



THE STATE  
*of* **ALASKA**  
GOVERNOR MIKE DUNLEAVY

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT

# XUNAA BOROUGH INCORPORATION

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Hoonah  
January 9, 2024



# Borough Incorporation

## **Xunaa proposed borough public meeting**

**January 9, 2024  
In Hoonah**

**Jedediah R. Smith,  
Staff to Local Boundary Commission**



State of Alaska  
Department of Commerce, Community, and Economic  
Development  
Division of Community and Regional Affairs



# Topics Covered

Roles of Local Boundary Commission (LBC)  
and LBC staff

Borough types and duties

Borough incorporation standards

Comments

Petition procedures and schedule



# Local Boundary Commission

Commission's role

LBC staff's role



# 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.**



## **Commission's Role**

**Governor appoints members for 5 year overlapping terms.**

**Members are volunteers and receive no pay.**

**One member is from each of Alaska's four judicial districts.**

**Fifth member (the chair) is appointed from the state at-large.**

**Photos & bios on LBC website**



## Commission's Role continued . . .

**Private (*ex parte*) communications are expressly prohibited between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal (3 AAC 110.500(b)).**

**Because *ex parte* contact is prohibited, all inquiries, written comments, other written communications, and briefs must be directed to LBC staff.**



## **LBC Staff's Role**

**LBC staff answer the public's questions, manage day-to day operations for the LBC, and make recommendations to the commission.**

**During proceeding, staff may provide technical assistance, information, and forms to petitioners, respondents, and interested persons who have procedural questions regarding local government or boundary issues.**





## Borough Types

### **There are several types of boroughs:**

- Home rule boroughs (power comes from a charter)**
  - **Unified home rule (define)**
  - **Nonunified home rule boroughs (e.g. proposed Petersburg borough)**
  
- General law borough (power comes from the authority that the state grants it)**
  - **First class borough**
  - **Second class borough**



## Borough Types

### Present unified home rule boroughs:

- Municipality of Anchorage
- City and Borough of Juneau
- City and Borough of Sitka
- City and Borough of Wrangell



# Borough Types

**Nonunified home rule boroughs:**

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



# Borough Powers and Duties

Power	Areawide					Non-Areawide					Service Area											
	Rule	Home	S	Class	First	Class	nd	Stade	Home	S	Class	First	Class	nd	Stade	Home	S	Class	First	Class	nd	Seco
Education	•			•		•									+			⌘				❖
Taxation of Property	•			•		•																
Taxation of Sales	⊕			•		•																
Planning, Platting, Land Use Regulation	⊕			•		•									+			⌘				❖
Transportation Systems	+			⌘		⌘		+		⌘		⌘		+			⌘		⌘			❖
Water Pollution Control	+			⌘		⌘		+		⌘		⌘		+			⌘		⌘			❖
Air Pollution Control	+			⌘		⌘		+		⌘		⌘		+			⌘		⌘			❖
Regulation of Animals	+			⌘		⌘		+		⌘		⌘		+			⌘		⌘			❖
License Day Care Facilities	+			⌘		⌘		+		⌘				+			⌘		⌘			❖
Regulate Fireworks	+			⌘		⌘		+		⌘		⌘		+			⌘		⌘			❖
Solid Waste	+			★		☆		+		⌘		⌘		+			⌘		⌘			❖
Housing Rehabilitation	+			★		☆		+		⌘		⌘		+			⌘		⌘			❖
Economic Development	+			★		☆		+		⌘		⌘		+			⌘		⌘			❖
Roads and Trails	+			★		☆		+		⌘		⌘		+			⌘		⌘			❖
EMS Communications	+			★		☆		+		⌘		⌘		+			⌘		⌘			❖
Regulate Motor Vehicles	+			★		☆		+		⌘		⌘		+			⌘		⌘			❖
Development Projects	+			★		☆		+		⌘		⌘		+			⌘		⌘			❖
Hazardous Substance Control	+			★		☆		+		⌘		⌘		+			⌘		⌘			❖
Other Power Not Prohibited	+			★		☆		+		⌘				+			⌘					❖

- Mandatory power
- Mandatory power, but discretion permitted
- + Home Rule Charter Powers may exercised
- ⌘ May exercise by ordinance
- ★ May exercised by areawide voter approval
- ☆ May exercised by approval of the voters areawide, or transfer from all cities and approval of the voters non-areawide.
- ❖ May be exercised upon approval of voters in service area or by all property owners in service area.



