

TAX CAP INFO FYI, 2/19/05

EXCERPTS FROM THE 7/30/04 MEETING MINUTES REGARDING TAXES AND A TAX CAP

Specific discussion on the mill rate tax cap took place. A compromise was suggested that rather than a property tax cap, perhaps a section could be included saying that the Assembly must set a generally applied mill rate levy cap by ordinance and can only raise it by a 2/3 vote of the Assembly. The reasoning for this being that the Assembly has to establish a cap so there is something to work within, but in order to raise that mill levy, there has to be 5 votes. That means that the elected representatives who are hopefully elected by voters who have done their due diligence, in order for them to raise the cap, there would need to be 5 affirmative votes. That would be a compromise that doesn't tie the Assembly's hands completely, but it does put the brakes on the spending and taxing authorization. THOMPSON said he would draft an agenda item for the next meeting.

Excerpts from the 9/3/04 meeting minutes regarding taxes and a tax cap

THOMPSON said that the Commission would now discuss agenda items H-2 (A-F).**Attached** THOMPSON invited HARRINGTON to lead off the discussion. THOMPSON asked HARRINGTON which of the proposed options was his favorite.

HARRINGTON said his original change to the Petition, 9 mills with voter approval for raising the cap was his preference. He said obviously that wasn't going anywhere. He said he'd even consider 9.2 mills. If that weren't done, then his preference would be to establish 9.2 mills and give the new Assembly, by a super majority of some sort, authorization to declare a financial emergency and to exceed that limit, on a year-by-year basis. He said the original and Item B were his favorites. He said if he had to, he'd probably go along with C, D & E. He said he hates F and he didn't like A.

THOMPSON asked in terms of Item B, what was to prevent them from continuing every year from declaring an emergency and raising the taxes? Not a thing, except it's a super majority and every time they have to do it, they have to declare an emergency and they have to have the super majority, but remember, HARRINGTON said, every year there's an election right after that. That's where you kick the bums out who raised it. The only way to raise the cap and get it out of that cycle is by a vote of the people.

PAINTER said he liked what Mr. Tipton had said; it's short and simple. PAINTER indicated that the item he was referring to was #5 on Mr. Tipton's list. Mr. Tipton was there the last Friday and Saturday. He said he'd said it before and he would say it again; he didn't like having a tax cap. He said he likes part of what HARRINGTON had said, part of what everybody else said, is that simply stated, taxes, sales taxes, levies and apportionment and property tax could only be changed a 2/3 vote or super

majority by the Assembly. Because of the cost of a special election, those voters who are going to vote in that election, percentages are going to be low. The shell game; the guessing game, of a municipal manager of trying to guess at the do or die date of an election, or doing the emergency route and then doing it the next year, or whether there are reserves to cover the budget shortfall for a year. The first time the manager gets caught in the cross-fire of the guessing game as to how much revenue sharing there is going to be, he/she is either going to get fired, or quit.

KIFFER said he agreed with that, but he thought that having the Assembly's ability to operate above that cap is a real do-able thing. Everyone's said that seven votes are not attainable; he said he accepted that, but they (the Borough Assembly) knew last year that this year they were in trouble. If they know going into the budget process that they either have to get 6 votes to go above the tax cap to get out of the financial trouble predicted for the next year or the issue has to be taken to the voters. They know it's going to cost \$10,000 and they also know they may get turned down if it goes to the voters. He said that for the Assembly to get 6 votes to operate above the cap, if it's necessary, they're going to do it because the alternative is not going to be good and they could get turned down, which really would put them in trouble. KIFFER said that requiring 6 votes is a big deal.

PAINTER said whether there's a tax cap by ordinance or not a tax cap, the proof in the pudding is a prudent assembly and prudent staff management should have been doing their job way back in the year and watching the deficit spending, looking ahead of where they were going, instead of just doing business. KIFFER said this amendment sort of forces them to do that. If they know that in order to operate above the cap, they're going to have to jump through some hoops. That's going to force the Assembly to look a little farther down the road.

OTTE said that was basically what THOMPSON's addition to the agenda item says (the additional option). She said it deletes Section 10.05 that talks about sales tax and puts local sales and the property tax raising procedures on the same procedure and the six votes are there. PAINTER said there was no way to do $\frac{3}{4}$ of a 7-member body. FINNEY said the unanimous (7-0) vote requirement has been removed (convicting them 12-0).

THOMPSON said that he didn't think anyone on the Commission wanted to discuss A. That's probably been ruled out. THOMPSON said in reference to Item B that if it's to be allowed for an Assembly to declare an ordinance and operate above the cap, what's the point of the cap? They've established a cap that's arbitrary and they've said they're not going to go above a certain number and if they choose to raise it, they're going to raise it. If there is a cap imposed by the Commission of 9.2 mills and they say it's an emergency and they (the Assembly) are going to operate above it, what's the point of that cap? He said he didn't see what the point is. Point two, THOMPSON continued, is this does not solve the problem of running sales or property

tax. On the other hand, it actually goes the other way. It makes it easier for the Assembly to raise property taxes without having to go to a vote of the people. Third, he said, there could be 6 people vote for this property tax cap, the mayor could veto it, and there would only be 5 votes necessary to over-ride his veto. He said he was struggling with the six votes.

PAINTER said that THOMPSON's added suggestion prevents being captured in a cap and six or seven or five votes to change that. It would help prevent things from becoming fees if the tax cap couldn't be raised. OTTE concurred indicating they couldn't supplant the taxes that couldn't be raised with fees.

