

CHARTER COMMISSION MEETING  
TUESDAY, JANUARY 11, 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  
William Gombar  
Tianna Higgins  
Paul Ladakakos  
Ronald Regis  
Michael Vallante  
Jayne Flaherty [excused absence]

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

Chair Gombar requested an emergency agenda item be added to the Charter Commission agenda to add an additional meeting date of Saturday, January 22, 2011.

Charter Commissioners wished to table until the end of the meeting to see how far they get into the remainder of the Charter before making a decision.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to table this item until the end of the meeting.

VOTE: Unanimous.

Chair Gombar read Section 409.12:

“Sec. 409.12. Adopt, modify and carry out plans proposed by the Planning Board for the replanning, improvement and redevelopment of neighborhoods and for the replanning, reconstruction and redevelopment of any area or district which may have been destroyed in whole or in part by disaster;”

Chair Gombar then read Code Enforcement Officer Mike Nugent’s response via e-mail, received January 10, 2011:

“I’m not troubled by the proposed change to 409.11, but eliminating 409.12 could potentially create a contradiction in our laws. The Planning Board reviews zoning changes and some of the activities in 409.12, may well be zoning changes.

Thanks for asking!”

Vice-Chair Bird motioned to strike Section 409.12 from the Town Charter, seconded by Commissioner Ladakakos.

Vice-Chair Bird stated that it talks about Planning Board redevelopment of neighborhoods and they can continue to do that through zoning changes if the need arises.

VOTE: Vice-Chair Bird, Commissioners Begert and Ladakakos, yes; Commissioners Higgins, Regis, Vallante and Chair Gombar, no. Motion fails 4-3.

Commissioner Vallante motioned to keep Section 409.12 as currently written in the Charter, seconded by Commissioner Higgins.

VOTE: Commissioners Higgins, Regis, Vallante and Chair Gombar, yes; Vice-Chair Bird, Commissioners Begert and Ladakakos, no. Motion passes 4-3.

Commissioner Vallante would like to add Section 502.10:

“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 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.

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.”

Commissioner Regis stated that he felt it was very good, and he could see that Commissioner Vallante had put a lot of work into it. His comment would be reference Section iv. He felt the appeal should go to the Town Council as a whole unit, and not individual Town Councilors.

Commissioner Higgins thought it was a great means of citizen inquiry, but was concerned about the Charter regulating citizens.

Commissioner Vallante stated that any citizen in the community should have the right to inquiry, and this is a mechanism to allow that.

Chair Gombar stated that it should be spelled out that Town Council members are not excluded from this process.

Commissioner Begert stated he agrees with the wording.

Chair Gombar said he was concerned about the finite 10 business days. What if it gets complex? There should be something to cite why, and ask for additional days.

Commissioner Regis said that it should apply to taxpayers, as well as residents.

Commissioner Ladakakos motioned, seconded by Vice-Chair Bird, who agreed that it was a good and necessary addition to the Charter, to send the draft to the Town Attorney for recommendations and possible changes, and to table the item pending receipt of that information.

VOTE: Unanimous

Vice-Chair Bird motioned, seconded by Commissioner Vallante, to add a new Section 505 to the Town Charter:

“Sec. 505. Office of the Town Clerk

This Town Office is to be an independent, unbiased, and non-partisan office and shall be responsible for the running of fair and impartial elections, recording, archiving and maintaining clerical affairs of the Town, receive and post agendas, receive and maintain official copies of minutes of the Town Council and other bodies, and maintain other official duties including issuance of Birth, Marriage and Death Certificates, various other licenses and permits, the receipt of funds therefore and the recording of them according to policies set forth by State Law, this Charter and Town Ordinances. It shall be the official repository and manager of the Town Records.

The Town Clerk shall be independently elected by the Town as in Article II above, and shall appoint a Deputy Town Clerk.

Town Clerk, Powers and Duties.

The powers and duties of the Town Clerk shall be the same as are provided for Town Clerks under the general laws of the State of Maine.

The Town Clerk shall be the Deputy Registrar of Voters and in the absence of a Registrar, may be appointed and act as Registrar.

