

CHARTER COMMISSION MEETING  
TUESDAY, JULY 27, 2010 – 7 P.M.

Vice-Chair Bird opened the regular meeting at 7:05 p.m., in Town Hall, Council Chambers. The following members were in attendance:

John Bird  
William Gombar  
Jerome Begert  
Jayne Flaherty  
Michael Vallante  
Tianna Higgins, excused absence  
Paul Ladakakos, excused absence  
Ronald Regis, excused absence

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

Vice-Chair Bird stated that due to illnesses and other circumstances, several members of the Charter Commission were unable to attend tonight's meeting. He advised the Charter Commission meeting would be abbreviated tonight.

Motion made by Commissioner Flaherty, seconded by Commissioner Gombar, to attach the response by the Town's legal attorney, Christopher Vaniotis, to the June 22<sup>nd</sup>, 2010 minutes, and to accept those minutes.

VOTE: Unanimous.

The Commission members were given a copy of Vice-Chair Bird's compilation of recommended changes by members to the Charter for review for the next meeting, which are attached to the end of the minutes.

The meeting was adjourned at 7:08 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 twenty (20) pages is a true copy of the original Minutes of the Charter Commission Meeting held July 27, 2010.

Kim M. McLaughlin

## “ARTICLE I. POWERS OF THE TOWN

### Sec. 101. Incorporation.

The inhabitants of the Town of Old Orchard Beach, in the State of Maine, within the limits now established or hereafter established in the manner provided by law, shall be a municipal corporation by the name of the Town of Old Orchard Beach, Maine.

### Sec. 102. Powers of the Town.

The Town shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises, and shall be subject to all the duties, liabilities and obligations, provided for herein, or otherwise pertaining to or incumbent upon said Town as a municipal corporation, or the inhabitants or municipal authorities thereof; it may enact bylaws, regulations and ordinances not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof to be recovered to the use of said Town by appropriate action.

The Town may acquire property within or without its corporate limits for any town purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, lease or condemnation and may sell, lease, mortgage, hold, manage and control such property as its interest may require.

The Town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil division or agencies thereof, or with the United States or any agency thereof.

In this Charter the mention of a particular power shall not be construed to be exclusive or to restrict the scope of the powers which the Town would have if the particular power were not mentioned. The Charter shall be liberally construed to the end that the Town may have all the powers necessary or convenient for the conduct of its municipal affairs, including all the powers the Town may assume pursuant to state laws and to the provisions of the State Constitution.

The Government of the Town shall be made up of three parts: Legislative and Policy-making; Administrative; and Adjudicative and Advisory.

The Legislative and Policy-making Branch of the Town Government shall consist of a Town Council, which shall be the Representatives of the People of the Town, enact the bylaws, regulations and ordinances, set the governing policies and guide the affairs of the Town.

It is the obligation of every public official and employee to carry out the lawful orders and policies of the Town Council. No public official, employee or appointee shall knowingly take any action inconsistent with the lawful orders or policies established by the Town Council and no public official or employee shall knowingly take any action which would be detrimental to the best interests of the Town.

The Administrative Branch of the Town Government shall consist of a Town Manager, an elected Town Clerk and various Department Heads, who shall manage the daily, operational and administrative affairs of the Town according to the direction and policies of the Town Council and this Charter and pursuant to state laws and to the provisions of the State Constitution.

The Adjudicative and Advisory Branch of the Town Government shall consist of such various Boards, Commissions, and Committees as set forth in this Charter or as may be created from time to time by the Town Council, including, but not limited to, a Planning Board, Zoning Board of Appeals, Conservation Commission and others. They shall consider initial appeals under various policies and ordinances and such other duties as set forth in this Charter or as assigned by the Town Council, and provide advice to the Town Council.

## ARTICLE II. ELECTED OFFICES, NOMINATIONS AND ELECTIONS

Sec. 201. Town Council, ~~School Board~~, Representatives to the Board of Directors of Regional School Unit #23, Town Clerk.

The elected officials of the Town shall be: the members of the Town Council, Representatives to the Board of Directors of Regional School Unit #23 ~~the members of the School Board~~ and the Town Clerk.

Sec. 201.1. *Town Council.* The Town Council shall be composed of ~~five (5)~~ six (6) members, each of whom shall be elected by the registered voters of the entire Town. Each member shall be elected for a term of ~~two (2)~~ three (3) years, and shall serve until a successor is elected and qualified. The terms of the Town Council shall be staggered, and expire at ~~two~~ three year intervals on the third Monday in November. No member of the Town Council shall be eligible to serve for more than two (2) three -year terms consecutively.

