

## Comments by Scott Brandt-Erichsen

June 11, 2004

### Memorandum to Charter commission,

The comments on the draft charter and petition that are set out in this memorandum are my personal comments, as a resident of both the Borough and the City and should not be interpreted as official comments of the Borough. By virtue of the work that I do, I have specialized knowledge concerning a number of relevant issues, and that helps to shape my personal opinions. I would encourage you to feel free to disregard any of my suggestions with which you disagree and to accept those that you believe will produce a better product.

Some of the comments relate to technical items, while others are policy issues. They are organized loosely in order based on the order in which the issues appear in the draft e-mailed out the week of June 7-11, 2004, and labeled as updated June 10, 2004.

1. On page one, the name seems to have been an issue with Dan Bockhorst. However, I believe that Tom Miller's point regarding the Charter section (section 1.01) adequately addresses this issue.
2. On page three, I would recommend that in the listing of 'areawide powers required by statute,' the taxing powers should be re-worded to read, "Assessment and collection of taxes, including but not limited to property, sales and transient occupancy taxes." The future assembly may elect to impose excise taxes or other taxes as alternatives. The Charter section 10.04 gives all taxing powers allowed by law.
3. Also on page three, several of the areawide powers are actually contemplated to be nonareawide, exercised in all areas of the present borough except for the city of Saxman. For example the Library, Museum, Civic Center, Solid Waste, Ports and Harbors, Fire, Water, and Sewer are functions exercised by the City of Saxman that the new consolidated municipality would be precluded from exercising within Saxman under Article 13 of the Charter. In effect, these powers would be exercised in all areas outside of cities within the new municipality. The portion of the municipality outside of all cities is referred to as "nonareawide". There are multiple ways to address this, and I am not sure which would be most satisfactory. The main point is recognizing that excluding Saxman technically makes a power non-areawide, while allowing Saxman to exercise the power concurrently makes it areawide. The

significance of the choice is whether Saxman residents are also taxed for the areawide functions.

4. In this same section the question of fire powers should be addressed both here and in other portions of the petition. (The description and division of fire powers is mentioned on page three of the petition. Relevant references also appear at: pages one and two of Exhibit E-3; section 12.03 of the Charter, Exhibit I, page 30; and Exhibit J, pages 9, 10, 19, 22 and 33.) There are several aspects of the fire services that are confusing. Initially, in the description of these services provided in exhibit E pages 1 and 2, the Ketchikan Service Area has “fire suppression” powers but EMS powers are not mentioned. The South Tongass Service Area has “Fire protection” and EMS powers, and the North Tongass Service Area has “Fire” and EMS powers. There is no distinction between full-time or volunteer levels of service. It is unclear if there is a distinction between “fire suppression”, “fire protection”, and just “ fire” services. The difference is certainly not described in the petition.

The manner of delivery of Fire and EMS services in the consolidated borough is a difficult issue to address, both retaining the differences of the current arrangement and providing for efficient delivery of services. I would suggest that a distinction between the powers be made based upon personnel staffing levels as that is the only apparent difference remaining between the North Tongass, South Tongass, and City areas. Specifically, I would recommend that for both Fire and EMS services the dispatch, equipment, facilities and administration be areawide functions, and that Fire and EMS personnel services be service area functions. Thus, those assets, and to providing fire and EMS service whether on a volunteer or full-time basis (i.e. fire apparatus, station structures, equipment, and the like) would be areawide assets. Likewise, unified administrative costs for supporting Fire and EMS service would be an areawide function. The service area funding format would be used to finance the actual personnel services. In the City service area this would provide the 24/7 level of coverage. In the other service areas it would provide a volunteer response level of coverage. There would be a corresponding adjustment to the allocation of the Public Safety sales tax revenues as well.

This approach would offer much greater opportunity for efficiency, and avoid issues of inter-service area billing for use of equipment or administrative staff. It would also allow each area of service to pay for that level of personnel coverage they desire.

5. Another powers issue on page three is Sewer and Septic waste collection and disposal. The Borough currently exercises nonareawide sewer and septic waste powers. Sewer is not listed either as a utility or as an

areawide power. The borough's sludge collection and disposal program and health regulation of on-site sewer systems is in furtherance of nonareawide sewer and septic waste powers. Adding the City of Ketchikan sewer powers, the new municipality would have sewer powers in all areas except for Saxman. This is an important function that should be addressed. Further, there are operating efficiencies which might be realized if the sewer functions both inside the current City of Ketchikan and outside the current Cities of Ketchikan and Saxman were operated as a unified sewer utility or enterprise fund.

