



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Commerce, Community,
and Economic Development**

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Preliminary Report to the Local Boundary Commission

Concerning the Petition for Detachment of 0.076
Square Miles (48.5 Acres) from the City of
Fairbanks, a Home Rule City, Using the Local
Option Election Method

October 2015

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This is the *Preliminary Report to the Local Boundary Commission Concerning the Petition for Detachment of 0.076 Square Miles (48.5 Acres) from City of Fairbanks, a Home-Rule City Using the Local Option Election Method*. The report was written by staff to the Local Boundary Commission. The staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development (Commerce). The report can also be found at the following address: <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofFairbanksDetachmentPetition.aspx>

The report is preliminary and should be used for public review and comment in accordance with 3 AAC 110.530, which also requires LBC staff to issue a final report after considering written comments regarding the preliminary report.

Commerce complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at 907-269-4559, 907-269-4587, TDD at 907-465-5437, or via email using LBC@alaska.gov.

Graphic illustration only: This publication's maps are intended to be used only as general reference guides. Source documents remain the official record.

Chapter I. Background

Local Boundary Commission

Local Boundary Commission’s Constitutional Foundation

Article X of the Constitution of the State of Alaska created the Local Boundary Commission (also referred to as "LBC" or "commission").¹ The commission is responsible for establishing and modifying proposed municipal government boundaries. The Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise, and they also asserted their belief that the state should set municipal boundaries because “local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.”² Placing decision-making authority with a state body allows debate about boundary changes to be analyzed objectively, taking areawide or statewide needs into consideration.³

Local Boundary Commission’s Statutory Authority

Pursuant to AS 29.06.040(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.

LBC Duties and Functions

The LBC acts on proposals for several different municipal (cities and boroughs) boundary changes. These are:

- incorporating municipalities;
- annexing to municipalities;
- detaching from municipalities;
- merging municipalities;
- consolidating municipalities;

¹ Article X, section 12 states, “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.”

² *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962) (citing Alaska Constitutional Convention Minutes of Committee on Local Government, November 28 and December 4, 1955).

³ *Id.*

- reclassifying municipalities; and
- dissolving municipalities.

In addition to acting on the above proposals for municipal boundary changes, the LBC under AS 44.33.812 shall:

- make studies of local government boundary problems; and
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

Nature of the Commission

Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within the Alaska constitution’s separation of powers framework. The LBC is a quasi-legislative commission with quasi-judicial and quasi-executive attributes, all of which are discussed below.

Quasi-Legislative

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that the Constitution of the State of Alaska gives the LBC legislative authority to make fundamental public policy decisions. The court stated that:

“[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission’s reading of the standards and its evaluation of the evidence.”⁴

Under AS 44.33.812(a)(2), the LBC carries out another quasi-legislative duty when it adopts “regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . .”⁵

Quasi-Judicial

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. The LBC is mandated to apply established standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings.

⁴ *Mobil Oil Corp. v. Local Boundary Comm’n*, 518 P.2d 92, 98-99 (Alaska 1974). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Comm’n*, 863 P.2d 232, 234 (Alaska 1993).

⁵ See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Comm’n*, 489 P.2d 140 (Alaska 1971), discussing applying due process requirements to develop boundary change standards and procedures in commission proceedings.

The LBC's quasi-judicial nature requires that a reasonable basis of support exist for the LBC's reading of the standards and evaluating the evidence. The LBC's quasi-legislative nature provides it with considerable discretion in applying those standards and weighing evidence.

Quasi-Executive

Article X, section 12 of the Constitution of the State of Alaska placed the LBC in the state's executive branch. One example of the commission's quasi-executive duty under AS 44.33.812(a)(1) is to "make studies of local government boundary problems."

Limits on Directly Contacting the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone's right to due process and equal protection. Those rights are preserved by ensuring that communications with the commission concerning municipal boundary proposals are conducted openly and publicly.

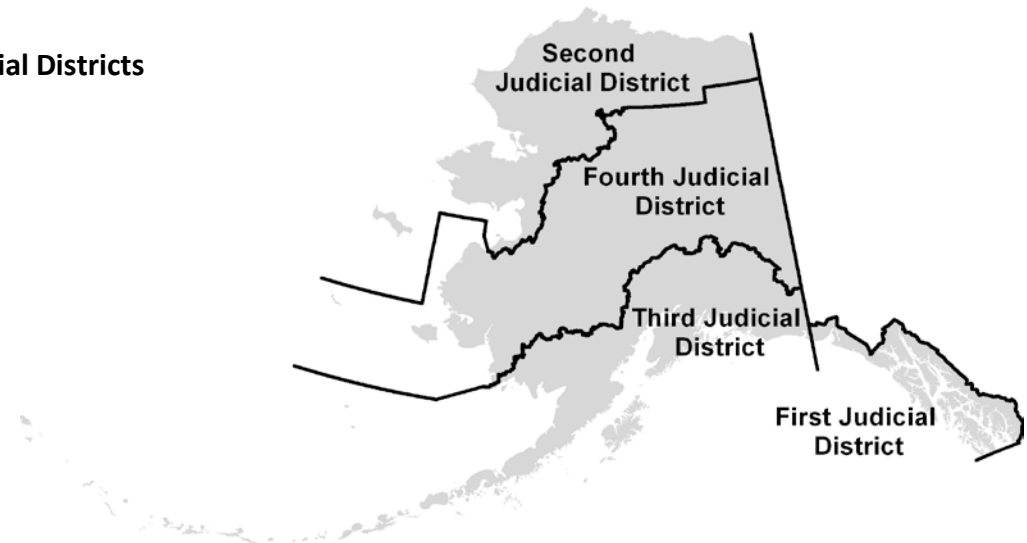
To regulate communications, the commission adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is judicially appealed, the *ex parte* limitation extends to the last date of court ordered proceedings. All communications with the commission must be submitted through its staff.