## Borough Powers and Duties

**Alaska constitution art. X, sect. 5 -  
Assembly:**

**- The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.**



## **Borough Powers and Duties**

### **Alaska constitution art. X, sect. 5 - Service Areas:**

**- Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.**



## Borough Powers and Duties

**Alaska constitution art. X, sect. 9 – Charters:**

**- The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.**



## **Borough Powers and Duties**

**Alaska constitution art. X, sect. 11 -  
Home Rule Powers:**

**- A home rule borough or city  
may exercise all legislative powers not  
prohibited by law or by charter.**





# Borough Incorporation Standards

**Alaska constitution art. X, sect. 3**

**AS 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**



## **Borough Incorporation**

### **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.**



# Borough Incorporation

## Section 10.3 – Boroughs (continued):

- 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.



# Borough Incorporation Standards

**Sec. 29.05.031. Incorporation of a borough or unified municipality:**

**(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:**

**(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;**



## Borough Incorporation Standards

(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;

(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;



## Borough Incorporation Standards

4) **land, water, and air transportation facilities** allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough.



# Borough Incorporation Standards

## 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**



# Borough Incorporation Standards

- (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.**





## Borough Incorporation Standards

### 3 AAC 110.045. Community of interests (continued):

(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**



# Borough Incorporation Standards

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



## Borough Incorporation Standards

### 3 AAC 110.045. Community of interests (continued):

d) In determining whether **communications and exchange patterns** are sufficient, the commission may consider [regularity of schedule transportation, and whether the communications and exchange patterns will adequately facilitate interrelationships and integration of the people in the proposed borough].



## Borough Incorporation Standards

**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.**



# Borough Incorporation Standards

## 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



# Borough Incorporation Standards

## 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



# Borough Incorporation Standards

## 3 AAC 110.055. Resources continued . . .

- 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.



# Borough Incorporation Standards

## 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...**





# Borough Incorporation Standards

- (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.



# Borough Incorporation Standards 3 AAC 110.060

**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

**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.**



# Borough Incorporation Standards

## **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.**



## Comments

**Send a written comment on the petition or send responsive briefs to the LBC ([lbc@alaska.gov](mailto: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 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.**



# Petition Procedures and Schedule

**There are two possible methods for borough incorporation:**

- Borough incorporation by legislative review**
- Borough incorporation by local action**



# 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)**  
**December 1, 2023**

**Monday, November 27, 2023**

**Acceptance of Xunaa petition for review by LBC staff**

**Friday, December 1, 2023**

**Petition's public comment period starts - 1<sup>st</sup> date of publication of notice (within at least 45 days by regulation)**

**Thursday, February 29, 2024**

**Petition public comment period deadline (lasts 90 days) *At least 14 days for petitioner's reply brief.***



# Schedule

**Monday, April 1, 2024**

**Deadline for receipt of petitioner's reply brief (30 days). 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

## Tuesday, October 29, 2024

**Mail final report (23 days before hearing) *Must precede the hearing by at least 21 days.***

## Tuesday, September 10, 2024

**LBC public hearing “in the area proposed to be incorporated”**



## Schedule

**Wednesday, September 11, 2024**

**Xunaa decisional meeting .**

**(Decisional meeting must be within 90 days of the hearing, but can immediately follow it). Written decision must be issued within 30 days after decisional meeting.**

**Friday, October 11, 2024**

**LBC meeting to approve/disapprove written decision.**





## 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.**



## Questions?

**For further information, contact LBC staff at:**

**Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)**

**Jedediah Smith**

**(907) 269-4559**

**LBC website:**

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