Sec. 201.2. Representatives to the Board of Directors of Regional School Unit #23. ~~School Board. The School Board shall be composed of five (5) members, each of whom shall be elected by the registered voters of the entire Town. Each member shall be elected for a term of two (2)-years, and shall serve until a successor is elected and qualified. The terms of the School Board shall be staggered, and expire at two year intervals on the third Monday in November.~~

In removing the responsibility for the education of the Town's children from the Town and giving it over to the State-mandated Regional School Unit (RSU) #23, †The state legislature has eliminated the Town's locally elected School Board and replaced it with Regional School Unit Representatives, allowing only two locally elected Representatives to the Board of Directors of the State-mandated Regional School Unit #23.

The terms of the Regional School Unit representatives are also set by the State as three years, however, no Representative to the Board of Directors of Regional School Unit #23 from the Town shall be eligible to serve for more than two (2) three-year terms consecutively.

Sec. 201.3. *Town Clerk.* The Town Clerk shall be elected by the registered voters of the town. The term of the Town Clerk shall expire at two (2) year intervals on the third Monday in November, in the even numbered years. The Town Clerk shall be elected for a term of two (2) years, and shall serve until a successor is elected and qualified.

Sec. 201.4. *Qualifications of Town Clerk.* The Town Clerk shall be a registered voter of the Town and shall have his or her principal place of residence in the Town during his or her term of office. The Town Clerk shall not hold any other compensated Town office, be employed in any Town department other than the office of the Town Clerk or serve in any position appointed by the Town Council under section 409.3 of this Charter except that of Registrar.

Sec. 202. Municipal Elections.

The office of Town Clerk, members of the Town Council and ~~members of the School Board~~ Representatives to the Board of Directors of Regional School Unit #23 shall be filled in accordance with general law by Australian ballot, 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.

Sec. 203. Nominations.

Registered voters of the Town shall be nominated for the Town Council, ~~School Board~~ Representatives to the Board of Directors of Regional School Unit #23, and Town Clerk by use of nomination papers in accordance with the State Statutes and this Charter in governing Town elections.

Sec. 204. Conduct of Elections.

The provisions of the laws of the State of Maine relating to the qualifications of electors, registration, the manner of voting, the duties of election officers and all other particulars with respect to preparing for, conducting and managing of elections, so far as they may be applicable, shall govern all municipal elections, except as otherwise provided in this Charter.

Sec. 205. Voting Places.

The voting places established for state elections shall be established for municipal elections, and shall be accessible to persons with disabilities according to State law.

Sec. 206. Election Officials.

The Town Clerk shall be the supervisor of all elections. With the approval of the Town Council, the clerk shall appoint a warden and one or more deputy wardens to assist in the duties on election day. The clerk may designate himself or herself as warden or deputy warden. The municipal officers and the Town Clerk shall appoint election clerks as provided by state law.

Sec. 207. Certification.

After the results of any municipal election held pursuant to the provisions of this Charter are declared by the Town Clerk or the warden designated by the Clerk under Section 206, the clerk shall report the results of the election to the Town Council, which shall then issue a certificate of election.

### ARTICLE III. INITIATIVE AND REFERENDUM

Sec. 301. Petition for Overrule of Action of Council.

The following shall be subject to overrule by referendum as follows:

~~(A.) Sec. 301.1.~~ All ordinances;

~~(B.) Sec. 301.2.~~ Orders or resolves appropriating \$250,000 or more for a single capital improvement or piece of capital equipment;

~~(C.) Sec. 301.3.~~ Orders or resolves authorizing the issuance of general obligation bonds or notes of \$250,000 or more ~~for capital improvements or capital equipment.~~

~~(D.) Sec. 301.4. Orders or resolves appropriating \$250,000 or more from the Capital Improvement Fund.~~

If within ~~twenty (20)~~ thirty (30) days after the enactment of any such ordinance, order or resolve, a petition signed by not less than 10% of the number of the registered voters having voted in the last gubernatorial election of the Town of Old Orchard Beach is filed with the Town Clerk requesting its reference to a referendum, the Council shall call a public hearing to be held within thirty (30) days from the date of the filing of such petition with the Town Clerk, and shall within fourteen (14) days after said public hearing call a special Town election for the purpose of submitting to a referendum vote the question of adopting such ordinance, order or resolve. Pending action by the voters of the Town, the referred ordinance, order or resolve shall be suspended from operation until it has received a vote of the majority of the voters voting on said question. ~~The Town Council shall not repeal any ordinance, order, or resolve adopted by referendum for a period of one hundred eighty (180) days from the date of the referendum. (redundant — see next paragraph)~~ An ordinance, order or resolve defeated at a referendum shall not be reintroduced for a period of one hundred eighty (180) days from the date of the referendum.

