

CHARTER COMMISSION MEETING
TUESDAY, APRIL 8, 2011 – 6:30 P.M.

Chair Gombar opened the regular meeting at 6:30 p.m., in Town Hall, Council Chambers. The following members were in attendance:

Jerome Begert
John Bird
Jayne Flaherty
William Gombar
Ronald Regis
Michael Vallante
Tianna Higgins (excused absence)

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

Chair Gombar began with Section 501, reading Attorney Vaniotis's comments from his February 18, 2011 letter:

“Section 501 (Town Manager, Qualifications).

I do not think it is realistic to expect a town manager coming in from out of state to become a resident of the Town before having a contract with the Town. I would therefore recommend against the proposed change to the last sentence.”

Commissioner Begert stated the Charter could be amended to read that “Once you get the two-year contract” you have to move to Maine.

Vice-Chair Bird stated he was comfortable with what the Charter Commission has. “You should be in the State before you sign a contract”.

Commissioner Flaherty said it is unreasonable to make a move until there is surety that the job is stable. This is moving a lot of people away from applying.

Vice-Chair Bird stated he would be willing to add the wording, “non-probationary contract”.

Commissioner Flaherty agreed that after six months, the Town Manager should be a resident of the State. If the Town Manager doesn't show interest, he won't get a two-year contract anyway.

Commissioner Vallante stated “non-probationary contract” should be used, and add a one-year contract, in case the Town Council wishes to give the Town Manager another six month contract.

Chair Gombar stated the attorney was concerned with using less than a two-year contract, because it would be bad for attracting candidates.

Commissioner Vallante motioned, seconded by Commissioner Regis, to amend Section 501 as follows:

“Sec. 501. Town Manager, Qualifications.

The Town Manager shall be chosen by the Town Council on the basis of what is in the best interest of the town of Old Orchard Beach and must hold a Bachelor's or advanced degree in government, law, accounting, political science, public administration, public finance, business administration, economics or another similar academic discipline or must have significant experience serving as the chief administrative/executive officer or as an assistant or deputy to the chief administrative/executive officer of a state, municipality or other political subdivision, or of a state or federal government agency. At the time of appointment, and during the probationary period, the Town Manager need not be a resident of the ~~Town or State~~, but shall become one before entering into a contract of more than one year with the Town.”

VOTE: Commissioners Begert, Regis, Vallante, Flaherty and Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 5-1.

Chair Gombar then began discussion on Section 502.1.

Commissioner Begert read the Town Clerk's e-mail from March 24, 2011, regarding where the words “nominate” and “appoint” appears in the current Charter:

“The term “nominate” appears in the following sections of the draft Charter:

502.1; 504; 506; 506.2; 506.3; 507.1; 507.2; 508; 509; 510; 511; 512.

The term “appoint” appears in the following sections of the draft Charter:

409.1; 409.3; 411; 414.3; 414.4; 502; 1003; 1003.1; 1013.”

Commissioner Regis stated the Town Manager is responsible for the appointment of employees, which is what is currently in the Charter.

Vice-Chair Bird stated he didn't like the way it was worded, but they could add “appoint department heads” at the end.

Commissioner Vallante and Flaherty stated they should just put “nominate/appointment” department heads.

Commissioner Vallante motioned, seconded by Commissioner Flaherty, to amend Section 502.1, first sentence in the first paragraph, as follows:

“Sec. 502.1. Appoint Nominate and then appoint department heads, subject to confirmation by the Town Council, ~~the~~ The Town Manager shall establish performance criteria for each subordinate position ~~of~~ in the Town Government. The Town Manager shall be responsible for the appointment and/or removal of all ~~officers and~~ employees of the Town except as otherwise provided in this Charter. The Town Manager may authorize the head of a department or office to appoint and/or remove subordinates. All removals shall be made in accordance with the Personnel Policy.

~~Subject to confirmation by the Council, Employees nominated by the Town Manager, and confirmed by the Town Council, unless otherwise provided in this Charter, shall~~

have ~~nominate a Town Planner~~ for a six (6) month probationary period during which they may be removed by the Manager with or without cause. They, or their successors, shall be appointed or reappointed annually by July 1st of each year.”

VOTE: Commissioners Begert, Regis, Vallante, Flaherty and Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 5-1.

Commissioner Begert motioned, seconded by Commissioner Vallante, to shorten the second paragraph because it was already laid out in the first paragraph:

“~~Subject to confirmation by the Council, Employees appointed by the Town Manager, unless otherwise provided in this Charter, shall have~~ ~~nominate a Town Planner for a six (6) month probationary period during which they may be removed by the Manager with or without cause. They, or their successors, shall be appointed or reappointed annually by July 1st of each year.”~~

VOTE: Commissioners Begert, Regis, Vallante, Flaherty and Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 5-1.

