

## Introduction:

In accordance with AS 29.05.100(a), the Local Boundary Commission may approve the *Petition to Incorporate Gustavus as a Second Class City* – with or without amendments and/or conditions – if the Commission determines that the city proposal (as may be amended or conditioned):

1. meets all standards for city incorporation under the Commission's regulations (3 AAC 110.005 – 3 AAC 110.042; 3 AAC 110.910; and 3 AAC 110.990; ),
2. meets all statutory standards for incorporation (AS 29.05.100(a) and AS 29.05.011),
3. meets applicable standards under Alaska's Constitution, and
4. is in the best interests of the state. (AS 29.05.100(a)).

If the Commission determines that the petition does not meet all of those four tests, it must deny the petition.

The constitutional, statutory, and regulatory standards relate to the following considerations:

- Existence of a community
- Boundaries: Necessary areas
- Boundaries: Local community, plus reasonably predictable growth, development, and public safety needs
- Boundaries: Exclusion of large geographic regions or large unpopulated areas
- Boundaries: Contiguity and Inclusiveness
- Boundaries: Overlapping territory
- Resources
- Size and stability of population
- Need: Demonstration of need
- Need: Existing municipal government
- Best interests of the State
- Transition plan
- Effect on civil and political rights

Details about each of the above standards are included in this workbook.

It has been the practice of the Commission to rotate among members present during the decisional session, the opportunity to initiate discussion regarding the extent to which each of the various standards is met. For example, one member will initiate the discussion of the first standard; another will initiate the discussion of the second standard, and so on. The member that initiated the discussion of the first standard would then initiate the discussion of the sixth standard. The rotation would continue in that

fashion until all standards have been addressed. During discussions with Chairman Hargraves regarding this procedure, the Chairman indicated that he intended to continue this historical practice.

As always, all members of the Commission are encouraged to contribute to the discussion of each standard, particularly if there are relevant and important points that have not been addressed by other members or if there is a differing opinion with respect to the standard.

The following lists the standards that each Commissioner will be responsible for in terms of initiating the discussion at the decisional session.

**Commissioner Hargraves**

- ❑ Standard 1: Existence of a community
- ❑ Standard 6: Boundaries: Overlapping Territory
- ❑ Standard 11: Best Interests of the State

**Commissioner Nakazawa**

- ❑ Standard 2: Boundaries: Necessary Areas
- ❑ Standard 7: Resources
- ❑ Standard 12: Transition plan

**Commissioner Hicks**

- ❑ Standard 3: Boundaries: Local community, plus growth, development and public safety needs
- ❑ Standard 8: Population: Size and stability
- ❑ Standard 13: Effect on civil and political rights

**Commissioner Harcharak**

- ❑ Standard 4: Boundaries: Exclusion of large geographic regions of unpopulated areas
- ❑ Standard 9: Need: Demonstration of need

**Commissioner Zimmerle**

- ❑ Standard 5: Contiguity and inclusiveness
- ❑ Standard 10: Need: Existing municipal governments

The laws relating to the standards are stated in their entirety on the following pages. Included are citations in the Petition or Response where the Petitioner expressed its view and citations in DCED's reports where DCED expressed its view concerning the various standards. The Petitioner maintains that all requisite standards are met. DCED conclusions concerning each standard are cited in the workbook. Extra pages are provided for notes during the hearing and deliberations.

Standard Number 1: Existence of a Community  
(Commissioner Hargraves)

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**1. The Standard Established in Law**

State law provides that a locality proposed for incorporation as a city must comprise a community. Specifically, AS 29.05.011(a) states that “A community” that meets the city incorporation standards may incorporate as a city. Further, 3 AAC 110.005 requires that “An area proposed for incorporation as a city must encompass a community.” In 3 AAC 110.990, “community” is defined as “a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920.” That regulation establishes several criteria that the Commission may consider in determining whether the locality proposed for incorporation comprises a community. Specifically, the law states:

**3 AAC 110.920. DETERMINATION OF COMMUNITY.** (a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

(1) settlement is inhabited by at least 25 individuals;

(2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and

(3) inhabitants residing permanently at a location are a discrete and identifiable social unity, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

(1) public access to or the right to reside at the location of the population is restricted;

(2) the population is adjacent to a community and is dependent upon that community for its existence; or

(5) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

The Petition seeks incorporation of the City of Gustavus under AS 29.05.011. Thus, the applicable standard in this case is whether Gustavus constitutes a community.







