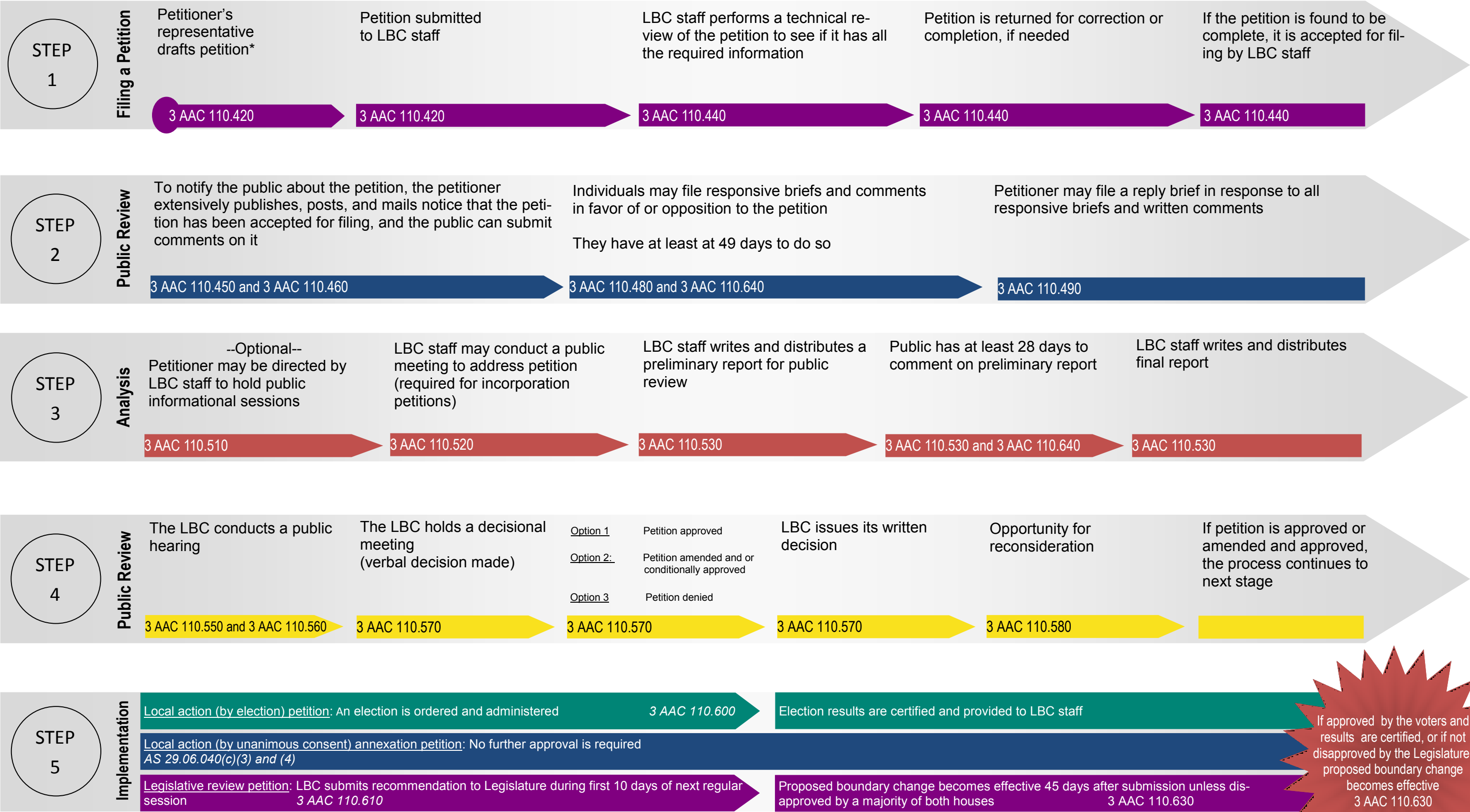


Municipal Boundary Change Petition Procedures—Local Boundary Commission

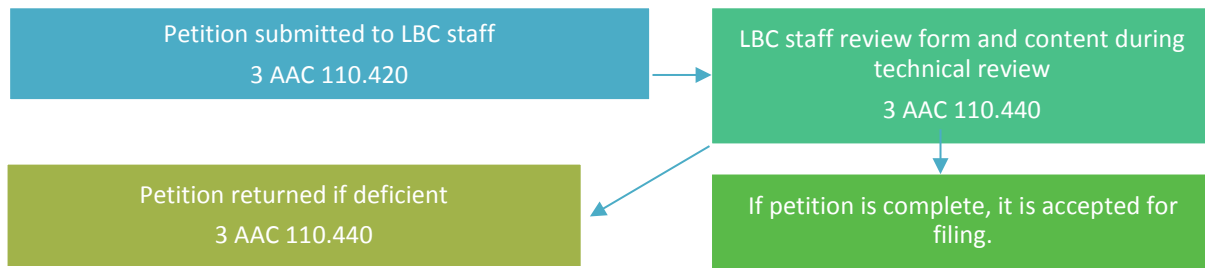


If approved by the voters and results are certified, or if not disapproved by the Legislature, proposed boundary change becomes effective 3 AAC 110.630

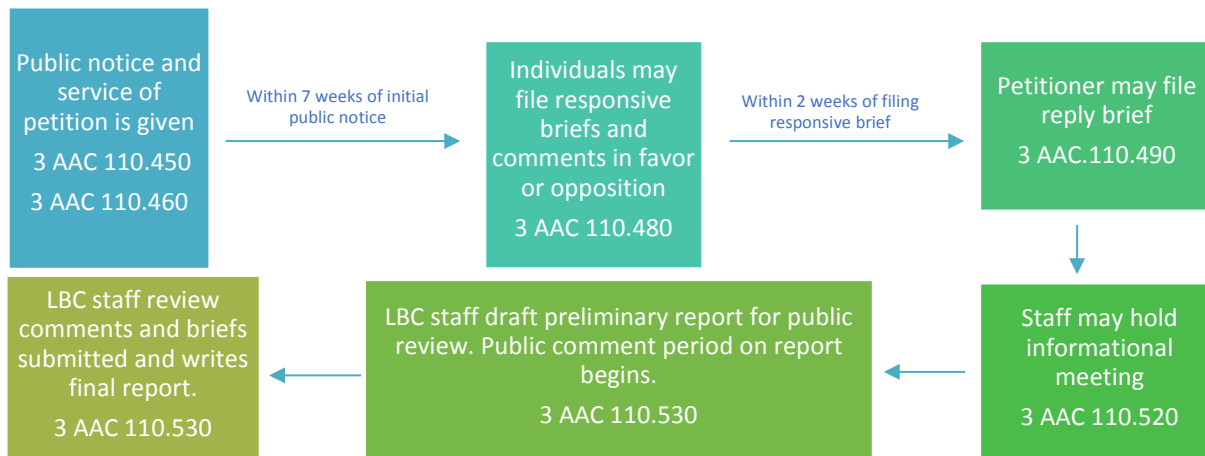
*Legislative review annexations petitions require petitioner to hold a hearing before filing petition per 3 AAC 110 425

Borough Detachment Petition Process

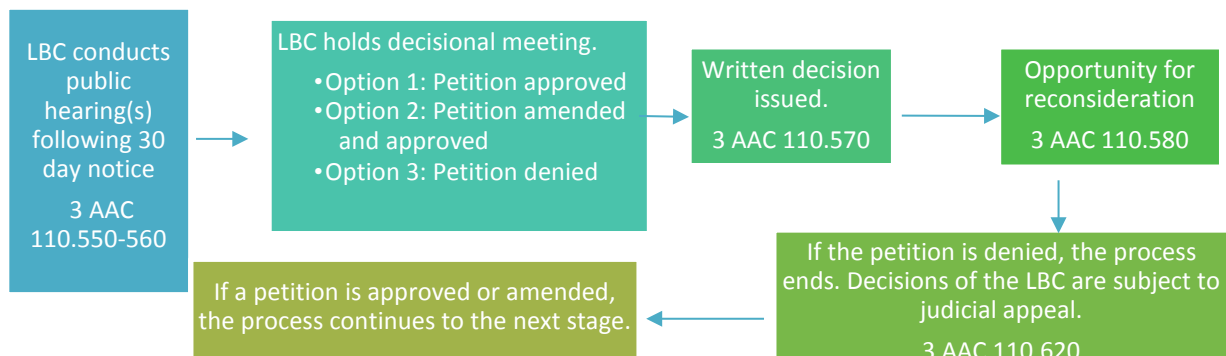
Stage 1: Filing the Petition



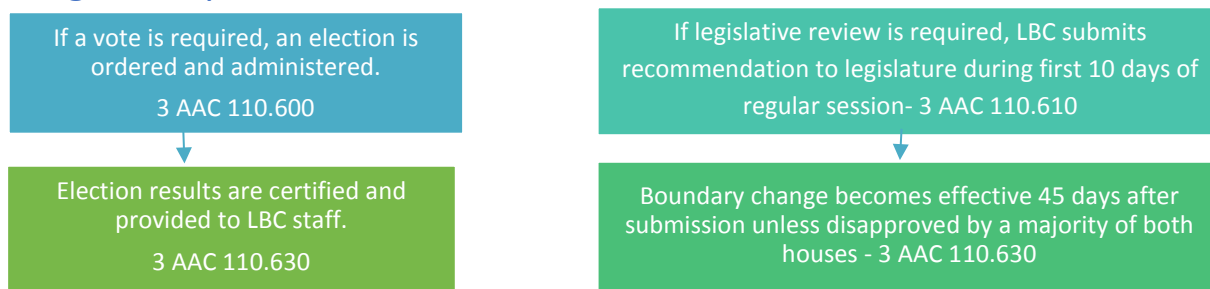
Stage 2: Public Review



Stage 3: Hearing and Decision by LBC



Stage 4: Implementation



LOCAL GOVERNMENT IN ALASKA

Prepared by Local Boundary Commission Staff
Alaska Department of Commerce, Community, and Economic Development
May 2015

Section 1 – Alaska Has Just Two Types of Municipal Government – Cities and Organized Boroughs.

Unlike most other states that typically have local government structures consisting of many overlapping local government service providers, Alaska's system of local government is simple, efficient, and effective. It consists of just two types of municipal government as described below.

A. Cities.

Federal law did not allow the incorporation of city governments in Alaska until 1900. The City of Ketchikan is the oldest city government in Alaska.

A city government is a municipal corporation and political subdivision of the State of Alaska. City governments are subject to the "limitation of community" doctrine. (See *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974).) The doctrine requires the area taken into the boundaries of a city to be urban or semi-urban in character. (Also see 3 AAC 110.040(b).)

On average, the corporate boundaries of cities in Alaska encompass just over 30 square miles. However, there are wide variations in the size of individual cities. The City of Saint Paul encompasses the largest area (295.5 square miles), while the City of Kiana encompasses the smallest area (0.2 square miles).

Current State law restricts the inclusion of large geographical regions or large unpopulated areas in cities. (3 AAC 110.040(b) - (c); 3 AAC 110.130(c) - (d)). A city is part of the borough in which it is located. (Article X, section 7, Alaska Constitution.)

Presently, there are 144 city governments in Alaska. In 2014, those cities were inhabited by 162,016 individuals or 22 percent of Alaska's total population of 735,601.

The 2014 population of cities ranged from a high of 31,721 (City of Fairbanks) to a low of 25 (City of Kupreanof).

B. Organized Boroughs.

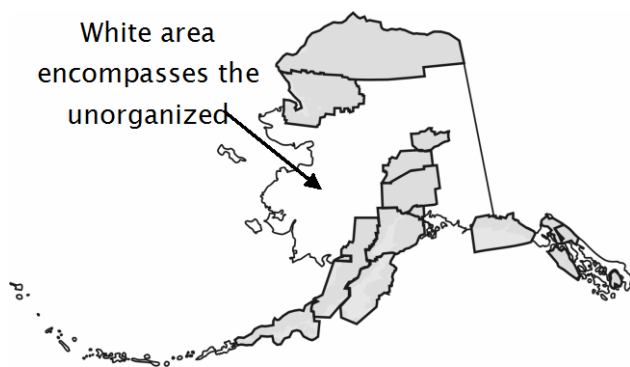
Prior to statehood, federal law prohibited the creation of counties in Alaska.

Like a city, an organized borough in Alaska is a municipal corporation and political subdivision of the State of Alaska. However, organized boroughs are regional governments—much larger than cities.

Article X, section 3 of the Alaska Constitution requires that the entire state be divided into boroughs, organized or unorganized. It also requires that each borough embrace a maximum area and population with common interests.

Article X, section 1 of the Alaska Constitution calls for minimum numbers of local governments. Together, sections 1 and 3 of article X promote large boroughs embracing natural regions.

Presently, there are 19 organized boroughs in Alaska. On average, organized boroughs encompass just over 15,866 square miles (528 times the average size of cities). Like cities, the size of individual organized boroughs varies considerably. The largest organized borough is the North Slope Borough (94,762 square miles), while the Municipality of Skagway is the smallest (464.3 square miles)



In 2014, Alaska's 19 organized boroughs were inhabited by 658,273 individuals, or 89.5 percent of the total population of the state. Of the 658,273 residents of organized boroughs in Alaska, 103,820 (15.8 percent) also lived within a city government during 2014.

Organized boroughs encompass about 45 percent of the geographic area of Alaska. State law provides that the part of Alaska outside organized boroughs comprises a single unorganized borough. As it is presently configured, the unorganized borough encompasses 323,440 square miles. The unorganized borough was inhabited by 75,550 residents in 2014. Additional information about the unorganized borough is provided later in this publication.

Section 2 – Classification of Cities and Boroughs.

A. Cities.

There are three different classifications of city governments in Alaska—home-rule, first-class, and second-class cities. A community must have at least 400 permanent residents to form a home-rule or first-class city.

First- and second-class cities are general-law cities—state law defines their powers, duties, and functions. General law is distinct from home rule. Home-rule cities have all legislative powers not prohibited by law or charter. Details about the differences between the two types of government are provided in Section 3.

Table 1 lists the number of cities of each classification and indicates whether those cities are inside or outside an organized borough. The classification and location of cities are significant in terms of the powers and duties of city governments in Alaska as addressed in Section 3.

Table 1 City Governments in Alaska						
Classification	Within Organized Boroughs		Within the Unorganized Borough		Total	
	Number of Cities	2014 Population	Number of Cities	2014 Population	Number of Cities	2014 Population
Home-Rule Cities	7	64,550	3	6,714	10	71,264
First-Class Cities	7	24,238	12	15,962	19	40,200
Second-Class Cities	35	15,032	80	35,520	115	50,552
Total	49	103,820	95	58,196	144	162,016

B. Organized Boroughs.

The word “borough” has its origins in fifth century Europe. It means “place organized for local government purposes.” A number of countries and a number of states in the US have boroughs; however, they are unlike boroughs in Alaska.

There are five different classifications or types of organized boroughs in Alaska. These are unified home-rule, non-unified home-rule, first-class, second-class, and third-class.¹ First, second, and third-class boroughs are general law governments.

Table 2 lists the number of boroughs according to classification. Details about the distinctions among the different classifications of boroughs are provided in Section 3.

Table 2 Organized Boroughs in Alaska		
Classification	Number	2014 Population
Unified Home Rule	4	345,042
Non-unified Home Rule	7	27,319
First Class	1	1,031
Second Class	7	284,881
Third Class	0	0
Total	19	658,273

¹ A “unified municipality” is an organized borough (unified, home-rule borough). A unified municipality is defined as such by the Local Boundary Commission in 3 AAC 110.990(1). The Alaska Constitution recognizes only two types of municipalities, cities and boroughs (Alaska, Const., art. X, sec. 2). The legislature consistently treats unified municipalities as boroughs. For example, State statutes utilize the same standards for incorporation of a borough as they do for incorporation of a unified municipality (AS 29.05.031). By contrast, the legislature has established separate standards for incorporation of a city (AS 29.05.011). Newly-formed unified municipalities and boroughs are entitled to identical organization grants and other transitional assistance (AS 29.05.190; 29.05.210), whereas newly-formed cities are entitled to substantially lower levels of organization grants and different transitional assistance. AS 29.06.410 describes the powers of a unified municipality to include all powers granted to a home-rule borough. Additionally, all the existing unified municipalities in Alaska recognize themselves as boroughs in that each is governed by an assembly. Article X, section 4 of the Alaska Constitution reserves the term “assembly” for the governing body of a borough, whereas article X, section 8 of the Alaska Constitution reserves the term “council” for the governing body of a city. Lastly, none of the unified municipalities exhibits characteristics that are exclusive to city governments.

While the third-class borough classification remains in law, there are no third-class boroughs. Moreover, state law expressly **prohibits** the formation of new third-class boroughs. Therefore, this publication does not address the powers of a third class borough or other aspects of a third class borough.

Section 3 – Alaska’s Cities and Organized Boroughs – Both General Law and Home Rule – Enjoy Broad Powers.

A. Provisions Applicable to All Local Governments in Alaska.

Article X of the Alaska Constitution establishes the framework for local government in Alaska. Section 1 of the local-government article states the following with respect to the purpose and construction of the constitutional provisions regarding local government:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. *A liberal construction shall be given to the powers of local government units* (emphasis added).

All local governments in Alaska – general-law cities, home-rule cities, general-law boroughs, and home-rule boroughs – enjoy broad powers. The Alaska Supreme Court has noted with respect to the constitution provision for a liberal construction of the powers of local government as follows:

The constitutional rule of liberal construction was intended to make explicit the framers’ intention to overrule a common law rule of interpretation which required a narrow reading of local government powers.^[2]

² Footnote 19 in original. The rule, called Dillon’s rule states:

[A] municipal corporation possesses and can exercise the following powers and not others. First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

Merriam v. Moody’s Executors, 25 Iowa 163, 170 (1868). The minutes of the constitutional convention reveal that the liberal construction clause of Article X, Section 1 was intended to assure that general law municipalities, as well as those having home-rule powers, would not be governed by this rule, but would have their powers liberally interpreted. The following colloquy between delegates Hellenenthal and Victor Fischer is illustrative:

HELLENTHAL: Is there a compelling reason for the retention of the last sentence in the section?

V. FISCHER: Mr. President, we were advised by our committee consultants that due to the fact that in the past, courts have very frequently, or rather generally interpreted the powers of local government very strictly under something

(continued . . .)

B. General-Law Cities and Boroughs.

As noted in Section 2, general-law local governments derive their powers from laws enacted by the state legislature. The constitutional principle of liberal construction of local government powers is reflected in the laws enacted by the legislature granting powers to general law governments. Among the statutes are the following provisions:

Sec. 29.35.400. General construction.

A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

Sec. 29.35.410. Extent of powers.

Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

In 1983, the Alaska Supreme Court addressed article X, section 1 of the Alaska Constitution, along with the similar version of the two statutes noted above that was in effect at the time. The court concluded that a second-class (general-law) borough had powers beyond those expressly stated in law. Specifically, the court concluded that even though state statutes did not specifically authorize a second-class borough to dispose of land by lottery, that power was “fairly implied.” (*Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983).)

(... Continued)

called “Dillon’s Rule”, or something like that, that a statement to this effect was rather important, particularly in connection with the local government provisions of the article to make sure that it would be interpreted to give it the maximum amount of flexibility that we desire to have in it and to provide the maximum powers to the legislature and to the local government units to carry out the intent of this article.

....

HELLENTHAL: Now I refer to Section 11. Doesn’t Section 11 clearly reverse this rule that you refer to as Dillon’s Rule?

V. FISCHER: That would apply to home rule, cities and boroughs, but the point is that there may be a lot of local government units in Alaska over the years that may not be granted the home rule authority by the legislature and it may not want to adopt a home rule charter. Alaska Constitutional Convention Proceedings, Part 4, 2690 – 96.

In reaching its conclusion that a general-law government had implied powers, the court cited the irreconcilable conflict rule that it utilized in *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974). The court made no distinction as to the deference due to an enactment by a home-rule municipality as compared to an enactment by a general law-municipality. The application of the irreconcilable conflict rule in *Gilman v. Martin* clearly enhanced the powers of general-law municipalities in Alaska.

Those powers were further enhanced to a great degree in 1985 when the state legislature eliminated the enumerated list of regulatory powers of general-law municipalities (former AS 29.48.035) and the enumerated list of authorized facilities and services of general-law municipalities (former AS 29.48.030). The enumerated lists of powers were replaced with the broadest possible grant of powers to general-law municipalities; i.e., “any power not otherwise prohibited by law.” (AS 29.35.200(a) and (c); 210(c) and (d); 220(d); 250(a); 260(a).)

The statutory grant of powers to general-law municipalities has no general limitations such as “any municipal power” or “any local government power” which would imply that the granted powers were limited to those that the court might think of as typical or appropriate local government powers. Finding such an implied limitation would be difficult in light of the language of article X, section 1; *Liberati v. Bristol Bay Borough*, *Gilman v. Martin*; and the literal language of the statutory grant of powers.

Similarly, it may be relevant that the second sentence of article X, section 1 of the Alaska Constitution reads “A liberal construction shall be given to the powers of local government units” instead of, “A liberal construction shall be given to local government powers.” The latter implies that there is some definition or judicial understanding of what constitutes local government powers and invites a court to define what is encompassed by the term before it applies a liberal construction to the power being questioned. If it is not typically a “local government power” as envisioned by the courts across the nation, then the court need not apply a liberal construction to it. The actual language of the Alaska Constitution does not lend itself as easily to such an interpretation and, coupled with the language of the Title 29 grants (“any power not otherwise prohibited by law”), would make it difficult for a court (in a well-briefed case) to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

As a practical matter, under the present language of Title 29, the nature of the powers to which a general-law municipality has access are substantially the same as those to which a home-rule municipality has access, bearing in mind the specific Title 29 limitations that apply to general-law municipalities.

C. Distinctions Between General Law Boroughs.

A principal distinction between a first-class borough and a second-class borough relates to the authority to assume powers. A first-class borough may exercise any power not prohibited by law on a nonareawide basis (i.e., in the area of the borough outside cities) by adopting an ordinance. In contrast, a second-class borough must gain voter approval for the authority to exercise many nonareawide powers.

D. Home-Rule Cities and Boroughs.

While general-law local governments in Alaska have broad powers, home-rule local governments have even greater powers. Article X, section 11 of the Alaska Constitution provides that:

A home-rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Adoption of a home-rule charter promotes maximum local self-government to the greatest extent possible. Tom Morehouse and Vic Fischer, recognized experts in Alaska local government, wrote the following account of the views of the constitutional convention delegates with regard to this matter:



Committee on Local Government meeting during the Alaska Constitutional Convention, February 1956.

An oft-repeated theme of the [Alaska Constitutional] convention, and one of the stated purposes of the local government article, was provision of maximum local self-government to the people of Alaska. . . . Home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local problems at the local level. It was also to be the means for promoting local government adaptation in a state with great variations in geographic, economic, social, and political conditions.

This home-rule philosophy was not believed to be inconsistent with a strong state role in local affairs. As the above discussion indicates, the exercise of state authority was considered essential in matters of incorporation and boundaries, i.e., the creation of local governments and their areas of jurisdiction were felt to be matters ultimately of state responsibility. When properly established, however, their internal organization and operations were to be primarily local concerns, particularly in the case of home rule units. Moreover, a “strong state role” also meant that the state would support local governments with financial aid and technical assistance.

Before Alaska became a state, there was little self-determination either at territorial or local levels. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government that could be established and restricting the powers that could be exercised by incorporated cities.