The Town Clerk shall monitor the membership and expiration dates of the seats of various boards, committees, etc. and notify the members and the Town Council of impending or actual vacancies and provide a list of persons who have applied for appointment or re-appointment to the same. All such persons desiring appointment or re-appointment to various boards and committees shall submit their applications through the Office of the Town Clerk.

Commissioner Higgins stated the last paragraph doesn't need to be in the Charter. She was under the understanding that the Charter Commission wasn't placing job descriptions in the Charter.

Commissioner Ladakakos said if there are items in the Charter currently that are working, why change it?

VOTE: Unanimous.

Commissioner Higgins motioned, seconded by Vice-Chair Bird, to amend the title of Article V to read "Town Administration", removing the word "manager".

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to move the language of Section 801, Assessor, to the end of Article V.

VOTE: Unanimous.

Vice-Chair Bird then read Section 801.

### **"ARTICLE VIII. TAX ADMINISTRATION**

Sec. 801. Assessor.

There shall be established a Division of Assessment, the head of which shall be the Town Assessor. The Assessor shall be appointed by the Town Council for a two year term subject to removal for cause during such term by the Town Council after notice and hearing. 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."

Commissioner Begert stated that placing this under Article V, places it under administration, and there is a State Law requiring demarcation of this position.

Commissioner Vallante stated it should be forwarded to the Town Attorney for verification.

Vice-Chair Bird said there should be something in the Charter that allows for the split of this position amongst municipalities, as is currently done; maybe a sentence allowing the Assessor to be sub-contracted out.

Commissioner Higgins felt that wording was not needed in the Charter.

Commissioner Higgins motioned, seconded by Vice-Chair Bird, to amend Section 801 (now at the end of Article V), as follows:

“There shall be established a Division of Assessment, the head of which shall be the town Assessor. The Town Assessor shall be nominated by the Town Manager, subject to confirmation 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.”

VOTE: Unanimous.

Chair Gombar then moved to Article VI.

Commissioner Higgins pointed out that language is needed in the Charter to revert back to the School Board if the State repeals the Regional School Unit [RSU] language.

Vice-Chair Bird said the Charter Commission may wish to strike the language of Article VI, Sections 602-612, conditionally.

Commissioner Higgins inquired if Section 612, Adult Ed, should be deleted from the Charter.

The Commission agreed that more information is needed as to whether Adult Education is part of the Regional School Unit, or a separate entity.

Vice-Chair Bird requested the Town Attorney be asked what language could be placed in the Charter should the RSU State law be repealed.

Commissioner Regis motioned, seconded by Commissioner Ladakakos, to table Article VI until receiving advice from the Town Attorney.

VOTE: Commissioners Ladakakos and Regis, yes; Commissioners Vallante, Begert, Higgins, Vice-Chair Bird and Chair Gombar, no. Motion fails 5-2.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to strike Sections 602-611, having to do with the School Board, from the Charter.

VOTE: Commissioners Ladakakos, Vallante, Begert, Higgins, Vice-Chair Bird and Chair Gombar, yes; Commissioner Regis, no. Motion passes 6-1.

Commissioner Higgins read Section 601:

“Sec. 601. Qualifications.

Members of the School Board shall be registered voters of the Town and shall have their principal place of residence in the Town during their terms of office. No member of the School Board shall hold any other compensated Town office or be employed in any Town department under the direct control of the School Board. If a School Board Member shall cease to possess any of these qualifications or shall be convicted of a crime which is punishable by imprisonment for more than six months, the office of that School Board Member shall immediately become vacant upon majority vote of the remaining members of the School Board. The School Board shall notify the Town Council of the vacancy immediately.”

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 601 as follows:

“Sec. 601. Qualifications.

~~Members of the School Board~~ Representatives to the Board of Directors of the Education system RSU #23 shall be registered voters of the Town and shall have their principal place of residence in the Town during their terms of office. No ~~Members of the School Board~~ Representative to the Board of Directors of the Education system RSU #23 shall hold any other ~~compensated~~ Town office or be employed in any Town department ~~under the direct control of the School Board.~~”

Commissioner Vallante felt that “Education” should not be capitalized, as it is being used as a noun. The Charter will not be naming the education system.

