

Introduced By: Council Member Hilling

Date: April 23, 2012

RESOLUTION NO. 4522

A RESOLUTION DENYING THE USE OF CITY RESOURCES, AND URGING THE STATE OF ALASKA TO DENY USE OF ITS RESOURCES, IN ANY UNCONSTITUTIONAL FEDERAL SUSPENSION OF HABEAS CORPUS PURSUANT TO SECTION 1021 OF THE NATIONAL DEFENSE AUTHORIZATION ACT (NDAA)

WHEREAS, the United States Constitution assures all citizens the right to habeas corpus, that is, the right to demand that the arresting authority show legal cause for detention; and

WHEREAS, legal cause for detention must conform to the Fourth Amendment outlawing any unreasonable seizure of persons, the Fifth Amendment requiring due process in any deprivation of liberty, and the Sixth Amendment assuring speedy and public trial; and

WHEREAS, the *only* exception to such legal causes for detention is found in Article 1, Section 9, of the U. S. Constitution, which reads, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it"; and

WHEREAS, the Tenth Amendment reserves all powers and rights to the people and the states, *except* those delegated to the federal government by the U. S. Constitution; and

WHEREAS, the power of habeas corpus suspension, as legislated to the federal government in Section 1021 of the NDAA of 2012, includes the power to detain any person "who was part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners," and anyone who commits a "belligerent act" against the U.S. or its coalition allies in aid of such enemy forces, under the law of war, "without trial until the end of the hostilities"; and

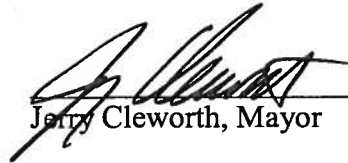
WHEREAS, Section 1021 thus oversteps the clear meaning of Article 1, Section 9, insofar as it grants the federal government power of unlimited detention of American citizens without charge or trial *without defining or specifying conformity* to the meanings of "rebellion," "invasion," "hostilities" or "public safety" as these terms constitutionally should be understood by Article 1, Section 9; and


WHEREAS, the Mayor of the City of Fairbanks and the Governor and Legislature of the State of Alaska have taken oaths to support the Constitution of the United States;

NOW THEREFORE BE IT RESOLVED, that (1) the Mayor of the City of Fairbanks refuse to permit the expenditure of resources to conform to any federal request or mandate which should overstep the power granted in Article 1, Section 9, of the U.S. Constitution; (2) the Governor of the State of Alaska be hereby urged to do the same; and (3) the Legislature of the

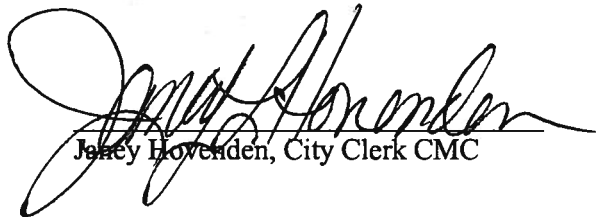
State of Alaska be hereby urged to enact a statute requiring same; and (4) the Congress of the United States must repeal Section 1021 or reformulate it by specifying exactly how it shall conform to Article 1, Section 9, suspending habeas corpus.

PASSED and APPROVED this 23rd Day of April, 2012.

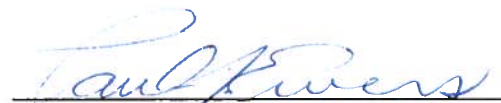

Jerry Cleworth, Mayor

AYES: Stiver, Matherly, ~~Gatewood~~, Hilling, ~~Eberhart~~, Roberts
NAYS: ~~None~~ **GATEWOOD, EBERHART** 
ABSENT: None
APPROVED: April 23, 2012

ATTEST:


Jacey Hovenden, City Clerk CMC

APPROVED AS TO FORM:


Paul Ewers, City Attorney