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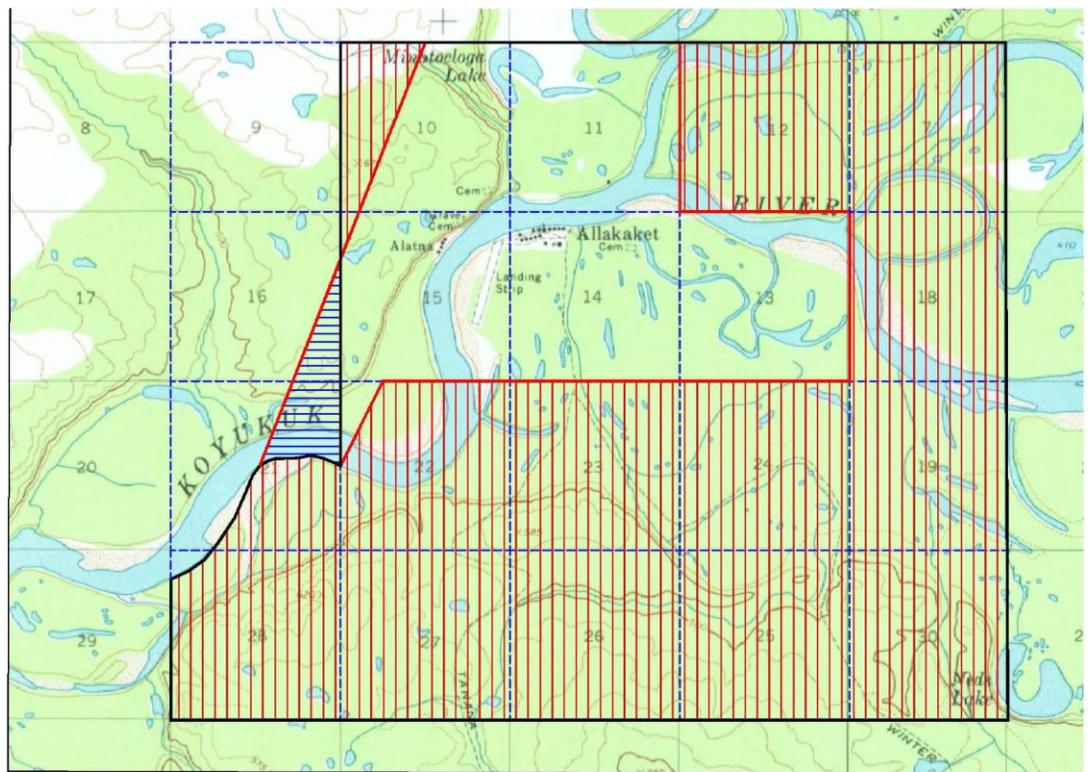


Local Boundary Commission Decision

In the matter of the petition for detachment from and concurrent annexation to the City of Allakaket

Section I Introduction

On July 5, 2014, the City of Allakaket (hereafter "Petitioner" or "city") petitioned the Local Boundary Commission (hereafter "LBC" or "commission") to detach 174 acres from and concurrently annex 12.3 square miles of territory to the City of Allakaket. The 174 acres of territory proposed for detachment are generally described as the land north of the Koyukuk River, bordering new Alatna. The 12.3 square miles of territory proposed for annexation is generally described as the land developed and selected for future development to the northwest, northeast, and south of the city limits.



Section II Proceedings

LBC Public Hearing Regarding the City Detachment and Concurrent Annexation Petition

In accordance with 3 AAC 110.550 and 3 AAC 110.560, the commission held a duly noticed public hearing on Tuesday, October 14, 2014, at 3:00 p.m. regarding the City of Allakaket's detachment and concurrent annexation petition. The hearing was held in the Allakaket Village Council office in Allakaket. At the hearing the commission heard sworn testimony from several witnesses for the city. The commission also heard comments from public members in favor of the proposed boundary changes. No comments were made against the proposed boundary changes.

LBC Decisional Meeting Regarding the City Detachment and Concurrent Annexation Petition

In accordance with 3 AAC 110.570, the Commission held a duly noticed decisional meeting regarding the petition on Tuesday, October 14, 2014, immediately following the hearing.

