

# KETCHIKAN CHARTER COMMISSION

## AGENDA STATEMENT

NO. H-1

MEETING OF **September 16, 2005**

### ITEM TITLE

**Suggested Charter changes from the Municipal Bond Counsel: Sections 8. 03 (g); 10.07; 10:08; 11.02 (b); 11.04; 11.05 (a); and adding a new section, 11.09. (Second Reading)**

SUBMITTED BY John Harrington

### SUMMARY STATEMENT

After extensive discussion on the topic of bonds, bonding, requiring a vote by the people to issue revenue or general obligation bonds, the firm of Preston/Gates/Ellis was contacted by the Chair and David O. Thompson, bond counsel attorney, responded with comments on various sections of the Charter relating to bonding and finances.

The included subsections are the result of motions on a number of suggested items regarding bonding from Mr. Thompson. Each item was covered by the Commission, with a recommended and/or amended motion, at the meeting of 8/5/05 and they are before the Commission at this meeting in second reading.

As was the case at the 8/5/05 meeting, these agenda items in second reading may be accepted in total or individually.

Also attached is Section 11 of the Charter with all of the changes incorporated, including those in this agenda item packet.

**If handled in total, the following is the recommended motion:**

**“I move to accept changes to Article VIII, Section 8.03(g); Article X, Section 10.07; Article XI, Sections 11.02(b), 11.04, 11.05(a), and 11.09; as initially passed at the Commission’s regular meeting of 8/5/05 and brought before the body at this meeting in second reading.”**

See the following pages if handled individually.

**I-1 (1) Changing the spelling of the word “therefore” throughout the bonding sections of the Charter:**

Mr. David Thompson said in his faxed memorandum of 5/13/05:

The word “therefor” has been changed (probably by a spell check program) to “therefore”. “Therefor” is one of those words (only used by bond lawyers!) that can be correct where, as here (Section 11.03), it refers to evidence of indebtedness for borrowed money. It does not mean “as a result” or “consequently” (i.e. it doesn’t mean “therefore”).

The following reflect the specific areas of the bonding sections to be changed by this motion:

Section 11.01 (a) and Section 11.04

**Suggested Motion:**

**I move in the second reading to replace all instances of the use of the word “therefore” with “therefor” referenced by Attorney David Thompson in his comments on the following sections of the Charter: Sections 11.01 (a) and Section 11.04.”**

**I-1 (2) Section 8.03 (g) Sale of the Municipal Utility**

Mr. Thompson, Bond Council, made the following comments to Section 8.03 (g) of the Charter:

- (g) Sale of Municipal Utility.** The municipally owned electric, telephone, or water services may not be sold or leased [ **Is this limited to a sale or lease in whole? Or would it apply to a sale or lease of part of a system? For example, would it take a vote to approve the lease of an insubstantial asset of one of the utilities? Note, however that covenants in revenue bond ordinances may further limit sale or lease of utility assets.)** ] except by authority of an ordinance approved or enacted at an election by an affirmative vote of a majority of the qualified voters of the Municipality who vote on the question of approving the ordinance.

The question before the Commission at the 8/5/05 meeting on this section was whether an amendment would be needed to this section to encompass the questions posed by Mr. Thompson.

The amendment to this section was passed by the Commission at the 8/5/05 meeting. Acceptance of these changes at this meeting will change Article VIII, Section 8.03 (g) in the Petition Charter to read:

- (g) The municipally owned electric, telephone, or water utilities may not be substantially sold or leased except by the authority of an ordinance approved or enacted at an election by an affirmative vote of a majority of the qualified voters of the Municipality who vote on the question of approving the ordinance.**

**MOTION**

**"I move in the second reading to make the changes indicated above to Section 8.03 of the Charter."**

## I-1 (3) Section 10.07 Property Tax Limit

### Section 10.07 Property Tax Limit

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, but 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. 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.~~

Comment by Attorney David Thompson: *[As written, the last sentence is puzzling. Does the 3% limitation contradict the statement that this section will not limit the ability of the Municipality to meet its bonded obligations? That's why I suggest this revision.]*

**Unfortunately, the Commission members had been away from the job for so long, they forgot that Section 10.07 had been changed in March of 2005 to read:**

The increase in the rate of the areawide property tax levy from one year to the next shall not exceed two-tenths (.2%) percent of the assessed valuation of the property to be taxed, (2 mills) above the rate levied in the prior fiscal year. The Assembly may raise this limit by a super-majority vote (2/3), advertised for a minimum of one month prior to the first of two noticed meetings or may elect to have the voters 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.

