

DRAFT

Stephanie Scott
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TO: Mayor Jan Hill, Assembly Members Mike Case, George Campbell, Margaret Friedenauer, Tresham Gregg, Ron Jackson, Diana Lapham,

CC: Dave Sosa, Haines Borough Manager, Julie Cozzi, Haines Borough Clerk

RE: Composition of Personnel Committee; commitment to a Manager form of Government; preservation of the powers of the mayor

FROM: Stephanie Scott

Dear Mayor Hill and Members of the Assembly,

In the determining how and whom to appoint as Acting Manager, I hope that you will find time to discuss these issues at your public meeting:

1) How will you sort out the votes of the Personnel Committee, given that 4 Assembly members, not 3 as stipulated in code, participated in the vote?

2.72.040 Personnel committee.

A. There shall be a personnel committee of the borough, which shall be composed of three members of the assembly and the manager. The mayor shall appoint a chair of the committee. The mayor may appoint ex officio members as desired.

Does this error mean that the recommendation is void? If the vote had been 2-2, we would be having an entirely different discussion. How will you authorize the removal of one member of the Assembly from the Personnel Committee? (I suggest the 4 Assembly members draw straws...in public; the short straw steps aside. Or you could use another method that is random and can be seen as fair. For example, put names into a hat; let a member of the audience draw a name; the person drawn steps aside. Very quick.) The identified person "out" can certainly serve ex officio, However, as you know, it is our practice in the borough that ex officio members hold non-voting membership to committees:

2.60.060 Ex officio members.

The mayor may be an ex officio member of any committee, board or commission. The manager may appoint an employee of the borough who shall be an ex officio member of a committee, board or commission for the purpose of acting as a secretary to the committee, board or commission or to furnish the committee, board or commission with technical advice and

information. An ex officio member shall not be entitled to vote on any question to be determined by the committee, board or commission, nor shall such ex officio member be considered a member for the purpose of establishing a quorum of any committee, board or commission. An ex officio member shall not be entitled to any compensation for the member's duties or services on any committee, board or commission, with the exception of the clerk, who shall be paid as directed by the borough assembly.

2) Would appointment of the mayor as manager violate the Haines Borough Charter? When the Third Class Haines Borough and the First Class City of Haines consolidated in 2002, the people adopted a Home Rule Charter stating in the very first Article that we would implement a manager form of government. This is sometimes called a council-manager form of government. Is not the placement of the elected mayor in the Manager's place, in violation of our Charter?

Section 1.02 Form of Government

(A) Home rule. The Haines Borough government is a home rule borough established by the voters through the consolidation of the former first class City of Haines and the former third class Haines Borough.

(B) Form. The Haines Borough shall operate as a manager form of government.

This was a momentous change. The former City of Haines was a strong mayor form of government; the Third Class Haines Borough was a strong mayor form of government. Here is a link to a good review of these two forms of government: https://ballotpedia.org/Council-manager_government. There has always been some discontent with our form of government (council/manager) and I was always willing to help those in the community who wished to explore these two forms of government, to do so. Maybe now is the time to start that conversation, which would end in a question on the ballot to alter our charter and code. But I really do urge you to avoid starting the conversation by fiat – by putting the mayor in the manager's office. Let's get some conversation going.

If you appoint the Mayor of a Manager Form of Government as acting manager, I fear you are violating our Charter. I do strongly urge you not to. You also may inadvertently put our mayor at risk. The manager, acting or not, serves at the pleasure of the Assembly. The Manager (think "mayor") could be dismissed by the Assembly! What a mess that would be! Additionally, the mayor, should she take on the duties of acting manager would not be entitled to any additional compensation. Take a look at these codified provisions:

HBC 2.08.040 provides in part: An elected official may not receive compensation for service in addition to the salary compensation received as an elected official. . . .

HBC2.16.070 Compensation of the mayor.

The mayor of the borough shall be paid a salary of \$1,250 per month, provided, however, if the mayor is out of the borough for a period of more than 15 days (exclusive of time spent on borough business), the mayor's salary shall be suspended for the entire period of absence and paid to the deputy mayor as prorated by the chief fiscal officer. **The mayor shall not receive any other form of compensation from the borough other than that provided under this section and HBC [2.92.010](#) as an elected official.** Per diem payments or reimbursement for expenses are not considered compensation hereunder. (Ord. 10-10-246 § 4) [2.92.010 is health insurance]

If I were the mayor and tagged to serve as "Acting Manager," I might want to be additionally compensated. But this is not possible without violating code.

3) Will appointment of the mayor as manager unbalance our political process? Our mayor is not a member of the Assembly; the office acts as a check and as a balance to the Assembly. As you know, if the Assembly is deadlocked (3-3), the mayor is authorized to weigh in with a vote. And in certain cases, the mayor may issue a veto of an Assembly action. These are powers available to the mayor – who is not a member of the Assembly, not to the Deputy Mayor, who is a member of the Assembly. Do you think it is in the best interests of the community to remove these checks and balances to Assembly decisions by removing the mayor from office? I don't.

