

BACKGROUND ON ANNEXATION OF TERRITORY TO CITIES

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Division of Community & Business Development
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Flexible Boundaries

Alaska's Constitution and statutes provide that corporate boundaries of cities may be adjusted. [Ak. Const., Art. X, § 12; AS 29.06.040] This allows cities to accommodate growth and adapt to changing needs and conditions with respect to their jurisdiction.

Establishment of Local Boundary Commission

Municipal governments are political subdivisions of state governments. State legislatures have "plenary power, within constitutional limits, to fix municipal boundaries and establish municipal jurisdiction over any part of the state." [McQuillin *Mun Corp* §7.03 (3rd Ed)]

Alaska's Constitution and statutes established the Local Boundary Commission. [Ak. Const., Art. X, § 12; AS 44.33.810] The Local Boundary Commission (LBC or Commission) has the power and duty to review proposals for municipal annexation, detachment, incorporation, dissolution, merger, consolidation, and reclassification of cities. [AS 29.04; 29.05; AS 29.06]



Local Boundary Commission at a recent hearing.

Among the more than 120 State boards, only the Local Boundary Commission and four others have origins in Alaska's Constitution. In a landmark ruling more than three decades ago, the Alaska Supreme Court addressed the purpose and role of the Commission as follows:

Article X [of the Alaska Constitution] was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not

usually create proper boundaries and that boundaries should be established at the state level. 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.”

. . . Following World War II the City of Anchorage, the largest municipality in Alaska, experienced such a rapid growth that it soon outgrew its boundaries, and the population of adjacent and contiguous areas became greater than that of the city. This resulted in efforts by the city to annex a number of these heavily populated and unincorporated areas. Those efforts were met by the most determined opposition. In a 1954 case involving the attempted annexation of adjacent territory, Judge Folta remarked:

“Every impediment and dilatory tactic has been employed by the opponents of annexation, except the homesteaders, to obstruct and harass the city in every move in connection with its efforts to extend its boundaries in the traditional manner to include the adjacent areas. Such opposition does not appear to be in the public interest or in good faith.”

In 1955 there were petitions for the annexation of three additional areas adjacent to the city. Again there were protests and concerted opposition, which required determination by the Territorial District Court. In his written opinion Judge Folta commented on the history of the growth of urban areas, and the deficiencies in existing procedures for annexation. He said:

‘The areas sought to be annexed are a part of one compact urban community comprising the metropolitan area of Anchorage, and, except for the invisible corporate boundaries, are a part of the city’s social and economic existence. The real boundaries extend away beyond the corporate boundaries. Moreover, not only do the streets of the city extend through these areas, but they bear the names originally given them by the city and the areas themselves are indistinguishable from that part of the city adjacent thereto. The opposition in part is traceable to the failure of the city during the boom to extend its facilities and services into the areas as they developed. This delay resulted in the extension of privately owned utilities and the organization of public utility districts. The situation is such that the annexation law appears to be inadequate, and gerrymandering, or the appearance thereof, would appear to be excusable in attempting to cope with it; otherwise it may well develop that several municipalities will be carved out of this one community, each with a government of its own, resulting in a multiplication of facilities and services, increased tax burdens, and inevitable jurisdictional conflict and chaos. The Court is not going to lend itself to the imposition of a hydra-headed government on the people of a single urban area unless it has no alternative under the law.’

. . . We cannot assume that when the delegates to the constitutional convention assembled later in 1955, they were unaware of [obstacles to annexation] faced by Alaska’s cities. We cannot assume that they were insensitive to the inadequacies inherent in a system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation.

. . . The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation.

. . . Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is

legitimately the concern of the state as a whole and not just that of the local community. [*Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962)]

Other rulings by the Alaska Supreme Court provide further insight into the powers and duties of the Commission. For example, the Court has formally recognized that determinations by the Commission may involve “broad judgments of political and social policy” and that the Commission has been given “broad power to decide in the unique circumstances presented by each petition.” [*Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d at 98-99 (Alaska 1974).]

Nine other states utilize commissions similar to Alaska’s Local Boundary Commission to determine whether municipal boundary changes should occur. Six states delegate municipal boundary decisions to the courts. Six other states allow municipalities to unilaterally alter their boundaries. Another set of six states requires acts of the state legislature to alter municipal boundaries. The remaining twenty-two states provide that boundary adjustments will be made through popular determination, such as elections. (Lindsey, Greg and Palmer, Jamie; *Annexation in Indiana: Issues and Options*, Center for Urban Policy and the Environment, pages 52-55, November 1998)

Members of Local Boundary Commission

The Commission consists of five members appointed by the Governor for five-year overlapping terms. Members serve without compensation. One member is appointed from each of Alaska’s four judicial districts. The Chairperson of the Commission is appointed from the state at-large.

