

CHARTER COMMISSION MEETING
TUESDAY, NOVEMBER 30, 2010 – 7 P.M.

Chair Ladakakos opened the regular meeting 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
Paul Ladakakos
Michael Vallante
Ronald Regis (excused absence)

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

Motion made by Commissioner Begert, seconded by Commissioner Higgins, to accept the minutes of November 10, 2010.

VOTE: Unanimous.

Town Clerk, Kim McLaughlin, read Section 405 of the Town Charter:

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

Vice-Chair Bird recommended the following change to Section 405, stating the Charter needed to clarify that no additional duties will be placed on the Chair, i.e. Mayor, etc.:

“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.”

Chair Ladakakos felt the Chair does have certain powers. An example would be placing people on agendas for committees.

Commissioner Higgins believed it did not belong in this section.

Commissioner Gombar questioned the need for the change.

Chair Ladakakos then questioned what “extraordinary powers” were.

Vice-Chair Bird stated that the Chair might be empowered by the Town Council to make the actual appointments to the committees.

Commissioner Vallante felt the wording was ambiguous, and is reluctant to add that wording. He was concerned about the term “extraordinary powers”, stating it needed to be more specific and understandable.

Commissioner Begert asked for a vote.

Vice-Chair Bird made a motion to table Section 405, seconded by Commissioner Begert.

VOTE: Unanimous.

Town Clerk, Kim McLaughlin, read Section 406.

“Sec. 406. Quorum.

A majority of the Town Council shall constitute a quorum for the transaction of business provided that three 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.”

Vice-Chair Bird made the following underlined/strikethrough recommended changes to Section 406.

“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.”

Commissioner Gombar thought the reference to the number of councilors should be removed, and the term, “majority of elected councilors”, should be used.

Commissioner Higgins recommended, “Half of the Town Council, plus one”.

Commissioner Gombar stated that maybe there should be an addendum to the referendum question on the ballot changing the references to the number of councilors depending on if the referendum question passes on increasing the number of councilors from five to seven.

Commissioner Higgins was concerned that this is not the only section that the number of councilors is referenced.

Commissioner Vallante recommended the wording on the ballot could be, “Do you agree to change the number of councilors, as well as all references in the Charter?”

Vice-Chair Bird agreed the Charter should have flexible language, and not a definite number.

Commissioner Higgins said the word “seated” should be placed in the first sentence, “A majority of the seated Town Council shall constitute a quorum...”

Commissioner Higgins made a motion, seconded by Commissioner Gombar to amend Section 406 as follows:

“Sec. 406. Quorum.

A majority of the seated Town Council shall constitute a quorum for the transaction of business provided that ~~three~~ affirmative votes of the majority of the whole Council 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.”

VOTE: Unanimous.

Discussion continued on Section 406.

Commissioner Vallante questioned the “compelling” of members. The Charter Commission needs to put meat into it or throw it out.

Commissioner Higgins said it’s hard to compel attendance unless a Judge does so with a subpoena.

Vice-Chair Bird stated there were times, many years ago, when a police officer went to a councilor’s home to pick them up because they didn’t go to the meeting and they were needed for a quorum.

Commissioner Begert said a Town Councilor could sabotage a vote by purposely refusing to attend a meeting. A Town Councilor should be forced to attend.

Commissioner Flaherty stated they have no authority to force someone to attend.

Town Clerk, Kim McLaughlin, read the response from Attorney Vaniotis when the Charter Commission asked this question at the February 9, 2010 meeting.

“Question 1. The Charter Commission was discussing section 406, and questioned the word “compel”, inquiring as to how “a smaller number may adjourn from time to time or may compel attendance of absent members”. Is this an empty threat? If not, how is it accomplished? If it is an empty threat, does it need to be in the Charter?”

Answer:

The Commission is correct that there is no mechanism within the Charter for actually compelling an absent member to attend a meeting. What the language essentially translates to is giving authority to the “smaller number” than a full majority to attempt to make a meeting happen by contacting the absent members and telling them they are needed. But that, I think, is a power which the “smaller number” has implicitly anyway.

A casual review of several charters in the area indicates that some contain this language, and some do not. The Town of Freeport charter says that the members who do show up for the meeting “may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council.” And the Freeport council rules contain a provision that says that those members present may “send a police officer or other person for any or all of the absent members...” Even that, however, does not really create the ability to compel – the police officer could not take the absent member into custody (no crime is committed).

While leaving the language in the current charter does not really cause any harm, I also think the Commission is on the right track in suggesting that it serves no real purpose.”

