

An Ordinance of the Haines Borough Amending Haines Borough Code Title 5 to Change the Definition of Commercial Tour; Change the Commercial Tour Permit Fee and Reporting Structure; Amend the way changes are made to the Approved Commercial Ski Areas and various other Amendments to Title 5.

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 shall become effective January 1, 2021. All provisions contained in Ordinance 18-09-512, not changed by this ordinance, shall become a permanent part of the Haines Borough Code.

Section 4. Amendment of Chapter 5.01. Chapter 5.01 of the Haines Borough Code of Ordinances is amended as follows:

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

**Chapter 5.01
GENERAL PROVISIONS**

Sections:

- 5.01.010 Purpose, type and scope.
- 5.01.020 Definitions
- 5.01.030 Regulation by the Borough.
- 5.01.040 Clerk to keep record of licenses and permits issued.
- 5.01.050 Conditions applicable to all permits.
- 5.01.060 ~~Solicitation on Public Property.~~ **Revocation and suspension – Procedure.**
- 5.01.065 Appeal from decision of the Manager.**
- 5.01.070 Penalties.

Section 5. Amendment of Chapter 5.01.010. Chapter 5.01.010 of the Haines Borough Code of Ordinances is amended to read as follows:

5.01.010 Purpose, Type, and scope.

A. Where this title imposes a greater restriction upon persons, premises, or personal property than is imposed by the provisions of any other ordinance, the provisions of this title shall control.

B. The purpose of this title is to regulate business and other activities within the Haines Borough in order to: ~~protect the public safety and welfare; protect local business establishments from unfair competition; maintain safe and efficient pedestrian access and traffic flow;~~ maintain an attractive community environment ~~for tourism;~~ avoid litter; and ensure the safe, efficient, and fair operation of commercial tours, business enterprises, and related activities; **and to ensure the proper collection of sales tax.**

Section 6. Amendment of Chapter 5.01.020. Chapter 5.01.020 of the Haines Borough Code of Ordinances is amended to read as follows:

5.01.020 Definitions.

For the purposes of this title, the following terms shall be defined as follows:

...

"Commercial helicopter tour" means a commercial helicopter operation, other than a commercial ski tour or commercial ski production that provides a helicopter-assisted tour to or through an area. ~~It is a commercial tour and requires a permit.~~

"Commercial ski tour" means a commercial tour ~~as defined in HBC 5.18.010(B)~~ that: (1) includes downhill skiing or snowboarding as the primary experience; and (2) includes professionally guided skiing and snowboarding; and (3) includes daily transportation of the customer by all means other than helicopter to and from the skiing or snowboarding area as frequently as weather permits.

"Commercial tour" means the selling and/or providing of guided, or escorted **services that last less than 24 hours without including an overnight stay and is offered for sale and sold by an agent or operator at a predetermined price.** ~~tours, excursions, experiences, sightseeing trips, or visits to a natural or cultural display, and includes all services provided, whether or not incidental to, advertised with, or specifically offered in the sale.~~

...

"Expanded tour" means a tour which is more than 10% larger than the number of customers requested in the original permit application or new areas not requested in the original permit application.

...

~~"Guided fishing charters" means a qualified individual or company for hire who take customers fishing.~~

~~"Guided hunting charters" means a qualified individual or company for hire who take customers hunting.~~

"Primary Activity" means hiking; non-motorized water craft; motorized water craft; Motorized vehicles; Van, Shuttle or Bus Tour; Misc/Other Tour.

Section 7. Amendment of Chapter 5.01.050. Chapter 5.01.050 of the Haines Borough Code of Ordinances is amended to read as follows:

5.01.050 Conditions applicable to all permits.

...

D. Transferability

...

3. A transferred permit shall not be valid, and the new permittee may not conduct

any activities under the permit, until the permit has been reissued by the clerk after the clerk is satisfied that the new permittee will comply with all conditions in the permit and under the applicable provisions of this title.

E. Limitations

...

3. Solicitation on Public Property. In accordance with the purpose of this title, no person or entity may exhibit, sell products, or deliver goods, wares, merchandise, tours and services from a public street, alley, sidewalk, Portage Cove Harbor, dock/wharf or other public place except as expressly authorized by the borough manager, or provided by conditions of the permit.

