATMENT PLANT
PROPERTY OF THE CITY OF HOMER

AT THE REQUEST OF
PROPERTY OWNERS,
THIS WAS ADDED TO
ANNEXATION AREA AT
LOCAL BOUNDARY COMMISSION
HEARING IN HOMER

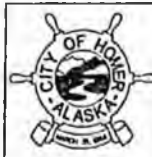
AREA RECOMMENDED
BY LOCAL BOUNDARY
COMMISSION FOR
ANNEXATION

CURRENT
CITY OF HOMER

See legal description prepared
by the Local Boundary Commission
for exact boundary locations.

GRAPHIC SCALE 0 2500 5000 7500

| REVISION | | | REVISION | | |
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CITY OF HOMER, ALASKA
PUBLIC WORKS DEPARTMENT

3575 HEATH STREET
HOMER, ALASKA 99603
PHONE: (907) 235-3170
FAX: (907) 235-3145

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| DATE: | |
| SCALE: | |
| DESIGN: | |
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| CHECKED BY: | |
| APPROVED BY: | |

**PROPOSED
ANNEXATION
AREA**

Drawing Status: Updated: 2/2002

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| PROJECT NO: | |
| SHEET: | 1 |
| OF: | 1 |

PERKINS COIE LLP

1029 WEST THIRD AVENUE, SUITE 300 · ANCHORAGE, ALASKA 99501-1981
TELEPHONE: 907 279-8561 · FACSIMILE: 907 276-3108

January 31, 2002

Senator John Torgerson
Chair Senate Community & Regional
Affairs Committee
State Capitol, Room 427
Juneau, AK 99801-1182

Representative Kevin Meyer
Co-Chair, House Community & Regional
Affairs Committee
State Capitol, Room 110
Juneau, AK 99801-1182

Representative Carl Morgan
Co-Chair, House Community & Regional
Affairs Committee
State Capitol, Room 434
Juneau, AK 99801-1182

Re: City of Homer Annexation — Shortening of Incumbents' Terms

Dear Senator Torgerson and Representatives Meyer and Morgan:

In connection with the Local Boundary Commission recommendation concerning City of Homer's annexation petition, some have argued that the terms of the Mayor and City Council members, the elected officials of Homer, should be shortened to allow voters in the annexed territory an immediate opportunity to vote for new officials. The Boundary Commission found that such action was not merited on the facts.

As the attorney for the City of Homer, I now write to explain that it would be unlawful and unwise to force a shortening of the incumbents' terms.

[13126-0201/AA020170.017]

I. The Terms of Office of Elected Officials Are Set By Law and Cannot Be Shortened For Current Incumbents

According to law, city council terms are three years, and a change in the length of terms cannot be effective as to a current member, except in cases of change in composition or apportionment. AS 29.20.150 provides

(a) A member of the governing body is elected for a three-year term and until a successor qualifies, unless a different term not exceeding four years is prescribed by home rule charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a governing body is changed by charter or ordinance the term of the member holding office when the change becomes effective is not affected.

Homer has not adopted an ordinance to prescribe a different term for council members. Every year two council members are elected for three-year terms.

The term of the Mayor of the City of Homer is governed by AS 29.20.230(a) and Homer City Code. The statute provides:

The mayor of a borough or first class city is elected at large. The mayor of a borough or first class city serves a term of three years, unless by ordinance a different term not to exceed four years is provided. The current term of an incumbent mayor may not be altered. ...

The City of Homer has, by ordinance, provided for a two-year term for mayor, HCC 1.24.030. The incumbent mayor's term expires in October 2002.

Because the annexation of territory to the City of Homer involves neither a change in composition (six members elected at-large) nor an apportionment, the incumbent city council members' terms cannot be shortened. The term of the office of the incumbent mayor can not be changed in any event. Any attempt by the Local Boundary Commission or the City to change the terms of office of the current incumbents would violate AS 29.20.150(b) and 29.20.230(a).

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No other statute or regulation gives authority to change the terms of current elected officials, neither expressly nor by implication.

Therefore, any LBC action or City of Homer ordinance attempting to shorten the terms of incumbents would be unlawful.

II. Stability of Public Affairs Is a Compelling Need That Outweighs the Interests of Annexed Residents In Voting Immediately for New Elected Officials

Opponents of Homer's annexation have argued annexing them into the City without electing an entirely new slate of elected official is unfair, and that it deprives them of opportunity to vote for elected officials to represent them.

