

KETCHIKAN CHARTER COMMISSION

REGULAR MEETING

February 6, 2004

The regular meeting of the Ketchikan Charter Commission commenced at 6:00 p.m., Friday, February 6, 2004, in the City Council Chambers.

A: Pledge of Allegiance**Roll Call**

PRESENT: PAINTER, OTTE, THOMPSON, HARRINGTON, KIFFER, FINNEY
(Telephonically)

ABSENT: MCCARTY

B: Ceremonial Matters

NONE

C: Public Comments

Chuck Slagle, 683B Forest Park, spoke to the Commission regarding tourism and the presentation of Ketchikan on the Internet in a more positive manner as a part of the new consolidated government. He urged the Commissioners to not just look at the bottom line, but to envision our community 10 years from now. He urged the Commission to re-evaluate what we stand for.

Commissioner Painter asked what Mr. Slagle's attitude was toward consolidation and he responded that if it were done properly and more efficiently and focus on those things that would make Ketchikan more competitive toward attracting tourists or home-owners, he would be for it.

Commissioner Kiffer asked Mr. Slagle if he felt he would be better represented by smaller service area groups, or a larger, central group. He responded that if pointed to the efficiency aspect again. If it's the right group of people that can motivate and get people headed in the right direction, it's probably more efficient to have a good, focused group of people and he feels a smaller government would be more efficient.

D. Informational Reports and/or Presentations

Borough Attorney, Scott Brandt-Erichsen, provided a hand-out regarding the Open Meetings Act as it relates to the Commission.

Mr. Brandt-Erichsen indicated that the law of 1996 has not changed. He indicated that while the Ketchikan Charter Commission is not under the Borough Assembly or the City Council, it was created by an initiative through the statutes for a general law borough, so the Commission is an entity related to the Borough and would be covered under the Open Meetings Act.

The general policy regarding the Open Meetings Act is that it is not up to the public servants to decide what is good for people to know and not good for them to know. People get to decide for themselves what they should know.

The first issue covered was what makes a meeting. When 3 or more, or if subcommittees are formed, a majority of the subcommittee, gather in person, by a series of telephone calls or telephonically, by electronic communications to collectively consider something. It doesn't mean that the Commissioners cannot be in the same place at the same time, they just shouldn't talk about Commission business (at the movies, a party). Public perception of a group of Commissioners talking would probably be they were talking about Commission business and the Commissioners should be aware of this public perception.

He indicated that an email is not a lot different than a phone call or letters. He gave an example of an original email draft went to each of the Commissioners, and each responded with suggestions/corrections with the original document then being edited for presentation to the public, THAT would be collective consideration and should have been done in the public forum.

He indicated that the use of one-on-one contacts between Commissioners should not be used to subvert the public process. Meetings must be given prior notice to the public. He indicated that putting all the all-Commission meetings on Sitnews would be providing access to public documents, but would not be properly noticed if consideration of issues was being conducted by emails, and therefore would be considered a meeting. Teleconference meetings also should be given prior to the teleconference and the public should have access.

Mr. Scott Brandt-Erichsen indicated he didn't feel the exclusion of the public process for executive sessions would apply much to this Commission.

Possibly if a staff person were hired, or possibly when reviewing KPU's business plan for the new entity's budget, an executive session may be warranted. The Commission must identify the reason for the executive session, not just have a blank executive session without explanation.

On meetings of less than 4 members of the Commission, unless 2 or 3 members are a majority (sub-committees), Mr. Brandt-Erichsen indicated those meetings need to have public notice, as well.

Social matters do not need to be noticed, unless Commission matters are discussed. Reasonable public notice must be given for all meetings. These notices must indicate the time, date and location of the meeting. Notice can be given by posting in a combination of publication or broadcast media. The meetings should be posted in the City and Borough offices. There should be a consistent location for these postings so people will know where to look. The time in advance for posting is not specified, but varies with the significance of the issue.