#### Sec. 302. Petition for Enactment of Ordinances.

Not less than 10% of the number of the registered voters having voted in the last gubernatorial election of the Town may at any time petition for the enactment of any proposed lawful ordinance by filing a petition, including the complete text of the ordinance, with the Town Clerk. The Town Clerk shall then forward the proposed ordinance to the Town Attorney who shall review the proposed ordinance before a public hearing is held. The Town Attorney is authorized to correct the form of the proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions, and to assure accuracy in its text and references and clearness and preciseness in its phraseology, but shall not materially change its meaning and effect.

The Council shall call a public hearing to be held within thirty (30) days from the date of the filing of the petition with the Town Clerk. Within thirty (30) days after the public hearing, the Council shall call a special Town election for the purpose of submitting to a referendum vote the question of adopting the ordinance, unless the ordinance shall be enacted by the Council prior to the call for the special town election. The ordinance shall take effect on the 10th day after the conclusion of the referendum, provided a majority of those voting thereon shall have voted in the affirmative. ~~The Town Council shall not repeal or amend any ordinance, order, or resolve adopted by referendum for a period of one hundred eighty (180) days from the date of the referendum.~~ three hundred sixty days from the date of the referendum.

#### Sec. 303. Referendum on Certain Expenditures.

The Town Council shall submit the following actions to the voters at a regular or special election following one or more public hearings:

(i) any order or resolve appropriating \$500,000 or more ~~for a single capital improvement or for a single item of equipment;~~

(ii) any order, resolve or ordinance authorizing general obligation bond issues of \$500,000 or more ~~for capital improvements or equipment.~~

~~These provisions shall apply whether or not payment for the capital improvements or single item of equipment is to be made in more than one fiscal year.~~

The questions shall be submitted to the voters at the next regular municipal election held not less than thirty-five (35) days after the order, resolve or ordinance is passed; or the Town Council may order that the question be submitted to the voters at a special election to be held not less than thirty (30) days from the date of the order, resolve or ordinance.

#### Sec. 304. Form of Question.

The form of the ballot for the proposed ordinance, or repeal of such ordinance, order or resolve, shall be in accordance with state law. The form of question shall be substantially as follows: "Shall the ordinance, order or resolve entitled ` \_\_\_\_\_ ' be adopted? (or repealed?)"

#### Sec. 305. Procedures for Recall.

Any seven (7) qualified voters may begin at any time proceedings to recall a Town Councilor, Representative to the Board of Directors of Regional School Unit #23 ~~School Board member~~, Town Clerk or other elected official by a request in writing to the Town Clerk for appropriate petition blanks. These voters shall be referred to as the Recall Committee. All copies of the petition shall contain a statement of the reason or reasons for recall and the names of the members of the Recall Committee. Each petition shall be limited to the recall of a single individual.

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 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 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 registered voters of the Town. Should less than 20% of the number of the registered voters having voted in the last gubernatorial election 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.

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 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, Representative to the Board of Directors of Regional School Unit #23, ~~School Board member~~, 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.

Sec. 305.3. Unless the official or officials whose removal is sought shall have resigned within ten days after the receipt by the Town Council of the Town Clerk's certification, the form of the ballot at such election shall be as nearly as may be: "Shall \_\_\_\_\_ be recalled?" with the name of the official whose recall is sought being inserted in the blank. The ballot shall also contain the names of the candidates nominated in place of the person recalled, as follows:

"Candidates for the place of \_\_\_\_\_, if recalled"; but the person whose recall is sought shall not be candidate upon such a ballot. The form of ballot at said election shall be the same, as nearly as may be, as the form and the arrangement in use at a regular municipal election. In the event the person sought to be recalled resigns within the ten day period, such person shall not be reappointed to his former position by the Town Council, the Board of Directors of Regional School Unit #23, the School Board, or other appointing authority, as the case may be.

Sec. 305.4. If, of the total number of votes cast for and against the recall of the particular official, the majority cast are in favor of recalling such official, he shall thereby be removed, and the candidate chosen to succeed him shall hold office for the balance of the unexpired term.

Sec. 305.5. In the event that the Town Council fails or refuses to order an election as herein provided, the Town Clerk or, in the absence or disability of the Town Clerk, the Deputy Town Clerk, shall call the election to be held not less than thirty (30) days nor more than sixty (60) days following the Town Council's failure or refusal to order the required election.

Sec. 305.6. In the event of a recall petition referring to the Town Clerk, the Town Registrar of Voters shall take the Town Clerk's place and shall perform all of the functions of the Town Clerk as outlined in Sections 305.1 through 305.5 above.

#### ARTICLE IV. TOWN COUNCIL

The Town Council is the Legislative and Policy Setting Branch of the Town Government.

