

CHARTER COMMISSION MEETING
SATURDAY, JANUARY 22, 2011 – 9 A.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
Ronald Regis
Jayne Flaherty [excused absence]
Paul Ladakakos [excused absence]
Michael Vallante [excused absence]

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

Item #1, Chair Gombar stated that due to health reasons, Commissioner Paul Ladakakos is resigning from the Charter Commission.

Commissioner Regis motioned, seconded by Commissioner Higgins, to accept Commissioner Ladakakos's resignation, with regret, from the Charter Commission. All of the Commissioners expressed their sentiment, and thank you for his contributions, to Commissioner Ladakakos.

VOTE: Unanimous.

Item #2, Commissioner Higgins motioned, seconded by Commissioner Regis, to accept the minutes of December 28, 2010.

VOTE: Unanimous.

Item #3, Commissioner Higgins motioned, seconded by Commissioner Regis, to accept the minutes of January 8, 2011.

VOTE: 4-0-1 (Vice-Chair Bird abstained due to partial absence).

Item #4, Commissioner Higgins motioned, seconded by Commissioner Regis, to accept the minutes of January 11, 2011.

VOTE: Unanimous.

Item #5, Chair Gombar stated the Charter Commission would be going over changes in the Charter, approved up to today's date.

Vice-Chair Bird stated the Commission had discussed changing Section 201.1, but did not vote on that section.

Chair Gombar read Attorney Vaniotis's response in reference to the Regional School Unit:

Question 2. What language could be placed in the Charter in case the State Law is repealed on the Regional School Units? Can there be language to revert back to the 1998 Charter?

Answer: Note that the RSU would survive a repeal of the statute, unless the repealing statute called for the dissolution of units already created. In that case, the repealing statute would in all likelihood specify a procedure for dissolving the existing units and restoring municipal schools. In any event, the Town would probably have sufficient advance notice and time to enact appropriate charter amendments in advance of a dissolution of the RSU.

On the other hand, there is no reason why the Charter could not contain a kind of safety position, along the following lines:

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 on [insert date of Charter election] 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.

Question 3. Should there be a capital “E” in Education system, if it refers to a noun? The Charter Commission was concerned about using the term “Regional School Unit” in the Charter in case it is amended in the State Law.

Answer: I would not change the reference to the Regional School Unit. That is the entity in place under the law in effect at the time of adoption of the new Charter; therefore it is a defined term, whereas the suggested term “the education system” does not have a precise meaning.

Chair Gombar agreed with the response to question #2, suggesting the Charter could have that as a fallback measure should the State Law change.

Vice-Chair Bird stated it should be left as Education system.

Commissioner Regis stated that all schools are RSU’s, whether there is one town or three towns.

Vice-Chair Bird suggested the Charter Commission continue to put more thought into changing the section regarding the RSU. He then read his suggested changes to 201.1:

“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."

Commissioner Regis suggested the two-year term remain, stating a three-year term would burn someone out.

Commissioner Higgins concurred, stating three years is a long time to commit to.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to amend Section 201.1 as follows:

"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."

VOTE: 4-1 (Commissioner Regis against).

Vice-Chair Bird motioned, seconded by Commissioner Begert, to amend Section 201.1, regarding term limits as follows:

"Term Limits:

No member of the Town Council shall be eligible to serve for more than seven years out of a ten (10) year period."

Discussion reference term limits ensued, and consensus wasn't reached.

Commissioner Begert withdrew his second, and Vice-Chair Bird withdrew his motion and stated they will let the vote from September 28th stand as of right now.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 305.1 by adding "registered" twice in the paragraph, adding the word "qualified" and amending the last sentence. The rest of the paragraph was amended on 10/12/2010:

"Sec. 305.1. The recall committee shall have thirty (30) days from the date of issuance of appropriate petition blanks to cause the petition to be signed by 20% of the number of the qualified registered voters having voted in the last gubernatorial election of the Town. The petition shall be signed in the presence of the Town Clerk or of a qualified registered voter of the Town who shall certify to the authenticity of the signatures collected. Within ten (10) days after the circulation period ends the Town Clerk shall certify to the Town Council as to whether the petition has been signed by not less than 20% of the number of the qualified registered voters having voted in the last gubernatorial election of the Town. Should less than ~~20% of the~~ required number of registered voters ~~of the town~~ sign the petition, the petition shall have no further force or effect, and no new petition asking for recall of the

same person can be initiated until one hundred eighty (180) days from the end of the previous filing period.”

