

CHARTER COMMISSION MEETING
WEDNESDAY, AUGUST 10, 2011 – 7:00 P.M.

Chair Gombar opened the regular meeting at 7:06 p.m., in Town Hall, Council Chambers. The following members were in attendance:

Jerome Begert
John Bird
William Gombar
Jayne Flaherty
Tianna Higgins
Ronald Regis

Also present were: Robin Dayton, Member of the Old Orchard Beach Town Council and Geoff Hole, Esq. of Bernstein, Shur, Sawyer and Nelson.

The members of the Charter Commission stood for a Pledge to the Flag.

Robin Dayton was present at the meeting, and handed out the attached document regarding budget process and suggested changes to the Charter.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to add an emergency agenda item to consider wording changes to Section 707.

Commissioner Flaherty stated they have been working on this document for 18 months and she doesn't want to see last minute recommended changes.

Commissioner Regis stated he would not agree to add this agenda item.

VOTE: Vice-Chair Bird, Commissioners Begert and Higgins, yes; Commissioners Regis and Flaherty, and Chair Gombar, no. Motion fails 3-3.

Vice-Chair Bird motioned to amend the minutes of July 26, 2011.

VOTE: Vice-Chair Bird, Commissioners Begert, Higgins, Flaherty and Chair Gombar, yes; Commissioner Regis abstained. Motion passes 5-0-1.

Vice-Chair Bird motioned to accept the July 26th, 2011 minutes as amended.

VOTE: Vice-Chair Bird, Commissioners Begert, Higgins, Flaherty and Chair Gombar, yes; Commissioner Regis abstained. Motion passes 5-0-1.

Chair Gombar read item #2 on the agenda:

“Discussion with Action: Consider change to Section 706 adding the words”, to be managed at the line-item level.”, if a motion to reconsider is made by a commissioner previously voting in the negative on this matter.”

Commissioner Begert motioned, seconded by Vice-Chair Bird, to reconsider the change to Section 706.

VOTE: Vice-Chair Bird, Commissioners Begert, Flaherty and Chair Gombar, yes; Commissioners Regis and Higgins, no. Motion passes 4-2 to reconsider.

Commissioner Begert stated that he had voted no at the previous meeting since he felt that it wouldn't pass because it pertained to the Town Council micro-managing 365 days a year. It has been clarified to him that the managing will be done by the department heads, and the Town Council will only have the vote on the budget level.

Vice-Chair Bird said that he wanted to amend Section 706 to be clearer by changing "gross" to "line-item"; however, the Charter Commission didn't vote on that previously. Both this item and his previous recommendation are for better accountability of expenditures by the Town. Gross appropriation is just one lump sum, even though the Town Council discusses the budget by line-item at the budget hearings. Once the budget is passed, the department heads don't have to stay within their line items.

Robin Dayton stated she was attending this meeting as a citizen, and not a Town Councilor. She said she has a background in finances, and agrees with Vice-Chair Bird. She referred to her hand-out, stating there are four phases to the budget. The first phase is the formulation phase. The Town Council goes through the budget diligently, but there is no charter requirement to do so. Going through the budget by line-item is very beneficial. The Town Council has found areas to save money. Once the first phase is finished, after review, the Town Council does a gross appropriation by department. The Town Council has examples of line-items not being followed, but they're not advised of this, because we don't have to be by Charter. There isn't a mechanism in the Charter to require notification of the Town Council. Some of the examples of line-items not being followed are heating fuel, employee overtime and sick time, etc. The Town Council is not made aware of these changes until phase four, when the Town Council gets the audit in December. The Town Council needs to be proactive and accountable. It does not mean that they manage it, but if they give a certain amount of money in a line-item, they mean it.

Commissioner Regis responded that he agreed in some sense, but why change Section 706? The Town Council is already taken care of in Section 708.

Commissioner Begert replied that he asked residents, and they agree with Ms. Dayton.

Chair Gombar asked Attorney Hole if the Charter Commission makes the line-item change to Section 706, would that preclude the Charter Commission from having their last meeting tonight, to which Attorney Hole responded that it would not.

Ms. Dayton, responding to Commissioner Regis's comment, stated that Section 708 refers to unencumbered appropriations. It doesn't cover Section 706. Transferring within a department is currently covered in the Financial Policy.