**In the interest of moving the process along, it is suggested that the change approved by the Commission at their 8/5/05 meeting be incorporated into the previously amended Section 10.07 as follows:**

The increase in the rate of the areawide property tax levy from one year to the next shall not exceed two-tenths (.2%) percent of the assessed valuation of the property to be taxed, (2 mills) above the rate levied in the prior fiscal year. The Assembly may raise this limit by a super-majority vote (2/3), advertised for a minimum of one month prior to the first of two noticed meetings or may elect to have the voters raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election, **but 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.** 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.~~

### Recommended motion:

**"I move, in the second reading, to make the amended changes that are indicated above to Article X, Section 10.07."**

#### **I-1 (4) Section 11.02 (b) Notice of Bond Indebtedness**

**Section 11.02 (b)** For bonds secured by a pledge of taxes to be levied in a service area or on a non-area-wide basis, the notice shall also contain the information required in (3), (4), and (5) relative to the service area or other area. Instead of the information required in (3), (4), and (5) for revenue bonds that are not also secured by a general obligation pledge secured by a pledge of the municipal utilities' revenues, the notice shall contain the amount of current indebtedness secured by the applicable revenues, including authorized but unsold bonds, and the amount of the current year's debt service on outstanding bonds of the Municipality secured by a pledge of the applicable revenue. ~~information required in (3) and (4) relative to the affected municipal utilities.~~

The changes to Section 11.02 (b) were suggested by Bond Counsel, David Thompson and the amendment to this section passed in first reading on 8/5/05.

#### **Recommended motion:**

"I move in the second reading to make the suggested deletions and additions to Section 11.02 (b) as shown above."

**I-1 (5) Section 11.04                      Revenue Bonds and Borrowing**

**Section 11.04                      Revenue Bonds and Borrowing.**

The Municipality shall have power to borrow money and to issue revenue bonds or other such evidences of indebtedness therefore, the principal and interest of which are payable solely out of, and the only security of which is, the revenues of a revenue-producing municipal utility or enterprise; but only when authorized by the Assembly and ratified by the voters for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the said utility or enterprise, ~~for refunding or for purposes authorized by Section 11.03 of this Charter.~~  
**[Requiring a vote in these instances conflicts with provisions of Sections 11.01 (d) and 11.03.]** Bond anticipation notes may be issued following the ratification of a bond issue and pending sale of the bonds.

Bond Counsel David Thompson suggested the changes shown above to this section of the Charter and the amendment to this section passed in first reading on 8/5/05.

**Recommended motion:**

**“I move, in the second reading, to delete the language that is crossed out, as shown above, in Section 11.04.”**

**I-1 (6) Section 11.05 (a)**

**Economic Development Financing**

(a) Non-recourse revenue bonds and other non-recourse revenue obligations issued pursuant to this section shall be secured and payable only from any source except revenues, including tax revenue, of the Municipality. ~~money or other property received as a result of projects financed by the non-recourse revenue bonds, or other non-recourse revenue obligations, and from money or other property received from private sources.~~

Bond Counsel David Thompson wrote, "This tracks the language of AS 29.47.390 (a) and avoids the implication that a project of the Municipality may be financed by such a bond."

During the meeting of 8/5/05, a friendly amendment to the one suggested was passed that changed the name of the Section from Economic Development Financing to Non-Recourse Bond Financing.

The following will be considered in second reading:

**Section 11.05 (a)**  
**Financing**

**Non-Recourse Bond Financing ~~Economic Development~~**

(a) Non-recourse revenue bonds and other non-recourse revenue obligations issued pursuant to this section shall be secured and payable only from any source except revenues, including tax revenue, of the Municipality. ~~money or other property received as a result of projects financed by the non-recourse revenue bonds, or other non-recourse revenue obligations, and from money or other property received from private sources.~~

**Recommended motion:**

**"I move in the second reading to make the changes to Charter Section 11.05 (a) as passed by the Commission on 8/5/05 and indicated above."**

**I-1 (7)                      New Section, Section 11.09 Challenges to Bond Authorizations**

Bond Counsel David Thompson writes, "You may wish to consider adding something like the following, which is modeled on a provision in the Charter of the City and Borough of Sitka (and is similar to a provision in the Charter of the City of Petersburg."