KIFFER said he liked where THOMPSON was going with his suggested changes because it cures the recent problem about sales tax and property tax and the perceptions that the voters had about what went on. He wanted to know what prevents the mayor from vetoing the vote and then having to go back to a 5-2 vote? There would still be that problem. THOMPSON said that's why he'd put $\frac{3}{4}$ in there, but he would be more inclined to make that a $\frac{2}{3}$ vote and make it 5 votes and be consistent. He said the only reluctance he has with that is he's kind of like FINNEY, 12-0 is always good. If 7 people cannot agree that taxes need to be raised, that it's an emergency, it should be taken to the voters. Mr. Tipton said the Assembly could always take it to the voters if they aren't comfortable making the choice. The other side of the coin is that this will be a Home Rule Municipality. Home rule municipalities are managed and run by elected representatives who are expected to make these types of decisions. If it is the desire to put some brakes on them, you make them have a super majority. That way, just like the Commission has attempted to do, if there isn't a vote of 5-2, 6-1 or 7-0 to have a consensus that the choice is the best way to go before something is passed. A 4-3 vote is not a consensus, at least in his mind, said THOMPSON. A 5-2 vote is a pretty good consensus majority.

FINNEY said he'd been thinking about this tax cap situation and he actually agreed with THOMPSON on that. He gave an example where he thought something was there that required a raise in taxes and one fool on the body says no. He said he might have his own interests why he thinks there should be more money up there. The reality is that it's going from what a majority of the people want. He said if the Commission was to go behind the idea of the elected officials, if you trust the bums and typically, four of them should represent the majority of the community that might want to raise taxes, that's what they want to do. He said he thought a simple majority...he said to him, maybe a unanimous vote and a tax cap is too much. Maybe a tax cap and a super majority vote is a better way to go.

HARRINGTON said that if the body went back to OTTE's suggestion that the number of Assembly members be raised and only do it to 8, then $\frac{2}{3}$ or $\frac{3}{4}$ are the same number of votes anyway. He said he'd like to have it consistent. He went on, if there is a super majority or $\frac{2}{3}$ in one spot, it makes sense it's $\frac{2}{3}$ throughout. He said he

could just see it becomes a scratching the head and wondering what were those people (the Commission) thinking about by having all of these various votes? He said it needs to be consistent with 2/3 if it's going to be done. He said he kind of liked the idea of requiring a 2/3 vote to raise any tax or fee. If something is going to be raised, it needs 2/3's. He said he still likes having a cap on top of that, but, he said, it's looking like he's losing that battle toward having a cap, but he would really like to see a cap.

THOMPSON asked that if there is a cap, chances are the taxes will go to the cap. But, if there isn't a cap and say to the Assembly. KIFFER wanted to know when the last time was where the community finances ran at the cap? Never. FINNEY said the only reason he'd be in a favor of a cap is because it's a big bullet point sell in the consolidation effort. He said he didn't care if the cap were put at 10, 15, whatever it is. He said that's the reason to have a cap, in his mind, he said he didn't think it mechanically does the Commission any good to have it there. He said he thought needing the 5 votes is the needed brakes for the tax purposes, but having a tax cap written into the Charter would help sell the document.

THOMPSON said first, the number that's been bandied about has been 9 or 9.2 mill areawide property tax limit. That's 1/2-mill above where the tax rate is currently. THOMPSON said that no one knows whether in a year and a half from now the tax rate wouldn't be at 9.8 and the cap would be lower than that. He went on to say that should a cap be established, it should be at some millage above that property tax levy that is in effect at the time this Charter goes into effect, rather than having a hard number in there. If the taxes are raised to 10 mills, then we go to one mill over or 1/2 mill over, or whatever. PAINTER pointed out that the 10ths should be eliminated. THOMPSON said another thing he's concerned about, as has been seen with the insurance issue, there could be a million dollar problem – that's a mill or 1/4% of sales taxes. If there is going to be a tax cap, there has to be enough wiggle room that they won't be under water right away.

FINNEY said that it's going to come back; it's the issue of how much money a person is willing to spend for government. It's not how much government that you want; and that's what gets to him. It comes to a point where they should start chopping it off and if the insurance or what have you goes to that extent, then personnel should be whittled off. There may not be the services that are right now. He said that's his feeling on taxes and on government. It's not how much government does he want, it's how much money he is willing to spend for government. And when he's willing to spend that much money, he said he wants the best bang for his buck. He said he's shelling out as much as he's willing to spend for government.

PAINTER said that there is no assembly member that is going to be elected on a platform of raising taxes; nobody that runs for office. FINNEY said he'd disagree. He

said he's seen a lot of people on the platform that the schools would be funded to the cap and that required taxes to be raised and will again.

PAINTER said they didn't get his vote. Typically, an elected official never runs on a platform of ultimately...may skirt around the issues, but, and whenever a decision regarding taxes is before the Assembly or the City Council, no one wants the hot potato, but only if you've dug yourself into a hole and you have to pay for goods and services already rendered, and so that's like going into a restaurant and ordering a hamburger and realizing you don't have enough money to pay for that.

KIFFER said the elected officials have already raised the taxes this year and the community is not being given enough credit to be able to say that the increase is necessary. He said that having a cap and having to work within that cap, or have some additional effort to go above that cap, the only good is that they are going to have to think about what's going to happen during this year. If the Assembly is forced to jump through the hoops a year from now to deal with the cap, they know they're going to have a problem, it's just going to make them think farther ahead.

PAINTER said they should have been thinking farther ahead earlier on in the year.

FINNEY asked KIFFER if he had a number in his mind and setting the cap, or talking like THOMPSON said, or a mill or 1/2-mill higher than whatever it is when consolidation goes into effect? KIFFER said he would be really happy with 1/2-mill over when it goes into effect. He said he'd even be willing to talk higher than that, because he doesn't think that the actual height of the cap, or the distance between is as important as what it's going to make them do this year. FINNEY said the perception of it. PAINTER said that if the cap could be changed by a super majority vote on an ordinance as with THOMPSON, any taxes, if there is a cap, whether it's dealing with politicians, electricity, water or sewer, it takes the path of least resistance. If the Municipality is short-funded at budget time and they've got to generate more income to pay for things that has been done throughout the year, they're going to take the path of least resistance. If there's a tax cap that they could change by ordinance and give themselves a black eye in public, there would be the temptation to change a portion of those proposed taxes into fees or they could increase the occupancy tax in whatever areas or all areas. KIFFER said that's why he agrees with THOMPSON's. PAINTER said he liked what THOMPSON had to say in his amendment.

