

CHARTER COMMISSION MEETING
TUESDAY, DECEMBER 14, 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
Ronald Regis
Michael Vallante

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

Motion made by Vice-Chair Bird, seconded by Commissioner Begert to amend the minutes of November 30, 2010, page 1, sixth paragraph by deleting the strikethrough language and adding the underlined language: “Vice-Chair Bird recommended the following ~~made the following~~ ~~underlined recommended~~ change to Section 405, stating the Charter needed to clarify that no additional duties will be placed on the Chair, i.e. Mayor, etc.”

VOTE: Unanimous.

Commissioner Begert, seconded by Commissioner Higgins, to accept the minutes of November 30, 2010 as amended.

VOTE: Unanimous.

Chair Ladakakos stated the position of Chair has been very stressful, and he would like to concentrate on the Charter revisions, and asked the Charter Commission to accept his resignation as Chair. He then thanked everyone for the confidence they had shown him.

Commissioner Higgins motioned, seconded by Commissioner Regis, to accept Chair Paul Ladakakos’s resignation, with regret and gratitude.

VOTE: Unanimous.

Commissioner Ladakakos motioned, seconded by Commissioner Vallante to nominate William Gombar as Chair of the Charter Commission.

Commissioner Regis then nominated Vice-Chair Bird, stating that Commissioner Bird has been Vice-Chair, and deserves to be elected to the Chair’s position.

Vice-Chair Bird stated he appreciates the support and sentiment, but he wants to continue as Vice-Chair.

Commissioner Regis then withdrew his nomination.

VOTE [William Gombar as Chair of the Charter Commission]: Unanimous.

Chair Gombar then opened the Workshop portion of the meeting.

Commissioner Ladakakos stated he is against the Town Council taking control of Department Heads. He will vote “no” on giving this power to the Town Council. He believes it is the responsibility of the Town Manager, further stating that under no circumstances should the Town Council have the ability to hire or fire Department Heads.

Town Clerk, Kim McLaughlin, read the last paragraph of Section 409.3 of the Town Charter:

“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.”

Chair Gombar commented that at the last meeting, Vice-Chair Bird had requested that the words, “under paragraph (b)” be struck from the sentence.

The Town Manager, Jack Turcotte, was present at this meeting at the request of the Charter Commission. Mr. Turcotte said he thinks there are a lot of problems associated with the Town Council having the ability to hire/fire Department Heads. He works directly for the Town Council. The Town Council is a political position by nature. If the ability to hire/fire is transferred from the Town Manager to the Town Council, the Town will see Department Heads working very hard to keep their jobs, and not concentrating on the job they’re supposed to be doing. If it’s transferred, Mr. Turcotte inquired what role the Town Manager would have over department heads. He asked what Town Manager would be sitting down and doing evaluations, yet has no potential to dismiss. Would the Town Council do the evaluations? It will limit applicants who can deal with that. In the current Charter, if the Town Council is unhappy with a department head, and the Town Manager refuses to recognize that department head is failing, then the Town Council has a problem with the Town Manager, whom they have authority over.

Commissioner Vallante said his original position hasn’t changed much. He agrees with Mr. Turcotte. When the Town Manager is hired, there are specific requirements. When the voters elect the Town Council, there are no such requirements, i.e. supervisory skills. This is designed to be a political process. The Town Manager is in the best position to manage the department heads. This is designed best without political pressure.

Commissioner Ladakakos stated it would be wrong of the Town Council to take away the Town Manager’s duties. He’s concerned that the Town Council can gather as a team and do what they want. He further stated that he will back the Town Manager’s position 100%, and will go no other way.

Commissioner Begert recommended a solution that if this amendment goes through to possibly amend it to require that a super majority would be required to hire/fire a Department Head. He then inquired of Mr. Turcotte how discipline is currently handled. Is it done through executive session, and then possibly an open meeting?

Mr. Turcotte stated he's not prepared to offer an alternative to his recommendation tonight. His personal style is that if there is a problem with a department head, he wouldn't want the Town Council to find out on Monday that he fired a department head on Friday. He said he would inform the Town Council in a professional manner that he is having a difficult issue with a department head. If there were an executive session, that would include the employee. He would never fire a department head without first making the Town Council aware, so they know his actions are justified.

Commissioner Higgins commented on the difference between "appointees" and "nominees", advising that the Public Works Director, for example, is a "nominee" by the Town Manager, not an "appointee" by the Town Council. Therefore, this paragraph should not pertain to department heads.

Commissioner Ladakakos concurred that this paragraph refers to committees, and not department heads.

Commissioner Regis stated the Town Manager runs the Town, and the Town Council runs the Town Manager. The Town Council should not talk to department heads. Let the Town Council and Town Manager square it off amongst themselves.

Vice-Chair Bird stated that firing the Town Manager is not a solution for a wayward department head. There needs to be something in there other than firing the Town Manager.

Commissioner Regis stated that in Section 506, during the first round, they discussed the Department of Public Safety (police/fire) having an ability to have a hearing. He believes it should be the same process for all departments.

