

CHARTER COMMISSION MEETING  
TUESDAY, MARCH 29, 2011 – 6:30 P.M.

Chair Gombar opened the regular meeting at 6:34 p.m., in Town Hall, Council Chambers. The following members were in attendance:

Jerome Begert  
John Bird  
William Gombar  
Tianna Higgins [arrived at 6:45 p.m.]  
Michael Vallante  
Jayne Flaherty [excused absence]  
Ronald Regis [excused absence]

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

Chair Gombar stated the Charter Commission will begin with discussion on Section 409, and who the appointing authority should be.

Chair Gombar then read Attorney Vaniotis's recommendations in his February 18<sup>th</sup> letter.

**“Section 409.3(a) and (b) (Confirm or appoint officers or officials... ).**

The proposed changes would actually make the Council the appointing authority for all the positions listed in subparagraphs (a) and (b), rather than the confirming authority as is currently the case in subparagraph (a). Also, because the proposed revision adds in some employment positions which are not currently required by the Charter (i.e., Plumbing Inspector, Electrical Inspector, Emergency Management Director, Parks Director), the introductory language to subparagraphs (a) and (b) should be changed to read as follows: "Appoint such officers and officials, after examination of their qualifications, as may be required by this Charter or State law or as the Town Council may deem appropriate, as follows:".

In subparagraph (b), I recommend taking out the word "annually." The risk is that, if the Council inadvertently omits to make the appointment annually, the authority of either the Town Attorney or the Town Auditor could be challenged. Traditionally, such appointments, unlike the appointments of board members who have fixed terms, are standing appointments.

In order for the grammar of the entire paragraph to work, the words "shall be appointed by the Town Council" need to be restored to subparagraph (b). And, in the last paragraph, the reference to Council appointees should now refer to both subparagraphs (a) and (b). Finally, I point out that the suggested language changes do represent a fairly substantial policy shift. There is, in practice, a difference between having the Manager appoint the subparagraph (a) positions, subject to confirmation by the Council, and having the Manager only nominate with the Council making the actual appointment decision. That change would involve the Council more deeply in personnel administration than is the case under the current Charter.”

Commissioner Begert stated that at a previous meeting, it was suggested that, in terms of hiring, it should be phrased as, “the Town Manager nominates, the Town Council confirms, and then the Town Manager appoints”. That covers it, and the Town Manager had given his nod of approval when he was present.

Commissioner Vallante commented that wherever the term “nominate” currently is in the Charter, it could be replaced with Commissioner Begert’s recommendation.

Vice-Chair Bird stated that in Section 409.3, to be clear, they should have a separate third paragraph that lists appointees who can also be other department heads, such as the Plumbing Inspector and the Electrical Inspector.

Commissioner Vallante stated that the Town Manager appoints and the Town Council confirms. It has been that way for years.

Vice-Chair Bird stated that that is a policy decision. Attorney Vaniotis did not make a recommendation either way.

Chair Gombar stated the Charter Commission is turning the Charter on its head. They’ve given the Town Council removal power, as well.

Vice-Chair Bird motioned to leave Section 409.3 as they currently have it recommended.

Commissioner Vallante stated the Charter Commission cannot accept Vice-Chair Bird’s proposal until they know who does what. He stated the Town of Old Orchard Beach is a “Town Manager” form of government. As such, the Town Manager should be responsible for making the appointments, not the Town Council.

Vice-Chair Bird responded that the Town of Old Orchard Beach does not have a “Town Manager” form of government, that we have a Charter.

Commissioner Begert stated he would agree on changing the terminology to have the Town Manager make the appointments as long as the Town Manager serves at will to the Town Council.

Commissioner Higgins said that when someone is being hired for a job, that everyone should be involved. If the Town Manager is working for the Town Council, they should already have the Town Council involved. The Town Council doesn’t just “rubber stamp”, if they have the power to say “no”. The Town Council should confirm and the Town Manager should do the rest.

Chair Gombar stated that the Town Manager, Jack Turcotte, had advised them that it would limit the candidates if the Town Council has the power to remove.

