

KETCHIKAN CHARTER COMMISSION

AGENDA STATEMENT

NO F-1

MEETING OF **February 13, 2004**

ITEM TITLE Acceptance of the Preamble and Section I of the Ketchikan 2004 Draft Charter Agreement, Second Reading SUBMITTED BY John Harrington

SUMMARY STATEMENT

At the regular meeting of February 6, 2004, the Commission amended and passed through to second reading the Preamble and Section I of the Ketchikan 2001 Consolidation Charter.

This meeting constitutes the second reading of these sections of the 2001 Charter and when passed, they become the first section in the Ketchikan 2004 DRAFT Charter document.

RECOMMENDED ACTION:

"I move to accept the amended Preamble and Section I of the Ketchikan 2001 Charter as part of the Ketchikan 2004 DRAFT Charter document."

Preamble

We, the people of the greater Ketchikan area, in order to form an efficient and economical government with just representation, do hereby ordain and establish this Charter of the municipality of Ketchikan.

Section 1.01 Name

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 and Borough of Ketchikan."

Section 1.02 Type and Class of Government

Ketchikan shall be a home rule borough and shall operate as an "assembly manager" form of government.

Section 1.03 Boundaries

The boundaries of the municipality shall be the same as the boundaries of the Ketchikan Gateway Borough as they exist on the date of ratification of this Charter. The boundaries of the municipality may be changed in the manner provided by law.

Section 1.04 Powers

The municipality may exercise all powers of a home rule borough not prohibited by law or by this Charter. All powers of the municipality shall be exercised in the manner prescribed by this Charter or applicable laws or, if the manner is not thus prescribed, then in such a manner as the Assembly or other authority may prescribe.

----- Original Message -----

From: [John Harrington](#)

To: [Mike Painter](#) ; [Tom Miller](#) ; [Brad Finney](#) ; [Debby Otte](#) ; [Dennis McCarty](#) ; [Glen Thompson](#) ; [Jerry Kiffer](#) ; ['Dan Bockhorst'](#)

Sent: Sunday, February 08, 2004 10:13 AM

Subject: Re: Question for Mr. Bockhorst

Dear Mr. Bockhorst:

During deliberation, the Ketchikan Charter Commission had questions regarding some wording in the 2000 Ketchikan Charter. We found the following (italicized wording) not very illuminating. So we deleted it. However, if there is some purpose for inclusion of the wording we would certainly consider reinstating it or some similar wording. The sentence in question was the second sentence in Section 1.04 Powers:

Section 1.04 Powers: The municipality may exercise all powers of a home rule borough not prohibited by law or by this Charter. ***All powers of the municipality shall be exercised in the manner prescribed by this Charter or applicable laws or, if the manner is not thus prescribed, then in such a manner as the Assembly or other authority may prescribe.***

In particular the "other authority" raised the paranoia quotient up a few points.

PS: Glen, or Debby could you forward this on to Mr. Schwepe? I can't locate his email address.

----- Original Message -----

From: "Steve Schwepe"

To: "Deborah S. Otte"

Sent: Monday, February 09, 2004 11:00 AM

Subject: Re: Fw: Question for Mr. Bockhorst

This sentence was added to the draft charter on August 1, 1997. It was added in response to comments from Dan Bockhorst. Mr. Bockhorst noted that there has been some controversy over the meaning of the prior sentence which gives the municipality all powers not prohibited by law. The controversy centers on whether the Assembly must adopt an ordinance whenever it seeks to exercise a particular power or whether it can do so merely by approving an act which is an exercise of the power. We opted to allow the Assembly to exercise the municipality's powers by ordinance or otherwise as it determines. I summarized the decision as follows:

" Section 1.04 has been changed to maximize the manner in which the Borough's powers may be exercised. As you will recall, Dan Bockhorst described conflicting opinions as to whether a home rule borough must enact an ordinance in order to exercise a certain power. The new language, which is patterned after existing language in the City of Ketchikan's Charter, is intended to allow the Borough to exercise powers in any way it determines whether that be pursuant to ordinances, resolutions, motions or other determinations by borough officials. The Charter does require some powers to be exercised only after voter approval or by ordinance. The thrust of this language is to allow the greatest flexibility except in those areas where that flexibility has been specifically limited or denied."

I encourage you to keep this sentence. It avoids any dispute as to how powers can be exercised. It reflects the realities of local governing bodies. Elected officials often authorize actions without considering whether they need an ordinance, resolution or motion to do so. Our approach was to recognize this fact and to allow it except in cases where the manner of exercising the power was important. When a certain procedure was important to protect certain rights we specified the procedure. If you don't use this approach, you just open the door for lawsuits over whether or not the Assembly used the right form for exercising a power and write into the Charter unnecessary delays due to cumbersome procedure. Our approach in general was to avoid broad mandates so that future officials could address problems without obsolete rules to box them in. That has been the key to successful constitution writing as most clearly shown by the US Constitution.

As long as I am commenting, I would like to comment on the name of the new government. Simply referring to it as Ketchikan does nothing to tell people what they really want to know. They want to know what kind of government it is, not the geographical location. I favored the name Ketchikan Borough, but the Mayor's Blue Ribbon Committee thought that this name lacked style and would too easily be confused with the present borough. The term Municipality of Ketchikan copied Anchorage's name so people would have some idea of the type of government they are dealing with by reading the name.

----- Original Message -----

From: "Steve Schweppe"

To: "Deborah S. Otte"

Sent: Monday, February 09, 2004 11:16 AM

Subject: Re: Fw: Question for Mr. Bockhorst

I didn't reply directly to the question of "other authority". That phrase probably refers to the manager and department heads although it could refer to a State or Federal agency which might want to see a power exercised by ordinance or resolution. I do not see a reason for concern since we are dealing with a matter of procedure, not an extension of powers. The sentence applies to situations where the municipality already has the power and is proceeding to exercise it.

----- Original Message -----

From: "Dan Bockhorst"

To: "Deborah S. Otte"

Cc: Glen Thompson; Tom Miller; Brad Finney; Jerry Kiffer; John Harrington; Mike Painter; Dennis McCarty; "Steve Schweppe" ; "Lorna J Mcpherren"

Sent: Monday, February 09, 2004 2:20 PM

Subject: Re: QUESTIONS/ANSWERS

Debby: I concur fully with Mr. Schweppe about the issue at hand as well as the issue about the name of the prospective consolidated borough government.