Members are appointed “on the basis of interest in public affairs, good judgment, knowledge and ability in the field . . . and with a view to providing diversity of interest and points of view in the membership.” [AS 39.05.060] A brief biographical statement of the current members of the Commission follows.



Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson of the LBC on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998. Commissioner Waring was one of the original division directors of the former Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage’s Community Planning and

Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.



Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31, 1996. Commissioner Wasserman also serves as the current Mayor of the City of Pelican. In the past, Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman is self-employed. Her present term on the Commission expires January 31, 2001.



Nancy E. Galstad serves from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995. Ms. Galstad's current term on the LBC expires January 31, 2004.



Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS Title 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's term on the Commission expires January 31, 2002.



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

Communications with the Commission

The Commission is a quasi-judicial board. To ensure that the rights of interested parties to due process and equal protection are maintained, laws restrict contact with the LBC on any proposal to come before it. These laws prohibit communication between the Commission and any party, other than the Commission's staff, except during a public meeting called to address the proposal. This limitation takes effect upon the filing of a petition. It remains in place until the opportunity for the Commission to reconsider its decision in the matter has expired.

Written communications must be submitted to the Commission through its staff. Briefs, written comments, inquiries, and other written communications concerning this matter must be directed to:

Local Boundary Commission Staff
Department of Community and
Economic Development
550 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Telephone: 269-4559 Fax: 269-4539
E-mail: Dan_Bockhorst@dced.state.ak.us

Commission Staff

The Alaska Department of Community and Economic Development (DCED), Division of Community & Business Development provides staff to the Commission.

The Commission's staff is available to provide technical assistance to prospective petitioners, respondents (those for or against annexation) and other interested parties.

The Commission's staff is required by State law to examine annexation proposals and prepare reports to the LBC conveying DCED's recommendations. Although DCED provides technical and administrative support to the Commission, the Commission and Department are independent of one another with respect to policy issues.

Methods of Annexation

State law allows for five different methods of annexation to cities. These are described as follows:

Annexation of Adjoining City-Owned Property. City-owned property that is contiguous to the boundaries of a city, may be annexed to that city. The city council must adopt an ordinance and then petition the Commission.

Annexation Upon Unanimous Consent of Owners and Resident Voters. An area adjoining a city may be annexed if all of the property owners and all of the voters living in the area proposed for annexation consent. Typically, this process is used for the annexation of small numbers of parcels, often in conjunction with requests from property owners for the extension of city water or sewer utilities. To implement annexation, the city must adopt an ordinance and then petition the Local Boundary Commission.

Annexation by Election. An area may be annexed upon approval by the Local Boundary Commission, subject to ratification by the voters in the area proposed for annexation. To pass, the proposition must be approved by a majority of those voting on the question. This type of annexation is seldom used.

Step Annexation. Contiguous territory may be annexed gradually over a period not exceeding five years. Step annexation requires approval by the Commission and the voters of the area proposed for annexation. In addition, it requires review and tacit approval by the State legislature. Legislative review is initiated when the LBC files a recommendation for the annexation with the legislature. Such recommendations may be filed only during the first 10 days of a *regular* session of the legislature. The recommendation is rejected only if the legislature adopts a concurrent resolution to deny the action within 45 days of the date that it was filed. Otherwise, the proposal gains tacit approval from the legislature. There has never been a step annexation proposal in Alaska.



Alaska State Capitol building

Annexation by Legislative Review. An area may be annexed without approval by the voters or property owners under the

legislative review process. Such proposals require approval by the Local Boundary Commission as well as review and tacit approval by the State legislature. Legislative review is initiated in the manner described for step annexation. Again, the recommendation receives tacit approval from the legislature unless that body adopts a concurrent resolution to deny the action within 45 days of the date that the Commission's recommendation concerning the matter was filed.

Because a legislative review annexation proposal may be submitted to the legislature only during a specific 10 day period during an entire year,

Annexation Procedures

Procedures governing annexation are designed to secure the informed, reasonable, timely, and inexpensive determination of every proposal that comes before the Commission. The procedures and requirements include:

- Extensive public notice that a petition has been filed with the Local Boundary Commission;
- Public access to a complete set of petition documents;
- At least seven weeks for individuals and organizations to file comments or responsive briefs with the Local Boundary Commission in support of or in opposition to the petition;
- At least two weeks for the petitioner to file a brief with the Local Boundary Commission in reply to the responsive briefs and comments;
- At least four weeks for interested persons and organizations to review and comment upon a preliminary report by DCED concerning the annexation proposal;
- Opportunity to review DCED's final report on the annexation proposal at least three weeks prior to a Local Boundary Commission hearing on the matter;
- Opportunity to participate at the Local Boundary Commission hearing on the matter (those who filed a responsive brief may make an opening statement; provide sworn testimony, and make a closing statement; the general public is also afforded an opportunity for comment). Hearings are typically held in or near the area proposed for annexation;
- Opportunity to review a written decisional statement setting out the basis for the decision by the Commission; (The Commission may approve a petition, amend and approve a petition; impose conditions on annexation; or deny the petition)
- Opportunity to seek reconsideration of the Commission's decision.