F. Fraud. Unfair competitive practices are strictly prohibited. A permittee who commits any act of deceit, fraud or misrepresentation that would constitute an unlawful act or practice under AS 45.50.471, either through the permittee's own act or through the acts of the permittee's employee, agent, or representative, in relation to an activity authorized under the permit shall, upon conviction, be punished as provided in HBC 5.04.140 **HBC 5.01.070.**

Section 8. Repeal and reenactment of Chapter 5.01.060. Chapter 5.01.060 of the Haines Borough Code of Ordinances is repealed and reenacted to read as follows:

5.01.060 Solicitation on public property.

~~In accordance with the purpose of this title, no person or entity may exhibit, sell products, or deliver goods, wares, merchandise, tours and services from a public street, alley, sidewalk, Portage Cove Harbor, dock/wharf or other public place except as expressly authorized by the borough manager, or provided by conditions of the permit. The manager may allow the use of public property for dissemination of educational or charitable information upon application and at the manager's discretion.~~

5.01.060 Revocation or suspension – Procedure. *(Clerk's note: Moved from 5.04.120 in its entirety)*

A. The manager may at any time revoke or suspend a permit issued under this title for the following reasons:

1. Substantial noncompliance with any term, condition or provision of the permit;

2. Violation of any provision of this title or other applicable local, state or federal law, ordinance, or regulation;

3. Upon a determination that the suspension of the permit is necessary to remedy an unforeseen consequence which threatens the safety or welfare of the public; operation of the permittee is causing a hazard or a disruption of pedestrian or vehicular traffic;

4. Upon a determination that the permittee secured the permit through deceit, fraud, or intentional misrepresentation; or

5. That the area affected by the permit is required for another public purpose or for other reasons affecting the public safety or welfare;

B. The manager shall give the permittee written notice of the proposed revocation or suspension of the permit(s). If the manager determines that the reason for the revocation or suspension may endanger the public health or safety, or is based on repeated noncompliance, the revocation or suspension may take effect immediately. If the manager determines that the reason for the revocation or suspension does not endanger the public health or safety, or is not based on repeated noncompliance, the effective date of the revocation or suspension may be delayed until the date set for an appeal hearing before the assembly.

C. The permittee may appeal the decision of the manager to the assembly and request a public hearing by filing a written notice of appeal with the clerk not later than three days after receipt of the written notice of proposed revocation or suspension. Upon receipt of the notice of appeal, the clerk shall place the ~~set the date of the hearing of the appeal on~~ before the assembly's next regularly published agenda. The clerk shall notify the appellant of the time and place of the hearing at least three days prior to the hearing. After the appeal hearing, the assembly may modify, revoke, rescind, or affirm the decision from which the appeal is taken, or may enter its own order.

If the permittee does not appeal the manager's decision, the revocation or suspension shall become final at the end of the appeal period.

A decision of the assembly may be appealed to the proper court.

D. Revocation of a permit shall result in cessation by the permittee of all permitted activities during the year for which that permit is issued. Unless otherwise provided, revocation of a permit on the grounds stated in (A)(1), (2), (3) or (4) of this section shall result in the loss of the privilege to have that permit renewed for the period of one year after the date the revocation is effective. After revocation, any application shall be treated as a new application.

E. Suspension of a permit shall result in cessation by the permittee of all identified activities until the manager notifies the permittee that the reasons for the suspension have been satisfactorily corrected or until the suspension is reversed by the assembly. A suspension may be conditioned on correction of a status or condition of a person or a vehicle.

Section 9. Addition of Chapter 5.01.065. Chapter 5.01.065 of the Haines Borough Code of Ordinances is added to read as follows:

5.01.065 Appeal from decision of manager. *(Clerk's note: Moved from 5.18.075 in its entirety)*

A. An applicant or permittee desiring to appeal a decision of the manager made pursuant to this chapter shall, within 15 days after the written decision is mailed to the applicant or permittee, file with the manager a written notice of appeal to the assembly. The notice of appeal shall state with particularity the order or decision from which the appeal is taken and the grounds of the appeal. The stated

grounds will be the only issues considered by the assembly in the appeal.