Chair Gombar began discussion on Section 502.3:

Commissioner Vallante motioned to delete “after the close of the fiscal year”, but there wasn’t a second. Commissioner Vallante then read Attorney Vaniotis’s comments from his February 18th, 2011 letter:

“Section 502.3 (Prepare and submit [annual] report...).

Since, as I understand it, the receipt of the annual audit report is typically greater than 30 days after the close of the fiscal year, I would simply make the requirement 30 days after receipt of the annual audit report.”

Commissioner Flaherty felt the language the Charter Commissioner currently had for the Charter was fine.

Chair Gombar felt the language was redundant and did not feel the need to leave that language in. Condition B will always be after the Fiscal Year ends.

Commissioner Begert concurred that there is a redundancy, and suggested removing the first part, “As of the end of the Fiscal Year”.

Chair Gombar stated they couldn’t do that because there has to be a terminus point at the end of the Fiscal Year.

Commissioner Begert responded that they should then leave as is.

All the Commissioners agreed to move on to the next section, and Chair Gombar began discussion on Section 503.

Chair Gombar stated that Vice-Chair Bird wanted to interject with, “Manage Inquiries Concerning Municipal Employees”.

Vice-Chair then read the recommended Section:

“[detailed section to be developed on Inquiries

Section ~~502.10~~ Manage Inquiries Concerning Municipal Employees

With the understanding that transparency and accountability in municipal affairs are the rightful expectations of all residents, this section is established to provide a systematic, unbiased, and means of inquiry into the job-related-conduct of all municipal employees and officials. To that end:

- i. Any ~~citizen resident(s)~~ may submit, in writing, to the Town Manager, a request for the administrative inquiry into the actions of any town employee. Such request shall include all relevant information that may assist in the Inquiry.
- ii. Upon receipt of such request, the Town Manager shall enter into a permanent Inquiry Log:
 - The name and contact information of the person(s) requesting the Inquiry
 - The date and Inquiry was requested
 - The name of the municipal employee about whom the Inquiry is requested, if known or relevant.
- iii. Within ten business days, the Town Manager shall complete an investigation of the matters cited in the Inquiry request and shall:
 - Make a judgment and render a decision in the matter
 - Take or order remedial or other appropriate action as necessary
 - Inform all concerned parties of the decision
 - Record, in the Permanent Inquiry Log, a brief statement of the action taken
 - Record, in the Permanent Inquiry Log, the date that the concerned parties were notified of the action taken in the Inquiry.
- iv. In the event that the person(s) making the initial request are not satisfied with the findings or actions of the Town Manager, those actions or findings may be appealed to any member(s) of the Town Council who will be authorized to direct the Town Manager to repeat the process as outlined in this section.
- v. The Inquiry Log shall be made available to any member of the Town Council upon request at any time and for any reason.”

Vice-Chair Bird explained the basic reason for this new section is to provide a history of complaints. It allows for rebuttal of complaints. If there is a history of a lot of complaints against a particular person, the Town Council or Town Manager should be able to take action. He noted that in the State statutes for the Selectmen – Town Manager form of government, they are specifically allowed to inquire into the conduct of any official or department or any matter relating to the welfare of the Town. He felt, therefore, that it was completely appropriate and thanked Commissioner Vallante for writing this up.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to add the above as a new section.

Chair Gombar read Attorney Israel's response [dated January 19th, 2011] to this proposed section:

“Kim,

Because the proposed inquiry policy involves employment and labor law issues, I asked Glenn Israel, who practices in that area of the law, to provide comments. He has done so and his comments are reproduced below:

As you requested, I have reviewed the proposed section of the OOB Charter regarding inquiries concerning municipal employees. I have the following concerns based upon my familiarity with Maine employment law and current Town practices:

1. The contents of the proposed “inquiry log” is information that ordinarily would be considered under Maine law to be part of a confidential personnel file (except for records of final disciplinary action which is public information). Placing information about complaints and investigations in the “inquiry log” could compromise the confidentiality of that information. This is of particular concern given that the proposed Charter provision gives the entire Town Council access to the log “for any reason.” If the Town wants to keep a record of complaints made about employees, the usual place to keep that information is in the employee’s personnel file with access to that file on a need to know basis.
2. The proposed Charter provision is inconsistent with the established chain of command. Under the current system, the Manager hires, fires, and disciplines many of the Town employees or assists the department heads with these duties. The proposed Charter provision includes the Council in personnel administration, a function which is typically reserved to the executive/administrative branch of municipal government, in order to insulate it from political considerations.
3. The proposed Charter provision imposes requirements upon the Manager that interfere with his/her ability to exercise discretion and independent judgment in the management of personnel matters. Of particular concern is the provision that requires a complaining resident to be informed of the managers “findings” and provides a right of appeal to the Council if those “findings” are not satisfactory.
4. It could be argued that the proposed language affects the terms and conditions of employment of Town employees which could lead to a challenge by one or more of the unions that represent those employees. That challenge would most likely take the form of a demand to bargain over the inquiry process and a prohibited practice charge being filed with the Maine labor Relations Board if the Town refused to bargain.
5. The proposal is not necessary. Any resident already has the ability to complain about any Town employee to a supervisor, a department head, the Manager, or to any Councilor

(who can in turn refer the complaint to the Manager). The Manager can investigate those complaints as they arise and take appropriate disciplinary action when necessary.