Throughout its deliberations, therefore, the Local Government Committee emphasized the need for effective constitutional provisions for home rule.

Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, p. 56.

In 1963, the Alaska Supreme Court ruled as follows:

By constitutional provision cities have “the powers and functions conferred by law or charter.” The meaning of this provision is that where a home rule city is concerned the charter, and not a legislative act, is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provisions stating that a home rule city “may exercise all legislative powers not prohibited by law or by charter” and then to say that the power of a home rule city is measured by a legislative act.”

Lien v. City of Ketchikan, 383 P.2d 721, 723 (Alaska 1963) (footnotes omitted).

In 1974, the Alaska Supreme Court ruled that the prohibitions referred to in article X, section 11 can be either in express or implied terms. Specifically, the Court stated:

The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded with weight of law.

Jefferson v. State, 527 P.2d 37, 43 (Alaska, 1974).

There are 138 sections of the current Alaska Statutes that specifically refer to home-rule local governments. Most of those (104) are found in Title 29 of the Alaska Statutes dealing with municipal government. The remaining 34 are scattered in 20 other titles of the Alaska Statutes.

Section 4. The Duties of Cities and Boroughs Depend Upon Classification. City Duties Also Vary in Terms of Location Within or Outside of Organized Boroughs.

All local governments have certain fundamental duties such as conducting elections and holding regular meetings of the governing bodies. Beyond this, the duties of municipalities in Alaska vary considerably.

All organized boroughs as well as home-rule and first-class cities in the unorganized borough must operate municipal school districts. Second-class cities in the unorganized borough and cities in organized boroughs are not authorized to do so.

All organized boroughs, along with home-rule and first-class cities in the unorganized borough, must also exercise planning, platting, and land use regulation. Second-class cities in the unorganized borough are permitted, but not required, to exercise those powers. Home-rule, first-class, and second-class cities in organized boroughs may exercise planning, platting, and land-use regulation powers only if those powers have been delegated to them by the borough.

Organized boroughs also have the duty to collect municipal property, sales, and use taxes levied within their boundaries.

Otherwise, municipal powers are exercised at the discretion of local governments. Second-class cities are not obligated by law to provide any particular service.

Organized boroughs may provide services on three jurisdictional levels. These are (1) areawide (i.e., throughout the entire borough); (2) nonareawide (i.e., in that part of the

borough outside of cities); and (3) service area (the size and configuration of service areas may vary, they may even include territory within the boundaries of city governments under certain circumstances).³

The Alaska Constitution (article X, section 5) and Alaska Statutes (AS 29.35.450) prohibit the creation of new service areas if services can be provided by an existing service area, annexation to a city, or incorporation of a new city.

Tables 3 and 4 provide additional information concerning the powers and duties of the various types of cities and boroughs.

Section 5 – The Unorganized Borough Is Unlike an Organized Borough.

Unlike cities and organized boroughs, the unorganized borough is not a municipal corporation or political subdivision of the State of Alaska.

Unorganized boroughs were intended to serve as a means to decentralize state services and to foster local participation in the administration of state programs within regions not ready or suited for organized borough status.

Article X, section 6 of the Alaska Constitution stipulates that, “The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.”

Ostensibly to carry out the constitutional mandate that the entire state be divided into boroughs, organized or unorganized, the 1961 Legislature enacted a law providing that all areas not within the boundaries of an organized borough constitute a single unorganized borough. (AS 29.03.010.)

The Local Boundary Commission has stressed repeatedly over many years that, given the size and diversity of unorganized areas of Alaska, a single, residual unorganized borough falls far short of the constitutional intent regarding

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“Service area” means an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided. Borough service areas are not local governments; service area boards lack legislative and executive powers.

borough boundaries.⁴ In 1990, the commission initiated an effort to define the unorganized borough in terms of model boundaries based on constitutional, statutory, and regulatory boundary standards for borough incorporation. The commission's work was completed at the end of 1992. Funding for the project was provided by the legislature. In the course of the effort, the LBC held hearings involving 88 communities. Since 1992, the model borough boundaries have been modified five times.⁵

Currently, 18 different model boroughs are defined in the unorganized borough. In addition, the commission identified five parts of the unorganized borough that have greater social, cultural, economic, geographic, transportation, and other relevant ties to existing organized boroughs vis-à-vis any of the 18 model boroughs in the unorganized borough.

A map showing the then-16 organized boroughs, 18 model boroughs, and parts of the unorganized borough with ties to organized boroughs is provided below.

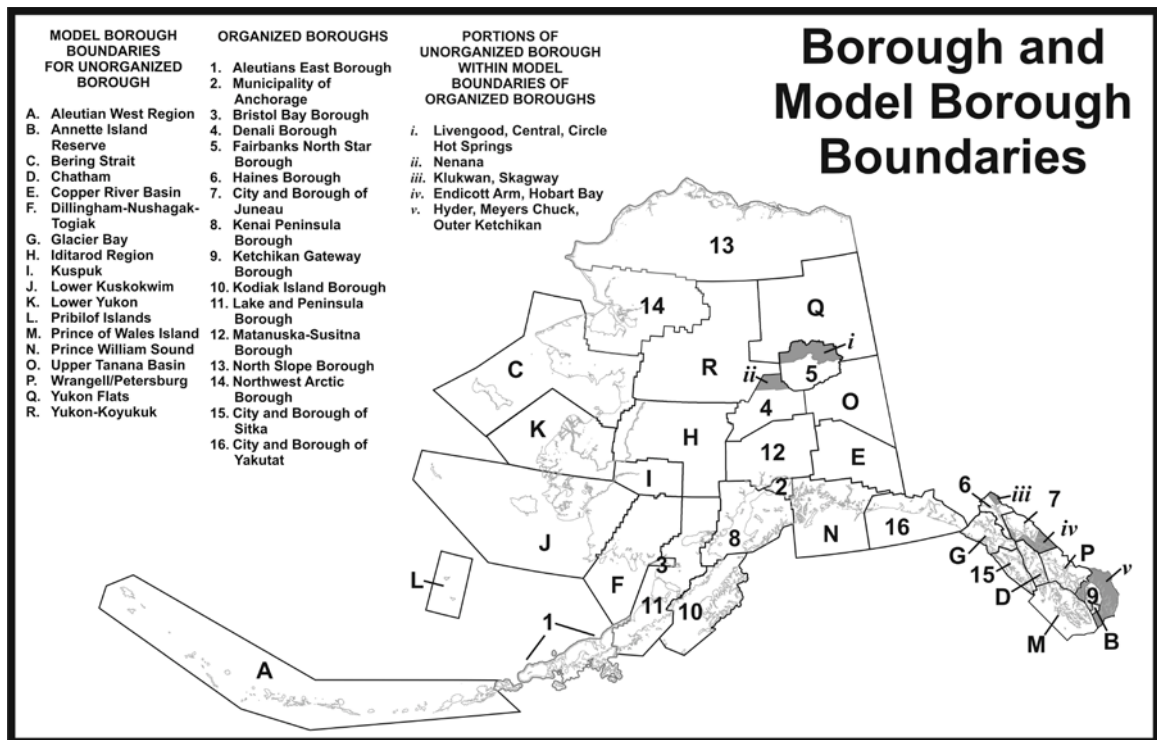
⁴ Most recently, the LBC recently expressed the view that the 1961 law creating the single residual unorganized borough, "disregarded the constitutional requirement that each borough must embrace an area of common interests." Local Boundary Commission and Department of Education and Early Development, *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*, February 2004, p. 30.

⁵ The first modification occurred to the boundaries of the Prince William Sound Model Borough, which were reduced as a result of an annexation to the adjoining City and Borough of Yakutat. The second modification occurred when the LBC merged the former "Aleutian-Military Model Borough" into the "Aleutians West Region Model Borough" in December 2002, during the course of a study of the unorganized borough. (See: *Local Boundary Commission, Unorganized Areas of Alaska That Meet Borough Incorporation Standards*, February 2003, p. 69.)

The third modification occurred in 2007 to the model borough boundaries in the upper Lynn Canal region, which were reduced as a result of the incorporation of the former City of Skagway as a borough. The model borough boundaries in the upper Lynn Canal region now consist of the Haines Borough and the enclave therein, Klukwan.

The fourth modification also occurred in 2007. The amendment was to the boundaries of the Wrangell/Petersburg Model Borough, which were reduced as a result of the commission's 2007 approval of a Wrangell borough (approved by voters in 2008). Incorporation of the Wrangell borough removed approximately 3,465 square miles of land and water from the 7,200-square-mile Wrangell/Petersburg Model Borough. That incorporation also effected the fifth modification to the model borough boundaries in that the commission included the Meyers Chuck/Union Bay area in the Wrangell borough, thereby removing it from the model borough boundaries for the Ketchikan Gateway Borough (KGB). Following that decision, the commission in 2007 also approved annexation by the KGB of the majority of its remaining model borough boundaries. The only area remaining to be included in the KGB model borough boundaries is in the region of Hyder.

The Model Borough Boundaries have not been updated since 2007.



The Model Borough Boundaries are not up-to-date.

The legislature has enacted provisions to allow for local participation and responsibility in the delivery of state services in the unorganized borough. These are described below.

Regional educational attendance areas (REAAs) are state service areas to provide public education to the unorganized borough, except within home-rule and first-class cities. The 1975 Legislature required the then Department of Community and Regional Affairs,⁶ in consultation with the then Department of Education and local communities, to divide the unorganized borough into educational service areas. The criteria used to establish the boundaries of REAAs are similar in many respects to the criteria for setting boundaries of organized boroughs. (AS 14.08.031.) In a number of instances, the model borough boundaries set by the Local Boundary Commission in 1990-1992 follow the boundaries of REAAs.

Initially, 21 REAAs were established. These were: Adak, Alaska Gateway (headquartered in Tok), Aleutian Region, Annette Island, Bering Straits, Chatham (headquartered in Angoon), Chugach (serving Prince William Sound), Copper

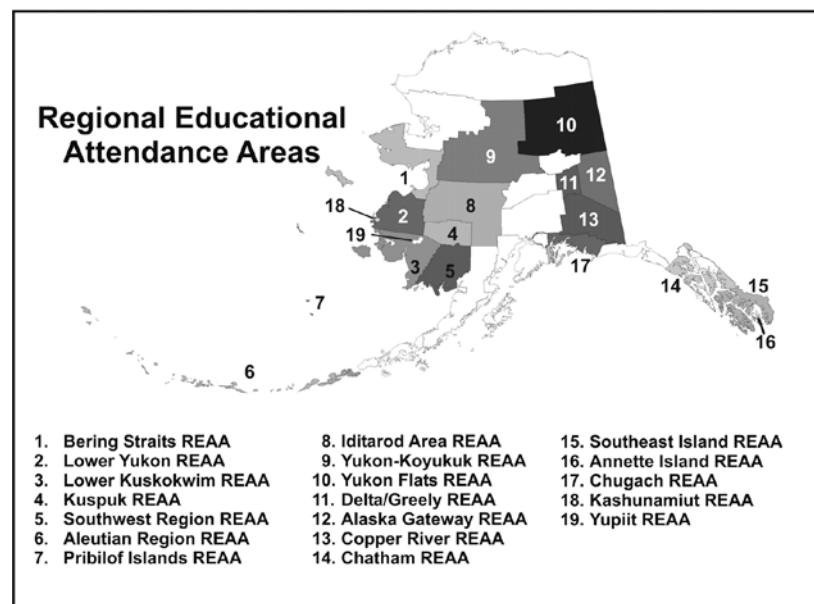
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Predecessor agency to the Department of Commerce, Community, and Economic Development, which serves as staff to the Commission under AS 44.33.020(a)(4).

River, Delta/Greely, Iditarod Area, Kuspuk, Lake and Peninsula, Lower Kuskokwim, Lower Yukon, Northwest Arctic, Pribilof Islands, Railbelt, Southeast Island, Southwest Region, Yukon Flats, and Yukon-Koyukuk.

In 1985, the Bureau of Indian Affairs stopped funding schools in Akiachak, Akiak, Tuluksak, Chevak, and Chefnak. The 1985 Legislature passed a law allowing the formation of two “federal transfer regional educational attendance areas” to assume the operation of those schools, subject to voter approval.

Voters in Chevak approved the proposition to form the Kashunamiut Federal Transfer REAA. Voters in the other communities, except Chefnak, also approved the proposition to form the Yupiit Federal Transfer REAA.



Since the mid-1970s, ten organized boroughs have formed. The formation of the Northwest Arctic Borough, Lake and Peninsula Borough, and Denali Borough resulted in the dissolution of the REAAs in those areas. In the case of six new boroughs, the Aleutians East Borough, the City and Borough of Yakutat, the Municipality of Skagway, the City and Borough of Wrangell, Petersburg Borough, and the City and Borough of Juneau, they took in only portions of the REAAs in those regions. Thus, in those instances, the REAAs remained in existence.

On July 1, 1997, the Adak REAA was merged into the Aleutian Region REAA.

Other Service Areas in the Unorganized Borough.

AS 29.03.020 provides that the legislature may establish, eliminate, or change service areas of the unorganized borough. Specifically, it provides that:

Allowing for maximum local participation, the

legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, that may include but are not limited to schools, utilities, land use regulations, and fire protection. A new service area **may not be established** if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

Other Entities

Other entities may be established under state or federal law to provide public or quasi-public services to residents of Alaska. They include; tribal governments, port authorities, local emergency planning committees, soil and water conservation districts, regional housing authorities, civil defense districts, consolidated health districts, telephone and electrical cooperatives, historical districts, grazing districts public utility districts, registration districts and local improvement districts. It is beyond the scope of this discussion to provide details about these other entities other than to recognize their existence.

TABLE 3
POWERS AND DUTIES OF CITIES

POWERS AND DUTIES	HOME-RULE CITY	FIRST-CLASS CITY	SECOND-CLASS CITY	REFERENCES
Public Education	If the city is in the unorganized borough, it must provide the service in accordance with AS 14. A home-rule city is not permitted to do so within organized boroughs.	Same as for a home-rule city.	The city is not allowed to provide the service under any circumstance.	AS 29.35.260(b) AS 14.12.010 AS 14.12.025
Planning, Platting & Land Use Regulation	If the city is in the unorganized borough, it must exercise the powers. If it is in an organized borough, it may be permitted by borough to exercise the powers.	Same as for a home-rule city, except the power must be exercised in accordance with AS 29.40.	The city is not required to exercise the powers in any circumstance, but may be permitted in all cases in the manner described for first-class cities.	AS 29.35.250(b) AS 29.35.260(c)
Property Tax	The city may tax up to 30 mills, except where a higher levy is necessary to avoid default on debt. Some home-rule charters require voter approval to authorize the levy property taxes.	The city may tax up to 30 mills except where a higher levy is necessary to avoid default on debt. Voter approval is not required under State law; however, some general-law municipal governments have more restrictive limitations imposed at the local level.	The city may tax up to 20 mills, except where a higher levy is required to avoid default. Voter approval is required.	AS 29.45.550- AS 29.45.590
Sales Tax	The rate of levy may be limited by charter. Requirements for voter approval may also be set by charter.	There is no limit on the rate of levy of sales taxes; however, voter approval is required.	Same as for a first-class city.	AS 29.45.700
Other Powers	Possess all legislative powers not prohibited by law or charter.	May exercise other powers not prohibited by law.	May exercise other powers not prohibited by law.	Art. X, § 11 Ak. Const. AS 29.35.250
City Council Composition and Apportionment	Determined by charter or ordinance.	Six members elected at-large, except the council may provide for election other than at-large.	Seven members elected at-large, except the council may provide for election other than at-large.	AS 29.20.130
Election and Term of Mayor	Determined by charter or ordinance.	Elected at large for a three-year term, unless a different term not to exceed four years is provided by ordinance.	Elected from the city council for a one-year term, unless a longer term is provided by ordinance. Mayor is selected by council (or by voters upon adoption of ordinance).	AS 29.20.230

**TABLE 3 - Continued
POWERS AND DUTIES OF CITIES**

POWERS AND DUTIES	HOME-RULE CITY	FIRST-CLASS CITY	SECOND-CLASS CITY	REFERENCE
Vote by Mayor	Determined by charter or ordinance.	May vote to break a tie vote on the city council.	Votes on all matters.	AS 29.20.250
Veto Power of the Mayor	Determined by charter or ordinance, except veto is not permitted of appropriation items in a school budget ordinance (if the city is a school district); actions of council sitting as the board of equalization or board of adjustment; adoption or repeal of a manager plan of government; or of ordinance prohibiting possession of alcohol.	Generally has veto power, with the same exceptions noted for home-rule cities.	Has no veto power.	AS 29.20.270
Power of Eminent Domain	Permitted by statute.	Permitted by statute.	Permitted, but requires voter approval.	AS 29.35.030
Ability to Attain Home-rule Status	Already has home-rule status.	Voters may adopt home-rule charter.	May not adopt home-rule charter without first reclassifying to a first-class city.	AS 29.10.010

TABLE 4
POWERS AND DUTIES OF ORGANIZED BOROUGHS

POWER	HOME-RULE BOROUGH (INCLUDING UNIFIED MUNICIPALITY)	FIRST-CLASS BOROUGH	SECOND-CLASS BOROUGH
Public Education	The borough or unified municipality must provide the service areawide in accordance with AS 14.	Same as for a home-rule borough.	Same as for a home-rule borough.
Planning, Platting & Land Use Regulation	The borough or unified municipality must exercise the powers areawide, but not necessarily in accordance with AS 29.40.	The borough must exercise the powers areawide; in accordance with AS 29.40; the borough may allow cities to assume such powers within their boundaries	Same as for a first-class borough.
Provide Transportation Systems, Water & Air Pollution Control, Animal Regulation	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide or nonareawide basis by ordinance; approval from voters or property owners required for service area powers.
License Day Care Facilities	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide basis by ordinance; voter approval required for exercise on a nonareawide or service area basis.
Regulate Fireworks, Provide Solid & Septic Waste Disposal, Housing Rehabilitation, Economic Development, Roads & Trails, EMS Communications, Regulate Motor Vehicles and Development Projects	Determined by charter or ordinance	May be exercised areawide upon approval of areawide voters or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide or service area basis.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide basis; may be exercised on a service area basis with voter approval
Hazardous Substance Control	Determined by charter or ordinance	Same as above.	Same as above.
Other Powers Not Prohibited	Determined by charter or ordinance	Same as above.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities and approval of nonareawide voters; may be exercised nonareawide upon approval of nonareawide voters; may be exercised on a service area basis with voter approval

Table continued on next page

TABLE 4 - Continued
POWERS AND DUTIES OF ORGANIZED BOROUGHS

POWER	HOME-RULE BOROUGH (INCLUDING UNIFIED MUNICIPALITY)	FIRST-CLASS BOROUGH	SECOND-CLASS BOROUGH
Property Tax	Limited to 30 mills except where a higher levy is necessary to avoid default on debt; voter approval to levy property taxes is required by some charters.	Same as home-rule except there is no charter. Still some general law boroughs have more limited taxing authority established by local action.	Same as for a first-class borough.
Sales Tax	The rate of levy may be limited by charter and voter approval to levy sales taxes may be required by charter.	No limit exists on the rate of levy; however, voter approval is required to levy sales taxes.	Same as for a first-class borough.
Assembly composition and apportionment	Flexible; determined according to AS 29.20.060 - 29.20.120	Same as for a home-rule borough.	Same as for a home-rule borough.
Election and Term of Mayor	Established by charter or ordinance.	Elected at large for a three year term, unless a different term not to exceed four years is provided by ordinance.	Same as for a first-class borough.
Vote by Mayor	Established by charter or ordinance.	May vote to break a tie vote only if the borough has a manager form of government	Same as for a first-class borough.
Veto Power of the Mayor	Generally determined by charter, except veto is not permitted of appropriation items in a school budget ordinance (if the city is a school district); actions of council sitting as the board of equalization or board of adjustment; adoption or repeal of a manager plan of government; or of ordinance prohibiting possession of alcohol.	Generally has veto power, with same exceptions noted for home-rule borough.	Same as for a first-class borough.
Ability to Attain Home-rule Status	Already has home-rule status.	Voters may adopt home-rule charter.	Same as for a first-class borough.

Local Boundary Commission

Department of Commerce, Community, and Economic Development

Division of Community and Regional Affairs

550 W. 7th Avenue, Suite 1640

Anchorage, AK 99501



BOROUGH DETACHMENT IN ALASKA

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INTRODUCTION

Thank you for your interest in borough detachment. The process for changing boundaries, including detachment, takes place at the state level in Alaska. Boundary changes are subject to a process first described in the Constitution of the State of Alaska. The intended audience for this information is boroughs and residents interested in pursuing detachment, and this packet seeks to provide the necessary information to get started. This packet is primarily intended for those considering preparing a petition; however, opponents and proponents of current or planned petitions can find helpful information as well.

This packet is organized into several modules:

- [About the Local Boundary Commission](#)
- [About Borough Detachment](#)
- [Planning for a Detachment](#)
- [Procedures for Petitions](#)

These modules are intended to provide background information and orient interested persons and boroughs with the process for borough detachment in Alaska and the relevant entities involved. This information packet provides background information on the Local Boundary Commission (LBC or commission) and its authority to consider boundary changes as well as the staff that supports the commission. It also describes steps to take, lists important considerations when deciding whether to pursue detachment, and offers guidelines on the planning process. In addition, this packet provides information about the procedures before and after a petition is filed with the LBC.

Throughout the packet, the text refers to Alaska statutes, regulations, and sections of the Alaska constitution. All relevant laws are listed by title, and the full text can be found in the appendices. The appendices also include a generic sample petition form; however, interested persons should still consult LBC staff before drafting a petition. Borough detachment, however small the area proposed for detachment, is an involved process. This information packet aims to help prepare potential petitioners, and educate those interested in the process. Prospective petitioners and those with questions should feel free to contact staff:

Local Boundary Commission staff
550 W. 7th Avenue, Suite 1640
Anchorage, AK 99501
907-269-4587/4559
lbc@alaska.gov

CONSTITUTIONAL ORIGIN OF THE LOCAL BOUNDARY COMMISSION

The framers of Alaska's constitution subscribed to the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution."¹ The framers recognized that a "grave need" existed when it came to the establishment and alteration of municipal governments and provided for the creation of the Local Boundary Commission (LBC or commission) in Article 10, Section 12 of the constitution.²

The LBC is one of only five state boards or commissions established in the constitution (among a current total of approximately 120 active boards and commissions). The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.³

DUTIES AND FUNCTIONS OF THE LBC

The LBC acts on proposals for seven different municipal boundary changes. The term "municipalities" includes both city governments and borough governments. These are:

- incorporation of municipalities;
- reclassification of city governments;
- annexation to municipalities;
- dissolution of municipalities;
- detachment from municipalities;

¹ Victor Fischer, Alaska's Constitutional Convention, p. 124.

² Article 10, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

³ *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

- merger of municipalities; and
- consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the legislature concerning boundary changes under Article 10, Section 12 of Alaska's constitution.

The LBC is sometimes assigned duties by the legislature. Examples include the 2002 requirement to study the unorganized borough and determine which areas meet borough incorporation standards, and the 2003 directive to work with the Department of Education and Early Development regarding school district consolidation. These materials are available on the LBC website.