The petition was originally submitted as a local action petition. The local action method requires a vote in the city proposing detachment, and another vote in the territory proposed for detachment. The commission finds that the proposed detachment cannot proceed under the local action method because nobody resides in the territory proposed for detachment. The commission determines that the petition can, however, proceed as a legislative review method petition, subject to 3 AAC 110.425 (see below). The commission can amend the petition to change it from a local action method petition to a legislative review method petition. By a 5 to 0 vote the commission amends the petition under AS 29.06.040(a) and 3 AAC 110.570(c) to make it a legislative review method petition.

3 AAC 110.425 requires a prospective petitioner to hold a hearing for a legislative review annexation petition before submitting the petition to the LBC. As the city filed the petition as a local action petition, it was not required to hold a pre-submission hearing and consequently did not hold one. The petition cannot proceed as a legislative review petition unless the commission suspends 3 AAC 110.425. Per 3 AAC 110.660 the LBC may suspend a procedural regulation if strictly adhering to the regulation would work injustice, among other reasons.¹

The commission finds that strict adherence to the procedures would work injustice and would not serve relevant constitutional principles and the broad public interest because the proposed detachment cannot proceed unless 3 AAC 110.425 is suspended. Strict adherence to 3 AAC 110.425 will work injustice for the communities of Allakaket and Alatna by extending the petition past the next legislative session in 2015, and instead cause the petition to be presented in the 2016 legislative session. Suspending 3 AAC 110.425 would serve the broad public interest because the local population is aware of the petition and supports it. For those reasons the commission suspends 3 AAC 110.425 by a vote of 5 to 0 in accordance with 3 AAC 110.660.

¹ 3 AAC 110.660 provides that "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."

Section III Findings and Conclusions

The record in this proceeding includes the city detachment and concurrent annexation petition with supporting materials, Commerce's preliminary report, and Commerce's final report.² It also includes opening and closing statements, sworn testimony, and verbal comments received at the public hearing on the petition. The hearing and decisional meeting were recorded.

Standards for Detachment from Cities

3 AAC 110.981(10). Maximum local self-government

In determining whether a proposed city detachment in the unorganized borough promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission considers whether the proposal would diminish the provision of local government to the territory and population being detached, or detrimentally affect the capacity of the remnant city to provide local government services. The commission also considers whether local government needs of the detached territory and population can be adequately met by another existing local government.

The LBC finds that the proposal would not diminish the provision of local government to the territory and population proposed for detachment because the territory has no residents who receive local government. The commission finds that the proposal would not detrimentally affect the capacity of the remnant City of Allakaket to provide local government services. The LBC further finds that no other local government exists which can adequately meet the local government needs of the detached territory and population. After considering those factors, the commission finds that the proposed city detachment in the unorganized borough promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska. The commission finds that 3 AAC 110.981(10) is met.

3 AAC 110.982(9). Minimum number of local government units

In determining whether a proposed city detachment promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission considers whether the detached area by itself is likely to be incorporated as a new city. The commission finds that the proposed detachment has no residents and will not meet the requirements for incorporation. After considering that factor, the LBC finds that the proposed city detachment promotes a minimum number of local government units under art. X, sec. 1, Constitution of the State of Alaska. The commission finds that 3 AAC 110.982(9) is met.

3 AAC 110.260. Best interests of state

In determining whether the detachment from the city is in the best interests of the state under AS 29.06.040, the commission finds that the territory proposed for detachment is uninhabited, and no buildings exist there. No services are provided to the territory.

² No comments or briefs were filed with the department for or against the petition throughout the proceedings.

No diminution of maximum local self government would result because of the proposed detachment. Nor would the remnant city lose residents, infrastructure, or tax base because of the proposed detachment. The proposed detachment would not adversely affect the city's health, safety, and general welfare, or its ability to provide necessary services or facilities. The commission finds that 3 AAC 110.260 is met.

3 AAC 110.257. Standards for detachment from cities

In determining whether the proposed detachment is in accordance with AS 29.06.040(a), the commission may approve a proposal for detachment from a city only if the commission determines that the proposal meets applicable standards under the Constitution of the State of Alaska; meets standards in 3 AAC 110.257 - 3 AAC 110.260 and 3 AAC 110.900 - 3 AAC 110.970; and is in the best interests of the state. The commission finds that those standards are met, and so finds that 3 AAC 110.257 is met.

3 AAC 110.263. Legislative review

Territory that meets the detachment standards specified in 3 AAC 110.257 – 3 AAC 110.260 may detach from a city by the legislative review process only if the commission also determines at least one of four other conditions specified by 3 AAC 110.263 are met. The commission has found above that 3 AAC 110.257 to 3 AAC 110.260 are met.