Glenn Israel”

Vice-Chair Bird stated he was concerned that residents be informed of resolutions to complaints, which isn't a current requirement.

Commissioner Flaherty stated there is a confidentiality component of this, and the Charter Commission would be setting themselves up for something that isn't legal.

Chair Gombar stated that although Commissioner Vallante had drawn up this proposed new section, he withdrew it once they received the attorney's response.

Commissioner Vallante stated that he was troubled by the first comment by the attorney about the inquiry log, regarding that information being considered under Maine law to be confidential. He said they need to be cautious. They need to give some right to be heard, but not break State law and union provisions. Sub-section [i] is fine. In sub-section [ii] the words “municipal employee about whom” should be changed to “department in which”. Instead of talking about an individual employee, it should be the department, so it doesn't violate confidentiality.

Vice-Chair Bird stated that it is amazing that a complaint that an employee did something they weren't supposed to do is confidential. “We're talking about public employees, and that should be public information”.

Commissioner Begert said there are instances where personnel matters are personnel matters. We're talking about an employee who does something, perhaps, that is so egregious it has a negative impact on the Town as a whole. Did they create a negative impact on the health and welfare of the Town or the property values of a private citizen?

Commissioner Regis said this new section should not be in the Charter.

Commissioner Vallante stated that this came about for the need to manage inquiries. The catch is, you won't know how egregious it is until after you investigate.

Chair Gombar stated there are many different time constraints on the Town Manager, and it could harass the Town Manager by inundating him with complaints. Some of this is too granular. Maybe there should be a framework to be set up by an ordinance.

Commissioner Begert said they should just say there will be a way to manage inquiries, and it will be established by ordinance.

VOTE [on adding the “Manage Inquiries Concerning Municipal Employees” section]:
Commissioner Begert and Vice-Chair Bird, yes; Commissioners Regis, Vallante, Flaherty and Chair Gombar, no. Motion failed 4-2.

Commissioner Begert motioned, seconded by Commissioner Vallante, to add the following sentence to Section 409.6 as follows:

“Create by ordinance a system of inquiry for citizen complaints concerning negative consequences of municipal employee conduct”.

VOTE: Unanimous.

Chair Gombar then read Section 503 as currently recommended by the Charter Commission:

“Sec. 503. Absence of Town Manager.

In the event of the Town Manager’s temporary absence or disability, the Assistant Town Manager shall perform the duties of the Manager until the Manager shall return or the disability shall cease. If there is not an Assistant Town Manager, tThe Manager may, with the consent of the Council, designate by letter filed with the Town Clerk, a qualified administrative officer of the Town to perform the Manager's duties during a period of temporary absence or disability. In the event or failure of the Manager to make such designation, the Council may by resolution appoint any administrative officer of the Town to perform the duties of the Manager until the Manager shall return or the disability shall cease.”

Chair Gombar then read the recommendations from Attorney Vaniotis in his letter dated February 18th, 2011:

“I suggest that this section not be changed. The relationship between the Town Manager and the Assistant Town Manager is currently governed by the ordinance which creates the position of Assistant Town Manager, and that position might not always exist (it is not a charter position).

I also understand that the Commission had a question as to whether there is anything inconsistent between section 503 and the prohibition in section 409.4 against assigning the duties of one office to another. I do not believe there is an inconsistency, because section 503 speaks only to a temporary absence or disability, in which case the “office” is not vacant and the council is not rearranging the duties of the office.”

Commissioner Begert stated he didn’t see a problem with the Charter Commission’s recommendation.

The Charter Commission agreed to leave this section as currently recommended.

Chair Gombar stated that the attorney wants the word “appoint” in sections 504-510. He then stated the Charter Commission has already addressed that.

Chair Gombar began discussion on Section 504.

Commissioner Flaherty motioned, seconded by Commissioner Vallante to amend Section 504 by adding “and then appointed by the Town Manager” in the sentence, to read as follows:

“Sec. 504. Department of Public Works.