THOMPSON said that HARRINGTON had made an earlier comment about his Item B, if there was an emergency declared and the taxes were raised over the cap, that shortly after that would be the opportunity to vote some of those Assembly members out who were in favor of that raise. The same thing happens on his proposed option, said THOMPSON, if the five or six people vote to raise the taxes and the public doesn't like it, then they (Assembly members) could be voted out at the next election. Would that mean the taxes would automatically go down? No. But if they operate at the

emergency ordinance above the tax cap, is it automatically revert? No, not until the next year. HARRINGTON and KIFFER both said that it would automatically revert. That year's done, but at least it goes back, said KIFFER. He went on that with THOMPSON's amendment, if four of them get voted out every year and it keeps crawling up a mill every year and it never reverts back.

FINNEY said that when the millage rate is around 25, people would be put into office to put an end to it. The community in general will rise up and say enough, enough, enough and put the people out. That's what elections and representative government is all about; that's the reality of it.

PAINTER said that the Commission is looking at this issue from the standpoint as taxpayers listening to neighbors; from a businessman's perspective and the new Assembly that may or may not have the right to change taxes by ordinance, is doing so by the majority of the public that elected them and their peers. If the majority of the people who are speaking up want to have a White Cliff School replacement built and the majority of the input of the people, the calls, the letters to the editor all are leading them toward the decision to fund that project and the bonding for the project. It may require taxes being increased. Private enterprise is not being dealt with; the public is being dealt with. If the public wants a swimming pool and a majority of the public is for that project, that's what an Assemblyperson is going to do as an elected official. If that's not being done, that Assemblyperson is going to be the bum that got voted out, whether it's raising taxes or not. HARRINGTON said he disagreed, but he didn't want to comment further.

HARRINGTON inquired where this issue was going to go. He said he'd expressed his preference and wondered if anyone else had anything to say. FINNEY asked HARRINGTON to summarize his thoughts on the issue. He said his concern he had was would a cap be put on the sales tax as well? HARRINGTON said there is a cap on sales tax that is set by a vote of the people and he said that he didn't think this would apply if the Assembly were allowed to raise sales taxes without a vote, which is why, he said, when he got that point in his head that said the people won't stand for the Assembly having the authority to automatically raise sales taxes, then the millage rate becomes the only place they could raise it. If there is a cap left in, then they can't do that without a vote of the people, therefore they must sell it to the people or, as the concern was expressed, the needed monies would be passed along in fees, which is the process where he really likes the idea of a supermajority to raise fees, as well. HARRINGTON continued he didn't think that the end document would be perfect, but he said he wants to be able to say to the citizens that a cap is to be retained. There is one now, the people know there is one, they know it's sort of a flaky deal, but there is one and he said he thinks the people are going to want to continue to have a cap.

FINNEY asked THOMPSON said that HARRINGTON's answer didn't explained to him what would happen with the sales tax. There's a tax on the property tax millage rate, how could the sales tax be capped? Or, there is none.

THOMPSON said there is none. HARRINGTON said there's no such thing as a sales tax cap. There is a State mandated 30% sales tax. THOMPSON said that in his proposal, the authority would be given to the Assembly, the same type of authority for sales tax and fees as property taxes, the desire to do what happened this past spring would be eliminated; if a sales tax is not passed, the Assembly would have no other recourse but to raise the property taxes way up. There would be no incentive built into the system (with his proposal). They decide if it would be better to use sales taxes and maybe capture some visitor industry dollars, or would the necessary monies be paid through property taxes. What makes more sense from an operational standpoint, from a taxation standpoint because it takes 5 or 6 votes to raise that rate, and the same thing for property taxes. And, if the people don't like what those folks do, then they'll respond at the polls, but it makes it across the board – it's the same procedure that they have the authority. Right now, within the City of Ketchikan, they don't take either sales or property taxes to the voters. They are a home rule municipality and the Council decides those questions. They get a lot of input from the public, and they certainly will get input at the polls, but that's the way the home rule works. What this proposal does is it makes them have a super majority, at least a 5-2, to say that a super majority of the elected representatives agree this is the best way to go, whether it is 5 or 6 votes. If that many elected representatives to decide that's the best way for the community to go as far as taxation, that's the preferred way to do it.

THOMPSON continued that the whole purpose in the exercise is fiscal restraint; telling the government that there's a limit to what the voters will stand for and the taxpayers can afford and there's a point at which services and costs need to be looked into before taxes are raised. If, at this table, the Assembly looks at all the costs and determine that their constituents do not want police and fire services, they do not want their sewers backing up, the Assembly needs to pass this tax in order to pay for those services. The voters would go along with that.

PAINTER said because there are fees, sales tax and property tax all there, it doesn't give one avenue of lesser resistance for the Assembly to increase the monies. THOMPSON said he agreed. PAINTER continued that it leaves the option open, because it's not known. One of the outlying service areas may want to increase fees for fire protection or EMS and it gives them the option. That happens all the time. There's not a year goes by that there isn't a service area that makes a change in their services and fees, because that's what the residents want. It gives them the option to be able to do that through the advisory boards of the service areas.

THOMPSON said the thing he didn't like about option B was that it wouldn't get away from the extortion like what was seen this past year. Under option B, the Assembly could say they were going to put a .5% sales tax out to the voters and if it's not voted on affirmatively, there will be an emergency declared and the property taxes would be raised to raise the funds. It doesn't solve that problem. Option D does, because there's no incentive for them to do that. They have to get 5 or 6 votes, they have to get the votes at this table, regardless of how the monies are to be raised, whether it be an areawide garbage fee, a sewer fee, a sales tax, a sales tax within the Gateway Service Area, whatever they would want to raise, they would have to get 5 or 6 votes at the table to do that.