Attorney Hole stated he can sign off on the "line-item" wording change to Section 706, as long as the Charter has a mechanism to deal with transfers.

Commissioner Regis stated money isn't being moved from one department to another department. The transfers stay within the department.

Ms. Dayton responded that the Town Council doesn't know that because they don't see it.

Commissioner Higgins stated this agenda item is not what the Charter Commission agreed to discuss five minutes ago, so they're changing it.

Commissioner Flaherty inquired if there was a negative to a line-item allocation amount.

Commissioner Higgins stated there wasn't, but the Charter is the picture of the Town—not the nitty gritty. The Town has a Financial Policy to handle these transfers.

Vice-Chair Bird, seconded by Commissioner Begert, motioned to amend Section 706 by adding, “to be managed at the line-item level”, after department in the second sentence.

After discussion, Commissioner Begert motioned to amend the motion, and Vice-Chair Bird seconded it, to amend Section 706 by changing “a gross” to “line-item” in the second sentence and “gross” to “line-item” in the third sentence and pluralizing the word “appropriation”, as follows:

“Sec. 706. Expenditures and Departmental Revenue.

The budget for all departments shall include all proposed expenditures, and carryover dedicated accounts. The Town Council shall make a ~~gross~~ line-item appropriations for each department for the ensuing fiscal year. The ~~gross~~ line-item appropriations for each department shall not be exceeded except by consent of the Council and subject to the provisions of Section 708.”

VOTE on amendment: Vice-Chair Bird, Commissioners Begert and Flaherty, and Chair Gombar, yes; Commissioners Higgins and Regis, no. Motion passes 4-2.

VOTE on amended motion: Vice-Chair Bird, Commissioners Begert, Higgins, Flaherty, and Chair Gombar, yes; Commissioner Regis, no. Motion passes 5-1.

Chair Gombar read agenda item #3:

“Discussion with Action: Consider any necessary changes based on the attorney's review of the proposed charter.”

Attorney Hole stated that in the change from five to seven Town Councilors, he felt Section 1004 is redundant. The Charter Commission could strike Section 1004 and have it covered.

Commissioner Regis motioned to strike Section 1004 from the Charter. There wasn't a second.

Attorney Hole felt the sentence about not calculating time prior to 2012 was better placed in Section 201.2 instead of in the transitional section.

Vice-Chair Bird responded that Section 201.1 is not fully quoted in the proposed question One.

Attorney Hole felt that term limits would more logically be placed in Section 1002.2 instead of 201.1.

Vice-Chair Bird stated that Section 201.1 talks about the Town Council qualifications, etc, and term limits should be mentioned there. Many people won't read the transitional sections, since they are not required to be included in printed copies of the final Charter per Sec. 1001.

Attorney Hole responded that he would put that back into Section 201.1. Attorney Hole also stated he would combine questions three and four into one question.

There was discussion that they were separate issues and that the Commission wanted separate questions.

Chair Gombar was concerned that if question four doesn't pass, but question three does, then the modification to other parts of the Charter won't be changed.

Vice-Chair Bird stated that if the RSU fails, there needs to be language in the words of explanation stating that it will revert back to the original Charter language. He suggested placing the explanation on a supplemental sheet.

Attorney Hole read M.R.S.A. Title 30-A, Section 2015, and stated he took the wording of the questions from the state law.

Vice-Chair Bird suggested putting in the summary only, and doing a supplemental sheet for the words of explanation for each question.

Attorney Hole stated that the Town Council can make a decision to summarize a question or not.

Commissioner Begert inquired if the current Charter complies as it did 13 years ago, or not.

Attorney Hole responded that just because items were in the last Charter, doesn't mean they're necessarily accurate. He just gave the Charter Commission some thoughts.

Ms. Dayton asked what was wrong with a long ballot. She said they should try to be as clear as possible. This is the Constitution of the Town, and people don't have time to look someplace else for the explanation.

Commissioner Flaherty said she agreed with the language that attorney came up with. She agrees with Councilor Dayton. Give the voters all the information they need.

Commissioner Regis motioned, seconded by Commissioner Flaherty, to accept the questions supplied by the attorney and let the Town Council modify if they want to.

