

**Haines Borough Address 8/25/15 regarding:  
Minor Offence Ordinance No. 15-06-413**

To the august body of the Haines Borough Assembly,

It is not my intent to appear here with an adversarial spirit. I have great respect for the heavy obligations of your seats of authority and responsibly, and whether or not I agree with the many individual decisions that you make, you do not often see me here trying to micro-manage your job. Whether I voted for each of you specifically or not; I, as a member of this community-- we --collectively voted for you to occupy the seats of governance in the Haines Borough so that we don't have to consume our time and energies organizing and maintaining our social tranquility. But social tranquility is not your only task as you occupy those honorable seats of great power. Let's review the details directly as spelled out in the opening to the Preamble and Bill of Rights to the Haines Borough Charter:

*"We the people of the Haines Borough [that's us], exercising the power of home rule granted by the Constitution of the State of Alaska [Article 10, Clauses 11] in order to achieve common goals [tranquility of unity], to support individual rights, to form a more responsive government, and to secure maximum control of our own local affairs, hereby establish this charter. ..."*

There are four specific line-items that are the declared reasons for our organized Home Rule governance in the Haines Borough. But in yesterday's generation that wrote them, there are a few ideas here that might come across differently in today's generation that reads them. The things that may immediately jump out to a local government with ideas of "more power" are; *responsive government*, and; *to secure maximum control*. But by asking questions of the phrases we can easily comprehend the actual intent.

**More responsive to whom?**

To US. To we the people of the Haines Borough.

We wanted a government that is more responsive to our local desires than a central government, which we cannot easily access and/or influence. This is about maintaining our individual rights while living in an organized community. This concept is actually recognized, and allowed for, in the State Constitution regarding local governance:

*"...Each borough shall embrace an area and population with common interests to the maximum degree possible. ..."* - Article 10, Clause 3.

The phrase *population with common interests* specifically recognizes that different groups of people tend to have different goals and ideas regarding communal self-management that will not cohere well in a larger, more all-encompassing government, and this powerful right of smaller groups is specifically granted by the State Constitution. The first tenant in the described purpose of Article 10 regarding Local Government is "to provide for maximum local self-governance with a minimum of local government units." Meaning: "Get as many likeminded people as you can into your common scope of local governance." This is a delicate balance between individuals and communities when it comes to standards of conduct between associated people.

It is quite clear then, that the term *responsive government* is not meaning or suggesting "more responsive to the State." This "power of the people" concept of interpretation marries perfectly with the other four tenants, such as; *to support individual rights*. As an individual, with rights in a collective community, I need ready access to my government, which can then be more responsive to my concerns, desires, and ideas regarding communal governance that affects me and my rights directly. This is the very purpose of the State granting Home Rule borough governments.

Now on to the second question asked of our Preamble that over-rules all motives within this Charter:

## Who is granted the power and authority to Secure maximum control?

Again this is speaking regarding *the people of the Haines Borough* in our *more responsive government* as it regards our own local affairs as distinct from any unifying State goals and affairs.

It isn't the State that is granted the power to secure maximum control of our local governance. But it isn't the Assembly either. It's; We the People of the Haines Borough. It's not the Assembly's government; it's OURS. This local government was established to ensure that we, who live here, have secured maximum control over our own lives and community. The advantage is that the Assembly is elected from among those who live here, so it's US sitting in those seats, not some bureaucrat far removed from the reality of our local lives. (It is noteworthy that the authors of this ordinance do not).

Finally, while there is indeed a great volume of other legally expounded evidences to show just how this whole thing works that we will not discuss now, allow me to include just one more point; the next phrases found in our Charter's Preamble and Bill of Rights:

*"This charter guarantees to the people of the Haines Borough the following rights that are in addition to the rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alaska: The right to a government of the people, by the people and for the people, which safeguards our diversity, [and] harmony between neighbors...*

*The right to access a well maintained public record...so that the citizens of the borough may retain control over the affairs of the government.*

*The right to enjoyment of private property, chosen lifestyles, traditions, employment, and recreational activities without unnecessarily restrictive or arbitrary laws or regulations..."*

It is far too easy to relegate formerly written statements to "generalized concepts" and not consider them binding or extremely important in their specific composition. But they are.

It must be understood, above all factors that someone may want to add later, that nothing in the Haines Borough Charter can lawfully negate these additional rights protected even beyond what is already protected by the other two Constitutions mentioned. There are a good number of listed "offenses" in this proposed ordinance that directly violates at least one of the categories specifically listed in the above Bill of Rights. But that is an argument for another time.