The Director of Public Works shall be ~~appointed~~ nominated by the Town Manager, subject to confirmation by the Town Council, and then appointed by the Town Manager,

and shall exercise all of the powers and perform all of the duties of the Town conferred or imposed by law, including the powers and duties of road commissioners under state statute.”

Vice-Chair Bird noted that the attorney was saying that the word “appoint” is important because State law requires a number of statutory positions to be “appointed” by the municipal officers of the town. He said that the Town Clerk went through the State statutes and apparently only found two, the Health Officer and the Code Enforcement Office. That’s it, for “appointments”.

VOTE: Commissioners Begert, Regis, Vallante Flaherty and Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 5-1.

Chair Gombar read Attorney Vaniotis’s February 18th recommendation for Section 505:

“Section 505 (new section, Office of the Town Clerk).

In a theme you will hear me repeat in my comments on several subsequent sections, I think it is not desirable to include such detailed job descriptions in the Town Charter. The Charter should be, in essence, the skeleton of the municipal body, with the other features left to grow and change over time, subject to basic limitations set forth in the Charter. Especially with respect to the Office of the Town Clerk, both the technology of recordkeeping and the state laws governing recordkeeping are likely to change in the future. I recommend that this type of job description be left out of the Charter and instead become part of a personnel policy or an ordinance enacted by the Council.”

The Charter Commission asked the Town Clerk if these are the duties she currently performs, and she responded that they were.

The Charter Commission agreed to leave as currently recommended.

Commissioner Vallante motioned, seconded by Commissioner Begert, to amend sections 506.1, 506.2, 506.3, 507.1, 507.2, 508, 509 51,0 511, and 512 to read the same as Section 506.1, by adding in the words, “and appointed by the Town Manager”, after “confirmation by the Town Council”.

VOTE: Commissioners Begert, Regis, Vallante Flaherty and Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 5-1.

Vice-Chair Bird stated he voted against the motion because he believes it’s bad policy.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to amend Section 507.2 by capitalizing “Overseers” and to add “of the Poor”.

VOTE: Unanimous.

Chair Gombar read Attorney Vaniotis’s February 18th recommendations on Section 507.3:

“Section 507.3 (new section, Tax Collection).

There is a heading here “Tax Collection,” but no text.”

Commissioner Flaherty suggested the Charter Commission receive input from the department head on what should be included in this section.

Commissioner Vallante motioned, seconded by Commissioner Flaherty, to amend Section 507.3 by adding the following:

“507.3 Tax Collection

The Tax Collector shall be nominated by the Town Manager, subject to confirmation by the Town Council, and appointed by the Town Manager. The Tax Collector shall be bonded and comply with all state regulations.”

VOTE: Commissioners Begert, Regis, Vallante Flaherty and Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 5-1.

Chair Gombar then read Attorney Vaniotis’s recommendations for Section 511, from his February 18th letter:

“Section 511 (former section 510, Waste Water Department).

As with my comments concerning the Town Clerk’s position, I recommend against having this kind of detailed job description within the Charter.”

The Charter Commissioner agreed to leave this section as they’ve currently recommended it.

Chair Gombar read Attorney Vaniotis’s recommendations for Section 512, from his February 18th letter:

“Section 512 (?) (former section 801, Division of Assessment).

Again, the appointment must be by the Town Council. Otherwise, I point out that this is a change from current Section 801, under which the Assessor is appointed for a two-year term, but is not required to be given a contract.”

Commissioner Vallante motioned, seconded by Commissioner Flaherty, to amend Section 512 by deleting “nominated by the Town Manager, subject to confirmation by the Town Council”, and replacing that wording with “appointed by the Town Council”. Section 512 would then read as follows:

“Section 512. Division of Assessment.

There shall be established a Division of Assessment, the head of which shall be the town Assessor. The Town Assessor shall be appointed by the Town Council for a six (6) month probationary period during which the Town Assessor may be removed by the Town Council with or without cause. After the probationary period, and subject to confirmation by the Council, the Town Assessor may be given a contract of not more than two (2) years duration, subject to removal for cause by the Town Council during the

term of the contract, after notice and hearing. The Town Assessor shall be given at least 60 days notice of a nonrenewal of a contract. The powers and duties of the Assessor shall be the same as provided for Town Assessors under the general laws of the State of Maine and the ordinances duly adopted by the Council.”

Vice-Chair Bird motioned, seconded by Commissioner Flaherty, to remove any mention of the RSU in the Charter, except for the prefatory language in Article VI, as follows:

“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.”

VOTE: Unanimous.

Commissioner Vallante moved, seconded by Commissioner Begert to label Article VI as “EDUCATION:.

VOTE: Unanimous.

Meeting adjourned at 8:37 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 ten (10) pages is a true copy of the original Minutes of the Charter Commission Meeting held April 8, 2011.

Kim M. McLaughlin