

We received the comments below on February 16 from Mr. Ryan. Responses and requests for follow up are noted below. The attached updated draft ordinance reflects all the changes noted below.

Proposed language as a precursor to the Minor Offenses Ordinance

The purpose and intent of this title is to protect the lives, health and safety of the public and government employees; to protect public and private property; and to protect the rights guaranteed in the United States Constitution, the State of Alaska Constitution, and the Haines Borough Charter Preamble and Bill of Rights. Under no circumstances shall revenue generation be used as a motive to enforce the provisions of this TITLE.

Attorney's response: This has been added as subsection HBCO 1.24.010(A).

Oversight Recommendations: It was suggested that there be an accounting of the dollar amount or number tickets issued under minor offenses to guard against "Policing for Profit". The staff recommends the fines be tracked and the dollar amount collected at any point within a Fiscal Year be available upon request to the Public Safety Commission or the Assembly upon request. As we have not had an opportunity to work out the details with how the fees will be distributed to the Borough the details of the reporting will have to be established upon completion and acceptance of the minor offenses ordinance.

Attorney's response: This has been added as a proposed subsection HBCO 1.21.010(E). Reporting matters are probably just as well left to staff procedures rather than ordinance (as suggested in the comment), but we can add more if desired.

Ad Hoc committee recommendations Feb 12th 2016

Recommend to the assembly that Haines Borough Police officers enforce minor offenses as listed in borough code.

Attorney Response: See 1.24.020(A) – We believe this paragraph accomplishes this portion of this comment and allows the police officers to issue a citation upon a sworn statement, which is customary in any enforcement context because police do not have to personally witness crimes in order to arrest or cite people for them. In fact, by requiring a "sworn statement", this provision actually sets a higher standard than required for most arrests (though not convictions, which require some sworn testimony or statement).

The Haines Harbormaster and assistant harbormaster may enforce violation of minor offences in Chapter 16.

Attorney Response: This is already the case under existing HBCO 16.08.030(A). No update needed unless the Committee/Assembly desires something else specific.

Recommend take Title 18 out of the minor offenses schedule have appeals dealt with by the planning commission.

Attorney Response: I think it would be helpful to talk about this so I can understand the Committee's goal before re-writing Title 18 and the minor offense ordinance based on this partial note. All denied permit applications would be appealed to the Planning Commission whether or not the minor offense ordinance is adopted. The ordinance does not change that. The primary proposed change to Title 18 enforcement is to make the failure to obtain a required Title 18 permit a minor offense. These can be removed from the minor offense ordinance if desired but there would be no meaningful way to enforce Title 18 if the Assembly does not enforce these as minor offenses. In fact, these "failure to obtain a permit"-type violations are among the most appropriate ordinances to be enforced as a minor offenses because they are not criminal, are strict liability, are very clear cut (you either have a permit or you don't), and do not vary greatly in their seriousness. Is it these the committee proposes to have appealed to the Planning Commission because that would be highly unusual and place a significant enforcement burden on the Planning Commission that it does not currently have (thereby undercutting one of the goals of the ordinance significantly). However, it might make sense not to enforce some of the more subjective violations as minor offenses if the theory is that these are the types of issues the planning commission has some expertise in and therefore should adjudicate. In any event, let's clarify so I can accomplish the Committee's goal more efficiently.

Recommend borough use the magistrate for resolution of all minor offenses.

Attorney Response: This is the case by definition because all minor offenses will be resolved in court by a district court judge/magistrate. If the Committee wants to clarify this comment or elaborate, please let me know.

Request manager, police chief and harbormaster draft language for how harbormaster and assistant harbormaster will receive training for issuing citations under Title 16. (This was with the intention the ad hoc committee will have a chance to review the plan and recommend to assembly along with resto of ordinance.) - Recommendations from the Josh Dryden include 1) Identify with clothing, hat, etc. 2) Oath of office, 3) Code of training.

Attorney Response: We can collaborate on this as needed, or as soon as the manager, chief, and harbormaster are available to discuss.