Commissioner Higgins stated that the Charter would require a lot of rules to determine if the Councilor was purposely avoiding the meeting or was ill.

Commissioner Vallante motioned, seconded by Commissioner Flaherty to strike the following language in Section 406, “or may compel attendance of absent members”:

“Sec. 406. Quorum.

A majority of the seated Town Council shall constitute a quorum for the transaction of business provided that ~~three~~ affirmative votes of the majority of the whole Council 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.”

Vice-Chair Bird stated it’s an empty threat unless the Town Council wants to do something. He said he would vote no, because it’s not doing any harm to leave it in.

Commissioner Flaherty stated that if the Charter Commission puts teeth into the document, then it should stay, but it undermines the purpose of the Charter, if they leave it in, and it has no teeth.

Commissioner Vallante was concerned that if the Charter Commission leaves that wording in the Charter, and someone on the Town Council tries to enforce it, are they opening the Charter to creating problems?

Vice-Chair Bird stated the wording was in the Charter to prevent problems.

Commissioner Vallante agreed, if it had teeth.

VOTE: Unanimous.

Town Clerk, Kim McLaughlin, read Section 407.

“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.”

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to accept Section 407 as currently written.

VOTE: Unanimous.

Town Clerk, Kim McLaughlin, read Section 408.

“Sec. 408. Powers and Duties.

The members of the Town Council shall be and constitute the municipal officers of the Town of Old Orchard Beach for all purposes required by statute, and except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers under the laws of this State.”

Commissioner Higgins state that at one of the previous meetings, it was mentioned that “by this Charter” should be added after “herein specifically provided...”

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 408 using the underlined language below:

“Sec. 408. Powers and Duties.

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

Town Clerk, Kim McLaughlin, read the introductory part of Section 409.

“Sec. 409. Enumeration of Powers.

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

Commissioner Higgins motioned, seconded by Commissioner Vallante, to accept Section 409 as currently written.

VOTE: Unanimous.

Town Clerk, Kim McLaughlin, read Section 409.1.

“Sec. 409.1. Appoint the Town Manager. The Town Council shall appoint an officer of the Town who shall have the title of Town Manager and shall have the powers and perform the duties described in this Charter. No Councilor shall receive such appointment during the term for which the Councilor shall have been elected, nor within one year after the expiration of the term, nor shall any Councilor act in that capacity. The Council 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 shall be given a two (2) year contract 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.”

Commissioner Higgins stated the Charter Commission agreed to change the word “officer” to “employee” in their first round of discussions. Commissioner Vallante concurred. Commissioner Higgins motioned, seconded by Commissioner Flaherty, to amend Section 409.1 as follows:

“Sec. 409.1. Appoint the Town Manager. The Town Council shall appoint an ~~officer~~ employee of the Town who shall have the title of Town Manager and shall have the powers and perform the duties described in this Charter. No Councilor shall receive such appointment during the term for which the Councilor shall have been elected, nor within one year after the expiration of the term, nor shall any Councilor act in that capacity. The Council, after examination of the qualifications of all applicants, may reopen the search or shall appoint the a Town Manager for a six (6) month probationary period during which the manager may be removed by a majority vote of the Town Council with or without cause. After the probationary period, the manager ~~shall~~ may be given a ~~two (2) year~~ contract of not more than two (2) years duration subject to removal for cause during the term of the contract. It shall be the duty of the Town Council to provide the Town Manager with a list of expectations upon hiring and annually thereafter. It shall be the duty of the Town Council to evaluate the Town Manager against the list of expectations and provide the Town Manager with a written copy of the evaluation, at least on an annual basis.”

VOTE: Unanimous.

Town Clerk, Kim McLaughlin, read Section 409.2.

“Sec. 409.2. Remove 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) of its members. At least thirty (30) days before such removal shall become effective, the council shall by vote of at least three (3) 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) 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 nonrenewal of the contract of the Town Manager at the end of the two year term 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.”

Commissioner Higgins recommended changing the numbers to the “majority of the whole Council”.

Commissioner Vallante stated that the language needs to be gender neutral.

Vice-Chair Bird said they should delete the reference to the “two-year contract” and put in, “of the contract”.

Commissioner Gombar motioned, seconded by Commissioner Higgins, to amend Section 409.2 as follows:

“Sec. 409.2. Remove 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) of its members~~ a majority of the whole council. At least thirty (30) days before such removal shall become effective, the council shall by vote of at least ~~three (3) of its members~~ a majority of the whole council, 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) of its members~~ a majority of the whole council, 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 nonrenewal 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.”