##### Sec. 401. Qualifications.

Councilors 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 Town Council shall hold any other compensated Town office, be employed in any Town department ~~under the direct control of the Town Council~~, vote on any contract while employed by the contractor or sub-contractor, nor serve in any position appointed by the Town Council under Section 409.3 of this Charter, during the term for which that member was elected to the Town Council with the exception of Inter-Governmental Groups and Charter Commissions in accordance with the State Statutes. If a Town Councilor 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 seat* of that Town Councilor shall immediately become vacant.

##### Sec. 402. Induction of Town Council into Office.

The Town Council shall meet at the usual place for holding meetings at 7:00 P.M. on the third Monday in November following the regular Town election and at said meeting Councilors-elect shall be sworn to the faithful discharge of their duties by a dedimus justice or by the Town Clerk and shall take office. The Council shall then elect a Chairperson and a Vice Chairperson for the next twelve month period.

##### Sec. 403. Town Council to Judge Qualifications of its Members.

The Town Council shall be the judge of the election and qualifications of its members and for such purpose shall have power to subpoena witnesses and to require production of records. The

decision of the Council in any such case shall be subject to review by the Maine Superior Court in accordance with state law.

#### Sec. 404. Meetings.

The Town Council shall, at its first meeting or as soon thereafter as possible, establish by ~~ordinance or~~ 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 1004 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.

Sec. 404.1. Any Councilor may place a subject for discussion and/or action on the Council Meeting Agenda prior to publication, but oOnce a Town Council meeting has commenced, any additions to or deletions from the agenda, including emergency items, must be made immediately after roll call, at the beginning of the meeting.

#### Sec. 405. Chairperson and Vice-Chairperson.

1. The Chairperson shall preside at meetings of the Town Council and shall be entitled to vote on Council matters. No other extraordinary powers shall be bestowed on the position of the Chair.

2. The Vice-Chairperson shall act as Chairperson during the absence of the Chairperson.

#### Sec. 406. Quorum.

A majority of the Town Council shall constitute a quorum for the transaction of business provided that ~~three~~ four affirmative votes shall be required in order for the Council to take action. A smaller number may adjourn from time to time or may compel attendance of absent members. At least 24 hours' notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken.

#### Sec. 407. Rules of Procedure, Journal.

The Council shall determine its own rules and order of business which shall not supersede the Town Charter. It shall keep a record of its proceedings and the record shall be open to public inspection.

#### Sec. 408. Powers and Duties.

The members of the Town Council shall be and constitute the municipal officers and the legislative body 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 and the municipal legislative body under the laws of this State.

#### Sec. 409. Enumeration of Powers.



Without limitation of the foregoing, the Council shall have the power to:

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 thereof 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, shall appoint the 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 shall~~ 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 evaluate the Town Manager and provide the Town Manager with a written copy of the evaluation, at least on an annual basis, against a list of expectations given to the Town Manager in writing upon hiring or one year before such evaluation.

Sec. 409.2. Removeal of the Town Manager.

The Council may remove the Town Manager for cause during the term of the contract by a vote of at least ~~three (3)~~ four (4) of its members. At least thirty (30) days before such removal shall become effective, the council shall by vote of at least ~~three (3)~~ four (4) of its members, adopt a preliminary resolution stating the reasons for the proposed removal. The manager may reply in writing and may request a public hearing within ten (10) days, which shall be held not earlier than twenty (20) days nor later than thirty (30) days after the filing of such request. After such public hearing if one is requested, or at the expiration of the time permitted the manager to request a public hearing, and after full consideration, the Council by vote of at least ~~three (3)~~ four (4) of its members may adopt or reject a final resolution of removal. By the preliminary resolution, the council may suspend the manager from duty, but the regular salary of the manager shall continue to be paid to him during the period of suspension. If removal is voted, the Town Manager shall be paid any unpaid balance of his salary to the date of removal.

The provisions of the preceding paragraph concerning removal shall not apply to the non-renewal of the contract of the Town Manager at the end of the ~~two year~~ term of the contract which may be done by majority vote of the Council with or without cause, provided that the Town Manager is given at least sixty (60) days notice of such nonrenewal.