6. Similarly, water service is listed as a utility power in the Ketchikan Service Area only. The Borough has water powers in the South Tongass service area, and operates an enterprise function in substantially the same way as a water utility. Phase 3 of the improvements currently under construction include connection of this water distribution system to the City of Ketchikan water system. It seems inefficient to try to keep these systems as separately managed water utilities. I believe that the reason the earlier petition kept the water function as a Ketchikan service area only utility was to preserve the subsidy to the City water utility which is provided by joint operation with the electrical and telephone utility. If maintenance of a subsidy from the electrical system is the issue this would not preclude water service being provided as a utility with an area of service including all areas currently served by a water distribution which is owned by either the city or the borough, and having that water utility operated jointly with the electric and telephone utilities.

7. The listing of non-areawide powers and services does not include the police and roads powers of the city service area. It also does not mention building safety powers.

8. On page four the tax rates will need to be corrected. Sludge fees will also need to be addressed either here or in exhibit E-3 which is cross-referenced. Here or elsewhere (E-3), the distinction between Saxman and the nonareawide portion of the new municipality should be clarified even if only for the purpose of making clear that the powers mentioned in comment 3 above (Museum, Civic Center, solid waste, etc.) are intended to be paid for by all residents including those in Saxman and applied areawide, with Saxman retaining the authority to exercise those same powers in a manner that does not conflict with the new municipality's areawide exercise of those powers.

9. On page nine, Section 19 should reference as certified copy of the initiative because this process was by initiative rather than resolution.

10. Exhibit A, page 3, the duplicated positions may also include HR Directors, Data Processing personnel, and Executive Assistants in the Manager's Offices.

11. Exhibit A, page 4, the example of Peter Ellis's comments about a borough Building may or may not still be a timely anecdote.

12. Exhibit A, page 5, the reference to services provided to the entire community paid for by the city lists emergency medical services, senior citizens support services, and Ketchikan Public Library. Currently the Borough provides EMS services in the North and South service areas and the city does not pay for those services. Additionally the Borough provides transportation support for seniors. Library services are paid for by borough and city residents on a proportional basis, with the exception of Saxman residents.

13. Exhibit A, page 6, the discussion of the Lewis Reef area for development may need to be updated. Lewis Reef is less of a focus than the Ward Cove area at the present time.

14. Exhibit A-3, page 2, the discussion of schools may be slightly off. Depending upon how the district labels its operations, the four elementary school buildings may be referred to as five schools with two charter schools sharing one building. It may be more accurate if the second sentence indicates that the school district uses four elementary school buildings. However, with the Whitecliff uncertainty, this issue may change again before the petition is filed.

15. Exhibit E-1, page 11, the listing of U.S. survey numbers included in the service area should also include: tract 1003; tract 3004; and U.S. surveys 1207, 1656, 2090, 2226, 3089, 3154, 3156, 3400, 3769 and 5525. While these were omitted from the listing in the legal description to the borough code, they were included within the boundaries of the map of the service area and are included in the service area in the Borough's current operations.

16. Exhibit E-3, page 1-2, this portion has the same issues as noted in comments five, six and seven above. Additionally, the facility and vehicle maintenance reference seems inappropriate as a separately identified power. The state statutes provide that a liberal construction shall be given to all powers and functions of a municipality conferred by Title 29, and that unless otherwise limited by law, a municipality has and may exercise all powers and functions necessary were fairly implied in or incident to the purpose of all powers and functions conferred by Title 29. See AS 29.35.400-410. Maintenance of public facilities or vehicles used in the exercise of some municipal or service area power will be, in nearly every case, incidental to the purpose or function of the underlying power. For example, having police powers necessarily includes the ability to maintain police vehicles.

Listing this item as a separate City service area power complicates the picture for maintaining facilities and vehicles that are not part of the City Service Area. While it may track with the method currently used by the City to organize its Public Works Department, it does not make sense to have facility and vehicle maintenance be only a service area power, not exercised areawide. It begs the question of what power is being exercised when repairs are made to the Museum or Civic Center buildings, or when vehicles are used by Assessment, Planning, Parks and Recreation, or in Garbage or Sludge operations and those vehicles are repaired. Facility and vehicle maintenance should not be a separate power, but should be administered in relation to each power in a coordinated and cost-effective manner.

