

AN ORDINANCE OF THE HAINES BOROUGH AMENDING HAINES BOROUGH CODE TITLE 5 TO REPEAL PERMIT REQUIREMENTS FOR HELI-SKI OPERATIONS AND COMMERCIAL HELICOPTER TOURS AND ADD PERMIT REQUIREMENTS FOR COMMERCIAL SKIING TOURS.

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. Legislative Findings. The Assembly finds as follows:

- A. The Haines Borough is a place of unparalleled natural beauty.
- B. Part of the natural beauty of the Haines Borough consists of the existence of what is generally described as "peace and quiet".
- C. The Haines Borough is home to a wide variety of wildlife including vibrant populations of grizzly and black bears, moose, mountain goats, and bald eagles.
- D. A strong economy in the Haines Borough is one of the overall goals of citizens of the Borough.
- E. Part of a strong economy for the Borough is the existence of a tourist and visitor industry. This industry includes winter visitors attracted to the Borough to participate in commercial ski tours and summer visitors attracted to the Borough to view wildlife including native populations of grizzly and black bears, mountain goats, lynx, wolves, bald eagles and moose. Many of these visitors view and access wildlife by using non-motorized, as well as motorized conveyance including: all-terrain vehicles, jetboats, airboats, automobiles, buses, and airplanes.
- F. Part of the attraction of commercial ski tours in the Borough is the ability of tour customers to avoid the crowds of skiers typically encountered at ski resorts in other parts of North America and to ski in relative "peace and quiet".
- G. The ability to avoid crowds of skiers on commercial ski tours will be enhanced if the Borough limits both the number of permitted operators of such tours and also limits the total number of days skied by participants in commercial ski tours. This in turn, will enhance the Borough economy by making the Borough a more attractive destination for participants in commercial ski tours.
- H. Helicopter skiing provides the opportunity to enjoy the beauty, freedom, solitude, and untracked snow of the backcountry for those without the desire or physical ability to access the backcountry on foot. Helicopter skiing makes this opportunity available to those who have adequate skiing skills but lack the specialized equipment, avalanche knowledge, and terrain familiarity to ski in the backcountry safely.

- I. Commercial ski tours and commercial ski productions involve risks of multiple injuries from avalanches not present in other types of commercial tours offered in the Haines Borough. EMS volunteers must receive special avalanche training in order to be prepared to provide EMS services to commercial ski tour customers in the event of an avalanche on a scale not generally present in day to day winter life in Haines. Although EMS volunteers willingly volunteer their time in this valuable public service the more participants in commercial ski tours there are in any particular year or on any particular day and the more companies permitted to offer commercial ski tours the greater the chance of the need for the Borough's limited EMS services.
- J. The quality of service provided by commercial ski tour operators in the Borough including strict adherence to safe practices will be enhanced if the number of operators is limited in general and if first priority to a limited number of commercial ski tour permits is provided to operators with previous experience operating commercial ski tours in the Borough. This limited competition between operators will avoid "cut rate" or "low budget" operations or operators either unfamiliar with local conditions or inexperienced which would reduce the reputation of the Borough as a commercial ski tour destination and increase the chance of ski-related accidents.
- K. Various studies related to the impact of commercial ski tours on wildlife have identified possible negative impacts on populations of mountain goats and bears from commercial ski tours. These studies include: "Monitoring Mountain Goat Habitat Fidelity and Population Study in Occupied Habitats with and without Helicopter Supported Commercial Recreation in the Haines-Skagway Area of Alaska" (Deaton, 2006); "Mountain Goat Response to Helicopter Overflights in Alaska (Goldstein et al., 2005); "Mountain Goat Responses to Helicopter Disturbances" (Cole S.D. 1996); "Dall's Sheep Responses to Overflight of Helicopter and Fixed-Wing Aircraft" (Frid, 2003). In addition, the Final Environmental Impact Statement issued by the Chugach National Forest in the fall of 2007 specifically discusses the potential impact of commercially guided helicopter skiing in Chugach National Forest on wildlife. Limiting the number of commercial ski operators and the number of days of skier participation in commercial ski tours in the Borough is likely to limit the negative impacts of commercial ski tours on these species of wildlife.
- L. Operating restrictions on commercial ski tours and commercial ski productions which limit the number of skier days will impact the maximum revenues available to commercial ski tour operators, however, this will be balanced by limiting the number of operators allowed to provide such tours or support such productions in the Borough and by the creation of a transferrable asset (a commercial tour permit and an allocation of skier days) which on balance should ensure a sufficient level of value in this business to allow it to continue as a part of the Borough's overall economic development.
- M. There are many stakeholders in the Haines Borough who must be respected. These stakeholders include, but are not limited to, commercial ski tour operators, residents, backcountry recreational users, subsistence users and wildlife.
- N. In an election held in 2003, Borough residents supported managed helicopter skiing.

