

**CHARTER COMMISSION MEETING
TUESDAY, MARCH 9, 2010 – 7 P.M.**

Chair Ladakakos opened the regular meeting at 7:03 p.m., in Town Hall, Council Chambers. The following members were in attendance:

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

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

This is the first televised Charter Commission workshop. Chair Ladakakos explained to the viewing audience the workshop procedure.

Chair Ladakakos asked for a motion to accept the minutes of the February 23, 2010 meeting.

Commissioner Vallante made a motion to approve the minutes, seconded by Commissioner Gombar.

VOTE: Unanimous

Chair Ladakakos stated Commissioner Begert will read the sections tonight.

Commissioner Begert inquired if the Charter Commission would be discussing the answers to the questions posted to Attorney Vaniotis.

Commissioner Vallante recommended keeping it for the second pass-through.

Chair Ladakakos advised they would keep that information for further use and would proceed with the other sections at tonight's meeting. Other members concurred.

Commissioner Begert read half of section 410.

Vice-Chair Bird suggested adding the following underlined portion to the sentence: "...shall file a reasonable number of copies in the office of the Town Clerk, shall post a copy of the proposed ordinance on the bulletin board in the Town Hall, and the Town internet web site, and shall cause..." and adding the following underlined portion to the sentence: "...together with notice of the time and place of public hearing thereon and reference to the Town internet web site for the full wording of the proposed ordinance if abbreviated in the notice".

Commissioner Begert inquired if that would be to the exclusion of the newspaper, as that had been previously discussed.

Commissioner Gombar inquired if the entire public hearing had to be advertised or if it could be a summary.

Town Clerk Kim McLaughlin explained that State Law authorized the Town Council to vote to place only a summary of a public hearing in the newspaper, with the full verbiage being available in the Town Clerk's Office. The Town Council voted in 2004 to allow the summary.

Commissioner Vallante asked if it was state law that public hearings must be advertised in the newspaper, and if there is a value to advertising in the newspaper.

Commissioner Gombar stated there are still some folks that don't use the internet.

Town Clerk Kim McLaughlin stated that state law requires only certain public hearings be advertised in the newspaper.

Commissioner Begert stated these are new laws for the Town, and it's important the public be aware.

Vice-Chair Bird suggested the advertising in the newspaper remain.

Commissioner Begert read the second half of section 410.

Commissioner Vallante asked to add the following underlined words in the sentence: "If an ordinance is amended so as to change substantially its meaning or effect, the Council may not adopt it..." Vice-Chair Bird concurred.

Commissioner Begert read the first half of section 410.1.

Vice-Chair Bird mentioned the number of Councilors needed to adopt an emergency ordinance will need to be bumped to five in this paragraph, if the Charter Commission chooses to change the amount of Councilors to six or seven, thereby keeping it a super majority needed to pass an emergency ordinance.

Commissioner Begert stated the Commission will have to keep this in mind for discussion the second time around, so the citizens and Council will have an opportunity to be heard.

Commissioner Vallante agreed, stating the Commission should circle each time these appear for addressing later.

Commissioner Begert read the second half of section 410.1.

Vice-Chair Bird suggested adding the following underlined portion to the sentence: "After adoption, the ordinance shall be posted on the bulletin board in the Town Hall, the Town internet web site, and such other places as the Council may designate".

Commissioner Begert inquired if the Town was considering an electronic bulletin board outside. He thought he saw a bid in the newspaper.

Vice-Chair Bird said that was for the police department, not for Town Hall.

Commissioner Gombar commented that he was concerned about limiting the use of the words to “Town internet web site”, maybe the terminology “whatever electronic notification system” should be inserted instead due to possible technology changes in the future.

Commissioner Begert read section 411. Then he commented that he understands this section is related to hired employees, not advisory committees.

