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Local Boundary Commission Bylaws

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BYLAWS

ALASKA LOCAL BOUNDARY COMMISSION

ARTICLE I - NAME AND AUTHORITY

Section 1. Name. The official name of this body is the Alaska Local Boundary Commission. Common usage and abbreviations are “Commission” and “LBC.” (Eff. 5/19/89; am 6/2/09)

Section 2. Constitutional Authority. The Commission is a body mandated by the Constitution of the State of Alaska, article X, section 12, which provides:

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.

(Eff. 6/2/09)

Section 3. Statutory Authority. Statutory provisions establishing the Commission in the executive branch are contained in AS 44.33.810 and AS 39.05.060. Statutory provisions regarding the Commission’s authority and duties are set out in AS 44.33.812 - 44.33.828. Statutory provisions dealing with the types of boundary changes that come before the Commission are set out in AS 29.04, AS 29.05, and AS 29.06. (Eff. 6/2/09)

Section 4. Standards and Procedures. Pursuant to AS 44.33.812(a) the Commission has adopted standards and procedures to be applied to actions that come before it. Those standards and procedures are set out in regulations adopted in 3 AAC 110.010 - 3 AAC 110.990. The Commission's adoption of regulations is subject to the requirements of the Administrative Procedure Act at AS 44.62.020 - 44.62.300. (Eff. 6/2/09)

Section 5. Federal Oversight. In addition to the Alaska Constitution, statutes, and regulations, Commission decisions on municipal boundary actions are subject to the federal Voting Rights Act, 42 U.S.C. Section 1973; 28 C.F.R. Part 51. The Voting Rights Act requires demonstration to federal authorities that municipal boundary changes do not have a racially discriminatory purpose or will not make racial or language minority voters worse off than they were prior to the boundary change. The Commission's regulations at 3 AAC 110.630(a) requires preclearance under the federal Voting Rights Act before a boundary change takes effect.

The federal Voting Rights Act includes minority-language-assistance provisions. Minority-language assistance applies to ballots (polling place, samples, and absentee), voter-registration forms and instructions, candidate-qualifying forms and instructions, polling-place notices, instructional forms, voter-information pamphlets, and oral assistance throughout the electoral process. (28 C.F.R. 55.19).

Language-minority groups covered by the federal Voting Rights Act are determined by the U.S. Census Bureau. (Eff. 6/2/09)

ARTICLE II - MISSION AND OBJECTIVES

Section 1. The Constitution of the State of Alaska recognizes that the establishment and revision of boundaries of cities and boroughs are primarily the responsibilities of the State. This mission has been described by the Alaska Supreme Court:

An examination of the relevant minutes of [a series of more than 45 meetings held by the Committee on Local Government at the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee -- “lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.”

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962). (Eff. 5/19/89; am 6/2/09)

Section 2. The courts have consistently recognized that the Commission enjoys considerable discretion and broad authority in the exercise of its powers and duties. In this regard, the Alaska Supreme Court has stated:

As we have emphasized on previous occasions, “the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate.” *Mobil Oil*, 518 P.2d

at 98-99.¹ We have similarly emphasized that “[t]he standards for incorporation set out in AS [29.05.031] were intended to be flexibly applied to a wide range of regional conditions.” *Id.* at 98.

Yakutat v. Local Boundary Com’n, 900 P.2d 721, 728 (Alaska 1995).

The Court has also stated:

We find the selection of annexation method made by the commission and approved by the legislature to be controlling. . . . We find no such fetters imposed upon the commission’s discretion. The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which we will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion.

Port Valdez Company, Inc. v. City of Valdez, 522 P.2d 1147, 1151 (Alaska 1974) (footnote omitted).

Finally, questions of political and public policy have been determined by the Alaska Supreme Court to be beyond the province of the court. *See United States Smelting, Refinery & Mining Co. v. LBC*, 489 P.2d 140, 143 (Alaska 1971) (the desirability of annexation is a “political question” beyond the compass of judicial review).

The Commission hereby acknowledges that such powers and duties carry with them the responsibility to act in a judicious fashion. (Eff. 5/19/89; am 6/2/09)

Section 3. The powers and duties of the Commission include considering any proposed local government boundary change. As set out by statute, such changes are

- (a) proposals for the incorporation of cities and boroughs;

¹*Mobil Oil Corp. v. Local Boundary Com’n*, 518 P.2d 92, 98-99 (Alaska 1974) (emphasis added).