Mr. Brandt-Erichsen indicated that nothing in law says there must be a public comment during Commission meetings, however, it would seem to defeat the purpose of this body if it weren't encouraged.

Remedies to violations are given in the Open Meetings Act. The simple solution if you know there has been a problem is to re-notice the item and consider it again. If an action is to be challenged in violation of the OMA, this challenge must occur within 180 days. The Court would then balance the harm with the public interest. The Commission itself can only be named as a defendant in an action, not the individual members.

The question about group emails which include all the Commissioners, Dan Bockhorst of the LBC, and the local newspaper and whether these emails are legal. Mr. Brandt-Erichsen indicated that if these emails, which include copies to all Commissioners, are not responded to, but are informational for the purposes of placing items on the agenda or actions taken by a specific Commissioner on behalf of the Commission (radio shows, contacts made to organizations, etc). If individual thoughts are expressed on issues, rather than hard facts or information, the Commission is taking a risk. An example would be if an all-Commission email was sent requesting an item be placed on the agenda, but if a response is sent to all-Commissioners expressing an opinion of that item, that would not be allowed. It was re-iterated and discussed by the Commissioners that no response to an individual's all-Commission emails would be sent, thereby keeping within the Open Meeting's Act. Routine things such as date or time of a special meeting or something on that order would be

allowed to be discussed as it is procedural rather than deliberative.

Reports were given about actions taken about the dissemination of requests to the City & Borough. Chair Thompson indicated he had not had a conversation with the Borough. The letters were sent, but they were too late to be included on their agendas. Mr. Amylon suggested that Mr. Thompson attend the City Council meeting of 2/5/04 and he did. He did not speak since the item wasn't on the agenda, however, he did have some conversation with some of the City staff and at the end of the Council meeting, there was a request to have the Commission's request put on the agenda for the next meeting.

Secretary Otte indicated that Marvin Davis of TBC had responded to our request by sponsoring a daily ad in the newspaper for the Commission. The newspaper said the ad could be changed now and then, but it does show when, where and what time the Commission meetings occur. The Commission owes Mr. Davis a big thank-you.

There has been no response to the other letters to vendors and organizations that were sent out. Chair Thompson indicated that any offices the Chamber might have are not ADA accessible.

E. Consent Calendar

The minutes of the January 30, 2004 regular meeting were approved by unanimous voice vote.

F. Unfinished business

F-1: Suggested Questions for a Commission Mail-Out Survey

The agenda statement and questions were read for the benefit of Commissioner Finney, who was unable to access the agenda due to computer problems.

M/S Painter/Kiffer to format questions in substantially the same format to be included in a community-wide mail-out as soon as funding allows.

Commissioner Harrington commented that he thought this was premature. We need a survey to answer burning issues, get data on questions that we have. If we are having trouble getting questions, it means we aren't to those burning issues yet. He suggested that this be postponed for awhile. He also

suggested using an 8 _ X 11 insert into the Daily News instead of a mail-out and check with the three major stores and have drop-boxes and possibly additional surveys on hand.

Commissioner Kiffer said he thought it was a little premature. He felt that maybe having some flyers/posters for local businesses to put up may get dialog going in the community. He again mentioned that there needed to be more public participation or the whole effort will fail.

Commissioner Harrington spoke regarding the suggested question regarding having a smaller number of service areas. He spoke regarding service areas and that citizen's inside a small geographical area have chosen to exercise certain powers, through the Borough, for that area. How does the Commission then separate Waterfall from the rest of North Tongass? There would be a whole set of information and discussion that has to have occurred prior to some of the survey questions being addressed.

Commissioner Finney felt that he doesn't have enough information right now to ask a question. He felt delay of this issue was warranted.

M/S Otte/Harrington to postpone this agenda item until the regular meeting of February 20.

ROLL CALL

FOR: FINNEY, KIFFER, HARRINGTON, PAINTER, THOMPSON, OTTE

AGAINST:

ABSENT: MCCARTY

Further discussion was held regarding getting public participation levels up.