Section 5. Amendment of Chapter 5.04.020. Section 5.04.020 of the Haines Borough Code of Ordinances is amended by changing the following definitions to read as

indicated below:

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

"Commercial helicopter tour" means a commercial helicopter operation, other than a heli-skiing operation, **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 production" means the professional filming or photographing of persons while skiing or snowboarding for the creation of a film or photography product featuring skiing or snowboarding as the primary subject.

"Commercial ski tour" means a commercial tour as defined in Section 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 helicopter to and from the skiing or snowboarding area as frequently as weather permits.

~~Heli-skiing operations" means a commercially guided heli-ski tour conducted for the purpose of guiding clients who ski or snowboard, and includes a helicopter operation that is related to the commercial filming of such activity, or to downhill skiing or snowboard competitions. It is a commercial tour and requires a permit.~~

~~"Photographer day" means one licensed professional photographer filming a heli-skiing operations for one day, and includes staff who are transported by the helicopter to assist the photographer.~~

"Skier day" means one individual skier, or snowboarder, **photographer or a member of the photographer's staff** participating in a **commercial ski tour heli-skiing operation or a commercial ski production** on one particular day or any portion of a day excluding guides.

~~"Special ski competition event" means a skiing or snowboarding competition supported by heli-skiing operations that **includes daily transportation of the participants by helicopter to and from the site of the competition.** is of three or more days' duration.~~

Section 6. Amendment of Chapter 5.04.140. Section 5.04.140 of the Haines Borough Code of Ordinances is amended by changing the following definitions to read as indicated below:

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

5.04.140 Penalties.

A. Operation of any commercial tour or business enterprise for which a permit is required under this title without a permit, or the failure to follow any permit condition, shall constitute an offense punishable, upon conviction, by a fine not exceeding \$300.00 for each offense **plus any surcharge required to be imposed by AS 12.55.039.**

B. The securing of a permit through deceit, fraud, or intentional misrepresentation shall constitute an offense punishable, upon conviction, by a fine

not exceeding \$1,000, **plus any surcharge required to be imposed by AS 12.55.039** as well as revocation of the permit.

C. The commission by a permittee of an act of fraud, misrepresentation, or cheating 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 a permit, is, upon conviction, punishable by a fine not exceeding \$300.00 for each violation **plus any surcharge required to be imposed by AS 12.55.039.**

D. The borough may institute a civil action against a person who violates this Chapter. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction.

Section 7. Amendment of Chapter 5.04. Chapter 5.04 of the Haines Borough Code is hereby amended by addition of new sections to read as follows:

5.04.150 Offenses separable

Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of any permit issued under this Chapter is committed, continued or permitted by any such person.

5.04.160 Initiation.

A. Fines may be initiated by the Borough Manager or by any Borough police officer by filing an original or copy of a charging document with the Alaska Court System.

