

4/13/04

Gentlemen:

A few questions and much discussion arose in last week's meeting regarding Article 12: Service Areas, here is some background:

Before the meeting, I had proposed an amendment to 12.02 to create a "Metro Service Area" that would encompass the geographical area currently being provided services on an area-wide basis in Ketchikan, (the roaded access and waterfront). This was before reading Mr. Bockhorst's memo to Mr. Harrington which I need to read again to fully understand. As part of that amendment, substantially all of the items in 12.02 were moved to the service area section 12.03. This was an attempt to resolve the issue of not providing services to remote areas such as Loring, Moser Bay, Bull Island, Vallenar Bay, and potentially Myers Chuck and Hyder.

When I did that, since both collection and disposal of solid waste were now in 12.03, I changed 12.03 to simply say "the power to manage solid waste."

After reviewing Mr. Bockhorst's memo, I decided that this was possibly an unnecessary amendment, but I did make a motion to change the language in 12.02(a) to say simply "the power to manage solid waste." and delete the reference to solid waste in 12.03(a)(3). This would simplify 12.02 and allow the new borough to manage solid waste as an area-wide power in accordance with AS29.

Mr. Amylon, Ketchikan City Manager, was concerned that the elimination of 12.03(a)(3) would prevent the new Ketchikan Service Area from providing solid waste collection as it currently does.

The motion failed.

I am not very happy with the construction of 12.02. I find it disjointed and somewhat difficult to follow and often redundant. As this is one of the most important articles in the charter, this concerns me greatly.

My questions:

1. Why, in 12.02(a), do we have this long paragraph describing solid waste disposal (which even includes a reference to recycling which isn't disposal at all) and in the remainder of 12.02, we have broad statements

regarding powers?

2. If we delete the reference to solid waste collection in 12.03, would the Ketchikan Service Area be precluded from providing collection if the overall power to manage solid waste was included in 12.02? I guess this question really boils down to:
3. If a power is described in 12.02, is the new borough precluded from exercising that power through a service area? That is how I read it and I'm not sure that is the proper way to address most of these powers like solid waste, museums, libraries, 911 dispatch etc. There are folks who do not have access to these services, but if they are mandatory areawide, then potentially folks in Myers Chuck or Hyder, if annexed, may have to bear some burden, however minor, in paying for them. If we intend to limit or exclude those folks from paying for those services, it seems more prudent to put them in as a non-areawide service and tax accordingly.

Reference is made here to section 12.03(2) paragraph 3, "Nothing in this Charter, **except Section 12.02**, prohibits the municipality from exercising any other power on a non-areawide basis or through service areas. No areawide power shall be interpreted to include or authorize any of the powers described in (1) through (3) above. " and section 12.04(d) "But any power **other than those listed in Section 12.02** which was previously exercised by the City of Ketchikan may, without approval of the voters, be exercised by the municipality on a non-areawide basis within the Ketchikan Service Area." (emphasis added)

1. Why was there not a section devoted specifically to the new Ketchikan Service Area? It is mentioned in several places, but you almost need to be an attorney to figure out what is envisioned.

Your comments, as usual, would be greatly appreciated.

Thanks

Glen Thompson, Chair

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From Steve Schweppe, 4/13/04

The answers to your questions are as follows:

1) Yes if a power is identified in Section 12.02 that power must be exercised area wide ( except for Saxman). This was critical. We didn't want to have the consolidation unwind over time and so made the services which are at the heart of the consolidation mandatory area wide services. For example we didn't want to see the financing of hospital or mental health services revert back to city taxpayers. Their reason for seeking consolidation was to make that service area wide so it needed to be guaranteed. It is common for people to pay for area wide services for which they receive no direct or immediate benefit. It is simply the old question of why the old bachelor has to pay the school tax. If Hyder and other areas are annexed the Ketchikan residents will have to pay some of the costs for area wide services in Hyder which are of no direct benefit to them either. If museums, hospital, landfill, civic center are allowed to become service areas then the City taxpayer is not getting his/her share of the benefit of consolidation but is picking up his/her share of the costs. One of the basic functions of government is deciding what costs are to be spread out to the community as a whole even though some or many citizens of that government receive no or little direct benefit.

2) If the new municipality is given area wide power over solid waste management under 12.02, then the city service area could not offer solid waste collection and the new municipality would have collection on an area wide basis. Section 12.02(a) is more detailed in order to define the difference between collection and disposal. It is also necessary to specify that the costs of any future remediation, repair, or removal of the landfill will be an area wide responsibility. This was done to avoid a question which I believe arose in Fairbanks where the landfill was made an area wide power, but the governments had not resolved who was responsible for fixing landfill problems and errors occurring under the previous management.

3) A separate section for the city service area could have been created. It seemed however that most of the details concerning that section were either issues applicable to any other service areas which might be created ( police and public works service areas) or dealt with the transitional sales tax. With the exception of the recreation of the Shoreline Service Area, 12.03 refers to the new city service area only to describe the city service area powers and to include an umbrella provision which specifies that any services formerly provided by the City can be provided by the city service area if not made mandatory area wide powers by 12.02. Since most of the city service area issues also apply to any future new service areas, and since the unique issues about the city service area were directly intertwined with other issues of area wide and nonareawide powers, it would cause either overlapping sections and confusion to add a separate city service area.

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4/14/04

Ladies and Gentlemen:

I am forwarding to you a response received from SBE on my questions regarding solid waste in Charter 12.02. I find Scott's response compelling in that I think he has hit on the issue that bothers me in 12.02.