Vice-Chair Bird asked that this section become more specific, adding “Town” to Council in the title, and adding the underlined language in the following sentences: “Neither the Town Council nor any of its members shall direct or request the appointment of any person to any Town office, position or employment, nor the removal of any person from office, or Town employment, by the Manager or by any of the Manager’s subordinates, except for cause”, and “Except for the purpose of inquiry, the council and its members shall deal with the administrative functions of the town solely through the Town Manager and Town Department Heads, and neither the council nor any member thereof shall give orders to any subordinates of the Town Manager and the Town Department Heads, either publicly or privately”.

Commissioner Bolduc was concerned that Councilors may cross the lines in giving instruction to the department heads, and they shouldn’t be allowed to interfere with department heads.

Vice-Chair Bird stated he was looking to protect regular employees—drivers, etc. The Town Council should be able to deal with department heads for inquiry to get things done.

Chair Ladakakos disagreed, stating there may possibly be a 6-7 member Council and is concerned about all of them contacting department heads at once with different requests. He believes the Chair or Vice-Chair should be designated by the Council to contact department heads.

Commissioner Bolduc agreed with the Chair. She was concerned about usurping the Town Manager’s responsibility, stating department heads report to the Town Manager, and the Town Manager is held accountable to the Council. Department heads need to listen to their one and only supervisor who reviews their performance, and the Council shouldn’t cross that line.

Chair Ladakakos stated that if the Town Manager has a complaint about a member of the union, it is the responsibility of the Town Manager to confront that employee to discuss the problem. However, if the Town Manager is constantly stating there isn’t a problem, the Town Council, through the Chair or Vice-Chair, should be allowed to act, by talking with the Department Head.

Vice-Chair Bird stated there is section of the Charter that states “except for the purpose of inquiry” currently.

Commissioner Bolduc was concerned about the Town Council being able to influence department heads in appointments or removals, and section 409.6 allows for inquiry.

Vice-Chair Bird stated section 411 backs 409.6.

Commissioner Vallante stated this is the second time the matter of inquiry has been discussed, so maybe it would be beneficial to add language to the inquiry process, to make it more specific.

Commissioner Bolduc also suggested language be placed in 409.6 referring to confidential personnel matters, and that Council should not get involved.

Commissioner Vallante inquired what the procedure currently is for a Councilor to approach a problem within a department. Should it go through the Department Head first, or through the Town Manager? What is the process?

Commissioner Begert suggested adding a section regarding inquiries not related to conduct, just general inquiries for information. Add a subsection to 411 that would read, “except for the purpose of inquiry...”, because if the Town Manager is on vacation, the Asst. Town Manager is sick, the Council can’t wait two weeks for answers. There needs to a contingency. The language should be clarified. Also, maybe it would be appropriate to ask inquiries of department heads when they’re present at Town Council meetings.

Chair Ladakakos announced that he was disappointed there weren’t any audience members in the Council Chambers tonight. He said the Charter is very important for the Town’s future, but he did thank the television-viewing audience, and advised his phone number and e-mail are available through the Town Clerk’s Office. He also said he is looking for input on the Charter.

Commissioner Bolduc, referring back to section 411, suggested the change of “administrative” to “personnel”, in the third to last line. Section 411 is really about personnel.

Vice-Chair Bird stated he preferred to keep the word administrative. He then stated that he believes all members can agree with the last part of the change reference adding Town Department Heads to the last sentence, “...subordinates of the Town Manager and Town Department Heads, either publicly or privately”.

Commissioner Begert thought the words “in case of emergency” should be added to that last sentence.

Other Commissioners stated there shouldn’t be any type of emergency where Councilors would be talking to subordinates of the Town Manager.

Commissioner Gombar stated he was concerned about taking away power from the Council to remove a person that is causing a problem, and is being protected by the Town

Manager. He thought if the entire Council agreed someone should be removed for cause, this power should not be taken away.

Vice-Chair Bird stated without this ability, all that is left is a “nuclear” option. You would need to remove the Town Manager first, and then the Department Head who is the problem. It does take a long time, and many legal fees.

Commissioner Begert stated in the Town Manager’s job description in the Charter, he must follow the Town Council’s orders. If the Town Council orders him to remove an employee from a position, he should follow that order.

