

CHARTER COMMISSION MEETING  
TUESDAY, JULY 26, 2011 – 7 P.M.

Chair Gombar opened the regular meeting at 7:00 p.m., in Town Hall, Council Chambers. The following members were in attendance:

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

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

Motion made by Vice-Chair Bird, seconded by Commissioner Flaherty, to amend the minutes of April 12, 2011, using Vice-Chair Bird's recommended changes.

VOTE: Commissioners Begert, Flaherty, Vice-Chair Bird and Chair Gombar, yes; Commissioner Higgins abstained. Motion passes 4-0-1.

Motion made by Vice-Chair Bird, seconded by Commissioner Flaherty, to accept the April 12, 2011 minutes as amended.

VOTE: Commissioners Begert, Flaherty, Vice-Chair Bird and Chair Gombar, yes; Commissioner Higgins abstained. Motion passes 4-0-1.

Motion made by Vice-Chair Bird, seconded by Commissioner Higgins, to accept the minutes of June 15, 2011.

VOTE: Commissioners Begert, Higgins, Vice-Chair Bird and Chair Gombar, yes; Commissioner Flaherty abstained. Motion passes 4-0-1.

The Commission then turned to the next item on the agenda: Consider any necessary changes based on the attorney's review of the proposed charter.

Vice-Chair Bird stated that when the attorney was given the Charter, he was asked to indicate just what he could not be approve as being against State or Federal Constitution, laws, or statutes. Now, three-four weeks later, we get a four page letter back indicating what he would like to see in the Charter, but no answer to what we asked for. He has not been not responsive and this is not what we asked for. We have wasted three weeks waiting. I am severely irritated in our considering even addressing some of these comments. Some are trivial. Most are incomplete. Some are even wrong. We've gone over these many times. He's addressing things in the current Charter that we didn't even touch. I think we should go to another attorney who might be more responsive in answering the questions put to him.

Chair Gombar stated he agrees that some of the responses were not appropriate to what the Commission had asked, but they should be addressing them. He then read Attorney Geoff Hole's letter dated July 19, 2011, regarding Section 202:

“Sec. 202, Municipal Elections

This section needs to be amended to include the absentee ballot process, under 30-A M.R.S.A. § 2528.”

Commissioner Flaherty suggested adding that the absentee ballot process follows state law.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 202 by adding the underscored language as follows:

“Sec. 202. Municipal Elections.

The office of Town Clerk and members of the Town Council shall be filled in accordance with general law by an official ballot printed at public expense on which the names of all the candidates and proposals appear and which is distributed only at the polling place and marked in secret, except insofar as the election dates and terms of office are modified by the terms of this Charter. The regular municipal election for such offices shall be held annually on the first Tuesday following the first Monday of November. The Council may, by resolution, order a special election when the provisions of this Charter or state law require a special election to fill a vacancy. Nothing in this section should be construed to preclude the absentee ballot process as provided by state law.

VOTE: Unanimous.

Chair Gombar read Attorney Hole’s comment regarding Section 303:

“Sec. 303, Referendum on Certain Expenditures

This section also needs to be changed, to respect the 45-day lead time required by 30-A M.R.S.A. § 2528(4) for the ballot process.”

Vice-Chair Bird commented that this section does not need to be changed. It already states that an election cannot be held in less than 35 days.

There weren’t any motions to amend this section.

Chair Gombar read Attorney Hole’s comment regarding Section 305.2:

“Sec. 305.2, Procedures for Recall

Again, 45 days’ notice is required.”

Chair Gombar stated that he agreed with this recommendation because this section requires an election within 30 days.

Commissioner Flaherty motioned, seconded by Commissioner Higgins, to amend Section 305.2 by deleting the strikethrough language and adding the underscored language, thereby changing the requirement from 30 days to 45 days:

“Sec. 305.2. Upon receipt of certification by the Town Clerk that a recall petition has been signed by at least or greater than the required number of voters, the Town Council shall within ~~thirty (30)~~ forty-five (45) days submit to the voters the question of recall. The Councilor, Town Clerk or other elected official shall be recalled when a majority of those voting thereon have voted in the affirmative. Any elected official against whom recall proceedings have been initiated may continue to hold office until recalled.