While it is not clear, there appears to be a funding issue driving identification of this power in the prior consolidation petition. City Public Works services are funded largely from sales tax. You will notice that the description of existing powers and duties in exhibit J, page 3-5 recognizes the 1 1/2 percent Public Works sales tax as a funding source for the Library, Museum, Civic Center, mental health/substance abuse, Public Works Engineering, Public Works Streets and Roads, and municipal facility and vehicle maintenance. Although the entire one and one half percent Public Works sales tax is proposed to be retained by the City Service Area, many of those functions funded by that sales tax are identified to no longer be funded by the City Service Area. If some of the current funding for vehicle and facility maintenance and construction for these functions is transferred, then an appropriate portion of the associated sales tax should transfer as well. Otherwise the expense burden on areawide functions is increased without a corresponding transfer of revenues.

I do not know what level of sales tax would most accurately correspond to this shift, or in the event that Fire facilities, equipment and dispatch are treated as areawide as well, what level of Public Safety sales tax should become areawide, but I do know that failure to address these issues will result in an artificially higher tax burden on areas outside of the City Service Area and lower tax burden on areas within the City Service Area than is currently experienced.

A good example for evaluating whether the division of taxes and the services makes sense is through comparison of impacts on the Forest Park service area and the City Service Area. The Forest Park Service Area has road powers and is included within the South Tongass Service Area. As a result, they have fire, EMS, sewer and road services. Water service is not currently available in that location. The mill levy proposed for roads for 2004/2005 is 2.2. The mill levy proposed for fire and EMS service for 2004/2005 is 2.3. Thus, for no police service and volunteer rather than full-time fire service, Forest Park residents can be expected to pay 4.5 mills. The proposed funding for the Ketchikan City Service Area in the draft petition contemplates 2 1/2 percent sales tax and 2.8

mills. If the final petition has the Forest Park folks paying more taxes for less service than the City Service Area it has not balanced the costs and services equitably. It would make more sense to include Forest Park in the City Service Area than to have them pay more for less.

17. Exhibit E-3, page 2-3, the tax levies and sales tax rates will need to be adjusted. As noted above the South Tongass Service Area mill levy is proposed at 2.3. I also note that the South Tongass Service Area does not include Saxman, contrary to the information on page three.

18. Exhibit G, page 2, I would verify that the Borough Clerk salary is still higher than the City Clerk. I do not know if this is still the case.

19. Exhibit G, page 3, there has been discussion of a port revenue bond for port improvements. It is unclear how much the inter-fund loan would be, or what the purpose of such a loan was. Also, the state revenue-sharing and safe communities funding has been eliminated. Thus the reference to a 15% rate of reduction is now inaccurate.

20. Exhibit G, page 5, these statements regarding the City General Fund, that "most of the assets and liabilities of the City General fund will be transferred to a special revenue fund established to account for the financial resources of the Ketchikan Service Area" causes some concern. As noted above, some ratio portion of this fund balance is associated with those services that are being transferred to become areawide. It would seem appropriate to transfer a corresponding portion of the city general fund balance to the areawide fund.

21. Exhibit G, page 6, the limitation of any payment in lieu of taxes to the equivalency of the mill rate required to balance the City General Fund at the time of consolidation seems inappropriate. On the one hand, if it is a payment in lieu of taxes it should be made based upon what the actual taxes would be if the property were taxable, not some arbitrary figure. Secondly, this limitation conflicts with the proposed charter section 8.03(e) which calls for a payment in lieu of taxes based on what the full tax liability would be.

22. Exhibit G, page 7, regarding the Ketchikan Service Area, the comments noted above in item 16 are relevant for determining what portion of the Public Works sales tax should be shifted areawide and how the vehicle and building maintenance "power" should be exercised.

23. Exhibit G, page 9, the Economic and Parking Development Fund talks about the proceeds being reserved for the benefit of the Ketchikan Service Area. If the current funding is designated for parking facilities in the central

business district, then the reservation should be for that purpose, not for the general use of the Ketchikan Service Area. Otherwise, funds that were intended to create additional parking could be redirected for Police and Fire purposes, or for Public Works activities outside of the downtown core.

24. Exhibit G, page 10, the Special Assessment Guarantee Fund should be an areawide fund. The role of guaranteeing special assessments should be one of the burdens of the areawide government, not the Ketchikan Service Area. To the extent that the reason to return these funds to the city service area fund is based on the fact that the original source of funding was the former city general fund, this argument is unconvincing where many of the services formerly funded by the city General fund are becoming areawide functions.

25. Exhibit G, page 10-11, the US Marshal Property Seizure Fund is proposed to be for the Ketchikan Service Area on the theory that it is associated with police powers. This is not necessarily a valid assumption. U.S. Marshals are required to seize and sell vessels. Vessel seizure expenses and proceeds would more likely be associated with Ports and Harbor powers resulting from seizure for nonpayment of moorage. As an areawide power, Ports and Harbors would need to be able to access this fund. To the extent that this fund contains money not related to vessels, and is made up of monies received in conjunction with drug prosecutions, the drug forfeiture component should remain with whichever service area or unit that retains the Police Department. This would likely be the Ketchikan service area.

