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MEMORANDUM

TO: Haines Borough
Brad Ryan, Acting Borough Manager

FROM: Patrick W. Munson
Boyd, Chandler & Falconer, LLP 

RE: Amended Minor Offense and Fine Schedule Ordinance based on Ad Hoc
Committee Recommendations

DATE: February 23, 2016

We received two sets of comments from the Committee tasked with reviewing the Minor Offenses Ordinance. We have incorporated all the comments received into the attached updated draft ordinance to the extent possible. For those comments we were not able to incorporate, we have provided follow up questions and/or explanation to try to more clearly understand the Committee's goal with regard to the particular comment. These questions and comments are set forth below and in the attached PDF file. We hope these are helpful and accomplish the Committee's goals, and look forward to discussing the remaining issues further at your convenience.

Attorney responses to Ms. Vogt's comments dated February 4, 2016:

General comment re ordinance numbering: This is achievable but will take significant restructuring of the ordinance and then cross-checking to ensure all internal code references are correct. It may not be a very efficient use of borough resources since the impact on the final product is negligible, but we can certainly do this if directed by the Assembly or Committee.

P. 1 § 3 - This has been changed to be left blank.

§ 4 - 1.24.010(B) - Changed
1.24.010(C) - Quoted language does not appear in text of proposed ordinance. The idea of this paragraph however is necessary to ensure meaningful enforcement of many ordinances, so the proposed change is probably not practical.

P. 2 1.24.020 - We have made this change as requested.

1.24.040 - We have clarified this provision to more clearly require the court to impose the amount stated in the fine schedule. Although technically redundant, we recommend including the final sentence clearly eliminating any judicial discretion to lower the fine (based on the understanding that, as a policy matter, the borough does not want the court to have such discretion).

P. 15 § 8 - Changed formatting as noted.

- We have no opinion as to “partial months” and have added the proposed phrase. Note that some people may be concerned about what constitutes a “partial month”.

- As to “terms” of licenses, we understand this language could be considered superfluous and have removed it based on an assumption that the licenses actually issued do not include terms, but this has not been confirmed. Even if that is not the case, the substance of this section is to provide a penalty for failing to obtain the license, so the “terms” reference may not be particularly necessary.

P. 16 § 10 - Deleted “such” (twice) and clarified final reference to refer to offender only.

- As to administrative enforcement, this section (5.04.150) only specifies that a violation on each day is a separate offense. It does not provide any enforcement authority to borough personnel. Borough staff have no authority to levy fines under this section (or any other that are characterized as minor offenses since only a court levies the penalty for a minor offense). As with all minor offenses where the defendant chooses to contest an allegation that a violation occurred, the court will be the entity determining if the violation occurred based on competing testimony of borough staff and the accused violator.

- As to 5.04.140, the same general response applies. Borough staff or police officers might be the person who realizes that an entity is operating a business in violation of its permit, which could justify a citation for the violation. The citation is not itself evidence of guilt – it is essentially an accusation. If the permit holder wants to argue that they did not violate the condition alleged, he or she can appear in court and the borough will be required to carry its burden of proving the condition was in fact violated by offering testimony from staff or officers (who witnessed the violation, for example).

- We did not receive an attachment (“TAB recommendations” perhaps?).

P. 19 § 18 - Changed.

§ 19 - We have changed this section to require the borough Police Department to enforce the smoking ban. We have proposed allowing a complaint to be filed with the Manager (but not authority to issue a citation), but this is optional. The only other reference to “the manager or designee” is at Section 48 (HBCO 18.30.080) which is not an enforcement authority ordinance and should therefore not be objectionable since it only allows staff to write a cease and desist letter. Other instances of “manager” have been amended to reflect our understanding of the concerns underlying these recommendations (i.e., that only police officers issue citations). See § § 19, 40, 48, etc.

P. 20 § 20 - Changed.

P. 25 § 25 - Changed Chapter 10.08 to Chapter 10.09. All cross references updated to reflect same.

P. 29 § 34 - Changed to each “week” rather than “day”.

§ 35 - Same.

P. 30 § 38 - Changed.

§ 40 - Changed to delete “manager or designee”.

§ 42 - No change requested in comments. Please advise.

Please advise with regard to Title 18 issues discussed in our office’s responses to the other set of committee recommendations.