- (b) proposals for the annexation of territory to cities and boroughs;
- (c) proposals for the detachment of territory from cities and boroughs;
- (d) proposals for the dissolution of cities and boroughs;
- (e) proposals for the consolidation of cities and boroughs;
- (f) proposals for the merger of cities and boroughs; and
- (g) proposals for the reclassification of cities.

Other powers and duties of the Commission include

- (h) making studies of local government boundary problems;
- (i) adopting regulations establishing standards and procedures for all types of boundary changes; and
- (j) considering local government boundary changes or related issues requested of it by the Legislature, the Commissioner of Commerce, Community, and Economic Development, or a political subdivision of the State. (Eff. 5/19/89; am 6/2/09)

Section 4. To facilitate the business of the Commission, each Commission member will notify Staff as to changes to the member's schedule that may affect Commission business. (Eff. 6/2/09)

ARTICLE III - AUTONOMY AND LEGAL REVIEW

The Commission is an autonomous body. Consistent with article X, section 12 of the Alaska Constitution and for administrative purposes, the Commission is located within the Department of Commerce, Community, and Economic Development (Department). Under AS 44.-33.020(4), the Department serves as Staff to the Commission and provides administrative and

technical support to the Commission. The Commission's decisions are legally independent of the Department, Staff, and all other State agencies.

The Commission's final decisions are appealable to the superior court under the Administrative Procedure Act at AS 44.62.560 - 44.62.570. Boundary changes approved by the Commission and certain of its adopted regulations are subject to review and preclearance by the U.S. Department of Justice under provisions of the federal Voting Rights Act of 1965, 42 U.S.C. Section 1973; 28 C.F.R. Part 51. (Eff. 5/19/89; am 6/2/09)

ARTICLE IV - MEMBERSHIP AND TERMS OF OFFICE

Section 1. Commission Composition. AS 44.33.810 provides that the Commission consists of five individuals appointed by the Governor. One member is appointed from each of the four judicial districts in the state; the fifth member is appointed from the state at-large. (Eff. 5/19/89; am 6/2/09)

Section 2. Term of Office:

- (a) Commission members serve staggered terms of five years (AS 44.33.810).
- (b) A vacancy occurring in the membership of the Commission is filled by appointment by the Governor for the unexpired portion of the vacated term.
- (c) A member whose term has expired remains on the Commission until a successor is appointed by the Governor.
- (d) The Commission may, by a vote of three or more members, and for good cause shown, recommend to the Governor the removal of a member from the Commission. The Chair shall provide notice to the member proposed for removal at least

10 days prior to the meeting at which the vote is to be considered. (Eff. 5/19/89; am 6/2/09)

ARTICLE V - OFFICERS, DUTIES, AND DELEGATION

Section 1. Officers consist of a Chair and a Vice Chair. (Eff. 5/19/89)

Section 2. Under AS 44.33.810, the member appointed from the state at large is the Chair. The Vice Chair is elected by a majority of the Commission members for a term of three years. (Eff. 5/19/89)

Section 3. The duties of the officers are as follows:

(a) Chair

- (i) call all meetings and hearings (except that three members of the Commission may also call a meeting or hearing). Preside at all meetings and hearings.
- (ii) appoint special committees and chairpersons of special committees.
- (iii) serve as ex-officio member of all committees.
- (iv) serve as the Commission's official representative.
- (v) operate and conduct the business and affairs of the Commission according to the orders and resolutions of the Commission.
- (vi) maintain order and decorum at meetings and hearings, including calling a recess of the meeting or hearing as may be necessary under the circumstance. The Chair will determine when order and decorum has been restored to allow the meeting or hearing to reconvene
- (vii) perform other duties described in these bylaws or assigned by resolution of the Commission. (Eff. 6/2/09; am 6/2/09)

- (b) Vice Chair
 - (i) assist the Chair in the discharge of his/her duties.
 - (ii) assume the duties of the Chair when delegated by the Chair and in the absence or unavailability of the Chair.
 - (iii) act as the parliamentarian for the Commission.
 - (iv) perform other duties in accordance with the orders and resolutions of the Commission. (Eff. __/__/ __; am 6/2/09)

Section 4. Delegation of powers. In case of the absence of the Chair or Vice-Chair, the remaining members may delegate the powers or duties of the Chair or Vice-Chair to any member in order to effect the business of the Commission. (Eff. 6/2/09)

ARTICLE VI - HEARINGS AND MEETINGS

The rules for Commission hearings and meetings are set out in the Commission's regulations at 3 AAC 110.560, 3 AAC 110.570, 3 AAC 110.680, and 3 AAC 110.690.