26. Exhibit G, page 12-14, there have been substantial changes in the borough's Economic Development and Land Trust Funds. These sections will need to be adjusted accordingly. Basically the distinction between many of the sub-funds has been eliminated and some funds have been combined.

27. Exhibit G, page 18, the Major Capital Improvements Fund is slated to go to the Ketchikan Service Area. As noted in comment 16 above, some of the facilities that these funds were being reserved for are facilities that are being transferred as part of the shift to areawide powers. Accordingly, some portion of this fund should also becoming areawide funds for future improvements to the Civic Center, Gateway Mental-Health facility, the Library, the Museum and the like.

28. Exhibit G, page 19, regarding enterprise funds, the Borough has several enterprise funds listed in its most current budget.

29. Exhibit G, page 20, regarding the Ketchikan Public Utilities Fund: The statement that Water Services will only be offered within the Ketchikan Service Area is incorrect. Water service would be offered South of the Ketchikan

Service Area as well. Whether budgeting for these water services would be combined with the other utility's services is an issue for the Charter Commission and the new Assembly to decide. It seems logical to include all water services under the same umbrella.

30. Exhibit H, page 6, the list of services should be adjusted as noted in prior comments.

31. Charter section 2.04(b)(7) and the cross-referenced section 16.01(b) do not set out either a procedure or an entity to determine whether a violation has occurred. I suggest that this be addressed in section 16.01(b) by providing that: "any municipal officer, employee, or elected official who is found by the assembly to have concealed such financial interest or to have willfully violated the requirements of this section...."

32. Charter section 2.09(b) I recommend the state reference for the Alaska Statutes regarding limitations on mayoral veto be updated to be 2004 version of the statute section.

33. Charter section 3.01(k) should include the word " zoning" between the words " official" and " map."

34. Charter section 3.02(b) creates an awkward situation. Nothing defines how significant an amendment may be before it is considered substantive. If this distinction is to be retained, some clarification would be helpful.

35. Charter section 6.01 deals with initiative and referendum. I would suggest that the second sentence include an additional clause providing that the regulations set out by the Assembly be "subject to the limitations of State law." Steve Schweppe's comments in this regard are helpful.

36. Charter section 7.01(b) indicates term in the and heading, but the term is addressed in subsection (a).

37. In Charter section 8.01 it is not clear why sewer service shouldn't also be considered as a possible utility.

38. Charter section 8.03(e) requires payment in lieu of taxes. A similar requirement for ports is in Charter section 10.08(b). While this is not a crucial issue, I would suggest using the permissive " may" rather than the mandatory "shall." If it remains "shall" the budget should calculate the full PILT areawide and in service areas. The revenue amount could be significant, certainly more than the current PILT.



39. Charter section 10.07 sets a 14 mill limit on taxes. As noted by Steve Schweppe, this does not clarify the interaction between areawide and service area levies.

40. Charter section 11.04 requires voter ratification of revenue bonds. State law does not require voter ratification of revenue bonds. This ratification requirement is likely carried over because it is in the current city of Ketchikan charter. The Borough does not have such a requirement and uses revenue bonds for the Airport on a regular basis. While such a requirement may serve some purposes, I see some significant disadvantages as well. Recently City Council member Charles Freeman inquired as to what appeared to be excessive utility reserves. Explanatory memoranda provided by City staff indicated that the large reserves were needed to save up for future capital projects, in part because of the requirement for voter approval of revenue bonds. The voter approval requirement makes them a less desirable vehicle for funding utility infrastructure improvements.

I also have some concerns about building up large pools of cash reserves with the intention of paying cash to construct improvements in the future. Large cash reserves are not irrevocably dedicated to a particular project, and may be subject to appropriation for other purposes, depending upon the political will at the time. Revenue bonds often offer a more cost-effective method for financing utility infrastructure without the risk of redirection of utility revenues. Additionally, it is difficult to justify raising utility rates when reserves are so large. Analytically, revenue bonds dedicated to specific improvements, even if they may be used without a public vote, would seem to offer greater security to the public than large pools of undedicated cash. Further, enterprises that cannot reasonably generate large pools of cash, such as the Airport, have needed to use revenue bonds to finance improvements that are needed in the short term with a payback over a 20 year period.

41. Charter section 12.03 addresses Fire service and service areas. The issues related to fire department organization and fire services were discussed in an earlier paragraph.