FINNEY suggested a 10-mill cap. By the time 3 years has past, the rate will probably be at 9.5 anyway. PAINTER asked, set by ordinance? FINNEY said set by the Charter. OTTE asked if FINNEY wanted to put a hard number in the Charter. FINNEY said if there were a place to put it, this would be the one place to put it.

OTTE suggested the following: By ordinance, shall establish an areawide property tax rate no more than 1.5-mills above the areawide property tax based on assessed valuation of the property to be taxed in place on the date the newly consolidated Municipality begins operation. THOMPSON said that the following could be added: Notwithstanding the foregoing, any ordinance or resolution that would increase fees, sales tax levies, or property tax levies requires 5 votes of the Assembly. PAINTER said he didn't like the percentages. He said round numbers should be in there, not 10th's. THOMPSON said OTTE was saying putting the rate at a mill and a half over what would be on that date. KIFFER wanted to know if PAINTER was suggesting 2? PAINTER said a mill is a million dollars. PERS or a lot of the issues could eat that up quickly. FINNEY said to start chopping, then. He said that 2 mills, even 1.5 mills, is too much. PAINTER said, then one-mill or two-mills. THOMPSON said he couldn't support two-mills; he said he'd support a mill.

FINNEY said the Commission was going back to the same thing; these people were willing to raise taxes as needed, so if they hit that cap, they go up to a mill, and it needs to go past that limit, give it to the people. He said there was plenty of time to figure it out and they could.

PAINTER said the Commission had to look at what the picture would be. The entire area is going to be comprised of different service areas. If the consensus of the community for a specific areawide power, all of the people want that to be done and taxes would need to be increased to do so, whether sales or property taxes, the body is going to have to do it, because that's what the people want. If it's a specific service area request that the consensus of the people want, then it's only dealing with that service area. If that service area wants to pay an extra .3 of a mill or whatever. FINNEY said this would not disallow that. PAINTER said that the cap is smoke and mirrors. If it could be changed by ordinance with a 5 or 6 member vote...THOMPSON

said no, that's not what is being said. He said that what he'd said was if a cap was established, say 10 for discussion purposes, regardless of the fact that the level is under that 10-mill cap; the Assembly couldn't raise the tax levy (the rate of taxation), without 5 votes on sales tax, property tax, or fees. There would still have to be 5 votes to raise taxes. There would also be the cap that would never be exceeded, but if the current rate was 8.7 and they wanted to raise it to 9.2 (the cap being 10), the Assembly would need 5 votes would be required. If they wanted to raise the cap, it would have to go to a vote for a Charter amendment. KIFFER said the government has never run against that cap. He said the mill rate had been lowered 8 years ago, and it's been every little bit, just what HARRINGTON's concern is, it's climbing and climbing. It's taken a lot of time to get there. There has been a lot of time to reflect on it. PAINTER said that KIFFER needed to understand that if what occurred 8 years ago was noted when Borough staff was given the marching orders to drop the millage rate by 2 mills, there were consequences for that. There were reserves that were drawn down. FINNEY said, yeah, but the public paid less money in taxes. KIFFER said, yeah, the money went back into the public. PAINTER continued that the reserves that were burned. THOMPSON said those operations after the millage rate drop were also funded by the earnings on the Land Trust and the Disaster Fund monies. That's how they were able to lower the millage rate.

THOMPSON said it is what it is. The Commission could argue about what happened 8 years ago, but that doesn't give direction as to how the body wants to proceed to the future.

PAINTER said that to put the 10-mill cap in the Charter? THOMPSON said yes, put it in the Charter and it can only be changed by Charter amendment. That gives the Assembly 1.3-mills of wiggle room, but he said that he still thought it should require 5 votes to raise sales taxes and 5 votes to raise property taxes. FINNEY said he also agreed with 5 votes for fees. HARRINGTON said that a super majority could be decided throughout the document, or $\frac{3}{4}$ of the Assembly, so long as it's consistent.

PAINTER brought up the statewide sales tax cap issue from several years ago, as well as the Shoreline annexation. He indicated that the sales tax cap issue had not gotten to the ballot. FINNEY indicated that PAINTER was saying that this might get thrown back to the Commission. PAINTER said if it does, it does, and then changes will have to be made. FINNEY said that if it were made a mill higher than what the taxes are at the point of consolidation, that's roughly 10% higher on taxes. PAINTER said that the Commission seemed to be willing to go with a 10-mill cap in the Charter and include THOMPSON's language on the fees and all taxes.

OTTE wanted to know if anyone had substitute wording ready for any of these suggestions, so when the agenda item is reviewed, it will be clear what the Commission is voting on. THOMPSON said if the Commission seemed to be in

apparent agreement as to the desired direction this item would take. He said he didn't want another 4-3 vote on it.

THOMPSON said that what he would propose when the body reviews the agenda item is as follows: The language would revert to the original language adopted on 8/6/04 with the limit being set at 1% (10-mills) of the assessed value of the property to be taxed. Voters may raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election. This section shall not in any way limit the Municipality to meet its bonded obligations and in no event shall the property tax levy during a year exceed 3% (30-mills) of the assessed value of the property in the municipality. And then, any ordinance or resolution that would increase...HARRINGTON said that would need to be a whole separate section. THOMPSON said the title of the new section would be: Taxation Super Majority Requirement to Raise Taxes or Fees Limit.

PAINTER asked that what was being said was that the areawide property tax limit shall not exceed 1%? That was affirmed. The section 10.07 Section would only change from the 8/6 amendments from .9% to 1%. THOMPSON suggested that would be 10.07 (a) and the other new section would be (b). OTTE said, no, the second one has a different title. It should be a new Section and the subsequent sections would be re-numbered. Section 10.05 (b) would also be deleted, since it would be covered in the new 10.08. That puts everything on a level playing field. If the new body gets 5 votes, things move. FINNEY wanted to know if there were a cap on sales tax and the body answered no, just a statewide cap.