Sec. 409.3. Confirm or appoint officers or officials after examination of their qualifications, as follows:

a) the Assessor, the Tax Collector, the Town Planner, the Code Enforcement Officer, the Plumbing Inspector, the Electrical Inspector, the Town Treasurer, the Health Officer, the Director of Public Works, the Superintendent of the Wastewater Treatment Plant, ~~the Director of Public Safety, the Police Chief, the Fire Chief, the Emergency Management Director~~, the Recreation Director and any other department heads shall be appointed, upon nomination by the Town Manager, ~~subject to confirmation~~ by the Town Council after examination of their qualifications. The Town Council may reject any nomination, whereupon the Town Manager shall provide another nominee for the position;

b) the Town attorney and the Town Auditor annually, the members of the Zoning Board of Appeals, the Members of the Planning Board, the members of the Conservation Commission, ~~the members of the Recreation Committee,~~ Representatives to the Biddeford / Saco / Old Orchard Beach Transit Committee, other inter-governmental groups and all other non-elective statutory and advisory officers, boards, commissions, and committees shall be appointed by the Town Council.

The Town Council may remove any of its appointees ~~under paragraph (b)~~ above after providing 60 days written notice of such intent, with reasons therefor, and providing the appointee an opportunity for hearing which shall be conducted in compliance with 1 M.R.S.A. § 401 et seq.

Sec. 409.4. By ordinance resolution or order, create, change and abolish offices, departments, commissions, boards, authorities, committees or agencies, other than the offices, departments, commissions, boards, authorities, committees and agencies established by this Charter. The Council by ordinance resolution or order, may assign additional functions or duties to appointed offices, departments, commissions, boards, authorities, committees or agencies established by this Charter but may not discontinue or assign to any other office, department, commission, board, authority, committee or agency any function or duty assigned by this Charter or State Statute to a particular office, department, commission, board, authority committee or agency. ~~Subject to any provisions of this Charter to the contrary, the Council may, however, vest in the Manager all or part of the duties of any office except the Department of Education;~~

Sec. 409.5. Establish, modify, amend, repeal and codify ordinances;

Ordinances may only be established for the purposes of maintaining or fostering the public health or safety of the townspeople.

Ordinances may not be established, modified, amended, repealed or codified by reference to any standards or other documents unless they, or the language to be used from them are included in the ordinances.

Sec. 409.6. Inquire, as individual members or as a whole, into the management conduct of any office, department or agency of the Town and make investigation as to municipal affairs. All department heads shall be responsible to the Town Council as a whole, but not to individual members;

Sec. 409.7. Adopt and modify the official maps of the Town;

Sec. 409.8. Regulate and restrict the height and number of stories of buildings and other structures, the size of yards and courts, the density of population and the location and use of land, buildings, and other structures for trade, industry, business, residence and other purposes;

Sec. 409.9. Provide for shelters in case of emergencies. ~~safe and sanitary housing accommodations for families of low income;~~

~~Sec. 409.10. Create a housing authority;~~

Sec. 409.11. Adopt, modify and carry out plans proposed by the CDBG Planning Board ~~for the clearance of slum districts and~~ rehabilitation of blighted areas;

~~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;~~

Sec. 409.1~~3~~2. Authorize and issue general obligation bonds and notes of the Town and enter into lease and lease purchase agreements in compliance with state law and Article VII of this Charter;

Sec. 409.14~~3~~. Act as the general legislative body of the Town with all the powers of a Town meeting. The Town Council may not delegate any of the legislative powers conferred by this Charter or by law to any official of the Town or to any statutory or advisory board, commission ~~or~~ committee or person.

Sec. 409.14. Set the policies under which the Town Manager and the Department Heads shall operate and conduct the affairs of the Town. [Job Descriptions of Departments ?]

Sec. 409.15. Dispose of real and personal property acquired through nonpayment of taxes, when deemed in the best interest of the Town, by sealed competitive bids, except that the Council, in its discretion, may sell the property to the former owner for a sum not less than the total of all back taxes, interest, and costs;

Sec. 409.16. Sell, or offer to sell, by sealed competitive bids, surplus property of the Town provided that no real property acquired in any manner other than through nonpayment of taxes may be offered for sale, leased for more than three years, or otherwise disposed of without a referendum vote or, in the case of condemnations, sold to any other than the original owner without first offering it to the original owner for the price paid minus any expenses incurred by the original owner because of the condemnation. Invitations for bid shall be published at least thirty (30) days prior to the date for the opening of bids. The Council may, in its discretion, accept or reject any or all bids.

Sec. 410. Public Hearing on Ordinances.

A proposed ordinance may be introduced in writing by any Councilor to the agenda of any regular or special meeting of the Council.

Upon introduction of an ordinance, the Town Clerk shall distribute a copy to each Councilor and to the Town Manager, shall file a reasonable number of copies in the office of the Town Clerk, shall post a copy of the proposed ordinance on the bulletin board in the Town Hall, and on the Town internet web site, and shall cause to be published in a newspaper of general circulation in the Town the wording of the proposed ordinance or a title descriptive of its contents and purpose, together with notice of the time and place of public hearing thereon and reference to the Town internet web site for the full wording of the proposed ordinance if abbreviated in the notice.