In evaluating 3 AAC 110.263, the commission determines that the territory may detach from the city by the legislative review process as it is impossible or impractical for the city to extend facilities or services to the territory. The commission further finds that specific policies set out in the Constitution of the State of Alaska and AS 29.06 are best served through detachment of the territory by the legislative review process, and that detachment is in the best interests of the state. For those reasons the commission finds that 3 AAC 110.263 is met.

Standards for Annexation to Cities

3 AAC 110.090. Need.

Under 3 AAC 110.090(a), in determining whether the territory may be annexed to a city, the territory must exhibit a reasonable need for city government. In 1994, the Koyukuk River flooded, causing homes and infrastructure along the river such as the city office, washateria, water treatment plant, wastewater lagoon, clinic, and the airport to be relocated outside of the city boundaries. This caused residential and commercial growth beyond the existing boundaries of the city. The residents who moved outside of the city boundaries currently receive city services, but are not eligible to vote in city elections or run for elected positions in the city, and are not included as city residents for state revenue programs. Those conditions show that the territory proposed for annexation exhibits a reasonable need for city government.

Under 3 AAC 110.090(b), territory may not be annexed to a city if the essential municipal services can be provided more efficiently and more effectively by another existing city, by an organized borough on an areawide basis or nonareawide basis, or through a borough service area. There are no other cities within 20 miles; no other city can provide the essential municipal services. Also, Allakaket is in the unorganized borough; there is no organized borough to

provide essential municipal services. The City of Allakaket is the most effective and efficient essential municipal service provider in the region.

The commission finds that 3 AAC 110.090(a) and 3 AAC 110.090(b) are met.

3 AAC 110.100. Character

In determining the character of the territory proposed for annexation, the territory must be compatible in character with the annexing city. The territory proposed for annexation has experienced considerable growth since the flood of 1994. Homes, the airport, clinic, new cemetery, city office, and other facilities are in the territory proposed to be annexed. The population in the territory proposed for annexation consists of the residents who formerly lived within the city limits, but due to the flood moved to higher ground. Those city residents and the territory proposed for annexation are considered by the populace (both inside and outside of the city) to be part of Allakaket, just not within the current city boundaries. The territory proposed for annexation is compatible in character with the annexing city because both infrastructure and people considered to be city residents are outside the current city boundaries. For those reasons the commission finds that 3 AAC 110.100 is met.

3 AAC 110.110. Resources

In determining whether the economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level, the commission finds that the economy includes those resources because there are no new services to be introduced with the proposed annexation, there are sufficient human resources, and the city has a budget surplus while providing services to those displaced residents outside the city boundaries. For those reasons the commission finds that 3 AAC 110.110 is met.

3 AAC 110.120. Population

In determining whether the population within the proposed expanded boundaries of the city is sufficiently large and stable to support the extension of city government, the commission finds the present population is 108. After the proposed annexation it would be 173. In 2010, the top three age groups in the New Allakaket CDP (Census Designated Place) were the 15 to 19 age group with 10 individuals, the 45 to 49 age group with eight individuals, and the 20 to 24 age group with seven individuals. This indicates a healthy population of younger people, so the community will continue to grow. The commission finds that 3 AAC 110.120 is met.

3 AAC 110.130. Boundaries

In determining under 3 AAC 110.130(a) whether the proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level, the commission finds the size of the city after the proposed annexation would be approximately 17 square miles with a population of 173. That is a population to territory ratio of 173/17, or a population density of 10.18 people per square mile. This indicates sufficient land and water to provide (and sustain) essential municipal services.

The proposed expanded boundaries of the city include facilities used to support the City of Allakaket, such as the clinic, city office, washateria, wastewater lagoon, and other facilities. Not

only do the proposed expanded boundaries include a source of groundwater, but also more of the Koyukuk River would lie within the city. The river has cultural importance, but also provides an alternate mode of transportation.

In determining whether 3 AAC 110.130(b) is met, the commission finds that the legal description and map show the territory proposed for annexation is contiguous to the annexing city, and that it does not create enclaves.

In determining whether 3 AAC 110.130(c)(1) is met, the commission finds that the proposed expanded boundaries of the city are on a scale suitable for city government because they include the existing City of Allakaket, plus the 67 residents who live outside the city. A population of 173 is on a scale suitable for a second class city. The commission also finds that the proposed boundaries include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation. This is because people already live in the territory proposed for annexation, and because the proposed expanded boundaries include existing city property and infrastructure, including a culturally important cemetery in section 30. The population is increasing. It is anticipated that there will be growth, development, and public safety needs in the proposed expanded boundaries.

