

# Memorandum

To: Members of the Haines Borough Assembly

From: Mike Denker, 203 Union St. / P.O. Box 298, Haines, AK 99827

Re: Procedural issues surrounding the Minor Offenses Ordinance (Ord. 15-06-413)

Date: September 21, 2015

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This memorandum concerns various procedural issues surrounding the assembly's consideration of the Minor Offenses Ordinance (Ord. 15-06-413). As such, the argument presented does not address the substance of the ordinance, or the reasoning behind why the ordinance should or should not be adopted. I respectfully request it be included in the public record for the September 22, 2015 Assembly Meeting.

*NOTE: A "Short Answer has been presented on page two for the reader's convenience.*

## *Question Presented*

On September 22, 2015, the Haines Borough Assembly is schedule to vote to adopt Ordinance 15-06-413, the Minor Offenses Ordinance. The Public Safety Commission (PSC) and the Port and Harbor Advisory Committee (PHAC) were tasked to review various portions of the ordinance. The PSC held public meetings on August 21 and August 28 to review the ordinance and make recommendations. The PHAC held a public meeting on August 27 to review the ordinance. Meeting minutes, recommendations and supporting information from these meetings has not been included in an assembly meeting packet.

The question presented is whether the Assembly should postpone the vote to adopt Ordinance 15-06-413 until all committee minutes, recommendations and supporting information has been included in an assembly meeting packet and another public hearing is held.

*Short Answer*

Yes. The Assembly must postpone the vote to adopt Ordinance 15-06-413 until all committee minutes, recommendations and supporting information related to the ordinance has been provided in an assembly meeting packet and another public hearing is held.

I.

The Haines Borough Code, the Haines Borough Charter, and the Alaska Open Meetings Act all argue strongly for postponing the vote until all meeting minutes, recommendations and supporting information has been included in an assembly meeting packet. Pgs. 2 – 4.

II.

The Petition Clauses of both the Alaska and United States Constitutions argue strongly for holding another public hearing once previously unreleased committee minutes, recommendations and supporting information have been included in an assembly meeting packet. Pgs. 4 – 6.

*Argument*

I.

The Haines Borough Code, the Haines Borough Charter and the Alaska Open Meetings Act argue strongly for postponing the vote.

First, the process set out in Haines Borough Code ensures committee minutes, recommendations and supporting information is included in an assembly meeting packet before a vote is held. Haines Borough Code § 2.60.120 states, “The minutes shall be filed in the office of the clerk as soon as feasible, but in no case later than two weeks following the committee meeting, and shall be a public record open to inspection by any person.” Next, HBC § 2.10.030 (A) states,

“The mayor, with assistance from the clerk, shall arrange [the committee information] according to the order of business and the clerk shall furnish each member of the assembly, the mayor, the manager and the chief fiscal officer with a copy of the same in packet form five calendar days in advance of the assembly meeting.” *Haines, Alaska, Borough Code § 2.10.030 (A)*.

This process ensures that committee information will be included in an assembly meeting packet in advance of assembly votes on important community matters.

Second, the process in Code is designed to align with the Haines Borough Charter. The Charter Preamble and Bill of Rights guarantees to the people of the Haines Borough;

“The right to access a well maintained public record of all actions of public officials in accordance with this charter, so that the citizens of the borough may retain control over the affairs of their government.” *Haines, Alaska, Charter Preamble and Bill of Rights.*

Timely release of public records such as committee meeting minutes and supporting information is essential to ensuring this guarantee in the Haines Charter.

Lastly, the process in Haines Borough Code is designed to align with the State policy regarding meetings set out in the Alaska Open Meetings Act. This section of Alaska Statutes states, “the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” *Alaska Statutes § 44.62.312 (a)(4)*. More significantly it states, “the people’s right to remain informed shall be protected so that they may retain control over the instruments they have created.” *Alaska Statutes § 44.62.312 (a)(5)*. Thus, the State requires that all information such as committee minutes and supporting information be provided so “the people of [the] state do not yield their sovereignty to the agencies that serve them.” *Alaska Statutes § 44.62.312 (a)(3)*.

Yet, even though the Charter, Code and Alaska Statutes referenced above provide these mandates, all information from three committee meetings where the Minor Offenses Ordinance was addressed was not included in the September 22 assembly meeting packet. For instance, the Public Safety Commission (PSC) held a public meeting on August 21 to go over the public safety portions of the minor offenses list. *See Haines, Alaska, Borough website, Public Safety Commission meeting notice, August 21, 2015*. The minutes and other supporting information from this meeting were due to the office of the clerk on September 4, well ahead of the agenda preparation deadline. However, the information from this meeting is not included in the assembly meeting packet for the September 22 meeting.

Additionally, the Port and Harbor Advisory Committee (PHAC) held a public meeting on August 27 to “Review Ordinance 15-06-413”. *See Haines, Alaska, Port and Harbor Advisory Committee, Aug. 27, 2015 Public Notice and Agenda*. Here again, this information was due to the office of the clerk on September 10 ahead of the agenda deadline. And here again, this information is not included in the September 22 assembly meeting packet.

Lastly, the PSC held a public meeting on August 28 “to forward...recommendations...concerning the reviewed public safety section of the Minor Offenses list as well as recommendations concerning the Minor Offenses ordinance in general.” *See Haines, Alaska, PSC, Aug. 28, 2015 Public Notice and Agenda*. Once again, this information was due on September 11 well

ahead of the September 22 agenda deadline. And once again, this information is not included in the assembly meeting packet for the September 22 meeting.