It has been a well-established fact that all governments tend to desire more power over the governed, and as local and small as this government is, it is not above that desire.

Governments are not the people. They are established **by** the people.

I understand that while you were once individually categorized as "a part of the people," sitting in the seats of government you are now necessarily categorized as "of the government." Your focus has necessarily changed as it is your job to maintain the government in good health as best you can, distinct from the people's job to maintain their individual freedoms in good health as best they can. This is a very daunting and thankless job. And I am grateful that you have chosen to do it.

I have simply come here to remind you that the will and desire, and especially the above listed rights, of the people must be maintained as a primary focus even above the health of the government, who by nature never can satiate its hunger for more money and more control.

This brings me to my main argument, among many others, regarding this Ordinance 15-06-413 as proposed. Limited time forces me to abandon the volume of Preamble-violating Clauses and concepts of this ordinance, and I will only now address the all-encompassing one.

\* \* \*

## Oligarchy by Judicial Activism:

As I review the Assembly Agenda Bill No. 15-576 page 7A regarding the Comprehensive Minor Offence Ordinance, I notice that the originator is the Borough Attorney, and it was recommended by him as well as the borough manager. In the Summary Statement it explains that this ordinance is in obedient response to a

requirement mandated by a District Court ruling. This responding ordinance was created by borough attorneys, reviewed by staff (whoever “they” are), as well as by the court-system itself.

Apparently it all looks good and legal to them, so who am I, a local nobody, to think my raised-hand response has any merit whatsoever? How do I think my opinion has any standing against the legalese of several attorneys and judges?

I simply answer that; **I am a “we the people” of the Haines borough, a home rule form of governance.**

And what I have to say today is vitally important on the grandest of scales. It would tend to sound like conspiratorial paranoia if we had not been watching news feeds over the recent past years describing an out-of-control Federal government doing all manner of Nancy-Pelocy-Insane things, recently ending in a Supreme Court that now re-writes law, even to the public chagrin of the dissenting judges themselves. But that problem is “out there,” we small-time locals cannot affect a change in that arena. We have our own government to manage and affect. But the problems are the same.

Our form of local governance is not lawfully an oligarchy of judges, be it local, or of Juneau, or even of the AK State Supreme Court itself. In fact, like the Federal, our State Constitution does not grant the Judicial branch the power to write law at all. That right remains solely in the hands of the Legislative branch. Yes, there are rules-of-procedure that the Judicial is allowed in the self-management of its prescribed system, but those “in house” rules-of-procedure have no standing in attempting to mandate borough ordinance, which is a legislative function.

In case you hadn’t noticed; Attorneys are a part of the Judicial system, very much like Assemblymen are a part of the borough government. We must guard against their natural tendencies to placate the Judicial system that feeds them. While the borough attorneys are paid from the sums that comes from my/our hard earned money given to the borough for management, I am forced to pay my own work in defense against what they propose at my expense, and because of this I have not found the time to adequately prepare my argument. It does not please me to see that this ordinance was written by Attorneys at the direction of the Court. This concept is far from self-governance by Home Rule, but it happens by the same slothfulness now emulated by our Federal Legislatures. Thank you at least for reading this ordinance before you attempted to pass it.

Some years back I addressed this Assembly regarding letting a Juneau Judge change your decision on a vote in spite of the fact that she found you had done nothing unlawful. I warned you then that this was a case of judicial activism in allowing a single judge the power to rule over our local community instead of the six elected Assemblypersons granted that power by the people.

But just as then; you today, in applying your rightful power, have the granted authority to choose to adopt the Court’s/ attorney’s recommendations, but it would be highly ill-advised to do so on the following grounds *beyond* the foundation of a faulty and powerless *mandate* by the rogue Court now dictating legislation. If you pass this ordinance you become the ruling puppets of an oligarchy. This is not to be tolerated.

But beyond the foundational flaw that perpetrates this ordinance; let’s now discuss the greatest of numerous foundational flaws within the ordinance itself. Curiously, directly related to the Judicial Activism of my previous argument.

\* \* \*

### **Eliminating the Last Protection Against Tyranny:**

There are several checks-and-balances designed into our American form of governance that were intended to diminish the potential of a run-away government. Among these is the design of separate but accountable branches. If all else fails to restrain a rogue government there is one last sure protection that keeps us free.

The right of a trial by Jury of our peers. i.e. a kind of local government with common interests.