The public hearing shall follow the publication in the newspaper by at least seven (7) days, may be held separately or in connection with a regular or special meeting of the Council and may be adjourned from time to time. All persons interested shall have a reasonable opportunity to be heard.

An ordinance shall become effective upon its adoption by the Council or at such other time as it may specify. After the public hearing the Council may adopt the ordinance with or without

amendment or reject it, but in no case shall the ordinance be adopted or rejected in less than fourteen (14) days after the public hearing.

If an ordinance is amended so as to change substantially its meaning or effect, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedure hereinbefore required for a newly introduced ordinance.

The above procedure may be waived only as provided in Section 410.1 dealing with emergency ordinances.

The Council may enact rules controlling reintroduction of defeated ordinances, provided that no defeated ordinance may be reintroduced for a period of one hundred eighty (180) days from the date of the meeting at which it was considered.

Sec. 410.1. 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 ~~four (4)~~ five (5) 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.

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

Neither the Town Council nor any of its members shall direct or request the appointment of any person to any Town office, position or employment, nor the removal of any person from office or Town employment, by the Manager or by any of the Manager's subordinates, except for cause.

Except for the purpose of general inquiry for information, the council and its members shall deal with the administrative functions of the town solely through the Town Manager and the Town Department Heads, and neither the council nor any member thereof shall give orders to any subordinates of the Town Manager and the Town Department Heads, either publicly or privately, except in case of emergency.

[detailed section to be developed on Inquiries?]

Sec. 412. Conflicts of Interest in appointment.

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.

As used in this section, the term "relative" means a parent, spouse, brother, sister, child, stepchild, stepparent, adopted child, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law [State List - *aunt, uncle, sister-in-law, brother-in-law, if they choose? Would they be able to use those designated in Title 21-A section 1.20 (Immediate family. "Immediate family" means a person's spouse, parent, grandparent, child, grandchild, sister, half-sister; brother, half-brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner or "significant other", the half-brother or half-sister of a person's spouse, or the spouse of a person's half-brother or half-sister? "by blood, marriage or law (to the 2<sup>nd</sup> degree?)"? What about Town Manager's relatives?].*

#### Sec. 413. Independent Annual Audit.

Prior to the end of each fiscal year, the Town Council shall designate either the State Department of Audit or a private certified Public Accountant, who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the Town government and shall submit a report to the Town Council, the Town Manager and the Town Treasurer.

Such accountant shall not be otherwise employed by the Town in any capacity and shall not maintain any accounts or records of the Town business, but shall post-audit the books and documents kept by the Department of Finance and any separate or subordinate accounts kept by any other office, department, or agency of the Town government.

#### Sec. 414. Compensation.

414.1 The Town Council by ordinance shall determine the compensation of Councilors ~~and members of the School Board~~. No increase in compensation shall take effect until after the next municipal election the next Town fiscal year.

414.2 Compensation of the Town Clerk shall be set at the compensation equal to the average of that of the top eight (8) Department Heads.

414.3 The Town Council, by specific order, shall set the compensation of its appointees.

414.4 Salaries of the appointees of the Town Manager shall be set by the Town Manager, subject to approval of the Town Council, by specific order.

Sec. 415. Vacancies in Council.

Any member of the Town Council who misses three (3) consecutive regular meetings of the Council without excuse may be removed from office after notice and hearing by a resolution duly adopted by the majority of the remaining members of the Council.

The office of Councilor shall also become vacant upon resignation, death, recall, failure to qualify or continue to qualify for the office within ten (10) days after written demand by the Council, forfeiture of office, or failure of the municipality to elect a person to the office.

If a vacancy occurs for any reason other than recall during the first six months after a Town Councilor has been elected, such vacancy shall be filled for the unexpired term by that person who was a candidate for Council at the same election at which the Councilor 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 there is no such person, then the vacancy shall be filled by a special election held within 90 days from the date the vacancy occurred.

Otherwise, if a seat on the Council becomes vacant more than six (6) months prior to the next regular municipal election and more than six (6) months prior to the expiration of its term, the vacancy shall be filled for the unexpired term within ninety (90) days from the date that the vacancy occurred by a special election.

If a seat on the Council becomes vacant less than six (6) months prior to the next regular municipal election, the vacancy shall be filled for the unexpired term, if any, at the next regular municipal election.

Sec. 416. Personnel Policy. The Town Council, with advice from the Town Manager, shall adopt an overall Personnel Policy for the Town employees.

Sec. 417. Purchasing Policy. The Town Council, with advice from the Town Manager, shall adopt an overall Purchasing Policy for the Town.

ARTICLE V. TOWN ~~MANAGER~~ ADMINISTRATION

This Article deals with the departments and offices involved with the daily administration of the affairs of the Town Government.

