

**CHARTER COMMISSION MEETING
TUESDAY, JANUARY 26, 2010 – 7 P.M.**

Chair Ladakakos opened the regular meeting at 7:01 p.m., in the High School Cafeteria. The following members were in attendance:

**John Bird
Laura Bolduc
William Gombar
Tianna Higgins
Paul Ladakakos
Ronald Regis
Kenneth Blow, excused absence
Jayne Flaherty, excused absence
Michael Vallante, excused absence**

Also present was Attorney Christopher Vaniotis, of Bernstein, Shur, Sawyer and Nelson.

The members of the Charter Commission and members of the audience stood with a Pledge to the Flag.

Chair Ladakakos asked for a motion to accept the minutes of the January 13, 2010 meeting.

Commissioner Gombar motioned, seconded by Commissioner Regis to accept the minutes of January 13, 2010.

VOTE: Unanimous, with exception of Commissioner Bolduc, who abstained due to absence at the last meeting.

Commissioner Gombar motioned, seconded by Vice-Chair Bird to adjourn the meeting at 7:05 p.m.

VOTE: Unanimous.

Chair Ladakakos opened the workshop meeting at 7:05 p.m., introducing Attorney Vaniotis to the members of the Charter Commission.

Attorney Vaniotis advised that he was present to answer questions and explain the process. He told the Commission they have free reign on the Charter, and can choose to keep the existing Charter, make changes, or present a new Charter to the voters. He stated it's up to the Commission how they wish to proceed. He inquired if the Commission had adopted any rules and procedures yet. He was advised the Commission adopted Robert's Rules of Order. Attorney Vaniotis suggested that Robert's Rules is complicated, and the Commission may wish to use a modified version, similar to the Town Council rules. He stated he has a condensed version of Council rules that can be used for other committees,

and he will give that to the Commission for review. Attorney Vaniotis then gave copies of the State Law regarding Charter Commissions to the members.

Commissioner Gombar inquired if the Commission is able to place multiple questions to the voters or does it have to go as one question on the ballot. He realizes the potential School Board change, possible Mayor form of government or the number of Councilors may be controversial and doesn't want the entire Charter to fail before the voters.

Attorney Vaniotis stated that a change to a Mayor form of government would affect many sections of the Charter, and a new Charter would have to be presented in a whole document to the voters. He advised the Commission they could propose minor revisions, also known as modifications, to the current Charter, similar to what the Town Council has the authority to do. He then listed an example of the School Board change and the increase in Town Councilors, advising they could be separate questions; however, any change in the form of government would require the Charter to be placed on the ballot as one piece.

Commissioner Gombar asked if the Commission could place a new Charter on the ballot as one question, and also place on the ballot that if that fails, ask the voters to approve separate ballot questions for other items.

Commissioner Regis stated he is concerned about the Mayor form of government because the Town still needs a Town Manager, and now the Town would be paying for two people. He would like the Commission to consider wards, again, so that every part of the Town is represented.

Attorney Vaniotis gave examples of Mayors, from figureheads to Mayors that are administrators for the municipality, using Portland, Saco and Westbrook as examples. After review, the Commission may decide that what is currently in the Charter is right for Old Orchard Beach. He wanted the Commission to keep in mind that elected Mayors are strong political positions. He stated that Westbrook goes so far as to use party nominations for their Mayor.

Vice-Chair Bird asked what would be gained by having a Mayor. He is willing to listen to arguments, but doesn't believe a Mayor is right for Old Orchard Beach.

Chair Ladakakos inquired of Attorney Vaniotis when is the proper time for the Commission to be using his services, i.e. all workshops or only at certain times.

Commissioner Higgins said the Commission would not know how often they need him, but they don't need him at every meeting. When the Commission has completed a section of the Charter, maybe they need him at that point.

Attorney Vaniotis said that tonight was helpful, but believes the Commission can proceed on their own at most meetings. The Commission can then agree on when to contact him for certain sections. He said his job is to write and to edit the Charter. The Town Clerk could e-mail him when the Charter Commission has specific questions, or to ask him to attend a meeting.

Commissioner Higgins inquired if other Charters are written vaguely and difficult to read like the Town of Old Orchard Beach's.

Attorney Vaniotis stated that ours is the standard model. Towns are copycats by nature. The Charter is like the Constitution for the Town. There are no specifics. It just lays the broad framework. Ordinances enacted by the Town Council go into further detail. It's hard to amend the Charter, so the Commission wouldn't want to get too specific. He advised much of the language is old, not modern language, and told the Commission they could update the language if they wished.