Our Court has already addressed a strikingly similar argument — that elected officials should be ousted to accommodate the voting rights of a sudden influx of new voters brought into the jurisdiction by judicial decree, which was the functional equivalent of annexation. The Court concluded that the need for stability in local public affairs is compelling and outweighs the interests of those new residents in voting to replace lawfully elected incumbents. *Jordan v. Reed*, 544 P.2d 75 (Alaska 1975).

In the *Jordan* case, residents of the Eagle River-Chugiak area, acting on special statutory authority granted in Chapter 145 SLA 1974, voted to form a new borough to be carved out of the Greater Anchorage Borough. It was officially incorporated and began the business of governing.

Meanwhile, after the formation of the Eagle River-Chugiak Borough, the Greater Anchorage Area Borough proceeded about its business, electing a school board, voting to authorize about \$8,000,000 in bonds, electing assembly members, approving a home-rule charter, and electing a Charter Commission.

Subsequently, the Supreme Court in *Abrams v. State*, 534 P.2d 91 (Alaska 1975), declared Chapter 145 SLA 1974 unconstitutional. As a consequence, the Eagle River-Chugiak Borough was suddenly dissolved and "automatically reincorporated" into the Greater Anchorage Area Borough.

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One of the major issues in the *Jordan v. Reed* case was whether the residents of Eagle River-Chugiak who were thus "automatically reincorporated" into Anchorage were unconstitutionally denied the right to vote for the Charter Commission, which was elected by Greater Anchorage Area Borough voters during the time the Eagle River-Chugiak Borough was in existence. The Court observed that the right to vote is fundamental, and its denial ought to be strictly scrutinized by the courts. With those principles in mind, and applying the appropriate standard of constitutional review, the Court found the following considerations outweighed the right to vote in these circumstances:

We have previously held that political subdivisions have a compelling state interest in stability in public affairs, which may be implemented by residency requirements for candidates for public office. We see no reason why that decision ought not, by analogy, extend as far as acknowledging a compelling state interest in having an electorate reside in the governed area. When denial of the right to vote, based on apparently valid laws which do not create suspect classification, is weighed against the compelling state interest of stability in public affairs, and the denial bears a direct and substantial relation to the state interest, the balance weighs in favor of upholding the challenged election.

Jordan v. Reed, 544 P.2d at 81.

It was also contended that it was fundamentally unfair to deprive the residents of Eagle River-Chugiak the right to vote on the members of the new Charter Commission. They claimed it would "thrust upon them a government they had no part in selecting." *Id.* In rejecting this claim, the Court stated:

Appellees, on the other hand, argue that the realignment of political boundaries which occurred as a result of the *Abrams* decisions is functionally equivalent to an annexation. We find this argument, and the case authority cited in support, persuasive. The general rule regarding annexation is summarized in 2 McQuillin, *Municipal Corporations*, § 7.10 at 857 (3d ed. 1966), where it is stated:

When territory has been lawfully and finally annexed, the new area becomes, *ipso facto*, a part of the municipality subject to municipal jurisdiction and it may be governed as the original municipal territory was governed prior to the change. ...

In annexation cases it can also be argued that it is unfair to place individuals under the authority, and the existing obligations, of a political entity they had no part in fashioning. Yet, to do otherwise could, in our view, create an intolerable burden upon the annexing entity.

Id. at 81-82.

As the *Jordan* court recognized, it is intolerably dangerous to destabilize local public affairs by undoing valid elections properly held before the annexation, even when the annexation involves a significant number of voters. *See also Kentopp v. Anchorage*, 652 P.2d 453, 463 (Alaska 1982). There is a compelling need for stability in elections, as well as in municipal bonds, ordinances, taxes, and all manner of municipal acts approved before annexation, all of which, it could be argued, are also "thrust upon" the annexed residents without their participation. If one concludes that being "thrust upon" by annexation justifies ousting properly elected officials of the city, then there is no logical place to stop before throwing out all of the actions approved by the city under the governance of such elected officials and their predecessors. While opponents of Homer's annexation may be thrilled with this result, it would, as *Jordan* stated, create an intolerable burden on the City. This result is not wise or good public policy. Destabilization or destruction of the City of Homer government would harm the interests of all the people of the Homer area as well as the interests of the State as a whole.

The compelling interest in the stability of Homer's public affairs will outweigh any claim that the newly-annexed voters should immediately have a vote to elect new officials. The Court will not approve ouster of the current elected officials for this purpose. *Kentopp v. Anchorage*, 652 P.2d 453 (Alaska 1982).

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III. Any Formal Shortening of Terms Is Contrary to the Voting Rights of Current City Resident Voters

Not only would ousting the current elected officials destabilize public affairs, but it would also diminish the voting rights of those qualified electors who validly elected them to office.