LBC Membership

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding their terms' prescribed length, however, LBC commissioners serve at the governor's pleasure (AS 39.05.060(d)).

The LBC is comprised of five members (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at large. LBC members receive no pay for their service.

Map of Alaska Judicial Districts



Member Biographies



Lynn Chrystal, Chair, At Large, Wasilla

Governor Palin appointed Lynn Chrystal as the member from the Third Judicial District on March 27, 2007. Governor Parnell appointed him as the Local Boundary Commission's chair on September 10, 2009, and reappointed him as chair on April 22, 2013. Although recently a Wasilla resident, Mr. Chrystal lived in Valdez for 39 years and served as the mayor of Valdez and as a member of the city council. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. Chair Chrystal has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends January 31, 2018.



John Harrington, First Judicial District, Ketchikan

Governor Parnell appointed John Harrington of Ketchikan as the member from the First Judicial District on the Local Boundary Commission on September 10, 2009. Governor Parnell reappointed him in April of 2011. Mr. Harrington is a real estate manager and previously worked as an adult education coordinator in Ketchikan from 1985-97. He was also a special education teacher and administrator in Washington state from 1972-84. He served on the Ketchikan Gateway Borough Assembly 2005 through 2011, chairing the borough's Planning Liaison and Economic Development Advisory Committee, among others. His community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission from 2003-04, and serving as an elected member of the Ketchikan Gateway Borough school board from 1988-94. Commissioner Harrington earned a bachelor's degree in psychology and history from Western Washington University and a master's degree in educational administration from Seattle University. His current term on the LBC ends January 31, 2016.



Robert "Bob" Harcharek, Vice Chair, Second Judicial District, Barrow

Governor Knowles appointed Robert "Bob" Harcharek as the member from the Second Judicial District on the Local Boundary Commission on July 18, 2002. Governor Murkowski reappointed him to the LBC on March 24, 2004. He serves as the commission's vice chair. On March 9, 2009, Governor Palin reappointed him to the LBC. Commissioner Harcharek was again reappointed by Governor Parnell on May 14, 2014. In 1977, he earned a Ph.D. in international and development education from the University of Pittsburgh. Commissioner Harcharek served for three years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. Commissioner Harcharek retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. He served as a member of the Barrow City Council for fifteen years, and is currently Mayor and Chief Administrative Officer for the City of Barrow. His current LBC term ends January 31, 2019.



Darroll Hargraves, Third Judicial District, Wasilla

Governor Parnell appointed Darroll Hargraves of Wasilla to the Local Boundary Commission as the member from the Third Judicial District on June 1, 2013. Mr. Hargraves is a consultant and owner of School and Community Resources. He is a retired school superintendent of the Nome and Ketchikan Gateway Borough school districts, and has served as the executive director of the Alaska Council of School Administrators. Commissioner Hargraves is a charter member of the Alaska Council of Economic Education, Commonwealth North, and the Wasilla Chamber of Commerce. A former member and chair of the LBC, he holds a master's degree in education, an education specialist degree from University of Alaska Fairbanks, and an honorary doctorate of letters degree from Oakland City University. His term ends on January 31, 2017.



Lavell Wilson, Fourth Judicial District, Tok

Governor Palin appointed Lavell Wilson, a Tok resident, as the member from the Fourth Judicial District on the Local Boundary Commission, June 4, 2007. Governor Parnell reappointed him on October 6, 2010. Governor Walker reappointed him on September 21, 2015. Commissioner Wilson is a former member of the Alaska House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. His current term on the LBC ends January 31, 2020.

Local Boundary Commission Staff

Constitutional Origin

The Constitution of the State of Alaska called for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as that local government agency is presently delegated to the Alaska Department of Commerce, Community, and Economic Development (Commerce, DCCED, or department). Commerce serves as staff to the LBC per AS 44.33.020(a)(4). Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. This includes providing staff, research, and assistance to the LBC.

LBC Staff Role

LBC staff is required by law to investigate and analyze each boundary change proposal and to make recommendations regarding the proposal to the LBC. For each petition, staff will write at least one report for the commission. The report(s) is made available to the public as well. Staff recommendations to the LBC are based on properly interpreting the applicable legal standards, and rationally applying those standards to the proceeding's evidence. Due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

The LBC staff provides support to the commission. The LBC's staff also delivers technical assistance to municipalities, to residents impacted by existing or potential petitions to create or alter municipalities, to petitioners, to respondents, to agencies, and to the general public.