Vice-Chair Bird then stated that one question that came up during the public hearing was about the Ballpark currently being under the purview of the Conservation Commission under the Charter, and stated one suggestion, for purposes of the Ballpark, is not to define it as a Park. He's concerned about being too specific in the Charter, however.

Attorney Vaniotis advised this issue is an ongoing question for the Town Council—under the Charter and State Statute, is the Ballpark really considered a "Park"? The Council can do a lot in reference to this, as long as it is not inconsistent with the Charter. He believes if the Commission gets too detailed in the Charter, it could be dangerous. His suggestion is to loosen the regulations on the Conservation Commission to maybe follow the regulations of the Town Council.

Commissioner Bolduc told the Commission the Town Council is working with Attorney Vaniotis this week to formulate language. They want to look at Portland's because they deal with the expo.

Commissioner Regis added "Hadlock Field", as well.

Attorney Vaniotis recommended not adding specifics to the Charter on the Ballpark because sometime in the future if the Town would like to develop the Ballpark into a "Park", the Charter would prohibit it. He used the example of another Town in Maine that placed in their Charter that no development of a certain business was going to be allowed to be constructed on a certain side of I-295. A developer came along that the Council wanted to consider, but were prohibited from doing so because of the Charter. It should have remained in the Zoning Ordinance.

Commissioner Higgins inquired if there were many Towns re-writing their Charters due to the RSU?

Attorney Vaniotis replied there are some Towns, but not many. He believes a lot of Towns with RSU's do not have Charters.

Vice-Chair Bird inquired if there is a State Statute that governs County Charters separate from Town Charters.

Attorney Vaniotis replied in the affirmative.

Chair Ladakakos, stating the time, advised the Commission they should commence with discussing Articles I, II and III, and inquired from Commissioner Bolduc how the previous Commission tackled the Charter.

Commissioner Bolduc responded they went word by word, sentence by sentence. If they couldn't get a consensus on something, they would table it and refer back to it later.

Vice-Chair Bird recommended discussing each item and then taking action at a later time.

Chair Ladakakos started with Article I. There were no comments to section 101.

Vice-Chair Bird passed out recommendations he formulated to the members and proceeded to explain, stating that he thought when a person opens the Charter, it is difficult to understand. He thought it would be helpful to attempt to educate them on how the government is structured, and broke it down into three parts. He advised that he obtained the second paragraph from the Code of Ethics the Town Council signs at their Inaugural Meeting.

Commissioner Bolduc liked the concept of the breakdown, but would like to work on the language and grammar changes. She believes the third paragraph Vice-Chair Bird added, [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 or employee 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.], should be the last paragraph because it is such a statement.

Commissioner Regis was concerned about the first paragraph in Section 102. "It may enact bylaws, regulations and ordinances not inconsistent with the Constitution...", believing it to be a double negative.

Attorney Vaniotis advised the Commission not to touch that wording, due to the legal jargon, stating the language was formulated like that for a reason, and should remain as is.

Commissioner Gombar inquired about the Kelo decision. He was concerned about the Town having the ability to take private property by eminent domain and turn it over to developers.

Attorney Vaniotis responded that due to the Kelo decision, the State of Maine put language in the State Statutes to protect private property owners from eminent domain for that reason.

Vice-Chair Bird asked Attorney Vaniotis to find out information reference the Kelo decision, and send it to the Commission.

Gary Curtis, one of the RSU Directors elected to represent Old Orchard Beach, was in the audience. He gave the Commission and Attorney Vaniotis a copy of what he referred to as the School plan so they would have it with they deliberated on the school section.

Chair Ladakakos asked the Town Clerk to make copies available for the public at their next meeting.

Commissioner Higgins questioned Article I, and how it describes jobs but doesn't explain whose job it is to perform. When it states "the Town", the entire Town does not decide each item.

Attorney Vaniotis advised that section is supposed to be just a general description, that it shouldn't say who exercises the powers of the Town. Further sections below go into further detail. This is just introductory language. This is the same language used in Corporate Charters.

Commissioner Bolduc inquired if, under Section 201, we are still electing a School Board.

Vice-Chair Bird stated that we are electing representatives to the RSU.

Attorney Vaniotis advised the Commission they will need to refer to Directors of the RSU being elected. Old Orchard Beach no longer has a School Board. The whole section needs to be removed.

Commissioner Gombar inquired if they are considered elected officials of the Town.