G-1: Resolution no. 5 – Adopting Robert's Rules of Order as the guideline in conducting meetings

M/S Harrington/Painter to adopt Resolution No. 5.

ROLL CALL

FOR: KIFFER, HARRINGTON, FINNEY, PAINTER, THOMPSON, OTTE

AGAINST:

ABSENT: MCCARTY

G-2: Review and Acceptance of the Preamble and Section I of the City of

Ketchikan's Charter of 2001

M/S Harrington/Painter to approve the Preamble and Section I of the Ketchikan 2004 Charter in the first reading.

Commissioner Harrington read the Preamble. He said it could be re-reviewed after the entire Charter had been reviewed.

Commissioner Finney suggested reversing the order to having just Ketchikan and Municipality of Ketchikan in Section I to keep it simple.

Secretary Otte concurred, but suggested that rather than the Municipality of Ketchikan, the term should be City & Borough of Ketchikan. She inquired as to any specific reason why Municipality was chosen; possibly to get away from the current divisiveness. Chair Thompson indicated that from the standpoint of the initiative group, they didn't really think too much about it. The prior effort referred to the Municipality. He said he felt he liked using Ketchikan and the Municipality of Ketchikan. Commissioner Harrington agreed with just Ketchikan but the City & Borough of Ketchikan rather than

M/S Harrington/Painter to amend the Section 1.01 to read "The municipal corporation shall be known as Ketchikan. Whenever it deems it in the public interest to do so, the municipality may call itself the City & Borough of Ketchikan or Ketchikan Borough."

In the preamble, the only change would be to have municipality in lower case, rather than upper. It becomes a descriptive term rather than part of the name.

Tom Miller, Ketchikan Daily News, 59 Earl Hines Lane, suggested the Preamble state simply the "Charter of Ketchikan" and like Haines, "the municipal corporation shall be known as Ketchikan." No bureaucratic talk at all. What legal entanglement would there be if there was no municipality, borough, corp. or Inc.? He said he wondered if you have to call a town something that sounds corporate.

Chair Thompson offered a friendly amendment to the amendment in that no two choices in Section 1.01 to either be City & Borough of Ketchikan OR Borough of Ketchikan. Commissioner Harrington & the second, Commissioner Painter agreed to the friendly amendment to the amendment.

Ted Jacobsen, 15 Wood Road, spoke from the audience to say that he thought the consolidation was to eliminate the divisiveness in the community. Calling the new entity Ketchikan for the unity of the community is good and for legal

things, he feels it should be the Municipality of Ketchikan. That was the corporate label is there, and the unifying title of just Ketchikan.

The motion on the floor is to amend Section 1.01 to say "The municipal corporation shall be known as Ketchikan. Whenever it deems in the public interest to do so, the municipality may use the name City & Borough of Ketchikan."

ROLL CALL on the AMENDMENT
FOR: FINNEY, HARRINGTON, KIFFER, THOMPSON, OTTE
AGAINST: PAINTER
ABSENT: MCCARTY

It is suggested for future reference that all of the capital m's in the document will be changed to small m's. This would apply to the Preamble, as well.

Section 1.02 is the type and class of government, a home rule Borough and an assembly/manager form of government. A discussion was held regarding assembly/manager form of government. It was described as a strong manager form of government. No changes were noted by amendment to this section.

Section 1.03, Boundaries, was discussed. No changes other than changing the m's to lower case were made.

Section 1.04, Powers, was discussed. It was noted that all the powers would be discussed later in this process. It was also noted the word "may" rather than 'will' exercise the powers is important. It was questioned what "other authority" referenced in this section. Chair Thompson felt that the Assembly could delegate the authority to a board. Commissioner Kiffer indicated that when he read the section, it seemed to him that the State may prescribe. It was pointed out that it could refer to the Courts or a vote of the people. It is noted that Sitka and Haines did not have that particular clause, but before eliminating the statement, someone with knowledge about this should be consulted.