Mr. Turcotte said it would be interesting to know what would occur if the Town Council fired a department head without a paper trail, and it went to court.

Commissioner Ladakakos stated that if the Town Manager were fired, the Town still has an assistant Town Manager. If this part of the Charter is working, leave it alone. The Town Council should not have this power. The Town Manager talks to department heads and knows the problems, and he's best to handle them.

Commissioner Flaherty stated this could reach a point of ridiculous. The Charter Commission can come up with scenarios that would make a person's blood boil, but there needs to be some trust.

Chair Gombar stated that it should remain as is in the Charter to keep the chain of command.

Commissioner motioned, seconded by Commissioner Regis to remove this item from the table.

VOTE: Commissioner Begert, Commissioner Flaherty, Commissioner Higgins, Commissioner Ladakakos, Commissioner Regis, Commissioner Vallante, Chair Gombar, yes; Vice-Chair Bird, no. [Motion passes 7-1]

Commissioner Vallante motioned, seconded by Commissioner Higgins, to accept the last paragraph of Section 409.3 as currently written.

VOTE: Commissioner Flaherty, Commissioner Higgins, Commission Vallante, Commissioner Ladakakos, Chair Gombar, yes; Vice-Chair Bird, Commissioner Begert, Commissioner Regis, no. [Motion passes 5-3]

The Charter Commission continued to discuss the last paragraph of Section 409.3.

Commissioner Begert was concerned that if an appointee committed an egregious act, it would take 60 days before that person could be removed from a committee.

Commissioner Higgins stated that if he was concerned about that, maybe a section regarding what would occur if a committee member committed an egregious act should be added.

Commissioner Higgins stated that the Charter Commission had discussed in a previous meeting about adding job descriptions to this section. The Commission then agreed that it belonged elsewhere in the Charter.

Town Clerk, Kim McLaughlin, read Section 409.4 of the Town Charter:

“Sec. 409.4. By ordinance create, change and abolish offices, departments or agencies, other than the offices, departments and agencies established by this Charter. The Council by ordinance may assign additional functions or duties to appointed offices, departments or agencies established by this Charter but may not discontinue or assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department 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;”

Vice-Chair Bird motioned, seconded by Commissioner Begert to amend Section 409.4 by adding the underlined language and deleting the strikethrough language:

“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;”~~

Vice-Chair Bird said his reasoning for requesting these amendments is because the ordinance level is unnecessarily high for a temporary working committee. It doesn't need to rise to that level. There are some committees that don't require an ordinance. Removing the last sentence removes any conflict of interest.

Chair Gombar inquired if the word “ordinance” should be left in that section, and then add “resolution or order”.

Commissioner Flaherty recommended having the Ordinance Review Committee look at this section.

Commissioner Begert stated that committee is working on de-cluttering the ordinances.

Commissioner Vallante said that he’s not in favor of these changes. This document is going to micro-manage the Town. The Charter Commission should be addressing only significant changes, and leave the rest the way it is.

Commissioner Begert stated that not every group is ordinance worthy.

Commissioner Vallante stated that he is interested in leaving ordinances in, and other issues should be not in this section.

Vice-Chair Bird did agree, partly, stating that by leaving “ordinance” in, the Town Council would then have a choice.

Commissioner Higgins stated there should be two groups—one group of volunteers for committees, and one group of paid appointees. An ordinance should definitely govern all paid appointees.

Commissioner Vallante stated that when the Charter Commission makes massive changes, they are not doing a service to the people—less is best.

Vice-Chair Bird disagreed, stating the Charter defines the rules of the Town, and if the Charter Commission can figure a better way of defining the rules, it should do it.

Commissioner Vallante stated that the Charter should not have language on resolutions or orders.

VOTE: Vice-Chair Bird, Commissioner Begert, yes; Commissioner Higgins, Commissioner Flaherty, Commissioner Regis, Commissioner Ladakakos, Commission Vallante, Chair Gombar, no. [Motion fails 6-2]

Commissioner Begert motioned to amend Section 409.4 by adding the following underlined language:

“Sec. 409.4. By ordinance create, change and abolish offices, departments or agencies, other than the offices, departments and agencies established by this Charter. The Council by ordinance may assign additional functions or duties to appointed offices, departments or agencies established by this Charter, but may not discontinue or re-assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department 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, temporarily, contingent upon staff replacement;”

Commissioner Higgins and Chair Gombar stated they were concerned about not defining the word “temporarily”.

Commissioner Begert then changed his motion to remove “temporarily”, and add “for no more than 60 days”.

Commissioner Higgins stated the words “Department of Education” haven’t been removed.

Commissioner Vallante then seconded the motion.

Commissioner Regis stated that the Town Manager is only assisting the department, and is not the department head.

Commissioner Higgins stated they aren’t calling him a department head.

Chair Gombar stated they would only be vesting in the Town Manager the duties of the office.

Vice-Chair Bird stated that in this motion, they’re intending to cover a vacancy, but that isn’t what it says. This issue of the Town Manager covering duties of other departments has been an issue in the past.