Assistance the LBC staff provides includes:

- answering citizen, legislative, and other governmental inquiries relating to municipal government issues;
- writing reports on petitions for the LBC;
- drafting LBC decisions;
- traveling to communities to hold meetings and to answer questions about proposed local boundary changes;
- drafting for the LBC an annual report to the legislature;
- developing and updating municipal incorporation or alteration forms;
- sending local boundary change forms and materials to interested persons;
- providing a link between the LBC and the public;
- maintaining Alaska municipal incorporation and boundary records;
- coordinating and scheduling LBC public meetings and hearings;
- developing orientation materials and providing training for new LBC members; and
- maintaining and preserving LBC records in accordance with Alaska's public records laws.

The LBC Staff

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Petition Procedures

Procedures to establish and alter municipal boundaries and to reclassify cities are designed to ensure every proposal's reasonable and timely determination. The procedures are also intended to ensure that commission decisions are based on applying the standards to the facts.

Preparing and Filing a Petition

The LBC staff offers technical assistance, information, and forms to prospective petitioners. When a petition is prepared, it is then submitted to staff for filing. The staff will then review the petition to identify any deficiencies in form and content. This can allow petitioners to correct the draft before it is either circulated for voter signatures or adopted by a municipal government. If the staff finds that the petition contains all the required information, Commerce accepts it for filing.

Public Notice and Public Review

Once a petition is accepted for filing, the staff arranges extensive public notice. This provides ample opportunity for public comment concerning the petition. Interested parties are given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided at least two weeks to file one brief replying to public comments and responsive briefs.

Analysis

Following the public comment period on the petition, the LBC staff analyzes the petition, written comments, briefs, and other materials. Both the petitioner and the staff can conduct public informational meetings. If the petition is to incorporate, the staff must hold at least one public meeting

within the boundaries proposed for incorporation. When the staff finishes its analysis, it issues a preliminary report including a recommendation to the commission.

The preliminary report is available for public review and comment for a minimum of four weeks. After considering the comments, the LBC staff issues its publically available final report. The final report discusses comments received on the preliminary report, and notes any changes to the staff's recommendation. The final report must be issued at least three weeks prior to the LBC's public hearing.

Public Hearings and LBC Decisional Meeting

Before the hearing commission members review the petition, written comments, responsive briefs, reply briefs, and the staff reports. Following extensive public notice, the LBC conducts at least one public hearing. The commission may tour the area before the hearing to understand the area better. Typically the hearing is in or near the boundaries of the proposed change. Parties may present sworn witnesses, and the public has the chance to comment.

After the hearing, the LBC holds a decisional meeting. At the decisional meeting, the LBC may act by:

- approving the petition as presented;
- amending the petition (e.g., expanding or contracting the proposed boundaries);
- imposing conditions on approving the petition (e.g., requiring voter approval of a proposition authorizing levying taxes to ensure financial viability); and
- denying the petition.

LBC Decisions Must Have a Reasonable Basis

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must be rational.⁶ 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 the evidence does not support the LBC's decision.

Written Decision

The LBC must adopt a written decision stating the basis for its decision. Decision copies are issued to the petitioner, respondents, and others who request them. At that point the decision becomes final, but is subject to reconsideration. Within 18 days of the mailing, any person may ask the LBC to reconsider its decision under 3 AAC 110.580. The LBC may order reconsideration on its own motion. If the LBC does not approve any reconsideration requests within 30 days of the decision's mailing date, all reconsideration requests are automatically denied.

⁶ 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 the decision has a reasonable basis.

Implementation

3 AAC 110.630(a) specifies conditions that must be met before a LBC final decision is effective. If the LBC approves a legislative review petition, it goes to the Legislature, which can disapprove it by a majority of both houses per article 10, section 12 of Alaska's constitution. If the LBC approves a local action petition, it typically goes to the voters for approval.⁷ A petition that has been approved by the commission takes effect upon satisfying any stipulations imposed by the commission. If an election is held, it must be certified by the director of elections or the appropriate municipal official. If all of 3 AAC 110.630(a)'s requirements have been met, the department shall issue a certificate describing the changed boundaries of the municipality.

Conclusion

This chapter has described the Local Boundary Commission's background, the role of the LBC staff, and petition procedures. Chapter 2 will discuss this petition's proceedings to date and analysis of the petition.

⁷ Unless it is a local action annexation petition, either with unanimous consent, or if the municipality already owns the land. In those cases, no election is necessary.

Chapter II. Analysis

Introduction

The petition, briefs, and any comments submitted were read and reviewed for this report. These materials are available at

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofFairbanksDetachmentPetition.aspx>

The report uses the term “Commerce” interchangeably with “LBC staff” and “we.” LBC staff works in the Division of Community and Regional Affairs (DCRA) within the Department of Commerce, Community, and Economic Development.

This is a preliminary report. There will be a public comment period on this report until November 25, 2015. After reviewing the comments on the preliminary report, Commerce will issue a final report.

Some standards contain factors that commission “may consider” in determining whether the standard is met. As the standards use the word “may,” it is not required that the commission (or this report) consider those factors, only that the commission consider whether or not the standard is met.