LBC DECISIONS MUST HAVE A REASONABLE BASIS AND MUST BE ARRIVED AT PROPERLY

LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.⁴ The LBC must proceed within its jurisdiction, conduct a fair hearing, and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by evidence.

COMMUNICATIONS WITH THE LBC

LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the right of everyone to due process and equal protection. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly

⁴ See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

and publicly preserves those rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

In that regard, all communications with the commission must be submitted through staff. The LBC staff may be contacted at the following address, telephone number, fax number, or email address.

Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1640
Anchorage, Alaska 99501-3510
Telephone: (907) 269-4587 or 269-4559
Fax: (907) 269-4563
Email: LBC@alaska.gov

LBC MEMBERSHIP

The LBC is an independent commission. Members of the LBC are appointed by the governor for five-year overlapping terms.⁵ Notwithstanding their terms, the five members of the LBC serve at the pleasure of the governor.⁶ One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state, at-large.

State law provides that members of the LBC must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership."⁷ LBC members receive no pay for their service on the commission. However, they are entitled to travel expenses reimbursement and per diem authorized for members of boards and commissions under AS 39.20.180. A biographical summary of the current members of the LBC can be found on the LBC website.

⁵ AS 44.33.810

⁶ AS 39.05.060(d)

⁷ AS 39.05.060(b)

STAFF TO THE LOCAL BOUNDARY COMMISSION

The framers provided for a local government agency in Article 10, Section 14 to advise and assist local governments.⁸ The constitutional duty to support local governments is entrusted to Alaska Department of Commerce, Community, and Economic Development (DCCED or department).⁹ Within DCCED, the Division of Community and Regional Affairs (DCRA) carries out the duty to advise and assist local governments, and provides staff to the commission pursuant to [AS 44.33.810](#).

The department is required to investigate each boundary change proposal and make recommendations regarding each to the commission.¹⁰ LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, DCCED adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, DCCED's self-imposed standard requires its recommendations to the LBC to be based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. DCCED takes the view that due process is best served by providing thorough, credible, and objective analysis of every municipal boundary proposal that comes before the LBC.

DCCED's commissioner, deputy commissioners, and the director of DCRA provide policy direction concerning recommendations to the LBC from staff. DCCED staff's recommendations to the LBC are not binding on the LBC. The LBC is an independent commission. While the commission is not obligated to follow DCCED recommendations, it has historically considered the department's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. The LBC considers the entire record when it renders a decision.

DCCED staff also provide technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others. There are two full-time staff positions assigned to work on commission matters.

Types of assistance provided by DCCED staff include:

- conducting feasibility and policy analysis of proposals for incorporation or

⁸ Article 10, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

⁹ AS 44.33.020 provides that DCCED "shall (1) advise and assist local governments."

¹⁰ AS 29.05.080 and 3 AAC 110.530

alteration of municipalities;

- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;
- providing technical support during commission hearings and commission meetings;
- drafting decisional statements;
- implementing decisions of the commission;
- certifying actions;
- maintaining incorporation and boundary records for each of Alaska's municipal governments;
- drafting reports, correspondence, public notices, legislation, or regulations as requested by the commission;
- coordinating, scheduling, and overseeing public meetings and hearings for the commission;
- developing orientation materials and providing training for new commission members;
- maintaining and preserving commission records in accordance with the public records laws of the state;
- developing and updating forms and related materials for use in municipal incorporation or alteration; and
- if directed by the commission, acting as a petitioner on a matter that the commission believes will promote local government standards in the Alaska constitution, AS 29.04, AS 29.05, or AS 29.06.

PROCEDURES OF THE COMMISSION

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the commission. The procedures are also intended to ensure that decisions of the commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the commission, and opportunity for reconsideration by the commission. Petition procedures are described later in the modules [About Borough Detachment](#) and [Procedures for Petitions](#).

ABOUT BOROUGH DETACHMENT

INTRODUCTION

This module provides basic information about borough detachment. Detachment from a borough means the contraction of the borough boundaries by the removal of area formerly within its jurisdiction. There are two methods available to detach area from a borough. One involves an election among the voters in the area proposed for detachment.¹¹ The other involves legislative review.¹²

Any proposed boundary change, including detachment, must be approved by the Local Boundary Commission. State law requires certain standards be met, and certain procedures be followed in order for the commission to approve a proposed detachment. In other words, the mere filing of a petition does not ensure that the proposed detachment will occur. If the LBC approves the petition, either the voters need to approve it, or the legislature must not disapprove it, in order for the detachment to take effect.

Before any decision is made to propose detachment, thought should be given to the need for detachment and the specific detachment process to pursue. Additionally, a prospective petitioner should objectively consider the likelihood of success. A proposal for detachment requires a substantial commitment of time and other resources on the part of the petitioner. Submission of a petition for detachment can result in significant expense to the petitioners for such necessary actions as newspaper publication of the notice of filing of the petition.

A prospective petitioner could be motivated to detach from a borough due to disagreements with the borough over policy issues (land use regulation), tax rates, perceived disparity between the level of services and taxes or fees, or similar issues. Petitioning for boundary changes is not a recommended mechanism for resolving local disputes.

Few detachment petitions have come before the commission since its creation, and fewer have been approved. Detachment petitions are not necessarily simply petitions to detach from a borough, but can also be petitions to concurrently form new cities or boroughs, or to be concurrently annexed to existing cities or boroughs. If a proposed detachment includes other boundary changes, those standards must also be met. This module and the following one will provide more detail as well as other resources to consult that may be relevant to those seeking additional boundary changes.

¹¹ AS 29.06.040(c)(1)

¹² Article 10, section 12, Alaska constitution

FREQUENTLY ASKED QUESTIONS

WHO CAN PROVIDE INFORMATION REGARDING DETACHMENT FROM BOROUGHS?

The LBC staff provide certain assistance to prospective petitioners. Assistance includes:

- providing petition forms;
- discussing policy issues;
- guidance on technical matters; and
- direction on information sources needed to complete a petition.

While the staff can answer questions, the petitioner bears the responsibility of preparing a petition.

IF AN INDIVIDUAL OR GROUP DOES NOT WANT DETACHMENT, WILL STAFF PROVIDE INFORMATION TO THEM?

The LBC staff also provide assistance to any individual or organization that wishes to oppose a detachment petition. Assistance might include:

- providing information about submitting comments and responsive briefs;¹³
- providing opposing responsive briefs from prior petitions;
- discussing policy issues;
- guidance regarding technical matters; and
- identifying information sources needed to complete a responsive brief.

WHO CAN INITIATE A DETACHMENT PETITION?

Usually a borough detachment petition is submitted by voters who no longer wish to be in the borough. A city in the borough or the borough itself can also be the petitioner. Anyone can draft a petition (petitioners can enlist the help of consultants), but only certain entities are allowed to submit a petition to the LBC. Per [3 AAC 110.410](#), a petition for detachment may be initiated by:

- a city or borough;
- a regional education attendance area (REAA);

¹³ Submitting a responsive brief allows any interested party to be identified as a "respondent" in the detachment proceeding. Being a respondent results in a higher level of notice about action on the proposed detachment and provides certain procedural rights (e.g. to speak at length and to present witnesses) at the LBC public hearing.

- at least 10 percent of the resident registered voters of a city, borough, or regional educational attendance area;
- at least 25 percent of the resident registered voters of the area proposed for detachment (area);
- the legislature;
- the department's commissioner; or
- a person designated by the LBC.

Alaska's Division of Elections can provide the pertinent number of registered voters in the area proposed for detachment, a political subdivision of the state, or a REAA. Associations, tribal organizations, or corporations may not be petitioners.

ARE DISAGREEMENTS WITH THE BOROUGH GOVERNMENT A BASIS FOR DETACHMENT?

Occasionally, a prospective petitioner is motivated by disagreements with the borough over policy issues (e.g. land use regulation), tax rates, perceived disparities between levels of service and taxes or fees, or similar issues. Such disagreements are not a basis for detachment. Detachment is not intended to be a means to settle group or individual disagreements with local governments. A proposal to detach area will be granted only if it meets all applicable standards established in law.

WHAT ARE THE PROCEDURES FOR DETACHMENT?

The procedures for detachment petitions are found in [3 AAC 110.400-110.700](#). See the module, [Procedures for Petitions](#), for more specific information. Generally, most petitions come from either municipalities or voters. The petitioner drafts the petition, proposes the boundaries, and, if the petition is initiated by voters, gathers signatures.

If the petition is initiated by a municipality, then the proposed boundary change would first need to be discussed at a publicly noticed borough assembly meeting. People can attend such a meeting, or otherwise make their views known to the potential petitioner. It is possible that such input could result in a petition not being filed, or filed with different boundaries.

When a petition is submitted, the LBC staff first performs a technical review, which verifies that the petition includes everything necessary for commission review and everything required by statutes and regulations. This review is not an analysis of the merits of the petition. If the petition does not include all of the necessary information, staff send it back to the petitioner to complete.

If a petition is accepted for filing, there is a publicly noticed opportunity for the public to submit written comment. A person or entity can also become a respondent. A respondent has the

opportunity to file a brief in response to the petition, and to present witnesses at the hearing. This gives a respondent the opportunity for greater input before the commission.

Next, the staff analyze the petition to see whether it meets the standards. In doing so, it considers the petition, briefs, and comments submitted. The staff then issue a public report with its findings. People can comment on that report, and say why they feel the report is correct or incorrect in its findings. Staff consider those comments, and then issue a second report with findings. The findings could change from the first report based on the comments submitted.

After public notice, the commission will hold a public hearing, where parties can present witnesses, and the public will have an opportunity to speak. After the hearing, the commission will carefully consider all of the testimony, materials, and comments submitted in determining whether the petition meets the standards. It will then approve, amend, or deny the petition, and issue a written decision. People can request that the LBC reconsider its decision on certain grounds specified by [3 AAC 110.580](#). What happens after the LBC issues its decision depends on the petition uses the local action method or the legislative review method. See the next page for additional details about petition methods.

The petition process generally takes about a year before the LBC holds the hearing and issues a decision, primarily because of the ample opportunities for public comment, and because of the two written reports by staff analyzing the petition.

CAN A PETITION BE AMENDED AFTER IT IS FILED?

The petitioner may amend the petition after it has been filed. The commission may also amend or impose conditions on a petition following a public hearing. Ideally, amendments can be avoided with careful planning and proper consultation before filing a petition. Amending a petition can delay the petition process.

CAN AN UNSUCCESSFUL PETITION BE REFILED?

Unless the LBC is shown significantly changed conditions, the department will not accept a petition for filing that:

- is substantially similar to a petition that the LBC denied during the preceding three years;
- is substantially similar to a petition that the legislature disapproved or the voters rejected during the preceding two years; or
- requests reversing an LBC decision that became effective in the preceding two years.

HOW LONG DOES IT TAKE TO DETACH?

It typically takes several months (in some cases a year or more depending on the local effort, and whether or not there is a charter) to prepare a petition. A petitioner is encouraged to ask the staff questions during that process. Once a petition is completed, the petition is filed with the LBC. The process for review of the proposal depends, in part, upon other actions pending before the commission. The procedural steps required by law are extensive. In general, one should assume that it might take one year or longer from the filing of a petition to final action.

PETITION METHODS

There are two borough detachment petition methods: local action and legislative review. While the petitioner can choose the method, the LBC may change the method.

LOCAL ACTION

Detachment by Vote. Local action (also known as local option) is authorized by [AS 29.06.040](#). If the LBC approves a local action petition, then the borough will conduct an election within the area proposed for detachment. A majority of voters in the area must approve detachment. The rest of the borough does not vote on the issue, although it can express its position on the proposed detachment throughout the petition process. If the area voters approve detachment, it takes effect once the appropriate borough official has certified the election.

LEGISLATIVE REVIEW

Detachment by Legislative Review. The constitutional framers established the legislative review method in [Article 10, Section 12](#) of Alaska's constitution. The legislative review method does not require voter approval. Instead, if the commission approves the petition, it sends the decision to the legislature during the first 10 days of a regular session (typically in late January). The legislature then has 45 days to *disapprove* the LBC's decision by a resolution concurred by a majority of the Senate and a majority of the House of Representatives. If the legislature does not pass such a resolution, it has tacitly approved the proposal, and the boundary change takes effect.

3 AAC 110.273 describes an additional standard for legislative review detachment petitions. It can be found in below in [Summary of Borough Detachment Standards](#), and in the [appendices](#).

SPEED OF DECISION

Whether legislative review or local action by election is faster depends on when the commission issues its decision. If petition uses the legislative review method, how quickly the boundary change takes effect depends on when the next regular legislative session starts. If the petition uses the local action method and the area voters approve detachment, the detachment takes effect once the appropriate borough official has certified the election.

HOW DOES A POTENTIAL PETITIONER DECIDE WHAT METHOD OF DETACHMENT TO USE?

The petitioner can choose the method used. [3 AAC 110.273](#) describes the requirements that a petition must meet to proceed by legislative review. Petitioners should consider who would be affected by the boundary change as well as the type of boundary change proposed when selecting a method. The commission may change the method used.

WHAT ARE THE STANDARDS THE LBC USES TO REACH A DECISION?

Certain regulatory standards ([3 AAC 110.267](#) - [3 AAC 110.275](#)) apply to detachments. The standards concern whether the proposed detachment is in the best interests of the state. The next section describes the standards in detail. If a proposal for detachment includes another boundary change (e.g. annexation or incorporation), then those standards must also be addressed and satisfied by a petition. Staff will draft a petition specific to the boundary changes a petitioner is seeking.

WHAT HAPPENS AFTER DETACHMENT?

See the [Planning for a Detachment module](#) for information on post-detachment options.

SUMMARY OF BOROUGH DETACHMENT STANDARDS

A petition must state how the petition meets the legal criteria. The department will analyze the petition and other materials and make a recommendation to the LBC based on whether the petition meets these standards. Likewise, the LBC will base its decision on whether the petition meets the standards.

The standards are in [Article 10, Section 3 of Alaska's constitution](#), [AS 29.06.040\(a\)](#), [3 AAC 110.267](#) – [3 AAC 110.275](#), and [3 AAC 110.900](#) – [990](#). The standards are summarized below and fully described in the [appendices](#). Some parts not related to detachment have been omitted.

- ☐ The proposed detachment must meet applicable standards under the Constitution of the State of Alaska.
- ☐ The proposed detachment must meet standards in [3 AAC 110.267](#) - [3 AAC 110.270](#) and [3 AAC 110.900](#) - [3 AAC 110.970](#).
- ☐ The proposed detachment is in the best interests of the state per [3 AAC 110.270](#).
- ☐ Per [3 AAC 110.270\(b\)](#), if either the petitioner has proposed or the commission requires that the area incorporate in order to adequately receive local government services, the commission will condition its approval of detachment upon voter approval of incorporation.

- ☐ Per [3 AAC 110.270\(c\)](#), absent a specific and persuasive contrary showing, the proposed detachment may not create noncontiguous parts of the remnant borough or enclaves within the remnant borough.
- ☐ Per [3 AAC 110.270\(d\)](#), absent a specific and persuasive contrary showing, the commission will presume that area proposed for detachment from an organized borough to the unorganized borough diminishes maximum local self-government and does not meet the detachment standards.
- ☐ Per [3 AAC 110.270\(e\)](#), a detachment petition that also seeks to incorporate a new borough must propose that the new borough will encompass a substantially larger population and area than the population and area proposed for detachment.
- ☐ Per [3 AAC 110.272](#), a petition that proposes to detach an area from an organized borough and include that area in the unorganized borough must explain the plan for education by a REAA, including a proposal to work with the department and the Department of Education and Early Development to implement the plan.
- ☐ Per [3 AAC 110.273](#), an area that meets the standards specified in [3 AAC 110.267](#) – [3 AAC 110.270](#) may detach from a borough by the legislative review process if the commission also determines that any one of the following circumstances exists:
 - ☐ detachment will allow the area to regulate or control any detrimental health, safety, or general welfare conditions;
 - ☐ it is impossible or impractical for the borough to extend facilities or services to the area;
 - ☐ area residents or property owners have not received, and do not reasonably expect to directly or indirectly receive the benefit of borough government without significant additional tax contributions; and
 - ☐ the commission determines that specific constitutional or statutory policies are best served through detaching by the legislative review process, and that detachment is in the best interests of the state.
- ☐ The petitioner must prepare a proper transition plan per [3 AAC 110.900](#).
- ☐ The proposed detachment may not deny any person the enjoyment of any civil or political right per [3 AAC 110.910](#).
- ☐ The proposed detachment must promote maximum local self-government per [3 AAC 110.981](#).
- ☐ The proposed detachment must promote a minimum number of local government units per [3 AAC 110.982](#).

ADDITIONAL INFORMATION AVAILABLE

LBC staff are available to answer questions about the standards for detachment and about borough detachment generally. The next modules, [Planning for a Detachment](#), and [Procedures for Petitions](#), provide additional information about the process and procedures for detachment throughout the petition process.

PLANNING FOR A DETACHMENT

There are many factors to think about when considering the feasibility and desirability of borough detachment. The LBC takes a statewide perspective when considering the effects of a detachment petition, and the effects such a boundary change will have on other entities. Proper planning and preparation are critical to the success of any detachment petition. This is particularly true if the petition is complex or likely to be controversial.

Potential petitioners should:

- *Carefully define objectives:* articulate what changes to the local government status quo are desired.
- *Examine post-detachment options:* realistically determine which, if any, local government would best achieve the defined objectives.
- *Thoroughly and credibly understand what is required:* address the economic and political feasibility of the proposed detachment, and whether it could meet the standards.
- *Develop and implement an action plan:* determine what course of action, if any, to pursue. Determine how to organize the resources needed to draft the petition and gather support for the proposed detachment.

CAREFULLY DEFINE OBJECTIVES

The first step in the planning stage is to define the objectives for borough detachment. [3 AAC 110.420](#) requires a petitioner to state the reasons for seeking detachment.

CONSIDER POST-DETACHMENT OPTIONS

When considering a detachment, potential petitioners should consider what will happen to an area after detachment takes effect. The petition must thoroughly describe and document these issues. The possible petition should be discussed with LBC staff as part of the planning process. The staff can provide information and the appropriate forms for specific boundary changes.

If an area detaches from a borough, there are several potential scenarios:

Simple detachment

- an area detaches from an organized borough and becomes part of the unorganized borough, a non-contiguous area made up of all unorganized lands throughout the state. The Alaska State Legislature can act as the borough assembly for the unorganized borough.

- When considering simple detachment, a petitioner must address how local government services will be provided post-detachment, including explaining the plan for education by an REAA in the area. The petitioner must explain why such a detachment does not diminish maximum local self-government.

Detachment with annexation

- an area detaches from an organized borough and concurrently petitions to become part of another existing organized borough and/or city.

When considering detachment and concurrent annexation, petitions must meet the standards and requirements for either borough or city annexation in addition to the standards for borough detachment. The area generally must be contiguous to the annexing borough or city. Further information can be found in the annexation information packets on the LBC website. Standards for annexation to cities include need for city government, compatibility in character, adequate resources, adequate population, appropriate boundaries, best interests of the state, and additional standards for legislative review petitions. Borough annexation standards include a relationship of interests, adequate population, adequate resources, appropriate boundaries, best interests of the state, and additional standards for legislative review petitions.

Detachment with incorporation

- an area detaches from a borough and concurrently petitions to incorporate as a new organized borough or city.

When considering detachment and concurrent incorporation, petitions must meet the standards and requirements for either borough or city incorporation in addition to the standards for borough detachment. Further information can be found in the incorporation information packets on the LBC website. Standards for incorporation of cities include community, need for city government, adequate resources, adequate population, appropriate boundaries, and best interests of the state. Borough incorporation standards include community of interests, adequate population, adequate resources, appropriate boundaries, and best interests of the state. [3 AAC 110.270\(b\)](#) requires voter approval of the proposed incorporation. Per [3 AAC 110.270\(e\)](#) the new borough must have a substantially larger population and area than the area proposed for detachment.

UNDERSTAND WHAT IS REQUIRED

Potential petitioners should:

- Understand the two methods that may be used to detach area.
- Consider the time, labor, and financial resources needed to draft a petition.

- Consider the advantages and disadvantages of a petition.
- Become familiar with the legal standards that will be used to judge the detachment petition. [The standards are summarized](#) in the About Borough Detachment module and fully described in the [appendices](#). Additional boundary change standards must be addressed if the petition is also seeking an additional, concurrent boundary change.
- Learn what information must be included in a petition. A sample petition is included in the appendix; all petition forms are available upon request from LBC staff. Petition information is listed in [3 AAC 110.420](#).
- Understand the signature requirements, if applicable, for detachment, or if an additional boundary change is sought, those requirements as well. Signature requirements can be found in [3 AAC 110.410](#).
- Identify the resources needed to develop a petition. Potential petitioners should also consult with LBC staff to obtain and review any available materials to consider for similar detachments in your borough or similar borough. These may include petitions, responsive and reply briefs, LBC staff reports, LBC decisional statements, and any relevant case law.

DETERMINE WHICH METHOD OF DETACHMENT IS BETTER SUITED

If those advocating detachment choose to pursue detachment, the planning effort should address which particular method of detachment is better suited to accomplish the objectives. Potential petitioners should consider the effect of a detachment and other factors when choosing which method is more appropriate. Areas may be detached from boroughs by either the local action or legislative review methods, both of which require commission approval. [Those petition methods are described above](#) in the About Borough Detachment module.

CONSIDER THE ADVANTAGES AND DISADVANTAGES OF DETACHING FROM A BOROUGH

In deciding whether to file a borough detachment petition or not, it is best to consider the advantages and disadvantages of doing so. The advantages and disadvantages of borough detachment will vary depending on the circumstances. What one person might see as an advantage, another might see as a disadvantage.

COMMONLY CITED ADVANTAGES OF DETACHMENT

Generally, people supporting detachment stress that doing so would benefit the area because they feel that:

1. *The area would not be subject to local government and taxation.* Some borough residents want as little local government as possible, and so seek to detach. Upon detachment, area residents might not be subject to taxation, or the same level of it.

2. *Communities in the area would be able to incorporate as cities if the communities are no longer in a unified borough.* Upon detachment, a community or communities may petition to incorporate as cities, something they cannot do in a unified borough.

3. *Not being part of a borough can increase certain revenues to cities such as state shared fisheries taxes.* Upon detachment, unincorporated communities can become eligible for Community Assistance Program payments.

4. *Lack of services.* Residents might feel that the area proposed for detachment receives few if any services, especially commensurate with taxation. Upon detachment, area residents might not receive all of those services.

5. *Lack of ties.* Area residents may not feel strong economic, social, or cultural ties to the rest of the borough.

COMMONLY CITED DISADVANTAGES OF DETACHMENT

Boroughs can provide many advantages to their residents. Upon detachment, residents of the area could lose those advantages, depending on what their post-detachment status is.

Advantages of remaining in an organized borough can include:

1. *Allowing local residents to make decisions about local matters.* A state agency might not be as knowledgeable and responsive to local issues as a borough. In the absence of local control, the state has the authority to make planning decisions for the area. A borough provides the means for communities within it to collaborate, and to present a strong, unified voice in matters of regional importance.

2. *Providing local services.* Beyond the mandatory powers of education, land use regulation, and assessment and collection of taxes, boroughs can provide additional services that the region wants and can afford.

3. *Retaining capacity to pay for services.* Boroughs have the power to raise revenue by levying user fees, sales taxes, and property taxes. They can use that revenue to pay for general government operations, road maintenance, and other services. The unorganized borough outside of cities does not have the power to raise revenue, and must depend on the state or federal government for funding.