As non-residents of the City, people in the proposed annexation area were not entitled to vote in City elections held before the annexation. After the effective date of annexation, they will be qualified to vote and run for office in every election. That is as it should be. The right to vote for elected officials is reserved to the residents of the City at the time they are elected. There are compelling reasons for this result, but there is no compelling reason to oust incumbents and thereby frustrate the will of the voters who validly put them in office.

For every argument that it is unfair to some 900 new residents to make them wait until the end of incumbents' respective terms to vote for new council members, there is a weightier counter argument that it is unfair to nearly 4000 existing residents to have their valid exercise of political will disregarded by the premature ouster of their elected representatives.

To remove the current elected officials from office at this stage would be an arbitrary act, because there is no statutory authority for the removal nor standards by which to judge which, if any, terms should be ended. Just as the right to vote is fundamental, and abridgements of that right are subject to strict scrutiny, see *Jordan v. Reed*, so should the ouster of the officials elected by exercise of the fundamental right to vote be viewed with strict scrutiny. Depriving the people of the effect of their vote in this manner must be justified by a compelling need. *Kentopp v. Anchorage*, 652 P.2d 453, 463 (Alaska 1982) ("the intrusive remedy of court ordered truncation is only warranted when supported by compelling considerations.") As concluded by *Jordan v. Reed*, discussed above, the desire of newly annexed citizens to vote for a new slate of officials is not compelling.

If compelling need is at one end of the spectrum, then arbitrariness would be near or at the opposite end of the spectrum. The Local Boundary Commission must not be arbitrary in its actions, but rather it must make its decisions based on written standards. On December 12, 2001, the Dept. of Law issued an opinion, No. 663-02-0090, on the subject of "Authority of Local Boundary Commission to require

truncation of terms of governing body in annexation proceeding." The opinion concludes that the LBC does not, in the absence of preestablished standards, have discretionary authority to require truncation of city council terms as a condition of approving annexation. On that point the conclusion is surely correct for the reasons stated in the opinion.¹ A standardless decision to shorten terms would be arbitrary.

Reference has been made to the governor's former authority to truncate terms of state legislators as "incidental to his general reapportionment powers." *Egan v. Hammond*, 502 P.2d 856, 874 (Alaska 1972). However, annexation is not analogous to reapportionment, nor do the facts in the Homer case even approach the magnitude of concern that might justify truncating terms in the reapportionment context.

The six Homer City Council members are elected at large, with two being elected every year on staggered three-year terms. Those brought into the city by annexation will be entitled to vote in every election following annexation, and their votes will instantly carry equal weight with every other voter in the city.

In contrast, reapportionment addresses unequal voting power in which residents of one district have disproportionate power in legislative elections. Reapportionment is intended to eliminate such disproportionate voting and invidious discrimination. It does not result in the immediate election of a whole new legislature, but it may result in shortening terms of particular legislators in extraordinary circumstances.² For

¹ The Department of Law goes on to opine that the LBC has authority, under current law, to promulgate and apply regulations for truncating terms of elected officials as a condition for approval of future boundary changes. With that conclusion we disagree. Absent change of composition or reapportionment, neither of which is present here, the shortening of terms of incumbents is prohibited by AS 29.20.150 and .230. The ordinary rule following annexation is that ouster of incumbents does not occur, see *Jordan v. Reed*, discussed above. No one has pointed to any reported case approving the ouster of elected incumbents as a condition of annexation. The power to shorten incumbent terms is not implied in the power to approve annexations. The LBC does not have, and should not assume the power to change the terms of incumbent elected officials as a condition of annexation unless first granted by statute enacted by the Legislature.

² In ordinary circumstances, reapportionment does not require truncation of terms following redistricting. *Gaona v. Anderson*, 989 F.2d 289 (9th Cir. 1993), even when the shift of population into and out of a voting district is greater than 50%, *Kentopp v. Anchorage*, 652 P.2d 453, 463 and n.11 (Alaska 1982).

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instance, one of the cases that *Egan v. Hammond* relied on for that proposition is *Moss v. Burkhardt*, 220 F. Supp. 149 (D. Oklahoma 1963), affirmed *Williams v. Moss*, 378 US 558, 84 S. Ct. 1907 (1964). In *Moss* the misapportionment was so bad that 31% of the population had the power to elect a majority of the state house. The size of house districts ranged from 11,700 in population to 62,800, while senate districts ranged in size from 24,400 to 115,300. Furthermore, the court concluded that this arbitrary and invidious discrimination was purposeful, and the state legislature essentially refused to correct it. If the terms of incumbents were not shortened, this discrimination would continue for many years. In such egregious circumstances it was found necessary to drastically rearrange voting districts, necessitating the shortening of incumbent terms, in order to eliminate this clearly unconstitutional apportionment.