Petition Proceedings Thus Far

The City Council of Fairbanks approved a resolution in 2011, which can be found in the Appendix C, that directed the city mayor to prepare and submit a petition to detach a territory of 0.0076 square miles or 48.5 acres (see maps in Appendix B). The resolution stated that the costs were to be paid by the property owner who had requested this boundary change.

Commerce received this City of Fairbanks petition on April 22, 2015. After technical review, it was accepted for filing on May 22, 2015. Due to a delay by the petitioner in posting notice, a supplemental notice was prepared to give public notice of an extension in the deadline to file comments on the petition until August 20, 2015. Staff received only one comment during this extended comment period. On July 7, 2015 the Fairbanks North Star Borough voiced its non-objection to the detachment petition. That comment can be found in Appendix D.

Standards

The criteria used by the commission to evaluate the detachment from the City of Fairbanks are set out in AS 29.06.055, 3 AAC 110.257 – 3 AAC 110.265, and 3 AAC 110.900 - 3 AAC 110.990. These relevant statutes and regulations are listed briefly here and an analysis of how those criteria are met follows.

AS 29.06.055

Sec. 29.06.055. Property taxes in annexed or detached areas

(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.

The petition states that the City of Fairbanks, the Fairbanks North Star Borough, and the sole owner of the taxable land in the territory proposed for detachment have stipulated that there is no liability for uncollected past taxes. In 2013, the borough and city recognized the error and have since corrected their records and assessed and collected taxes as such. A letter from the borough indicates that when detachment is completed, only the borough will levy taxes on the private property. It will add non-areawide taxes for services including Emergency Management Services, Economic Development, and Solid Waste Services. Petition information and letters received from the borough indicate that the entities are willing to work together to ensure levied taxes are correct. This stipulation can be found in Appendix E.

REGULATIONS

3 AAC 110.257. Standards for detachment from cities

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

(1) meets applicable standards under the Constitution of the State of Alaska;

(2) meets standards in 3 AAC 110.257 - 3 AAC 110.260 and 3 AAC 110.900 - 3 AAC 110.970; and

(3) is in the best interests of the state.

There are no constitutional standards regarding detachment. The applicable standards and best interests of the state are addressed below. 3 AAC 110.260 lists factors that the commission may consider as examples in considering whether the overall standard of 3 AAC110.260 is met. Not all of the factors are pertinent. The report only addresses the pertinent factors.

3 AAC 110.260. Best interests of state

(a) In determining whether detachment from a city 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 city and the territory after detachment;

Detachment will have no effect on health, safety, or general welfare because the territory can still be served by the North Star Fire Department, as it had been when it was mistakenly believed to be outside the city limits. After detachment, the owner can petition the fire service area for inclusion, as it will not be automatically included.

It will also continue to be served by the Alaska State Troopers as it had been prior to realization of the boundary error. The AST submitted a letter of non-objection in response to the petition draft in 2013.

(2) the ability of the proposed remnant city to efficiently and effectively provide reasonably necessary facilities and services after detachment;

The remnant city will remain virtually unchanged if the proposed detachment takes effect. It would decrease in size from 33.85 to 33.77 square miles. The city's population would decrease by two persons. The ability of the proposed remnant city to provide reasonably necessary facilities and services efficiently and effectively would not decrease after detachment.

(3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;

Whether growth or economic development is predicted is irrelevant because the territory proposed for detachment will remain within an organized borough and therefore subject to borough law.

(4) the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory;

Detachment will reestablish the de facto arrangement the borough and city had when the boundary was mistakenly thought to be part of the borough.

(6) the extent to which detachment might enhance or diminish the ability of the proposed remnant city to meet the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, 3 AAC 110.005 - 3 AAC 110.042, and 3 AAC 110.900 - 3 AAC 110.970;

Given its small size and population, this proposed detachment does not enhance or diminish the ability of the proposed remnant city to meet the standards for incorporation of cities.

(8) the effect of the proposed detachment on the long-term stability of the finances of the proposed remnant city, other municipalities, and the state;

There will be no effect on the city, the borough, or the state.

(9) whether the proposed detachment will promote

(A) maximum local self-government, as determined under 3 AAC 110.981; and

The two persons will still reside in the Fairbanks North Star Borough, but not in the city. The proposed detachment will neither promote nor diminish local self-government because the two persons had not received the benefits of city government before.

(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;

No new government units will be created, and no duplication of services as a result. There will still be two municipalities.

(10) whether the territory's requirements for local government services will be adequately met following detachment;

The territory will remain in the borough, but no longer be in the city. The borough will offer the same services the territory had been provided as part of the de facto arrangement. The petition argues that the services are better met by the borough given the relative isolation of the land in question, and that the borough has adequately provided services thus far due to the error.

(b) If, to fulfill the requirements of (a)(10) of this section, the petitioner has proposed, or the commission requires, incorporation of the territory into a new municipality, the commission may condition the approval of the detachment upon voter approval of the incorporation.

This standard is not relevant.

(c) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for detachment that would create noncontiguous parts of the city or enclaves within the city does not meet the standards for detachment.