**Section 11.09                      Challenges to Bond Authorizations**

Notwithstanding any provision of this charter to the contrary, no action challenging the authority or proceedings for or the validity of, the issuance of any bonds (or other obligations), a bond ratification election, or the authorization of taxes to pay any bond (or other obligation), may be commenced or maintained unless instituted within thirty (30) days from the date of certification of the results of a bond ratification election or from the date of passage of the ordinance or resolution authorizing the issuance of any bonds (or other obligations) when a bond ratification election has been obtained or is not required.

**Recommended Motion:**

**"I move in second reading to approve the addition of a paragraph in Article 11 of the Charter, Section 11.9, as shown above."**



## **ARTICLE XI -- BORROWING**

### **Section 11.01      General-Obligation Bonds, and Revenue Bonds.**

(a)      **Power to Borrow.** The Municipality shall have power to borrow money and to issue its general-obligation bonds, revenue bonds, or other such evidences of indebtedness therefor, but only when authorized by the Assembly for capital improvements and ratified at an election by a majority of those qualified to vote and voting on the question.

(b)      **Areawide, Nonareawide, and Service Area Indebtedness.** The Municipality may incur indebtedness:

- (1)      On an areawide basis when exercising powers on an areawide basis;
- (2)      On a service area basis when exercising powers through a service area;
- (3)      On a nonareawide basis when exercising powers on a nonareawide basis.

Indebtedness incurred on a service area basis shall be repaid from revenues and taxes received from the service area and indebtedness incurred on a nonareawide basis shall be repaid from revenues and taxes received from the affected area. The full faith and credit of the Municipality may, however, be pledged to guarantee repayment of indebtedness incurred on a service area basis or on a nonareawide basis if the indebtedness has been approved as required by this subsection. If the indebtedness is incurred for the exercise of areawide powers, the election approving the indebtedness shall be areawide. If the indebtedness is incurred on a service area basis and is to be repaid solely from revenues and taxes received from the service area, the election approving the indebtedness shall be among the voters of the service area. If the indebtedness is incurred on a nonareawide basis and is to be repaid solely from revenues and taxes received from the affected area, the election approving the indebtedness shall be among the voters of the affected area. If the full faith and credit of the entire Municipality is pledged for the payment of indebtedness incurred on a service area or nonareawide basis, then the indebtedness must be approved on an areawide and on a service area or nonareawide basis.

(c)      General-obligation evidences of indebtedness may also be secured by revenues from a revenue-producing utility or enterprise when they are issued for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the said utility or enterprise, and/or by other designated funds or revenues specifically pledged for payment of principal and interest thereon. Capital improvements as used hereinabove may also include a part or all of the Municipality's share of the cost of public improvement of which a part is to be paid by benefitted property. Bond anticipation notes may be issued following bond issue approval, and pending sale of the bonds.

(d)      The requirement for ratification does not apply to borrowing money to meet appropriations for a particular fiscal year, nor to indebtedness to be paid from special assessments to be made on benefitted property, nor to refunding indebtedness.

## **Section 11.02      Notice of Bond Indebtedness.**

(a) Before holding any election required by this article, the Assembly shall cause a notice of bond indebtedness to be published once a week for three consecutive weeks in a newspaper of general circulation in the Municipality. The first publication shall be at least twenty (20) days prior to the date of election. For elections approving the issuance of general-obligation bonds or revenue bonds the notice shall contain the following information:

- (1) The amount of the bonds, purposes of issuance, and length of time within which the bonds shall mature;
- (2) The amount of the estimated annual debt service on the proposed bonds based upon an estimate of the anticipated interest rate;
- (3) The amount of the current total general obligation indebtedness of the Municipality including authorized but unsold bonds;
- (4) The amount of the current year's debt service on the outstanding bonds of the Municipality;
- (5) The current total assessed valuation within the Municipality.

(b) For bonds secured by a pledge of taxes to be levied in a service area or on a non-area-wide basis, the notice shall also contain the information required in (3), (4), and (5) relative to the service area or other area. Instead of the information required in (3), (4), and (5), for revenue bonds that are not also secured by a general obligation pledge, the notice shall contain the amount of current indebtedness secured by the applicable revenues, including authorized but unsold bonds, and the amount of the current year's debt service on outstanding bonds of the Municipality secured by a pledge of the applicable revenue.