Town Clerk, Kim McLaughlin, read Section 409.3 (a).

“Sec. 409.3. Confirm or appoint officers or officials, as follows:

a)The Assessor, the Tax Collector, the Town Planner, the Code Enforcement Officer, the Town Treasurer, the Health Officer, the Director of Public Works, the Superintendent of the Wastewater Treatment Plant, the Director of Public Safety, the Recreation Director and any other department heads shall be appointed by the Town Manager, subject to confirmation by the Town Council;”

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 409.3 (a) as follows with the underlined and strikethrough language:

“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, 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;

Commissioner Higgins inquired why the Plumbing and Electrical Inspectors needed to be added into this section.

Vice-Chair Bird stated they were current appointments by the Town Council.

Commissioner Higgins was concerned what would happen if the Town Council could not locate someone to fill those positions.

Commissioner Vallante asked the rest of the Commission if they wanted a “Parks” Department Head.

Commissioner Higgins was concerned it may force the Town Council’s hands.

Commissioner Vallante inquired if the Charter Commission views the parks as a necessary and valuable part of the community, and if they do, to ensure their protection, it should be placed in the Charter.

Chair Ladakakos agreed that a Parks and Recreation Department should be created as a dual role, using the example of the swings in Memorial Park.

Jason Webber, the Recreation Director, came up to the table and spoke on behalf of his department. The Recreation Director could be the Department Head, and have a Parks Supervisor under him, like other Towns do. He did state that the position should not be held by a volunteer, because you can not always find volunteers.

Commissioner Flaherty stated there needs to be a Parks Department in the Charter.

Commissioner Vallante said that someone mentioned at a previous meeting that the Recreation Department and the Parks Department should be separate.

Commissioner Begert recommended that a study needs to be conducted first to see if a Parks Director is needed.

Jason Webber stated that different areas of Town need to be taken care of, not just the parks, i.e. the Town Hall grounds and the rotary in halfway. He said although they may not be parks, someone needs to maintain them. He doesn't see the need to separate the Recreation Director's position. He said the Recreation Director can be the department head and oversee the Park Director.

Commissioner Vallante motioned, seconded by Commissioner Higgins to amend the original motion to add "Parks Director".

VOTE: Chair Ladakakos, and Commissioners Gombar, Flaherty, Higgins, Begert and Vallante voted in favor; Vice-Chair Bird voted against.

VOTE on original motion, as amended: Unanimous.

Town Clerk, Kim McLaughlin, read section 409.3 (b).

"b)the Town attorney, the auditor, 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 and all other nonelective statutory and advisory officers, boards, commission and committees shall be appointed by the Town Council."

Vice-Chair Bird stated that at a previous meeting, it was mentioned the Recreation Committee wasn't active and should be deleted from the Charter.

Jason Webber said since the last time it was discussed, the Recreation Committee has been resurrected, and they have a few good people that want to help out. He recommended it be kept in the Charter. He wants to start having meetings every three months.

Commissioner Gombar recommended that it be located in an Ordinance, but not a requirement in the Charter.

Commissioner Vallante questioned if it was a necessary enough board to have in the Charter.

Jason Webber stated he spends Town funds, so he thinks it's important to have an overseeing Board.

Vice-Chair Bird motioned, seconded by Commissioner Flaherty to amend Section 409.3 (b) as follows using the underlined and strikethrough language:

"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, other inter-governmental groups, and all other non-elective statutory and advisory

officers, boards, commissions, and committees. ~~shall be appointed by the Town Council.~~”

VOTE: Unanimous.

Vice-Chair Bird read the remainder of Section 409.3 (b).

“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.”

Vice-Chair Bird recommended removing the words “under paragraph (b)”.

Commissioner Higgins thought they couldn’t legally remove those words, because then the removal process would affect both appointed employees, as well as Board members in sections (a) and (b).

Commissioner Flaherty stated the Town Manager said that it was his job to control the Department Heads.

Commissioner Gombar asked if it should fall to the Town Manager or the Town Council.

Commissioner Vallante motioned, seconded by Chair Ladakakos to table this last paragraph to the next meeting.

VOTE: Unanimous.

Respectfully Submitted.

Kim McLaughlin
Town Clerk

I, Kim McLaughlin, Town Clerk of Old Orchard Beach, do hereby certify that the foregoing document consisting of ten (10) pages is a true copy of the original Minutes of the Charter Commission Meeting held November 30, 2010.

Kim M. McLaughlin