Attorney Vaniotis advised that under the RSU structure, they are Town officials for the purposes of election.

Commissioner Regis inquired how the RSU members are elected.

Commissioner Bolduc responded they are elected based on enrollment figures and Town valuation.

Attorney Vaniotis advised the Commission they could not change how the RSU Board of Directors is elected; however, he needs to review the State Statute. He believes the Town can fill in the gaps of the Statute, setting term limits.

Attorney Vaniotis advised he would check into it.

Commissioner Bolduc advised that it's going to take at least five years to fix the loop holes in the State Statute on RSU's, so the Commission should be as generic as possible.

Attorney Vaniotis thought the Commission could place under the school section that the education of the children of Old Orchard Beach is administered by RSU #23, pursuant to the School Consolidation Law. He told the Commission he could work on the language for that.

Chair Ladakakos moved on to Section 201.1, stating that he would like to discuss term limits and increasing the amount of Councilors to seven. He advised he is not for a Mayor form of government. He believes a manager is critical.

Commissioner Regis stated he was in favor of seven Councilors, but believes they should be from different wards to share equally in the votes. He also believes the Council should not select the Town Manager, that the Town Manager should be elected by the people. The Town Council can choose five people, and then those five people would be placed on a ballot for the voters to choose from.

Vice-Chair Bird advised that he is not in favor of a Mayor form of government. He agrees on expanding the number of Councilors, and made a recommendation of six Councilors. He stated there would be an even amount staggered—two Councilors a year, for three-year terms. If there were a tie in voting on an issue, the vote would fail. It is the same result as having seven Councilors. There would still be a need for four Councilors to pass an item. He then asked Attorney Vaniotis if there was a legal problem with that.

Attorney Vaniotis advised there wouldn't be a legal problem, but that he has never seen a voting body with an even amount of members due to the "tie" issue. In a melded system, if there is a tie, the Mayor breaks the deadlock. He's concerned about six Councilors because the Council has to sign warrants for people to get paid, and other concerns about the Council being unable to act when needed.

Chair Ladakakos agreed there needs to be someone to break a tie.

Commissioner Bolduc recalled that during deliberations the former Commissioners had, the members spent several meetings on the issue of wards, laying out maps, etc. They then realized it would be expensive and impractical.

Commissioner Regis advised that if a member of the Planning Board or ZBA is absent, they table an item, and feels the Council should do the same, instead of an item failing.

Chair Ladakakos stated there should be a request to table until all members could be present to vote on the issue.

Commissioner Bolduc stated the last Commission went to staggered terms to elect two Councilors in an odd year and three in an even-numbered year, because there would be a bigger turnout for a Gubernatorial or a Presidential Election.

Vice-Chair Bird was concerned about changing the complexion of the Council all at once. He said electing three new members could change the entire complexion. If six or seven, done in three-year terms, this may not happen.

Commissioner Bolduc thought that three years was a long commitment.

Commissioner Gombar recommended the possibility of one member being elected for a one-year term, and the others for three-year terms.

Commissioner Higgins agreed the number of Councilors should be increased, and believes the Town does not need a Mayor form of government. She also believes that if term limits are set for the Council, it could force change, stating that some members feel obligated to stay if they keep getting re-elected.

Vice-Chair Bird advised that in reference to term limits, the Councilors could run for two, consecutive, three-year terms, and then they would have to take a year off, before they could run, again.

Chair Ladakakos stated he thinks there should be more than one year in between the term limits, believing that two terms should be enough.

Commissioner Gombar agreed that six years is enough.

Pat Brown, 1 Fourth Street, an audience member, spoke up, advising that she doesn't believe term limits are a good idea. She thinks that during the second of the three-year terms the Councilor would run Wiley Coyote, knowing they wouldn't be elected, again. She also doesn't believe in Wards, stating the Town is too small to break into sections, and would create special interest groups.

Chair Ladakakos agreed that wards should not be created, that it's up to the people to decide who they want on the Town Council.

Commissioner Bolduc advised there would be a significant cost in ballots, for example, if Wards were created.

Vice-Chair Bird inquired of the Commission if, under 201.2, they should develop qualifications and term limits for the RSU.

Gary Curtis spoke, advising term limits are not allowed under the School plan because their terms fall under State Statute.

Vice-Chair Bird advised there should be qualifications for a RSU member to be elected, and that is in the jurisdiction of the Charter Commission.

Attorney Vaniotis stated he would read the plan.

