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**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 24-1364
Assembly Meeting Date: 04/09/24

Business Item Description:	Attachments:
Subject: Adding HBC Section 3.72.105 Exchange of Information	1. Ordinance 24-02-668 as introduced 2. Borough Attorney's Memo 3. Assessor's Memo
Originator: Property Tax Assessment Ad Hoc Committee	
Originating Department:	
Date Submitted: 2/22/24	

Full Title/Motion:

This Ordinance is eligible for adoption. If the Assembly would like to make changes , after amendment, the Clerk requests that the Ordinance be scheduled for another public hearing April 23, 2024.

Administrative Recommendation:

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required	Projected Impact to Future Operating Budgets
\$	\$	\$	N/A

Comprehensive Plan Consistency Review:

Comp Plan Goals/Objectives: _____

Consistent: Yes No

Summary Statement:

Update: The Borough Attorney has submitted the attached Memo for consideration.

At the Committee of the Whole meeting on February 20, 2024, the Exchange of Information recommendations from the Property Tax Assessment Ad Hoc Advisory Board were discussed and item (D) was added to clarify that the Appellant and Assessor may continue to share information and negotiate until the appeal hearing.

Referral:

Referred to: _____ Referral Date: _____

Recommendation: _____ Meeting Date: _____

Assembly Action:

Meeting Date(s): 2/27/24 Public Hearing Date(s): 3/12/24, 3/26/24, 4/9/24

Postponed to Date: _____

**An Ordinance of the Haines Borough Assembly Amending Haines
Borough Code Section 3.72.105 Exchange of Information**

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Addition of Section 3.72.105. Section 3.72.105 shall be added as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

3.72.105 Exchange of Information.

- A. **Information to be presented to the board of equalization by the assessor's office shall be made available to the appellant at least 10 working days prior to the appeal hearing date scheduled for the appeal.**
- B. **The appellant shall be notified by email or first-class mail when the information is available and how to obtain it. A link to the information on the borough web site is permissible.**
- C. **The appellant must provide their information by first-class mail, email or by personally delivering it to the Haines Borough office at least five working days before the appeal hearing date scheduled for the appeal.**
- D. **Notwithstanding the above, the appellant and the assessor may continue to exchange information and negotiate directly until the appeal is heard.**

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 26th DAY OF MARCH, 2024.

ATTEST:

Thomas C. Morphet, Mayor


Aleka Fullerton, MMC, Borough Clerk

Date Introduced: 02/27/24
Date of First Public Hearing: 03/12/24
Date of Second Public Hearing: 03/26/24

CHANDLER, FALCONER, MUNSON & CACCIOLA, LLP

ATTORNEYS AT LAW
SUITE 302
911 WESTEIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
FACSIMILE: (907) 274-3698
bcf@bcfaklaw.com

MEMORANDUM

TO: Annette Kreitzer
FROM: Charles A. Cacciola 
RE: Information Disclosure for Assessment Appeals
DATE: April 4, 2024

Introduced Ordinance 24-02-668 would establish a procedure for the assessor and appellant to exchange information prior to the board of equalization hearing an assessment appeal. The assessor opined that the ordinance would shift the burden of proof from the appellant to the assessor. You asked whether the proposed ordinance is lawful and for identification of drafting and practical issues that the assembly may wish to consider.

This proposed ordinance is lawful. It does not conflict with AS 29.45.210(b) or the parallel HBC 3.72.10(B), which provide that the appellant has the burden of proof.

A. Drafting Considerations

The following are suggestions to improve Ordinance 24-02-668 without altering the intent or substance. These suggestions do not address the practical concerns presented by the ordinance, which are discussed further below.

1. *Deadlines.* It's unclear how the ten- and five-day deadlines in proposed HBC 3.72.105 (A) and (C) function as relates to mailing. We recommend that the ordinance specify that the deadlines are from the time information is received, not when it is mailed. A minor point, but the borough code generally uses "business days" not "working days" to establish deadlines.
2. *Notice of Information Availability.* Under the ordinance, the assessor is required to make information available at least ten days before the board of equalization hearing. The assessor can satisfy that requirement by putting the information on the borough website. Together, these provisions render email or mail notification of availability of the information superfluous. We recommend that (B) be deleted and (A) restated as:

“Information to be presented by the assessor to the board of equalization shall be available on the borough’s website not less than ten business days before the scheduled date of the appeal hearing.” The appellant can retrieve the information from the website, knowing when it will be available. No additional notice is necessary. Requiring additional notice imposes an unnecessary burden on the borough administration and is a potential ground for error.