VOTE: Unanimous.

Commissioner Higgins motioned, seconded by Vice-Chair Bird to leave Section 405 as is in the current Charter.

VOTE: Unanimous.

Commissioner Higgins motioned, seconded by Commissioner Regis, to amend Section 305.2 by adding the word “qualified” before registered voters. The remainder of the paragraph was voted on October 12, 2010:

“Sec. 305.2. Upon receipt of certification by the Town Clerk that a recall petition has been signed by at least 20% of the number of the qualified registered voters having voted in the last gubernatorial election of the Town, the Town Council shall within thirty (30) days submit to the voters the question of recall. The Councilor, School Board member Representative to the Education System, 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.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 409.1 by adding “in writing” in the last sentence. The remainder of the paragraph was voted on November 30th, 2010:

“Sec. 409.1. Appoint the Town Manager. The Town Council shall appoint an officer employee 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 the 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 shall may be given a two (2) year 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 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.”

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to amend Section 410.1 by adding the title, “Emergency Ordinance”. The paragraph, itself, was voted on December 28th, 2010:

“Sec. 410.1. Emergency Ordinance. Notwithstanding any other provision of this Charter, to meet a public emergency affecting life or health or property or the public peace, the Council may adopt one or more emergency ordinances, with the statement of the emergency being a part of the preamble to the ordinance. The declaration of such emergency by the Council shall be conclusive. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least a majority plus one of the seated four (4) Councilors shall be required for adoption. After adoption, the ordinance shall be posted on the bulletin board in the Town Hall, the Town internet web site, and such other places as the Council may designate. It shall be effective as of its adoption or as of such other time as it may specify. Every emergency ordinance except one authorizing the issuance of emergency bonds or notes shall stand repealed as of the 61st day following the date of its adoption, but this shall not prevent the reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.”

VOTE: Unanimous.

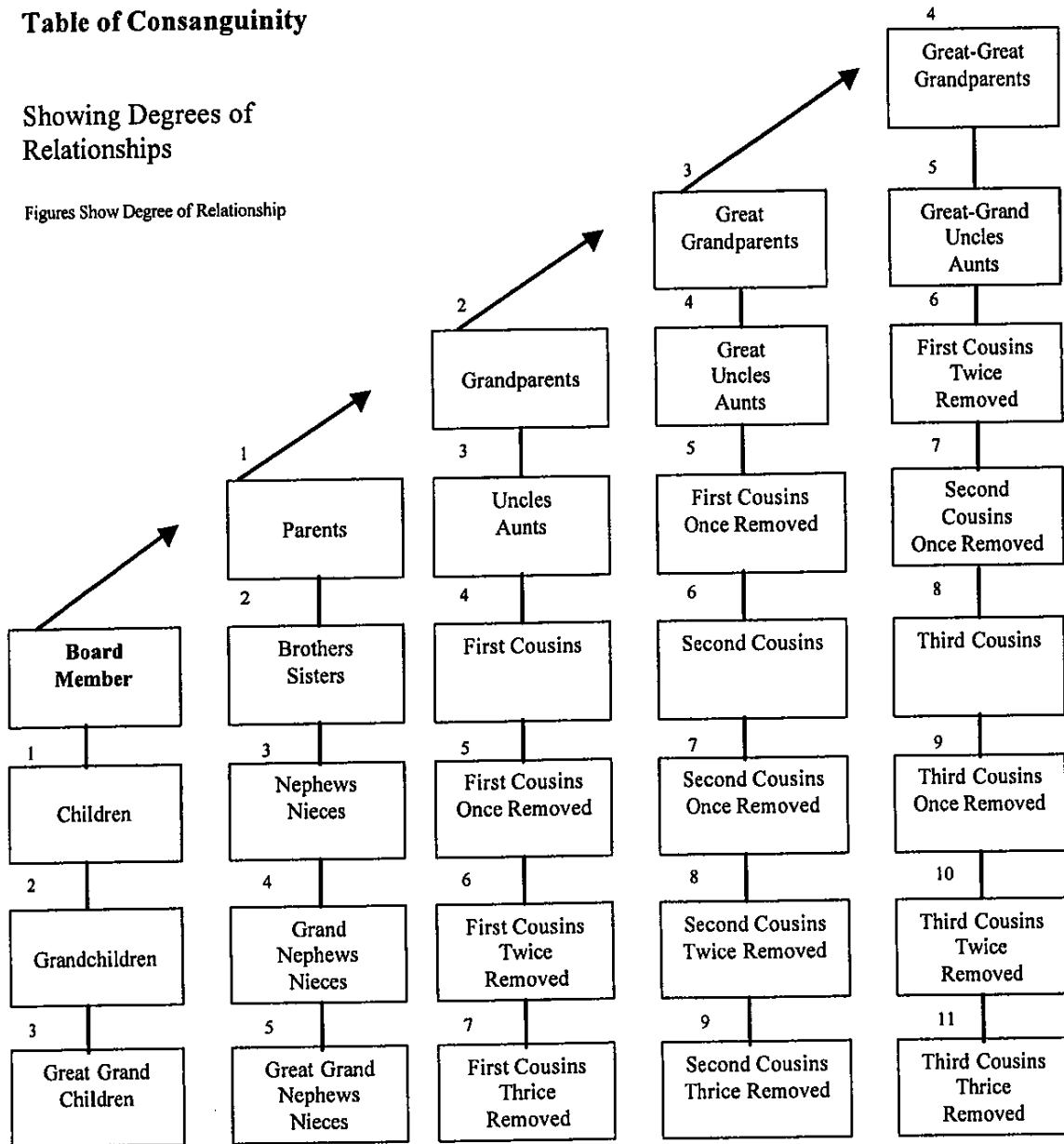
At the beginning of the meeting, Town Clerk Kim McLaughlin passed out a Table of Consanguinity form Showing the Degrees of Relationships from Maine Municipal Association.

