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**MEMORANDUM**

**TO:** Julie Cozzi  
Haines Borough Clerk

Brad Ryan  
Haines Borough Interim Manager

**FROM:** Brooks Chandler  
Haines Borough Attorney

**DATE:** January 23, 2017

**SUBJECT:** Citizen Request for Borough Attorney Investigation

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On January 18, 2017, Ms. Cozzi forwarded a document titled "Citizens' complaint of alleged malfeasance" ("Complaint") to our office. The Complaint alleged four members of the Assembly who voted against a motion to confirm Mayor Hill's nomination of Ms. Diana Lapham to the Ports and Harbor Advisory Committee had violated Ms. Lapham's rights under the United States and Alaska Constitutions. Paragraph 4 of the Complaint asked "the borough attorney investigate the facts and circumstances" related to the alleged violations under the two constitutions "or any other ordinance or law". This request was made pursuant to HBC 2.62.050(B)(1). As explained below, this section of Borough code does not give the Borough Attorney authority to investigate alleged violations of a citizen's constitutional rights. Any such investigation must be authorized by the assembly, the mayor or the Borough Manager.

**LAW**

**A. Haines Borough Charter.**

There is one section of Article V of the Charter relevant to the request.

**Section 5.05 Administrative Procedures in Borough Code**

The Assembly by ordinance shall adopt provisions regarding:

(A) **the methods of appointment and dismissal** of borough officers and other personnel;

(B) **the powers, duties, and limitations** of borough officers and the assembly in regard to personnel matters;

(C) **the identity, function, and responsibility** of each executive department and agency;

(D) **rules of practice and procedure** governing administrative proceedings;

(E) **personnel policy** and rules regarding employee evaluations for promotions and raises according to merit.

(Bold in original)

**B. Haines Borough Code.**

Pursuant to Article V, Section 5.05(A) and (D) of the Charter, the Assembly adopted Chapter 2.62 of the Borough Code titled “Responsibilities of Officers and Employees”. Section 2.62.010(A) of the Borough Code states in part:

**2.62.010 Conduct in office – Investigations – Oath – Records – Reports**

A. The assembly, the mayor, manager or any person or committee authorized by any of them shall have power to inquire into the conduct of any office, department, agency or officer of the borough and to make investigations as to borough affairs and for that purpose may order the appearance of witnesses, administer oaths, and compel the production of books, papers and other evidence.

(Emphasis supplied).

Section 2.62.050(B)(1) of the Borough Code states in part:

**2.62.050 Suspension and forfeiture of office or employment.**

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B. The assembly shall be the body to hear and decide all matters concerning suspension or removal of any borough officer or employee on the grounds of a violation of this chapter.

1. Upon a complaint in writing and signed by any resident of the borough being filed with the clerk, which complaint can be interpreted as a charge that a named borough officer or employee has violated a provision of this chapter, the borough attorney shall immediately investigate the complaint for any violation.

(Emphasis supplied)

The phrase “this chapter” refers to Chapter 2.62 of the Borough Code. In order to determine whether the Borough Attorney has been given authority to investigate these citizen allegations per Article V, Section 5.05 of the Charter and HBC 2.62.050(B)(1) it is necessary to analyze whether the Complaint alleges a violation of Chapter 2.62. The following is a summary of the obligations of Assembly members under Chapter 2.62<sup>1</sup>.

HBC 2.62.010(B) requires that each Assembly member “take an oath in writing”. HBC 2.62.020 establishes obligations of attendance. HBC 2.62.030 prohibits participation in contracting. HBC 2.62.040 prohibits voting on certain questions. HBC 2.62.060 requires certain actions be taken if an Assembly member wants to have business dealings with the Borough.

## ANALYSIS

In our opinion, the Complaint cannot be interpreted as a charge that those Assembly members voting “no” on confirmation of Ms. Lapham’s appointment violated Chapter 2.62. The Complaint alleges a violation of constitutional rights and a violation of a specific state statute (AS 11.76.110) not a violation of Chapter 2.62. Based on these allegations the Complaint could also be “interpreted” as alleging a violation of the oath of office required by HBC 2.62.010. However, the oath required (“honestly, faithfully and impartially perform and discharge the duties of that office”) does not mention constitutional rights of individual citizens. Even if it did, the requirement of Chapter 2.62 is only to “take an oath in writing”. The Complaint does not allege any Assembly member failed to take an oath in writing.

There is an avenue under Borough code for investigation of allegations any Borough officer violated a citizen’s constitutional rights. But that is not opened by filing a complaint with the clerk thereby automatically triggering an investigation by the borough attorney. Rather, citizens should direct allegations constitutional rights were violated to the attention of the Assembly, mayor, or manager and request any of them to conduct an investigation under HBC 2.62.010(A). The Assembly, mayor or manager could then decide whether to conduct an

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<sup>1</sup> The entire Chapter 2.62 is attached.

investigation. If an investigation is conducted they could also determine whether to ask the borough attorney to be involved in the investigation process.

### **RECOMMENDATIONS**

You should inform the citizens the borough attorney has concluded the attorney does not have independent authority to commence an investigation of alleged violations of constitutional rights under HBC 2.62.050(B)(1). You should ask them if they wish you to transmit their allegations to the Mayor, Assembly and manager for their consideration of whether to conduct an investigation. You should let them know the Borough Clerk does not have authority to undertake criminal investigations and suggest they contact either the Police Department or the State Troopers if they wish to lodge a criminal complaint.

We assume the Complaint has been made public and also suggest this memorandum be made available to the public upon request.

If you have any further questions regarding this matter, please let me know.