Commissioner Begert stated the Town Council can "massage" the questions, but they cannot modify or change.

Chair Gombar stated that questions one, two and four are fine, but question three needs to be changed.

Vice-Chair Bird stated that he disagrees that the Town Council can modify the questions. They can vote to further summarize, but not modify, and didn't agree with Commissioner Regis's motion.

Attorney Hole stated the form of the question is quite fixed by State Law; however, the Town Council has the prerogative of how to summarize.

VOTE: Commissioners Flaherty and Regis, yes; Commissioners Higgins, Begert, Vice-Chair Bird and Chair Gombar, no. Motion fails 4-2.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to have Question One read:

“Shall the Town of Old Orchard Beach approve the charter modifications changing the number of Town Councilors from five (5) to seven (7), and the length of the terms of Town Councilors recommended by the Charter Commission as reprinted below? [The last sentence in Section 201.1 in brackets is not included in this question].

Sec. 201.1. Town Council. The Town Council shall be composed of seven (7) members, with six three-year terms and one one-year term, each of whom shall be elected by the registered voters of the entire Town, and shall serve until a successor is elected and qualified. The six three-year terms of the Town Council shall be staggered, and expire at three year intervals. The one-year term shall expire annually. All terms shall expire on the third Monday in November of the term year. [No Town Councilor is eligible to serve more than seven years consecutively.]

Sec. 1002.1. Transition to New Charter.

The provisions of Section 202 notwithstanding, the terms of the Town Councilors elected in 2011 for 2-year terms shall expire normally in 2013 and the first regular municipal election in November 2012 shall elect two (2) Town Councilors for three-year terms and two (2) Town Councilors for two-year terms, and one (1) Town Councilor for a one-year term.

All succeeding elections under this Charter shall elect two (2) Town Councilors for three-year terms and one (1) Town Councilor for a one-year term, thereby providing elections for a Town Council composed of seven (7) members, with six (6) Town Councilors having three-year terms and one (1) Town Councilor having a one-year term by the year 2014.

The six three-year terms of the Town Council will be staggered, and expire at three year intervals. The one-year term will expire annually.

Candidates for Council shall specify on their nomination papers whether they are seeking election for a one-year term or a three-year term and may be elected only for the term so specified.

Sec. 1004. Terms of Current Officials.

The terms of members of the Town Council, elected at the regular municipal election on November 8, 2011 shall expire on the third Monday in November, 2013.”

Attorney Hole advised he did not see anything wrong with that verbiage.

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Flaherty, to have Question Two read:

“Shall the Town of Old Orchard Beach approve the charter modifications enacting term limits of not more than seven (7) consecutive years for Town Councilors and establishing when the term limits shall commence as recommended by the Charter Commission as reprinted below? [The sentences in Section 201.1 in brackets are not included in this question].

Sec. 201.1. Town Council. [The Town Council shall be composed of seven (7) members, with six three-year terms and one one-year term, each of whom shall be elected by the registered voters of the entire Town, and shall serve until a successor is elected and qualified. The six three-year terms of the Town Council shall be staggered, and expire at three year intervals. The one-year term shall expire annually. All terms shall expire on the third Monday in November of the term year.] No Town Councilor is eligible to serve more than seven years consecutively.

Sec. 1002.2 Term Limits.

Term limits shall go into effect with the 2012 election. Council seats elected prior to November, 2012 shall not calculate into the term limit formula.”

VOTE: Unanimous.

Chair Gombar stated that in Question Three, instead of “reprinted below” it should be “as summarized below”.

Attorney Hole suggested keeping the same language he had recommended, and put “reprinted and summarized”.

Vice-Chair Bird motioned, seconded by Commissioner Regis, to place wording in Question Three that if RSU 23 ceases to exist, the former Charter language would take effect.

Attorney Hole stated that he had missed that.

That motion and second was rescinded.

Vice-Chair Bird motioned, seconded by Commissioner Regis, to have the attorney add an additional sentence in his words of explanation regarding the revival of our school Charter provisions if the RSU fails.

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to have Question Four worded as follows, and to have the Attorney draw up the bullet points for the other changes to the Charter:

Question 4:

Shall the Town of Old Orchard Beach approve the charter modifications regarding all other changes not voted on in separate questions, as recommended by the Charter Commission and summarized below?