3. *Information.* “Information” should be defined. The board of equalization has historically allowed oral statements of fact during arguments on assessment appeals. Based on that practice, we assume that the intent of this ordinance is to require disclosure of documents, photos, sales data, appraisals and other such material that the party will rely upon and that it is *not* intended to require disclosure of “testimony” and argument to be presented to the board. If this is the intent, we recommend adding a new subsection that reads: “For the purpose of this section, “information” consists of documents, photographs, and other recorded or printed materials.”
4. *Use of Undisclosed Information.* It appears the intent of the ordinance is to preclude the parties from presenting to the board information that was *not* disclosed in accordance with (A) and (C). However, this is not explicit. If this is the intent, it should be stated in the code that information presented to the board of equalization shall be limited to information disclosed in accordance with HBC 3.72.105. Additionally, the current subsection (D) specifies that the appellant and assessor may continue to exchange information. It is unclear if this later-exchanged information may also be presented to the board. The ordinance should be revised to clarify these issues.
5. *Resolution by Agreement.* We recommend that (D) be revised to read: “Nothing in this section shall preclude the assessor and appellant from conferring to resolve an alleged error in an assessment prior to the board of equalization hearing the appeal.”

B. The Ordinance in Practice

While the proposed ordinance does not shift the burden of proof from the appellant to the assessor in contravention of AS 29.45.210(b) and HBC 3.72.10(B), the assessor’s concern is understandable. In short, this proposed procedure has the appellant responding to the appellee, not the other way around. The appellant still has the burden of proof legally, but less so in practice.

The proposed procedure prevents the assessor from effectively responding to the appellant’s facts and arguments. In judicial and quasi-judicial appeals, and in argument and debate generally, the party with the burden presents their position first and the other party then presents rebuttal to show that the burden has not been satisfied. For assessment appeals to the board of equalization, the appellant first argues that the valuation is unequal, excessive, or improper. Then the assessor responds to the facts and arguments presented by the appellant.

Exchange of information to be used as in support of an appellant's position and of the assessor's rebuttal should generally follow the same sequence: The party with the burden provides the information intended to satisfy the burden and the other party then discloses rebuttal information.

Requiring the responding party (here, the assessor) to disclose information to be used for rebuttal without first knowing what needs to be rebutted does not make sense and stymies effective rebuttal. Say an appellant provides the board of equalization with two comparable sales, one for \$300,000 and another for \$325,000 to show that the assessor's \$500,000 value is excessive. However, the seller of the first comp was the buyer's parent (at a non-market in light of the familial relationship) and the second comp was the sale of a home with extensive lead paint and asbestos. If the appellant does not present these facts (which the appellant may not be aware of), the assessor cannot demonstrate that the first sale is not indicative of market value and the second sale is not of comparable property.

Property owners may view information disclosure by the appellant followed by information disclosure by the assessor as simply putting the appellant in the same disadvantageous position that the assessor would be in as described above. (And if one party must shoulder this disadvantage, why not the subject matter expert?) However, this view doesn't consider the burden of proof. The situation is not that either the assessor or appellant must guess at what will need to be rebutted because the law imposes the burden of proof on the appellant. It is the assessor who responds to the appellant, not the other way around.

An appellant needs a summary of the property information that the assessor relied upon for the assessment to make an informed decision as to assessment error. For each assessed property, Haines Borough has a property card that contains this information. An example of such a property card is attached.¹ Property cards are public records open to inspection. Some municipalities have this information available on their websites as part of a searchable database and/or accessible by a link in the GIS parcel viewer.

Ideally, a property owner should obtain the property card information *before* appealing an assessment because the information obtained in the card is often necessary for an owner to determine if there is an error in the assessment. Property card information is information that a property owner should certainly have and review before gathering and disclosing information to be used in support of proving an error. This information enables the appellant to specifically identify the alleged error and provide information that supports a specific alleged error.