The territory proposed to be detached will not create noncontiguous parts of the city or enclaves within the city or the borough.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for detachment from a city in an unorganized borough is a diminution of maximum local self-government and does not meet the standards for detachment.

The city and territory are within an organized borough.

(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 city must propose that the new city will encompass a substantially larger population and territory than the population and territory proposed for detachment.

This section is not relevant as there is no new city being created.

These factors are ones the commission may consider. The boundary change sought by the City of Fairbanks has little relevance to the state. Indeed, because a single piece of property is being detached,

very little change will occur. The de facto arrangement resulting from the boundary error demonstrates that the effect of the change will be minimal and primarily administrative in nature.

Commerce finds that the proposal meets the standard of the best interests of the state because the effect on the state, city and borough will be minimal, and will be very unlikely to have any impact on state revenue, or need for state assistance in the future.

(a) 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 city, city, unorganized city 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 city, city, and unorganized city 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 city, city, unorganized city 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 city, city, and unorganized city 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 city 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 city, city, and unorganized city 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 city, city, or unorganized city 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 city, city, and unorganized city 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.

The petition clearly states the aim is to legalize the de facto boundary error. Because of this error, the transition has in effect already taken place but now must be formally processed by the LBC. The petitioner provided evidence of consultation with borough officials as well as the residents and property owners. The petition has also indicated consultation with service area officials as well and listed names and dates of consultation. Assets and liabilities were addressed by the petition but are immaterial to the detachment proceedings.

The petition has noted that the Fairbanks North Star Borough, the City of Fairbanks, and the property owner intend to enter into an agreement that will ensure back taxes will not be collected on the territory for city property taxes that went uncollected in error. As the petitioner, the City of Fairbanks states that it does not intend to collect back taxes. This stipulation can be found in Appendix E. Staff has also received a letter of non-objection from the Fairbanks North Star Borough (see Appendix D) indicating the same stipulation agreement.

The petition indicates that in their consultations a letter of non-objection was received in 2013 from the Alaska State Troopers. The petitioner lists the North Star Fire Service Area as one party in their consultation. However, the private property owner will have to petition the fire service area to be reinstated if he wishes to have that protection, as it will not happen automatically. Commerce suggests an agreement between parties regarding the steps and timeline to be annexed into the fire service area be drafted before the LBC meets to decide on the detachment to ensure that this is fully understood.

The remainder of the territory that is state-owned, adjacent to the New Richardson Highway, is not taxable and the detachment will have little to no impact on any of the entities.

Commerce finds that this transition plan is adequate and addresses the specific tenets that are relevant to this detachment proceeding.

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.

Nothing in these proceedings suggest that the proposed detachment will deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. Commerce finds that the standard of [3 AAC 110.910](#) is met.

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.*

This section is not relevant as there are two existing cities and the detachment will only remove the territory from one, and still remain in the other. The commission does not need to make any determinations of essential services for the territory.

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

- (9) for a 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*
 - (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;*

It has been demonstrated that the de facto arrangement does not diminish nor affect the capacity of the city to render services to its population or provide local government in any way. The proposed detachment does not diminish the provision of local government to the territory and population being detached because local government needs of the territory and population to be detached can be adequately met by the borough. It promotes maximum local self-government because it would then be clear that the property is only in the borough and not in the city, and that the residents would only receive services from and pay taxes to the borough. Commerce finds that [3 AAC 110.981](#) is met.

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

- (9) for city detachment, whether the detached area, by itself, is likely to be incorporated as a new city*

The territory is unlikely to become its own city because it will remain part of an organized borough and also because it meets none of the standards required for incorporation by the Local Boundary Commission regulations. Commerce finds that [3 AAC 110.982](#) is met.

Conclusion

Statutes and regulations governing detachment are minimal. Generally, the detachment must meet the best interests of the state. The information provided in this petition and from the additional entities involved has demonstrated that situation arose from an error and detachment would formalize the de facto arrangement. The impact on either municipality is not material, and the change the City of Fairbanks seeks has the support of the Fairbanks North Star Borough. Commerce finds that the city detachment standards are met. We do recommend that the petitioner, city, borough and fire service area draft an agreement or memorandum of understanding regarding the need to petition the North Star Fire Service Area for inclusion in a timely manner, so the territory does not have a gap in service. Staff recommends that LBC approve the petition as presented.

Appendices

Table of Contents

- A. Public Notice of Preliminary Report
- B. Maps
- C. 2011 Fairbanks City Council Resolution No. 4470
- D. Letter of Non-objection from the Fairbanks North Star Borough
- E. Stipulation Regarding Property Taxes

Appendix A: Public Notice of Preliminary Report

NOTICE OF PRELIMINARY REPORT AND PUBLIC COMMENT PERIOD FOR PETITION TO DETACH BY THE CITY OF
FAIRBANKS WITH LOCAL BOUNDARY COMMISSION

The Local Boundary Commission (LBC) staff preliminary report concerning the petition to detach territory from the City of Fairbanks will be released on October 21, 2015. The territory is approximately 0.076 square miles (48.5 acres). The territory is on the eastern edge of the city, and south of the intersection of Old Richardson Highway and Badger Road. The LBC report recommends that the commission approve the petition, and that the petitioner and other parties listed within the report enter into an agreement regarding fire service area inclusion.