Why then does this Assembly voluntarily accept the work of judicially favorable attorneys in gifting to the power-hungry Courts our last protection? I quote:

*"As a minor offense, trial is by the court without a jury, and there is no right to court-appointed defense counsel" - Haines Borough proposed Ordinance No. 15-06-413, 1.24.030 Disposition of minor offenses.*

Forgive me, but that does not sound like a ruling "of the people, by the people, and for the people" of the Haines Borough; that sounds more like a power hungry institution that wants less problem with the people it manages against their will. And while I don't expect or anticipate finding myself voluntarily in violation of any of the infractions listed at this point in time, this still scares the tar out of me for its Totalitarian form: The Court ordered the ordinance, then the court tries the accused of violating the ordinance, and that without a jury.

If only we lived in America!

And if that is not bad enough, Court Rule 3(f) grants the arresting officer the ability to make an accusation of "probable cause" without any need to state the grounds or provide the evidence of it beyond; "I swear!" Welcome to Nazi Germany!

There is a Clause in the HB Charter (1.24.060 B.) that makes you guilty even if you just *thought* you were guilty, and Clause 1.24.060 A. makes you guilty even if you didn't actually do anything wrong. Then there is Court Rule 10(A) that allows the judge to take circumstances into account and reduce the listed fine unless the Borough government expressly forbids it... and guess what? Our Haines Borough figures *"What the heck? If we are going to charge them, by gum, we are going to collect all we can!"* (1.24.040 "The fines set forth below may not be judicially reduced"). Welcome to the Hell of your nightmares!

And while this Assembly insanity may have been originally excused away as simply a desire to streamline the management of chronic offenders at a much reduced cost to the borough in both time and moneys, the motive of the Court that mandated this process does not allow this fundamental change to be excused. I quote:

"IN THE SUPREME COURT OF THE STATE OF ALASKA  
ORDER NO. 1797

IT IS ORDERED:

District Court Criminal Rules 8, 8.1 and 8.2 are renamed and renumbered as Minor Offense Rules 1-22 as follows..."

And just like that, what used to be lawfully classed as crime, which demanded a trial by jury, is now judicially classed as "Minor Offense."

How sweet.

It would take a few hours to explain in detail how this complex magical handwaving is done, but the important thing to note here is that the creation of a new category of crime as "Minor Offence" leaves the accused within the criminal court, but now missing the trial by jury (See Rule 15 regarding the application of criminal rules regarding a Speedy Trial as one example).

Remember; these "minor offenses" used to be crimes as defined by the Legislature, so they are still crimes. But they are treated with new "judicial rules" that don't allow a trial by jury-- in direct violation of the Constitution itself in Article 1 Clause 1, Clause 11, and defined by Clause 12:

*"Criminal administration shall be based upon the following: The need for protecting the public, [and/or] community condemnation of the offender..."*

Many of the listed offenses in this Ordinance fall directly within this partial definition, but now have no jury protection against borough abuses of their declared protected rights of lifestyle and customs among others.

OK, so these are not treated as Criminal offenses anymore:

Article 1 section 16; **Civil Suits; Trial by Jury** declares:

*"In civil cases where the amount in controversy exceeds \$250, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law."*

This magical and unconstitutional space between Civil and Criminal jurisdictions now called "Minor Offences" is a total fabrication of the Isaiah 19:14 perverted Courts following the design of Agenda 21; a UN treaty intending the self-destruction of independent nations. But again, we don't have the time to explore this, even though it directly affects our proposed ordinance today on our way to a designed assisted political suicide here at home.

We little people cannot fix these bigger problems in the far-away regions of State and Federal governments, but we can sure keep that perversion from crawling up our skirt here at home.

I fully understand that as law abiding responsible Assemblypersons, you desire to make the rules-of-home less convoluted, and the Court has "preemptively" volunteered to help, but I implore you as the rightful Assembly of my home town; DO NOT pass this ordinance as written or you *become* the destroying enemy of this great nation at its grass roots. Find another way.

And fire your attorney.

Sincerely,  
Kyle Ponsford  
HC 60 Box 3394  
Haines AK, 99827

c.c. via hand delivery 8/25/2015:  
Assemblyman Dave Berry Jr.  
Assemblyperson Diana Lapham  
Assemblyman Michael Case  
Assemblyperson Joanne Waterman  
Assemblyman George Campbell  
Assemblyman Ronald Jackson  
Borough Manager David Sosa  
Borough Clerk July Cozzie

\*