B. A citation, notice of violation or complaint must contain the following information:

1. The name or address of the alleged violator or violation;
2. Identification of the section of this Code violated;
3. A brief description of the conduct or condition which is alleged to be in violation;
4. Identification or signature of the person filing the charge indicating that the manager or officer swears that the information is true and correct as of the date of the alleged violation;
5. The date of the alleged violation;
6. Proof of service in compliance with subsection B of this section, including the date of service;
7. Notice advising the alleged violator of his right to a hearing and the manner in which to request a hearing;
8. The penalty proposed pursuant to Section 5.04.140 upon conviction or failure to request a hearing.
9. That the person has a right to
 - (a) a trial;
 - (b) engage counsel;
 - (c) confront and question witnesses;
 - (d) testify; and
 - (e) subpoena witnesses on the person's behalf.

C. A citation, notice of violation or complaint may be served:

1. in person;

2. by first class mail, with return receipt requested, to the last known address of the alleged violator or person responsible for the alleged violation;
 3. by affixing the charging document to the property the subject of the violation in the case of movable property; or
 4. by delivery to the authorized representative of the alleged violator or person responsible for the alleged violation.
- D. Any person charged with a violation shall appear for arraignment at the time and place designated on the citation.

Section 8. Amendment of Section 5.18.020. Section 5.18.020 of the Haines Borough Code is hereby amended to read as follows:

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

5.18.020 Number of Permits available.

The number of available tour permits, **other than the number of permits for a commercial ski tour** may be set by the assembly in September of each year for the following year. 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 tour permit applications. The clerk will determine the number of new permits available and allow new applicants to apply based on their position on a waiting list maintained by the clerk.

Section 9. Amendment of Section 5.18.060. Section 5.18.060 of the Haines Borough Code is hereby amended to read as follows:

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

5.18.060 Renewal.

A commercial tour permit issued under this chapter may be renewed upon application to the clerk, in accordance with Chapter 5.04 HBC and this chapter. 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: (1) proposes to provide a new commercial tour not previously provided; (2) proposes to solicit for or sell a tour on public property other than the designated staging area at the Port Chilkoot Dock; or (3) proposes to expand the capacity of an existing tour **other than a commercial ski tour** by 25 percent or more of the capacity of the tour from the time of, and/or as described in, the initial permit issued by the Borough for the particular tour.

Section 10. Amendment of Section 5.18.070. Section 5.18.070 of the Haines Borough Code is hereby amended to read as follows:

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

5.18.070 Permit Revocation ~~or~~ 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 5.18.080 may be reduced for the reasons identified in HBC 5.04.120 and** in accordance with the **procedures set forth in** HBC 5.04.120.

Section 11. Repeal and Reenactment of Section 5.18.080. Section 5.18.080 of the

Haines Borough Code is hereby repealed in its entirety and reenacted to read as follows:

5.18.080 Commercial Ski Tours, Commercial Ski Productions and Special Ski Competition Event.

A. Number of Permits

1. No more than three commercial ski tour permits, and one permit for a special ski competition may be issued for any one calendar year.
2. A permit does not create an exclusive right of use of an area by the permittee. However, the Borough may specify areas of the map in which a permittee may operate.
3. If more than three applicants apply for a commercial ski tour permit in any calendar year, preference shall be given to existing permit holders in good standing in the grant of a permit.

B. Skier Day Limits.

The following limitations on skier days shall apply to all commercial ski tours conducted in areas identified on the attached map.

1. Base Limits - No more than a total of 2600 skier days per year will be authorized in an allocation of skier days.
2. Allocation - If the borough receives applications for more than the total number of skier days authorized under subsection (B)(1) of this section, skier days will be allocated under HBC 5.18.080(C).