Bullet points of all other changes.

Words of Explanation

These modifications are all the other changes recommended by the Charter Commission.

VOTE: Unanimous.

Chair Gombar stated the Charter Commission would not be able to discuss item five on the agenda at tonight's meeting because they're not there yet.

The next meeting was scheduled for August 24th at 7 p.m.

Meeting adjourned at 9:39 p.m.

Respectfully Submitted.

Kim McLaughlin
Town Clerk

I, Kim McLaughlin, Town Clerk of Old Orchard Beach, do hereby certify that the foregoing document consisting of seven (7) pages is a true copy of the original Minutes of the Charter Commission Meeting held August 10, 2011.

Kim M. McLaughlin

Submitted by Robin Drayton

A "budget," in customary usage, is a plan for managing funds, setting levels of spending, and financing that spending. Most of us use the term budget and budget process more broadly to include both the planning process of projects, programs and department functions as well as the end result of that plan and the fiscal effect of spending, (i.e. revenues and taxes).

In this context the budget process then has 4 distinct phases. These phases hold true regardless of the level of government you are talking about. In the US, states, counties and municipalities follow the budget process and procedures used by the Federal Government. For more information on governments General Accounting Practices please go to www.GAO.gov. These phases are:

Phase 1 – Budget formulation. January – March

Council provides general guidance to the Town Manger about the financial and program goals for the next fiscal year. The Town Manager works with the Head of each Town Department and determines how best to meet that guidance and meet the priorities of the Town. Literally thousands of pieces of information and data are taken into consideration. These include:

- Cost estimates - are established for each line item in the budget
- Budget narratives – written, describe departmental functions
- Program descriptions - written to define what specific items will be provided to the public
- Budget justifications – written to specify the for funding and explain priorities

Phase 2- Council Budget Review, Approval and Appropriation. March – June

As you witnessed for the 1st time on Channel 3 this spring, Council reviews each and every line tem in the budget as presented. Council goes through this process several times until a majority is reached to support each line item. It is a grueling process. If a majority does not support a particular line item, project or program; it is deleted. In this manor Council changes the budget as presented by the Town Manager. Council must approve the annual budget by June 30th by majority vote. The approved budget translates to an appropriation for each department as per our Charter as it is currently written.

It is Phase 3 that I believe we have the largest financial weakness in OOB.

Phase 3- Budget Execution and Control. July 1 through June 30th of each fiscal year
Budget execution and control refers to the time period where appropriated funds are actually spent. The task of each Department is to meet the objectives, goals and plans that Council approved in the budget. Each Department spends their appropriation using legal obligation instruments commonly known as contracts, grants, and purchase orders. Every 2 weeks Council must sign off on a document called a "Warrant" that lists those legal obligations to pay a bill. Each warrant must have a minimum of 3 signatures.

HERE IN LIES THE PROBLEM. At this time council is required to approve these warrants without first reviewing the obligation. Through the years and for many different reasons, we have hundreds of examples where appropriated funds are not executed as approved by Council. At this time Council has no recourse other than to not sign the warrant. The act of refusal to sign however has no legal effect or impact. In short Council has no mechanism to ensure budget appropriations are executed properly.

Section 707 of the Charter if re-written can help Council with this problem. An allotment is a financial management control instrument. By definition, the word allotment means to incur obligations within a specified amount. (GAO Budget Glossary pg 10.) A work program allotment shows the amount of each line item obligation by month. In other words if the charter is re-written as discussed, each department head would provide to Council and the Town Manager a spreadsheet that specifies how they will spend each line item through-out the year by month. This will help Council better monitor expenditures before they happen. Work program Allotments can be used to as a reference point prior to signing a warrant. If a warrant comes before council that is not on the work plan, Council will be more prepared to ask questions and ensure that funds are being spent as appropriated. In order for this to help Council affect greater financial management control and efficiency, it is exceedingly important to note that a work program allotment is NOT provided to Council prior to the approval and appropriation of each budget. An allotment is not part of phase 1 of the budget process.

Phase 4 – Budget Auditing and Evaluation – June 30th – September.