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Standard Number 2: Boundaries - Necessary Areas  
(Commissioner Nakazawa)

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**1. The Standard Established in Law**

State law (AS 29.05.011(a)(2)) requires that the boundaries of a proposed city must include all areas necessary to provide municipal services on an efficient scale. The provisions of 3 AAC 110.040 establish five distinct standards relating to the suitability of the proposed boundaries. The first standard of that section provides:

(a) In accordance with AS 29.05.011, the boundaries of a proposed city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

**2. Views of the Petitioner: Petition, Ex. H.**

**3. DCED's analysis: Preliminary Report, pp. 48 - 49; Final Report, pp. 16 -19, 22.**

**4. DCED's conclusion:** The boundaries of the proposed City of Gustavus include all areas necessary to provide municipal services on an efficient scale as required for city incorporation by AS 29.05.011(a)(2) and 3 AAC 110.040(a).

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Standard Number 6: Boundaries - Overlapping Territory  
(Commissioner Hargraves)

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**1. The Standard Established in Law**

State law provides that if a proposal to incorporate a city includes territory already within the boundaries of an existing organized borough or city, the proposal must address standards for annexation to or detachment from the existing borough or city, as applicable. Specifically, 3 AAC 110.040(e) provides:

(e) If a petition for incorporation of a proposed city describes boundaries overlapping the boundaries of an existing organized borough or city, the petition for incorporation must also address and comply with all standards and procedures for either annexation of the new city to the existing borough, or detachment of the overlapping region from the existing borough or city. The commission will consider and treat that petition for incorporation as also being either an annexation petition to the existing borough, or a detachment petition from the existing borough or city.

**2. Views of the Petitioner: Petition, Ex. H.**

**3. DCED's analysis: Preliminary Report, p. 53 – 54; Final Report, p. 23.**

**4. DCED's conclusion:** The boundaries of the proposed City of Gustavus do not overlap the boundaries of an existing borough or city. Therefore, standards and procedures for annexation to or detachment from existing boroughs and cities need not be applied as would otherwise be required by 3 AAC 110.040(e).

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Standard Number 7: Resources (Commissioner Nakazawa)

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**1. The Standard Established in Law**

AS 29.05.011(a)(3) provides that a proposed city must have the human and financial resources to support municipal government. Specifically, State law provides, in relevant part, as follows:

**Sec. 29.05.011. Incorporation of a city.** (a) A community that meets the following standards may incorporate as a home rule, first class or home rule city:

. . . .

(3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the LBC shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

Additionally, 3 AAC 110.020 provides as follows:

In accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission

(1) will consider

(A) the reasonably anticipated functions of the proposed city;

(B) the reasonably anticipated expenses of the proposed city;

(C) the ability of the proposed city to generate and collect local revenue, and the reasonably anticipated income of the proposed city;

(D) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed city through the third full fiscal year of operation;

(E) the economic base of the proposed city;

(F) property valuations for the proposed city;

(G) existing and reasonably anticipated industrial, commercial, and resource development for the proposed city; and

(H) personal income of residents of the proposed city; and

(2) may consider other relevant factors, including

(A) land use for the proposed city;

(B) the need for and availability of employable skilled and unskilled persons to serve the proposed city; and

(C) a reasonably predictable level of commitment and interest of the residents in sustaining a city.

**2. Views of the Petitioner: Petition, Ex. H; Response to Preliminary Report.**

**3. DCED's analysis: Preliminary Report, pp. 57 – 70; Final Report, pp. 7 – 16, 24.**

**4. DCED's conclusion:** The economy of Gustavus includes the human and financial resources necessary to provide municipal services on an efficient, cost-effective level as required for city incorporation by AS 29.05.011(a)(3) and 3 AAC 110.020. Based on the written clarification regarding the intent of the Petition's excise tax, LBC should amend Petition to provide that the proposed levy of the 4 percent excise tax will apply to overnight accommodations only,

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Standard Number 8: Population Size and Stability  
(Commissioner Hicks)

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**1. The Standard Established in Law**

AS 29.05.011(a)(4) requires the population of the proposed community to be stable enough to support city government. Specifically, State law provides, in relevant part:

**Sec. 29.05.011. Incorporation of a city.** (a) A community that meets the following standards may incorporate as a first class or home rule city:

.....