Vice-Chair Bird stated it’s the same as the “Board of Directors” being capitalized.

Commissioner Vallante stated that term is currently being used in State Law, “Board of Directors”, where “education system” is not. By capitalizing it, the Charter is changing it to a term that is not wanted.

It was agreed to ask the Town Attorney if a capital “E” should be used and revisit this Section if needed.

VOTE: Unanimous [on the original motion].

Commissioner Bird motioned, seconded by Commissioner Higgins, to amend Section 610 as follows, and renumber it as Section 602:

“Sec. ~~610~~ 602. Vacancies in the Education system ~~the School Board~~.

If a ~~School Board Member~~ Representative to the Education system RSU #23 shall cease to possess any of these qualifications or shall be convicted of a crime which is punishable by imprisonment for more than six months, the office of that ~~School Board Member~~ Representative to the Education system RSU #23 shall immediately become vacant ~~upon majority vote of the remaining members of the School Board. The School Board shall notify the Town Council of the vacancy immediately.~~”

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Vallante, to add the following additional paragraphs to the new section 602:

~~“The office of the School Board [member] Representative to the Education system RSU #23 shall also become vacant upon resignation, death, recall, failure to qualify for the office within ten (10) days after written demand by the Town Council, forfeiture of office, or failure of the municipality to select a person to the office.~~

~~If a Representative seat to the Education system RSU #23 seat on the School Board becomes vacant for any reason less than ninety (90) days prior to the next regularly scheduled municipal election, the vacancy shall be filled at that next regularly scheduled municipal election and the School Board shall operate with the remaining members.~~

~~If a Representative seat to the Education system RSU #23 seat on the School Board becomes vacant for any reason more than ninety (90) days prior to the next regularly scheduled municipal election, it shall be filled until the next municipal election by the affirmative vote of at least four members of the Town Council.~~

~~Notwithstanding the foregoing, if a vacancy occurs for any reason other than recall during the first six months of a School Board member's Representative's term, such vacancy shall be filled for the unexpired term by that person who was a candidate for the School Board Representative to the Education system RSU #23 at the same election at which the School Board member Representative whose office has become vacant was elected and who received the greatest number of votes among the unsuccessful candidates, and in the event that such person is unwilling or unable to serve or if there is no such person, then the vacancy shall be filled as otherwise provided by this section.”~~

Commissioner Regis motioned, seconded by Commissioner Vallante to amend the motion by changing “four members” in paragraph three to “a majority of” the Town Council.

VOTE ON THE AMENDMENT: Unanimous.

VOTED ON THE AMENDED MOTION: Unanimous.

Commissioner Higgins read Section 701.

**“ARTICLE VII. FINANCIAL PROCEDURE/  
BUDGET**

Sec. 701. Fiscal Year.

The fiscal year of the Town government shall be established by ordinance. Such fiscal year shall constitute the budget and accounting year as used in this Charter. The term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.”

Chair Gombar stated that the current fiscal year being used of July 1<sup>st</sup> to June 30<sup>th</sup> has been in place for many years and should be placed permanently in the Charter.

Commissioner Ladakakos motioned, seconded by Commissioner Higgins, to amend Section 701 as follows:

“ARTICLE VII. FINANCIAL PROCEDURE / BUDGET

Sec. 701. Fiscal Year.

The fiscal year of the Town government shall be from July 1<sup>st</sup> of the current calendar year to June 30<sup>th</sup> of the next year. ~~established by ordinance.~~ Such fiscal year shall constitute the budget and accounting year as used in this Charter. The term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.”

VOTE: Unanimous.

Commissioner Higgins read Section 702:

“Sec. 702. Preparation and Submission of the Budget.