B. Filing of a notice of appeal under this section will operate to stay a decision of the manager to deny renewal of a permit.

C. Upon receipt of the notice of appeal, the mayor shall set the date of the hearing before the assembly. The mayor shall notify the appellant of the time and place of

A. An applicant or permittee desiring to appeal a decision of the manager made pursuant to this chapter shall, within 15 days after the written decision is mailed to the applicant or permittee, file with the manager a written notice of appeal to the assembly. The notice of appeal shall state with particularity the order or decision from which the appeal is taken and the grounds of the appeal. The stated grounds will be the only issues considered by the assembly in the appeal.

B. Filing of a notice of appeal under this section will operate to stay a decision of the manager to deny renewal of a permit.

C. Upon receipt of the notice of appeal, the mayor shall set the date of the hearing before the assembly. The mayor shall notify the appellant of the time and place of the hearing. The notice of the appeal hearing shall be given to the appellant at least three days prior to the hearing.

D. After the appeal hearing, the assembly may modify, revoke, rescind, or affirm the order from which the appeal is taken, or may enter its own order. A decision of the assembly may be appealed to the proper court.

Section 10. Amendment of Chapter 5.02.020. Chapter 5.02.020 of the Haines Borough Code of Ordinances is amended to read as follows:

5.02.020 Violation a minor offense.

Violators who refuse to obtain a business license after notification of the **commit a** minor offense **and** are subject to fines and penalties as described in HBC Chapter 1.24.

Section 11. Amendment of Chapter 5.04.050. Chapter 5.04.050 of the Haines Borough Code of Ordinances is amended to read as follows:

5.04.050 Permit application.

...

C. Before a permit is issued under this title, a permit applicant must first obtain a borough business license (except if the merchant/vendor has a Fair Vendor permit or a transient and itinerant merchant permit) ~~and any other required state and/or local licenses or permits.~~

...

Section 12. Repeal of Chapter 5.04.120 Chapter 5.04.120 of the Haines Borough Code of Ordinances is hereby repealed and reserved.

Section 13. Amendment of Chapter 5.04.130 Chapter 5.04.130 of the Haines Borough Code of Ordinances is amended to read as follows:

5.04.130 Fees designated.

...

D. Permit Renewal Fee. The ~~annual~~ renewal fee for a permit required by this title is the same as the application fee for that permit.

Section 14. Amendment of Chapter 5.08.030 Chapter 5.08.030 of the Haines Borough Code of Ordinances is amended to read as follows:

5.08.030 Transient and itinerant merchants and vendors.

A. No person may engage in the temporary business of exhibiting, selling, and delivering goods, wares, services, **tours** or merchandise within the borough, whether alone, in association with, or in the name of a local dealer, merchant, or auctioneer, without first procuring a permit. ~~This section does not apply to a commercial traveler who occupies a temporary location and exhibits samples for the purpose of securing orders for future deliveries, but does not sell from stock.~~ The acquisition of the transient and itinerant merchant's permit exempts the merchant from the requirement to obtain a business license.

...

D. This section may not be construed to authorize a person to solicit for sales or sell goods, wares, services, **tours** or merchandise in a residential area in violation of other provisions of

As used in this section, "temporary" means for a period contemplated to be less than 120 consecutive days' duration.

Section 15. Amendment of Chapter 5.18. Chapter 5.18 of the Haines Borough Code of Ordinances is amended to read as follows:

**Chapter 5.18
COMMERCIAL TOUR PERMITS**

Sections:

- 5.18.010 Intent and definition.
- 5.18.015 Permit required.
- 5.18.020 Number of permits available.
- 5.18.025 Fee Designation
- 5.18.030 Application process.
- 5.18.040 Hearing for commercial tours.
- 5.18.050 Issuance of permit.
- 5.18.060 Renewal.
- 5.18.065 Reporting.