Chair Ladakakos stated the Town Manager's position should have very strict qualifications, that currently those are very weak. He recommended reviewing the salary for possible inclusion in the Charter.

Attorney Vaniotis stated the salary could be placed in the Charter, but it would be risky. If the Town Council could only find a Town Manager that required a higher salary, they would be locked.

Commissioner Regis re-iterated that the Council should pick five people and then the citizens should vote for those five.

Commissioner Bolduc didn't believe five people would subject themselves to that.

Chair Ladakakos moved on to section 201.3, election of the Town Clerk.

Commissioner Bolduc stated it was a Town wide battle during the last Commission because the Commission wanted the Town Clerk's Office to be in the 21st Century, and they felt the

only way to do that was to appoint the Clerk. It was decided to leave it an elected position, and doesn't feel it needs to be changed this time.

Vice-Chair Bird prefers it to be an elected, independent office.

Commissioner Regis agreed that it should remain as is.

Chair Ladakakos also believes it should be an elected position, and asked the Town Clerk about the Warden's position being appointed by the Town Council instead of the Town Clerk.

The Town Clerk advised Chair Ladakakos that it is a good "checks and balances" system. The Town Clerk is the Supervisor of Elections, and the Warden should be selected by someone other than the Clerk.

Commissioner Bolduc advised the Commission to look at the term of the Town Clerk. During her lifetime, there have only been three Town Clerks.

Commissioner Higgins recommended increasing the term to four years, with no term limits.

Commissioner Regis echoed an agreement.

Chair Ladakakos moved on to section 202, but there weren't any comments.

Under Section 203, there was discussion of the possible need to put rules in the Charter for write-in candidates.

The Town Clerk mentioned the year before last there were requirements for write-in candidates that Old Orchard Beach was required to follow, under Title 21-A. Last year the Legislature changed those rules, and the Town went back to using Title 30-A, with a different set of rules for the candidates.

Attorney Vaniotis advised that the Town could set its own rules for write-in candidates for elections of local candidates.

Chair Ladakakos read 204, 205 and 206, which basically inform the Town it needs to follow the State Statute.

No comments were made on 207.

Chair Ladakakos then read Article III, section 301.

Commissioner Bolduc stated that Article III should be reversed with Article IV. The rules for the Council should be before the section on recalling them.

Attorney Vaniotis stated that the last Commission wanted the empowerment of the people first, but in most Charters it does follow, so they can reverse that.

The Town Clerk asked Attorney Vaniotis how to advertise the next Charter Commission meeting, as to whether the exact items to be discussed must be written on the agenda.

Attorney Vaniotis advised the wording could be, for example, that the Charter Commission anticipates discussion on Article III, and the ensuing sections of the Charter, and will continue in numerical order as time permits.

Vice-Chair Bird stated that sections 301.3 and 301.4 should be more restrictive, advising to remove “for Capital Improvements and Capital Equipment”, and leave the rest.

Commissioner Regis believes they should get so much in one year, and then have to wait another whole year for the rest.

Chair Ladakakos moved on to 301.4.

Commissioner Gombar stated he deals with petitions on a frequent basis, and think that 10% of the registered voters should be changed to 10% of the registered voters that voted in the last gubernatorial election.

Commissioner Bolduc suggested they could put a numeric in there.

Commissioner Gombar mentioned the number, 500.

Attorney Vaniotis suggested that they could be 10% of the votes cast at the last gubernatorial election.

Vice Chair Bird also mentioned the possibility of changing the days from 20 to 30 days to gather the signatures.

Commissioner Regis stated he could go with the 30 days.

Commissioner Bolduc recommended 20 working days.

Vice-Chair Bird recommended taking out the last sentence in the second paragraph from the bottom in 301.4, and not allowing the item to be repealed at all.

Commissioner Gombar suggested changing it to “until a new Council election”.

Attorney Vaniotis advised they could be 180 days or next election, whichever is longer.

Commissioner Regis said that if the voters voted for it, then the voters should be the only ones to change it.

Commissioner Bolduc advised she would support a period of one year from the referendum date.

Attorney Vaniotis said the second to last sentence in section 301.4, “The Town Council shall not repeal any ordinance, order, or resolve adopted by referendum for a period of one

hundred eight (180) days from the date of the referendum”, should be moved to Section 302.

Vice Chair Bird agreed with Commissioner Bolduc on the period of one year before the Council could repeal the referendum question; however, he also wanted to add “or amend”.

Commissioner Regis agreed with one year.