4. *Supplementing state education funding.* Boroughs can supplement the available state education funding through their own revenues. REAAs do not have that ability because they have no authority to raise revenue.

5. *Being eligible for flood insurance.* Participating in the National Flood Insurance Program requires passing a municipal ordinance to meet applicable Federal Emergency Management

Agency rules. Residents and businesses in flood prone areas of the unorganized borough outside of cities are ineligible for federal flood insurance.

6. *Instituting regional alcohol control.* Boroughs can regulate alcohol sales throughout the entire borough. Upon detachment, area residents can lose the ability to control alcohol sales regionally. Their authority would be confined to the relatively small boundaries established for alcohol control by communities in the unorganized borough.

7. *Instituting regional marijuana control on commercial operations.* Upon detachment, area residents lose the ability to control commercial marijuana operations outside the relatively small boundaries established by cities in the unorganized borough.

CONSIDER HOW DETACHMENT WOULD BE IMPLEMENTED

After gathering information and identifying resources needed, a potential petitioner should make preliminary decisions after reviewing the standards. Potential petitioners should do the following:

- Define clearly why detachment is warranted; develop data to objectively examine the need for detachment;
- Determine what area should be detached;
- Determine which detachment method to use (see the discussion of [borough detachment methods](#) in the About Borough Detachment module);
- Determine how local government services will be provided to the area proposed for detachment;
- Project local, state, and federal revenues changes that will result from detachment; and
- Consult with officials of local governments, state agencies, and organizations that will be affected by detachment.

[3 AAC 110.900](#) requires that petitions have a transition section which must include:

- A plan for the transition or termination of municipal services in the shortest practicable time after detachment (not to exceed two years);
- A practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised within the area proposed for detachment within two years; and
- A practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of entities (including existing borough, city, service areas, or other entities) located within the area proposed for detachment without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities within two years.

This plan must be thorough and practical and explain how the proposed detachment will be implemented. It is vital to devote sufficient attention to this step. The transition plan must be prepared in consultation with the officials of existing cities, boroughs, and service areas wholly or partially included within the boundaries proposed for detachment. The transition plan will necessarily be more complex if a proposal seeks detachment and another concurrent boundary change. Additional information about the transition plan can be found in [3 AAC 110.900](#).

ENCOURAGE PUBLIC PARTICIPATION IN PLANNING FOR DETACHMENT

Petitioners should encourage those who live or own property in the area to participate in planning for the proposed detachment. Petitioners should hold public meetings and work sessions to gather public input, hear counterarguments, and determine the level of interest in such a petition.

TECHNICAL ASSISTANCE, FORMS, AND SAMPLE MATERIALS AVAILABLE

Local Boundary Commission staff are available to provide technical assistance, petition forms, and sample detachment materials to prospective petitioners, prospective respondents (those favoring or opposing detachment), and other interested individuals and groups throughout the planning phase of the petition process. Staff will draft a petition form specific to the boundary change(s) a petitioner is seeking and can offer guidance regarding signature requirements for concurrent boundary changes such as detachment and incorporation.

Ultimately, the burden of deciding whether to pursue a particular boundary change and drafting a petition falls on petitioners. The next module will discuss drafting a petition for review, the formal filing of a petition as well as the process that takes place after a petition is filed with the Local Boundary Commission staff.

PROCEDURES FOR PETITIONS

THE PROCESS PRIOR TO ANY ACCEPTANCE OF THE PETITION

1. [3 AAC 110.400](#) – [3 AAC 110.700](#) contain the procedures for borough detachment petitions. The procedures are designed to reasonably and timely decide every petition before the LBC. They are intended to ensure that commission decisions are based on analyzing the facts and the applicable legal standards. The LBC considers the positions of interested parties and the public. A brief summary of the procedures is:
 - a. A petition is drafted and filed with the LBC.
 - b. The department performs a technical review on the petition to see whether it is complete.
 - c. If the department accepts the petition for filing, both the department and the petitioner provide public notice of the department's acceptance of the petition and the opportunity for public comment.
 - d. The department reviews the petition to see whether it meets the standards. The department writes public preliminary and final reports with recommendations to the LBC. The public can comment on the petition and the preliminary report.
 - e. The LBC holds public hearing(s), makes a decision, and issues a written decision.
 - f. There is an opportunity for the LBC to reconsider its decision, upon public request or on its own initiative.
 - g. The detachment becomes effective after either voter approval or legislative review (if the legislature does not disapprove it), depending on the method used.
2. Petition forms are drafted and provided by LBC staff. There are many varieties of petition forms depending on the kind of boundary change and the method used. A sample form for detachment by local action is provided in the appendices of this packet. Other forms including forms for detachment and concurrent annexation or incorporation are available on request. When the petitioner is preparing the petition and has questions, DCRA's local government specialists can answer questions about day-to-day borough operations. LBC staff can answer questions about the petition standards and other required information. DCRA staff, including LBC staff, cannot help a petitioner fill out the form.
3. The department routinely advises petitioners to submit petitions in draft form for an informal technical review. This informal technical review is an optional step that the staff offer as a service to the petitioner. If the department finds that the petition needs to be corrected or completed, it returns the petition to the petitioner to correct or complete. This provides the petitioner an opportunity to identify and correct potential technical deficiencies relating to petition form and content *before* the petition is circulated for

voter signatures or formally adopted by a municipality. If the department rejects a petition after signatures of local voters are gathered, the corrected petition must be circulated again for signatures of qualified voters. This could be time-consuming and potentially confusing to the public.

4. Information required in a petition is specified in [3 AAC 110.420](#). Petitioners may submit additional information to supplement their petition, and are not limited to the space provided in sample forms. Staff may offer technical assistance including review, analysis and an assessment of the feasibility of a particular proposal. However, staff may not act in an advocacy capacity pursuant to [3 AAC 110.410](#) and [3 AAC 110.435](#).
5. Once a petition, including signatures and any supporting materials, is complete, it is submitted to LBC staff. Even if the staff performed an informal technical review, a formal technical review is still necessary and required. Staff have 45 days to complete a technical review required by [3 AAC 110.440](#). Staff will return the petition to the petitioner to correct and complete if necessary. This review ensures all required elements of the petition are included, complete, and sufficient for commission review. It also ensures there are enough valid signatures to proceed.

It is important to note that the technical review only determines whether the petition has all of the required information. It does not examine the merits of a petition. An investigation and analysis of the merits of the petition occurs later in the process when the department drafts its preliminary report for the commission which includes a nonbinding recommendation to the LBC. A petition could pass technical review because it has all of the required information, but staff could still recommend that the LBC deny the petition if it finds that the petition does not meet all of the standards.

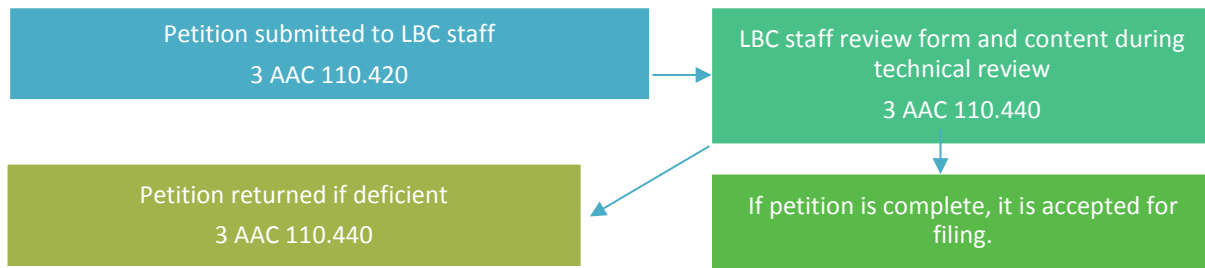
6. If a petition is deemed incomplete, it will be returned to the petitioner for completion with a list of the missing elements. The chair of the LBC will determine if the changes necessary are significant enough to warrant the gathering of new signatures. If a petition passes technical review, the petition will be accepted for filing. Acceptance of the petition for filing is not a formal endorsement of the petition as submitted. Acceptance allows the merits of the detachment proposal to be examined formally by interested parties, including the department, and the commission. As staff develop the report to the LBC regarding the petition, specific policy issues or other concerns may be identified.
7. If the petition contains all the information required by [3 AAC 110.420](#), the department will accept the petition for filing and notify the petitioner. In its acceptance letter, the department will provide a packet of information including the procedure going forward. The end of this section includes a flow chart listing the next steps in the petition process. The next section will describe those steps in detail.

ADDITIONAL CONSIDERATIONS FOR LEGISLATIVE REVIEW PETITIONS

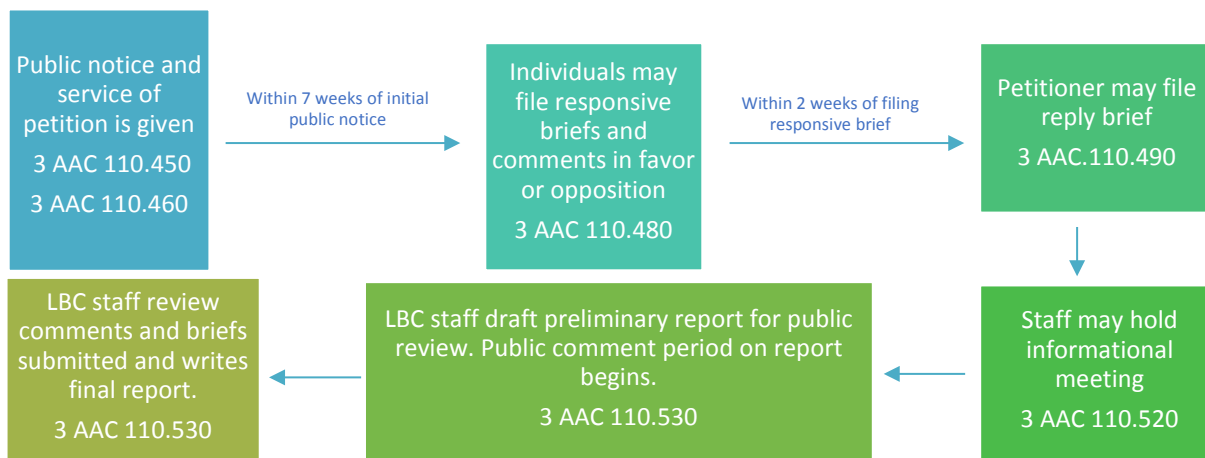
If the petition seeks detachment using the legislative review method, the petition should be filed recognizing the time constraints necessitated by the legislative review method. Successful legislative review petitions can only be submitted during the first 10 days of a regular legislative session—typically around late January to early February. Those petition decisions completed after that point during the year must wait until the next regular legislative session.

Borough Detachment Petition Process

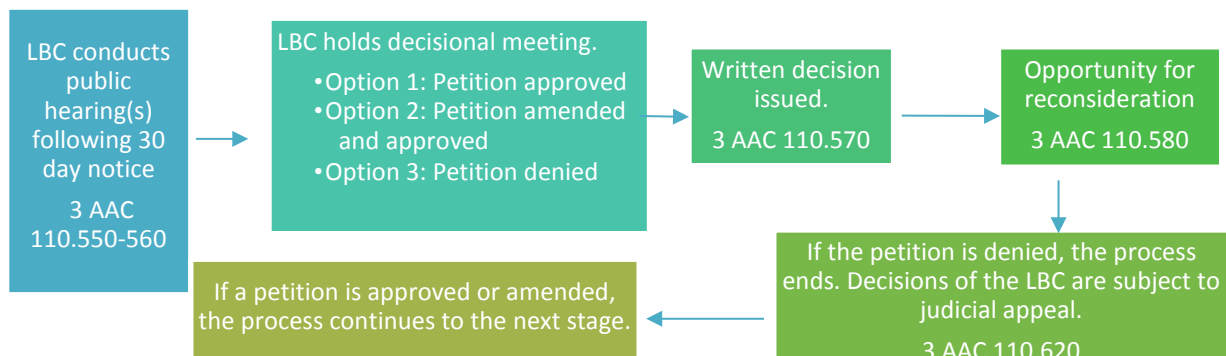
Stage 1: Filing the Petition



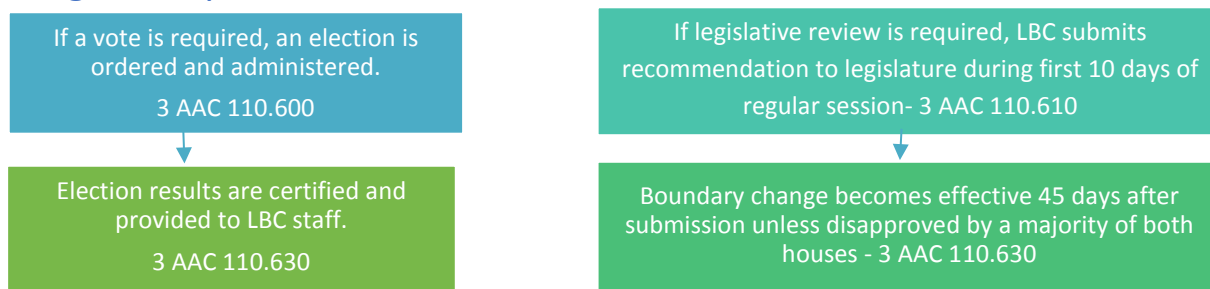
Stage 2: Public Review



Stage 3: Hearing and Decision by LBC



Stage 4: Implementation



PETITION PROCEDURES ONCE ACCEPTED

PUBLIC NOTICE AND PUBLIC REVIEW

Once a petition is accepted for filing, extensive public notice of the filing of the petition is given. Interested parties have at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner has at least two weeks to file one brief replying to any responsive briefs.

PETITION ANALYSIS

Following the initial public comment period, the department analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its analysis and investigation, in order to determine whether the petition meets the applicable standards. The department may, but is not required to, hold a public informational meeting in or near the area proposed for detachment.

At the end of its investigation, the department issues a preliminary report for public review and comment. The public comment period on the report lasts for at least four weeks. The report includes a formal recommendation to the LBC for action on the petition.

The public can submit comments on the preliminary report. After reviewing and considering those comments, the department issues its final report. Based on those comments or other factors, the department could change its recommendation. The final report must be issued at least three weeks before the petition hearing.

COMMISSION REVIEW OF MATERIALS AND PUBLIC HEARING

The commissioners review the petition, responsive briefs, written comments, reply brief, and departmental reports before the public hearing. If circumstances permit, LBC members tour the area in question before the public hearing in order to better understand the petition. Following extensive public notice, the commission conducts at least one public hearing on the petition. At this public hearing petitioners and respondents may state their positions and present witnesses. The hearing does not include direct or cross examination of witnesses. Members of the public are given the opportunity to comment, and commissioners may ask questions. Commission hearing procedures are found in [3 AAC 110.550](#).

DECISION AND OPPORTUNITY FOR RECONSIDERATION

The LBC must act on the petition within 90 days of the public hearing. Typically, however, it holds a decisional meeting immediately after the hearing.

The commission may take any one of the following actions:

- approve the petition as presented;
- amend the petition (e.g., alter the boundaries);
- impose conditions on approval of the petition (e.g., require an additional public meeting); or
- deny the petition.

The LBC considers the entire record when it reaches a decision on a petition. The LBC is an independent commission and is not obligated to follow the staff's recommendation. The commission must:

- rationally interpret the legal standards;
- rationally evaluate the evidence;
- ensure that its decision has a reasonable basis
- conduct a fair hearing; and
- not abuse its discretion. Abuse of discretion occurs if the commission has not proceeded in the manner required by law or if the evidence does not support the LBC's decision.

Within 30 days of announcing the decision, the commission must adopt and issue a written statement setting out the basis for the decision. The LBC provides copies of the decision to the petitioner, respondents, and others who request it. At that point, the decision becomes final, subject to reconsideration.

Per [3 AAC 110.580](#), any person may ask the LBC to reconsider its decision, based on certain criteria:

- a substantial procedural error occurred in the original proceeding;
- the original vote was based on fraud or misrepresentation;
- the commission failed to address a material issue of fact or a controlling principle of law;
- or
- new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

Such requests must be filed within 18 days from the date that the decision became final (the date the LBC issued its written decision). The LBC itself may reconsider its decision within 30 days of that date, based on the same criteria. The request to reconsider a decision is automatically denied if the commission does not approve a reconsideration request within 30 days of the date the decision became final.

IMPLEMENTATION

If the commission approves a petition, the petition is either subject to voter approval or submitted to the legislature, depending on whether the petition used the local action method or the legislative review method. A local action approved by the LBC takes effect when any condition imposed by the commission is satisfied, and the election is certified. Legislative review petitions take effect when any condition imposed by the commission is satisfied, and if the legislature does not pass a resolution concurred in by a majority of each house disapproving the LBC's decision. Decisions are no longer subject to Department of Justice preclearance (previously required under the Voting Rights Act of 1965).¹⁴

¹⁴ *Shelby County v. Holder*, 570 U.S. 2 (2013).

A general timeline is provided below.

PETITION PROCESS TIMELINE	
Date	Action
Within 45 days of receiving petition	LBC staff conduct a technical review of the petition. It will either be accepted for filing or it will be returned to the petitioner to correct or complete.
Within 45 days of receiving notice of acceptance for filing	After the petition is accepted, staff will provide a public notice of the filing of the petition and instructions for publication. This notice informs the public and alerts them to an opportunity to comment.
Beginning when notice of filing is published, at least 49 days	Public comments and responsive briefs are received during the time period published in notice. If deemed necessary, the department can require the petitioner to conduct public informational meetings.
At least 14 days	Petitioner may respond to the responsive briefs and comments.
About 7 weeks	LBC staff prepare and distribute preliminary report with recommendations for the public to review and comment.
At least 28 days after the preliminary report is mailed	Opportunity for public review and comment on the preliminary report.
Approximately 3 weeks	LBC staff consider comments on preliminary report and makes any appropriate changes to its report and recommendation. The final report is issued for public review.
At least 21 days after the preliminary report is mailed	LBC conducts public hearing(s).
Within 90 days of hearing	LBC conducts public decisional meeting and reaches a decision (often made immediately after hearing).
Within 30 days of decisional meeting	LBC issues its written decision.
Within 30 days of when the written decision is issued	Any public member may request reconsideration within 18 days after the written decision is issued. The LBC may grant a reconsideration request, or order reconsideration on its own motion within 30 days after the written decision is issued. If the LBC does not act on a reconsideration request within 30 days, the request is automatically denied.
If petition is denied, LBC process ends (parties may appeal LBC action to superior court)	If the LBC approves a legislative review petition, the petition is subject to review by the legislature. If the LBC approves a local action by election petition the voters in the area approved for detachment must approve the proposed detachment.

STAFF ASSISTANCE

Staff are available to help petitioners throughout this process. When a petition is formally accepted, petitioners will receive a packet of information with a schedule and materials specifying next steps for that petition.

CONCLUSION

This packet seeks to inform Alaska residents interested in detaching from a borough by providing the necessary resources to start the petition process. Staff are available to answer factual questions regarding the standards and procedures, and should be consulted when preparing a petition and before gathering any signatures. Staff cannot advise, however, how to prepare the petition.

Detachment of any size requires a substantial effort on the behalf of petitioners. The borough detachment process can take over a year when including the time to plan and draft a petition. Proper planning can help petitioners anticipate roadblocks and help streamline the process. The commission staff are available to answer questions and to give information to both proponents and opponents of borough detachment.

APPENDICES

1. APPLICABLE LAWS
2. BLANK DETACHMENT PETITION FORM BY LOCAL ACTION

LIST OF APPLICABLE LAWS AND REGULATIONS

ARTICLE 10, ALASKA CONSTITUTION

- [Section 1. Purpose and construction, local self-government, local government units.](#)
- [Section 2. Local self-government powers, taxing authority.](#)
- [Section 3. Boroughs.](#)
- [Section 6. Unorganized boroughs](#)
- [Section 12. Boundaries.](#)
- [Section 13. Agreements; transfer of powers.](#)
- [Section 14. Agency to advise and assist local governments.](#)

ALASKA STATUTES

- [AS 29.06.040. Local Boundary Commission.](#)
- [AS 29.06.055. Property taxes in annexed or detached areas.](#)
- [AS 44.33.810. Local Boundary Commission, appointment.](#)
- [AS 44.33.812. Powers and duties.](#)
- [AS 44.33.814. Meetings and hearings.](#)
- [AS 44.33.816. Minutes and records.](#)
- [AS 44.33.818. Notice of public hearings.](#)
- [AS 44.33.820. Quorum.](#)
- [AS 44.33.822. Boundary change.](#)
- [AS 44.33.824. Expenses.](#)
- [AS 44.33.826. Hearings on boundary changes](#)
- [AS 44.33.828. When boundary changes take effect.](#)

RELEVANT REGULATIONS

- [3 AAC 110.267. Standards for detachment from boroughs.](#)
- [3 AAC 110.270. Best interests of state.](#)
- [3 AAC 110.272. Effect of detachment of education](#)
- [3 AAC 110.273. Legislative review.](#)
- [3 AAC 110.275. Local action.](#)
- [3 AAC 110.400. Applicability.](#)
- [3 AAC 110.410. Petitioners, defining authorized petitioners, signature requirements.](#)
- [3 AAC 110.415. Additional requirements of a voter-initiated petition.](#)
- [3 AAC 110.420. Petition, form, supporting brief, exhibits.](#)
- [3 AAC 110.421. Name of municipal government.](#)
- [3 AAC 110.430. Consolidation of petitions.](#)
- [3 AAC 110.435. Role of department staff.](#)
- [3 AAC 110.440. Technical review of petitions, department review, deficient petition.](#)
- [3 AAC 110.450. Notice of petition, time limit and method for providing notice.](#)
- [3 AAC 110.460. Service of petition, recipients and method of delivery, availability of all petition documents for public review.](#)

- [3 AAC 110.470. Proof of notice and service.](#)
- [3 AAC 110.475. Summary determination.](#)
- [3 AAC 110.480. Responsive briefs and written comments, filing with department, affidavit of delivery to petitioner.](#)
- [3 AAC 110.490. Reply brief, filing with department, affidavit of delivery to respondent.](#)
- [3 AAC 110.500. Limitations on advocacy, adherence to regulations, commission contact with interested parties.](#)
- [3 AAC 110.510. Informational sessions, department determination of adequate public information sessions, affidavit.](#)
- [3 AAC 110.520. Departmental public meetings, notice, affidavit of posting, presiding officer, meeting summary, postponement, relocation.](#)
- [3 AAC 110.530. Departmental reports, draft review and comment.](#)
- [3 AAC 110.540. Amendment of petition.](#)
- [3 AAC 110.545 Withdrawal of petition.](#)
- [3 AAC 110.550. Commission public hearing, notice, public service announcement, postponement, relocation.](#)
- [3 AAC 110.560. Commission hearing procedures, presiding officer, commission quorum, limit on comments, witnesses, sworn testimony, and timely submission of documents.](#)
- [3 AAC 110.570. Decisional meeting, time limit, commission quorum, change to comply with law, minutes, statement of considerations, decision, affidavit.](#)
- [3 AAC 110.580. Reconsideration, time limit, denial or acceptance of request.](#)
- [3 AAC 110.600. Local action/local option elections, election by director of elections under AS 15, election by municipality.](#)
- [3 AAC 110.610. Legislative review, amendment to consider as local action procedure, legislative review of commission decision.](#)
- [3 AAC 110.620. Judicial review, appeal and judicial review in accordance with Administrative Procedure Act.](#)
- [3 AAC 110.630. Effective date and certification, Voting Rights Act approval, certification of election, legislative review deadline, certificate of change, recordation.](#)
- [3 AAC 110.640. Scheduling, chairperson order setting/amending schedule, timeline, postponement.](#)
- [3 AAC 110.650. Resubmittals and reversals, denial of previous similar petition, request for reversal of decision.](#)
- [3 AAC 110.660. Purpose of procedural regulations, relaxation or suspension of procedural regulation, commission discretion, guidelines.](#)
- [3 AAC 110.680. LBC Meetings.](#)
- [3 AAC 110.690. Teleconference policy and procedures.](#)
- [3 AAC 110.700. Filing with the commission.](#)
- [3 AAC 110.900. Transition, submission of transition plan; assumption of powers, duties, responsibilities, assets, and liabilities; time limit on execution of plan; approved agreement.](#)
- [3 AAC 110.910. Statement of non-discrimination.](#)
- [3 AAC 110.970. Determination of essential city or borough services, guidelines.](#)

- [3 AAC 110.981. Determination of maximum local self-government.](#)
- [3 AAC 110.982. Minimum number of local government units.](#)
- [3 AAC 110.990. Definitions.](#)

APPLICABLE LAWS AND REGULATIONS

CONSTITUTION OF THE STATE OF ALASKA: ARTICLE 10, LOCAL GOVERNMENT

SECTION 1. PURPOSE AND CONSTRUCTION. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

SECTION 2. LOCAL GOVERNMENT POWERS. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

SECTION 3. BOROUGH. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

SECTION 6. UNORGANIZED BOROUGH. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

SECTION 13. AGREEMENTS; TRANSFER OF POWERS. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

SECTION 14. LOCAL GOVERNMENT AGENCY. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review

their activities, collect and publish local government information, and perform other duties prescribed by law.

