



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT

XUNAA BOROUGH INCORPORATION

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Hoonah
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Topics Covered

Roles of Local Boundary Commission (LBC) and LBC staff

Borough types and duties

Borough incorporation standards

Petition procedures and schedule

Comments



Local Boundary Commission

The Local Boundary Commission is an autonomous commission created by Alaska's constitution to objectively consider proposed municipal boundary changes, taking into account areawide and statewide needs.



Local Boundary Commission AS 44.33.810

There is in the Department of Community and Economic Development a Local Boundary Commission. The Local Boundary Commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in AS 22.10.010 and one member shall be appointed from the state at large. The member appointed from the state at large is the chair of the commission.



3 AAC 110.435 Role of department staff

- a) **A department employee assigned under AS 44.33.020(a)(4) as a member of the commission staff serves as an advisor. The advisory staff may not act in an advocacy capacity as a petitioner under 3 AAC 110.410.**
- b) **During a proceeding, the advisory staff to the commission may provide technical assistance, information, and forms to petitioners, respondents, and interested persons who have procedural questions regarding local government or boundary issues. If the commissioner, a department subdivision, or a department employee not assigned under AS 44.33.020(a)(4) to the commission's advisory staff serves in an official capacity as a petitioner in a case before the commission,**
 1. **Communications with the commission's advisory staff regarding the case are subject to the limitations of this subsection and 3 AAC 110.500; and**
 2. **Communications with the commission's advisory staff regarding the case are subject to the limitations of this subsection and 3 AAC 110.500.**
- c) **Nothing in this section limits the role and ability of the commission's advisory staff to ensure that the commission is fully and accurately informed by providing to the commission new or additional information that supplements, questions, or refutes information provided by, or a position taken by, a petitioner, respondent, or other person.**



Borough Types

- **Home rule boroughs (power comes from a charter)**
- **General law borough (power comes from the authority that the state grants it)**
 - **First class borough**
 - **Second class borough**



Non-Unified Home Rule Boroughs

- **Denali Borough**
- **Haines Borough**
- **Lake and Peninsula Borough**
- **North Slope Borough**
- **Northwest Arctic Borough**
- **City and Borough of Yakutat**



Borough Incorporation Standards

Alaska Constitution art. X, sect. 3

Alaska Statute 29.05.031

3 AAC 110.045 Community of Interests

3 AAC 110.050 Population

3 AAC 110.055 Resources

3 AAC 110.060 Boundaries

3 AAC 110.065 Best Interests of State

3 AAC 110.067 Applicability



Alaska Constitution art. X, sect. 3 – Boroughs

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law.

The standards shall include population, geography, economy, transportation, and other factors.



Alaska Constitution art. X, sect. 3 – Boroughs

Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.



Alaska Statute 29.05.031 Incorporation

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:



Borough Incorporation Standards

- (1) the **population** of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;
- (2) the **boundaries** of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;



Borough Incorporation Standards

- (3) the **economy** of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;
- 4) **land, water, and air transportation facilities** allow the communication and exchange necessary for the development of integrated borough government.



3 AAC 110.045. Community of interests

- a) On a regional scale suitable for borough government, the social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated in accordance with AS 29.05.031(a)(1) and art. X, sec. 3, Constitution of the State of Alaska. The commission may consider factors including:



3 AAC 110.045 Community of interests

- (1) compatibility of urban and rural areas within the proposed borough;**
- (2) compatibility of economic lifestyles and industrial or commercial activities;**
- (3) existence throughout the proposed borough of customary and simple transportation and communication patterns;**
- (4) extent and accommodation of spoken language differences throughout the proposed borough; and**
- (5) existence throughout the proposed borough of organized volunteer services such as fire departments or other emergency services.**



3 AAC 110.045 Community of interests

(c) The **communications media and the land, water, and air transportation facilities** throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government in accordance with AS 29.05.031(a)(4) and art. X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, **including**



3 AAC 110.045 Community of interests

- (1) transportation schedules and costs;**
- (2) geographical and climatic impediments;**
- (3) telephonic and teleconferencing facilities; and**
- (4) electronic media for use by the public.**



3 AAC 110.045 Community of interests

- d) In determining whether **communications and exchange patterns** are sufficient, the commission may consider whether
- (1) all communities within a proposed borough are connected to the proposed borough seat by a public roadway, regular scheduled airline flights on at least a weekly basis, regular ferry service on at least a weekly basis, charter flight service based in the proposed borough, other customary means of travel including boats and snow machines, or sufficient electronic media communications; and
 - (2) communications and exchange patterns will adequately facilitate interrelationships and integration of the people in the proposed borough.