A separate publication providing more details about the annexation procedures and requirements is available from the Local Boundary Commission staff.

Standards for Annexation

State statutes require that any annexation must be "in the best interests of the state." (AS 29.06.040) Beyond that, the Local Boundary Commission has the duty and authority to establish standards for the annexation of territory to cities. (AS 44.33.812) The Alaska Supreme Court found three purposes underlying the statutory requirement for the Commission to establish standards.

First, such standards expose the basic decision-making processes of the commission to public view and thus subject commission action to broad corrective legislation. Second, the standards guide local government in making annexation decisions and in preparing proposals for the commission. . . Third, annexation standards objectify the criteria of decision-making and delineate the battleground for a public hearing. [*Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974)]

The Local Boundary Commission has adopted standards for annexation to cities; these are codified as 3 AAC 110.090 - 3 AAC 110.150. The city annexation standards are patterned after the statutory and regulatory standards for incorporation of a city. This reflects a philosophy that annexation is viewed as the means to perfect the boundaries of a city to accommodate jurisdictional needs that have arisen since its incorporation or last annexation.

These standards are outlined below.

1. The territory must exhibit a reasonable need for city government. [3 AAC 110.090(a)]

In deciding whether there is a reasonable need for city government in the area proposed for annexation, the Commission may consider any factor that it deems relevant and appropriate. 3 AAC 110.090 lists five factors that the Commission commonly considers. These relate to:

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

2. Territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough. [3 AAC 110.090(b)]

3 AAC 110.090(b) expresses a strong preference for annexation over the formation of new service areas. This stems from Article X, § 1 of the Constitution. That provision states that the purpose of the local government section of the constitution is “to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions” (emphasis added). An authoritative study on the principles of local government in Alaska states that the purpose of the limitation on the creation of new service areas, “*was to avoid having ‘a lot of separate little districts set up . . . handling only one problem . . .’; instead, services were to be provided wherever possible by other jurisdictions capable of doing so.*” (Morehouse, Thomas A. and Fischer, Victor; *Borough Government in Alaska*, pages 41 – 43.)

3 AAC 110.990(8) defines “essential city services” as “those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political

subdivision of the state, or by the creation or modification of some other political subdivision of the state; 'essential city services' may include

- (A) assessing, levying, and collecting taxes;
- (B) providing primary and secondary education in first class and home rule cities in an unorganized borough;
- (C) public safety protection;
- (D) planning, platting and land use regulation; and
- (E) other services that the commission considers reasonably necessary to meet the local governmental needs of the community."

3. The territory must be compatible in character with the annexing city. [3 AAC 110.100]

The Commission may consider any factor that it deems relevant and appropriate in determining whether this standard is met. 3 AAC 110.100 lists five factors that the Commission commonly considers. These relate to:

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

4. The proposed post-annexation boundaries must include the resources necessary to provide essential city services on an efficient, cost-effective level. [3 AAC 110.110]

The area within the proposed post-annexation boundaries of the city (i.e., the territory proposed for annexation plus the area within the existing boundaries of the city) includes the human and financial resources needed to provide essential city services on an efficient, cost-effective level. The Commission may consider any factor that it deems relevant and appropriate in determining whether this standard is met. 3 AAC 110.110 lists ten factors that the Commission commonly considers. These relate to:

- 1. functions the city may perform in the territory;
- 2. added expenses of the city;
- 3. current revenues of the city;
- 4. added revenues of the city;
- 5. economic base;
- 6. property values in the territory;
- 7. land use in the territory;
- 8. industrial, commercial and resource development;
- 9. personal income of residents; and
- 10. availability of employable skilled and unskilled people.

5. The population within the proposed post-annexation boundaries must be sufficiently large and stable to support the extension of city government. [3 AAC 110.120]

The Commission may consider any factor that it deems relevant and appropriate in determining whether this standard is met. 3 AAC 110.120 lists five factors that the Commission commonly considers. These relate to:

1. total population;
2. duration of residency;
3. historical population patterns;
4. seasonal population changes; and
5. age distributions.