There are no such unconstitutional infirmities with the City of Homer voting procedures. When the annexed territory is included, there will be no voting rights discrimination against the new residents. See *Jordan v. Reed*. The power to shorten terms implied in reapportionment, sometimes necessary to address unconstitutional voting districts, simply has no application in a case such as this.

The voting rights of those who elected the incumbents to office are entitled to just as much consideration as the voting rights of those who will be annexed. Indeed, as concerns their respective rights in elections prior to annexation, the voting rights belong entirely to those who then resided in the city. The effect of their votes should never be taken away arbitrarily. Perhaps their rights can be diminished for a compelling reason, but the only compelling need present in this matter is to maintain stability in local public affairs. There is nothing present in this case to justify conditioning annexation on the premature termination of all of Homer's elected representatives.

IV. Voluntary Resignations of Elected Officials Will Not Result in a New Election of Council Members, and May Not Result in the Election of a New Mayor

A vacancy in the office of mayor occurring six months before a regular election is filled by an appointment by the governing body. A vacancy in this office occurring more than six months before a regular election is to be filled by special election. AS 29.20.280(b), and Homer City Code § 1.24.050. Whether by appointment or

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

January 31, 2002

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special election, a mayor filling a vacancy will serve only until the next election in October 2002, when the term of the current Homer mayor will expire in any event.

Under both AS 29.20.180 and Homer City Code § 1.24.050, a vacancy in the office of city council member created by resignation is filled by an appointment made by the remaining members of the council regardless of when it occurs. If the membership is reduced to less than a quorum, the remaining members are authorized to appoint a sufficient number to constitute a quorum. Therefore, a vacancy created by resignation of a city council member will be filled by appointment, not election.

The only conceivable way resignations could result in the election of new council members is if all simultaneously resign with simultaneous effective dates. This is extremely unlikely to happen, because it would require unanimous agreement among the council members that this is a good idea. As discussed above, this is not a good idea. A mass resignation would be dangerous and unwise because it would cause a destabilization of the local government and public affairs of Homer. There are very compelling reasons not to do this, but no compelling reasons for it.

In conclusion, prematurely ending the terms of all the incumbent elected officials as a condition of annexation is unlawful, unnecessary, and unwise. There are compelling policy and legal reasons why it should not be done. Even without such drastic action, the new residents of Homer will instantly have an equal vote in all future elections. Three of the seven elected officials' terms are scheduled to end in October of this year, which quickly gives the new voters a very substantial opportunity to affect the selection of the mayor and one-third of the city council. This will be accomplished in an orderly fashion while the stability of local public affairs is fully maintained. Both as a legal matter and as a matter of public policy, this is much the better choice.

As additional resources for your review I am attaching:

1. Memorandum (5 pages) from Marjorie Vandoi, Asst. Attorney General to Commissioner Deborah Sedwick, DCED, December 12, 2001, File No. 663-02-0090, Subject: "Authority of Local Boundary Commission to require truncation of terms of governing body in annexation proceeding."

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2. Memorandum (2 pages) from Senator John Torgerson to Tam Cook, Legal Services, January 2, 2002, Subject: "Legal Opinion - Annexation Issues."
3. Memorandum (3 pages) from Tamara Brandt Cook, Director, Division of Legal and Research Services, Legislative Affairs Agency, to Senator John Torgerson, Senate Community and Regional Affairs Committee, January 9, 2002, Work Order No. 22-LS1270, Subject: "City of Homer annexation."

Thank you for your careful consideration of the issues addressed in this letter.

Very truly yours,

Gordon J Tans

GJT:gjt

Attachments

cc: Senators Austerman, Phillips, Lincoln, Kelly and Ward
Representatives Halcro, Scalzi, Murkowski, Guess, Kerttula,
Lancaster and Chenault
DCED - Dan Bockhorst


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 incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution." (emphasis added).

The Honorable Deborah Sedwick, Commissioner
Department of Community & Economic Development
Re: Authority of LBC to truncate terms

December 12, 2001

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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 reappropriation of legislative seats. See *Groh v. Egan*, 526 P.2d 863 (Alaska 1974); *Egan v. Hammond*, 502 P.2d 856 (Alaska 1972). In those cases, wherein the governor's reapportionment plan resulted in the truncation of several senate seats, the Court equated the governor's constitutional authority to reapportion the 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).