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, the Town Manager need not be a resident of the ~~Town or State~~, but shall become one before entering into a contract with the Town.

Sec. 502. Town Manager, Powers and Duties.

The Town manager shall be the chief administrative officer and the head of the administrative branch of the Town government, and shall be responsible to the Council for the proper administration of the day-to-day affairs of the Town.

The manager shall have the power and shall be required to:

Sec. 502.1. Nominate ~~Appoint~~ department heads, subject to confirmation by the Town Council.

The Town Manager shall establish performance criteria for each 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 overall Personnel Policy of the Town as approved by the Town Council.

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.

Sec. 502.2. Prepare a proposed budget annually, submit it to the Town Council at least ninety (90) days prior to the commencement of each fiscal year, and be responsible for the administration of the budget after adoption;

Sec. 502.3. Prepare and submit to the Town Council as of the end of the fiscal year, a complete report on the finances and administrative activities of the Town for the preceding year, and cause such annual Town report to be published and made available to the public within ~~ninety (90)~~ thirty (30) days after the close of the fiscal year and receipt of the annual Town Audit Report;

Sec. 502.4. Prepare and submit to the Town Council on a monthly basis, a cumulative monthly report of the condition of all appropriation accounts showing appropriations, income and anticipated income to each account, expenditures to date, balance remaining and anticipated expenditures for the remainder of the year.

Sec. 502.5. Attend the meetings of the Town Council, except when the Manager's removal is being considered, promptly provide answers to such questions as members of the Town Council may have, ~~and~~ keep the Town Council advised of the financial condition and future needs of the Town and make such recommendations as may seem desirable after consultation with respective department heads;

Sec. 502.6. See that all laws, orders and ordinances governing the Town are faithfully executed;

Sec. 502.7. Act as purchasing agent for all departments of the Town individually, jointly, or in concert with other municipalities and agencies, subject to provisions of this Charter and the Town Purchasing Policy, except the Department of Education;

Sec. 502.8. Prepare overall Town Personnel and Purchasing Policies Policy to be submitted annually to the Town Council for adoption by January first of each year and be responsible for their its administration after adoption;

Sec. 502.9. Perform such other duties as ~~may be~~ prescribed by this Charter or required by the Council not inconsistent with this Charter.

Sec. 503. Absence of Town Manager.

The Manager may, with the consent of the Council, designate by letter filed with the Town Clerk, a qualified administrative officer of the Town allowed by this Charter, 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 allowed by this Charter, to perform the duties of the Manager until the Manager shall return or the disability shall cease.

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. [Alt. Suggestion]

Sec. 504. Department of Public Works.

This Town Department shall be responsible for the maintenance of the Town Public Infrastructure, Solid Waste Disposal, maintenance of the Town fleet of vehicles and machinery, and such other public works and operations as directed by the Town Council and the Town Manager and not otherwise contracted for, delegated or provided for by the Town Council and this Charter.

The Director of Public Works shall be ~~nominated~~ appointed by the Town Manager, subject to confirmation by the Town Council, and shall exercise all of the powers and perform all of the duties conferred or imposed by law, including the powers and duties of road commissioners under state statute, review all subdivision applications from a public works point of view and advise the Planning Board thereon, perform the duties and have the responsibilities of a Clerk of the Works for all Public Works contracts, and direct such other public works and operations as directed by the Town Council and the Town Manager.

The Director of Public Works shall, annually, prepare a projected plan of work for the department for the next fiscal year and provide it in conjunction with its annual budget to the Town Manager and Town Council. Upon providing such plan, the Director shall also, at the same time, report on the previous year's work.

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, duties and responsibilities 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.

~~Department of General Assistance.~~ [Move to Dept. of Finance?]

~~This Town Department shall be responsible for assessing and evaluating the accuracy of all General Assistance applications and making determinations of eligibility based on State and Federal guidelines.~~

~~The Director of General Assistance shall be nominated appointed by the Town Manager, subject to confirmation by the Town Council, and shall exercise all of the powers and perform all of the duties conferred or imposed by State law on Overseers of the Poor.~~

Sec. 506. ~~Department of Public Safety.~~ **Police Department**

This Town Department shall be responsible for enforcing the various criminal codes of the Town and State and, if need be, assisting the Code Enforcement Officer and Lifeguards in enforcing the various civil codes, ordinances and Beach Safety Rules.

The Chief of Police shall be nominated by the Town Manager, subject to confirmation by the Town Council, and shall exercise all of the powers and perform all of the duties conferred or imposed by State law on Heads of Municipal Police Departments.

The Police Department shall also be responsible for the following functions: Parking Enforcement, Animal Control, and the Summer Police Force.

