

CHARTER COMMISSION MEETING
WEDNESDAY, JUNE 1, 2011 – 7:00 P.M.

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

Jerome Begert
John Bird
Jayne Flaherty
William Gombar
Tianna Higgins
Ronald Regis
Michael Vallante

Chair Gombar read the Summary of the Preliminary Report:

“SUMMARY OF RECOMMENDED CHANGES TO THE OLD ORCHARD BEACH
TOWN CHARTER

The following are recommended changes to the Old Orchard Beach Town Charter. Many are only housekeeping changes. Some provide explanatory language to various Articles, to make it easier to understand how town government works.

One major change is that all references to the “OOB School Board” have been removed. A statement has been included assuring a return to the local school board system if changes are made at state level.

We have also recommended two other major changes. We recommend that the number of Town Councilors be expanded to seven (7) and that they be term limited.

Specifically, it is recommended that the Town Council shall be composed of seven (7) members, with six (6) having three-year terms and one (1) a one-year term. 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.

The six three-year terms will provide greater continuity, yet ensure that a majority of the Town Council will not turn over at any one election. The one-year term will provide an opportunity for candidates who may only wish to serve for a shorter time and make up the seventh member of the seven-member Town Council.

No member of the Town Council shall be eligible to serve for more than seven years consecutively.

The Town Clerk’s term was changed to four (4) years with the Town Clerk’s salary being determined by averaging the compensation of the top eight (8) department heads. This will bring that salary in line with those of the other Town department heads.

Previously unstated positions, jobs, and offices are now listed in the new Charter. They already exist in our municipal government.

In November, four questions will be asked:

1. Should the number of Town Councilors be increased from five to seven?
2. Should there be term limits for Town Councilors?
3. Should the references to the “OOB School Board” be removed from the Charter to comply with State law changes?
4. To approve all other recommended changes to the Charter.

Much time, research and thought have gone into this document. Our Commission has always put the Town’s interests ahead of our own. We appreciate the input from citizens, department heads, Town Councilors and the Town Manager.”

Robin Dayton, a Town Councilor, then approached the podium.

She said that this has been a year and a half endeavor and a great deal of work has gone into this. She wanted to commend the Charter Commission for their perseverance and hard work. She was at the podium speaking as a citizen, and not as a Town Councilor.

She was concerned with the increase to seven Town Councilors, because Old Orchard Beach is a small town. Without having above a 15,000 population, she was not sure it would work.

She discussed the one-year term, stating there is the same amount of time, energy and expense in running for a one-year-term as a three-year-term. What would be the incentive to run for a one-year term? She said it may not work the way the Charter Commission perceives it will work. She was unsure why someone would want to run for a one-year position unless they had a personal agenda.

Ms. Dayton then started to discuss Article VII, Section 706, asking the Charter Commission if they would consider changing this to a line item appropriation instead of a gross appropriation. She advised that if there is an over expenditure, the Town Council is not afforded the opportunity necessary to do anything about it. In a few cases in the past, a department’s budget went over and the Town Council had to hold their breath that another department would be under budget. If this were a line-item appropriation, it would require everyone to be more diligent and accountable—Town Manager, Town Council, Department Heads. It would bring more focus on how finances are handled. It’s worth considering. Her recommendation is to amend Section 706 as follows:

“Sec. 706. Expenditures and Departmental Revenue.

The Budget for all departments shall include all proposed expenditures. The Town Council shall make a gross appropriation for each department, to be managed at the line-item level, for the ensuing fiscal year. The gross appropriation for each department shall not be exceeded except by consent of the Council and subject to the provisions of Section 708.”

Commissioner Begert stated the last sentence in Section 706 should cover her concerns because department heads need permission to exceed their budget.

Ms. Dayton stated that it's never happened. She understands that sometimes there may be a valid emergency; however the Town Council has never invoked Section 708 as long as she has been on the Town Council and there have been overages.

Commissioner Vallante inquired about the budget process.

Ms. Dayton responded that when the audit is done, the final numbers are out. In the past, overages have been covered by other surpluses.

Vice-Chair Bird stated he has been attending the Town Council Budget Workshops and he had been very disappointed with the procedure vis-à-vis the Charter. At the end, according to the Charter, the department gets a bagful of money to spend however they want, not necessarily the way they said that they were going to spend it.

Ms. Dayton stated the Town Council could require this accountability internally, but they don't.

She then began discussion on the first sentence in Section 706, stating some departments have revenues and they are separate. She believes the first sentence should also include "carryovers".

"Sec. 706. Expenditures and Departmental Revenue.

The Budget for all departments shall include all proposed expenditures, and carryovers. The Town Council shall make a gross appropriation for each department, to be managed at the line-item level, for the ensuing fiscal year. The gross appropriation for each department shall not be exceeded except by consent of the Council and subject to the provisions of Section 708."

For example, the Public Works Department has a CIP budget for streets and sidewalks. The Town Council saves enough money for two years, but it's not apparent in the budget that the money was appropriated, and that it is still there. She then used an example of the Skateboard Park. The Town Council appropriated \$15,000 three years ago and then another \$15,000 last year, to be carried over. It is not transparent in the budget that it was then and that it is still in the budget.