As noted, property cards are public records. Any person, including a property owner, is entitled to request or inspect a property card. However, having every property owner who believes there may be an error in an assessment request a copy or inspection of a property card imposes an unnecessary burden on property owners and borough staff. Mailing a copy of a

¹ Although this property card, like all property cards, is a public record that any person may request or inspect, we have nevertheless redacted the name of the owner and address.

property card with each assessment notice is at least as inefficient. In our experience, the best practice is for property card information to be available on the municipality's website.

With the benefit of the property card information, a property owner can make an informed decision to accept an assessment or appeal based on an alleged error. In addition to enabling an owner to identify erroneous facts assumed by the assessor, simplified public access to property cards better enables a property owner to determine if property has been assessed unequally. Should the owner decide to appeal, the owner can gather, and then disclose, information that supports the owner's allegation of error that the owner will present to the board of equalization to prove error. The assessor can subsequently provide the appellant with the assessor's rebuttal information.

The proposed ordinance incentivizes a significant increase in the work burden on the assessor (and thus on the borough's finances), on the appellant, and on the board of equalization. Without knowing what information the assessor will need to respond to or rebut, the assessor's rational action is to provide a massive information dump – everything the assessor thinks could possibly be relevant in responding to the appellant – for every appeal. The assessor is incentivized to submit *all* available information on *all* potentially similar properties, assessment history, and professional resources and methodologies. This could be hundreds, if not thousands, of pages for each appeal. The *appellant* will then need to wade through voluminous information, most of which will be irrelevant to the appeal. If the appeal is not resolved and is heard by the board of equalization, the board will also have before it a tremendous volume of information that it will need to consider. On the other hand, if the assessor knows what information needs to be responded to, the assessor can tailor rebuttal information to information that actually responds to the appellant's position rather than providing a document dump.

Moreover, having the appellant's information disclosure occur first eliminates appeals where the assessor concludes that the appellant is correct. Errors are often obvious to the owner and easily proven. If an assessment is based on a 2,800 sq. ft. home and the appellant shows that it's actually 1,800 sq. ft., the assessor can correct the error without preparing extensive information for a moot appeal.

Finally, the assessor's concerns with adopting this ordinance about a month before board of equalization hearings is understandable. Public comment at the March 26, 2024 assembly meeting included expressions of frustration with perceived delay and that action needed to be taken lest potential code changes drag on. The assessor's concerns and those expressed during public comment can be reconciled by adopting an ordinance with an effective date following completion of 2024 appeal hearings (*e.g.*, July 1, 2024). This would enable immediate legislative action without altering the 2024 appeal process mid-stream.

In summary, our view is that sequence of information disclosure should consist of:

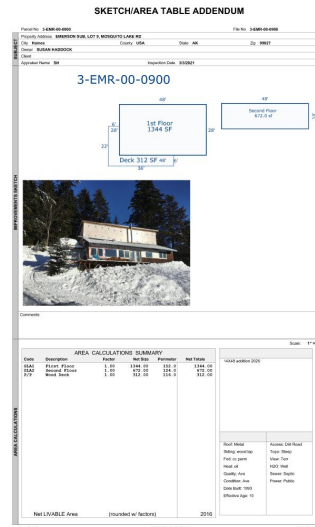
1. Online access to property card information, which allows the owner to make an informed decision as to assessment error.

2. Disclosure by the appellant of documents and other media that the appellant intends to present to the board of equalization in support of an allegation of error.
3. Disclosure by the assessor of documents and other media that the assessor intends to present to in response or rebuttal to the appellant's position and information.

CONCLUSION

Introduced Ordinance 24-02-668 is lawful, legally enforceable legislation. Clarity of the proposed legislation can be improved while retaining the intent. However, the intent of the ordinance, even following clarification, poses challenges to effective and efficient resolution of assessment appeals.

Please let us know if you have any further questions regarding this matter.



