



**SOLDOTNA**  
City of Soldotna, Alaska

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Sunday, August 30, 2020

Mr. Larry Wood, Chair  
State of Alaska Local Boundary Commission  
c/o Jed Smith, Local Government Specialist  
550 W. 7<sup>th</sup> Ave., Ste. 1650  
Anchorage, AK 99501

Re: City of Soldotna Annexation Petition

Dear Mr. Wood:

The City of Soldotna requests the Commission suspend procedural requirements of 3 AAC 110.500 and 3 AAC 110.570(a)(1) which limit presentations of materials, to allow the City to address the pending motion to convert its legislative review petition into a local option petition. This request is submitted pursuant to 3 AAC 110.660, which allows for relaxation of procedural rules unless strictly provided for in the Constitution or state statute, if strict adherence would result in a substantially uninformed decision or would not serve constitutional principles. The City's primary interest is to inform the Commission of the constitutional principles providing for legislative review as applied in prior decisions of the Commission.

As explained in the attached proposed submission, the Commission has a long and unbroken history of approving legislative review petitions over objections that boundary decisions should be determined by popular vote. This includes approvals where specific requests for conversion to a local option petition have been voiced by respondents as well as members of the public. Past precedent establishes a consistent pattern of Commission application of the Alaska Constitution Art. X, Sec. 12 favoring referral of approved petitions to the Legislature. The Commission deserves to be informed of this history and precedent or a substantially uninformed decision may result.

In addition, the Commission may not be aware that of all the members of the public who provided testimony during the public hearing on Soldotna's petition, only two are residents of the Territory who would be eligible to vote in a Local Action election. These individuals both testified in favor of annexation. None of the business or land owners who testified in opposition to the City's petition would be eligible to vote in the Territory.

We respectfully ask that you submit this request to a vote of the Commission. Thank you.

Sincerely,

Stephanie Queen  
Soldotna City Manager

**City of Soldotna Statement on Pending Motion to  
Convert Annexation Petition from  
Legislative Review to Local Option**

August 30, 2020

By:



Stephanie Queen

City Manager, City of Soldotna

By:



Brooks Chandler

City Attorney

The City of Soldotna submits the following statement intended to prevent the Commission from making a decision without substantial information about the Commission’s unbroken record of submitting annexation petitions to the Alaska Legislature, as provided in Art. X, Sec. 12 of the Constitution. Similarly, the City submits information regarding the residency of those individuals testifying to the Commission during the public hearing, to avoid the Commission making a decision under the mistaken belief that those who testified in opposition to the petition would be eligible to vote in the Territory if the petition were converted to Local Option.

**Public Testimony at August 4, 2020 Hearing.**

Eighteen members of the public commented before the Commission during the public hearing, but only two were residents of the Territory. Therefore, only these two individuals would be eligible to vote in a Local Option election if one were to be held within the Territory, and both testified to the Commission in support of annexation.<sup>1</sup>

Eight people who own or manage a business, or own vacant land in the Territory, testified in opposition to the City’s annexation petition.<sup>2</sup> However, not a single one of them would be eligible to vote in the Territory because they all reside elsewhere.

The concept of “let those who are impacted, decide” cannot be achieved by deviating from the Commission’s past precedent and converting the petition to Local Option because roughly 80% of the parcels in the Territory are either vacant, or in commercial use. These properties have no ‘resident’ who would be eligible to vote. Placing the decision in the hands of a very small number of residents does not enfranchise the much larger group of business and land owners, who would still be denied a vote.

A popular vote is not fundamentally better than Legislative Review. Although the City’s petition presents a Territory proposed for annexation as a whole, the Commission has discussed and evaluated each Study Area individually. It is worth noting that there are no registered voters in Study Areas 2 or 9. There is no democratic theory justifying allowing voters in other Study Areas to determine whether these areas should be annexed to Soldotna. Only the Legislative Review method can provide these landowners with a fair, deliberative process that takes all evidence and perspectives into account.

**LBC Precedent**

After applying regulatory, constitutional, and statutory standards, the Local Boundary Commission has approved the following legislative review annexation petitions:

<b>Municipality</b>	<b>Year</b>
Aleknagik	1999
Ketchikan	2000
Homer	2001
Palmer	2002

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<sup>1</sup>Mr. Schmitt, Mr. Michaud.