In determining whether 3 AAC 110.130(c)(2) is met, the commission finds the proposed boundaries do not include entire geographical regions or large unpopulated areas.

For those reasons, the commission finds that 3 AAC 110.130 is met.

3 AAC 110.981(7) Determination of Local Self-Government

Annexation will promote maximum local self-governance by extending the current local government to territory in the unorganized borough where no local government exists. This will give those residents the opportunity to vote in city elections and run for city office. The commission finds that 3 AAC 110.981(7) is met.

3 AAC 110.982(7)

The proposed annexation will promote a minimum number of local government units as the territory will be annexed into an existing city, rather than incorporating as a new city, or being created as a new borough service area. The commission finds that 3 AAC 110.982(7) is met.

3 AAC 110.135. Best interests of state

In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission finds the proposed annexation would bring into the city the homes of former city residents and infrastructure owned and used by the City of Allakaket. Annexation would increase maximum local self government because it would give those residents the opportunity to vote in city elections and run for city office. The proposed annexation will promote a minimum number of local government units as the territory will be annexed into an existing city, rather than incorporating as a new municipality. For those reasons the commission finds that 3 AAC 110.135 is met.

3 AAC 110.140. Legislative review

The commission finds that the petition meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110.135. For that reason the territory may be annexed to a city by the legislative review process if the petition meets at least one of the standards specified in 3 AAC 110.140.

The territory proposed for annexation is in the unorganized borough, and is served by no other local government. Annexing the territory will promote maximum local self-government by extending the city boundaries to a territory and population where no municipal government currently exists. The proposed annexation also promotes the minimum number of local governments by extending the boundaries of the current city rather than incorporating a new city in the territory. 3 AAC 110.140(7) is met.

The proposed annexation enhances the extent to which the city meets the standards for incorporation of cities. This is because the incorporation standards include factors such as whether the proposed city has the human and financial resources necessary to provide essential municipal services. The proposed annexation would increase the city's population. That means that there are more human resources to provide those services. The incorporation standards also say that a proposed city's population must be large and stable enough to support city government. Allakaket's increased population would enhance the extent to which the city meets the city incorporation standards.

Regarding financial resources, the increased population would also gain a small amount (\$3,188) in community revenue sharing funds. While the city does not levy taxes nor is there any evidence that it wishes to do so, an annexation would increase potential for increased revenue. Having a city with potentially more revenue means the city has more potential to provide those services. 3 AAC 110.140(8) is met.

Lastly, the proposed annexation would serve specific policies set out in Alaska's constitution and is in the best interests of the state because, as above, the specific policies of maximum self government and a minimum number of local government units set out in the Constitution of the State of Alaska and AS 29.06 are best served through annexation of the territory by the legislative review process. Without using the legislative review process the detachment and concurrent annexation petition cannot go forward because there are no voters to vote within the territory proposed for detachment. The petition, local residents, and the territory are best served if the petition follows the legislative review process. 3 AAC 110.140(9) is met.

As 3 AAC 110.090 – 3 AAC 110.135 are met, and 3 AAC 110.140(7), (8), and (9) are met, 3 AAC 110.140 is met.

Provisions Applying to both Detachment from and Concurrent Annexation to Cities

3 AAC 110.900 Transition Plan

3 AAC 110.900(a) asks whether the petition includes a transition plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practical time after the effective date of the

proposed change. The transition of services will be immediate. The commission finds that the petition does include such a transition plan.

3 AAC 110.900(b) asks whether the petition includes 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 LBC finds that 3 AAC 110.900(b) is not pertinent because there are no relevant and appropriate powers, duties, rights, and functions presently exercised by an existing municipality or other appropriate entity located within the boundaries proposed for change that would be assumed. The city is not exercising any powers, duties, rights, or functions in the territory proposed for detachment. The powers, rights, duties, and functions are already assumed by the city in the territory proposed for annexation.

3 AAC 110.900(b) also asks if the plan was prepared in consultation with the officials of each existing borough, city, and unorganized borough service area. The LBC finds that the requirement is not pertinent for the above reasons.

3 AAC 110.900(b) further asks if the plan is designed to affect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The LBC finds that the requirement is not pertinent for the above reasons.