Commissioner Kiffer indicated that unless there is a specific reason for wording in the Charter, it shouldn't be there. He felt that the document should be kept as simple and clean as possible. He said he would like to see the words "or other authority" be pulled out, but he's unsure as to the legality.

M/S Thompson/Unknown second moved to delete the second sentence in Section 1.04 in its' entirety to read, " The municipality may exercise all powers of home rule cities or boroughs not prohibited by law or by this Charter."

Commissioner Harrington suggested emailing the LBC and check to see why they felt this phraseology was appropriate. He indicated that he would support the amendment because it made the Charter cleaner.

ROLL CALL VOTE ON THE AMENDMENT

FOR: PAINTER, HARRINGTON, KIFFER, FINNEY, OTTE, THOMPSON

AGAINST:

ABSENT: MCCARTY

It was pointed out that all the items in bold are what the Commission is looking to change, with the other wording merely exemplars. Secretary Otte then went over the next few weeks' schedule of the review of the Charter for agenda purposes.

ROLL CALL VOTE ON THE ORIGINAL MOTION AS AMENDED

FOR: FINNEY, KIFFER, THOMPSON, PAINTER, HARRINGTON, OTTE

AGAINST:

ABSENT: MCCARTY

G-3: Discussion of and authorization for Commission Member participation in public venues and creation of public service announcements

M/S Harrington/Painter to authorize Commissioner Kiffer approach the various radio stations regarding participation in their regular interview programs, as well as help develop PSA's educating the public about the Ketchikan Charter Commission and its goals. I also move to contact both Rotary and the Chamber of Commerce to schedule Mr. Kiffer and/or another Commissioner to speak at one of these organization's functions.

Commissioner Kiffer spoke to the motion and said that the more discussion in the community, the better the process will be.

Commissioner Painter reminded the other Commissioners that anything discussed at these venues can only be about those things already voted on by the Commission, and any other things discussed are clearly noted as being the one Commissioner's opinion, rather than speaking for the body.

Commissioner Kiffer indicated that he was merely hoping to get more community involvement in the process and any discussions on specific issues should be brought before the whole Commission at a meeting.

Chair Thompson indicated he'd participated in these forums before and it's

somewhat daunting for only one Commissioner and that others on the Commission volunteer to assist in these programs.

ROLL CALL

FOR: HARRINGTON, THOMPSON, KIFFER, OTTE, PAINTER, FINNEY

AGAINST:

ABSENT: MCCARTY

G-4: Discussion of the existing service areas – their powers and funding

Chair Thompson pointed out that there are differing levels of service and differing cost levels throughout the amalgam of service areas that currently exist. There are seven active service areas. Service area representatives should be invited to the meetings to give their opinions.

Commissioner Harrington pointed out that the service areas hadn't voted on the taxes assessed to their area, they've voted to take on certain powers for their geographic area. The Borough has assessed the taxing level for those services to be provided. The Borough Assembly is the final authority on all of the service areas.

Chair Thompson discussed his hand-outs for existing taxes which was taken from the prior consolidation documents. Mr. Brand-Erichsen pointed out there are some errors on these sheets, and Mr. Thompson indicated he would talk with Mr. Brandt-Erichsen and correct those errors. He also pointed out other items on this spreadsheet regarding who exercises the power and where the funding comes from. Commissioner Thompson also indicated he would meet with the City Finance Director and get the document updated to the current year.

Commissioner Harrington said that as the Commission goes through the areawide powers and whether they're exercised by the City or the Borough or by both, it would be instructive to get what the powers are and what the costs are currently for when the Commission gets to the taxation section of the Charter.

Chair Thompson said the Commission will need to define what kind of tax level is needed to maintain the powers. One of the more confusing taxation issues is regarding the hospital. It should be determined whether an areawide function should be supported by a sales or property tax. As much as the status quo can be maintained in the Commission's new Charter, the better accepted it will be by the citizens.