Commissioner Higgins said she thought the Charter Commission was trying to remove the bias.

Commissioner Begert stated that the Town Manager is not necessarily the only person with personnel experience. A Town Councilor may have served in a capacity that gives them that knowledge.

Commissioner Vallante said that by the Town Manager conducting the hiring, it takes the political influence out of the hiring process.

Commissioner Vallante motioned, seconded by Commissioner Higgins, to amend Section 409.3a to read:

“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, Plumbing Inspector, 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, the Parks Director and any other department heads shall be ~~appointed~~ nominated by the Town Manager, ~~confirmed~~ by the Town Council after examination of their qualifications, and then appointed by the Town Manager. The Town Council may reject any nomination, whereupon the Town Manager shall provide another nominee for the position;”

Commissioner Vallante further stated that when the Town Council appoints, they take on a managerial role and that’s not how it’s set up. The Town Manager manages the Town.

Vice-Chair Bird said that appointments are a function of the Town Council, the policy-making body. Having the Town Manager do the appointing is very elitist and undemocratic.

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

Commissioner Begert stated that he was voting “no” because the Town Manager needs to serve at will.

Chair Gombar then noted Attorney Vaniotis’s recommendations for Section b) in his February 18<sup>th</sup> letter, “**Section 409.3(a) and (b) (Confirm or appoint officers or officials... )**.”

In subparagraph (b), I recommend taking out the word "annually." The risk is that, if the Council inadvertently omits to make the appointment annually, the authority of either the Town Attorney or the Town Auditor could be challenged. Traditionally, such appointments, unlike the appointments of board members who have fixed terms, are standing appointments.

Commissioner Higgins stated she sees no reason to remove the word “annually”.

Vice-Chair Bird suggested that a number of the appointments be moved to a new Section c): Plumbing Inspector, Electrical Inspector, Emergency Management Director and Parks Director as these are appointments that could be dual appointments.

Commissioner Higgins suggested that Section C should state these positions may be held by existing department heads, but that maybe it should be in a different area of the Charter.

Vice-Chair Bird agreed regarding creating a new Section C, and suggested placing those positions in that paragraph for now, and to possibly change the location at a later date.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to create a new Section 513, titled “Dual Appointments. The following positions may be held by other existing department heads: Plumbing inspector, electrical inspector, emergency management director and parks director.”

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to number the section regarding the Assessor as Section 512, and title the section, “Division of Assessment”.

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Vallante to name Section 511, as “Waste Water Department”, remove the first paragraph, and change the second paragraph as follows. All changes regarding the name of the department as to be amended globally throughout the Charter:

“The Waste Water Treatment Department Superintendent shall be responsible for the management of the department so as to meet all federal and state regulations, submitting an annual budget that includes operational, maintenance and capital costs, and assist the Planning Board and Town Planner in the long term planning process; including identifying growth areas, economic opportunities, recommending fee structures and infrastructure improvements.”

VOTE: Unanimous.

Vice-Chair Bird read a sentence from Attorney Vaniotis’s letter from February 18<sup>th</sup> regarding section 409.4, “It seems to me that the proposal to remove the last sentence unnecessarily ties the hands of the Town Council in the management of the Town”. This referred to the Town Manager holding several different Town offices.

Chair Gombar asked the Commission if they wanted to change Section 409.4 after reading the attorney recommendation.

Commissioner Begert stated the Town Manager should not be doing other jobs than Town Manager.

The Commission agreed they did not want to amend this section.

Chair Gombar then read Attorney Vaniotis’s comments from his February 18<sup>th</sup> letter regarding Section 409.11, “I concur with the notion of removing the words “proposed by the Planning Board.” However, I recommend leaving in the words “the clearance of slum districts.” While the

word “slum” is not in common usage nowadays, it is still utilized in the state statutes authorizing urban renewal and redevelopment projects, which this section is intended to reference.”

Commissioner Higgins stated she found it odd that “slum” is still used in state statute, but she did not have a great conviction either way.

Vice-Chair Bird recommended the Charter Commission leave the section with their current recommendation.