42. Charter section 12.04(b) addresses amendment of service area boundaries. I believe this section is too limiting. It would require approval of the voters for any change in service area boundaries. Thus, if only a single homeowner wants to join a service area, that action would require voter approval from the existing service area. Similarly, if the Assembly desires to remove a single parcel from a service area, that action would require approval of voters in the area which would remain. I would recommend a threshold that would moderate this requirement. An example may be seen from AS 29.35.450 that treats less than 1000 persons or 6% of the number of parcels in

the service area as a de minimus amount below which a vote of the remainder of the service area is not required. The charter could also identify a de minimus level such as 10% of the assessed value.

43. This section, 16.05, addresses continuing effect of ordinances. If the intention is to limit building safety and police action to the Ketchikan Service Area, both in this section and in the transition plan (Exhibit J page 23), a jurisdictional limitation upon application of the building safety ordinances and general criminal and traffic ordinances should be spelled out. Otherwise, the Building Safety Code, for example, would apply throughout the jurisdictional boundaries of the new municipality, but would only be enforced within the City Service Area. On the same topic, the procedure called for in the transition plan for resolving conflicting ordinances minimizes the role of the Assembly. I would be surprised to see the Assembly come up with and pass a well-drafted alternative within 30 days. Often it takes longer to have a thoughtful review and adoption. Additionally, I would recommend that the ordinance review process include the Clerk, as well as the Manager, Mayor and Attorney.

44. Exhibit J, pages 3-5, several of the funds addressed on these pages note reliance on the 1 1/2 percent Public Works sales-tax. However, the petition, as noted above, does not allocate that sales tax in proportion to allocation of the services funded by that sales-tax.

45. Exhibit J, page 9, regarding facility and vehicle maintenance powers, please see the comments noted above. These are not a separate power, but are ancillary to each of the other powers.

46. Exhibit J, page 13, currently the Borough does not pay in proportion of the cost attributable to the number of residents located in Saxman. Saxman residents do not contribute to funding of the Library.

47. Exhibit J, page 17, the limitation on providing services only within the Ketchikan wastewater collection treatment and discharge system area is potentially problematic. The Borough regulates septic waste in all areas outside of the cities of Ketchikan and Saxman. Following consolidation, it would need to have sewer (i.e. septic waste) powers in all areas outside of Saxman. Otherwise the sludge program would become an unauthorized power.

48. Exhibit J, page 18, as noted previously the Public Safety and Public Works sales-taxes may need to be apportioned based upon those services currently funded by those funding sources that are transferred to become areawide functions.

49. Exhibit J, page 19, as discussed above, fire suppression may be more effectively addressed through separating out infrastructure and equipment from personnel. This would require a corresponding adjustment in allocation of sales-tax revenues.

50. Exhibit J, page 20, there are numerous operations that would benefit from Engineering services. Contract administration and design services are currently required by the Borough for schools, sewer, water, Parks and Recreation, and other Public Works projects. The engineering services could be more easily be an areawide function for which the Ketchikan Service Area would pay an intergovernmental charge for the road design needs. Looking at the entire City and Borough, and how the capital projects and responsibilities would be divided after consolidation, the bulk of the demand for Public Works Engineering services would be with the areawide functions, not with the Ketchikan Service Area. Again, some appropriate portion of the sales tax revenues should follow the function.

51. Exhibit J, page 21, as noted above the current city Public Works Facility and Vehicle maintenance function is not a separate power and should track with the primary powers exercised by the consolidated municipality which use facilities or vehicles.

52. Exhibit J, page 22, the proposed powers and services have been individually addressed in prior comments. The listing on page 22 would need to be adjusted if the commission is to implement some of those prior comments.

53. Exhibit J, page 23, the earlier comments regarding the procedure for selection between competing code provisions applies to this page as well.

54. Exhibit J, page 26, as noted earlier, there have been additional Borough positions added which duplicate corresponding City positions.

55. Exhibit J, page 27, the executive staffing plan is not provided. I would recommend two attorneys and two support staff in the Attorney's office. One support staff would be insufficient to keep up with the workload.

56. Exhibit J, page 28, the figures in the proposed taxation levels should be revised to reflect allocation of powers.

57. Exhibit J, page 33, the assets and liabilities to be allocated should be adjusted in accordance with the Commission's allocation of functions and revenues.

In closing, probably the most significant issue is the balancing of tax burdens with the levels of services received. If it costs more in Forest Park for less service than in the City Service Area, the balance has not been reached.

Thank you for your consideration of these comments and thanks for the opportunity to have input.

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