ALASKA STATUTES, TITLE 29, CHAPTER 6, ARTICLE 2. ANNEXATION AND DETACHMENT

SEC. 29.06.040. LOCAL BOUNDARY COMMISSION

(a) The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act). The Local Boundary Commission may present a proposed municipal boundary change to the legislature during the first 10 days of a regular session. The change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.33.812, the Local Boundary Commission shall establish procedures for annexation and detachment of territory by municipalities by local action. The procedures established under this subsection must include a provision that

- (1) a proposed annexation must be approved by a majority of votes on the question cast by voters residing in the annexing municipality;
- (2) a proposed annexation or detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached;
- (3) municipally owned property adjoining the municipality may be annexed by ordinance without voter approval; and
- (4) an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body.

(c) A boundary change effected under (a) and (b) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 5 ch 74 SLA 1985; am § 14 ch 58 SLA 1994; am § 36 ch 30 SLA 1996; am § 29 ch 58 SLA 1999; am § 3 ch 86 SLA 1999; am § 3 ch 46 SLA 2006)

SEC. 29.06.055. PROPERTY TAXES IN ANNEXED OR DETACHED AREAS.

(a) Unless the annexation takes effect on January 1, the annexing municipality may not levy property taxes in an annexed area before January 1 of the year immediately following the year in which the annexation takes effect. However, notwithstanding other provisions of law, the municipality may provide services in the annexed area that are funded wholly or partially with property taxes during the period before the municipality may levy property taxes in the annexed area.

(b) If an area is detached from a municipality, all property taxes that are levied by that municipality on property in the detached area based on an assessment that occurred before the effective date of the detachment remain valid. AS 29.45.290 - 29.45.500 apply to the

enforcement of those taxes. (§ 2 ch 12 SLA 2004)

ALASKA STATUTES, TITLE 44, CHAPTER 33, ARTICLE 12. LOCAL BOUNDARY COMMISSION

SEC. 44.33.810. LOCAL BOUNDARY COMMISSION

There is in the Department of Community and Economic Development a Local Boundary Commission. The Local Boundary Commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in AS 22.10.010 and one member shall be appointed from the state at large. The member appointed from the state at large is the chair of the commission. (§ 64 ch 58 SLA 1999)

SEC. 44.33.812. POWERS AND DUTIES

(a) The Local Boundary Commission shall

- (1) make studies of local government boundary problems;
- (2) adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; the regulations providing standards and procedures are subject to AS 29.04 – AS 29.10.
- (3) consider a local government boundary change requested of it by the legislature, the commissioner of commerce, community, and economic development, or a political subdivision of the state; “boundary change” may not be construed to include a borough incorporation; and
- (4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.

(b) The Local Boundary Commission may

- (1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and
- (2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years. (§ 64 ch 58 SLA 1999; am § 2 ch 86 SLA 2005; am § 4 ch 46 SLA 2006).

SEC. 44.33.814. MEETINGS AND HEARINGS.

The chair of the commission or the commissioner of community and economic development with the consent of the chair may call a meeting or hearing of the Local Boundary Commission. All meetings and hearings shall be public. (§ 64 ch 58 SLA 1999)

SEC. 44.33.816. MINUTES AND RECORDS

The Local Boundary Commission shall keep minutes of all meetings and hearings. If the proceedings are transcribed, minutes shall be made from the transcription. The minutes are a public record. All votes taken by the commission shall be entered in the minutes. (§ 64 ch 58 SLA 1999)

SEC. 44.33.818. NOTICE OF PUBLIC HEARINGS

Public notice of a hearing of the Local Boundary Commission shall be given in the area in which the hearing is to be held at least 15 days before the date of the hearing. The notice of the hearing must include the time, date, place, and subject of the hearing. The commissioner of commerce, community, and economic development shall give notice of the hearing at least three times in the press, through other news media, or by posting in a public place, whichever is most feasible. (§ 64 ch 58 SLA 1999)

SEC. 44.33.820. QUORUM

Three members of the commission constitute a quorum for the conduct of business at a meeting. Two members constitute a quorum for the conduct of business at a hearing. (§ 64 ch 58 SLA 1999)

SEC. 44.33.822. BOUNDARY CHANGE

A majority of the membership of the Local Boundary Commission must vote in favor of a proposed boundary change before it may be presented to the legislature. (§ 64 ch 58 SLA 1999)

SEC. 44.33.824. EXPENSES

Members of the Local Boundary Commission receive no pay but are entitled to the travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180. (§ 64 ch 58 SLA 1999)

SEC. 44.33.826. HEARINGS ON BOUNDARY CHANGES

A local government boundary change may not be proposed to the legislature unless a hearing on the change has been held in or in the near vicinity of the area affected by the change. (§ 64 ch 58 SLA 1999)

SEC. 44.33.828. WHEN BOUNDARY CHANGE TAKES EFFECT

When a local government boundary change is proposed to the legislature during the first 10 days of any regular session, the change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. (§ 64 ch 58 SLA 1999)

ALASKA ADMINISTRATIVE CODE, PART 15, CHAPTER 110, ARTICLE 8. STANDARDS FOR DETACHMENT FROM BOROUGHES

3 AAC 110.267. STANDARDS FOR DETACHMENT FROM BOROUGHES

In accordance with AS 29.06.040(a), the commission may approve a proposal for detachment from a borough only if the commission determines that the proposal

- (1) meets applicable standards under the Constitution of the State of Alaska;
- (2) meets standards in 3 AAC 110.267 - 3 AAC 110.270 and 3 AAC 110.900 - 3 AAC 110.970; and
- (3) is in the best interests of the state.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.

AS 29.06.040

Art. X, sec. 3, Ak Const.

AS 44.33.812

Art. X, sec. 12, Ak Const.

3 AAC 110.270. BEST INTERESTS OF STATE

- (a) In determining whether detachment from a borough is in the best interests of the state under AS 29.06.040, the commission may consider relevant factors, including
- (1) the health, safety, and general welfare of the proposed remnant borough and the area after detachment;
 - (2) the ability of the proposed remnant borough to efficiently and effectively provide reasonably necessary facilities and services after detachment;
 - (3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the area after detachment;
 - (4) the historical pattern of providing to the area municipal services that have been, or should be, supported by tax levies in the area;
 - (5) the historical pattern of cooperation and shared commitment between the people of the proposed remnant borough and the people of the area;
 - (6) the extent to which detachment might enhance or diminish the ability of the proposed remnant borough to meet the standards for incorporation of boroughs, as set out in the Constitution of the State of Alaska, AS 29.05, 3 AAC 110.045 - 3 AAC 110.065, and 3 AAC 110.900 - 3 AAC 110.970;
 - (7) the extent to which a transition plan of a previous annexation has been implemented and is effective;
 - (8) the effect of the proposed detachment on the long-term stability of the finances of the proposed remnant borough, other municipalities, and the state;
 - (9) whether the proposed detachment will promote
 - (A) maximum local self-government, as determined under 3 AAC 110.981; and
 - (B) a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;
 - (10) whether the area's requirements for local government services will be adequately met following detachment;
 - (11) contemporary and historical public school enrollment data; and
 - (12) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.
- (b) If, to fulfill the requirements of (a)(10) of this section, the petitioner has proposed, or the commission requires, incorporation of the area into a new municipality, the commission will condition the approval of the detachment upon voter approval of the incorporation.
- (c) Absent a specific and persuasive showing to the contrary, the commission will presume that area proposed for detachment that would create noncontiguous parts of the borough or enclaves within the borough does not meet the standards for detachment.
- (d) Absent a specific and persuasive showing to the contrary, the commission will presume that area proposed for detachment from an organized borough to an unorganized borough is a diminution of maximum local self-government and does not meet the standards for detachment.
- (e) In order to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, a petition for detachment that also seeks to incorporate a new

borough must propose that the new borough will encompass a substantially larger population and area than the population and area proposed for detachment.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.

AS 29.06.040

Art. X, sec. 3, Ak Const.

AS 44.33.812

Art. X, sec. 12, Ak Const.

3 AAC 110.272. EFFECT OF DETACHMENT ON EDUCATION

In addition to the information required by a petition form under 3 AAC 110.420, a petition that proposes to detach an area from an organized borough and include that area in the unorganized borough must explain in the brief required under 3 AAC 110.420(b)(19) the plan for education by a regional educational attendance area in the detached area, including a proposal to work with the department and the Department of Education and Early Development to implement the plan.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.

AS 29.06.040

Art. X, sec. 3, Ak Const.

AS 44.33.812

Art. X, sec. 12, Ak Const.

3 AAC 110.273. LEGISLATIVE REVIEW

An area that meets the detachment standards specified in 3 AAC 110.267 – 3 AAC 110.270 may detach from a borough by the legislative review process if the commission also determines that any one of the following circumstances exists:

- (1) the health, safety, or general welfare of borough residents is or will be endangered by conditions existing or potentially developing in the area, and detachment will enable the area to regulate or control the detrimental effects of those conditions;
- (2) it is impossible or impractical for the borough to extend facilities or services to the area;
- (3) residents or property owners within the area have not received, and do not reasonably expect to receive, directly or indirectly, the benefit of borough government without significant additional tax contributions;
- (4) the commission determines that specific policies set out in the Constitution of the State of Alaska or AS 29.04, AS 29.05, or AS 29.06 are best served through detachment of the area by the legislative review process and that detachment is in the best interests of the state.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.

AS 29.06.040

Art. X, sec. 3, Ak Const.

AS 44.33.812

Art. X, sec. 12, Ak Const.

3 AAC 110.275. LOCAL ACTION

An area that meets the detachment standards specified in 3 AAC 110.267 – 3 AAC 110.270 and has been approved for local action detachment by the commission, may be detached from a borough upon approval by a majority of voters residing in the area voting on the question at an election.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.

AS 29.06.040

Art. X, sec. 3, Ak Const.

AS 44.33.812

Art. X, sec. 12, Ak Const.

ARTICLE 13

PROCEDURES FOR PETITIONING AND FOR OTHER COMMISSION MATTERS

Section:

- | | |
|---|---|
| 400. Applicability. | 545. Withdrawal of petition. |
| 410. Petitioners. | 550. Commission public hearing. |
| 415. Additional requirements of a voter-initiated petition. | 560. Commission hearing procedures. |
| 420. Petition. | 570. Decisional meeting. |
| 421. Name of municipal government. | 580. Reconsideration. |
| 430. Consolidation of petitions. | 600. Local action/local option elections. |
| 435. Role of department staff. | 610. Legislative review. |
| 440. Technical review of petition. | 620. Judicial review. |
| 450. Notice of petition. | 630. Effective date and certification. |
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| 475. Summary determination. | 660. Purpose of procedural regulations; relaxation or suspension of procedural regulations. |
| 480. Responsive briefs and written comments. | 680. Meetings. |
| 490. Reply brief. | 690. Teleconference policy and procedures. |
| 500. Limitations on advocacy. | 700. Filing with the commission. |
| 510. Informational sessions. | |
| 520. Departmental public meetings. | |
| 530. Departmental reports. | |
| 540. Amendment of petition. | |

3 AAC 110.400. APPLICABILITY

Except as provided in 3 AAC 110.590, 3 AAC 110.410 - 3 AAC 110.700 apply to petitions for city reclassification under AS 29.04, for incorporation under AS 29.05 or art. X, sec 12, Constitution of the State of Alaska, and for alterations to municipalities under AS 29.06 or art. X, sec 12, Constitution of the State of Alaska. However, only those sections of 3 AAC 110.410 - 3 AAC 110.700 with which compliance is required under 3 AAC 110.590 apply to an annexation petition filed under a local action method provided for in AS 29.06.040(c)(3) or (4).

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:

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| Art. X, sec. 1, Ak Const. | AS 29.05.060 |
| Art. X, sec. 3, Ak Const. | AS 29.06.040 |
| Art. X, sec. 7, Ak Const. | AS 29.06.090 |
| Art. X, sec. 12, Ak Const. | AS 29.06.100 |
| AS 29.04.040 | AS 29.06.450 |

3 AAC 110.410. PETITIONERS

- (a) A petition for a proposed action by the commission under this chapter may be initiated by
1. the legislature;
 2. the commissioner;
 3. a person designated by the commission, subject to (d) of this section;
 4. a political subdivision of the state;
 5. a regional educational attendance area;
 6. repealed 1/9/2008;
 7. at least 10 percent of the persons registered to vote in a political subdivision of the state or in a regional educational attendance area, if the petition seeks the alteration of a municipality under AS 29.06, other than by local option under AS 29.06.090(b)(2) or AS 29.06.450(a)(2);
 8. at least 10 percent of the persons registered to vote in
 - (A) the area proposed for borough annexation by election under 3 AAC 110.210(3) or by legislative review under AS 29.06.040(b) or AS 44.33.812(b)(2); or
 - (B) the territory proposed for city annexation by election under 3 AAC 110.150(3) or by legislative review under AS 29.06.040(b) or AS 44.33.812(b)(2);
 9. at least 25 percent of the persons registered to vote in
 - (A) the area proposed for borough detachment by election under AS 29.06.040(c)(2) or by legislative review under AS 29.06.040(b) or AS 44.33.812(b)(2); or
 - (B) the territory proposed for city detachment by election under AS 29.06.040(c)(2) or by legislative review under AS 29.06.040(b) or AS 44.33.812(b)(2); or
 10. the number of qualified voters required under
 - (A) AS 29.04.040, if the petition seeks reclassification of a city;
 - (B) AS 29.05.060, if the petition seeks a municipal incorporation under AS 29.05.060;
 - (C) AS 29.06.100(a), if the petition seeks a municipal merger or consolidation under AS 29.06.090(b)(2); or
 - (D) AS 29.06.460(a), if the petition seeks a municipal dissolution under AS 29.06.450(a)(2).
- (b) If, to achieve compliance with AS 29.06.100(a), a petition for merger or consolidation must be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition. The number of borough voters required to sign the petition must be based on the number of registered voters or the number of votes cast in the area of the borough outside any city or cities joining the petition.
- (c) The provisions of (a)(10) of this section may not be construed to apply to petition procedures established by the commission under AS 44.33.812(a)(2), AS 29.06.040(c) for annexation and detachment, AS 29.06.090(b)(1) for merger and consolidation, or AS 29.06.450(a)(1) for dissolution.
- (d) A person designated by the commission may initiate a petition if the commission
1. determines that the action proposed will likely promote the standards established under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, and is in the best interests of the state; and
 2. directs the designated person to prepare a petition by a motion approved by a majority of the appointed membership of the commission.
- (e) The person initiating a petition under (a) of this section is the petitioner. A petition must include a designation of
1. one person as representative of the petitioner; and
 2. a second person as an alternate representative, who may act if the primary representative is absent, resigns, or fails to perform the representative's duties.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.06.040
Art. X, sec. 3, Ak Const.	AS 29.06.090
Art. X, sec. 7, Ak Const.	AS 29.06.100
Art. X, sec. 12, Ak Const.	AS 29.06.450
Art. X, sec. 14, Ak Const.	AS 29.06.460
AS 29.04.040	AS 44.33.020
AS 29.05.060	AS 44.33.812

3 AAC 110.415. ADDITIONAL REQUIREMENTS OF A VOTER-INITIATED PETITION

- (a) In determining whether a voter-initiated petition under 3 AAC 110.410(a)(7) - (10) or 3 AAC 110.410(b) contains at least the minimum number of required signatures, the department may not consider a signature
- (1) unless the voter who signed the form printed the voter's name, physical address of place of residence, and a numerical identifier, and dated the signature;
 - (2) that is dated more than one year before the date that the petition was submitted to the department.
- (b) If a voter-initiated petition is unacceptable under (a)(2) of this section, the department is not required to perform a technical review of the petition under 3 AAC 110.440. The department shall return the petition to the petitioner with a letter explaining the reason for the return.
- (c) A person who has signed a petition form may withdraw that person's name only by giving written notice to the petitioner's representative before the date the petition is submitted to the department.
- (d) Information that is confidential under AS 15.07.195 is not open to public inspection unless otherwise required by law.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.06.040
Art. X, sec. 3, Ak Const.	AS 29.06.090
Art. X, sec. 7, Ak Const.	AS 29.06.100
Art. X, sec. 12, Ak Const.	AS 29.06.450
Art. X, sec. 14, Ak Const.	AS 29.06.460
AS 29.04.040	AS 44.33.020
AS 29.05.060	AS 44.33.812

3 AAC 110.420. PETITION

- (a) A proposal for one or more actions by the commission under this chapter is initiated by submitting a petition and supporting materials to the department.
- (b) A petition must be submitted on forms provided by the department. On the forms provided, the department shall require that the petition include the following information and supporting materials:

- (1) the name of the petitioner;
- (2) for the petitioner's representative and alternative representative designated under 3 AAC 110.410(e),
 - (A) the physical address of each individual's place of residence;
 - (B) each individual's mailing address; and
 - (C) each individual's telephone number, facsimile number, and electronic mail address, if any;
- (3) the name and class of the
 - (A) existing municipal government for which a change is proposed; and
 - (B) proposed municipal government;
- (4) a general description of the nature of the proposed commission action;
- (5) a general description of the
 - (A) area proposed for borough boundary change; or
 - (B) territory proposed for city boundary change;
- (6) a statement of reasons for the petition;
- (7) legal metes and bounds descriptions, maps, and plats for a proposed municipality, or for any existing municipality for which a change is proposed;
- (8) the size of the
 - (A) area proposed for borough boundary change; or
 - (B) territory proposed for city boundary change;
- (9) data estimating the population of the
 - (A) area proposed for borough boundary change; or
 - (B) territory proposed for city boundary change;
- (10) information relating to public notice and service of the petition;
- (11) the following tax data for a borough boundary change:
 - (A) the assessed or estimated value of taxable property in the area proposed for change, if the proposed municipal government, or any existing municipal government for which a change is proposed, levies or proposes to levy property taxes;
 - (B) projected taxable sales in the area proposed for change, if the proposed municipal government, or any existing municipal government for which the change is proposed, levies or proposes to levy sales taxes;
 - (C) each municipal government tax levy currently in effect in the area proposed for change;
- (12) the following tax data for a city boundary change:
 - (A) the assessed or estimated value of taxable property in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which a change is proposed, levies or proposes to levy property taxes;
 - (B) projected taxable sales in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which the change is proposed, levies or proposes to levy sales taxes;
 - (C) each municipal government tax levy currently in effect in the territory proposed for change;
- (13) for a proposed municipality, or for any existing municipality for which a change is proposed, projections of revenue, operating expenditures, and capital expenditures through the period extending one full fiscal year beyond the reasonably anticipated date
 - (A) for receipt of any final organization grant under AS 29.05.180 or 29.05.190;
 - (B) for completion of any transition set out in AS 29.05.130 - 29.05.140 or 3 AAC 110.900; and
 - (C) on which a proposed new borough or city will make its first full local contribution required under AS 14.17.410(b)(2), if the proposal seeks to incorporate a municipality that would be subject to AS 14.17.410(b)(2);
- (14) information about any existing long-term municipal debt;

- (15) information about the powers and functions of
 - (A) the proposed municipality;
 - (B) any existing municipality for which a change is proposed, before and after the proposed change; and
 - (C) alternative service providers, including regional educational attendance areas and other service areas within the area proposed for borough boundary change or territory proposed for city boundary change;
 - (16) the transition plan required under 3 AAC 110.900;
 - (17) information about the composition and apportionment of the governing body of
 - (A) the proposed municipality; and
 - (B) any existing municipality for which a change is proposed, before and after the proposed change;
 - (18) information regarding any effects of the proposed change upon civil and political rights for purposes of 42 U.S.C. 1971 - 1974 (Voting Rights Act of 1965);
 - (19) a supporting brief that provides a detailed explanation of how the proposal serves the best interests of the state and satisfies each constitutional, statutory, and regulatory standard that is relevant to the proposed commission action;
 - (20) documentation demonstrating that the petitioner is authorized to file the petition under 3 AAC 110.410;
 - (21) for a petition to incorporate or consolidate a home rule city or borough, the proposed municipal charter;
 - (22) an affidavit from the petitioner's representative that, to the best of the representative's knowledge, information, and belief, formed after reasonable inquiry, the information in the petition is true and accurate;
 - (23) other information or supporting material that the department believes the petitioner must provide for an adequate review of the proposal.
- (c) The petitioner shall provide the department with a copy of the petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format.
- (d) For a voter-initiated petition, the petition form must include sufficient space for the printed name, a numerical identifier, the signature, the date of signature, and the address of each person signing the petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.06.040
Art. X, sec. 3, Ak Const.	AS 29.06.090
Art. X, sec. 7, Ak Const.	AS 29.06.100
Art. X, sec. 12, Ak Const.	AS 29.06.450
Art. X, sec. 14, Ak Const.	AS 29.06.460
AS 29.04.040	AS 44.33.020
AS 29.05.060	AS 44.33.812

3 AAC 110.421. NAME OF MUNICIPAL GOVERNMENT

The name of the municipal government specified in accordance with 3 AAC 110.420(b)(3)(B) must contain the word "city," "borough," or "municipality," as applicable to the type of municipal government proposed. The name may not contain a word or phrase that indicates or implies that the municipal government is organized for a purpose other than that authorized by its incorporation or alteration.