6. The proposed post-annexation boundaries must include all areas necessary to provide the full development of essential city services on an efficient, cost effective level. [3 AAC 110.130(a)]

The Commission may consider any factor that it deems relevant and appropriate in determining whether this standard is met. 3 AAC 110.130(a) lists five factors that the Commission commonly considers. These relate to:

1. land use and ownership;
2. population density;
3. transportation patterns and facilities;
4. natural geographic features and environmental factors; and
5. extraterritorial powers of cities.

7. The area proposed for annexation must, with limited exceptions, be contiguous to the existing boundaries of the city to which annexation is proposed. [3 AAC 110.130(b)]

State law provides that territory annexed by certain methods must be contiguous to the annexing city. These consist of the method for “annexation of adjoining city-owned property” and the method for “annexation upon unanimous consent of owners and resident voters” described previously.

In all other instances, the law presumes that territory proposed for annexation will be contiguous; however, it allows the annexation of non-contiguous property if there are compelling reasons for such. 3 AAC 110.130(b) establishes limitations on the annexation of territory that is not contiguous. Specifically, it provides that, “*Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing city does not meet the minimal standards required for annexation.*”

8. The post-annexation city boundaries must be limited to the developed areas and areas subject to impending development. [3 AAC 110.130(c)]

3 AAC 110.130(c) provides that “*The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation of that city.*”

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

The standard set out in 3 AAC 110.130(d) is intended to maintain the distinction between the two types of municipal governments in Alaska – cities and boroughs. A city government is a municipal corporation that is intended to serve a community. In contrast, an organized borough is a municipal corporation that is an intermediate unit of government, larger than a city and smaller than the state as a whole. Organized boroughs are intended to encompass large natural regions.

10. The territory proposed for annexation may not overlap the boundaries of an existing organized borough or city unless the petition also addresses and demonstrates satisfaction of detachment standards. [3 AAC 110.130(e)]

The standards for detachment from cities are found at 3 AAC 110.260. Standards for detachment from boroughs are found at 3 AAC 110.270.

11. A practical transition plan must be provided for the assumption of appropriate powers, assets, and liabilities on the part of the annexing city. [3 AAC 110.900]

The petition must include a practical plan demonstrating the following:

- A. The intent and capability of the annexing city to extend essential city services [as defined by 3 AAC 110.990(a)(8)] into the territory proposed for annexation in the shortest practical time following annexation;
- B. The manner in which the annexing city will assume all relevant and appropriate powers, duties, rights, and functions presently exercised within the territory proposed for annexation;

- C. The manner in which the annexing city will assume and integrate all relevant and appropriate assets and liabilities of an entity providing services to the territory that will be assumed by the city; and
- D. The transition plan must be developed in consultation with representatives of current providers of services to the territory proposed for annexation.

12. The proposed annexation to the city may not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. [3 AAC 110.910]

Since Alaska is subject to the Federal Voting Rights Act, all changes to municipal jurisdictions in Alaska must receive preclearance from the U.S. Department of Justice. The preclearance is intended to ensure that the interests of racial and language minorities are not abridged as a result of changes affecting voting rights, including annexation.

Additionally, 3 AAC 110.910 provides that the Commission will not approve an annexation that denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

13. Annexations must serve the best interests of the state (AS 29.06.040).

As noted previously, state statutes prescribe that any annexation must serve the best interests of the state.

14A. For a legislative review proposal, the annexation must serve the balanced best interests of the state, the territory to be annexed and all political subdivisions affected by the annexation. [3 AAC 110.140]

The Commission may consider any factor that it deems relevant and appropriate in determining whether this standard is met. 3 AAC 110.140 lists six factors that the Commission commonly considers. These include whether:

1. the territory is an enclave surrounded by the annexing city;
2. health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;

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

I 4B. For a local action proposal, the annexation must meet the local action requirements.

[3 AAC 110.150]

The local action requirements are all objective. As noted previously, these vary depending upon the particular process. The standards are:

- **For annexation by election:** The annexation is subject to approval by a majority of the resident registered voters in the territory proposed for annexation who vote on the annexation proposition.
- **For annexation by unanimous consent of owners & voters:** (1) All property owners and resident registered voters must consent to annexation; and (2) the territory must also be contiguous to the existing city boundaries.
- **For annexation of city owned property:** The property must be: (1) wholly owned by the city and (2) contiguous to the city's existing boundaries.

Additional Information.

For more information about the Local Boundary Commission or annexation of territory to a city contact:

Local Boundary Commission Staff
Department of Community and Economic Development
550 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510

Telephone: 907-269-4559 Fax: 907-269-4539
E-mail: [Dan Bockhorst@dced.state.ak.us](mailto:Dan.Bockhorst@dced.state.ak.us)

Information is also available through the Local Boundary Commission's Internet website at:

http://www.dced.state.ak.us/mra/Mrad_lbc.htm