

KETCHIKAN CHARTER COMMISSION

AGENDA STATEMENT

NO G-3

MEETING OF April 9, 2004

ITEM TITLE Review and approval of Article XVI, General Provisions, of the Ketchikan 2004 DRAFT Charter in the third reading SUBMITTED BY John Harrington
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SUMMARY STATEMENT

At the regular Charter Commission meeting of March 26, 2004, Article XVI, General Provisions, was reviewed and amended utilizing the Ketchikan 2001 Charter document and alternatives from Sitka, Juneau and Haines. The section was also reviewed and amended on April 2, 2004, and is being brought back for final review at this meeting.

Formatting note: Wording added to the Charter is underlined. [Deleted items are smaller font, bracketed and bolded]. **Areas of concern or questions are highlighted and marked with asterisks.**

RECOMMENDED ACTION:

"I move to approve Article XVI, General Provisions, of the Ketchikan 2004 DRAFT Charter in the third reading."

ARTICLE XVI

GENERAL PROVISIONS

Section 16.01 Personal Financial Interest; Nepotism.

(a) **Prohibition.** An elected municipal officer may not participate in any official action in which the officer or a member of the officer's household has a substantial financial interest unless, after disclosure of the interest, the officer's participation is approved in public meeting by the presiding officer or a majority of the body. Municipal officials shall publicly disclose their substantial financial interests as required by law. The Assembly, by ordinance, shall adopt procedures dealing with conflicts of interest on the part of municipal employees.

(b) **Punishment.** Any municipal officer, employee, or elected official who conceals such financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office and shall forfeit his office or employment. Violation of this section with the knowledge, express or implied, of the person contracting with or making a sale to the municipality shall render the contract or sale to the municipality voidable by the municipal manager or the Assembly.

(c) Except when chosen solely on the basis of competitive examination administered and graded by persons not employed by the municipality, the municipal manager, the mayor, the Assembly, and their subordinates or appointees shall not appoint or hire any person to any employment or office who is related to the municipal manager, the mayor, or any assemblymember or to the spouse of the municipal manager, the mayor, or any assemblymember. Except when chosen solely on the basis of competitive examination administered and graded by persons not employed by the municipal utilities, the utilities general manager, the municipal utility board, and their subordinates or appointees shall not appoint or hire to any employment or office any person who is related to the utilities general manager or to any municipal utility board member or to the spouse of the general manager or of any municipal utility board member. For purposes of this subsection a person is considered related to an official or the official's spouse if the person is a parent, spouse, child, sibling, half-sibling, grandparent, grandchild, great grandparent, great grandchild, aunt, uncle, niece, nephew, or is a spouse of any of the above. This subsection shall not prohibit an officer or employee from continuing employment which the officer or employee held prior to becoming a relative or prior to the relative's term of office. This subsection shall not prohibit an officer or employee from being promoted, under applicable personnel rules, from a position held by the officer or employee prior to becoming a relative or prior to the relative's term of office. This subsection shall also not apply if the relative is an independent contractor for goods and services provided that the contract has been awarded or approved as provided in paragraph 2.10(a)(2).

Section 16.02 Surety Bonds.

The municipal manager, the clerk, the finance officer, and such other officers and employees as the Assembly may designate before entering upon their duties shall be bonded by individual or group bonds for the faithful performance of their respective duties payable to the municipality in such form and in such amounts as the Assembly may prescribe with a surety company authorized to operate within the state. The municipality shall pay the premiums on such bonds.

Section 16.03 Oath of Office.

Every officer of the municipality before entering upon his duties shall take the oath or affirmation required by section 5 of Article XII, Constitution of the State of Alaska. The Assembly may require designated employees to take such oath before entering upon their employment. Oaths of office shall be filed with the clerk.

Section 16.04 Municipal Proceedings.

The Assembly, by ordinance, shall establish procedures governing administrative proceedings in which the legal rights, duties, privileges, or penalties of persons are to be determined; provide for fair and equal treatment of all persons involved in such proceedings; and provide for the conduct of such proceedings in an orderly and uniform manner.

Section 16.05 Ordinances and Resolutions.

Except as otherwise provided by this Charter or by the transition plan, the ordinances and resolutions of local governments to be dissolved shall continue in full force and effect in their respective jurisdictions until expressly reaffirmed, revised, or repealed by the Assembly.

Section 16.06 Pre-Consolidation Assets, Liabilities, Sales Taxes, Reserves and Franchises, and Collective Bargaining Rights

(a) **Assets and Liabilities.** The municipality shall succeed to all the assets and liabilities of the former City of Ketchikan and of the former Ketchikan Gateway Borough. Bonded indebtedness incurred before consolidation shall remain the obligation of the area which was subject to the debt unless the asset for which the bonded indebtedness was incurred is used for an areawide purpose or is used for the benefit of a larger area, in which case the obligation shall become the obligation of the area benefitted by the asset's use. The obligation to repay revenue bonds issued by the City of Ketchikan d/b/a Ketchikan Public Utilities shall not be affected by this Charter.

(b) **** Sales and Use Taxes.** All sales and use taxes levied within the former City of Ketchikan and the former Ketchikan Gateway Borough shall remain in effect until changed as provided in this Charter. Within one year from the first election under this Charter, the Assembly shall apply the levy of the former City of Ketchikan's one percent (1%) hospital and other purposes sales tax on an areawide basis throughout the municipality with the revenues from the areawide levy being appropriated for the municipality. The ratification requirement of Section 10.05(b) shall not apply to this one percent areawide levy. The remaining two-and-one-half percent (2½%) of the

former City of Ketchikan's sales tax shall be appropriated for the Ketchikan Service Area. Sales tax levies required by this section shall remain in effect until changed as provided in this Charter. **

(c) **Reserves.** Any pledged reserve accounts of the prior local governments shall remain committed to the purposes for which they were originally dedicated.