(4) the population of the community is stable enough to support city government (emphasis added) ;

Additionally, 3 AAC 110.030(a) states as follows regarding this standard:

**3 AAC 110.050. POPULATION.** (a) In accordance with AS 29.05.011, the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission may consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

**2. Views of the Petitioner – Petition, p. 1 and Ex H.**

**3. DCED’s analysis: Preliminary Report, pp. 72 –75; Final Report, p. 26.**

**4. DCED’s conclusion:** The population of Gustavus is large and stable enough to support city government as required for city incorporation by AS 29.05.011(a)(4) and 3 AAC 110.030(a).

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Standard Number 10: Need – Existing municipal governments  
(Commissioner Zimmerle)

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**1. The Standard Established in Law**

The second standard regarding the need for city government is found in AS 29.05.021. It relates to the capacity of an existing municipality to serve the needs of the community. Different standards apply to a proposed city in the unorganized borough compared to one within an organized borough. The standard applicable in this case – the proposed formation of a city government in the unorganized borough – is found in subsection (a) of that statute. It provides that, “A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city.” That statute is implemented, interpreted, and made specific by 3 AAC 110.010(b), which provides:

In accordance with AS 29.05.021, a community may not incorporate as a city if essential city services can be provided more efficiently or more effectively by annexation to an existing city, or can be provided more efficiently or more effectively by an existing organized borough on an areawide basis or non-areawide basis, or through an existing borough service area.

**2. Views of the Petitioner: Petition, Ex. H.**

**3. DCED’s analysis: Preliminary Report, p. 87 – 88; Final Report, p. 28.**

**4. DCED’s conclusion:** The services to be provided by the proposed City of Gustavus cannot be provided by annexation to an existing city as required by AS 29.05.021(a) and 3 AAC 110.010(b).

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Standard Number 11: Best Interests of the State  
(Commissioner Hargraves)

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**1. The Standard Established in Law**

The Local Boundary Commission may approve a city incorporation proposal only if the Commission concludes that such incorporation meets applicable standards and will serve the best interests of the state. Specifically, the statute provides:

**Sec. 29.05.100. Decision.** (a) The Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition (emphasis added).

The Commission has adopted regulations to define the “best interests of the state.” Those regulations provide as follows:

**3 AAC 110.042. Best interests of state** In determining whether incorporation of a city is in the best interests of the state under AS 29.05.100 (a), the commission may consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units;
- (3) will relieve the state government of the responsibility of providing local services; and
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the city in the event of the city's dissolution.

**2. Views of the Petitioner: Petition, Ex. H.**

**3. DCED’s analysis: Preliminary Report, p. 90; Final Report, p. 28.**

**4. DCED’s conclusion:** Incorporation of the City of Gustavus would serve the best interests of the state as required for city incorporation under AS 29.05.100 and as defined under 3 AAC 110.042.









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Standard Number 12: Transition Plan (Commissioner Nakazawa)

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## 1. The Standard Established in Law

Under 3 AAC 110.900, a petitioner is required to provide a transition plan addressing the proposed change. The standards for the transition plan are broadly fashioned to pertain to any proposal that comes before the Commission from an existing or prospective city or borough government. Specifically, the law provides as follows:

**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 city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the as-







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Standard Number 13: Effect on Civil and Political Rights  
(Commissioner Hicks)

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**1. The Standard Established in Law**

As provided for under 3 AAC 110.910, 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*. Specifically, that law provides:

**3 AAC 110.910 STATEMENT OF NON-DISCRIMINATION.** 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.

In addition to the provisions in State law, the federal Voting Rights Act of 1965, codified as amended at 42 U.S.C. § 1973, establishes standards relating to the effects that incorporation would have upon civil and political rights of minorities. The Voting Rights Act prohibits political subdivisions from imposing or applying voting qualifications, voting prerequisites, standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. Specifically, the Federal law provides as follows:

**Sec. 1973. - Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation**

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.









## **DCED Final Recommendations:**

The DCED recommends that the LBC approve the Petition for incorporation of the City of Gustavus with one amendment. The amendment recommended by the DCED is to modify the Petition to provide that the 4 percent excise tax will be strictly a “bed tax” (i.e., it will apply only to short-term overnight accommodations).

With the amendment, incorporation of the City of Gustavus will still be conditioned upon voter approval of the proposition authorizing the proposed city to levy the excise taxes (i.e., both the 2 percent general sales tax and the 4 percent “bed” tax).