5.18.070 Permit revocation, suspension **and Appeal from Decision of Manager**, ~~or reduction in skier day allocation.~~

~~5.18.075 Appeal from Decision of manager.~~

Section 16. Amendment of Chapter 5.18.015. Chapter 5.18.015 of the Haines Borough Code of Ordinances is amended to read as follows:

5.18.015 Permit required.

A. No person **or entity** shall operate a commercial tour in the Haines Borough except as authorized by a duly issued and currently valid tour permit obtained pursuant to this chapter for each commercial tour **primary activity** offered. ~~B. Multiple tour activities by a single operator having different impacts on the Haines Borough may require a separate commercial tour permit.~~ **"Impacts" is a subjective evaluation considering traffic, congestion (density), land use, noise, population, and displacement of public use and access.**

C. ~~B.~~ Permits shall be issued biennially and the permit year shall be from May 1 – April 30 except that **heliski** permits issued under Chapter 5.24 shall be valid between February 1 and May 3. Proof of valid insurance shall be provided annually.

~~D. Exemptions. The following are exempted from the regulation of this chapter:~~

- ~~1. Fishing and hunting charters with a total capacity of six or less customers per excursion.~~
- ~~2. Guided overnight excursions occurring outside the townsite service area.~~

Section 17. Addition of Chapter 5.18.018. Chapter 5.18.018 of the Haines Borough Code of Ordinances is amended to read as follows:

5.18.018 Multi-Day Tours

Multi-day tours are tours operated by the same tour company in excess of 24 hours (other than Heliskiing Tours). These tours do not require a tour permit but they are still required to have a business license and to complete an annual report per HBC 5.18.065.

Section 18. Addition of Chapter 5.18.025. Chapter 5.18.025 of the Haines Borough Code of Ordinances is added to read as follows:

5.18.025 Fee Designation

A. ~~For 2019,~~ **The Haines Borough permits activities in identified locations and commercial tour vehicle parking. Primary activities are identified as tours. An applicant for a permit must identify the activity and the location(s) where the tour will occur.** An applicant for a commercial tour permit required by this title shall pay the a following nonrefundable application fee at the time of application:

1. Flat tour permit fee of \$250 per activity for a term of 2 years and \$250 public hearing fee for new or expanded tours. Commercial Tour Permittees shall pay \$75.00 for a company who annually serves fewer than 5,000 customers and \$250.00 for a company who serves more than 5,000 customers annually.

2. Commercial Tour Vehicle Parking Permit. Tour permittees shall pay \$10 per vehicle for less than 15 passenger vehicles and \$25 per vehicle for larger than 15 passenger vehicles for a Commercial Tour Vehicle Parking Permit to park at the Portage Cove dock parking lot. Companies must park two vehicles designed to carry fewer than 15 passengers in one bus parking place at the PC Dock.

...

Section 19. Amendment of Chapter 5.18.030. Chapter 5.18.030 of the Haines Borough Code of Ordinances is amended to read as follows:

5.18.030 Application process.

A. Application for a commercial tour permit and permit renewal shall be made using the procedures set out in Chapter 5.04 HBC and this chapter.

B. An applicant must make application on the borough approved Commercial Tour Permit Application **form**, and provide the following information:

- ~~1. Name, address, and telephone number of applicant and all principals.~~
- ~~2. Customer capacity; number of vehicles to be used; location of all phases of the tour(s), including where the tour(s) will be offered for sale and scheduled stops; a summary of the tour(s); a map showing the routes to be taken; and hours of operation. One copy of each published pamphlet or brochure describing each tour must accompany the application.~~
- ~~3. Broker's certificate of \$500,000 of current commercial general liability insurance naming the borough as additional insured. The policy shall not contain any self-insured retention or deductible in excess of \$1,000 and shall include a provision requiring written notification to be given to the borough by the insurance company not less than 30 days before the policy is canceled, modified, or terminated for any reason.~~
- ~~4. Proof of worker's compensation insurance where applicable by law.~~
- ~~5. A copy of current Haines Borough business license.~~
- ~~6. Current copy of a signed tour operator's code of conduct agreement which shall be approved by the borough assembly.~~
- ~~7. An explanation of any felony conviction within the past five years.~~
- ~~8. A safety and operating plan for heli-skiing and helicopter tours.~~