<sup>2</sup>Mr. Hansen, Mr. Green, Mr. Nelson, Mr. Boston, Mr. Crouse, Ms. Patterson, Mr. Wolfe, and Ms. Wolfe.

Ketchikan Gateway Borough	2007
Fairbanks	2009
Gustavus	2011
Manokotak	2017

Soldotna requests the LBC take official notice of this unbroken history, as establishing a strong policy precedent against “punting” a decision on municipal annexation to a very small pool of registered voters. Doing so is not in the best interests of the State of Alaska.

Opposition to municipal boundary changes is common. Compare, however, the reaction to Soldotna’s annexation petition with the public reaction to the City of Homer’s petition which the Commission approved for legislative review. Not a single person, organization, municipality, or business submitted a responsive brief opposing Soldotna’s annexation. In comparison, Homer’s annexation petition for legislative review generated 14 responsive briefs<sup>1</sup> before being ultimately approved. Several of the LBC decisions noted above have been challenged in Superior Court.<sup>2</sup> None have been overturned.

### **Constitutional Principles Favor Legislative Review**

The Alaska Constitution clearly authorizes the legislative review process. This was a conscious choice of the framers. The Alaska Supreme Court has stated that:

We have . . . recognized that the intention of the constitutional provision . . . was to provide an objective administrative body [LBC] to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small self-interested group could stand in the way of boundary changes that were in the public interest<sup>3</sup>.

The Court has also held that residents of a community have no constitutionally protected interest in the existence of a separate government unit so the legislature may provide for annexation without their consent.<sup>4</sup>

This preference for legislative review is also reflected in Alaska Statutes. AS 29.06.040(d) states, "A boundary change effected under . . . (b) of this section [legislative review] prevails over a boundary change initiated by local action, without regard to priority in time." It is better for the State to have boundary decisions made on a state-wide basis by an appointed Commission whose objective decision can be reviewed by state elected representatives, rather than determined by a local election subject to political influence.

### **Balanced Best Interests of the Locality and the State**

3 AAC 110.610 states the commission may determine that a legislative review petition “must be amended and considered” as a local option petition. To do so, the Commission must determine

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<sup>1</sup> Homer Preliminary Report pp. 23-24.

<sup>2</sup> Craig v. Local Boundary Commission Case No. 1KE-08-04\_(CV). Kachemak Area Coalition, Inc. v. Local Boundary Commission, Case No. 3AN-05-0725 (CV).

<sup>3</sup> Port Valdez Company, Inc. v. City of Valdez, 522 P.2d 1147, 1150 n.7 (Alaska 1974).

<sup>4</sup> Fairview Public Utility Dist. No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962)

“that the balanced best interests of the locality and the state are enhanced by local participation.”

‘Locality’ includes not only the Territory, but also the existing City of Soldotna. Boundary decisions must also be in the best interest of the entire State of Alaska. It does not make sense for the Commission to elevate the interests of a tiny group of people over those of all Alaskans and those of existing Soldotna residents, under the guise of “balancing” best interests. It is not balancing to allow approximately 140 people to determine the boundaries of an entire city of more than 4,300 people.

### **Conclusion**

There is no past precedent or current legal basis to convert Soldotna’s petition to Local Option. Such would be a dramatic change in LBC policy. Change of this magnitude should be reflected in revised LBC regulations that would contain carefully considered objective standards to apply when considering whether to convert a legislative review petition to a local option petition. This policy change should not be determined “in the heat of the moment,” in response to a specific petition.

Additionally, converting the petition to Local Option does not achieve the goal of putting the decision in the hands of those who are most impacted. The majority of business owners and landowners in the Territory would be ineligible to vote in the Territory, because they reside elsewhere. Instead, the decision would be made by a small number of residents in the Territory, only a small fraction of whom participated in the Commission’s public process despite multiple opportunities.

The Local Boundary Commission has been tasked with making boundary change decisions in Alaska. It should accept this responsibility consistent with the Commission’s long history of approving annexation by legislative review. Neither the Soldotna community nor the State of Alaska would be better served should the Commission make a one-hundred eighty degree policy turn, favoring Local Option over Legislative Review. The Commission must vote no on the motion to convert the petition to Local Option.