VOTE: Unanimous.

Chair Gombar read Attorney Hole’s comment regarding Section 403:

“Sec. 403, Town Council to Judge Qualifications of its Members

If the power to subpoena witnesses and require production of records was included in the last legislative Old Orchard Beach Charter, as amended, and that power has been preserved in subsequent home rule charters, it may still exist. If that is the case, we will need to compose careful language to continue to preserve it in this charter.”

Chair Gombar commented that the Charter Commission has received this recommendation at a late date, and was not given any recommended language.

Commissioner Begert stated there are several items in Attorney Hole’s letter that he has concerns about. Why did he wait until now, at the 11<sup>th</sup> hour, to present these? Attorney Vaniotis should have explained everything he had done to Attorney Hole prior to leaving the firm.

Commissioner Higgins said that she didn’t understand what he was trying to recommend, and wanted further clarification from the attorney.

Commissioner Begert explained that some towns were given home rule by special legislative action, but the Town of Old Orchard Beach already has the language needed. Why change it?

Vice-Chair Bird noted that the language referred to is already in the current Charter and that the Commission had not touched it.

Chair Gombar felt there was nothing that needed to be changed in this section.

There weren’t any motions to amend this section.

Chair Gombar read Attorney Hole’s comment regarding Section 404:

“Sec. 404, Meetings

The citation to “Section 1004” was a typographical error, which you and I agreed should be 904.”

Vice-Chair Bird commented that when the sections were changed, this section wasn’t amended to read Section 904, and needs to be, but that this was a trivial oversight that could be fixed as a matter of course.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 404 by deleting the strikethrough language and adding the underscored language, as follows:

“Sec. 404. Meetings.

The Town Council shall, at its first meeting or as soon thereafter as possible, establish by resolution a regular place and time for holding its regular meetings, and shall meet regularly at least once a month. It shall also provide a method for calling special meetings and workshop meetings. Public notice shall be given for all meetings of the Town Council in accordance with Section ~~404~~ 904 of this Charter and in accordance with state law. Meetings of the Town Council shall be open to the public in accordance with 1 M.R.S.A. § 401 et seq. as amended and shall be recorded.”

VOTE: Unanimous.

Chair Gombar read Attorney Hole’s comment regarding Section 408:

“Sec. 408, Powers and Duties

This section is not accurate, as written. I would amend the last sentence to read:

All legislative and executive powers are vested in the Town Council, except as noted herein.”

Commissioner Begert felt the attorney’s opinion was bogus, and that the Commission should refrain from amending this section. Vice-Chair Bird concurred.

Chair Gombar recommended changing the section, because he believed it would give the section clarity.

Commissioner Higgins stated there are other sections of the Charter where this language is used.

Commissioner Flaherty motioned, seconded by Commissioner Higgins, to include the language, “except as noted herein” to Section 408, as follows:

“Sec. 408. Powers and Duties.

The members of the Town Council shall be and constitute the municipal officers of the Town of Old Orchard Beach for all purposes required by statute, and except as otherwise herein specifically provided by this Charter, shall have all powers and authority given to, and perform all duties required of, municipal officers under the laws of this State . All legislative and executive powers are vested in the Town Council, except as noted herein.”

VOTE: Commissioners Flaherty, Higgins and Chair Gombar, yes; Commissioner Begert and Vice-Chair Bird, no. Motion passes 3-2.

Chair Gombar read Attorney Hole’s comment regarding Section 409.1:

“Sec. 409.1, Appoint the Town Manager

In addition to the time of hiring and annually thereafter, I also like to see the written list of expectations provided to the manager just before he or she comes off probation, but freely note this is not a legal issue.”

Chair Gombar stated the time has passed for these types of recommendations.