The Town Manager, at least ninety (90) days prior to the beginning of each budget year, shall submit to the Council a budget and an explanatory budget message. With respect to the Department of Education only, the budget authority of the Council shall be limited to the final determination of the total appropriation to be made to that Department. The proposed budget prepared by the Manager, and the Department of Education budget, shall be reviewed by the Town Council which shall approve such budgets with or without amendment. The Town Council shall fix the time and place for holding a public hearing on such budgets, and shall give a public notice of such hearing. The Council shall thereafter review the budgets and adopt them, with or without change, no later than the day before the beginning of the fiscal year. In the event the Council shall fail to adopt the budgets before the beginning of the fiscal year, the budgets as presented by the Manager and the Department of Education shall automatically become the budgets for the fiscal year. The budget shall be compiled from detailed information furnished by the administrative officers and boards on such forms as may be designated by the Manager, and shall contain:”

Vice-Chair Bird motioned, seconded by Commissioner Regis, to strike the following language from Section 702:

“Sec. 702. Preparation and Submission of the Budget.

~~With respect to the Department of Education only, the budget authority of the Council shall be limited to the final determination of the total appropriation to be made to that Department.~~

The proposed budget prepared by the Manager, ~~and the Department of Education budget,~~ shall be reviewed by the Town Council which shall approve such budgets with or without amendment.

The Town Council shall fix the time and place for holding a public hearing on such budget, and shall give a public notice of such hearing. The Council shall thereafter review



the budget and adopt it them, with or without change, no later than the day before the beginning of the fiscal year. In the event the Council shall fail to adopt the budgets before the beginning of the fiscal year, the budgets ~~as presented by the Manager and the Department of Education shall automatically become the budgets~~ for the fiscal year.

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to add the following to Section 701:

“Sec. 702. Preparation and Submission of the Budget.

The Town Council, at least six (6) months prior to the beginning of each budget year, shall notify the Town Manager and each Department Head of an expected budget limit figure within which they should formulate their next budget year's budget. This figure need only be a guideline, subject to changes throughout the budgetary process, but should serve as an expectation of the Council.

Each Department Head, at least one hundred and twenty (120) days prior to the beginning of each budget year, shall submit to the Town Manager a budget, a projected work plan and an explanatory budget message for next budget year.”

Vice-Chair Bird stated he spoke with some Finance Committee members and they agreed with his recommended additions to Section 702.

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to add the following to Section 702:

“In the event the Council shall fail to adopt the budgets before the beginning of the fiscal year, the budgets from the preceding fiscal year shall be extended, pro rata, month to month, until such time as the Town Council shall adopt a new budget for the fiscal year.”

Vice-Chair Bird advised that this would leave the Town with the same budget as last year, and give the Town Council time to act. In the meantime, they have a method to operate on from month to month.

Commissioners Higgins wondered what other towns did.

Chair Gombar was concerned that the summer months are when many departments use most of their funding.

Vice-Chair Bird stated that they will use a pro rata rate to take care of that.

Commissioner Regis stated that the Town Council will need to take money out of the Undesignated Fund to cover the budget.

Vice-Chair Bird said it was either accepting the Town Manager's budget, or give the Town Council a chance to adopt a budget by going month to month until they do.

Commissioner Begert inquired of the constitutionality in the Town Council not adopting a budget.

Commissioner Vallante said he would like a legal opinion.

Chair Gombar said they shouldn't be doing a month-to-month budget because, again, many departments use most of their budgets in the summer months, so they would not be able to use 1/12<sup>th</sup> of their budget.

Commissioner Ladakakos stated the way it was worded in the last two Charters worked, asking why they would want to change it now.

VOTE: Vice-Chair Bird and Commissioner Begert, yes; Commissioners Higgins, Regis, Ladakakos, Vallante and Chair Gombar, no. Motion fails 5-2.

Chair Gombar stated at this point the Charter Commission will discuss the table item of setting an additional meeting date.

The Charter Commission stated they are going to set a meeting date of Saturday, January 22, 2011 from 9 a.m. to noon. Vice-Chair Bird stated he would not attend unless it is televised. Commissioner Begert concurred. Commissioner Vallante stressed the importance of at least recording the meeting. The other members requested the meeting to be televised if at all possible.

Meeting adjourned at 9:13 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 January 11, 2011.

Kim M. McLaughlin