SEE NEXT PAGE:

Table of Consanguinity

Showing Degrees of Relationships

Figures Show Degree of Relationship



Each Number equals one "degree" of blood or marital relationship.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 412 to read "4th Degree".

Commissioner Higgins stated, that although she seconded for discussion, she feels it should be 3rd degree relationships.

Commissioner Begert stated that if it were just who the Town Council hires, it should be 4th degree.

Commissioner Higgins withdrew her second, and Vice-Chair Bird withdrew his motion.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 412 by changing 2nd Degree (which had been previously voted upon) to “3rd degree”, and add “first cousins”. The remainder of the paragraph was voted on January 8th, 2011:

“Sec. 412. Conflicts of Interest.

No relative of a Town Councilor shall be appointed to any compensated Town office or any position appointed by the Town Council or shall be hired for a position in any Town department under the direct control of the Town Council so long as that Councilor continues to serve on the Town Council. If the relative was serving in any such position at the time of that Councilor's election, the relative shall not receive any increase in salary which is approved during that Councilor's term of office. No Town Councilor may vote on any contract while employed by the contractor or subcontractor or in which the member or a relative has a financial interest. As used in this section, the term "relative" means by blood, marriage, or law “to the third degree”, first cousins or domestic partner relationship. ~~a parent, spouse, brother, sister, child, stepchild, stepparent, adopted child, grandparent, mother-in-law, father-in-law, son-in-law or daughter-in-law.”~~

Commissioner Regis motioned to add those employees under the town manager, as well, but did not receive a second to his motion.

Vice-Bird stated he believed it was okay as is now.

Commissioner Higgins stated this is a very small town, and amending this section any further could hamper the efforts to find anyone to work.

Commissioner Begert pointed out the part of the paragraph referring to “any position appointed by the Town Council”. He wanted the Commission to be aware that current wording refers to any “advisory boards”.

Commissioner Higgins stated that she agrees with Commissioner Begert that a 3rd degree relative cannot serve on an advisory board as the Charter currently reads, but stated she was fine leaving it as is for now.

Vice-Chair Bird stated he would like to address conflicts in general. He felt Councilors should not be voting on contracts they're involved in.

Vice-Chair Bird motioned, seconded by Commissioner Regis, to add two more paragraphs to Section 412, and to remove “appointments” from Title”:

“No Town Councilor may vote on any contract while employed by the contractor or sub-contractor or in which the member or a relative has a financial interest,

Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue must be decided by a majority vote of those members present and voting, excluding the member being challenged."

VOTE: Unanimous.

Commissioner Higgins motioned, seconded by Commissioner Regis, to move the sentence "As used in this section, term "relative" means by..." to the end of the Section, so that it pertains to all of the above paragraphs:

"Sec. 412. Conflicts of Interest.