KETCHIKAN CHARTER COMMISSION

AGENDA STATEMENT

NO H-2 a-f
MEETING OF September 3, 2004

<p>ITEM TITLE Article X: Finance, Section 10.07 (Second Reading)</p> <p>SUBMITTED BY <u>Glen Thompson, Chair</u></p>
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SUMMARY STATEMENT

During the course of the deliberations of the Charter Commission, the subject of a property tax cap has been discussed many times. It is felt by some that there should be some form of constraint placed within the Charter to require voter approval for any increase in property taxes.

Article X: Finance, Section 10.07 as amended on 08/06/04 read:

The areawide property tax levy shall not exceed nine-tenths (.9%) percent (9 mill) of the assessed valuation of the property to be taxed. The voters may raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election. This section shall not in any way limit the ability of the Municipality to meet its bonded obligations and in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality.

Article X: Finance, Section 10.07 as amended in first reading on 08/27/04 reads:

The Assembly, by ordinance, shall establish a property tax levy limit for each and every areawide, nonareawide and service area property tax. Any property tax limits so established may only be increased by at least a 2/3-majority vote of the Assembly.

The following comments were addressed in the agenda statement of 8/27/04 in order to explain the need for the above-change:

Since the time of the initial changes on this item, comments have been received regarding the tax cap and associated risks involved by putting an arbitrary figure in the Charter document. As discussed in the work session, the areawide property tax millage is currently at 8.7 mills. It has been pointed out that the leeway allowed by the 8/6/04 version of Section 10.07 of the Charter is insufficient for the needs of the Municipality.

By putting an arbitrary tax cap in the Charter, the Commission is guaranteeing there will be special elections necessary in order for the new Assembly to go about their business. These special elections cost approximately \$10,000 each and are viewed by some as an unnecessary and avoidable expense to place on the new government. The representative-type government

that has been chosen should allow the public to elect fiscally responsible individuals to the Assembly of the home-rule borough. Should the Assembly not adhere to a fiscally responsible management of the community's assets, there are remedies for removing those members the public feels are not representing the community as desired.

Voter turn out in past elections has been low, and in some of the special elections, the turn-out has been barely fifteen percent (15%). It is confusing for the voting citizens to be constantly inundated with choices throughout the year. Most citizens are cognizant of the fall election cycle and would be more likely to vote during that time, whether in person or by absentee ballot, just because of the familiarity with the time frame. Requiring special elections to raise the property tax cap will probably generate a low percentage of voter turn out, thereby negating the desire that the entire community have a voice in the change in the property tax mill rate.

The manner in which the prior Section 10.07 was written made it unclear as to whether bonded indebtedness taxation would be covered under the section, or if those taxes for the bonded indebtedness would be allowed to increase the cap, making the cap itself a more "political" statement than an actual deterrent to fiscal mismanagement.

This proposed compromise amendment to Section 10.07 was developed in order to allow some fiscal leeway for the new Assembly without the necessity of taking a property tax increase to the voters, but making it apparent that fiscal restraint is required in the conduct of the Municipality's business. Given the recent 3-year budget discussions and the fact that the tax rate previously set in the amended Section 10.07 is too low, the Chair is requesting a review of this section and a compromise on the part of the Commissioners in keeping a hard number out of the Charter. At the last meeting on August 27, 2004, the Commission passed the amendment by a 4-3 vote. There are other items having to do with a tax cap that are listed prior to the recently approved amendment to Section 10.07, which is back on the agenda for a second reading as ITEM F.

It has been apparent that the Commission was not of one mind on this issue and on 8/28/04, Chair Thompson brought back ITEM A for consideration instead of the 8/27/04 approved change. Liking neither the amendment passed on 8/27, nor Mr. Thompson's suggested change as listed in ITEM A, Mr. Harrington suggested four alternate amendments to Section 10.07 of the Charter. It is anticipated that all of the items will be again discussed during work session at the 9/3/04 meeting and subsequent to that discussion, a vote will occur. It is meant to consider each of these items as a separate entity, however because the items all deal with Section 10.07 of the Draft Charter, they have been included in this one agenda statement.

ITEM A: RECOMMENDED ACTION:

"I move to replace Article X: Finance, Section 10.07 with the following in the first reading:
No increase in the rate of levy of a property tax generally applied on an areawide, nonareawide or service area basis shall become effective except by an ordinance adopted UNANIMOUSLY by the Assembly OR ratified by a majority of the qualified voters who vote on the ordinance in a general or special election. If the increase in the rate of levy of the

property tax is limited to a service area or is nonareawide, the vote is limited to those qualified to vote in the area.”

Should the above be adopted, the changes below would be included for consistency:

Section 10.05 Taxation: Sales and Use Taxes; Ratification of Sales or Use Tax Rate Increases.

(b) No increase in the rate of levy of a sales or use tax generally applied on an areawide, nonareawide or service area basis shall become effective except by an ordinance adopted UNANIMOUSLY by the Assembly OR ratified by a majority of the qualified voters who vote on the ordinance at a general special election. If the increase in the rate of levy of the general sales or use tax is limited to a service area or is nonareawide, the vote is limited to those qualified to vote in the area. The Assembly may, by ordinance, but without ratification by the voters, increase the rate of transient occupancy taxes, create or terminate exemptions to the sales tax, change administrative procedures or fees, and increase the rate of levy of sales or use taxes on specifically designated goods or services.

ITEM B:

This holds the current .5-mil buffer between the current tax rate and the limit, but allows for an emergency declaration. This would also allow the Assembly to take the raising of the cap to the voters at the next regular election. They could not raise the limit but could exceed it by emergency declaration.