3 AAC 110.900(c) asks if the petition includes 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 entities located within the boundaries proposed for change. The commission finds that all assets and liabilities are already owned by the city and will remain so.

3 AAC 110.900(c) also asks if the plan was 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. The LBC finds that the consultation requirement does not apply because there is no such existing borough, city, and unorganized borough service area.

3 AAC 110.900(c) also asks if the plan is designed to affect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The commission finds that the requirement is not pertinent for the above reason.

3 AAC 110.900(c) further asks whether the plan specifically addresses 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. The LBC finds that the requirement is not pertinent for the above reason.

Under 3 AAC 110.900(d), 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. The commission finds that it is not necessary to require such an agreement.

3 AAC 110.900(e) asks if the transition plan states the names and titles of all the officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The commission finds that the requirement is inapplicable due to the absence of any pertinent existing borough, city, and unorganized borough service area.

3 AAC 110.900(e) also asks the dates on which that consultation occurred and the subject addressed. The commission finds that the requirement is inapplicable for the above reason.

3 AAC 110.900(f) asks if the prospective petitioner was 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. If so, the prospective petitioner may request that the commission waive the consultation requirement. The commission finds that 3 AAC 110.900(f) is inapplicable due to the absence of any existing borough, city, and unorganized borough service area.

In conclusion, the commission finds that 3 AAC 110.900 is either met or inapplicable.

3 AAC 110.910 Statement of Nondiscrimination

3 AAC 110.910 asks whether 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. After considering all of the record, the commission finds that the petition does not deny any person the enjoyment of any civil or political right, and the standard is met.

3 AAC 110.970(c) Determination of Essential Municipal Services

The commission finds that the services that the city would provide consist of mandatory and discretionary powers and facilities that are reasonably necessary to the city, promote maximum local self-government, and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

The city provides essential municipal services to the territory proposed for annexation. These services include the washateria, water treatment, the wastewater lagoon, a fuel store, and a city dump. Commerce finds that these are reasonably necessary to both the present city and the territory proposed for annexation.

The services promote maximum local self government because the city residents provide their own services through the city government. The people currently residing outside of city boundaries would be able to fully participate in civic affairs, including making necessary decisions about essential municipal services.

The city is the most effective and efficient provider of essential municipal services to the territory proposed for annexation. The essential municipal services cannot be provided more efficiently and more effectively by the creation or modification of another political subdivision of the state. There is no other municipality nearby. As there are no essential municipal services now being provided to the territory proposed for detachment, the territory proposed for detachment will not lose any essential municipal services.

After considering all of the record and arguments, the commission finds that 3 AAC 110.970 is met.

Section IV
Order of the Commission

The commission concludes that all of the relevant standards and requirements for detachment from and concurrent annexation to the City of Allakaket are met and the decision can be submitted to the Legislature within the first 10 days of the next (2015) legislative session. The commission reaches that conclusion after fully considering the written record, and the testimony and public comments given at the hearing.

The metes and bounds of the proposed city are:

Beginning at the NE Corner of Section 7, T20N, R23W, Fairbanks Meridian, Alaska, the true point of beginning;
thence west to the NW Corner of Section 10, T20N, R24W;
thence south to a point where the section line common to Sections 21 and 22, T20N, R24W intersects the left bank of the Koyukuk River;
thence west and southwesterly along the left bank of the Koyukuk River to a point which intersects the section line common to Sections 28 and 29, T20N, R24W;
thence south to the SW corner of Section 28, T20N, R24W;
thence east to the SE corner of Section 30, T20N, R23W;
thence north to the NE Corner of Section 7, T20N, R23W, the true point of beginning, containing 17.3 sq. miles, more or less.

Description based on USGS Quad Bettles (C-6), revised 1970.

The territory for detachment and annexation are located in the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

Approved in writing this _____ day of November 2014

Local Boundary Commission

By: _____
Lynn Chrystal, Chair

Attested by: _____
Brice Eningowuk, Staff

RECONSIDERATION BY THE COMMISSION

3 AAC 110.580 (Reconsideration) states that:

“(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.

JUDICIAL APPEAL

A decision of the LBC may be appealed to the Superior Court under AS 44.62.560(a) and Rules of Appellate Procedure 602(a)(2). Per 3 AAC 110.570(g), this is the final decision of the commission, unless reconsideration is timely requested or the commission orders reconsideration. A claimant has 30 days to appeal to the Superior Court.