Commissioner Begert did find a word in Section 409.1 that he felt needed to be changed, stating the Town Manager should be receiving the list of expectations prior to be hired. Commissioner Begert motioned to change the word “upon” to “before” in the third paragraph, as follows:

“Sec. 409.1. Appoint the Town Manager. The Town Council shall appoint an administrator of the Town who shall have the title of Town Manager and shall have the powers and perform the duties described in this Charter. No Councilor shall receive such appointment during the term for which the Councilor shall have been elected, nor within one year after the expiration of the term, nor shall any Councilor act in that capacity.

The Council, after examination of the qualifications of all applicants, may reopen the search or shall appoint a Town Manager for a six (6) month probationary period during which the manager may be removed by a majority vote of the Town Council with or without cause. After the probationary period, the manager may be given a contract of not more than two (2) years duration subject to removal for cause during the term of the contract.

It shall be the duty of the Town Council to provide the Town Manager with a list of expectations, in writing, ~~upon~~ before hiring and annually thereafter. It shall be the duty of the Town Council to evaluate the Town Manager against the list of expectations and provide the Town Manager with a written copy of the evaluation, at least on an annual basis.”

There wasn't a second to Commissioner Begert's motion.

There weren't any further motions on Section 409.1.

Chair Gombar read Attorney Hole's comment regarding Section 409.3:

“Sec. 409.3, Confirm or appoint officers or officials...

In subsection (b), 60 days' notice is very long, in my experience.”

Commissioner Begert commented that this wording has been in the Charter for 13 years and is completely unnecessary to be changed.

There weren't any motions on Section 409.3.

Chair Gombar read Attorney Hole's comment regarding Section 409.6:

“Sec. 409.6, Inquire...into the conduct of any office...

There is a typographical error in the capitalization of “create.” I would change to read, “...as to municipal affairs; and create by ordinance...”

Vice-Chair Bird stated the Charter Commission added the second part of the sentence as a further item in a list, and he doesn't see how a capital “C” makes a difference as the other items in the list begin with capitals.

There weren't any motions on Section 409.6.

Chair Gombar read Attorney Hole's comment regarding Section 409.15:

“Sec. 409.15, Sell, or offer to sell, by sealed competitive bids...”

Again, this is not a legal issue, but regarding the original owner, how far back do you want to go? In addition, I note there is no opportunity to be compensated for the value of improvements or appreciation.”

Chair Gombar stated this wasn't a legal issue, so he recommended moving on.

Commissioner Begert said the language is acceptable as is.

There weren't any motions on Section 409.15.

Chair Gombar read Attorney Hole's comment regarding Section 411:

“Sec. 411, Town Council Not to Interfere in Appointments or Removals

For context, please note that non-probationary public employees and officials have constitutional protections. A disciplinary process must strive to separate the roles of investigator, prosecutor and ultimate decision-maker who provides the so-called due process hearing.

The sentence in the first paragraph regarding the Town Council requesting removal from office or employment does not respect that concept, because the Town Council could be the ultimate decision-maker if there is an appeal from the removal to the Council. The farthest you should go in this direction is to allow an individual Town Councilor to request removal, with the understanding that the Councilor requesting removal cannot then participate in any appeal to the Council. It would be preferable to simply say in this paragraph that a Town Councilor with concerns should bring them to the attention of the Town Manager for an investigation and possible action.”

Vice-Chair Bird stated that his cure is worse than the disease.

Chair Gombar stated that he concurs with the attorney, that there should be a different appeal process.

Commissioner Begert stated there is no such thing as the Town Council requesting the removal of someone to the Town Manager and it just happens. An investigation would occur first. Per

Section 409.6, if the Charter passes, it will be the job of the Town Council, Town Manager and Town Attorney to craft an ordinance for an investigative process that would match state law. He recommended leaving this section as is.

Commissioner Higgins stated that if the Town Council is requesting the removal of an employee, then it should not be the Town Council the employee would appeal to.

Chair Gombar said the Town Council should not be the first line of appeal. It is not proper for the accuser to be the first Judge of the appeal.

Commissioner Flaherty told the Commission that, as a teacher, if she was fired by the Superintendent, she wouldn't appeal to the School Board. This needs to be clarified.