Chair Gombar initiated discussion on Section 409.16, surplus property, and Attorney Vaniotis’s recommendation from his February 18<sup>th</sup> letter,

**“Section 409.16 (Sell...surplus property... ).**

I think the changes proposed to Section 409.16 (which you indicated reflect some concerns about the scope of the eminent domain power) would work better if contained in a new Section 409.17, which might read as follows:

**Sec. 409.17.** Exercise the power of eminent domain as authorized by State law, except that the Council may not condemn land improved with homes or commercial or industrial buildings or structures for the purposes of private retail, office, commercial, industrial or residential development, for the primary purpose of enhancement of tax revenue, or for transfer to an individual or a for-profit business entity, except in an area identified as a blighted area pursuant to a redevelopment plan or urban renewal plan authorized by state law.

That language actually comes from a statute enacted by the Legislature several years ago in response to the U.S. Supreme Court Decision in *Kelo v. City of New London*, 545 U.S. 469 (2005). See 1 M.R.S.A. § 816 (copy attached). Therefore, it is not necessary currently to incorporate that language in the Charter. However, if the state law is later relaxed, having this language in the Charter would provide a more restrictive rule for Old Orchard Beach. That is a policy decision.”

Vice-Chair Bird pointed out that this recommendation of Attorney Vaniotis’s had nothing to do with “Section 409.16 (Sell...surplus property...) and was clearly irrelevant.

Commissioner Higgins stated that Attorney Vaniotis suggested that eminent domain be a separate paragraph, and she suggests they ignore his suggestion, as they have already addressed that issue.

The discussion then moved to Section 410.

Commissioner Higgins said that Attorney Vaniotis’s recommendation goes beyond what the Charter says, and read his recommendation, “I would suggest adding a new sentence at the end, to read: “A failure or malfunction in the Town internet website shall not require the postponement of any hearing or action by the Council or invalidate an ordinance otherwise enacted in compliance with the procedures of this section.”

Commissioner Begert was concerned about not informing people, and said they will just have to postpone any items not so advertised.

It was discussed that if the website goes down, it would mean that any proposed ordinance or any meetings would have to be postponed until the website came back up. If the website goes down, it could be down for weeks. There would be no way of knowing, and all Town business would have to be placed on hold for that amount of time. The website is an added place to advertise. It would still be advertised at Town Hall, and in the newspaper.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to add Section 410.2:

“Section 410.2. Public Hearing on Ordinances.

A failure or malfunction in the Town internet website shall not require the postponement of any hearing or action by the Council or invalidate an ordinance otherwise enacted in compliance with the procedures of this section.”

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

Chair Gombar moved on to Section 411, stating that Attorney Vaniotis made a recommendation in reference to removal for cause.

Commissioner Vallante stated that Attorney Vaniotis did a great job in describing the two branches of government, but he was not making a motion to change anything.

Commissioner Higgins didn't think that what the Charter Commission did was wrong.

Chair Gombar stated there weren't any recommended changes regarding emergencies.

Commissioner Begert did state that if there were an emergency, the EMA Director should control the situation, not the Town Council.

Fire Chief John Glass approached the Charter Commission and advised the purpose of this section was so the EMA Director wouldn't receive orders from the Town Council directly unless the Town Manager was unavailable. The EMA Director should be talking to the Town Manager as decisions are made, i.e. opening a shelter.

Commissioner Vallante stated that if the Town Council didn't agree with the Town Manager or EMA Director, could they do something different?

Chief Glass responded that it wouldn't be discounted, that it would be dependent on the situation. There would be coordination and compromising. Everyone's input would be taken into consideration. For example, a lot of towns want to open their own shelter in an emergency, but it is not always within their financial capabilities. A compromise may be a small warming shelter. Also, the York County Emergency Management Agency would also step in and advise as to the reasons why there may not be enough resources.

Commissioner Begert commented that if it were a federal disaster, the Town Council wouldn't have say anyway. The command system changes in a federal emergency. The Town Council would not be authorized, nor would it be practical.