**Fire Department**

This Town Department shall be responsible for safeguarding the personal physical safety and property of the citizens of the Town and, if need be, assisting the Code Enforcement Officer and Lifeguards in enforcing the various civil codes and solving Beach Safety Problems.

The Fire Department shall also be responsible for the following functions: Rescue & Ambulance, Civil Emergency Preparedness and Lifeguards.

~~The Director of Public Safety shall be appointed by the Town Manager, subject to confirmation by the Town Council. The Director of Public Safety shall report to the Town Manager. Any disciplinary action, including removal, demotion or suspension, taken by the Town Manager, against the Director of Public Safety 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.~~

#### Sec. 507. Department of Finance

This Town Department shall be responsible for the financial affairs of the Town including receipt, recording and disbursement of funds according to policies set forth by State Law, this Charter, the Town Council, and good and accepted accounting practices.

Town Treasurer, Powers and Duties.

The Town Treasurer shall be ~~nominated~~ **appointed** by the Town Manager, subject to confirmation by the Town Council. The Treasurer may be given a contract ~~will be~~ for a two (2) year term subject to removal for cause during such term by the Town Council, after notice and hearing, in accordance with the ~~current~~ contract.

The powers, ~~and~~ duties and responsibilities of the Town Treasurer shall be the same as provided for Town Treasurers under the general laws of the State of Maine and the ordinances duly adopted by the Council. The Town Manager shall not serve as the Town Treasurer.

The Department of Finance shall also include and be responsible for the following functions: Department of General Assistance, Tax Collection

##### Department of General Assistance.

This Town Department shall be responsible for assessing and evaluating the accuracy of all General Assistance applications and making determinations of eligibility based on State and Federal guidelines.

The General Assistance ~~Director Administrator~~ shall be nominated ~~appointed~~ by the Town Manager, subject to confirmation by the Town Council, and shall exercise all of the powers and perform all of the duties and responsibilities conferred or imposed by State law on Overseers of the Poor.

##### Tax Collection

Sec. 508. Recreation Department.

This Town Department shall be responsible for providing a program of recreation for the citizens of the Town and overseeing the resources and facilities therefore.

The Recreation Director shall be nominated ~~appointed~~ by the Town Manager subject to confirmation by the Town Council.

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

Sec. 509. Planning Department.

This Town Department shall be responsible for enforcing the various civil codes of the Town and advise and assist the Town Council, Town Manager, Tax Assessor, Planning Board and other Boards, Committees and Commissions in carrying out their duties. The Planning Department is an information resource that is available to them in formulating and maintaining various civil codes, ordinances and guidelines for the present and future development of the Town and shall promptly provide answers to such questions as they and other members of the Town Government may have .

Ordinances, civil codes and guidelines may only be established for the purposes of maintaining or fostering the public health or safety of the townspeople.

Ordinances may not be established, modified, amended, repealed or codified by reference to any standards or other documents unless they, or the language to be used from them are included in whole in the ordinances.

~~The Town Planner and the Code Enforcement Officer shall be appointed by the Town Manager subject to confirmation by the Town Council. [Moved below]~~

The Planning Department shall also be responsible for the following functions: Code Enforcement, Plumbing, Electrical and Building inspections, Building Permits, Business Licenses,

Sec. 901.1. Subject to confirmation by the Council, the Town Manager shall nominate ~~appoint~~ a Town Planner and a Code Enforcement Officer for a six (6) month probationary period during which they may be removed by the Manager or Town Council with or without cause. ~~After the probationary period, and subject to confirmation by the Council, the Town Planner and the Code Enforcement Officer may shall be given two (2) year contracts subject to removal for cause by the Town Manager Council during the term of the contract, after notice and hearing. The Town Planner and the Code Enforcement Officer shall be given at least 60 days notice of nonrenewal of a contract. A Code Enforcement Officer~~ They, or their successors, shall be appointed or reappointed annually by July 1<sup>st</sup> of each year.

The Town Planner ~~and the Code Enforcement Officer~~ shall attend all meetings of the Planning Board and the Design Review Committee, and the Code Enforcement Officer shall attend all meetings of the Zoning Board of Appeals, or they shall send a designee or request the Town Attorney to advise and assist these Boards, when they are unavailable.

Sec. 510. Waste Water Treatment Department Plant.

This Town Department shall be responsible for the Operation of the Waste Water Treatment, Flood Control and Waste Water Disposal Infrastructure of the Town.

The Waste Water Treatment Plant Superintendent shall be nominated ~~appointed~~ by the Town Manager subject to confirmation by the Town Council and shall be responsible for the management of the department so as to meet all federal and state regulations, submitting an annual budget that includes”