Now, it may be argued that a committee needs to approve their minutes before they can be delivered to the office of the clerk. However, this is incorrect. The process in Haines Borough Code is not structured as such. Code is structured to have committee information such as meeting minutes delivered to the assembly and the public as soon as possible so this information can be considered and approved by the Assembly before important decisions. *Ref. HBC 2.60.120; HBC 2.10.030 (A)*. The Code is designed so that committee minutes are either approved by the assembly during assembly meetings as presented, or amended if assembly members, members of the committee, or members of the public argue successfully for a change in the content of the information.

So, it is clear that the Borough has already violated the process set out in HBC 2.60.120 and HBC 2.10.030 (A) that requires timely inclusion of committee meeting minutes, recommendations and supporting information in assembly meeting packets. It is also clear that a failure to include committee minutes, recommendations and supporting information in a timely manner in an assembly meeting packet breaches the “well maintained public record” clause of the Haines Borough Charter Preamble and Bill of Rights. However, if the Assembly votes to consider adoption of the Minor Offenses Ordinance on September 22, this action will bring the borough in violation of the Alaska Open Meeting Act as well. This breach of State law is because the public will not have been provided all the information so they may control the instrument they have created; that instrument being the Haines Borough Assembly. Therefore, the Assembly must postpone the vote to adopt Ordinance 15-06-413 to adhere to the guarantees in the Haines Charter, as well as the requirements set out in the Alaska Open Meetings Act.

## II.

The Petition Clauses of both the Alaska and United States Constitutions argue strongly for holding a public hearing once the previously unreleased committee minutes, recommendations and supporting information have been included in an assembly meeting packet.

Both the Alaska and United States Constitutions protect a person’s right to petition the government. The Alaska Constitution states, “The right of the people...to petition the government shall never be abridged.” *Alaska Const., Art. 1, Sec. 6*. Additionally, the Petition Clause of the United States Constitution guarantees “the right of the people...to petition the government for a redress of grievances.” *U.S. Const., Amend. I*. Thus, the right to petition the government is a central feature in both constitutions.

A petition is more than merely a statement on a page followed by a list of signatures. A petition is “a formal, written request addressed to some government authority.” *Black’s Law Dictionary, Pg. 1145 (6<sup>th</sup> Ed. 1990)*. In general, “The

right to petition is...concerned with expression directed to the government seeking redress of a grievance.” *Duryea v. Guarnieri*, 564 U.S. \_\_\_ (2011), Pg. 7. A petition “conveys the special concerns of its author to the government and, in its usual form, requests action by the government to address those concerns.” *Id.*, Pg. 8; see also *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-897 (1984). As such, petitioning occurs whenever a person expresses concerns to the government, and seeks action by the government to address those concerns.

Public hearings allow the public to exercise the right to petition elected officials during the lawmaking process. Public hearings are designed to provide a person an opportunity to be heard and provide input on matters of importance to the community as a whole. This opportunity can also be used to express concerns to the government regarding the legislation being considered, and request specific actions to address those concerns. Thus, public hearings are uniquely tailored to allow the will of the people to be realized in the lawmaking process, and for our laws to reflect that will.

However, if the Assembly fails to hold a public hearing before voting to adopt the Minor Offenses Ordinance once committee minutes, recommendations and supporting information have been included in an assembly meeting packet, the public’s right to petition will be abridged. To abridge is “to reduce or contract.” *Black’s Law Dictionary*, Pg. 8 (6<sup>th</sup> Ed. 1990). An abridgement can also be understood as suppression or substantial interference with a person’s right to petition. *Id.* In this matter, failing to hold a public hearing removes a crucial opportunity for the public to engage in petitioning activity during the lawmaking process. Thus, failing to hold a public hearing will substantially interfere with the public’s right to petition on a matter of great importance to the community.

Now, it may be argued that the public can petition the Assembly during the regular public comment period. However, a public comment period is no substitute for a public hearing. A public hearing is time specifically devoted to only one subject that is to be acted upon by the Assembly. It occurs at the time the action item comes up on the agenda, and all focus of debate during this time is centered on just that one topic.

The public comment period, on the other hand, is time when a person can speak about a multitude of issues, and usually occurs at the beginning and end of public meetings. At times a person may have more than one issue to comment on during an assembly meeting, and the public comment period allows a person to speak on these many concerns. As such, assembly members are not focused on just one issue during a regular public comment period at the beginning of an assembly meeting.

Forcing a person to address a multiple issues during one three-minute public comment period reduces the time a person can devote to petitioning the assembly on an important matter to be voted on. This restricts the amount of time a person can petition the assembly on important community matters. It can also

cause a significant gap in time between the public comment and the item to be acted on by the assembly. Thus, forcing the public to use the public comment period to comment on matters of great community importance that will be voted on abridges a person of the right to petition the Assembly.

Therefore, failure on the part of the Assembly to hold another public hearing once previously unreleased committee meeting minutes, recommendations and supporting information is included in an assembly meeting packet will abridge the public's right to petition the Assembly.

#### *Conclusion*

The Assembly must postpone the vote to adopt Ordinance 15-06-413. The Haines Borough Code, the Haines Borough Charter, and the Alaska Open Meetings Act all argue strongly for postponing the vote. Additionally, the Petition Clauses of the Alaska and United States Constitutions argue strongly for holding another public hearing once previously unreleased committee minutes, recommendations and supporting information have been included in an assembly meeting packet.