C. Allocation of Skier Days

1. At the time of an application for each commercial skiing tour permit authorized by this Chapter the permit applicant shall request an allocation of skier days.
2. If the requested number of skier days of all permit applicants exceeds the limits established by section 5.18.080 (B)(1), the Borough Manager shall, after providing each permittee an opportunity for an informal hearing, make an allocation of skier days based on the following factors:
 - a) the quality of the operating and safety plans submitted by the permittee.
 - b) the economic impact of the allocation on the permittee.
 - c) the safety and well being of the general public.
 - d) historic use of skier days by the permittee.
 - e) the interests of the Borough in the promotion of tourism.
 - f) past safety record of the permittee.
 - g) the applicant's past record of compliance with Borough ordinances related to commercial ski tours.
 - h) the existence and terms of any voluntary agreement between the Borough and the applicant pertaining to operational practices of the applicant.
3. No later than ten (10) days after conclusion of all informal hearings, the Borough Manager shall issue a written decision establishing the allocation of skier days for each permittee and containing an explanation of the allocation decision.

The term of the allocation shall be for one (1) season subject to transfer of skier days under section 5.18.080(F).

4. A permittee receiving less than a requested allocation may appeal the initial allocation decision of the Borough Manager to the Borough Assembly by filing a notice of appeal with the Borough Clerk no later than fifteen (15) days from the date of the decision of the Borough Manager. All permittees shall be included as parties to the appeal and the results of the appeal shall be binding on all permittees.

D. Future Allocation of Skier Days

At or before the expiration of the initial term for an allocation of skier days, each permittee shall apply for a subsequent allocation of skier days for the next season. If the requested allocations exceed the limit for skier days established by 5.18.080(B) the requested days shall be allocated using the same procedure and factors as in the initial allocation.

E. Transfer of Allocated Skier Days

A permittee may sell or transfer a portion of their skier days allocation for a designated season to another permittee holding an allocation upon the review and approval of the manager.

F. General Permit Conditions and Regulations

1. Commercial ski tours, commercial ski productions and special ski competition events shall be conducted only from February 1st through May 3rd unless a different period is noted on the "Haines Borough Approved Commercial Ski Tour Areas".

2. Commercial ski tours, commercial ski productions and special ski competition events shall be conducted between the hours of 8:00 a.m. and 6:00 p.m., except that the borough may authorize additional hours for no more than 30 days.

3. Commercial ski tours, commercial ski productions and special ski competition events shall be conducted only in areas identified on the map attached hereto which shall remain on file with the Borough Clerk and labeled "Haines Borough Approved Commercial Ski Tour Areas".

4. Every commercial ski tour operator shall use Global Positioning System ("GPS") equipment capable of tracking and preserving information establishing the route taken by the helicopter to and from the skiing and snowboarding area and all landings. This information shall be provided to the Borough on a biweekly basis during each commercial ski tour season.

5. Every commercial ski tour operator shall submit to the borough clerk, on forms provided by the borough, bi-weekly use reports detailing the number of skier days used during each day of the reporting period, deviations from the flight guidelines and any accidents.

6. The borough manager shall compile a season-end report to be submitted to the borough assembly annually during the first meeting in July. The report shall include the number of skier days used by each permitted company as compared to previous years, and it shall include any verified permit infractions along with correspondence and other information documenting reasons for the infractions.

7. Every commercial ski tour operator shall submit to the borough clerk annually, a Safety and Operating Plan that, at a minimum, will include (1)

avalanche safety (addressing client safety, as well as safety of other backcountry users in the area); (2) helicopter safety; (3) emergency rescue procedures; (4) guide requirements; and (5) a system for resolving complaints from the public.

8. Explosives shall not be used for avalanche control.

9. Commercial ski tour operators shall annually register contracted helicopters, their N number, color scheme, and pilot's name with the borough.

10. Commercial ski tour operators shall provide mountain goat, and other wildlife sightings to the Borough. The Borough Clerk will provide commercial ski tour operators with incidental wildlife observation forms to be filled out daily. These forms shall be submitted annually upon completion of the permit season.

11. The permittee is responsible for obtaining authorizations required by other agencies for the permitted activity. Each permittee will provide a copy of any other authorizations to the Borough Clerk.

12. Every commercial ski tour operator shall submit to the Borough Clerk a copy of a signed mutual aid agreement requiring all permittees to come to each other's aid in the event of an accident or a mechanical problem that strands a helicopter used to transport participants in a commercial ski tour away from a heliport.