The Commission will conduct decisional sessions under 3 AAC 110.570 on the record in a public meeting unless there is a basis upon which a decisional session may be held in executive session under AS 44.62.310(d). The Commission also recognizes the application of the following legal principles with regard to its decision making process:

- (a) confidential legal advice from the Attorney Generals' office, or from a lawfully approved contractual legal consultant, provided to the Commission under the attorney-client privilege;

- (b) a draft statement of decision is confidential under the deliberative-process privilege² until the time of the draft's consideration at a public meeting; and
- (c) the unexpressed thought processes or impressions of Commission members in making decisions may be confidential under the deliberative-process privilege.³

The Commission recognizes that application of the deliberative process and executive privileges is reviewable by the Courts. (Eff. 6/2/09; am 6/2/09)

ARTICLE VII - TELECONFERENCE POLICY

The Commission's policy and procedure on use of teleconference to conduct its business and to provide for public participation is set out at 3 AAC 110.690. That policy provides that persons or parties accessing a Commission hearing or meeting by teleconference must pay for participation if there is a fee charged to the Commission by the teleconference provider unless the fee is waived by order of the Chair. For persons or parties who access a Commission hearing

²The deliberative process privilege "is a widely recognized confidentiality privilege asserted by executive officials. It rests on the ground that public disclosure would deter the open exchange of opinions and recommendations between government officials . . . [and] is intended to protect the executive decision-making process, its consultative functions, and the quality of its decisions. . . . This court has never explicitly adopted the deliberative process privilege by that name. We have however, accepted the "executive privilege" articulated in *United States v. Nixon*, 418 U.S. 683, . . . which encompasses the same policy concerns." (*Capital Information Group v. State*, 923 P.2d 29, 33 (Alaska 1996) (footnotes omitted).

³The Alaska courts include this in the deliberative process privilege.

We stated in *Capital Information Group v. State, Office of the Governor* that we considered the terms "executive privilege" and "deliberative process privilege" to be synonymous for purposes of that discussion. But the two terms are not identical. Instead, the deliberative process privilege is a "branch" of a broader group of governmental privileges. **The roots of the deliberative process privilege lie in the common law; it protects the mental processes of government decisionmakers from interference, not constitutional notions of separation of powers. Therefore, the question is not whether the communication relates to a duty mandated in . . . the Alaska Constitution, but whether disclosure of the communication sought would affect the quality of governmental decisionmaking.**

or meeting teleconference from a State Legislative Information Office (LIO) site, the Commission will bear the cost of the teleconference call where a Commission member is participating and where the meeting or hearing involves a matter of particular importance in the area in which the LIO site is located. However, the Commission will not bear the expense of connecting LIO sites when matters on the agenda deal with issues of a general nature such as training or orientation of new Commissioners or discussions regarding annual reports or bylaws. A diskette of a meeting or other proceeding in which the cost of an LIO site or teleconference fee would not be covered by the Commission will be available free of charge to a person who is interested but does not wish to pay for attendance by teleconference. Request for such a diskette should be made to Staff. (Eff. 6/2/09)

ARTICLE VIII - COMMITTEES

The Commission Chair may designate ad hoc committees or task forces to accomplish special purposes to be reported back to the Commission as a whole. Persons other than Commission members may serve on the Commission's ad hoc committees and task forces. The Open Meetings Act (AS 44.62.310 – 44.62.312) does not apply to committees on which two or fewer Commissioners participate. (Eff. 5/19/89; am 6/2/09)

ARTICLE IX - RULES OF ORDER

Section 1. Unless otherwise provided by law or these Bylaws, the Commission's procedures for its meetings and hearings are governed by Robert's Rules of Order (Newly Revised, 10th edition). (Eff. 5/19/89; am 6/2/09)

Gwich'in Steering Committee v. State, Office of the Governor, 10 P.3d 572, 578-9 (Alaska 2000) (emphasis added; footnotes omitted).