4) It is true that "it has been done before," and I sat on the Assembly that "did it." We appointed former Mayor Case to step in. We were not disappointed in his ability to steer the administration, but I believe we did err. Remember, back then, nearly a decade ago, we were struggling to find our way. We were naïve. Overtime, we have grown much better informed about our form of government. Is a repeat of the initial error justified in this case?

To: Julie Cozzi
Subject: RE: Request to reconsider Mayor appointment as temporary Borough Manager

From: Carol Tuynman <ctuynman@gmail.com>
Date: December 1, 2015 at 10:55:07 AM AKST
To: David Sosa <dsosa@haines.ak.us>, Jan Hill <jhill@haines.ak.us>
Cc: Margaret Friedenauer <mfriedenauer@haines.ak.us>, Diana Lapham <dlapham@haines.ak.us>, George Campbell <gcampbell@haines.ak.us>, "rjackson@haines.ak.us" <rjackson@haines.ak.us>, "mcase@haines.ak.us" <mcase@haines.ak.us>, Julie Cozzi <jcozzi@haines.ak.us>, Tresham Gregg <treshamgregg@gmail.com>
Subject: Request to reconsider Mayor appointment as temporary Borough Manager

Dear David Sosa and Honorable Mayor Jan Hill,

I respectfully request that the borough appoint a non-elected individual to serve as the Tier 1 interim borough manager. The fact that a precedent has been set with past elected officials holding the temporary position does not mean that such action is appropriate as stated in the Chilkat Valley News (see page one article, November 26, 2015), or supported by code.

Borough Code 18.02 referenced below does not state that the elected official can hold a borough office position if they are not getting paid...it states that **...an elected official “may hold no other compensated borough office or elected position” - The position of the borough manager is a compensated position and hence, an elected official is prohibited from holding that position.** Since there is potentially room for interpreting otherwise, current borough counsel advisement that the procedure is within the law, if an elected officer chooses not to be compensated, puts the borough management and assembly at risk of being perceived as violating the law. At the very least, the mayor serving as borough manager blurs the line between our policy makers and administrators at a time where this very issue is in question before the public.

Please note: a “Prohibition” is not the same as a conflict of interest (18.01) -In the interest of preserving and promoting public trust, it is wiser to make the more prudent, cautious choice when it comes to interpreting conflicts and prohibitions. Perception is everything, as this and other recent administration and borough assembly decisions demonstrate.

Section 18.02 Prohibitions

18.02 states **(A) Except where authorized by ordinance, an elected official of the borough may hold no other compensated borough office or elected position under the state or borough while in office.**

Respectfully yours,

Carol Tuynman
7echoes homestead
7 Mile Mud Bay Road
Haines, Alaska 99827

To: Julie Cozzi
Subject: RE: Acting Manager appointment

From: Weishahn [<mailto:weis@aptalaska.net>]
Sent: Tuesday, December 01, 2015 4:20 PM
To: Ron Jackson; George Campbell; Margaret Friedenauer; Tresham Gregg; Diana Lapham; Thecases
Cc: Janhill; Julie Cozzi
Subject: Acting Manager appointment
Importance: High

Julie--Please post the following comment on the borough meeting announcement for the record.

Thank you,

Carolyn Weishahn

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December 1, 2015

Hello Assembly Members,

I urge you to follow the Haines Borough Organization Chart, adopted by the assembly 5-27-14, that describes how to proceed in the Borough Manager's absence.

[http://www.hainesalaska.gov/sites/default/files/fileattachments/administration/org\\_chart\\_eff\\_7-1-14\\_adopted\\_5-27-14\\_0.pdf](http://www.hainesalaska.gov/sites/default/files/fileattachments/administration/org_chart_eff_7-1-14_adopted_5-27-14_0.pdf)

**5. In the Borough Manager's absence, the Borough Clerk will act as manager followed by other borough officers in order of seniority.**

The purpose of the chart is to ensure a smooth transition to a more permanent manager. Appointing the mayor as an acting manager is not allowed by either Haines Borough Code or State Statute. (see below) Alaska State Statute states that a member of the governing body may only serve as manager one year after leaving office. Prior to one year out of office, a member of the governing body may be appointed but only by a 3/4 majority vote. Thus, a sitting member of the governing body may not serve in the manager's position.

## **Haines Borough Code**

### **Chapter 1.08**

#### **FORM OF GOVERNMENT**

##### **1.08.010 Manager-assembly form of government.**

The form of government of the borough shall be the manager-assembly form of government as defined in AS [29.20.460](#) through [29.20.520](#).

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**Alaska State Statute**

**Sec. 29.20.490. Appointment of manager.** (a) The governing body shall appoint a manager by a majority vote of its membership. A manager is chosen on the basis of administrative qualifications and receives the compensation set by the governing body. **A member of the governing body may not be appointed manager of the municipality sooner than one year after leaving office, except by a vote of three-fourths of the authorized membership of the governing body.**

**(b) Subject to the contract of employment, the manager holds office at the pleasure of the governing body.**

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Acting manager, interim manager, and manager appointments must all comply with borough code, state statute and follow the duly adopted Organization Chart.

Thank you for pursuing an acting manager in accordance to our governing documents.

Carolyn Weishahn