Chair Thompson indicated that another discussion item should be whether or not areawide fire protection should be offered. Would it make sense to have

one fire department or keep it on a service area level? The question will be how expensive that option would be to all the citizens.

Commissioner Painter pointed out that Pennock is not a service area, but is part of the Borough. He questioned that those residents of Pennock and Gravina are not getting the services of the City. He spoke that under the current City and Borough accounting there seems to be a lot of robbing Peter to pay Paul. He pointed out the Telephone division is subsidizing the other two departments within the Utility.

Chair Thompson responded that KPU is different in that it's a public utility ultimately run by the City Council and that funding is used for various capital projects. He said he felt that the water department really belongs with the sewer department and to pull the water department out in this Commission's efforts might be better left for the new government to exercise its powers to realign the utility.

It was discussed about how to eliminate positions in the new government when both the duplicated positions have a full work load; it wouldn't seem like 1 person could do the work of 2.

Commissioner Harrington pointed out that a lot of these things this Commission will never be able to do, but the Commission should set up the new Charter to allow the new governmental body to maximize or minimize the services. He said he felt that if this Commission tried to make major changes in existing structure, it would fail. Things such as centralizing the fire departments could be authorized in the Charter but not mandated. Transition time is going to be needed to make a lot of these type things happen efficiently. This Commission should maintain the status quo as much as possible with the authorization for the discussed changes so that they do happen. He also said he fears that only partial information is being considered during the discussions and it's important that the person in charge of the issues be invited to speak to the Commission and answer questions.

Commissioner Kiffer suggested that perhaps, for example, KPU could be requested to come up with a budget showing the Water Department moving to Public Works and what effect that would have on the overall KPU budget.

Chair Thompson suggested for a survey question saying "Which of the following do you think should be provided areawide or non-areawide?" and just list the powers with an explanation of what those terms mean.

Commissioner Kiffer pointed out that the LBC has a lot of information regarding

service areas, those areas similar in geographic areas, type of housing and here in Ketchikan there are definite distinctions between different areas. Another question for the Commission is how many service areas does the public want; do Pennock and Gravina need to be included as one; what services are desired by the majority of the people in a proposed service area and how much would these services cost.

Ted Jacobsen from the audience questioned the service area process and it was explained to him the difference between a service area administered by Borough and a group of neighbors getting together and jointly paying for a service. The service areas offer choices of fee options.

G-5: Recommendation to begin a search for a staff secretary, depending on available funding

M/S Harrington/Painter to approach the Borough and the Borough Clerk and request assistance in advertising, hiring, and funding a 20-hour per week staff person to assist the Commission with their elected responsibilities.

Commissioner Harrington indicated that it is clear a staff person is needed and knowing that in going through the Borough the Commission should get started with this process as soon as possible. He indicated that the Commission as yet has no money, but it is expected there will be some money in the near future. He indicated that although he hadn't spoken directly to the issue of the Borough Clerk being part of the selection committee, he had spoken to her regarding assistance and technical advise on this issue. He indicated he would very much like the Clerk or the Assistant Clerk to be involved in the selection process.

Commissioner Kiffer indicated that parallel to this issue is the fact that a staff person needs a desk and an office.

Chair Thompson indicated that letters had gone to both the City and Borough and the City's requested in-kind office or support staff. Things are not obtained unless they are asked for.

ROLL CALL

FOR: FINNEY, PAINTER, KIFFER, THOMPSON, OTTE, HARRINGTON

AGAINST:

ABSENT: MCCARTY

G-6: Resolution No. 6: Establishing a procedure for teleconference meeting participation by out-of-town Commissioners

M/S Painter/Finney to adopt Resolution No. 6.