The report **will** be available at

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2015CityofFairbanksDetachmentPetition/Reports.aspx>. If the report is not immediately available there, contact the LBC staff to request a copy.

Interested persons or entities may file written comments with the LBC regarding the preliminary report. Commenters should also either send a copy of the comment to the petitioner and file a statement with the comment that such service was made, or notify the staff of an inability to send comments to the petitioner. Public comments must be filed and served in accordance with 3 AAC 110.480 and 3 AAC 110.700. The LBC has waived the requirement that commenters send a paper original of an electronically submitted comment. Written comments must be received by the LBC by 4:30 pm, November 25, 2015.

Local Boundary Commission Staff

550 W. 7th Ave., Ste. 1640, Anchorage, AK 99501
Phone: 907-269-4559 or 269-4587 • Fax: 907-269-4563
Email: LBC@alaska.gov

City of Fairbanks Petitioner's Representative

John C. Brainerd, Deputy City Attorney
800 Cushman Street, Fairbanks, AK 99701
Phone: 907-459-6750 • Fax: 907-459-6761
Email: jbrainerd@ci.fairbanks.ak.us

It is recommended that persons interested in receiving future LBC notices, updates, and materials by email subscribe to the LBC notice list server by visiting <http://list.state.ak.us/soalists/DCED-LocalBoundaryCommission/jl.htm>, and following the instructions.