CURRENT OWNER

HAINES AK 99827

Property Identification

Parcel # **3-EMR-00-0900** Use **R-Residential**
 City Number Property **SFR**
 Service Area **FD3**

Property Information

Improvement Size **2,016 SF** Year Built **1993** Estimated Land Size **4.5** AC
 Basement Size Effective Age **20** Zone **General**
 Garage Size Taxable Interest **Fee Simple**

Legal Description

Plat # Lot # **9** Block Tract Doc # Rec. District **106-HAINES**
 Describe **EMERSON SUB, LOT 9** Date recorded

PROPERTY HISTORY

Year	Taxable Interest	Land	Improvement	Assessed Value	Exempt Value	Taxable Value	Trending
2024	Fee Simple	\$71,700	\$182,600	\$254,300	\$0	\$254,300	
2023	Fee Simple	\$71,700	\$112,400	\$184,100	\$0	\$184,100	
2022	Fee Simple	\$58,000	\$94,700	\$152,700	\$0	\$152,700	
2021	Fee Simple	\$58,000	\$52,400	\$110,400	\$0	\$110,400	

NOTES

% comp updated 08/09/2021. DMO
 Updated % complete 4/7/2022 DML



LAND DETAIL

Market Neighborhood **1106** Site Area **4.5** **A** Topo **STEEP** Vegetation **Brushy**

Access **PUBLIC ROAD** Frontage **Ft** View **NEUTRAL** Soil **Buildable**

Utilities Typical Water Sewer Telephone Electric LQC

Comments

SITE IMPROVEMENTS

Site Improvements Total

Description	Area	Unit Value	Adj.	Value	Comments
	4.5	AC x \$15,933.33		= \$71,700	No changes noted. Land Values were imported from the 2023 Certified Roll Spreadsheet. Imported Assessed value was \$71700. Rounding discrepancies may occur
		AC x		=	
		AC x		=	
		AC x		=	
Total	4.5	AC Fee Value:		\$71,700	

SUMMARY FEE SIMPLE VALUATION

Inspected By **Scott Hansen** Date Inspected **2/24/2021** Valued By **Dean Olsen** Date Valued **8/9/2021**

VALUATION CHECK	FEE VALUE SUMMARY
The Total Fee Value \$254,300/2,016 SF Indicates \$126.14 Value/SF GBA	Total Residential \$182,600
Income Value = NOI Ratio = NOI / =	Total Commercial
Comments <input type="text"/>	Other Improvements
	Total Improvements \$182,600
	Land & Site imp \$71,700
	Total Property Value \$254,300



RESIDENTIAL

Description **Main House** Property Type **SFR** Design **1.5** Bedrooms **4**

Quality **Q5 - Fair** Plumbing Fixture Count **Fixtures -** Energy Efficiency **Typical** Bathrooms **1**

Other Rooms **3** Total Rooms **8**

Roof Typical Comp Metal Wood shingles Other

Exterior Typical Wood Metal Cement Fiber Log Vinyl Other

Foundation Typical Concrete Perim Slab Piling Other

Heat Fuel Typical Oil Electric Wood Other

Heat Type Typical BB Space Heater Radiant Forced Air Heat Pump Other

Interior Typical Sheetrock Plywood Panel WD Other

Floor Typical Slab Plywood Carpet Vinyl Wood - Laminate Other

Year Built **1993** Estimate

Effective age **20**

Total Life **55**

Condition **C4 -**

Effective age Status **Not**

Extra Lump Sums Total

Porches, **Deck 312SF \$5,248** Total **\$5,935**

Garage

Built-in SF Basement Garage SF Attached SF Detached SF Carport SF Finished SF

Comments

Basement

Size Finished Size Describe

Description	Status	Area	Base Value	Factor	Unit Value	RCN	% Good	Net Value
1.5 Unfin. Hous	Unfinishe	2,016	SF \$83.92	1.45	\$121.68	\$245,315	72%	\$176,627
			SF		\$0.00	\$0		
			SF		\$0.00	\$0		
			SF		\$0.00	\$0		
			SF		\$0.00	\$0		

Additional Adjustment

Lump Sum Total

\$5,935

Main House **Total**

\$182,600

Comment



From: Martins Onskulis
Appraisal Company of Alaska
405 W. 27th Ave.
Anchorage, AK 99503
907.334.6312 (Office)

To: Haines Borough Assembly

I am writing to address my concerns regarding the proposed Ordinance 24-02-668, as I find several aspects of it perplexing and potentially contradictory to State of Alaska Statutes.