RECOMMENDED ACTION

“I move to replace Article X: Finance, Section 10.07 with the following in the first reading: The areawide property tax levy shall not exceed ~~nine-tenths (.9%)~~ ninety-two hundredths (.92%) percent (~~9 mil~~) (92 mil) of the assessed valuation of the property to be taxed. The voters may raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election. The Assembly may levy property tax in excess of this cap if a financial emergency exists and six Assembly members vote in favor of the emergency declaration and in favor of the levy. This section shall not in any way limit the ability of the Municipality to meet its bonded obligations and in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality.”

ITEM C:

Raises the current .5-mil buffer to .8-mills, but leaves the wording alone.

RECOMMENDED ACTION

“I move to replace Article X: Finance, Section 10.07 with the following in the first reading: The areawide property tax levy shall not exceed ~~nine-tenths (.9%)~~ ninety-five hundredths (.95%) percent (~~9 mil~~) (95 mil) of the assessed valuation of the property to be taxed. The voters may raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election. This section shall not in any way limit the ability of the Municipality to meet its bonded obligations and in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality.”

ITEM D:

Deletes any reference to a property tax limit, but requires a supermajority to raise any property tax or fee.

RECOMMENDED ACTION

"I move to replace Article X: Finance, Section 10.07 with the following in the first reading:

Section 10.07 Taxation: Supermajority Requirement to Raise Taxes or Fees

Delete old 10.07 Substitute:

Any ordinance or resolution that will increase fees or property tax levies areawide, nonareawide, or on a service area basis requires the affirmative vote of three-fourths of the Assembly for passage.

ITEM E:

Holds the current .5-mil buffer between the current tax rate and the limit, but allows an increase in the cap by Assembly action.

"I move to replace Article X: Finance, Section 10.07 with the following in the first reading:
The areawide property tax levy shall not exceed ~~nine tenths (.9%)~~ ninety-two hundredths (.92%) percent (~~9 mil~~) (92 mil) of the assessed valuation of the property to be taxed. The tax limit may be raised by an affirmative vote of the majority of the voters participating in a special or regular election, or by the affirmative vote of six members of the Assembly on an ordinance raising the limit. The voters may raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election. This section shall not in any way limit the ability of the Municipality to meet its bonded obligations and in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality."

ITEM F: RECOMMENDED ACTION:

"I move to replace Article X: Finance, Section 10.07 with the following in the **second** reading:

The Assembly, by ordinance, shall establish a property tax levy limit for each and every areawide, nonareawide and service area property tax. Any property tax limits so established may only be increased by at least a 2/3 majority vote of the Assembly."

Additional option for H-2 tax cap discussion. 9/3/04 meeting

Delete Section 10.05 (b) that describes sales tax increases

Replace:

Section 10.07 Taxation: Supermajority Requirement to Raise Taxes or Fees

Limit

Any ordinance or resolution that will increase fees, sales tax levies or property tax levies on an areawide, nonareawide or service area basis shall require the affirmative vote of three-fourths (3/4) of the Assembly or be approved by a majority of the qualified voters who vote on the ordinance or resolution at a general or special election. If the increase in the rate of levy of the general sales or use tax is limited to a service area or is nonareawide, the vote is limited to those qualified to vote in the area.

Note:

The above is similar to Mr. Harrington's Option D, however it encompasses sales tax as well so that there is no "built-in" incentive to raise any particular fee, or tax: all are approved by the same mechanics. It also provides for referendum to the voters when a supermajority is not tenable.

I would personally prefer a requirement of 5 votes (2/3) majority rather than 6 votes (3/4) but that is up for debate/discussion.

FURTHER EXCERPTS FROM THE 9/3/04 MEETING MINUTES

H-2(A-F) Article X: Finance, Section 10.07 – 6 Variations on the Tax Cap

M/S PAINTER/FINNEY delete Section 10.05 (b) that describes sales tax increases and to amend Article X: Finance, Section 10.07 – Property Tax Limit, to read as follows: The areawide property tax levy shall not exceed 1 (1%) percent (10-mills) of the assessed valuation of the property to be taxed. The voters may raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election. This section shall not in any way limit the ability of the Municipality to meet its bonded obligations and in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality.

Further, a new Article X: Finance, Section 10.08 – Taxation: Supermajority Requirement to Raise Taxes or Fees Limit, will be added to the Charter, with subsequent sections renumbered accordingly. Section 10.08 will read: Any ordinance or resolution that will increase fees, sales tax levies or property tax levies on an areawide, nonareawide or service area basis shall require the affirmative vote of two-thirds (2/3) of the Assembly or be approved by a majority of the qualified voters who vote on the ordinance or resolution at a general or special election. If the increase in the rate of levy of the general sales tax, use tax or fee is limited to a service area or is nonareawide, the vote is limited to those qualified to vote in that area.

THOMPSON said for clarity, Section 10.07 currently says, The Assembly, by ordinance, shall establish a property tax levy limit for each and every areawide, nonareawide and service area property tax. Any property tax limits so established may only be increased by at least a 2/3-majority vote of the Assembly. This recently approved amendment to Section 10.07 will be replaced with the original language that was adopted on 8/6/04 with a substitution in the amount of the cap and the addition of the new Section 10.08.

M/S FINNEY/KIFFER to require 6 votes (3/4) of the body to make any changes to the cap or the taxes. NOTE: $\frac{3}{4}$ would require 6 votes.

KIFFER said he understood HARRINGTON's concern about making the document standardized in all voting requirements, however, he said he didn't think there was anything that the public had more interest in and stands to lose or gain, than in taxes. He said he felt that does warrant a stronger vote. If the new Assembly cannot look ahead far enough and they find themselves in trouble and sit down amongst themselves and come up with a consensus, like this Commission has had to do since this issue has split the Commission severely. He said that he suspects that when the Commission is done, it will be a unanimous vote. If the new Assembly cannot get 6 votes to raise the cap, then maybe there are the wrong people on the Assembly.