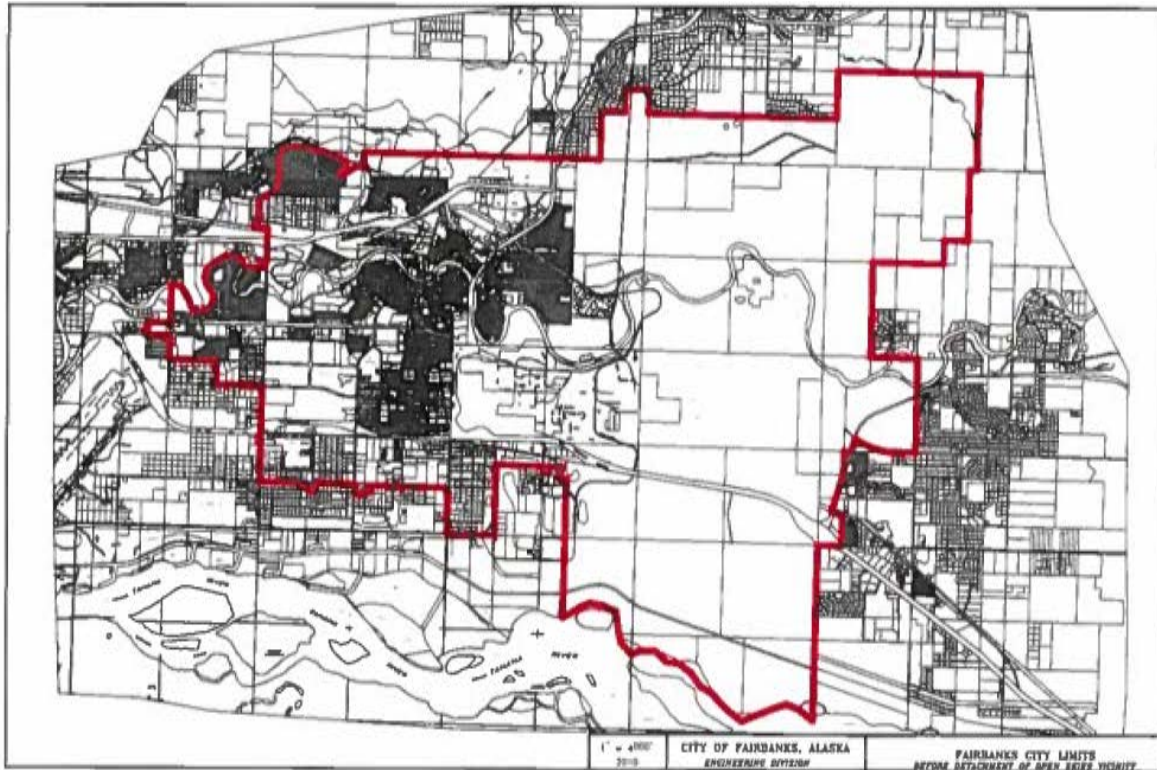
Appendix B: Maps

Territory Proposed for Annexation

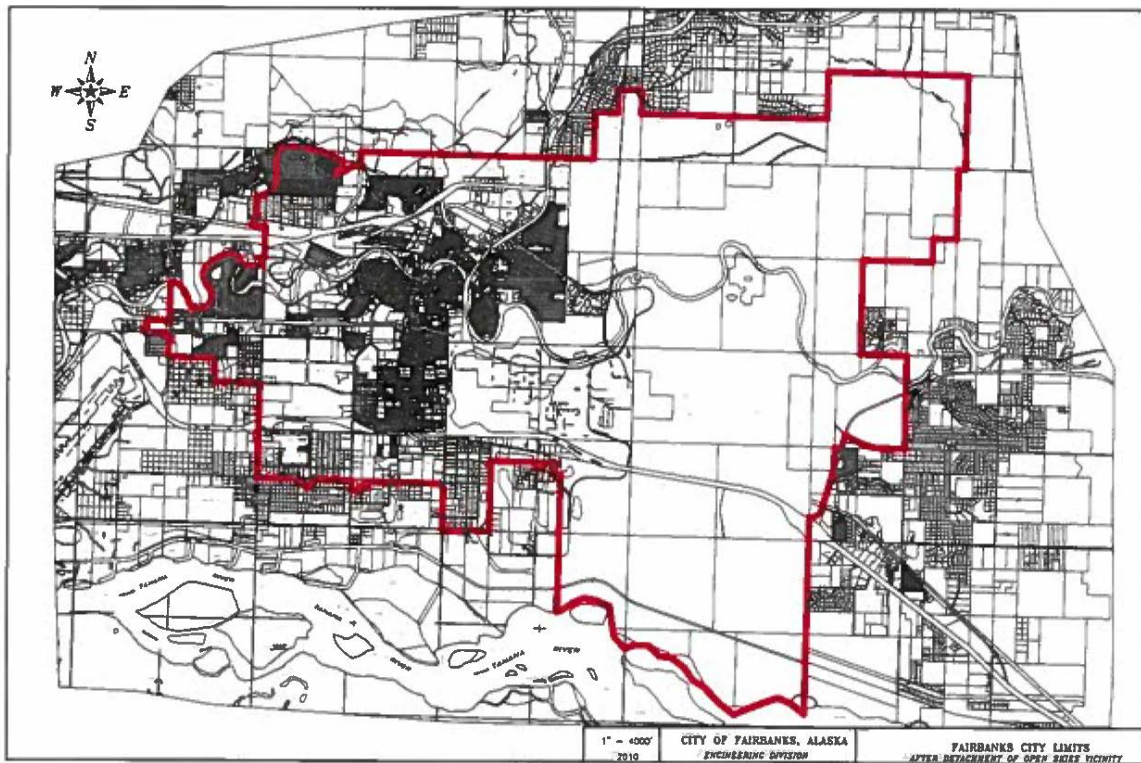


Appendix B: Maps

Map of Existing City of Fairbanks



Map of City of Fairbanks after proposed detachment



Introduced By: Mayor Cleworth
Introduced: April 25, 2011

RESOLUTION NO. 4470

**A RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT A PETITION
TO THE LOCAL BOUNDARY COMMISSION FOR THE DETACHMENT
FROM THE CITY OF THE OPEN SKIES COMMERCIAL PARK
SUBDIVISION, LOCATED AT THE INTERSECTION OF BADGER
ROAD AND THE OLD RICHARDSON HIGHWAY**

WHEREAS, in 1973, the State of Alaska approved annexation of Fort Wainwright into the City of Fairbanks; and

WHEREAS, Fort Wainwright includes land situated east of Badger Road; and

WHEREAS, tracts of land situated east of Badger Road have been transferred from military ownership; and

WHEREAS, parcels described as Lots 1 & 2, US Survey 11793, located at the intersection of Badger and Holmes Road, were transferred to the Fairbanks North Star Borough for use as a solid waste refuse collection site. The City consented to the detachment of these lots from the territory of the City of Fairbanks; and

WHEREAS, land described as Open Skies Commercial Park Subdivision, situated at the corner of Badger Road and the Old Richardson Highway, was transferred from military ownership and is now privately owned; and

WHEREAS, while it is the policy of the City Council of the City of Fairbanks that Fort Wainwright is an essential part of the City, detachment of territory that has been transferred from military ownership such as Open Skies Commercial Park Subdivision is appropriate under the regulatory standards adopted by the Local Boundary Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA as follows:

Section 1. The City Council authorizes the City Mayor to prepare and submit a Petition for Detachment of Open Skies Commercial Park Subdivision, Fairbanks Recording District, via the local option method in which the affirmative vote of a majority of eligible voters will be required. In the event that the local option method is not available due to no eligible

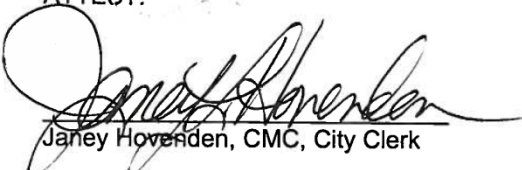
voters residing in the territory to be detached, the legislative review method of Detachment is authorized. All costs, including staff time, are to be paid by the owner of the land requesting Detachment.

Section 2. That the effective date of this Resolution shall be the 30th day of April 2011.