Commissioner Begert motioned, seconded by Commissioner Vallante, to add "a localized" in the second paragraph of Section 411, "except in case of a localized emergency".

Vice-Chair Bird stated that he didn't believe a qualifier was necessary. What if the Town Manager weren't available in an emergency?

Chair Gombar's concern was the possibility of a loop hole, where someone could decide a pot hole was an emergency.

Commissioner Higgins responded that if the Town Council were abusing the word "emergency", that hopefully someone would catch on to that.

The motion and second were rescinded.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to add a new Section here, originally written by Commissioner Vallante, stating it is appropriate, and it would provide a way of getting complaints settled:

~~"Section 502.10~~ Manage Inquiries Concerning Municipal Employees

With the understanding that transparency and accountability in municipal affairs are the rightful expectations of all residents, this section is established to provide a systematic, unbiased, and means of inquiry into the job-related-conduct of all municipal employees and officials. To that end:

- i. Any citizen resident(s) may submit, in writing, to the Town Manager, a request for the administrative inquiry into the actions of any town employee. Such request shall include all relevant information that may assist in the Inquiry.
- ii. Upon receipt of such request, the Town Manager shall enter into a permanent Inquiry Log:
  - The name and contact information of the person(s) requesting the Inquiry
  - The date and Inquiry was requested
  - The name of the municipal employee about whom the Inquiry is requested, if known or relevant.
- iii. Within ten business days, the Town Manager shall complete an investigation of the matters cited in the Inquiry request and shall:
  - Make a judgment and render a decision in the matter
  - Take or order remedial or other appropriate action as necessary
  - Inform all concerned parties of the decision
  - Record, in the Permanent Inquiry Log, a brief statement of the action taken
  - Record, in the Permanent Inquiry Log, the date that the concerned parties were notified of the action taken in the Inquiry.

iv. In the event that the person(s) making the initial request are not satisfied with the findings or actions of the Town Manager, those actions or findings may be appealed to any member(s) of the Town Council who will be authorized to direct the Town Manager to repeat the process as outlined in this section.

v. The Inquiry Log shall be made available to any member of the Town Council upon request at any time and for any reason.”

Commissioner Higgins stated she would need to read it several times to comprehend it, stating the Charter Commission has never hashed this out. She would not want to vote on this issue tonight.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to table Section 502.10.

VOTE: Unanimous.

Chair Gombar moved on to Section 412, reading Attorney Vaniotis’s recommendation that the specific Conflict of Interest relationships be spelled out.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to amend Section 412 as follows, listing the 3<sup>rd</sup> degree relationships specifically:

“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. 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. As used in this section, the term "relative" means related by blood, marriage, or law, including spouses, children, grandchildren, great-grandchildren, parents, brothers, sisters, nephews, nieces, grandparents, uncles, aunts, great-grandchildren, 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.”~~

VOTE: Commissioners Begert, Higgins, Vallante and Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 4-1.

Vice-Chair Bird motioned, seconded by Commissioner Begert to insert “or the Town Manager” into Section 412 as follows:

“Sec. 412. Conflicts of Interest.

No relative of a Town Councilor or the Town Manager 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.”

VOTE: Unanimous.

Commissioner Higgins began discussion on Section 414.2.

Vice-Chair bird suggested taking out “not less than”. It should be set at an equal rate—not more or less. It should be a straight formula.

Chair Gombar stated the office is an independent, elected office.

Commissioner Vallante stated that the Charter Commission’s reasoning for amending this Section should be placed in their summary.

Chair Gombar then began discussion on Section 414.4, stating that is moot by the Charter Commission’s first action at the beginning of the meeting.

Discussion then began regarding the next Charter Commission meeting, and the need to meet every week until it is finished. The meeting was tentatively set for Friday, April 8<sup>th</sup>, 2011, 6:30 p.m. to 9 p.m., possibly untelevised.

Meeting adjourned at 9:34 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 nine (9) pages is a true copy of the original Minutes of the Charter Commission Meeting held March 29, 2011.

Kim M. McLaughlin