Chair Thompson indicated he had questions about Section 1.a which states, "The meeting is held with a quorum of members physically present." He said that sometimes in a small body that person who is telephonically participating is often needed to make a quorum. He wanted to know why a Commissioner would have to be physically present to make a quorum. If only 3 were present, but 3 or 4 could participate telephonically, then we'd have a quorum. He didn't feel that would happen, but if it were to happen that way, the meeting could go on. He said he felt the Commission was a little less formal than the Assembly. He said he would hate to say the meeting was postponed because there wasn't a physical quorum.

Commissioner Harrington indicated that if only 3 Commissioners were present that he didn't feel there should be a meeting. He talked about when the Assembly meets and the telephonic connections are broken. He said having 4 people is pretty important.

Commissioner Finney indicated he was comfortable with his ability to participate in the meeting telephonically. He felt that 4 Commissioners should be present in person, though, to conduct a meeting.

M/S Otte/Painter to amend the Resolution by striking Section 4, which states that Commissioners are responsible for any telephone long distance charges incurred due to their participation telephonically in a meeting.

Commissioner Harrington agreed that until funding is obtained, it would be prudent not to reimburse those participating telephonically.

Commissioner Finney said he didn't have a problem paying for his own phone calls. But he said that calls from overseas (Mexico) would be prohibitively expensive. He said that it wasn't that important to him one way or another.

Secretary Otte said that if the Commission doesn't get the telephone cards, it would be up to the Commissioner who is away whether or not they chose to participate in the meeting.

Chair Thompson agreed that the Commission doesn't have any funds right now and further to that, if a Commissioner is in a place that would cost 50 cents a minute for a call, don't call in.

Commissioner Kiffer indicated he would like to leave the section and he would be voting no on the amendment. It puts the responsibility onto the Commission member to either call in with or without reimbursement. The item can be revisited.

ROLL CALL ON THE AMENDMENT STRIKING SECTION 4
FOR: PAINTER, OTTE
AGAINST: HARRINGTON, THOMPSON, KIFFER, FINNEY
ABSENT: MCCARTY

The amendment failed.

ROLL CALL ON THE MAIN MOTION TO ADOPT RESOLUTION NO. 6
FOR: FINNEY, PAINTER, KIFFER, HARRINGTON, OTTE, THOMPSON
AGAINST:
ABSENT: MCCARTY

H: Commission Comments

Commissioner Finney said that the Commission needs to look at Article II, Section 2.02(a), Composition of the Assembly. He said that the number of people on the Assembly and whether or not they are elected at-large or districting (from certain areas).

Chair Thompson indicated that there is something on the LBC website that discusses the pros and cons of at-large or districting for the composition of the Assembly, as well as some of the requirements when you have voting from districts that have to do with demographics of population and minority representation that are part of the reason a lot of smaller communities go to an at-large vote.

Commissioner Painter urged the Commissioners to read the White Paper that was put out by the Borough in February of 2000. A lot of the objections that the Borough had with the City's consolidation effort are addressed in the paper.

Commissioner Otte requested that agenda materials be submitted in a timely manner. She indicated that she and Chair Thompson are exploring lots of different options regarding our funding/equipment/office/staff requirements.

Commissioner Kiffer had no comments.

Commissioner Harrington had no comments.

Chair Thompson had a comment regarding Mr. Harrington's discussion about bringing people to the podium to give the Commission the facts and not the rumors. He said he was planning on contacting several of the people on Mr. Harrington's list (from the prior meeting) and inviting them to speak on topics. He said that the Commission needs to particularly speak to Mr. Hall, the finance director for the Borough and Mr. Newell, the City and KPU's finance manager and the City and Borough Managers. He thanked Mr. Brandt-Erichsen for coming in to speak to the Commission.

Ted Jacobsen, from the audience, said he felt that consolidation was a very good idea. He said he felt that because of the divisiveness between the City and Borough was getting in the way of good judgment and sound financial decisions by both bodies.

The meeting was adjourned at 8:35 p.m.