History: Eff. 1/9/2008, Register 185

Authority:
AS 44.33.812

3 AAC 110.430. CONSOLIDATION OF PETITIONS

If two or more petitions pending action by the commission affect all or some portion of the same boundaries, the chair of the commission may consolidate the informational session, briefing schedule, department reports, commission hearing, decisional meeting, or other procedure under this chapter for one or more of those petitions. The commission may consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.06.100
Art. X, sec. 3, Ak Const.	AS 29.06.450
Art. X, sec. 7, Ak Const.	AS 29.06.470
Art. X, sec. 12, Ak Const.	AS 44.33.812
AS 29.04.040	AS 44.33.814
AS 29.05.060	AS 44.33.818
AS 29.06.040	AS 44.33.822
AS 29.06.090	AS 44.33.826

3 AAC 110.435. ROLE OF DEPARTMENT STAFF

- (a) A department employee assigned under AS 44.33.020(a)(4) as a member of the commission staff serves as an advisor. The advisory staff may not act in an advocacy capacity as a petitioner under 3 AAC 110.410.
- (b) During a proceeding, the advisory staff to the commission may provide technical assistance, information, and forms to petitioners, respondents, and interested persons who have procedural questions regarding local government or boundary issues. If the commissioner, a department subdivision, or a department employee not assigned under AS 44.33.020(a)(4) to the commission's advisory staff serves in an official capacity as a petitioner in a case before the commission,
 - (1) communications with the commission's advisory staff regarding the case are subject to the limitations of this subsection and 3 AAC 110.500; and
 - (2) communications with members of the commission are subject to the ex parte limitations of 3 AAC 110.500.
- (c) Nothing in this section limits the role and ability of the commission's advisory staff to ensure that the commission is fully and accurately informed by providing to the commission new or additional

information that supplements, questions, or refutes information provided by, or a position taken by, a petitioner, respondent, or other person.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.

AS 44.33.020

Art. X, sec. 14, Ak Const.

AS 44.33.812

3 AAC 110.440. TECHNICAL REVIEW OF PETITION

- (a) The department shall review the petition and supporting materials to determine whether they include a budget sufficient for commission review, a transition plan sufficient for commission review, and other required information. When applicable, the department shall also determine whether the petition contains the legally required number of valid signatures. The department shall complete the technical review of the petition within 45 days after receiving it, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review.
- (b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides within the boundaries proposed for change, and the number of persons who voted within those boundaries during the last election.
- (c) If it determines that the petition or supporting materials are deficient in form or content, the department shall consult with the chair of the commission. With the concurrence of the chair of the commission, the department shall return the defective petition or supporting materials to the petitioner for correction or completion. With the concurrence of the chair of the commission, the department shall determine whether the deficiencies in the petition are significant enough to require new authorization for the filing of the corrected or completed petition. The department shall complete the technical review of any corrections or materials needed to complete the petition within 30 days after receiving them, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review. If the department determines that the petition and brief are in substantial compliance with applicable provisions of AS 29.04, AS 29.05, AS 29.06, and this chapter, the department shall notify the petitioner that the petition and brief have been accepted for filing.
- (d) The petitioner may appeal to the commission a determination by the department under (c) of this section that a petition is deficient in form and content or that new authorization will be required for the filing of a corrected or completed petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.

AS 29.05.070

Art. X, sec. 3, Ak Const.

AS 29.06.040

Art. X, sec. 7, Ak Const.

AS 29.06.110

Art. X, sec. 12, Ak Const.

AS 29.06.480

Art. X, sec. 14, Ak Const.

AS 44.33.020

AS 29.04.040

AS 44.33.812

3 AAC 110.450. NOTICE OF PETITION

- (a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall
- (1) publish public notice of the filing of the petition in a display ad format of no less than six inches long by two columns wide at least once each week for three consecutive weeks in one or more newspapers of general circulation designated by the department; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate within the boundaries proposed for change, the department shall require the petitioner to provide notice through other means designed to reach the public;
 - (2) post public notice of the filing of the petition in
 - (A) at least three prominent locations readily accessible to the public and within or near the boundaries proposed for change; and
 - (B) other locations designated by the department;
 - (3) ensure that notices posted under (2) of this subsection remain posted through the deadline set under 3 AAC 110.640 by the chair of the commission for the filing of responsive briefs;
 - (4) hand-deliver or mail, postage prepaid, public notice of the filing of the petition, correctly addressed to the municipalities having jurisdictional boundaries within 20 miles of the boundaries proposed for change, and to other persons designated by the department; and
 - (5) submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving within the boundaries of the proposed change and request that it be announced for the following 14 days.
- (b) The department shall specify the text of the public notices required in (a)(1) - (a)(4) of this section, to ensure that the notices contain the following information:
- (1) the title of the notice of the filing of the petition;
 - (2) the name of the petitioner and the petitioner's representative designated under 3 AAC 110.410(e);
 - (3) a description of the proposed action;
 - (4) a statement of the size and general location of the boundaries proposed for change;
 - (5) a map of the area or territory proposed for change or information where that map is available for public review;
 - (6) a reference to the constitutional, statutory, and regulatory standards applicable to the proposal;
 - (7) a reference to the statutes and regulations applicable to procedures for consideration of the petition;
 - (8) designation of where and when the petition is available for public review;
 - (9) a statement that responsive briefs and comments regarding the petition may be filed with the commission;
 - (10) a reference to the regulations applicable to the filing of responsive briefs;
 - (11) the deadline for receipt of responsive briefs and comments;
 - (12) the mailing address, facsimile number, and electronic mail address for the submission of responsive briefs and comments to the department;
 - (13) a telephone number for inquiries to the commission staff.
- (c) The department shall specify the text of the public service announcement required in (a)(5) of this section to ensure that the announcement contains
- (1) the title of the public service announcement;
 - (2) the period during which the public service announcement is requested to be broadcast;
 - (3) the name of the petitioner;
 - (4) a description of the proposed action;

- (5) a statement of the size and general location of the
 - (A) area proposed for borough boundary change; or
 - (B) territory proposed for city boundary change;
 - (6) a statement of where and when the petition is available for public review;
 - (7) a statement that responsive briefs and comments regarding the petition may be filed with the commission;
 - (8) a statement of the deadline for responsive briefs and comments;
 - (9) a statement of where the complete notice of the filing may be reviewed; and
 - (10) a telephone number for inquiries to the petitioner.
- (d) For a municipal incorporation, the department shall ensure that, in addition to the information required in (b) of this section, the notice also contains the following information:
- (1) for a petition using the local option method, a statement regarding voter eligibility in the incorporation election;
 - (2) for a petition using the legislative review method, a statement regarding the election of initial officials for the municipality.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 3, Ak Const.	AS 29.05.120
Art. X, sec. 7, Ak Const.	AS 29.06.040
Art. X, sec. 12, Ak. Const.	AS 29.06.130
Art. X, sec. 14, Ak Const.	AS 29.06.500
AS 29.04.040	AS 44.33.020
AS 29.05.100	AS 44.33.812

3 AAC 110.460. SERVICE OF PETITION

- (a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within 20 miles of the boundaries proposed for change, and to other interested persons designated by the department. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.
- (b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a)(1), through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction, the petitioner shall make a full set of petition documents, including public notices, responsive briefs, the reply brief, and department reports, available for review by the public at a central and convenient location such as a municipal office or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents, and the hours when the documents can be reviewed.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 3, Ak Const.	AS 29.06.040
Art. X, sec. 7, Ak Const.	AS 29.06.130
Art. X, sec. 12, Ak Const.	AS 29.06.500
AS 29.04.040	AS 44.33.812
AS 29.05.100	

3 AAC 110.470. PROOF OF NOTICE AND SERVICE

No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department five additional complete sets of petition documents and an affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162

Authority:

Art. X, sec. 3, Ak Const.	AS 29.06.040
Art. X, sec. 7, Ak Const.	AS 29.06.130
Art. X, sec. 12, Ak Const.	AS 29.06.500
AS 29.04.040	AS 44.33.812
AS 29.05.100	

3 AAC 110.475. SUMMARY DETERMINATION

- (a) If the staff for the commission or a person who may serve as a petitioner under 3 AAC 110.410(a) believes that a petition accepted for filing under 3 AAC 110.440 was prepared using defective procedures, that the petition lacks certain information needed to determine and fully evaluate the merits of the petition, or that a reasonable probability exists that the petition fails to meet the standards applicable to the petition, that person may request a summary determination of the petition in accordance with this section. If the person requesting a summary determination is the commissioner, a department subdivision, or a department employee not assigned under AS 44.33.020(a)(4) to the commission's advisory staff, and that person is making the request in an official capacity, the limitations of 3 AAC 110.435(b) apply.
- (b) Not later than 21 days after the initial publication of notice of the petition under 3 AAC 110.450(a)(1), the person seeking a summary determination must file an original and five copies of a request that the petition be rejected or be returned to the petitioner for substantial correction or modification.
- (c) A request for summary determination must include
 - (1) the name of the person requesting a summary determination and that person's representative;
 - (2) the physical address of place of residence and mailing address of the representative designated under (1) of this subsection and the telephone number, facsimile number, and electronic mail address, if any, for that representative;
 - (3) if a person other than the staff of the commission seeks a summary determination, documentation demonstrating that the person may serve as a petitioner under 3 AAC 110.410(a);
 - (4) a description of the proposed summary determination action;
 - (5) a statement of reasons for the request for summary determination;

- (6) a supporting brief that provides a detailed explanation of how
 - (A) the petition accepted for filing was prepared using defective procedures, or lacks certain information needed to determine and fully evaluate the merits of the petition; or
 - (B) a reasonable probability exists that the petition fails to meet constitutional, statutory, and regulatory standards that apply to the petition;
- (7) legal metes and bounds descriptions, maps, and plats needed to assess the proposed determination; and
- (8) an affidavit by the representative designated under (1) of this subsection that
 - (A) to the best of the representative's knowledge, information, and belief, formed after reasonable inquiry, the information in the request for summary determination is true and accurate;
 - (B) the request for summary determination is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition; and
 - (C) three copies of the request for summary determination have been served on the petitioner by mail, postage prepaid, or hand delivery, or one copy has been delivered by facsimile or electronic mail, unless prohibited under (d) of this section.
- (d) Copies of the request for summary determination, including maps and other exhibits, provided to the department and the petitioner under this section must conform to the original in color, size, and other distinguishing characteristics. If the request, including attachments, contains colored materials or materials larger than 11 inches by 17 inches, the person requesting a summary determination may not serve the request and copies by facsimile or electronic mail. The person shall provide the department with a copy of the request for summary determination in an electronic format, unless the department waives this requirement because the person lacks a readily accessible means or the capability to provide items in an electronic format.
- (e) Within 24 hours after receipt of a request for summary determination, the petitioner shall place a copy of the request with the petition documents available for review under 3 AAC 110.460(b).
- (f) Within two days after the receipt of a request for summary determination, the department shall determine whether the request is complete, filed in a timely manner, groundless, or filed for purposes of delay. The department shall immediately notify the person who filed the request, the petitioner, and the commission of the department's determination. If the department determines that the request for summary determination was incomplete or untimely, the person who filed the request may appeal the department's determination to the commission. If the department determines that a request for summary determination was complete and timely, the provisions of (g) - (p) of this section apply. If the department determines that the request was filed for the purpose of delay or is groundless, the provisions of (q) of this section apply.
- (g) If the department determines that a request for summary determination is complete and timely, the deadline for filing responsive briefs and comments under 3 AAC 110.480 is suspended pending a decision by the commission regarding the request for summary determination.
- (h) If it determines that the request is complete and timely, the department shall issue public notice of the request in accordance with 3 AAC 110.450(a)(1), except that publication of the notice is required only one time. The department shall issue public notice of the commission hearing under (k) of this section in accordance with 3 AAC 110.550, except that the first date of publishing must occur at least 20 days before the date of the hearing. The person who filed the request shall bear the cost of publication of the public notices.
- (i) Within 10 days after receipt of notice under (f) of this section that the request is complete and timely, the petitioner shall file with the department an original and five copies of a brief responding to the request for summary determination. At the same time the petitioner files its responsive brief with the department, the petitioner shall serve a copy of that responsive brief by mail, postage prepaid, or by electronic mail, facsimile transmission, or hand delivery on the person who filed the

request, and shall file an affidavit of service to that effect. The petitioner shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives that requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format.

- (j) Within 10 days after receipt of the petitioner's responsive brief under (i) of this section, the department shall provide the commission with a written report of the department's analysis, findings, and recommendation regarding the request for summary determination. The report must include a summary of the request, petitioner's responsive brief, and public comments, if any. A copy of the report must be provided to the person who filed the request and the petitioner at the same time the report is provided to the commission. The chair may, for good cause, grant additional time, not to exceed five days, for the department to file the report required under this subsection.
- (k) After service of the report under (j) of this section, the commission will hold a public hearing on the request for summary determination.
- (l) As part of the hearing conducted under (k) of this section, the commission will include
 - (1) a summary of the analysis and recommendation by the department;
 - (2) an opening statement by the person who filed the request, not to exceed 10 minutes;
 - (3) an opening statement by the petitioner, not to exceed 10 minutes;
 - (4) oral argument by the person who filed the request, on the merits of the request;
 - (5) oral argument by the petitioner on its opposition to the request;
 - (6) a period of public comment by interested persons, not to exceed three minutes for each person;
 - (7) a closing statement by the person who filed the request, not to exceed 10 minutes;
 - (8) a closing statement by the petitioner, not to exceed 10 minutes; and
 - (9) a reply by the person who filed the request, not to exceed five minutes.
- (m) Within three days after the public hearing under (k) of this section, the commission will hold a decisional meeting in accordance with 3 AAC 110.570(a), (b), and (d) - (f) and either grant the request for summary determination or deny the request.
- (n) If a request for summary determination seeking rejection of a petition is granted, the petitioner may not submit a substantially similar petition for at least three years after the date of commission's decision on the request. If a request for summary determination seeking substantial correction or modification of a petition is granted, the petitioner may modify the petition and resubmit it as a new petition, with no restriction as to the time of filing.
- (o) If the request for summary determination is denied, the chair of the commission shall determine a new schedule for the filing of responsive briefs and comments on the petition in accordance with 3 AAC 110.640.
- (p) The person who filed the request or the petitioner may seek reconsideration of a commission decision on a request for summary determination under this section.
- (q) The commission will deny, without hearing, a request for summary determination under this section if the commission concludes that the request is filed for purposes of delay or is groundless.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 44.33.020
Art. X, sec. 12, Ak Const.	AS 44.33.812
Art. X, sec. 14, Ak Const.	AS 44.33.814
AS 29.04.040	AS 44.33.816
AS 29.05.090	AS 44.33.818
AS 29.06.120	AS 44.33.820
AS 29.06.490	

3 AAC 110.480. RESPONSIVE BRIEFS AND WRITTEN COMMENTS

- (a) If an interested person seeks to participate as a respondent to a petition, that person must have the capacity to sue and be sued and must file with the department an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the petition. If the respondent is a group, the group shall designate one person to represent the group. A responsive brief must provide the physical address of the place of residence and mailing address of the respondent or the respondent's representative, and must provide the telephone number, facsimile number, and electronic mail address, if any, for the respondent or respondent's representative. Copies of the responsive briefs, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics. The respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the respondent lacks a readily accessible means or the capability to provide items in an electronic format.
- (b) The responsive brief, and any companion exhibits, must be filed with an affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.
- (c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by an affidavit stating that two copies of the brief have been served on the petitioner by regular mail, postage prepaid, or by electronic mail, facsimile transmission, or hand delivery.
- (d) An interested person may file with the department written comments supporting or opposing the petition. The department shall request that the commentor either serve a copy of the comments on the petitioner and file a statement on or with the comments that service was made on the petitioner or notify the department of an inability to serve comments on the petitioner. If the department receives comments without a statement that they were served on the petitioner, the department shall provide promptly a copy of the written comments to the petitioner by hand-delivery, electronic mail, facsimile, or postage-prepaid mail. If the written comments, including attachments, exceed 20 pages or if they include colored materials or materials larger than 11 inches by 17 inches, the commentor shall provide an additional five complete sets of the written comments to the department. Copies of the written comments, including attachments, must conform to the original in color, size, and other distinguishing characteristics. Written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:

Art. X, sec. 3, Ak Const.	AS 29.05.100
Art. X, sec. 7, Ak Const.	AS 29.06.040
Art. X, sec. 12, Ak Const.	AS 29.06.110
Art. X, sec. 14, Ak Const.	AS 29.06.130
AS 29.04.040	AS 29.06.480
AS 29.05.080	AS 29.06.500
AS 44.33.020	AS 44.33.812

3 AAC 110.490. REPLY BRIEF

The petitioner may file an original and five copies of a single reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480. The petitioner shall provide the department with a copy of the reply brief in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be accompanied by an affidavit stating that the brief has been served on all respondents by regular mail, postage prepaid, or by electronic mail, facsimile transmission, or hand delivery.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:	
Art. X, sec. 3, Ak Const.	AS 29.06.040
Art. X, sec. 7, Ak Const.	AS 29.06.110
Art. X, sec. 12, Ak Const.	AS 29.06.130
Art. X, sec. 14, Ak Const.	AS 29.06.480
AS 29.04.040	AS 29.06.500
AS 29.05.080	AS 44.33.020
AS 29.05.100	AS 44.33.812

3 AAC 110.500. LIMITATIONS ON ADVOCACY

- (a) Unless otherwise ordered by the commission for good cause shown, the commission will not, and the department may not, accept a document, letter, or brief for filing and consideration except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.410 - 3 AAC 110.700.
- (b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:

Art. X, sec. 12, Ak Const.	AS 29.06.110
Art. X, sec. 14, Ak Const.	AS 29.06.130
AS 29.04.040	AS 29.06.480
AS 29.05.080	AS 29.06.500
AS 29.05.100	AS 44.33.020
AS 29.06.040	AS 44.33.812

3 AAC 110.510. INFORMATIONAL SESSIONS

- (a) If the department determines that persons within or near the proposed boundary change have not had adequate opportunity to be informed about the scope, benefits, or detriments of the proposed change, the department shall require the petitioner to conduct informational sessions, and to submit a recording, transcript, or summary of those sessions to the department.
- (b) The department may not proceed with the processing of the petition until the petitioner has certified, by affidavit, that the informational session requirements of this section have been met.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:

Art. X, sec. 12, Ak Const.	AS 29.06.110
Art. X, sec. 14, Ak Const.	AS 29.06.130
AS 29.04.040	AS 29.06.480
AS 29.05.080	AS 29.06.500
AS 29.05.100	AS 44.33.020
AS 29.06.040	AS 44.33.812

3 AAC 110.520. DEPARTMENTAL PUBLIC MEETINGS

- (a) During its investigation and analysis of a petition for incorporation, the department shall convene at least one public meeting within the boundaries proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department may convene at least one public meeting within or near the boundaries proposed for change.
- (b) Notice of the date, time, and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to each respondent at least 15 days before the public meeting. The department shall publish the notice at least once each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people and entities within or near the boundaries of the proposed change. If the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate within or near the boundaries of the proposed change, the department shall provide notice through other means designed to reach the public. The petitioner shall post notice of the meeting in at least three prominent locations readily accessible to the public within or near the boundaries proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of

- the meeting. On or before the date of the public meeting, the petitioner shall submit to the department an affidavit certifying that the posting requirements of this subsection have been met.
- (c) Staff assigned to the commission shall preside at the public meeting. If the public meeting is held within the time period established under 3 AAC 110.640 for receiving written comments, the presiding staff person shall accept written materials submitted at the public meeting. However, except in extraordinary circumstances, the petitioner and the respondents may not submit further written materials at the meeting. The public meeting must be recorded and must be summarized in the department's preliminary or final report prepared under 3 AAC 110.530.
 - (d) The department may postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting. If the meeting is relocated, the new location must be within the same vicinity, and be rescheduled no more than 72 hours after the originally scheduled time.
 - (e) The department staff presiding at the public meeting may request that respondents with similar positions coordinate their participation and use a single spokesperson to present their common views or positions. The department staff presiding at the public meeting may request the same coordination by commentators with similar positions.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.	AS 29.06.090
Art. X, sec. 14, Ak Const.	AS 29.06.110
AS 29.04.040	AS 29.06.480
AS 29.05.080	AS 44.33.020
AS 29.06.040	AS 44.33.812

3 AAC 110.530. DEPARTMENTAL REPORTS

- (a) The department shall investigate and analyze a petition filed with the department under this chapter. The department shall prepare a written preliminary and a written final report regarding the petition. Each report must contain the department's findings and recommendations regarding the petition.
- (b) The department shall mail or hand-deliver its preliminary report to the commission, petitioner, and respondents. Within 24 hours after receipt of the preliminary report, the petitioner shall place a copy of the report with the petition documents available for review. The petitioner shall file an affidavit with the department stating the preliminary report has been made available for public review.
- (c) The petitioner, respondents, and other interested persons may submit to the department written comments pertaining directly to the preliminary report. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.
- (d) In its final report, the department shall consider timely submitted written comments addressing the preliminary report. The department shall mail its final report to the commission, petitioner, and respondents.
- (e) If a preliminary or final report of the department contains a recommendation to amend or condition approval of a municipal incorporation petition subject to AS 29.05.060 - 29.05.110,
 - (1) the department shall issue a public notice regarding the recommended amendment or condition;

- (2) the public notice required under (1) of this subsection
 - (A) must be issued contemporaneously with that report;
 - (B) must be published in conformance with the requirements of 3 AAC 110.450(a)(1), except that the notice need be published only one time;
 - (C) if the recommendation is part of a preliminary report, must state that comments on the recommendation must be filed on or before the same date as comments on the preliminary report under 3 AAC 110.640(b)(3); that date must be set out in the notice;
 - (D) if the recommendation is only part of a final report, must specify a date on or before which written comments on the recommendation may be filed; that date must allow at least 14 days for written comment; and
 - (E) must contain a statement that oral comments on a recommendation for amendment or conditional approval may also be provided at the public hearing under 3 AAC 110.560; and
 - (F) public comment received in response to a public notice required under (1) of this subsection must be included in the department's final report or summarized at the public hearing, whichever occurs first.
- (f) A report required from the department under this section does not constitute acting in an advocacy capacity as a petitioner under 3 AAC 110.410.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.	AS 29.06.110
Art. X, sec. 14, Ak Const.	AS 29.06.490
AS 29.04.040	AS 44.33.020
AS 29.05.080	AS 44.33.812
AS 29.06.040	

3 AAC 110.540. AMENDMENT OF PETITION

- (a) A petitioner may amend the petition at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the amendment must be filed with the department. The petitioner shall provide the department with a copy of the amended petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format.
- (b) A petitioner may not amend the petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition except upon a clear showing to the commission that the public interest of the state and of the persons within or near the boundaries of the proposed change is best served by allowing the proposed amendment.
- (c) If voters initiated the petition, the amended petition must contain the dated signatures of the same number of voters required by AS 29.04, AS 29.05, AS 29.06, or this chapter for the original petition and must include the dated signatures of at least a majority of the same voters who signed the original petition.
- (d) The petitioner shall serve the amended petition on each person designated by the department, and by 3 AAC 110.410 - 3 AAC 110.700 to receive the original petition, and on the respondents to the original petition. The petitioner shall place a copy of the amended petition with the original petition

documents, post the public notice of the amended petition, and submit an affidavit of service and notice in the same manner required for the original petition.