Vice-Chair Bird stated that Sections 915 and 916 speak to that. He then read the first sentence in Section 916:

"The Town Council, by ordinance, may create certain accounts dedicated to specific expenses".

For example, again, the Skateboard Park. If the money is required to be spent just for that purpose, this section covers that. There is, however, a provision for emergencies.

Commissioner Begert commented that the Town Council would have to vote in a public meeting, that an emergency exists in order to tap into that money for other purposes.

Ms. Dayton then began discussion on Section 707, the second line, stating she has never seen a work program for the year, so why is it in the Charter, “when requested by the Town Manager”.

Commissioner Begert stated that some of the Charter Commission members visualized it as good for transparency if the Town Council was informed of the intention of the departments before the cementing of the budget. Other Charter Commission members felt the executive and legislative branches should be kept separate.

Chair Gombar stated that in the current Charter the Town Manager is the only one given the work program, if he requests it. The new Charter would add the Town Council as receiving a copy if the Town Manager does.

Vice-Chair Bird said that the Town Council can require the Town Manager to request it.

He also stated he believed the word “year” is wrong in Section 707, that it should read “... the beginning of the budget **process**,...”, not the budget “**year**”.

Ms. Dayton responded that Section 707 needs more teeth. It should be a requirement that the Town Council receive that.

Commissioner Higgins stated she understands the process as the department head submitting their budget, the Town Council approving the budget and the work program is then involved in the allotments after that point.

Ms. Dayton replied that the work program happens after the budget is approved.

Vice-Chair Bird stated that the department heads need to figure out what they need to do the next year, figuring out a work plan. It should be mapped out before making a budget. That information should go to the Town Manager and the Town Council. The department heads need to do this so that they know how much money they need for the next fiscal year.

Ms. Dayton said the budget is an estimate. The Town Council has the right to approve or disapprove these allotments, when the department head can spend them and how.

Vice-Chair Bird read the following from Section 707:

“...a work program for the year, which program shall show the requested allotments of appropriations for such office, department or agency, by stated periods, and the purposes to which they are to be put, for the entire next budget year”.

Chair Gombar said that Ms. Dayton is asking for more teeth. What more teeth are needed? The Charter Commission added that the Town Council should get a copy. Isn't that up to the Town Council to ask the Town Manager?

Ms. Dayton responded that it should be a requirement.

Chair Gombar said that he read it as the Town Manager sets the deadline.

Commissioner Begert stated that there are three ways to handle this—1) Request and hope; 2) Put it in the Charter; 3) Use what is available to the Town Council to order the Town Manager to do it.

Ms. Dayton stated there are Town Councilors who may not be experienced or feel the value of this information. It should be in the Charter. She is looking for standardization across the board. Her difficulty is with the words, “when requested”.

Commissioner Vallante said they’ve talked about a couple of philosophies. To what degree should this document control day-to-day operations? He is in favor of the Town Manager controlling most of the running of the Town. The Town Council has oversight over the Town Manager and he is counting on a good relationship with the Town Manager. The Charter needs flexibility in case of an unplanned event. He asked Ms. Dayton if the Town Council could not intervene with the Town Manager if it weren’t in the Charter.

Ms. Dayton replied that the Town Council has to have three votes. If any particular issue is not supported by a majority, it won’t happen.

Commissioner Vallante responded that it is one reason for a seven-member Town Council.

Commissioner Begert stated the Town Attorney had given the Charter Commission a paper entitled, “Introduction to Drafting a Charter”. Part of that paper states that the Legislative Body rules unless the Charter says otherwise, and that the Town Council is the Legislative Body.

Vice-Chair Bird stated the current and recommended Charter, both, are heavily slanted toward the Town Manager, which he did not agree with. Essentially, the Town Council has only the ability to fire the Town Manager, “the Nuclear Option”. He doesn’t think it’s appropriate. The Town Council should have more options to be able to guide better. There is a great deal of sentiment, however, from other members that the Town Council hired him, let him do his job. If the Town Council doesn’t like him, fire him. Vice-Chair Bird would prefer otherwise, since the only option that they have, firing the Town Manager and getting a new one, is highly inefficient, drawn-out, contentious and disruptive for the Town.

Ms. Dayton said the public has to decide this question. She then began discussion on Section 502.6, stating the Charter Commission should add the words “and policies”. It would strengthen the financial internal policies.

“Section 502.6 See that all laws, ordinances, and Charter provisions and policies governing the Town are faithfully executed;”

Commissioner Regis stated those policies are all in the Charter—allotments, hiring, etc.

Commissioner Begert said the ones Ms. Dayton is talking about are created by the Executive Branch. They can’t be placed in the Charter.

Ms. Dayton stated that in Section 502.8, the Purchasing Policy should be presented annually.

Commissioner Vallante said the Charter Commission has set the structure up. He supports the autonomy of the Town Manager because he assumes there is oversight by the Town Council. If not, it is not a Charter issue. It is a problem with the Town Council. A larger Town Council may be able to handle oversight better.