(d) **Franchises.** All existing franchises of the governments to be consolidated shall continue after ratification of this Charter until they expire, are extended, renewed, or revoked by the Assembly.

(e) **Salaries.** Until changed as provided in Section 2.06, the salaries and expenses of the mayor and assemblymembers will be the same as paid to the mayor and councilmembers of the former City of Ketchikan.

Collective Bargaining. If the municipality opts out of the Alaska Public Employment Relations Act [Alaska Stats. 23.40.070 - 23.40.260 (1998)], the Assembly shall adopt and may thereafter amend an employment relations ordinance which will extend to eligible municipal employees the right to bargain collectively on wages, hours, and such terms and conditions of employment as are permitted by ordinance. The ordinance shall provide for the recognition and decertification of collective bargaining units and shall define the scope and nature of collective bargaining. Those collective bargaining units and their representatives which were previously recognized by the Ketchikan Gateway Borough or the City of Ketchikan will, unless decertified or modified by vote of the represented employees, continue to be recognized by the municipality for the purpose of collective bargaining under the ordinance.

Section 16.07 Continuation of Actions.

The adoption of this Charter shall not abate or otherwise affect any action, claim, or proceeding, civil or criminal, by or against, a local government to be consolidated and which had accrued at the time of the effective date of this Charter. All applications, petitions, hearings, and other proceedings pending on the effective date before a local government to be consolidated shall be continued before the municipality.

Section 16.08 Intergovernmental Relations.

The municipality may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by agreement with any one or more local governments, the State of Alaska, or the United States, or any agency or instrumentality of those governments.

Section 16.09 Transition Plan.

Other provisions concerning the transition shall be governed by the transition plan as approved by the Local Boundary Commission and any changes made thereto by the Assembly.

Section 16.10 Penalties.

Within six months after adoption of this Charter, the Assembly, by ordinance, shall prescribe penalties for violations of this Charter if no penalty is prescribed by this Charter.

Section 16.11 Separability Clause.

If a court of competent jurisdiction should hold any section or part of this Charter invalid, such holding shall not affect the remainder of this Charter nor the context in which such section or part so held invalid may appear, except to the extent that another part of the Charter may be inseparably connected in meaning and effect with that section or part.

If a court of competent jurisdiction holds a part of this Charter invalid, or if a change in the state constitution or law renders a part of this Charter invalid or inapplicable, the Assembly, by ordinance, may take such appropriate action as will enable the municipal government to function properly.

Section 16.12 Effective Date.

If, at an election ordered pursuant to Alaska Statutes 29.06.140(a) and (b), the voters approve of the consolidation of the City of Ketchikan and the Ketchikan Gateway Borough, this Charter shall become effective on the date the consolidation becomes effective.

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

From: [Scott Brandt-Erichsen](#)

To: '[Glen Thompson](#)'; '[Steven Schweppe](#)'; '[Al Hall](#)'; '[Bob Newell](#)'; '[Dan Bockhorst](#)'

Cc: '[Ketchikan Charter Commission](#)'

Sent: Wednesday, April 07, 2004 3:59 PM

Subject: RE: Charter Commission

Glen,

I do not have a great deal of time to address this prior to your meeting on Friday, but would like to pass on some concerns about how the sales and use taxes are treated. I believe that the division of sales tax and property tax funding sources between the service areas and the areawide functions is a key issue for voter reaction to the proposal. In essence it will dictate whose taxes go up and whose go down. Addressing the issue of equitable tax burden for services received is probably the most difficult task. Further, it is one for which the definition of equitable likely depends upon where one sits and the philosophical predispositions of individual residents.

The re-authorization concept invites controversy as to what happens if the re-authorization is rejected or partially rejected. Is the result no sales tax or is it a 3% areawide sales tax and 2.5% service area tax. Does it preclude any other changes in the interim? If the 2.5% is a service area levy does the charter section contemplate that the vote count on a re-authorization will be tallied separately in the service area and areawide with only service area approval being required for the new proposed service area levy? (There is not currently a requirement which would call for areawide approval of a service area sales tax levy.)

I personally believe that it is beneficial to allow the new assembly the tools to adjust the tax impacts to the needs and demands of the areawide and service area functions. However, the method needs to be one which meshes with the statutory procedures calling for voter ratification of sales tax increases and the separation of service area powers and funds. To the extent you include some sort of future referendum to "re-authorize" a separate division of sales taxes, I recommend that the commission approve official commentary which addresses the intended impact of voter rejection or partial rejection, and that the parameters of a proposal be consistent with statutory limitations on both voter approval of sales tax increases and the distinction between areawide and service area operations.

Scott

From: Glen Thompson [mailto:gthompson@akpacific.com]

Sent: Wednesday, April 07, 2004 12:43 PM

To: Steven Schweppe; Scott Brandt-Erickson; Al Hall; Bob Newell; Dan Bockhorst

Cc: Ketchikan Charter Commission

Subject: Charter Commission

Gentlemen:

The commission asked that I request your opinion on Article 16.06(b) regarding Sales and Use Taxes: specifically there was a desire to have the new Assembly place the sales tax on the ballot for voter reauthorization within 3 years. This generated quite a bit of discussion and it has been left out for now, but there are commissioners who are concerned that an inequity exists in the current sales tax structure that needs to be addressed.

Thank you

Glen Thompson, Chair