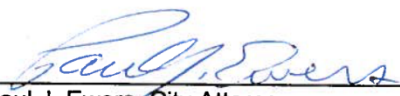


Jerry Cleworth,
City Mayor

AYES: Gatewood, Roberts, Matherly, Stiver
NAYS: Bratcher
ABSTAIN:
ABSENT: Eberhart
ADOPTED: April 25, 2011

ATTEST:


Janey Hovenden, CMC, City Clerk

APPROVED AS TO FORM:


Paul J. Ewers, City Attorney

BEFORE THE ALASKA LOCAL BOUNDARY COMMISSION

NON-OBJECTION
TO THE
PETITION
To the Local Boundary Commission
For
DETACHMENT
OF
0.076 SQUARE MILES
48.5 Acres
From
THE CITY OF FAIRBANKS

WHEREAS, the property subject to this detachment consists of two lots privately owned by Open Skies, LLC (known as Open Skies Commercial Park) as well as neighboring state roadway land. This subject area is already a part of the Fairbanks North Star Borough; and

WHEREAS, the privately owned parcels now known as Open Skies Commercial Park were once part of Fort Wainwright. Fort Wainwright was annexed by the City of Fairbanks in 1973. The subject property was transferred from federal to private ownership in 1982. Through good faith error, Open Skies Commercial Park was treated by the Fairbanks North Star Borough as if it were not part of the City and City property taxes were not collected until the error became evident in 2013. Instead, the Fairbanks North Star Borough levied service area, non-areawide and solid waste collection district property taxes on Open Skies Commercial Park; and

WHEREAS, in 2013, the City, Borough and the property owner entered into a Stipulation regarding the taxes previously incorrectly assessed. Since then, the Borough has corrected the error and is collecting taxes for the City of Fairbanks on the privately owned portion of the subject property; and

WHEREAS, the detachment will affect the privately owned property as to fire and ambulance and other services provided by the City as well as the taxes collected for same. Once the detachment is completed, the private property will be taxed by the Fairbanks North Star Borough only, deleting the City of Fairbanks taxes but levying additional non-areawide taxes such as Emergency Management Services, Economic Development and Solid Waste Collection District taxes; and

Appendix D: Letter of Non-objection from the Fairbanks North Star Borough

WHEREAS, after the detachment is approved, the property will not be in a fire service area but the private property owner may petition the relevant fire service area, North Star Fire Service Area, for inclusion into the service area; and

WHEREAS, the property will be served by the Borough's non-areawide EMS (ambulance) services; and

WHEREAS, the state roadway portion of this detachment is not taxed.

THEREFORE, the Fairbanks North Star Borough does not object to the Petition for detachment of .076 Square Miles (48.5 Acres) from the City of Fairbanks.

Dated this 29 day of June, 2015.

Fairbanks North Star Borough



Luke Hopkins
Borough Mayor

ATTEST:

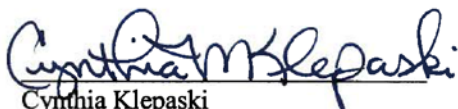


Nanci Ashford-Bingham, Borough Clerk

Date: 6-29-15



APPROVED AS TO FORM:



Cynthia Klepaski
Assistant Borough Attorney

Appendix E: Letter of Non-objection from the Fairbanks North Star Borough

In Re
PETITION
To the Local Boundary Commission
For
DETACHMENT
OF
0.076 SQUARE MILES
48.5 Acres
From
THE CITY OF FAIRBANKS

Stipulation Regarding Property Taxes

WHEREAS, 3 AAC 110.900(d) provides that “[b]efore approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area 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; and

WHEREAS, the territory known as Open Skies Commercial Park was once part of Fort Wainwright. Fort Wainwright, annexed by the City in 1973, is not subject to municipal property taxes. The territory now known as Open Skies Commercial Park was transferred from federal to private ownership in 1982. Through good faith error, Open Skies Commercial Park was treated as if it were not part of the City and City property taxes have not been collected. Instead, the Fairbanks North Star Borough levied service area, non-area-wide and solid waste collection district property taxes; and

WHEREAS, to eliminate the possibility of any dispute as to property taxes affecting the territory to be detached, the parties have reached an agreement regarding uncollected City of Fairbanks property taxes and taxes levied and collected by the Borough for the North Star Fire Service Area, non-area-wide borough economic development and emergency medical services and solid waste collection district; and

WHEREAS, no other City or Borough taxes are affected,

The parties hereby stipulate and agree as follows:

1. The City of Fairbanks waives any claim against the Fairbanks North Star Borough or Open Skies LLC for uncollected City property taxes on the territory known as Open Skies Commercial Park for 2014 and all prior years.

Appendix E: Letter of Non-objection from the Fairbanks North Star Borough


2. Open Skies LLC waives any claim against the Fairbanks North Star Borough for taxes collected for the North Star Fire Service Area, nonareawide borough economic development and emergency medical services and solid waste collection district for 2014 and all prior years.

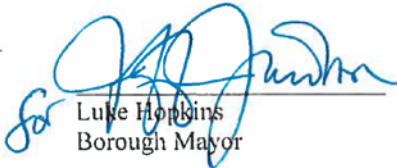
Dated this 19th day of April, 2013 ^{PBC}


City of Fairbanks

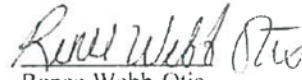
Fairbanks North Star Borough

Open Skies, LLC



Jerry Cleworth
City Mayor


Luke Hopkins
Borough Mayor


by: Howard A. Otis
Managing Member


Renee Webb-Otis
Managing Member

APPROVED AS TO FORM:


Paul J. Ewers
City Attorney


Cynthia Klepaski
Assistant Borough Attorney