C. Applications for new commercial **or expanded** tours shall require a public hearing and approval of the assembly as described in HBC 5.18.040 prior to issuance of a permit. TAB has recommended removing this section (C) in its entirety but I think the intention was to get rid of Staff changes which were **The Clerk shall provide notice of new or expanded tour permits to the public. The Clerk may schedule a public hearing before the assembly for any applications which, in the Clerk's discretion, warrant a public hearing.**

D. The police chief, tourism director, and harbormaster shall review any **all tour** applications ~~for a tour and, for all tours subject to a hearing,~~ submit a recommendation to the assembly for consideration prior to the scheduled hearing **Clerk prior to issuance of a permit.**

Section 20. Amendment of Chapter 5.18.040. Chapter 5.18.040 of the Haines Borough Code of Ordinances is amended to read as follows:

5.18.040 Public hearing for new commercial tours required.

A. ~~An applicant for a commercial tour permit shall provide, in addition to the application, any additional information the clerk considers appropriate to adequately notify the public of the proposed tour, based upon the nature of the tour. Upon receipt of a new commercial tour application, or upon determination that an renewal application requires a hearing per HBC 5.18.060,~~ the clerk shall fix a time and place for a public hearing before the assembly. Notice in writing of such hearing shall be given to the applicant. Due notice shall also be given to the general public by publishing a notice of such hearing in a local newspaper at least five days prior to the hearing containing a brief description of the proposed tour and indicating that a detailed description of the tour will be made available at the clerk's office and publicly posted.

B. The clerk shall post, in the same posting places used for other postings, a detailed description of the proposed tour, including route maps and numbers of persons anticipated to be taken on each tour, as well as any other information the clerk considers appropriate to illustrate the impacts of the tour on the community.

C. ~~The police chief, tourism director, and harbor master shall review any application for a tour and, for all tours subject to a hearing, submit a recommendation to the assembly for consideration prior to the scheduled hearing. In addition, any person may file with the clerk a written submittal in support of or in opposition to the issuance of a permit and/or may voice the person's opinions at the hearing. The assembly will consider all verified comments before acting on the permit application.~~

Section 21. Amendment of Chapter 5.18.060. Chapter 5.18.060 of the Haines Borough Code of Ordinances is amended to read as follows:

5.18.060 Renewal.

A commercial tour permit issued for the previous year may be renewed upon application to the clerk. The review standards that apply to initial permit applications shall apply to applications for the renewal of a permit, except that a renewal application does not require a hearing under HBC 5.18.040 unless the applicant proposes ~~to expand the capacity of an existing tour.~~ **an expanded tour.**

Section 22. Amendment of Chapter 5.18.060. Chapter 5.18.060 of the Haines Borough Code of Ordinances is amended to read as follows:

5.18.065 Reporting.

A. By November 1st, and before renewal of permit, all permittees except Commercial Heliski Tours must report all actual numbers of annual customers for the previous year **on the form provided by the Borough Clerk.** Tour operators required to submit totals to a state or federal entity must also report these totals to the borough clerk.

...

C. Failure to Report pursuant to HBC 5.18.065 shall constitute a minor offense punishable by a fine of \$500.00 for each offense, unless a different amount is specified in HBC 1.24.

Section 23. Amendment of Chapter 5.18.070. Chapter 5.18.070 of the Haines Borough Code of Ordinances is amended to read as follows:

5.18.070 Permit revocation, suspension or reduction in skier day allocation and appeal from decision of manager.

A commercial tour permit may be revoked or suspended ~~or the number of skier days allocated pursuant to HBC 5.24.030 may be reduced~~ for the reasons identified and procedures set forth in HBC 5.01.060 and in accordance with the procedures set forth in HBC 5.04.120. **Appeals from the decision of the manager shall follow the procedures set forth in HBC 5.01.065.**

Section 24. Repeal of Chapter 5.18.075. Chapter 5.18.075 of the Haines Borough Code of Ordinances is hereby repealed and reserved. ***Clerk's Note: Chapter 5.18.075 is moved to Chapter 5.01.065 above.*

Section 25. Amendment of Chapter 5.22.020. Chapter 5.22.020 of the Haines Borough Code of Ordinances is amended to read as follows:

5.22.020 Number of vehicle permits available.

The borough may limit the number of vehicle permits available. Renewal of existing permits by operators who have not had their permit revoked for failure to comply with this chapter shall have priority over new or expanded commercial tour or passenger vehicle parking permit applications. The clerk will determine the number of parking permit vacancies available and allow new applicants to apply based on their position on a waiting list maintained by the clerk.