There is a difference between having a power authorized areawide and actually exercising that power areawide: Mr. Bockhorst's memo, and indeed even Mr. Schweppe's response indicate to me that 12.02 is too narrowly worded and restrictive (especially considering the level of effort required to change it in the future). 12.02 states that the powers enumerated within shall (only) be exercised on an area wide basis and 12.03 states that powers defined within it may only be exercised on a service level basis.

Yes, this encapsulates the status quo but I wonder if it is the most efficient or prudent way to go about it? If the borough has an areawide power, it can choose, by ordinance, to set the level of service on a non-areawide basis and charge or tax accordingly. For the City to continue to provide the level and variety of services, status quo, as it does today, we only need to say so: either in the charter or the transition plan (remember, the charter is law, while the transition plan is advisory).

I would like to discuss this further with you at our next meeting during the work session.

Thanks

Glen

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

From: "Scott-Brandt Erichsen"

To: <"Dan Bockhorst"; "Steve Schweppe"; "Glen Thompson"

Sent: Wednesday, April 14, 2004 1:44 AM

Subject: charter questions

Glen,

Your questions are posed in a specific context, but have implications for more powers and operations than just solid waste. While Steve has provided some very good arguments and raised important points for you to consider, I think that some additional discussion may be helpful.

Steve points out that areawide powers must be exercised areawide. When I worked in Anchorage I found it frustrating that the Anchorage code seemed to skirt this in some areas, particularly building safety. While public works and related functions were an areawide power, there was a separate building safety service area within which the Uniform building code, uniform fire code and the like would be enforced. Outside of the building safety service area they were not enforced. The hang up was that the Assembly adopted these requirements by general ordinance which was not jurisdictionally limited. In other words, the building code would apply outside of the building safety service area but no one would require permits or enforce the provisions. Accordingly, applying the concept here, if solid waste is not areawide then how can you regulate whether people have dumping methods which create a pollution or public health hazard.

In looking at service areas and powers people often are focusing on the funding aspect, a service area as a funding unit, rather than the regulatory power aspect. Often the solution to allow regulation, but to have a smaller area for service delivery, can be resolved by overlapping the areawide power with a service area in which there is a higher or different level of service. For example, if there is an areawide power to collect and dispose of solid waste and operate a landfill, but also a service area within which solid waste collection services are provided, addition of area served by the collection system can be accomplished by expansion of the service area. One note with solid waste collection however is the fact that it is a fee based service rather than a tax service. Thus, it can be set up as a utility or enterprise function with an area of service defined not by a service area boundary, but by the boundary determined by the assembly in establishing a fee system. As Steve notes, either a service area overlay for collection or a utility/enterprise function may effect whether the service can be included in the package of services provided in the city service area. I do not think that you would be precluded from providing collection in the city service area due to the existence of a general statement of areawide powers to regulate or provide for collection and disposal of solid waste. You would only need to differentiate between the level of service so that it was distinct. Official commentary and transition plans can clarify how such a system is intended to work. Another analogy in the Ketchikan area is the bus system. Although the Borough has areawide power to provide mass transit it only provides bus service in a portion of the Borough. This does not mean that you need to provide a service area which fits the boundaries of where the service is being provided, nor does it require the Borough to run the bus on all roads in the Borough. If the Bus system were operated on a purely fee and grant basis without tax subsidies it would be substantially the same as a fee based solid waste collection service available only in certain areas. Similarly with water powers. The Borough has water powers throughout the South

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Tongass service area, but only charges water fees to customers receiving water. It retains the power to require all service area residents to use the water system if it is available. Sewer also works this way. The Borough has nonareawide sewer powers, but only charges monthly use fees to those served by Borough sewer systems. Other aspects of the sewer power (i.e. sludge fees) are charges to all nonareawide residents. The provision of a sewer line to the house, and the accompanying fees, are separate from the power to provide the service. Similarly, the provision of solid waste collection, and the power to require its use and charge a fee, can be applied to less than all residents. The differentiation between powers and placing the power in the city service area is one solution, but it is not the only solution.

While this overlay of areawide powers and service areas providing higher levels of service may not be desirable for some service, it is a method which can address some of the concerns expressed by commission members about the differing levels of fire protection. For example, some of the functions have equal areawide benefits, such as dispatch services and an e-911 call center. Such services make sense as an areawide combined function. Others are provided on a two tiered basis. Some areas are served by full time fire and EMS personnel 24 hours a day, while others have volunteer forces on call and outlying areas have only strictly volunteer rescue operations to assist them. If an areawide fire/EMS level is essentially a contract with a volunteer rescue entity for search and rescue services, a smaller (roaded) service area has a volunteer response level of service, and a third tier smaller service area has a higher (full time) level of response, the three can be overlapping with the residents in the higher service level areas paying a higher rate for the improved level of service. Such an approach would allow for more coordination, but may be seen as undesirable for other purposes. An example of this differing service levels may be seen in the downtown Anchorage patrol district. While downtown Anchorage is in the police service area, it also has a core downtown district which has additional patrols and services. Accordingly, the properties within that area pay for the higher level of service. The key here is defining the differences in the level of service that residents of the designated service area are getting for their money. However, it does not require that the power involved be limited to a service area power.

If I understand Steve's comments about specifying the city service area powers correctly, I agree that they need not be spelled out in the charter, but can be identified in the budget and transition plan. The specific boundaries or mix of services in the city service area may change over time, and listing them in the charter will require a charter amendment to change them. If the method to amend service areas allows change without an areawide vote, it would seem unbalanced to require an areawide vote to amend the charter merely to add or delete a service area power from the city service area. If they are set from the

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inception of the new municipality by the transition plan, then they can be revised as the service area sees fit following the same procedures as for any other service area.

Scott