Chair Ladakakos moved on to 303, stating that under Section (ii), the words “for a single capital improvement or for a single item of equipment” should be stricken.

Commissioner Bolduc agreed.

Chair Ladakakos moved to section 304, Form of Question.

Attorney Vaniotis stated that the Commission can change the wording of the ballot question if they desire.

Chair Ladakakos then referred to section 305, Procedures for Recall.

The Town Clerk advised she had spoken with Commissioner Vallante, who was unable to be present at the meeting. He had questions regarding the section on recalling the Town Clerk. He thought there weren’t any checks and balances in that section. If the Town Clerk is being recalled, the person has to pick up the petition from the Clerk and return it to the Clerk.

Attorney Vaniotis said it should be a generic new paragraph that states if the recall involves the Town Clerk, then someone other than the Town Clerk (Commission members would choose who) shall perform the duties of the Clerk.

Commissioner Bolduc recommended the Voter registrar. She asked about the section referring to 20% of the registered voters, and asked if that should be based on gubernatorial election to be uniform with the other sections; however she was concerned that this section was a “much higher bar”.

Commissioner Gombar stated that would be his recommendation.

Attorney Vaniotis stated the Commission could put in wording to follow Title 30-A, section 2528.

Commissioner Bolduc recommended changing the School Board language to RSU language in section 305.2.

There weren’t any comments on section 305.3, 305.4 or 305.5.

Commissioner Bolduc recommended adding the Recall provision for the Town Clerk as a new section, 305.6.

Chair Ladakakos then asked what the Commission would like on the next meeting agenda, besides accepting the minutes of the previous meeting. He recommended starting with Article IV and moving forward, and asked if the Commission needs Attorney Vaniotis present.

Attorney Vaniotis express that they wouldn't know if they need him until they're already discussing an item at the next meeting. He can respond via e-mail, or the Commission can ask if he can be at the next meeting.

Commissioner Regis recommended possibly having the attorney present once a month.

Attorney Vaniotis also recommended that questions to the law firm should be made by one or two individuals, suggesting it should probably be the Chair, and the Town Clerk, since she is in the Town Hall.

Chair Ladakakos asked that Vice-Chair Bird be added to that.

Attorney Vaniotis just asked that they discuss the question amongst themselves, first, and that only one of them call.

Commissioner Bolduc mentioned some items she would like the Commission to consider. First, the reference to the Public Safety Director. At the time of the last Commission, there was a Public Safety Director. That position no longer exists. Second, there is no reference to the Town Planner or Assistant Town Manager. Those positions were created by the Town Council. Third, the Town is currently in violation of the Charter because the Charter states department heads cannot hold any other compensated position in the Town. Currently, the Fire Chief and the Recreation Director both receive stipends for filming meetings. The violation either needs to be addressed, or the Charter needs to be changed to allow that to occur. Lastly, she inquired if something could be placed in the Charter to authorize the Town Council to participate in Union negotiations. The former Town Manager chose not to include the Council in negotiations until the final presentation, and it was very difficult. She advised that when she was on the School Board, there were liaisons to Policy Committees, Union negotiations, etc., and when she was elected to the Town Council, she was told those liaisons do not exist.

Vice-Chair Bird questioned whether the union negotiation question needs to be addressed in the Charter.

Attorney Vaniotis advised the Commission that the Town Council can regulate the Union Negotiation part by policy, or place it in the Town Manager's job description.

The Commission then discussed the advertising of legal ads—agendas and public hearings.

Attorney Vaniotis stated that some public hearings are required to be advertised in the newspaper.

The Vice-Chair mentioned that Saco doesn't advertise their agendas in the newspaper, that they just use the website.

Attorney Vaniotis mentioned that it is not a statutory requirement to advertise agendas, so the Commission can change that.

Commissioner Bolduc stated the Council has been getting phone calls from elderly residents not having access to a computer, who would not have the agendas.

There was talk of a compromise of possibly only advertising a condensed version of the Town Council Agenda, but other, smaller committees (Conservation Commission, Recycling, etc), would only be advertised on the website, Channel 3 and at Town Hall.

Commissioner Higgins apologized ahead of time, stating she is a civil engineer and in the summer time her hours may extend into the evening, and she may be late at times, but will notify the Chair or the Town Clerk if that happens.

The meeting was adjourned at 9:17 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 twelve (12) pages is a true copy of the original Minutes of the Charter Commission Meeting held January 26, 2010.

Kim M. McLaughlin