(c) Omissions of information required by (2), (3), (4), and (5) or errors in such information shall not invalidate any election.

## **Section 11.03      Borrowing to Meet Appropriations.**

The Municipality shall have power to borrow money to meet appropriations for any fiscal year in anticipation of the collection of revenues for that year, when authorized by the Assembly, and without submitting the question to the voters. The total of such indebtedness shall never exceed 25% of anticipated revenues of that year. All debts so contracted shall be paid before the end of the next fiscal year.

## **Section 11.04      Revenue Bonds and Borrowing.**

The Municipality shall have power to borrow money and to issue revenue bonds or other such evidences of indebtedness therefor, the principal and interest of which are payable solely out of, and the only security of which is, the revenues of a revenue-producing municipal utility or enterprise; but only when authorized by the Assembly and ratified by the voters for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the said utility or enterprise. Bond anticipation notes may be issued following the ratification of a bond issue and pending sale of the bonds.

## **Section 11.05      Non-Recourse Bond Financing**

The Municipality may enact ordinances authorizing the issuance of non-recourse revenue bonds or

other non-recourse revenue obligations and the application of the proceeds thereof for economic development purposes, subject to the following limitations:

(a) Non-recourse revenue bonds and other non-recourse revenue obligations issued pursuant to this section shall be secured and payable from any source except revenues, including tax revenue, of the Municipality.

(b) Non-recourse revenue bonds and other non-recourse revenue obligations issued pursuant to this section shall not be payable from, or secured by, any municipal assets, tax funds, or governmental revenue, or by all or part of the faith and credit of the Municipality.

(c) Non-recourse revenue bonds or other non-recourse revenue obligations may only be used to finance economic development projects, as defined by ordinance.

The restrictions of Articles VIII, X, and XI of this Charter shall not be construed as limitations upon the authority granted by this section. Non-recourse bonds and other non-recourse revenue obligations may be issued pursuant to this section without ratification at an election.

#### **Section 11.06 Unexpended and Unencumbered Balances.**

Every bond or other evidence of indebtedness shall contain a statement of the purpose for which it is issued, and the proceeds thereof shall not be used for any other purpose, except that, whenever any proceeds of an issue remain unexpended and unencumbered for the purpose for which issued, the Assembly shall authorize the use of such unexpended and unencumbered funds only for the following purposes, which are listed in descending order of priority:

(a) For the retirement of such issue;

(b) If such issue has been fully retired, then for the retirement of other bonds or obligations issued on the same areawide, service area, or nonareawide basis;

(c) If there are no such other bonds or obligations of the Assembly outstanding, then for any purpose related to the same areawide, service area, or nonareawide purpose.

#### **Section 11.07 Voiding Authorization of Bonds.**

The Assembly, by resolution or ordinance, may void the authorization of any unsold bonds or other evidences of indebtedness at any time. Every obligation shall be sold within the ten years following the adoption of the ordinance authorizing its issuance or the ratification of such issuance by the qualified voters of the Municipality, whichever is later, except when such sale has been delayed by an action to determine the validity of the proceedings authorizing the issuance of such obligations, in which case the period of such delay may be added to the said ten years. Authorization of obligations not sold within the time limits provided shall lapse unless otherwise voided at an earlier date by the Assembly.

#### **Section 11.08 Assembly to Have Power to Regulate.**

The Assembly shall have power to regulate the indebtedness of the Municipality and the issuance of bonds and other evidences of indebtedness, regardless of type or purpose, including general-obligation, revenue, special-assessment, refunding, and other, subject only to the limitations imposed by the state constitution and law and this Charter.

**Section 11.09****Challenges to Bond Authorizations**

Notwithstanding any provision of this charter to the contrary, no action challenging the authority or proceedings for or the validity of, the issuance of any bonds (or other obligations), a bond ratification election, or the authorization of taxes to pay any bond (or other obligation), may be commenced or maintained unless instituted within thirty (30) days from the date of certification of the results of a bond ratification election or from the date of passage of the ordinance or resolution authorizing the issuance of any bonds (or other obligations) when a bond ratification election has been obtained or is not required.