Chair Gombar concurred that the Commission needs more information from the attorney.

There weren't any motions on Section 411.

Chair Gombar read Attorney Hole's comment regarding Section 415:

“Sec. 415, Vacancies in Council

Would you not like to include permanent disability or incompetency as a reason for a vacancy?”

Chair Gombar felt it was too late to add this type of language.

Commissioner Flaherty felt the language wasn't necessary.

Commissioner Begert was concerned this type of language would violate federal ADA laws.

There weren't any motions on Section 415.

Chair Gombar read Attorney Hole's comment on Section 502.1:

“Sec. 502.1, Nominate and then appoint department heads...

Regarding the second paragraph, I note that 30-A M.R.S.A. § 2701 requires a probationary period of at least one year after graduation from the Maine Criminal Justice Academy for police officers.”

Vice-Chair Bird stated the Commission was thinking of department heads, not all employees.

Commissioner Higgins motioned, seconded by Commissioner Flaherty, to amend Section 502.1 by adding “at least” before the six month probationary period.

Secretary Kim McLaughlin mentioned that by adding “at least”, it would then make the application of length of time for probation subjective.

The commission agreed, and the motion and second were rescinded.

Vice-Chair Bird motioned, seconded by Commissioner Flaherty, to add, “or if state law requires a longer probationary period” after “this Charter”, in Section 502.1 as follows:

“Sec. 502.1. Nominate and then appoint department heads, subject to confirmation by the Town Council, the Town Manager shall establish performance criteria for each subordinate position in the Town Government. The Town Manager shall be responsible for the appointment and/or removal of all 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.

Employees appointed by the Town Manager, unless otherwise provided in this Charter, or if state law requires a longer probationary period, shall have 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 1<sup>st</sup> of each year.

Any disciplinary action, including removal, demotion or suspension, taken by the Town Manager, shall be appealable to the Town Council, provided such appeal is made in writing within ten days of the Town Manager's decision. The decision of the Town Council, after notice and hearing, may be appealed to the Superior Court in accordance with M. R. Civ. P. 80B.”

VOTE: Unanimous.

Chair Gombar read Attorney Hole’s comment regarding Section 505:

“Sec. 505, Office of the Town Clerk

Regarding such duties as posting agendas and maintaining official copies for the Council and other bodies, you may want to say that the Clerk shall post, or cause to be posted...”

Commissioner Begert felt the Charter Commission doesn’t need to micromanage.

Vice-Chair Bird pointed out that this section of the proposed Charter deals with the Office of the Town Clerk and not the Town Clerk as a person. The comment doesn’t make sense and is irrelevant here.

Chair Gombar stated he understands what the attorney is trying to say, and asked the secretary for a response.

The Charter Commissioner discussed this section and others and found that the attorney probably was referring to Section 904. Public Bulletin Board and not Sec. 505, Office of the Town Clerk.

Secretary Kim McLaughlin commented that if the Town Clerk is on vacation, or sick, this section does not allow for another person to conduct the posting responsibilities.

Commissioner Begert motioned, seconded by Commissioner Flaherty, to amend Section 904 by adding, “or cause[d] to be posted” after “shall be posted”, as follows:



“Sec. 904. Public Bulletin Board.

There shall be an official public bulletin board located outside the Town Clerk’s Office in the Town Hall. The agenda of each meeting of the Town Council, and all other boards, committees, and commissions shall be posted, or cause[d] to be posted, on this bulletin board and on the town internet web site by the Town Clerk, at least three (3) working days prior to the meeting and a copy of the agenda shall be printed as a legal advertisement in a newspaper of general circulation in the Town at least 24 hours prior to the meeting.

No action shall be taken on agenda items which have not been posted and published in accordance with this section, unless the Council, commission, committee or board determines that an emergency exists. The declaration of emergency by the Council, commission, committee or board shall be conclusive. Dates, times, and meeting places of all regular and special meetings, public hearings and workshops shall also be posted on the bulletin board in accordance with this section.