FINNEY said that the problem with that is when voting is taking place...what the Commission has done is negotiate, when votes are actually being taken on taxes as an Assembly, it's yes or no. They are either raised, or not. They might get raised to a smaller degree; that might be the negotiation that's arrived at. THOMPSON said that the other part that's in the amendment is that if it becomes apparent that there won't be enough votes on the Assembly, they can always take it to the voters. KIFFER said that would work with 6 as well. OTTE said that it takes 4 votes to take it to the voters, any time the body would decide to do so. PAINTER said that if the new Assembly wasn't comfortable with their vote, they could always have an election. KIFFER said hence the last time it went to the voters. He went on to say that the idea of the negotiations of whether or not to raise the cap or taxes doesn't come in the first meeting. Taxes, and the raising thereof, that's a long process. It isn't completed with one or two meetings and having to vote it up or down in one meeting. It culminates in that, true, but there's a lot of discussion prior to that vote of the body. He said he didn't think that 6 votes was that big a detriment and having to put 6 votes in is going to make the Assembly think the prior year about raising taxes.

FINNEY went on to say that another point would be if you, as an Assemblyperson, didn't want taxes raised, you should be able to convince another 2 members to vote it down. There would only be 3 votes to vote it down with the 2/3 requirement.

A roll-call vote on the amendment to the main motion to require a vote of 6 (3/4) of the Assembly to raise taxes.

FOR: KIFFER, THOMPSON
AGAINST: HARRINGTON, PAINTER, FINNEY, OTTE
ABSENT: MCCARTY

The motion to amend failed 4-2.

HARRINGTON said he would reluctantly support the amendment as presented in the agenda item. PAINTER said it was a tough issue. OTTE said everyone has compromised to a degree to get somewhat of a consensus. She said she thought that was admirable. HARRINGTON said he wanted to put in an amendment to make it 9.5, but he said he'd shut up.

A roll-call vote on the main motion was held.

FOR: THOMPSON, KIFFER, FINNEY, OTTE, HARRINGTON, PAINTER
AGAINST:
ABSENT: MCCARTY

HARRINGTON said he assumed this would be back at the next meeting for a second reading.

The motion passed unanimously in the first reading.

EXCERPTS FROM THE 9/10/04 MEETING MINUTES REGARDING TAXES AND A TAX CAP

MCCARTY went on to discuss Item H-2. He said he wasn't talking about the merits of having a tax cap, but he felt the way that it was written utilized a non-Charter process to amend the Charter. He said in the first paragraph that talks about there could be an affirmative vote of the majority of the voters to move the cap from 10 mills, it's unclear from the language whether this vote is to amend the Charter or whether it's just an election and the Charter is being changed by less than the formal process required. He went on to say that the second section (10.08) talking about any change in fees, etc. sets in the Charter how these things will happen, but again, a non-charter process is being used for amending the Charter. The Charter cannot be amended by Assembly action; it must be changed by a vote. MCCARTY said that the way the new Charter sections (10.07 and 10.08) read are saying what these things would be and when compared to the first paragraph, it winds up with what may be a challengeable action in that someone says that there's a Charter and to amend the Charter there is a specific process. In the new sections, it's set forth that the Charter is set in concrete and there is a non-Charter amendment process that would amend the Charter.

MCCARTY said that may be more him doing legalese analysis, but that's something that care should be given to.

HARRINGTON inquired of MCCARTY that he was saying that the section that says the voters may raise this limit by an affirmative vote, etc., at a special or regular election...the question is, is this an amendment to the Charter or is this a raise outside of the Charter and if that line were just deleted or added the voters may raise this limit by amending the Charter? He said it seems the Charter amendments are essentially the same thing, an affirmative vote of a majority of the people at a special or regular election. HARRINGTON said that's the objection? MCCARTY said the objection of saying if there is a difference from simply calling an election on a subject and calling an election for a constitutional (a Charter) amendment, if there's any difference in the process. The body needs to make sure that it's made clear whether changing this amount, is that a change to the Charter or is it a more informal process? It may be overly technical.

THOMPSON asked if could say in the second sentence of 10.07, the voters may amend this Charter to raise this limit by an affirmative vote of the majority of the voters...? MCCARTY said that would make it clear that it is an amendment to the Charter. If it were part of the Charter being amended, that would be the proper way to amend the Charter.

HARRINGTON inquired as to MCCARTY's second objection having to do with Section 10.08? MCCARTY said the second part, assuming for the moment that this is a Charter provision and the Assembly can change it. You could potentially get outside ...he said, it may not be a problem, but he's saying that someone looking at it from a slightly different viewpoint other than what was intended when it was drafted. The Commission should look at it from that side and see whether that potentially sends up a conflict again. HARRINGTON said that it was his understanding that on that second paragraph (10.08) it applied to everything except going above the 10-mill limit, so that all raises would require the super-majority up to a 10-mill limit and anything beyond that would have to be an amendment to the Charter. MCCARTY said it may be clear to someone else, but he said he was looking at it from a skeptical viewpoint. He said he'd much rather do preventive maintenance on the document now, than get into a lawsuit and have to clarify. In these sections, while he said, he was sure the implication is the body couldn't exceed 10 mills, what if the taxes were going to be lowered? If the taxes could be lowered without the process, that's the inference, but the one that isn't made clear in the sections is if there would be an increase from the 10-mills, would that be a permanent change until it's changed again, or would that be for one fiscal year? OTTE said if the Charter was being amended, it was a permanent change. If the first point he'd brought up was rectified, then that question would be answered. If it's made clear that it's a Charter change, the change would remain in effect until the Charter was changed again. He said if he were the attorney for someone who didn't want to pay their taxes, he would argue that the way it's

currently written is a legislative rather than constitutional (Charter) action. Procedurally, the Commission wants to make sure that it's clear and review the proposed sections with the aspect that an attorney would be coming in with a client with a lot of money at stake, and as that client's representative, the attorney would try to attack the wording because the client doesn't want more taxes, even in a situation where a majority of the people are convinced it's a good idea.