No relative of a Town Councilor shall be appointed to any compensated Town office or any position appointed by the Town Council or shall be hired for a position in any Town department under the direct control of the Town Council so long as that Councilor continues to serve on the Town Council. If the relative was serving in any such position at the time of that Councilor's election, the relative shall not receive any increase in salary which is approved during that Councilor's term of office. No Town Councilor may vote on any contract while employed by the contractor or subcontractor or in which the member or a relative has a financial interest. As used in this section, the term "relative" means by blood, marriage, or law "to the third degree", first cousins or domestic partner relationship. ~~a parent, spouse, brother, sister, child, stepchild, stepparent, adopted child, grandparent, mother-in-law, father-in-law, son-in-law or daughter-in-law."~~

Commissioner Higgins motioned, seconded by Commissioner Regis, to amend Section 502.1 by changing the previous vote on January 8th, 2011, on the wording:

~~"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: 4-1 (Vice-Chair Bird against).

Vice-Chair Bird stated he was concerned that the Town Council was not going to have a say in the removal. He said the Town Council should be able to weigh in on a removal during a probationary period.

Town Clerk, Kim McLaughlin, had been requested to research Section 612 on Adult Education, to find out if Adult Education is regulated by the municipality or through the Regional School Unit. The Town Clerk asked the Finance Director, Jill Eastman, and was advised that Adult Education is now regulated under the Regional School Unit.

Commissioner Higgins motioned, seconded by Vice-Chair Bird, to strike Section 612 from the current Charter:

~~“Sec. 612. Adult Education.~~

~~The Old Orchard Beach Department of Education shall act as fiscal agent for the Adult Education program. The School Board may enter into contracts, agreements, or other arrangements with other school administrative units for the purpose of providing joint adult education programs.”~~

VOTE: Unanimous.

Commissioner Higgins motioned, seconded by Commissioner Regis, to add the following paragraph as an entry to Article VI, as recommended by Atty. Vaniotis in answer to Question #2:

“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.

ARTICLE VII

Commissioner Higgins read Attorney Vaniotis’s answer to Question #4:

Question 4. Can the Charter have wording to use a “pro rata month-to-month budget if the Town Council fails to adopt a budget by June 30th? Is it against the State Constitution for the Council to fail to adopt a budget? Below is an excerpt from Section 702 to be amended.

Answer: The idea of adopting the previous year’s budget on a pro rata basis presents several practical challenges. First, the total amount of the budget needs to be fixed by July 1st in order to set the tax rate. In addition, on the expenditure side, proration would be extremely difficult because the Town’s expenses vary from month to month (i.e., sand and salt and plowing in the wintertime, lifeguards and reserve police officers in the summertime).

The current Charter provides, as the default position, that the Manager's proposed budget is automatically adopted if the Council fails to act before the beginning of the fiscal year. That is a very common provision in municipal charters. Old Orchard Beach could choose to make the previous year's budget the default position. That, however does pose the risk that the total budget number, and hence the tax levy, might not reflect the Town's current needs if circumstances had changed dramatically since the adoption of the previous year's budget.

There is no state constitutional requirement that the Council adopt the budget in any particular manner. The real question for the Charter Commission, therefore, is whether there is any need to change the current Charter provision on this question.

Commissioner Higgins stated she had no desire to change the current language.

Vice-Chair Bird stated that he did. He said it is not a good idea to leave it to a non-elected person by default.

Chair Gombar stated that a pro-rata system doesn't work, as explained by Atty. Vaniotis, especially since the amount of funding changes so drastically in different months, i.e. sand/salt.

Commissioner Higgins motioned, seconded by Commissioner Regis, to leave Section 702 as is in the current Charter.

VOTE: 3-2 (Vice-Chair Bird, Commissioner Begert, against).

Commissioner Begert motioned, seconded by Vice-Chair Bird to amend Section 702 to place a final date for a budget vote for the Town Council as May 30th. This would create a buffer between then and the beginning of the fiscal year.

Chair Gombar stated he doesn't see a functional point. The deadline is meaningless since they can still use the month as a buffer zone.

Vice-Chair Bird withdrew his second and Commissioner Begert withdrew his motion.

Commissioner Higgins motioned, seconded by Vice-Chair Bird to table this possible amendment to Section 702 until Attorney Vaniotis can give input.

VOTE: Unanimous.

Meeting adjourned at 11:55 a.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 January 22, 2011.

Kim M. McLaughlin