3 AAC 110.050 Population

a) The population of a proposed borough must be **sufficiently large and stable** to support the proposed borough government in accordance with AS 29.05.031(a)(1) and art. X, sec. 3, Constitution of the State of Alaska. In this regard, the commission may consider relevant factors, **including**

- 1) Census enumerations;
- 2) Durations of residency;
- 3) Historical population patterns;
- 4) Seasonal population changes;
- 5) Age distributions;
- 6) Contemporary and historical public school enrollment data;
- 7) Nonconfidential data from the Department of Revenue regarding PFD application



3 AAC 110.050 Population

b) In determining whether the population of a proposed borough is **sufficiently large and stable** to support the proposed borough government, the commission will presume that a minimum of 1,000 permanent residents is required unless specific and persuasive facts are presented showing that a lesser number is adequate.



3 AAC 110.055. Resources

In accordance with AS 29.05.031(a)(3), the economy of a proposed borough must include the **human and financial resources necessary** to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission

1. will consider

- A. the reasonably anticipated functions of the proposed borough;
- B. the reasonably anticipated expenses of the proposed borough;
- C. the ability of the proposed borough to generate and collect revenue at the local level;
- D. the reasonably anticipated income of the proposed borough;
- E. the feasibility and plausibility of the anticipated operating and capital budgets of the proposed borough through the period extending one full fiscal year beyond the reasonably anticipated date
 - i. For receipt of the final organization grant under AS 29.05.190
 - ii. For completion of the transition set out in AS 29.05.130-29.05.140 & 3 AAC 110.900; and
 - iii. On which the proposed borough will make its first full local contribution required under AS 14.17.410(b)(2)



3 AAC 110.055 Resources

- F. the economic base of the area within the proposed borough;
 - G. valuations of taxable property within the proposed borough;
 - H. land use within the proposed borough;
 - I. existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough; and
 - J. personal income of residents within the proposed borough; and
2. may consider other relevant factors, including
- A) The need for and availability of employable skilled and unskilled persons to serve the proposed borough government; and
 - B) A reasonably predictable level of commitment and interest of the population in sustaining a borough government.



3 AAC 110.060 Boundaries

a) In accordance with AS 29.05.031(a)(2) and art. X, sec. 3, Constitution of the State of Alaska, the boundaries of a proposed borough must conform generally to natural geography, must be on a regional scale suitable for borough government, and must include all land and water necessary to provide the full development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, **including...**



3 AAC 110.060 Boundaries

- (1) land use and ownership patterns;**
- (2) ethnicity and cultures;**
- (3) (repealed 1/9/2008;)**
- (4) existing and reasonably anticipated transportation patterns and facilities;**
- (5) natural geographical features and environmental factors;**
- (6) repealed 1/9/2008; and**
- (7) existing and reasonably anticipated industrial, commercial, and resource development within the proposed borough.**



3 AAC 110.060 Boundaries

b) When reviewing the boundaries proposed in a petition for borough incorporation, the commission may consider

- 1) model borough boundaries for the area within the proposed borough;**
- 2) regional boundaries including boundaries of one or more REAAs; Federal Census area boundaries; boundaries established for regional Native Corporations (ANCSA); and boundaries of national forests**
- 3) whether the proposed borough will embrace an area and population with common interests to the maximum degree possible;**
- 4) whether the proposed borough promotes maximum local self-government as determined in 3 AAC 110.981**
- 5) whether the proposed borough promotes a minimum number of local government units, as determined under 3 AAC 110.982**
- 6) whether the proposed borough boundaries are the optimum boundaries for that region in accordance with Article X, section 3 of the Alaska Constitution.**



3 AAC 110.060 Boundaries

c) Repealed 1/9/2008

d) Absent a specific and persuasive showing to the contrary, the commission will presume that an area proposed for incorporation that is noncontiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential municipal services on an efficient, cost-effective level.