Timeline

Firstly, I would like to draw attention to the issue of timing outlined in the proposed ordinance. The designated timeline for the assessor & property owner to submit their final review to the Board of Equalization (BOE) a mere 10 days & 5 days prior to the meeting presents significant challenges in effectively planning BOE sessions and planning for the workflow of the assessor's office. While this framework may be suitable under conditions of minimal appeals, it becomes problematic in scenarios involving a high volume of appeals, potentially leading to considerable delays. This is particularly exacerbated by the substantial time required for compiling necessary documentation for presentation before the BOE, coupled with efforts to contact property owners who may not have been reached previously.

Alaska State Statutes

In consultation with other assessors and based on information from other communities - assessors should be required to submit relevant information to the BOE at least one week prior to its convening, in some communities submission is a day or two before the scheduled meeting. The primary rationale behind this recommendation is to ensure that the BOE members are adequately equipped to make informed decisions based on the information **presented during the proceedings**. During recent meetings, concerns were raised by property owners who expressed frustration in attempting to engage with BOE members prior to scheduled hearings. It is imperative that the efficacy of BOE deliberations not be contingent upon members conducting independent investigations or reviews of materials in public forums.

In the context of Anchorage, property owners are afforded a timeframe of 45 days to furnish all relevant evidence, encompassing a 30-day window for initiating an appeal followed by an additional 15-day period allocated for the submission of supporting documentation. However, it is noted that this timeline may not be feasible for implementation in Haines this year, given the constraints imposed by Alaska State requirements and the timeline for mailing assessment notices.

The proposed ordinance, in its current form, appears to advocate for a reversal of roles, wherein the assessor is tasked with assembling documentation for the defense, thereby placing property owners in the position of relying solely on materials provided by the assessor. Such a framework contradicts established principles, wherein property owners should derive their appeal from diligent research and independent findings, rather than relying solely on the assessor's data for defense. This approach potentially contravenes the burden of proof as outlined in Alaska Statutes. Per Alaska Statutes, property owners are mandated to prove that the assessed value is unequal, excessive, improper, or undervalued.

Upon review of the evidence submitted by property owners, it is essential to maintain the protocol whereby the assessor diligently examines the provided evidence. This ensures a thorough and equitable assessment process, contrary to the proposed approach by the Ad Hoc committee. As outlined in the Anchorage municipal code, property owners are obligated to present their defense within 45 days of receiving assessment notices. Subsequently, the assessor meticulously reviews the submitted information and engages in discussions with property owners. In the event of appeals proceeding to the Board of Equalization (BOE), the assessor is mandated to submit the final findings to the BOE at least one week prior to the scheduled hearing. The proposed ordinance by Ad Hoc is opposite of what other communities across the State does.

It is imperative to emphasize that any proposed ordinance, including that of the Ad Hoc committee, must not override state statutes or undermine existing legal frameworks. Given the significance of legal compliance, it is advisable to seek guidance from your legal advisor to ensure alignment with applicable laws and regulations.

Has the proposed ordinance undergone thorough legal review to ascertain its consistency with prevailing state statutes and legal mandates? Such scrutiny is essential to uphold the integrity of our assessment procedures and ensure adherence to statutory requirements.

Here is an example from Anchorage:

What happens after I file my appeal?

Your appeal will be assigned to an appraiser for review following the informal review period. You will be notified of who has been assigned your appeal and how to contact them. You must provide the appraiser with your evidence within 45 days of the date notices (green cards) were mailed. The appraiser may require further information and/or an inspection of your property. Once the appraiser reviews the information or performs any requested property visit, the appraiser will make a value recommendation, and you will receive an 'Appeal Withdrawal Form' noting the recommended value. If you sign the Withdrawal Form your appeal will be finalized at the recommended value, and you will get your appeal deposit back; approximately 75% of appeals are resolved in this manner. If you choose not to sign the Withdrawal Form, your appeal will be scheduled for a hearing at the Board of Equalization (BOE). You will receive a notification for the hearing two weeks prior, and you will receive an appeal packet including a copy of your appeal and a summary of the Assessor's position that will be presented to the BOE one week prior to the hearing.