Ms. Dayton stated that maybe annually is too much work. Maybe it should be every other year.

Vice-Chair Bird said the Charter Commission added Section 914, as an enforcement provision.

Chair Gombar stated that over the past 18 months, the Charter Commission has had quite a few cantankerous discussions on how broad the Charter should be. Should it be a skeletal document or provide more detail? You don't want your Constitution to be filled with minutia that could change from year to year.

Dusty Guarino, 156 Ross Road, then came up to the podium to speak.

She thanked the Charter Commission for serving, stating she was on the Charter Commission about 30 years ago.

She was curious as to why the Charter Commission wants to change from five to seven Town Council members. She feels it's hard to obtain a quorum now, and was concerned about having more members.

Vice-Chair Bird responded that it was basically for two reasons. The first is for practicality and the second is for better representation. The practicality is that if there are only five members, they tend to sort out into factions. It's easier to get three people into a faction than four. With seven members, it allows for better turnover, as well. Currently with five members, three are elected one year, and two elected another year, so three could be a majority elected at the same time. With seven members and three-year terms, you're rotating two people, plus the one-year person each year. There isn't a majority of the Town Council being elected at any time, so people can't run as a block and take over.

Ms. Guarino said that in her history, she has seen maybe one block of people running. With three or four people in the majority, she would still be concerned about a small group of people making major decisions for the Town.

Vice-Chair Bird responded that he has seen a block run, four out of the five got elected, and it was a very bad time for the Town. He agreed with her concern about a small group of people making major decisions for the Town and hoped that this arrangement would lessen the probability.

Ms. Guarino also stated she is not in favor of term limits. She wants flexibility. She is concerned about continuity, and it takes away her choice as a citizen.

Commissioner Regis advised her that it would be a separate question on the ballot.

Vice-Chair Bird said that it doesn't prohibit someone from ever running for the office, again. It's for seven years on consecutively and then it starts over. They would take one year off, and then they could do another seven.

Ms. Guarino replied that a Town Councilor that is gone for a year might be a detriment to her. She doesn't like the citizen's options being taken away. We're a community that is willing to take people out of office when they don't like them. It shouldn't be dictatorial or black and white. There needs to be flexibility. All ordinances don't have to be in the Charter.

She then questioned the Town Clerk moving to a four-year term. Right now it's a two-year term, and she inquired of the Charter Commission why they wanted a four-year term. In 50 years, she said the Town has maybe elected three Town Clerks. She's not against it, but she was wondering about the reasoning.

Vice-Chair Bird stated that this one is for stability. The position requires a lot of qualifications, and the position is involved in elections every two years. It's more assurance of stability for the Town. There is a provision in the Charter for removal. This is an investment for the Town. The Town Council is different. They learn on the job. But it is still valuable that the Town Clerk be an elected position for independence.

Ms. Guarino asked why the Charter Commission felt they needed a formula.

Chair Gombar stated it's important to insulate the Town Clerk because it is an elected position. It should be insulated from Town Council and Town Manager influence. The salary is done by a formula so no one could grossly reward or punish the Town Clerk by using the salary.

Vice-Chair Bird stated it's an independent office and should be. Right now it's financially dependent on the Town Council and Town Manager. The Town Manager sets the budget and the Town Council rules on it. There is a possibility of mischief. Currently, the Town Clerk's position is way out of line with other salaries of other department heads. It's difficult for the Town Clerk, as an elected official, to go to the Town Council and ask for a raise. The Town Clerk has as many duties and responsibilities, although of different types, as some other departments, for example, the Recreation Department.

This formula allows the Town Council to have influence on the salary, but not directly. For example, if the economy is bad and none of the department heads get raises, the Town Clerk won't get a raise. If the economy is good and the other department heads get raises, the Town Clerk will, correspondingly, get a raise.

Ms. Guarino stated that, as a whole, she is happy with the Charter Commission's recommendations.

Vice-Chair Bird thanked her and replied that these recommendations are hopefully better than the current Charter in many ways. The Charter Commission has made it more educational. They've explained the duties of departments and branches of government, provided more financial accountability and fairness, and tried to tidy things up a bit. The Charter Commission will be holding another meeting to go over the recommendations from the public hearing.

Commissioner Flaherty said it was a pleasure to work with everyone and it was certainly a learning experience. The Charter Commission members have all shared a love for the Town.

Commissioner Begert told the public to express themselves in the voting booth; however, if they have no sentiment on the questions, do what they want for the first three questions, but question #4 is a year and half of strenuous analysis and getting consensus. Please give the benefit of the doubt to us that the Charter Commission did their due diligence.

Chair Gombar wanted to recognize and thank former Charter Commission members Laura Bolduc and former Chair Paul Ladakakos, who had to resign due to health issues.

Meeting adjourned at 8:27 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 eight (8) pages is a true copy of the original Minutes of the Charter Commission Meeting held June 1, 2011.

Kim M. McLaughlin