13. Commercial ski tour operators transporting participants in a commercial ski tour or a special ski competition event or commercial ski production by helicopter shall use one of the following heliports;

- a. Haines Airport,
- b. The Stewart landing strip at 18 Mile Haines Highway
- c. The heliport adjacent to the 33 Mile Roadhouse.
- d. Any heliport authorized by the Haines Borough Planning Commission as a conditional use.

G. Temporary Additions to Approved Commercial Ski Tour Areas.

1. A permittee may request the addition of territory to the "Haines Borough Approved Commercial Ski Tour Areas" map for a special ski competition event. All such requests shall be made only during a season and shall expire at the end of that season. Requests shall be submitted to the manager. All requests shall be in writing, be accompanied by a diagram showing the proposed additional area with reasonable specificity and shall explain the reasons for the proposal.

2. No later than seven (7) days after receipt of a request submitted in compliance with subsection 1 above, the manager shall prepare a written recommendation to the Assembly.

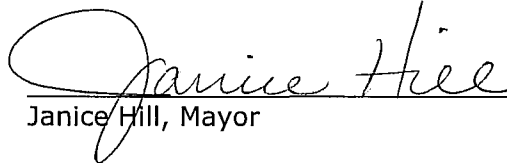
3. The Assembly may act on the manager's recommendation by resolution. If the Assembly approves the temporary addition of territory, the Haines Borough Approved Commercial Ski Tour Areas map shall be amended by designating the additional territory as "temporary" and identifying the dates for which the additional territory is approved.

H. Shared Use Policy

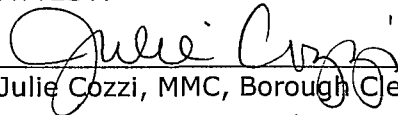
Haines Borough
Ordinance No. 10-10-243
Page 9 of 9

1. Commercial ski tour permittees shall yield to non-motorized, recreational backcountry users, within the boundaries of the area known as Telemark Ridge at the head of the Haska Creek drainage, on a by request basis.
2. Recreational backcountry users may contact a permittee by phone or email at least 48 hours in advance of the activity and request to use a specific area on a specific day.
3. Confirmation shall be given by the permittee within 24 hours of the request.
4. The person making the request shall notify the borough clerk of the request.
5. Cancellation of the request shall be communicated to the permittee before 9am on the day of the activity.
6. Failure by recreational users to communicate a cancellation of the activity may result in the loss of request privileges.
7. Failure by a permittee to confirm a request, or to yield an area to recreational users, shall be reported to the borough clerk and recorded for future review.
8. The duration of a recreational activity in any specific area shall be for a maximum of three days consecutively, and for no more than ten days per month.

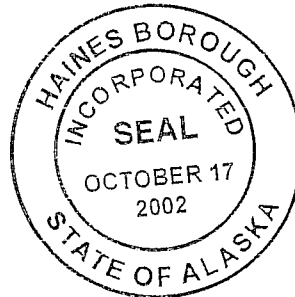
ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 8th DAY OF MARCH, 2011.


Janice Hill, Mayor








ATTEST:


Julie Cozzi, MMC, Borough Clerk

Date Introduced:	10/12/10
Date of First Public Hearing:	10/26/10 – Referred to Heliskiing Work Group
Date of Second Public Hearing:	01/25/11
Date of Third Public Hearing:	02/08/11
Date of Fourth Public Hearing:	02/22/11
Date of Fifth Public Hearing:	03/08/11 - Adopted



**Haines Borough
Approved Commercial Ski Tour Areas**

-  Haines Borough Boundary
-  Parcels
-  Goat Monitoring Control Area
-  February 1 to May 3
-  February 1 to March 31
-  February 1 to March 31 - Update
-  February 1 to May 3 - Update

0 1 2 4 6 8 Miles

Adopted by the Haines Borough Assembly 3/8/11
Ordinance 10-10-243