[Return to Top](#)

What information must I provide with my appeal?

When submitting an appeal, provide the following:

- Parcel number of the property you are appealing;
- Specific reasons why you believe the Assessor's valuation does not reflect the value of the property (the amount of tax, percent of increase, personal hardship, and other matters unrelated to the value, are not sufficient grounds for appeal.);
- Comparable sales or other supporting evidence (see the list below); and
- Your signature (and agency authorization, if someone else will represent you).
- Complete both sides of the appeal form.

By Alaska State law, "THE APPELLANT BEARS THE BURDEN OF PROOF. The only grounds for adjustment of assessment are proof of unequal, excessive, improper, or under valuation based on facts that are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the Board of Equalization may raise the assessment." Alaska Statute 29.45.210.(b)

You must present clear and convincing evidence to support your appeal. All evidence must be provided within 45 days from the date the assessment notice was mailed (30 days to file an appeal plus 15 days to provide all supporting evidence). The Assessor may agree to extend the time limit to provide evidence under certain circumstances. Contact the assessor's office regarding any extension request. *Appeals without supporting information will be dismissed by the Board. New or additional documentation may not be introduced at the hearing.*

Upon careful review, it appears that points A and C may require either revision or removal to ensure alignment with current best practices or regulatory frameworks. Given the significance of these points, it is imperative that they undergo thorough scrutiny and potential updating.

3.72.105 Exchange of Information.

- A. Information to be presented to the board of equalization by the assessor's office shall be made available to the appellant at least 10 working days prior to the appeal hearing date scheduled for the appeal.
- B. The appellant shall be notified by email or first-class mail when the information is available and how to obtain it. A link to the information on the borough web site is permissible.
- C. The appellant must provide their information by first-class mail, email or by personally delivering it to the Haines Borough office at least five working days before the appeal hearing date scheduled for the appeal.
- D. Notwithstanding the above, the appellant and the assessor may continue to exchange information and negotiate directly until the appeal is heard.

In reference to point D, it is noted that the inclusion of the term "negotiate" may warrant reconsideration. The essence of our assessment procedures should indeed be rooted in factual substantiation rather than subjective bargaining or compromise. Therefore, it is advisable to refine the language to underscore the importance of evidence-based decision-making rather than implying a negotiation or compromise process – **appeal is not a negotiation.**

Has this gone through the legal review to ascertain their compliance with applicable statutes and regulations?

Here is what I am proposing:

A. Information to be presented to the Board of Equalization by the assessors office will be made available to the appellant one week prior to the appeal hearing date scheduled for the appeal.

B. No change

C. **“Proposed amendment will not work for this year due to state requirements and given timeline but can be reviewed/adopted for the next year”** The appellant must provide all evidence within 45 days from the date the assessment notice was mailed (30 days to file an appeal plus 15 days to provide all supporting evidence that will be presented to the BOE). The Assessor may agree to extend the time limit to provide evidence under certain circumstances. Appeals without supporting information will be dismissed by the Board. New or additional documentation may not be introduced at the hearing.

D. Notwithstanding the above, the appellant and the assessor may continue to communicate until the appeal is heard.

Finally, it is essential to acknowledge the importance of comprehensive analysis and deliberation in the development of such ordinances. Rushing through these amendments without due diligence could compromise their effectiveness and integrity, which is a risk we must strive to avoid.

Additionally, it would be advantageous for the Ad Hoc committee to seek consultation with assessors - either from us or from other municipalities within the state. Collaborating with industry experts can offer valuable perspectives and help to identify any potential pitfalls or oversights in the proposed amendments.

Considering these concerns, I respectfully urge the Borough Assembly to carefully reconsider the proposed ordinance, ensuring alignment with the State of Alaska Statutes, giving a time for a legal team to review it and addressing the practical challenges outlined above. A thorough review and adjustment of the timeline and procedural ambiguities would contribute to the efficient and equitable implementation of the ordinance.

Thank you,

Martins Onskulis