At the end of each fiscal year, the Chief Financial Officer prepares for our annual audit. All receipts and expenditures are finalized and compiled into one final year-end report. I believe we meet the basic GAO standards for this phase of the budget.

BERNSTEIN SHUR
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Geoffrey H. Hole
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August 3, 2011

Charter Commission
Town of Old Orchard Beach
1 Portland Avenue
Old Orchard Beach, ME 04064-2245

Re: Ballot Question

Dear Members of the Commission:

I am enclosing my vision of three questions to present to the voters regarding the proposed revisions to the Charter.

The first deals with the number of members of the Town Council and the terms of the Councilors. The second addresses education. And the third deals with the other suggested changes. I propose to add bullet points summarizing the other changes, once that concept is approved by the Town Council.

I initially envisioned four questions, but upon reflection felt it would be more logical to incorporate the questions regarding number of Councilors, term limits and the necessary transitional provisions for Councilors into one question. If you prefer, we can split those subjects into two separate questions.

Sincerely,



Geoffrey H. Hole

GHH/lc

Enclosures

Shall the Town of Old Orchard Beach approve the charter modifications regarding the number of Town Councilors and the terms of Town Councilors recommended by the Charter Commission and reprinted below?

Sec. 201.1. Town Council. The Town Council shall be composed of seven (7) members, with six three-year terms and one one-year term, each of whom shall be elected by the registered voters of the entire Town, and shall serve until a successor is elected and qualified. The six three-year terms of the Town Council shall be staggered, and expire at three year intervals. The one-year term shall expire annually. All terms shall expire on the third Monday in November of the term year. No Town Councilor is eligible to serve more than seven years consecutively.

Sec. 1002.1. Transition to New Charter.

The provisions of Section 202 notwithstanding, the terms of the Town Councilors elected in 2011 for 2-year terms shall expire normally in 2013 and the first regular municipal election in November 2012 shall elect two (2) Town Councilors for three-year terms and two (2) Town Councilors for two-year terms, and one (1) Town Councilor for a one-year term.

All succeeding elections under this Charter shall elect two (2) Town Councilors for three-year terms and one (1) Town Councilor for a one-year term, thereby providing elections for a Town Council composed of seven (7) members, with six (6) Town Councilors having three-year terms and one (1) Town Councilor having a one-year term by the year 2014.

The six three-year terms of the Town Council will be staggered, and expire at three year intervals. The one-year term will expire annually.

Candidates for Council shall specify on their nomination papers whether they are seeking election for a one-year term or a three-year term and may be elected only for the term so specified.

Sec. 1002.2 Term Limits.

Term limits shall go into effect with the 2012 election. Council seats elected prior to November, 2012 shall not calculate into the term limit formula.

Sec. 1004. Terms of Current Officials.

The terms of members of the Town Council, elected at the regular municipal election on November 8, 2011 shall expire on the third Monday in November, 2013.

Words of Explanation

These modifications change the number of members of the Town Council from five to seven, enact a term limit of not more than seven consecutive years, and set forth the necessary transitional provisions for these modifications.

Shall the Town of Old Orchard Beach approve the charter modification regarding education recommended by the Charter Commission and reprinted below?

ARTICLE VI. EDUCATION

In the event that Regional School Unit #23 should cease to exist and no other provisions have been made for the operation of public schools in Old Orchard Beach, then the provisions of the Old Orchard Beach Charter governing education in effect in July, 1998, shall be revived and shall apply to the same extent as if adopted as part of this Charter and shall remain in effect unless and until replaced or superseded by amendment to this Charter or by state law.

Words of Explanation

This modification replaces the existing language in Article VI referencing the School Board/Department of Education with language recognizing the existence of Regional School Unit #23.

Shall the Town of Old Orchard Beach approve the charter modifications regarding all other changes recommended by the Charter Commission and summarized below?

[NOTE TO CHARTER COMMISSION: After the minutes of the July 26th Charter Commission meeting are reviewed and approved, the proposed changes will be briefly summarized here, as allowed by 30-A M.R.S.A. § 2103(7). That subsection reads, in pertinent part:

When...the municipal officers [the Old Orchard Beach Town Council], with the advice of an attorney, determine that it is not practical to print the proposed charter modification on the ballot and that a summary would not misrepresent the subject matter of the proposed modification, a summary of the modification may be substituted....]