- (e) The chair of the commission shall determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.410 - 3 AAC 110.700. Additional informational sessions, meetings, briefings, or other steps or processes will be conducted in accordance with the procedures specified in 3 AAC 110.410 - 3 AAC 110.700 for the processing of the original petition, except that the chair of the commission may shorten the timing.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.06.090
Art. X, sec. 3, Ak Const.	AS 29.06.100
Art. X, sec. 7, Ak Const.	AS 29.06.450
Art. X, sec. 12, Ak Const.	AS 29.06.460
Art. X, sec. 14, Ak Const.	AS 44.33.020
AS 29.04.040	AS 44.33.812
AS 29.05.060	AS 44.33.814
AS 29.06.040	

3 AAC 110.545. WITHDRAWAL OF PETITION

- (a) A petitioner may withdraw the petition at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the withdrawal must be filed with the department.
- (b) A petitioner may not withdraw the petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition except upon a clear showing to the commission that the public interest of the state and the persons within or near the boundaries of the proposed change is best served by allowing the proposed withdrawal.
- (c) If voters initiated the petition, a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing within the boundaries of the proposed change and must include at least a majority of the same voters who signed the original petition.
- (d) If the petition was submitted by a municipality under AS 29.06.040(c)(4) at the request of all property owners and voters within the boundaries of the proposed change, the petition may be withdrawn only with the approval of the petitioning municipality.
- (e) If the petitioning municipality declines to withdraw the petition,
- (1) the consent of a property owner or voter to the filing of the petition is binding on any subsequent purchaser of the property if the property is purchased before the boundary change is approved; and
 - (2) the municipality and the state are not responsible for ensuring that the subsequent purchaser receives notice of the proposed boundary change before purchase, by recording or otherwise.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.06.040
Art. X, sec. 3, Ak Const.	AS 29.06.090
Art. X, sec. 7, Ak Const.	AS 29.06.100
Art. X, sec. 12, Ak Const.	AS 29.06.450
Art. X, sec. 14, Ak Const.	AS 29.06.460
AS 29.04.040	AS 44.33.812
AS 29.05.060	AS 44.33.814

3 AAC 110.550. COMMISSION PUBLIC HEARING

- (a) The commission will convene one or more public hearings at convenient locations within or near the boundaries of the proposed change as required under AS 29.04, AS 29.05, AS 29.06, AS 44.33.810 - 44.33.828, and this chapter. If the proposed change is for legislative-review borough incorporation under AS 29.05.115, the commission will convene two or more public hearings within the boundaries of the proposed change.
- (b) Notice of the date, time, place, and subject of the hearing must be
 - (1) mailed, postage prepaid, by the department to the petitioner and to each respondent;
 - (2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people within the boundaries of the proposed change; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate within the boundaries of the proposed change, the department shall provide notice through other means designed to reach the public; and
 - (3) posted by the petitioner in at least three prominent locations readily accessible to the public within the boundaries of the proposed change in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.
- (c) The department shall submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving within the boundaries of the proposed change and request that it be announced during the 21 days preceding the date of the hearing.
- (d) The commission may postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing. If the hearing is relocated, the new location will be within the same vicinity and will be rescheduled no more than 72 hours after the originally scheduled time.
- (e) At least 14 days before the hearing, the petitioner and each respondent shall submit to the department a list of witnesses that the respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits its witness list to the department, the petitioner shall provide a copy of its witness list to each respondent by hand-delivery, facsimile, electronic mail, or postage-prepaid mail. On the same date that a respondent submits its witness list to the department, the respondent shall provide a copy of its witness list to the petitioner and to all other respondents by hand-delivery, facsimile, electronic mail, or postage-prepaid mail.
- (f) In conjunction with a public hearing under this section, the commission may tour the area or territory. The purpose of a tour is to enable the commission to gain first-hand perceptions regarding the characteristics of the area or territory. If a tour is conducted,
 - (1) the tour will be recorded; and

- (2) conversations relating to the pending petition will be limited to factual questions by commission members to the department staff and concise factual answers by the department staff.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.	AS 29.06.490
Art. X, sec. 14, Ak Const.	AS 44.33.020
AS 29.04.040	AS 44.33.812
AS 29.05.090	AS 44.33.814
AS 29.06.040	AS 44.33.818
AS 29.06.120	AS 44.33.826

3 AAC 110.560. COMMISSION HEARING PROCEDURES

- (a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.
- (b) As part of the hearing, the commission may include
- (1) a report with recommendations from the department;
 - (2) an opening statement by the petitioner, not to exceed 10 minutes;
 - (3) an opening statement by each respondent, not to exceed 10 minutes;
 - (4) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
 - (5) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by each respondent;
 - (6) sworn responsive testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
 - (7) a period of public comment by interested persons, not to exceed three minutes for each person;
 - (8) a closing statement by the petitioner, not to exceed 10 minutes;
 - (9) a closing statement by each respondent, not to exceed 10 minutes;
 - (10) a reply by the petitioner, not to exceed five minutes; and
 - (11) points of information or clarification by the department.
- (c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.
- (d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.
- (e) A brief, document, or other evidence may not be introduced at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents or for consideration in the reports of the department under 3 AAC 110.530.

- (f) The commission may amend the order of proceedings and change allotted times for presentations to promote efficiency if the amendment does not detract from the commission's ability to make an informed decision.
- (g) If the petition at hearing is for municipal incorporation subject to AS 29.05.060 - 29.05.110 and the department has recommended an amendment to or conditional approval of the petition, during the hearing the commission will invite specific comments on that recommendation.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.	AS 44.33.020
Art. X, sec. 14, Ak Const.	AS 44.33.812
AS 29.04.040	AS 44.33.814
AS 29.05.090	AS 44.33.816
AS 29.06.040	AS 44.33.820
AS 29.06.120	AS 44.33.826
AS 29.06.490	

3 AAC 110.570. DECISIONAL MEETING

- (a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony and to reach a decision regarding the proposed change. During the decisional meeting,
 - (1) the commission will not receive new evidence, testimony, or briefing;
 - (2) the chair of the commission or a commission member may ask the department or a person for a point of information or clarification; and
 - (3) the department may raise a point of information or clarification.
- (b) Repealed 1/9/2008.
- (c) If the commission determines that a proposed change must be altered or a condition must be satisfied to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, and be in the best interests of the state, the commission may alter or attach a condition to the proposed change and accept the petition as altered or conditioned. A motion to alter, impose conditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval. If the proposed change is a
 - (1) municipal annexation, detachment, deunification, dissolution, merger, or consolidation, a city reclassification, or a legislative-review borough incorporation under AS 29.05.115, and if the commission determines that the proposed change must be altered or a condition must be satisfied before the proposed change can take effect, the commission will include that condition or alteration in its decision; or
 - (2) municipal incorporation subject to AS 29.05.060 - 29.05.110, and if the commission determines that an amendment to the petition or the placement of a condition on incorporation may be warranted, the department shall provide public notice and an opportunity for public comment on the alteration or condition before the commission amends the petition or imposes a condition upon incorporation; if the department recommended the proposed change or condition and the public had an opportunity to comment on the proposed change or condition at a commission hearing, an additional notice or comment period is not required.
- (d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, or is not in the best

interests of the state, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

- (e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.
- (f) Within 30 days after the date of its decision, the commission will issue a written decision explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.
- (g) Unless reconsideration is requested timely under 3 AAC 110.580 or the commission, on its own motion, orders reconsideration under 3 AAC 110.580, a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioners and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:

Art. X, sec. 12, Ak Const.	AS 44.33.812
Art. X, sec. 14, Ak Const.	AS 44.33.814
AS 29.04.040	AS 44.33.816
AS 29.05.100	AS 44.33.818
AS 29.06.040	AS 44.33.820
AS 29.06.130	AS 44.33.822
AS 29.06.500	AS 44.33.826
AS 44.33.020	

3 AAC 110.580. RECONSIDERATION

- (a) Within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person may file an original and five copies of a request for reconsideration of all or part of that decision, describing in detail the facts and analyses that support the request for reconsideration.
- (b) Within 30 days after a written statement of decision is mailed under 3 AAC 110.570(f), the commission may, on its own motion, order reconsideration of all or part of that decision.
- (c) A person filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in an electronic format, unless the department waives this requirement because the person requesting reconsideration lacks a readily accessible means or the capability to provide items in an electronic format. A request for reconsideration must be filed with an affidavit of service of the request for reconsideration on the petitioner and each respondent by regular mail, postage prepaid, or by hand-delivery. A request for reconsideration must also be filed with an affidavit that, to the best of the affiant's knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.
- (d) If the person filing the request for reconsideration is a group, the request must identify a representative of the group. Each request for reconsideration must provide the physical residence address and mailing address of the person filing the request for reconsideration and the telephone number, facsimile number, and electronic mail address, if any, for the person or representative of the group.

- (e) The commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision only if the commission determines that
 - (1) a substantial procedural error occurred in the original proceeding;
 - (2) the original vote was based on fraud or misrepresentation;
 - (3) the commission failed to address a material issue of fact or a controlling principle of law; or
 - (4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.
- (f) If the commission does not act on a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied. If it orders reconsideration or grants a request for reconsideration within 30 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. The petitioner or respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the petitioner or respondent lacks a readily accessible means or the capability to provide items in an electronic format.
- (g) Within 90 days after the department receives timely filed responsive briefs, the commission, by means of the decisional meeting procedure set out in 3 AAC 110.570(a) - (f), will issue a decision on reconsideration. A decision on reconsideration by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:	AS 29.06.500
Art. X, sec. 12, Ak Const.	AS 44.33.020
Art. X, sec. 14, Ak Const.	AS 44.33.812
AS 29.04.040	AS 44.33.814
AS 29.05.100	AS 44.33.820
AS 29.06.040	AS 44.33.822
AS 29.06.130	AS 44.33.826

3 AAC 110.600. LOCAL ACTION/LOCAL OPTION ELECTIONS

- (a) In accordance with AS 29.04, AS 29.05, and AS 29.06, the commission will notify the director of elections of the commission's acceptance of a local action or local option petition proposing city reclassification under AS 29.04, municipal incorporation under art. X, sec. 12 of the Constitution of the State of Alaska or AS 29.05, and municipal dissolution, deunification, merger, or consolidation under AS 29.06.
- (b) If AS 29.06.040 requires a municipal election for a proposed annexation or detachment, the commission will notify the clerk of the municipality proposed for change of the commission's acceptance of a local action petition. The election must be administered by the municipality proposed for change at the municipality's own cost and in the manner prescribed by its municipal election ordinances, except that the commission may specify the wording of the ballot measure and broaden the election notice requirements.
- (c) If a petition for detachment under AS 29.06.040 and incorporation under AS 29.05 requires a municipal election, the commission will notify the director of elections of the commission's

acceptance of a local option petition and that the election must be a combined one for detachment and incorporation.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.05.120
Art. X, sec. 3, Ak Const.	AS 29.06.040
Art. X, sec. 7, Ak Const.	AS 29.06.140
Art. X, sec. 12, Ak Const.	AS 29.06.510
AS 29.04.040	AS 44.33.812
AS 29.05.110	

3 AAC 110.610. LEGISLATIVE REVIEW

- (a) The commission may determine during the course of proceedings that a legislative review petition must be amended and considered as a local action or local option petition if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.
- (b) If a decision of the commission requires legislative review, the commission will present a recommendation for the decision to the legislature during the first 10 days of a regular session in accordance with art. X, sec. 12, Constitution of the State of Alaska.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.	AS 44.33.812
AS 29.06.040	AS 44.33.822
AS 29.06.090	AS 44.33.826
AS 29.06.450	AS 44.33.828

3 AAC 110.620. JUDICIAL REVIEW

A final decision of the commission made under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.	AS 29.06.130
AS 29.04.040	AS 29.06.500
AS 29.05.100	AS 44.33.812
AS 29.06.040	

3 AAC 110.630. EFFECTIVE DATE AND CERTIFICATION

- (a) Except as provided in (b) or (c) of this section, a final decision of the commission is effective when
 - (1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;
 - (2) certification of the legally required voter approval of the commission's final decision is received from the director of elections or the appropriate municipal official; and
 - (3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.
- (b) The effective date of a merger or consolidation is the date set by the director of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.
- (c) The commission may defer the effective date of a city reclassification under AS 29.04, municipal incorporation under the Constitution of the State of Alaska or AS 29.05, or municipal annexation, detachment, deunification, merger, consolidation, or dissolution under AS 29.06 for a period of no more than two years.
- (d) When the requirements in (a) of this section have been met, the department shall issue a certificate describing the effective change. The department shall hand-deliver or mail, postage prepaid, a copy of the certificate to the municipality that has been changed and shall file a copy of the certificate in each recording district of all territory within the municipality that has been changed.
- (e) If a minor error is found in the certificate issued under (d) of this section, the person discovering the error shall notify the department and the commission. If the commission determines that the error resulted from an oversight during the petition proceeding or the issuance of the certificate, the commission will direct the department to issue a corrected certificate. The commission will not consider a request for a corrected certificate to include area or territory not proposed in the boundary change proceeding for which the certificate was issued.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:

Art. X, sec. 12, Ak Const.	AS 29.06.140
Art. X, sec. 14, Ak Const.	AS 29.06.510
AS 29.04.040	AS 44.33.020
AS 29.05.120	AS 44.33.812
AS 29.06.040	AS 44.33.828

3 AAC 110.640. SCHEDULING

- (a) The chair of the commission shall set or amend the schedule for action on a petition.
- (b) In a schedule under (a) of this section, and except as provided by 3 AAC 110.590 for certain local action annexations, the chair of the commission shall allow at least
 - (1) 49 days after the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief or written comments concerning the petition;
 - (2) 14 days after the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner. Contemporaneously with notice to the

- petitioner of the date for filing its reply brief, the department shall provide notice to respondents and commentors of that date;
- (3) 28 days after the date of mailing of a departmental preliminary report for receipt of written summary comments to the department; and
 - (4) 21 days between the date of mailing of a final report and the commission hearing on the petition.
- (c) As provided under 3 AAC 110.430, the commission may postpone proceedings on a petition that has been accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all the same boundaries and that has either been accepted for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated competing petition only if the anticipated competing petition is received by the department no later than 90 days after the date of the first publication of notice of the earlier petition under 3 AAC 110.450.
- (d) The chair of the commission will adjust the schedule in (b)(1) - (4) of this section to accommodate the procedures under 3 AAC 110.475 if a request for summary determination is filed on the petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.06.090
Art. X, sec. 3, Ak Const.	AS 29.06.110
Art. X, sec. 7, Ak Const.	AS 29.06.120
Art. X, sec. 12, Ak Const.	AS 29.06.480
Art. X, sec. 14, Ak Const.	AS 29.06.490
AS 29.04.040	AS 44.33.020
AS 29.05.070	AS 44.33.812
AS 29.05.080	AS 44.33.814
AS 29.05.090	AS 44.33.826
AS 29.06.040	

3 AAC 110.650. RESUBMITTALS AND REVERSALS

Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

- (1) is substantially similar to a petition denied by the commission during the immediately preceding three years; for purposes of this paragraph, the three-year period will be measured from the date that the denial is final at the agency level, including reconsideration, or through the end of the appeal process, whichever is later;
- (2) is substantially similar to a petition rejected by the legislature or rejected by the voters during the immediately preceding two years; or
- (3) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding two years.

History: Eff. 7/31/92, Register 123; am 1/9/2008, Register 185

Authority:

Art. X, sec. 3, Ak Const.	Art. X, sec. 12, Ak Const.
Art. X, sec. 7, Ak Const.	AS 29.04.040

AS 29.05.100
AS 29.06.040
AS 29.06.090
AS 29.06.130

AS 29.06.450
AS 29.06.500
AS 44.33.812

3 AAC 110.660. PURPOSE OF PROCEDURAL REGULATIONS; RELAXATION OR SUSPENSION OF PROCEDURAL REGULATIONS

The purpose of the procedural requirements set out in 3 AAC 110.400 - 3 AAC 110.700 is to facilitate the business of the commission, and will be construed to secure the reasonable, speedy, and inexpensive determination of every action and proceeding. Unless a requirement is strictly provided for in the Constitution of the State of Alaska, AS 29, or AS 44.33.810 - 44.33.849, the commission, by a vote of at least three members, may relax or suspend a procedural regulation if the commission determines that a strict adherence to the regulation would work injustice, would result in a substantially uninformed decision, or would not serve relevant constitutional principles and the broad public interest.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:

Art. X, sec. 1, Ak Const.
Art. X, sec. 3, Ak Const.
Art. X, sec. 7, Ak Const.
Art. X, sec. 12, Ak Const.
AS 29.04.040

AS 29.05.100
AS 29.06.040
AS 29.06.090
AS 29.06.450
AS 44.33.812

3 AAC 110.680. MEETINGS

- (a) When providing public notice of a commission meeting, the department shall include the date, time, and place of the meeting, the general topics to be discussed or considered, and the originating site of any teleconferencing facilities that will be used. If at least three days remain before the date of the meeting, and unless AS 44.33.818 or an applicable provision of this chapter sets out a more stringent publication requirement, the department shall publish notice of that meeting in a newspaper of general circulation in the vicinity where the meeting will be held or teleconferenced. If time is insufficient to arrange for publication of a complete notice as described in this subsection, the department shall publish an abbreviated notice that includes the date, time, and place of the meeting, the originating site of any teleconferencing facilities that will be used, and a statement that additional information regarding the meeting is available at the commission's offices and on the commission's website. Before the date and time of the meeting, the department shall
- (1) post the complete notice of the meeting on the commission's website;
 - (2) transmit the complete notice to subscribers to the commission's electronic notice list;
 - (3) notify by telephone, electronic mail, or facsimile transmission those persons whom the chair of the commission determines to warrant notice by those means;
 - (4) mail or otherwise provide the complete notice to each person who requests it; and
 - (5) mail or otherwise distribute notice as directed by the commission chair.
- (b) The department shall prepare an agenda of each public meeting as directed by the chair, make the agenda available for public inspection and copying at the commission's offices, post it on the commission's website, serve it by electronic mail on subscribers to the commission's electronic

notice service, and mail or otherwise provide it to each person who requests a copy. The department shall also make copies of the agenda available at the public meeting.

- (c) To the extent time permits, a public meeting agenda must be available at least 48 hours before the scheduled time of the meeting. If time does not allow that advanced publication, the agenda must be posted and distributed as soon as it is available but no later than the date of the meeting.
- (d) If the commission allows public testimony regarding a matter on the agenda or pending before the commission, that testimony is limited to three minutes for each person except that the chair may allow an extended period for good cause shown.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.

AS 44.33.812

Art. X, sec. 14, Ak Const.

AS 44.33.814

AS 44.33.020

3 AAC 110.690. TELECONFERENCE POLICY AND PROCEDURES

- (a) If the commission conducts a hearing by teleconference on a proposed boundary change, at least two members shall attend the hearing in person within or near the boundaries affected by the proposed change under consideration at the hearing. The department shall reflect in the minutes of a meeting or hearing whether a commission member attended in person or by teleconference.
- (b) If the commission conducts a hearing or meeting by teleconference, and teleconference access is arranged by the department, the petitioner, respondent, witness, or other person inconvenienced by teleconference attendance shall bear the cost of that person's teleconferencing, except as provided by law, or unless otherwise ordered by the commission.
- (c) If the commission conducts a meeting with a public teleconference site, agency materials that will be considered at a public meeting will be made available at the teleconference site or on the commission's website.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 12, Ak Const.

Art. X, sec. 14, Ak Const.

AS 44.33.020

AS 44.33.810

AS 44.33.812

AS 44.33.814

AS 44.33.816

AS 44.33.826

AAC 110.700. FILING WITH THE COMMISSION

- (a) The filing of documents with the commission as allowed or required by this chapter or by order of the commission is made by filing them with the commission staff at the commission's offices. Unless otherwise required by this chapter or ordered by the commission, documents may be filed by hand delivery, United States mail, electronic mail, or facsimile transmission. The commission requests that a document filed by electronic mail be in searchable portable document format (.pdf).
- (b) A document filed with the commission is complete upon receipt of the entire document by the commission. Filing that occurs in whole or in part after 4:30 p.m. is considered to have occurred at the opening of business on the next day that is not a Saturday, Sunday, or state holiday.
- (c) For a document to be considered timely filed under requirements of this chapter or an order of the commission, the document must be filed with the commission on or before the deadline set under (b) and (e) of this section. For good cause shown, the commission chair will consider a request to accept a late-filed document.
- (d) The original of a document served by electronic mail or facsimile transmission must be submitted to the commission within 10 days after the submission of the filing by either electronic method.
- (e) The time in which to perform an act required or permitted under this chapter is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or state holiday. If the last day is a Saturday, Sunday, or state holiday, that day is excluded and the act shall be performed on or before the end of the next state business day.

History: Eff. 1/9/2008, Register 185

Authority:
AS 44.33.812

ARTICLE 14 GENERAL PROVISIONS

3 AAC 110.900. TRANSITION

- (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for municipal detachment or dissolution under AS 29.06, or a city reclassification under AS 29.04, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.
- (b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.
- (c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area

wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

- (d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included within the boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.
- (e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.
- (f) If a prospective petitioner has been unable to consult with officials of an existing borough, city, or unorganized borough service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing borough, city, and unorganized borough service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; am 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.05.140
Art. X, sec. 3, Ak Const.	AS 29.06.040
Art. X, sec. 7, Ak Const.	AS 29.06.090
Art. X, sec. 12, Ak Const.	AS 29.06.130
AS 29.04.040	AS 29.06.150
AS 29.05.100	AS 29.06.160
AS 29.06.130	AS 44.33.812

3 AAC 110.910. STATEMENT OF NONDISCRIMINATION

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

History: Eff. 7/31/92, Register 123

Authority:

Art. X, sec. 12, Ak Const.
AS 44.33.812

3 AAC 110.970. DETERMINATION OF ESSENTIAL MUNICIPAL SERVICES

- (a) If a provision of this chapter calls for the identification of essential municipal services for a borough, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that
 - (1) are reasonably necessary to the area; and
 - (2) promote maximum local self-government.
- (b) The commission may determine essential municipal services for a borough to include
 - (1) assessing the value of taxable property if the proposed or existing borough proposes to levy or levies a property tax;
 - (2) levying and collecting taxes if the proposed or existing borough proposes to levy or levies taxes;
 - (3) establishing, maintaining, and operating a system of public schools on an areawide basis as provided in AS 14.14.065;
 - (4) planning, platting, and land use regulation; and
 - (5) other services that the commission considers reasonably necessary to meet the borough governmental needs of the residents of the area.
- (c) If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that
 - (1) are reasonably necessary to the community;
 - (2) promote maximum, local self-government; and
 - (3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.
- (d) The commission may determine essential municipal services for a city to include
 - (1) levying taxes;
 - (2) for a city in the unorganized borough, assessing the value of taxable property;
 - (3) levying and collecting taxes;
 - (4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065;
 - (5) public safety protection;
 - (6) planning, platting, and land use regulation; and
 - (7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.