Section 2. The purpose of parliamentary rules is to assist the LBC in transacting business. Whenever the rules fail to serve this purpose, and are not required by law, they may be suspended expressly or by contrary action. A failure by the LBC to conform to procedural rules does not invalidate its official actions. If, however, the rules affect procedural requirements under 3 AAC 110.400 - 3 AAC 110.650 or 3 AAC 110.700, relaxation or suspension is governed by the requirements of 3 AAC 110.660. (Eff. 5/19/89; am 6/2/09)

Section 3. The rules of order dealing with the process for reconsideration of votes at a meeting are separate and distinct from the rules (regulations) that apply to the process for reconsideration of a Commission decision under 3 AAC 110.570 and 3 AAC 110.580. (Eff. 6/2/09)

Section 4. The use of proxy votes by commission members is prohibited at public meetings. The votes of commission members at a public meeting must be recorded and noted in the minutes of that meeting. (Eff. 6/2/09)

ARTICLE X - ETHICS; FINANCIAL DISCLOSURE; *EX PARTE* CONTACT

Section 1. Commission members are required to comply with AS 39.52.010 - 39.52.960, the Alaska Executive Branch Ethics Act and 9 AAC 52.010 - 9 AAC 52.990, the related ethics regulations. The Commission adopts the general goals advanced by the Executive Branch Ethics Act, which are (1) to discourage public officials from acting upon personal or financial interests in the performance of their public responsibilities; (2) to improve the standards of public service; and (3) to promote and strengthen the faith and confidence of the people of this state in their public officers. As provided by AS 39.52.960(8), the Chair is the designated supervisor for the Commission members. (Eff.5/19/89; am 6/2/09; am 5/10/10) [**Editor's note:** supplemental ethics standards were first established by resolution of the Commission on May 24, 1988.]

Section 2. Ethics Considerations and Recusal. (a) In addition to the standards established by the Executive Branch Ethics Act in AS 39.52.010 – 39.52.950 and the related ethics regulations in 9 AAC 52.010 – 9 AAC 52.990, the following rules apply to members of the commission:

(1) Unless exempted under (b) of this section, a member of the commission may not participate in a proceeding before the commission if the member was employed by or had a contract with a party in the proceeding within a two-year period preceding the filing of the proposal with the commission.

(2) Unless exempted under (b) of this section, a member of the commission may not participate in the consideration of a proposal before the commission if the proposal affects an area or territory in which the member resides or owns real property. This subsection applies to action on area or territory that is proposed for annexation, consolidation, detachment, dissolution, incorporation, merger, or reclassification.

(3) Unless exempted under (b) of this section, a member of the commission may not participate in a proceeding if the member has a personal or financial interest in a party to the proceeding or an organization that advocates a position with respect to the proceeding.

(b) Commission members subject to the prohibitions in section 3(a) with respect to a matter before the commission must disclose the circumstances and the chair or the commission will determine whether the member may participate as provided in AS 39.52.220. The chair or a majority of the commission members, excluding the involved member, may waive a prohibition if the involved member's conflict is minor and inconsequential and the member's participation in the matter will not interfere with the full and faithful discharge of duties as a commission member. Examples of a minor and inconsequential conflict include:

(1) The conflict is insignificant in relation to the size, population, and other characteristics of the area or territory encompassed by the petition;

(2) The area or territory that is the subject of the petition is not in close proximity to the residence or other property owned by the member as specified in (a)(2) of this section;

(3) The nature of the interest of the member to a party in the proceeding, or in an organization that advocates a position with respect to the proceeding at issue as specified in (a)(3) of this section, is insignificant.

(c) The procedures for addressing ethics conflicts under this section are those set out in the Executive Branch Ethics Act at AS 39.52.220, 39.52.230, and 39.52.240, and the ethics regulations at 9 AAC 52.120.

(d) A request for recusal of a commission member under this section will be considered in accordance with the provisions of AS 39.52.230.

(e) “Recusal” means withdrawal as, or disqualification of, a commission member in a proceeding because of a conflict of interest, personal prejudice, or some other good reason why the member should not sit in the interest of fairness. (Eff. 5/19/89; am 6/2/09; am 5/10/10)

Section 3. Commission members are also subject to the *ex parte* prohibitions in 3 AAC 110.500. (Eff. 6/2/09; am 5/10/10)

Section 4. Each member of the Commission recognizes the requirements for, and importance of, timely filing an annual financial statement with the Alaska Public Offices Commission under AS 39.50.010 - 39.50.200 and 2 AAC 50.010 - 2 AAC 50.200, 2 AAC 50.450 - 2 AAC 50.470, and 2 AAC 50.905 - 2 AAC 50.920 and that statements must be filed by March 15 for the previous calendar year. Failure to timely file may be cause for removal from the Commission under AS 39.50.080. (Eff. 6/2/09; am 5/10/10)