A failure or malfunction in the town internet website shall not require the postponement of any hearing or action by the Town Council or any other board, committee or commission provided the agenda was posted on the official public bulletin board as required by this section.”

VOTE: Unanimous.

Chair Gombar read Attorney Hole’s comment regarding Section 909:

“Sec. 909, Comprehensive Plan and Zoning Ordinance

The Zoning Ordinance must be pursuant to and consistent with the Comprehensive Plan. Accordingly, I would amend the last sentence to say, “The comprehensive plan shall be updated at least every decade after the decennial census data is available, and as needed in the interim.”

Commissioner Begert stated the Zoning Ordinance is supposed to be consistent with the Comprehensive Plan, not the other way around.

Patricia Driscoll, resident and member of the Comprehensive Plan Committee, stated the CPC will be holding meetings well into 2013, and they can’t do this without the participation of the residents. This is not a casual process. The Comprehensive Plan needs to be a pillar and not a moving document. She recommends not changing the meaning in Section 909.

The Charter Commission thanked Committee member Driscoll for attending the meeting and expressing her concerns, and the Commission did not make any motions regarding this section.

Chair Gombar read Attorney Hole’s comment regarding Section 910:

“Sec. 910, Summons before Town Council

I repeat my comments regarding Section 403.”

Commissioner Begert stated this is just another example of criticism that is a year past the date that it passed muster by the previous attorney, Chris Vaniotis. He stated the attorney should write the language if he wants it changed.

The Commission did not make any motions regarding Section 910.

Chair Gombar read Attorney Hole’s comment regarding Section 914:

“Sec. 914, Violations of the Charter

While I would leave this section, it is not clear to me the Council can pass an ordinance entailing civil violations and monetary penalties in the subject area of charter violations.”

Vice-Chair Bird stated he believes it’s fine and to leave it as is. It was Attorney Vaniotis’s section and recommended wording anyway.

Commissioner Begert stated that he wants all the employees to memorize the Charter and that they would be removed from their position if they violated it. He is not interested in monetary charges.

Vice-Chair Bird stated it is his opinion and desire to go to another law firm for an opinion to see if this Charter violates state law or the Constitution since we did not get an answer from this one.

Commissioner Higgins commented that there isn’t enough time.

Vice-Chair Bird suggested that the Commission direct the Treasurer not to pay the invoice for the letter of July 19<sup>th</sup>, 2011 because the Charter Commission did not receive the answers they requested.

The Charter Commission discussed possible meeting dates of August 9<sup>th</sup>, 10<sup>th</sup> or 15<sup>th</sup>, and asked the Secretary to confirm a date that the Council Chambers would be available, and e-mail the Charter Commission as to what date could be set.

Commissioner Flaherty left the meeting at 8:30 p.m.

Vice-Chair Bird motioned, seconded by Commissioner Begert to submit the Charter to another law firm.

Commissioner Higgins stated she disagreed.

VOTE: Commissioner Begert and Vice-Chair Bird, yes; Commissioner Higgins and Chair Gombar, no. Motion failed 2-2.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to direct the Town Treasurer not to pay for the time spent by Attorney Hole because it was not responsive to the questions asked.

Commissioner Higgins stated she would need to see the e-mail the secretary sent to Attorney Hole in asking him to review the Charter.

Chair Gombar stated he would like to see the invoice before he makes a decision.

Vice-Chair Bird amended his motion, and Commissioner Begert agreed to the amendment, to not pay the invoice for the work done on the July 19<sup>th</sup>, 2011 letter, until the Charter Commission sees it first.

VOTE: Unanimous.

Commissioner Begert stated he would like to see all the invoices for the past year and a half. He said if Town departments called the attorney on their own about the Charter, they should be paying the invoices out of their own line of funds.

Commissioner Higgins stated it was too late for that. If the Charter Commission wanted to view the invoices, they should have been doing it all along, not once the invoices have been paid.

Meeting adjourned at 8:40 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 eleven (11) pages is a true copy of the original Minutes of the Charter Commission Meeting held July 26, 2011.

Kim M. McLaughlin