3 AAC 110.060

- e) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping boundaries from the existing organized borough. The commission will consider that petition for incorporation as also being a detachment petition.**
- f) The boundaries of a borough may not include only a portion of the territory of an existing city government.**
- g) Requirements relating to limitation of community, as set out in 3 AAC 110.040(b), do not apply to boroughs.**



3 AAC 110.065 Best interests of state

In determining whether incorporation of a borough 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, as determined under 3 AAC 110.981;**
- 2. promotes 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;**
- 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 borough in the event of the borough's dissolution.**



3 AAC 110.067 Applicability

The provisions of 3 AAC 110.045-3 AAC 110.065 apply to a petition for borough incorporation using either

- 1) the legislative review method provided in art. X, sec 12, Constitution of the State of Alaska; or**
- 2) the local option method provided in AS 29.05**



Petition Procedures and Schedule

- I. Petition is filed for review with LBC staff**
- II. Staff performs a technical review (TR)**
- III. Once TR is completed, if approved, public comment period begins for petition**
- IV. After public comment, LBC staff writes a preliminary report on petition**
- V. Preliminary report public comment period**
- VI. LBC staff final report**
- VII. Public hearing**
- VIII. LBC decisional meeting**
- IX. Reconsideration**



Schedule

Xunaa Petition Schedule (subject to change by LBC chair)

Monday, November 27, 2023

Acceptance of filing of Xunaa Non-Unified Home Rule Borough petition

Friday, December 1, 2023

Petition public comment period begins

Thursday, February 29, 2024 (90 Days)

Petition public comment period deadline at 5 p.m.



Schedule

Monday, April 1, 2024

Deadline for receipt of petitioner's reply brief. Staff begins drafting preliminary report

Monday, May 20, 2024 (approximate)

Preliminary report released (public will have 49 days to comment)

Monday, August 5, 2024

Finish and mail final report



Schedule

Tuesday, September 10, 2024

Public Hearing in Hoonah

Wednesday, September 11, 2024

LBC Decisional Meeting

Friday, October 11, 2024

Written decision issued 30 days after decisional meeting



Schedule

If approved, decision mailed to parties (petitioner and respondents). There will be an 18-day period for public to request reconsideration of decision starts. LBC has 30 days, on its own motion, to reconsider. If reconsideration granted, then petitioner or respondent has 10 days to file a brief.



Reconsideration

3 AAC. 110.580 (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.**



Comments

Send a written comment on the petition or send responsive briefs to the LBC (lbc@alaska.gov) by 5 pm on February 29. These comments will be read and considered by the LBC staff when writing the preliminary report, and by the LBC in considering the petition.



Comments

After the preliminary report is released in May, written comments on the report may be submitted for 49 days (through approximately July 8)*

***(Schedule is always subject to change).**

Oral testimony will be taken during a public hearing in Hoonah tentatively scheduled for September 10, 2024.



Comments

Any comments or responsive briefs must be RECEIVED by LBC staff by 5 p.m. on Thursday, February 29, 2024.

Comments may be by hard copy, or by email or fax.

You may submit more than one comment.

LBC relaxed/suspended the rule (3 AAC 110.700(d)) requiring that hard originals follow comments sent by fax or email.



Comments

The LBC will make its decision based upon whether it finds that the proposed incorporation meets the constitutional, statutory, and regulatory standards.

The comments that will most help the commission , and most help you, are those that factually state why the petition does or does not meet the standards.



Questions?

For further information, contact LBC staff at:

Email: LBC@alaska.gov

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(907) 269-4559

LBC website:

<http://www.commerce.state.ak.us/dca/lbc/lbc.htm>