ARTICLE XI - PUBLIC RECORDS AND ELECTRONIC MAIL

Each member of the Commission recognizes the application of the public records laws to documents created by or filed with the Commission and the Department. Included in the definition of *record* under AS 40.21.150(6) are electronic records, such as electronic mail (e-mail). To avoid concerns or allegations that e-mail is used among members to circumvent public meeting laws, members should avoid sending e-mail to each other on any Commission-related matter except for scheduling and agenda issues. E-mail on all other Commission-related matters, such as comments on pending issues, draft decisions, or draft regulations, should be sent to Staff for presentation to the Commission as a whole for consideration at a public meeting or hearing. (Eff. 6/2/09)

ARTICLE XII - DECISIONS, MINORITY OPINIONS, ERRATA

Section 1. Draft decisions. Any Commission member may volunteer to author all or a portion of a written decision required under 3 AAC 110.570(f). In the absence of such an election, the writing of the draft decision will be delegated to Staff and written in coordination with the Chair or the Chair's designee. Each draft decision must include an analysis of the boundary-change standards applicable to the case and how the petition met or failed to meet each standard. The draft must include a brief summary of the petition and the proceedings. Until considered by the Commission at a public meeting, draft decisions are confidential.

A draft decision may be distributed to Commission members only by Staff, whether authored by a member or Staff. With concurrence by the Chair, Staff will use its best efforts to distribute a draft decision to each member of the Commission within fifteen calendar days after the Commission's decisional meeting is held under 3 AAC 110.570(a)-(d), unless circumstances re-

quire an extension by the Chair of that timeline or a relaxation of procedures under 3 AAC 110.660. The Commission will meet to discuss the draft decision within eight days after it has been disseminated by Staff. Unless the Commission determines otherwise under AS 44.62.310(d), the draft will be considered in public meeting rather than in executive session.

At the meeting, each Commission member may present any suggested changes to the draft. A member should, whenever possible, submit his or her proposed amendments to Staff for copying and distribution to the other members in advance of the meeting.

If there are no substantive changes to be considered, the draft decision will proceed to final processing by Staff and the Chair so that the decision may be issued in accordance with 3 AAC 110.570(f). (Eff. 6/2/09)

Section 2. Minority Opinions.

(a) **Dissenting Opinion.** If a member of the Commission disagrees with the majority vote or the outcome of a proceeding, he or she may offer a dissenting opinion. A dissent shall not be included with the statement of decision. It must be issued separately from the majority's decisional statement. The dissenting opinion is subject to review, but not modification, by the other Commission members. The dissenting member should express his or her intent to dissent at the decisional meeting held under 3 AAC 110.570. The dissent may be authored by the dissenting member, or he or she may request assistance from Staff in that effort provided that the Staff person assisting did not draft the draft decision. The draft dissent should be available for dissemination at least four days before the date set for the Commission's public meeting on the relevant draft statement of decision. The draft dissent may be disseminated only in accordance with the rules

for disseminating the draft decision. The draft dissent may be discussed at the public meeting at which the relevant statement of decision is considered. A dissent to a statement of decision will be issued by Staff in the same manner as the final decision of the Commission.

(b) Concurring Opinion. When a member of the Commission agrees with the majority vote and the outcome of a proceeding, but disagrees with the majority's reasoning or wishes to present a different point of view, he or she may offer a concurring opinion in the same manner provided for a dissenting opinion above.

In the event that discussion of the draft statement of decision or a dissenting or concurring opinion requires additional time for consideration, the Commission may, under the provisions of 3 AAC 110.660, extend the deadline for the filing of the Commission's written statement of decision. In the event that the Chair or Vice Chair is the dissenting or concurring member, the other Commission members may extend the deadline. (Eff. 6/2/09)

Section 3. Errata The Commission may at any time correct a clerical or typographical error, an error of calculation or other similar error, or a factual error in its decision, which is not substantive and which would not alter the decision of the Commission, without prior notice to the parties. The Staff, with concurrence of the Chair, may correct a clerical or typographical error without prior notice to the parties. A correction under this section is made by issuance of an errata notice. (Eff. 6/2/09)

ARTICLE XIII - STAFF FOR THE COMMISSION

The Department of Commerce, Community, and Economic Development serves as Staff for the Commission under AS 44.33.020(a)(4). The role of Staff is set out in 3 AAC 110.435. The drafts of Staff's recommendations, including reports issued under 3 AAC 110.530 and draft decisional statements of the commission, are confidential until they are published or considered at a public meeting. (Eff. 6/2/09)

ARTICLE XIV - AMENDMENT OF BYLAWS

These bylaws may be amended at any meeting of the Commission by adoption of a motion or approval of the amendment by three or more Commission members. These Bylaws may be relaxed or suspended by the Chair or by a majority vote of Commission members. (Eff. 5/19/89; am 6/2/09)