THOMPSON said that the only thing he heard that really needed to be done was the modification to the first paragraph. That says if the cap is raised, it's a Charter amendment. OTTE said she didn't think 10.08 was clear and suggested adding the words 'up to the cap' after property tax levies. She said that should be added to clarify that those changes would only be up to the cap.

MCCARTY said this is an area where redundancy might be worthwhile with either insertion of language or both. It makes it abundantly clear because if there is enough money at stake, there are enough attorneys to try to find a way for their clients to not have to pay the increases.

THOMPSON said that Section 10.08 to read 'Any ordinance or resolution that will increase fees, sales tax levies or property tax levies up to the limit set in Section 10.07 on an areawide, nonareawide or service area basis....' Decreases will be allowed with any type of majority. MCCARTY said that the issue of decreasing taxes need not be addressed.

KETCHIKAN CHARTER COMMISSION

AGENDA STATEMENT

NO H-2
MEETING OF September 10, 2004

ITEM TITLE

Article X: Finance, Section 10.05 (b); Section 10.07; and New Section 10.08 (Second Reading)

SUBMITTED BY Glen Thompson, Chair

SUMMARY STATEMENT

During the course of the deliberations of the Charter Commission, the subject of a property tax cap has been discussed many, many times. It is felt by some that there should be some form of constraint placed within the Charter to require voter approval for any increase in property taxes.

During the discussion at the 9/3/04 meeting, a compromise was reached regarding the tax cap issue and the issue in the different procedures required for raising property and sales taxes.

Recommended Action:

"I move to delete Section 10.05 (b) that describes sales tax increases.

Further, I move to amend Article X: Finance, Section 10.07 to read: The areawide property tax levy shall not exceed one (1%) percent (10 mills) of the assessed valuation of the property to be taxed. The voters may raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election. This section shall not in any way limit the ability of the Municipality to meet its bonded obligations and in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality.

Further still, I move to insert a new Article X: Finance, Section 10.08 – Taxation: Supermajority Requirement to Raise Taxes or Fees Limit, which will read:

Any ordinance or resolution that will increase fees, sales tax levies or property tax levies on an areawide, nonareawide or service area basis shall require the affirmative vote of two-thirds (2/3) of the Assembly or be approved by a majority of the qualified voters who vote on the ordinance or resolution at a general or special election. If the increase in the rate of levy of the general sales tax, use tax or fee is limited to a service area or is nonareawide, the vote is limited to those qualified to vote in that area.

Finally, all subsequent sections to the newly created Section 10.08 in Article X: Finance will be renumbered appropriately."

**FURTHER EXCERPTS FROM THE 9/10/04 MEETING MINUTES REGARDING TAXES AND A TAX
CAP**

**H-2 Article X: Finance, Section 10.05 (b), Section 10.07 and New Section
10.08 with subsequent Section number changes (Second Reading)**

M/S HARRINGTON/PAINTER to delete Section 10.05 (b) that describes sales tax increases.

Further, it was moved to amend Article X: Finance, Section 10.07 to read: The areawide property tax levy shall not exceed one (1%) percent (10 mills) of the assessed valuation of the property to be taxed. The voters may *amend this Charter* to raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election. This section shall not in any way limit the ability of the Municipality to meet its bonded obligations and in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality.

Further still, it was moved to insert a new Article X: Finance, Section 10.08 – Taxation: Supermajority Requirement to Raise Taxes or Fees Limit, which will read:

Any ordinance or resolution that will increase fees, sales tax levies or property tax levies *up to the limit set in Section 10.07* on an areawide, nonareawide or service area basis shall require the affirmative vote of two-thirds (2/3) of the Assembly or be approved by a majority of the qualified voters who vote on the ordinance or resolution at a general or special election. If the increase in the rate of levy of the general sales tax, use tax or fee is limited to a service area or is nonareawide, the vote is limited to those qualified to vote in that area.

Finally, all subsequent sections to the newly created Section 10.08 in Article X: Finance will be renumbered appropriately.

MCCARTY said he'd spoken at length about his opposition to setting a tax cap and he said that while he would vote on the whole document to be passed on to the LBC, he said he felt this was such a serious mistake, if this were presented at an election, even though he's committed to consolidation, he would vote against it. It too severely hampers local government.

HARRINGTON said he'd vote for this, but there is a grievance that he has, a feeling the Commission will hear about the sales tax component of this before being done. Because as the sales tax is pulled out of a vote of the people, even requiring a super majority, he said he sensed the Commission may hear about it and there may be

repercussions about it. Since the Commission is limiting tying the hands of the new Assembly on property taxes, he would vote in favor of the motion.

PAINTER said that all the Commissioners had made some concessions in coming as close to a unanimous agreement as possible on this issue. He said this might come back to the Commission from the LBC. One of the questions he'd raised at the last meeting was there was a legal problem with the statewide tax cap initiative and he didn't know if the legal issues that prevented that from being voted on applied to this document, but he guessed we'd see. He said, for now, this is the best we've got.

FINNEY said that it should be a 7-0 vote to raise any taxes, so this is a good compromise document that's been arrived at by the Commission.

OTTE said she sincerely dislikes having a hard number in the Charter. She said her suggested amendment wherein at the time of consolidation, the property tax limit would be set to 1-mill above current, was more appropriate, but the body has come to this compromise and she would go along with the body.

A roll-call vote on the main motion, as amended, was held.

FOR: THOMPSON, FINNEY, OTTE, HARRINGTON, PAINTER
AGAINST: MCCARTY
ABSENT: KIFFER

END