Commissioner Higgins stated that the recommended changes may need to go somewhere in the Charter, but this sentence just refers to the duties the Town Manager would be given.

Commissioner Vallante removed his second, and Commissioner Begert removed his motion.

Commissioner Begert motioned, seconded by Commissioner Vallante to strike the last sentence in Section 409.4, and add the “re” to the beginning of “assign”, and add a “comma” after the word Charter:

“Sec. 409.4. By ordinance create, change and abolish offices, departments or agencies, other than the offices, departments and agencies established by this Charter. The Council by ordinance may assign additional functions or duties to appointed offices, departments or agencies established by this Charter, but may not discontinue or re-assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department 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;~~”

VOTE: Vice-Chair Bird, Commissioner Begert, Commissioner Higgins, Commissioner Flaherty, Commissioner Regis, Commission Vallante, Chair Gombar, yes; Commissioner Ladakakos, no. [Motion passes 7-1]

Commissioner Vallante then read the response to question #3 by Attorney Chris Vaniotis from October 20, 2010 regarding how many questions the Charter Commission can send to the voters. He then stated it was important for the Charter Commission to remember this. It will be very hard to go to the voters and say these are minor revisions.

Vice-Chair Bird stated that the Charter Commission could have a possible mandate to do a revised Charter.

Commissioner Regis said they need to keep in mind that this Charter is ten-years-old, and what they're working on today is for the next ten years.

Commissioner Vallante said that if there are major changes, the Charter Commission can't put it to the voters in separate questions.

Commissioner Regis said there should be three questions to the voters—the number of Town Councilors, one other questions, and then the rest of the Charter.

Commissioner Ladakakos stated the Charter Commission is wasting time doing minor things. For example, grammatical errors. They should be concentrating on the important items like the Town Council—this is a time killer.

Town Clerk, Kim McLaughlin, read Section 409.5 of the Town Charter:

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

Commissioner Ladakakos motioned, seconded by Commissioner Vallante, to accept Section 409.5 as currently written.

Vice-Chair Bird moved to amend the motion, and Commissioner Ladakakos seconded, by adding the following underlined language:

“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 whole in the ordinances.”

Vice-Chair Bird said he recommended the first sentence to protect the citizens and not foster benefits for certain groups or special interests. He recommended the second sentence to make things easier in cases where ordinances are enacted and swallowed whole. The Town Council shouldn't be enacting ordinances by reference that may not relate in whole to our community. They may need to be modified to our particular situation. The actual ordinance should be spelled out.

Commissioner Begert said that there are external standards adopted, but not in Town records. One example would be from Mike Nugent [Code Enforcement Officer], on the Building Code. We can't place that in our ordinance because it is copyrighted.

Commissioner Higgins said these are valid points, but not for this section. This section describes the Town Council duties, not what ordinances are.

Commissioner Vallante is concerned that the Charter Commission is getting too much into the nitty gritty part of operating the Town. He has a concern about the amendments to this section, and requests it be looked at by the Town Attorney, with Commissioner Regis concurring.

Commissioner Ladakakos said he would remove his second to the amendment to the motion, so the item can be tabled.

Commissioner Begert than seconded Vice-Chair Bird's amendment to the motion.

Chair Gombar stated this belongs under Article X.

Commissioner Vallante motioned, seconded by Vice-Chair Bird to table Section 409.5 pending a response from the Town Attorney.

VOTE: Unanimous.

Town Clerk, Kim McLaughlin, read Section 409.6:

“Sec. 409.6. Inquire into the conduct of any office, department or agency of the Town and make investigation as to municipal affairs;”

Commissioner Vallante motioned, seconded by Commissioner Higgins to amend Section 409.6 by adding the underlined language:

“Sec. 409.6. Inquire, through the Town Manager or other appropriate supervisor, into the conduct of any office, department or agency of the Town and make investigation as to municipal affairs;”

Commissioner Vallante stated this amendment is needed to maintain the order of command.

Vice-Chair Bird stated the Charter Commission is insulating the Town's functions away from the Town Council far too solidly. He then gave an example of the Charter Commission having the ability to inquire of Department Heads directly.

Commissioner Flaherty replied that the Charter Commission is only gathering information, and does not have the ability to hire or fire anyone.

Commissioner Vallante then stated the Town Council doesn't manage the Town, the Town Manager does.

Commissioner Ladakakos responded that he agrees with Commissioner Vallante. It is the responsibility of the Town Manager. The Town Council is not trained in the professionalism needed to discuss what is right and wrong with an employee or department. This could result in a lawsuit.

Commissioner Begert stated there are two aspects to inquiry: 1) conduct, to find out how a department is dealing with certain situations, and 2) so the Town Council can be better informed.

Commissioner Begert motioned, seconded by Commissioner Vallante to table Section 409.6 to the next meeting.

VOTE: Vice-Chair Bird, Commissioner Begert, Commissioner Higgins, Commissioner Flaherty, Commissioner Regis, Commission Vallante, Commissioner Ladakakos, yes; Chair Gombar, no. [Motion passes 7-1]

Meeting adjourned at 9 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 December 14, 2010.

Kim M. McLaughlin