Words of Explanation

These modifications are all the other changes recommended by the Charter Commission.

Kim McLaughlin

From: Geoffrey Hole [ghole@bernsteinshur.com]
Sent: Wednesday, August 10, 2011 10:56 AM
To: bill gombar; Kim McLaughlin
Subject: FW: questions - OOB Charter modifications

Chairman Gombar, I am sending four questions with a separation of the number of Councilors and term limit questions. I have also included a sentence regarding the State law requirement for RSUs. Geoff.

From: Lori Carpenter
Sent: Wednesday, August 10, 2011 10:45 AM
To: Geoffrey Hole
Subject: questions - OOB Charter modifications

Lori Carpenter
Legal Assistant to Geoff Hole, Peter Rubin, Dan Mitchell, Phil Saucier and Chris Vaniotis

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8/15/2011

Shall the Town of Old Orchard Beach approve the charter modifications regarding the number of Town Councilors and the length of terms of Town Councilors recommended by the Charter Commission and reprinted below?

Sec. 201.1. Town Council. The Town Council shall be composed of seven (7) members, with six three-year terms and one one-year term, each of whom shall be elected by the registered voters of the entire Town, and shall serve until a successor is elected and qualified. The six three-year terms of the Town Council shall be staggered, and expire at three year intervals. The one-year term shall expire annually. All terms shall expire on the third Monday in November of the term year.

Sec. 1002.1. Transition to New Charter.

The provisions of Section 202 notwithstanding, the terms of the Town Councilors elected in 2011 for 2-year terms shall expire normally in 2013 and the first regular municipal election in November 2012 shall elect two (2) Town Councilors for three-year terms and two (2) Town Councilors for two-year terms, and one (1) Town Councilor for a one-year term.

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The six three-year terms of the Town Council will be staggered, and expire at three year intervals. The one-year term will expire annually.

Candidates for Council shall specify on their nomination papers whether they are seeking election for a one-year term or a three-year term and may be elected only for the term so specified.

Sec. 1004. Terms of Current Officials.

The terms of members of the Town Council, elected at the regular municipal election on November 8, 2011 shall expire on the third Monday in November, 2013.

Words of Explanation

These modifications change the number of members of the Town Council from five to seven and set forth the necessary transitional provisions for these modifications.

Shall the Town of Old Orchard Beach approve the charter modifications regarding limiting the terms of Town Councilors, recommended by the Charter Commission and reprinted below?

Sec. 1002.2 Term Limits.

No Town Councilor is eligible to serve more than seven years consecutively.
Term limits shall go into effect with the 2012 election. Council seats elected prior to November, 2012 shall not calculate into the term limit formula.

Words of Explanation

These modifications enact a term limit of not more than seven consecutive years and establish when term limits commence.

Shall the Town of Old Orchard Beach approve the charter modification regarding education recommended by the Charter Commission and reprinted below?

ARTICLE VI. EDUCATION

In the event that Regional School Unit #23 should cease to exist and no other provisions have been made for the operation of public schools in Old Orchard Beach, then the provisions of the Old Orchard Beach Charter governing education in effect in July, 1998, shall be revived and shall apply to the same extent as if adopted as part of this Charter and shall remain in effect unless and until replaced or superseded by amendment to this Charter or by state law.

Words of Explanation

This modification replaces the existing language in Article VI referencing the School Board/Department of Education with language recognizing the existence of Regional School Unit #23. It is required by the recent laws requiring the reorganization of schools into regional school units.

Shall the Town of Old Orchard Beach approve the charter modifications regarding all other changes recommended by the Charter Commission and summarized below?

[NOTE TO CHARTER COMMISSION: After the minutes of the July 26th Charter Commission meeting are reviewed and approved, the proposed changes will be briefly summarized here, as allowed by 30-A M.R.S.A. § 2103(7). That subsection reads, in pertinent part:

When...the municipal officers [the Old Orchard Beach Town Council], with the advice of an attorney, determine that it is not practical to print the proposed charter modification on the ballot and that a summary would not misrepresent the subject matter of the proposed modification, a summary of the modification may be substituted....]

Words of Explanation

These modifications are all the other changes recommended by the Charter Commission.