Section 26. Amendment of Chapter 5.24.020. Chapter 5.24.020 of the Haines Borough Code of Ordinances is hereby amended as follows:

5.24.020 Permit required.

...

C. Permit revocation, suspension or reduction in skier day allocation. A commercial tour permit may be revoked or suspended or the number of skier days allocated pursuant to HBC 5.24.030 may be reduced for the reasons identified and procedures set forth in HBC 5.01.060.

Section 27. Amendment of Chapter 5.24.050. Chapter 5.24.050 of the Haines Borough Code of Ordinances is hereby amended as follows:

5.24.050 Approved Commercial Ski Tour Areas.

...
D. Non-temporary Amendment of the Haines Borough Approved Commercial Ski Tour Areas Map.

1. Amendments to the Haines Borough Approved Commercial Ski Tour Areas map shall only **may** be considered on a three **five**-year cycle beginning in 2016 **2020**. The process to review and amend the map shall be according to the following procedures:
 - a. At least 30 days prior to May 15th of every third **fifth** year after 2016 **2020**, the manager will solicit proposals for possible map amendments. Proposals are due by May 15th of that year, and will contain illustrations of the specific areas **Proposals shall include the name and contact information of the party proposing the amendment** and justification for the proposed amendments. **The area of the proposal shall be submitted in a Google Earth Keyhole Markup (.kml) format or Environmental Systems Research Institute shapefile (.shp) format. Only one specific area per proposal is allowed (a party proposing multiple areas to be amended must submit multiple proposals). Proposals are due by May 15th.**
 - b. **If the Manager determines the proposals are complete and with merit,** ~~As~~ as soon as possible after May 15th, the manager ~~may~~ **shall** establish an advisory committee to review any proposed map amendments, received by the proposal deadline. The committee shall convene no later than June 15th **30th**.
 - c. The committee shall include **at minimum: one heliski permittee, one representative of Takshanuk Watershed Council, one Assembly member, one member of Parks & Recreation Committee and one member of the Tourism Advisory Board, none of whom represent a proposing organization or individual. Committee members may be volunteers chosen at random.** ~~he following five voting members:~~
 - ~~_____ (1) A representative of a local conservation organization, appointed by the mayor;~~
 - ~~_____ (2) A member of the Haines Borough assembly;~~
 - ~~_____ (3) A representative from the heliskiing industry selected randomly by current Haines Borough commercial ski tour permit holders; and~~
 - ~~_____ (4) Two members chosen randomly from Haines Borough residents who petition to be members of the committee. The manager shall solicit applications by posting notice no less than 10 days.~~
 - d. The committee shall organize itself as to procedure.
 - e. The committee shall to every extent possible involve **consult with** ADFG area wildlife biologists and Bureau of Land Management (BLM) in its deliberations, including forwarding all proposals for map changes to the ADFG and BLM, seeking ADFG and BLM testimony, and requesting comments from ADFG and BLM on all draft recommendations before they are sent to the manager.

- f. The committee shall make a any recommendations to the **Assembly through the Clerk's office.** manager on or before September 30th. The manager shall prepare a recommendation for the assembly and will not be bound by the committee's recommendations. However, the manager shall also provide the committee recommendations to the assembly for consideration.
- g. For a proposal correctly submitted in accordance with the current map review policy, ~~t~~The borough assembly may **adopt amendments to the Haines Borough Approved Commercial Heliski Tour Areas Map by adopt a resolution by November 1 of the calendar year.** to provide for adjustments to the map amendment timeline to accommodate for reasonable date or schedule conflicts.

2. The Haines Borough assembly shall adopt a resolution, following a public hearing, to finalize any non-temporary amendments of the Haines Borough Approved Commercial Ski Tour Areas map.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 28th DAY OF APRIL, 2020.

ATTEST:


Alekka Fullerton, Borough Clerk




Janice Hill, Mayor

Date of Introduction: 03/24/20
Date of First Hearing: 04/14/20
Date of Second Hearing: 04/24/20