History: Eff. 5/19/2002, Register 162; am 1/9/2008, Register 185
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Authority:

Art. X, sec. 1, Ak Const.	AS 29.05.100
Art. X, sec. 3, Ak Const.	AS 29.06.040
Art. X, sec. 7, Ak Const.	AS 29.06.090
Art. X, sec. 12, Ak Const.	AS 29.06.130
AS 29.04.040	AS 29.06.450
AS 29.05.011	AS 29.06.500
AS 29.05.031	AS 44.33.812

3 AAC 110.981. DETERMINATION OF MAXIMUM LOCAL SELF-GOVERNMENT

In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider

- (1) for borough incorporation, whether the proposal would extend local government on a regional scale to a significant area and population of the unorganized borough;
- (2) for borough annexation, whether the proposal would extend local government to portions of the unorganized borough;
- (3) for merger or consolidation of municipalities, whether the proposal would expand or diminish the level of local government currently provided by the municipalities being merged or consolidated;
- (4) for borough detachment, whether the
 - (A) proposal would
 - (i) diminish the provision of local government to the area and population being detached; or
 - (ii) detrimentally affect the capacity of the remnant borough to serve the local government needs of its residents; and
 - (B) local government needs of the detached area can be adequately met by an existing local government;
- (5) for borough dissolution, whether the proposal substantiates that the provision of local government is no longer necessary or supportable for the area;
- (6) for deunification, whether the proposal substantiates that the provision of local government is not diminished by deunification or that deunification could lead to better local government by incorporation of other local governments better suited to needs of the area and population;
- (7) for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists;
- (8) for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area;
- (9) for city detachment in an organized borough, whether the
 - (A) proposal would
 - (i) diminish the provision of local government to the territory and population being detached; or
 - (ii) detrimentally affect the capacity of the remnant city to serve the local government needs of its residents; and
 - (B) local government needs of the territory and population to be detached can be adequately met by the borough;
- (10) for city detachment in the unorganized borough, whether the
 - (A) proposal would
 - (i) diminish the provision of local government to the territory and population being detached; or
 - (ii) detrimentally affect the capacity of the remnant city to provide local government services; and
 - (B) local government needs of the detached territory and population can be adequately met by another existing local government;
- (11) for city dissolution in an organized borough, whether the proposal substantiates that the
 - (A) provision of local government is no longer necessary or supportable for the territory; or
 - (B) local government needs of the territory could be better provided by the borough;
- (12) for city dissolution in the unorganized borough, whether the proposal substantiates that the
 - (A) provision of local government is no longer necessary or supportable for the territory; or
 - (B) local government needs of the territory could be better provided by a governmental organization other than the city;

- (13) for city reclassification, whether the proposal would expand or diminish the provision of local government to the territory being reclassified;
- (14) whether the petition proposes incorporation of a home rule municipality.

History: Eff. 1/9/2008, Register 185

Authority:

Art. X, sec. 1, Ak Const.	AS 29.05.100
Art. X, sec. 3, Ak Const.	AS 29.06.040
Art. X, sec. 5, Ak Const.	AS 29.06.090
Art. X, sec. 7, Ak Const.	AS 29.06.130
Art. X, sec. 12, Ak Const.	AS 29.06.450
AS 29.04.040	AS 29.06.500
AS 29.05.011	AS 44.33.812
AS 29.05.031	

3 AAC 110.982. MINIMUM NUMBER OF LOCAL GOVERNMENT UNITS

Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider

- (1) for borough incorporation, whether a new borough will be created from the unorganized borough and whether the proposed boundaries maximize an area and population with common interests;
- (2) for borough annexation, whether the jurisdictional boundaries of an existing borough are being enlarged rather than promoting the incorporation of a new borough and whether the proposed boundaries maximize an area and population with common interests;
- (3) for borough merger or consolidation, whether the merged or consolidated borough minimizes the number of local government units and whether the boundaries of the merged or consolidated borough maximize an area and population with common interests;
- (4) for borough detachment, whether the detached area by itself is likely to be incorporated as an organized borough;
- (5) for deunification of a unified municipality, whether
 - (A) incorporation of one or more new cities is likely to occur as a result of the proposed action, and, if so, the reasons why a new incorporation is or will be needed; or
 - (B) the action is proposed as an alternative to detachment of area and incorporation of one or more new boroughs;
- (6) for city incorporation, whether incorporation of a new city is the only means by which residents of the territory can receive essential municipal services;
- (7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area;
- (8) for city merger or consolidation, whether the merged or consolidated city minimizes the number of local government units;
- (9) for city detachment, whether the detached area, by itself, is likely to be incorporated as a new city.

History: Eff. 1/9/2008, Register 185

Authority:

Art X, sec. 1, Ak Const.	AS 29.05.100
Art. X, sec. 3, Ak Const.	AS 29.06.040
Art. X, sec. 5, Ak Const.	AS 29.06.090
Art. X, sec. 7, Ak Const.	AS 29.06.130
Art. X, sec. 12, Ak Const.	AS 29.06.450
AS 29.04.040	AS 29.06.500
AS 29.05.011	AS 44.33.812
AS 29.05.031	

3 AAC 110.990. DEFINITIONS

Unless the context indicates otherwise, in this chapter

- (1) "borough" means a general law borough, a home rule borough, or a unified municipality;
- (2) repealed 1/9/2008;
- (3) "commission" means the Local Boundary Commission;
- (4) "commissioner" means the commissioner of commerce, community, and economic development;
- (5) a "community" means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;
- (6) "contiguous" means, with respect to area, territory, or property, adjacent, adjoining, and touching; contiguous area, territory, or property includes area, territory, or property separated by public rights-of-way;
- (7) "department" means the Department of Commerce, Community, and Economic Development;
- (8) "mandatory power" means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; "mandatory power" includes one or more of the following:
 - (A) assessing the value of taxable property, and levying and collecting taxes;
 - (B) providing education, public safety, public health, and sanitation services;
 - (C) planning, platting and land use regulation;
 - (D) conducting elections; and
 - (E) other acts, duties, or obligations required by law to meet the local governmental needs within the boundaries proposed for change;
- (9) "model borough boundaries" means those boundaries set out in the commission's publications
 - (A) Model Borough Boundaries, revised as of June 1997 and adopted by reference; and
 - (B) Unorganized Areas of Alaska That Meet Borough Incorporation Standards: A Report by the Alaska Local Boundary Commission to the Alaska Legislature Pursuant to Chapter 53, Session Laws of Alaska 2002, dated February 2003 and adopted by reference;
- (10) "permanent resident" means a person who has maintained a principal domicile within the boundaries proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department and who shows no intent to remove that principal domicile at any time during the pendency of a petition before the commission;
- (11) "political subdivision" means a borough or city organized and operated under state law;
- (12) "property owner" means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands;
- (13) "regional educational attendance area" means an educational service area established in the unorganized borough under AS 14.08.031 by the department; "regional educational attendance area" includes the territory within the boundaries of a
 - (A) home rule city in that area;
 - (B) first class city in that area; or
 - (C) federal transfer regional educational attendance area formed under ch. 66, SLA 1985 in that area;

- (14) "witnesses with expertise in matters relevant to the proposed change" means individuals who are
 - (A) specialists in relevant subjects, including municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or
 - (B) long-standing members of the community or region that are directly familiar with social, cultural, economic, geographic, and other characteristics of the community or region;
- (15) "area" means the geographical lands and submerged lands forming the boundaries described in a petition regarding a borough government or forming the boundaries of an incorporated borough;
- (16) "boundary change" means the type of action the commission takes to create, alter, or abolish a municipal government; "boundary change" includes
 - (A) annexation, consolidation, detachment, dissolution, incorporation, and merger of boroughs or cities; and
 - (B) reclassification of cities if jurisdictional boundaries for public school districts are affected;
- (17) "city" has the meaning given in AS 29.71.800;
- (18) "consolidation" has the meaning given in AS 29.71.800;
- (19) "debt" means an obligation or alleged obligation of a municipality to pay money; "debt" includes funded debt and floating debt;
- (20) "deunification" and "deunify" mean to change a unified municipality into a non-unified home rule borough;
- (21) "floating debt" means a municipal obligation that is payable on demand;
- (22) "funded debt" means a municipal obligation
 - (A) evidenced by bonds payable at a time beyond the current fiscal year of their issue, with periodic payment of interest; and
 - (B) for which provision is made for payment by future taxation;
- (23) "merger" has the meaning given in AS 29.71.800;
- (24) "numerical identifier" has the meaning given in AS 15.60.010;
- (25) "non-unified home rule borough" means a home rule borough in which a city government does or could exist;
- (26) "person" has the meaning given in AS 01.10.060;
- (27) "public right-of-way" means a public easement or public property that is or may be used for a street, an alley, or another public purpose;
- (28) "region"
 - (A) means a relatively large area of geographical lands and submerged lands that may include multiple communities, all or most of which share similar attributes with respect to population, natural geography, social, cultural, and economic activities, communications, transportation, and other factors;
 - (B) includes a regional educational attendance area, a state house election district, an organized borough, and a model borough described in a publication adopted by reference in (9) of this section;
- (29) "regional" means having the characteristics of a region;
- (30) "remnant city" means the portion of a city that will remain if a petition to detach territory from that city is approved under AS 29.06.040;
- (31) "remnant borough" means the portion of a borough that will remain if a petition to detach area from that borough is approved under AS 29.06.040;
- (32) "territory" means the geographical lands and submerged lands forming the boundaries in a petition regarding a city government or forming the boundaries of an incorporated city;
- (33) "unified municipality" has the meaning given in AS 29.71.800;
- (34) "unorganized borough" has the meaning given in AS 29.03.010.

Petition

to the Local Boundary Commission to
Detach [number] Square Miles from [Name of Borough]
Using the Local Action Method

The petitioner hereby requests that the Local Boundary Commission (hereafter commission or LBC) grant this petition to detach area from an organized under Article 10, Section 12 of the Constitution of the State of Alaska, AS 29.06.040(a), and AS 44.33.812(3).

All of the petition's sections and exhibits need to be addressed and filled out. If a requirement does not apply, simply state "not relevant." If the petition has already addressed a requirement, simply state where it addressed the requirement. This petition incorporates by reference all of the attached exhibits.

Section 1. Petitioner's Name. 3 AAC 110.420(b)(1).

The petitioner consists of voters residing in the area seeking detachment (area). State how the petitioner is authorized to file a petition under 3 AAC 110.410 (9)(A). Include the voters' signatures and addresses in **Exhibit A**.

Section 2. Petitioner's Representative. 3 AAC 110.420(b)(2).

The petitioner designates the following individual to serve as its representative in all matters concerning this petition:

Name: _____

Physical address: _____

Mailing address: _____

Phone number: _____ Fax number: _____

Email address: _____

Petitioner's Alternative Representative

The petitioner designates the following person to act as alternative representative in matters regarding the proposed detachment, in the event the primary representative is absent, resigns, or fails to perform his or her duties:

Name: _____

Physical address: _____

Mailing address: _____

Phone number: _____ Fax number: _____
Email address: _____

Section 3. Name and Class of Borough for which a Change is Proposed.

3 AAC 110.420(b)(3).

The name and class of the borough from which detachment is proposed (existing borough) is: Name: _____

Class: _____

Section 4. General Description of the Nature of the Proposed Boundary Changes.

3 AAC 110.420(b)(4).

This petition requests that the commission authorize detaching the area from the [*name of borough*].

Section 5. General Description of the Area Proposed for Detachment. 3 AAC 110.420(b)(5)(A). (*E.g. size, location, population, current use, and prospective development*).

Section 6. Reasons for the Proposed Boundary Change. 3 AAC 110.420 (b)(6).

Section 7. Legal Descriptions, Maps, and Plats. 3 AAC 110.420(b)(7).

See **Exhibits B-1 to B-6.**

Section 8. Size of the Area Proposed for Change. 3 AAC 110.420(b)(8).

- a) The area of the existing borough is now _____ square miles.
- a) The area of the existing borough after detachment would be _____ square miles.

Section 9. Data Estimating the Population of the Area Proposed for Change.

3 AAC 110.420(b)(9).

- a) The population of the existing borough is estimated to be: _____.

b) The population of the existing borough after detachment is estimated to be:
_____.

Section 10. Information Relating to Public Notice and Service of Petition.

3 AAC 110.420(b)(10)

See **Exhibit C**.

Section 11. Tax Data. 3 AAC 110.420(b)(12).

a) **The assessed or estimated value of taxable property in the area** (if either the existing borough or any existing municipality for which change is proposed currently levies or plans to levy property taxes).

Real property \$ _____
Personal property \$ _____
Total \$ _____

b) **Projected taxable sales in the area** (if either the existing borough or any existing municipality for which change is proposed currently levies or plans to levy sales taxes. Any different sales tax rates for different goods or services are listed separately and totaled). The projected value of taxable sales within the area is \$_____. At a rate of _____, projected annual sales tax revenues in the area will be \$ _____.

c) **Each municipal tax levy currently in effect in the area proposed for detachment.**

The type and rate of each tax currently levied by municipalities within the area:

Borough, city, or service area	Property tax (mills)	Sales tax (%)	Other (delete column if not used)	Other (delete column if not used)	Other (delete column if not used)

Section 12. Budget Information. 3 AAC 110.420(b)(13)(B).

Exhibit D presents projected revenue, operating expenditures, and capital expenditures for any existing municipality for which change is proposed up to the first full fiscal year after the transition is complete.

Section 13. Existing Long Term Municipal Debt. 3 AAC 110.420(b)(14).

Name/type of debt	Purpose of debt	Date debt will be fully paid

Section 14. Municipal Powers and Functions. 3 AAC 110.420(b)(15).

The powers and functions of any existing municipality for which change is proposed.

Name of municipality or service area	Powers and functions before the proposed change	Powers and functions after the proposed change

The powers and functions of alternative service providers in the area proposed for change.

Name of municipality or service area	Powers and functions before the proposed change	Powers and functions after the proposed change

Section 15. Transition Plan. 3 AAC 110.420(b)(16).

See **Exhibit E**.

Section 16. Governing Body Composition and Apportionment.

3 AAC 110.420(b)(17).

Describe the composition and apportionment of any existing municipality for which change is proposed, before and after the proposed change.

Section 17. Supporting Brief. 3 AAC 110.420(b)(19).

See **Exhibit F**.

Section 18. Documentation Demonstrating that the Petitioner is Authorized to File the Petition Under 3 AAC 110.410. 3 AAC 110.420(b)(20).

See **Section 1** and **Exhibit A**.

Section 19. Petitioner's Affidavit. 3 AAC 110.420(b)(22).

See **Exhibit G**.

Exhibit A.
Signatures of Qualified Voters

This exhibit contains the signatures and resident addresses of voters registered to vote in the area proposed for detachment. An eligible voter should only sign once. Per 3 AAC 110.410(a)(9), the petition must include the signatures and resident addresses of 25 percent of the persons registered to vote in the area proposed for detachment. This petition form includes a signature page.

To help verify your voter registration status, please:

- Print your name legibly.
- List your physical residence address (e.g. street number, milepost) – **do not list a post office or other mail box**. This should match the address listed in the state voter registration records.
- Sign your name as it is listed in the state voter registration records.
- List a numerical identifier such as your State of Alaska voter ID or driver's license; date of birth; or the **last four digits only** of your Social Security number.
- Date your signature.

WE, THE UNDERSIGNED, hereby petition to detach an area described as [insert name here] from the [insert name here] Borough, as set out in the complete petition. Further, we swear or affirm that:

1. We are registered voters of the State of Alaska;
2. We are registered to vote within the area proposed for detachment;
3. We have reviewed the complete petition for detachment, including all exhibits, and we understand its terms.

Print Name: _____

Principal *Physical* Residence Address (or best equivalent – no PO box numbers):

Signature _____ **Numerical ID** _____ **Date signed** _____

Print Name: _____

Principal *Physical* Residence Address (or best equivalent – no PO box numbers):

Signature _____ **Numerical ID** _____ **Date signed** _____

Print Name: _____

Principal *Physical* Residence Address (or best equivalent – no PO box numbers):

Signature _____ **Numerical ID** _____ **Date signed** _____

[Print more signature pages as necessary.]

Exhibit B-1.

**Legal Metes and Bounds Description of the Current Boundaries of the
Borough from Which Detachment is Proposed**

This includes the USGS quad information and dates. Any plats required by the Department of Commerce, Community, and Economic Development (hereafter “department”) to demonstrate the accuracy of the legal descriptions are also included.

Exhibit B-2.

Legal Metes and Bounds Description of the Boundaries of the Area Proposed for Detachment

This includes the USGS quad information and dates. Any plats required by the department to demonstrate the accuracy of the legal descriptions are also included.

Exhibit B-3.
Legal Metes and Bounds Description of the Existing Borough's
Post-Detachment Boundaries

This includes the USGS quad information and dates. Any plats required by the department to demonstrate the accuracy of the legal descriptions are also included.

Exhibit B-4.

Map of the Existing Borough, Before and After the Proposed Detachment

Exhibit B-5.
Map of Area Proposed for Detachment

Exhibit B-6.

Maps(s) Showing the Boundaries of Each Existing Borough Service Area, if any, that Would be Divided by the Proposed Detachment

Exhibit C.

Information Relating to Public Notice and Service of the Petition

Local Media

The following lists the principal news media, if any, serving the boundaries proposed for change. If there aren't any, simply state that.

Newspaper(s) 3 AAC 110.450(a)(1):

Name: _____

Physical address: _____

Mailing address: _____

Telephone and fax number: _____ Fax number: _____

Email address: _____

Name: _____

Physical address: _____

Mailing address: _____

Telephone and fax number: _____ Fax number: _____

Email address: _____

Radio and television station(s) 3 AAC 110.450(a)(5):

Name: _____

Physical address: _____

Mailing address: _____

Telephone and fax number: _____ Fax number: _____

Email address: _____

Name: _____

Physical address: _____

Mailing address: _____

Telephone and fax number: _____ Fax number: _____

Email address: _____

Three or more prominent places readily accessible to the public and *within or near the boundaries proposed for change* to post notices concerning this petition:

Location and address	Days and times open to the public

Adjacent municipalities (including service areas) within twenty miles of the boundaries proposed for change:

Municipality	Address and contact information

Individuals and entities whose potential interest in the petition proceedings may warrant individual notice of the filing of the petition, and/or a copy of the petition:

Name	Address	Email address

Location(s) where the petition materials will be available for public review:

Location and address	Days and times open to the public

Exhibit D-1.

**Projected Revenues, Operating Expenditures, and Capital Expenditures for Any
Existing Municipality for which Change is Proposed**

Include the current fiscal year, the first fiscal year after the transition is anticipated to be complete, and any years in between. Add more columns if necessary.

Revenues	First fiscal year	Second Fiscal Year	Third fiscal year	Last fiscal year
Operating expenses				
Capital expenditures				
Balance				

Exhibit E.
Transition Plan

A) *As required under 3 AAC 100.900, does the petition include a practical transition plan:*

- *Per 3 AAC 110.900(a), demonstrating the transition or termination of municipal services in the shortest practical time after the proposed detachment would take effect?*

Yes ☐	No ☐
------------------------------	-----------------------------

Please explain how.

- *Per 3 AAC 110.900(b), to assume all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change?*

Yes ☐	No ☐
------------------------------	-----------------------------

Please explain how.

- *Per 3 AAC 110.900(c), for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entities located within the boundaries proposed for change?*

Yes ☐	No ☐
------------------------------	-----------------------------

Please explain how.

- *Per 3 AAC 110.900(c), that specifically addresses procedures ensuring that the transfer and integration of assets and liabilities occurs without loss of asset value or credit reputation, or a reduced bond rating for liabilities?*

Yes ☐	No ☐
------------------------------	-----------------------------

Please explain how.

B) Per 3 AAC 110.900(b) and (c), is the plan designed to effect an orderly, efficient, and economical transfer within the shortest practicable time (not exceeding two years) after the proposed change would take effect?

C) Per 3 AAC 110.900(b) and (c), was the plan prepared in consultation with officials of each existing borough, city, and unorganized borough service area?

Yes ☐	No ☐
------------------------------	-----------------------------

- Per 3 AAC 110.900(e), does the plan state the names and titles of all those officials who were consulted by the petitioner, and the consultation subjects and dates?*

Yes ☐	No ☐
------------------------------	-----------------------------

Officials consulted for the transition plan			
Name	Title and organization	Date(s) consulted	Subject(s) discussed

- Per 3 AAC 110.900(f), was the prospective petitioner unable to consult with those officials because they chose not to consult with the petitioner, or were unavailable during reasonable times to consult?*

Yes ☐	No ☐
------------------------------	-----------------------------

- If yes, the petitioner may request that the LBC waive the consultation requirement. If so, the petitioner must document all attempts it made to consult with those officials. Is the petitioner submitting such a request, and is it documenting all its attempts to consult with those officials?*

Yes ☐	No ☐
------------------------------	-----------------------------

Exhibit F.
Supporting Brief

This exhibit consists of a supporting brief that explains in detail how the proposed borough detachment satisfies each relevant constitutional, statutory, and regulatory standard. In preparing the brief, the petitioner should examine the language of the standards themselves – the below merely summarizes the standards.

If a requirement does not apply, simply state “not relevant.” If the petitioner has already addressed a requirement, simply state where it was addressed. Please be aware that the regulations often repeat the statutes, but sometimes subtly differ or have additional criteria. To avoid repetition, it suffices to explain how the petition meets the regulations, and refer to that explanation when addressing the statutes, *as long the regulation covers everything stated in the statute.*

Many standards list factors that the commission *may* consider. The word “may” indicates that it is optional for the commission to consider those factors. The LBC is not required to consider them, nor is it limited to those factors. Instead, they are guidelines for the LBC to use in evaluating the overall standard. The petitioner is not required to address every single “may” factor. The brief should answer the following questions:

Standards

A. *Per Article 10, Section 3 of the Constitution of the State of Alaska, would the existing borough after detachment embrace an area and population with common interests to the maximum degree possible?*

Yes ☐	No ☐
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Please explain how.

B. *Per 3 AAC 110.270, does the proposed detachment:*

(1) meet applicable standards under the Constitution of the State of Alaska?

Yes ☐	No ☐
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See question above.

(2) meet standards in 3 AAC 110.267 - 3 AAC 110.270 and 3 AAC 110.900 - 3 AAC 110.970; and

Yes ☐	No ☐
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See questions below.

(3) meet the best interests of the state standard?

Yes ☐	No ☐
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See 3 AAC 110.270 below.

C. Per 3 AAC 110.270, is the proposed detachment in the best interests of the state?

Yes ☐	No ☐
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Please explain how.

D. Per 3 AAC 110.272, does the petition propose to detach an area from an organized borough and include that area in the unorganized borough?

Yes ☐	No ☐
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Please explain how. If the answer is "yes," please explain the plan for education by a regional education attendance area (REAA) in the detached area, including a proposal to work with the department and the Department of Education and Early Development to implement the plan.

E. Per 3 AAC 110.910, does the proposed detachment deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin?

Yes ☐	No ☐
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Please explain how.

F. Per 3 AAC 110.981, does the proposed borough detachment promote maximum local self-government?

Yes	No ☐
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Please explain how. In doing so, consider whether:

(A) the proposed detachment would:

i. diminish the provision of local government to the area and population being detached; or

ii. detrimentally affect the capacity of the remnant borough to serve the local government needs of its residents; and

(B) local government needs of the detached area can be adequately met by an existing local government.

G. Per 3 AAC 110.982, does the proposed detachment promote a minimum number of local government units?

Yes	No ☐
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Please explain how. In doing so consider whether the detached area by itself is likely to be incorporated as an organized borough.

STATE OF ALASKA)
) ss.
_____ JUDICIAL DISTRICT)

To the best of my knowledge, information, and belief, formed after reasonable inquiry, the information in the petition is true and accurate.

SUBSCRIBED AND SWORN TO before me on _____, 20____.

My commission expires: _____