Commissioner Vallante believes there should be a more detailed section on inquiry and the process to follow, believing it might help those trying to follow the Charter. That instead of the Town Council removing someone, the Charter could say that through a designated process, they can accomplish that end.

Commissioner Bolduc stated that inquiry is a very broad word, very open ended. She feels there should be language as to what constitutes what a Council-related inquiry means.

The Commission members agreed there should be something in the Charter that explains “inquiry”.

Commissioner Begert then read section 412.

Vice-Chair Bird stated the Charter missed “brother-in-law” and “sister-in-law” when it was drafted.

Commissioner Bolduc stated that state law has the definition of immediate family members, and we could use that to refer to.

Commissioner Gombar stated that domestic partner isn’t included either.

Chair Ladakakos said it should include all relatives.

Commissioner Begert suggested changing the wording to “by blood or marriage”.

Commissioner Bolduc stated this needs to be more inclusive. Also, this pertains to relatives of Town Councilors only. There isn’t language to prevent the Town Manager from hiring his/her family member.

Vice-Chair Bird stated the Town Manager’s Department is under the direct control of the Town Council, and the Town Council could refuse the appointment.

Commissioner Begert asked what can be done if someone violates the charter. What is the punishment?

The Commission agreed to have the Town Clerk make that inquiry to the Town Attorney,

Commissioner Begert read section 413.

Vice-Chair Bird agreed with the section, but thought there should be a performance audit, as well.

Commissioner Bolduc inquired if we still use the term “Treasurer”, because everyone calls it a Finance Department.

Town Clerk Kim McLaughlin stated that it is still used, and the State Law calls for a Town Treasurer.

Commissioner Begert then read section 414.

Vice-Chair Bird stated that references to the School Board need to be removed.

Commissioners inquired if it was in the School Consolidation Law as to who votes on the compensation for the RSU members.

Commissioner Begert had the RSU law at the meeting, and gave it to Town Clerk Kim McLaughlin, who researched through the State Law regarding RSU’s. While the Town Clerk researched, the Commission continued their meeting.

Commissioner Vallante believes there should be a statement in section 414 that restricts an increase in compensation when the Town is having hard fiscal times.

Commissioner Gombar stated any increase in compensation the Council votes on for themselves won’t take effect until the next fiscal year, and they’ll have to face the voters at that point.

Vice-Chair Bird thought the words “next fiscal year” should be changed to “next municipal election”.

Commissioner Bolduc stated Councilors should not be allowed to vote for a raise that would impact themselves. They’re not supposed to have any fiduciary gain. If they approve a raise for themselves, it should not take place until they are replaced. Commissioner Vallante agreed.

Commissioner Begert wanted to favorably acknowledge Vice-Chair Bird for attending the RSU #23 Board Meeting, which was also attended by State Commissioner Susan Gendron. Vice-Chair Bird had succinctly pointed out that the current administration stated they would not raise taxes; however, the State cut money to the Towns, and that does constitute an increase in property taxes. Commissioner Begert then inquired if the Town Clerk had located the section regarding the RSU compensation.

Town Clerk Kim McLaughlin read M.R.S.A. Title 20-A, section 1471, regarding the compensation of the RSU Board of Directors, which outlines the process for compensation for the Board of Directors.

Commissioner Gombar stated that if the RSU Board of Directors compensation is listed in the RSU law, then it should be removed from the Charter.

Chair Ladakakos stated that in economic hard times, the Council should be allowed to freeze raises on all department heads and the Town Manager.

Commissioner Bolduc stated that no one received raises from the Council last year except unions who already had a contract in place. The year before there was a labor market research, and some were bumped up and given a COLA increase as well. She stated the Council would be open to eliminating positions if the budget warranted it—if the current fiscal affairs warranted it.

Vice-Chair Bird questioned whether a department head position could be eliminated if it was in the Charter.

The Commissioners agreed to have the Town Clerk ask the Town Attorney if it is possible to eliminate a department head position if it is in the Charter.

Commissioner Vallante thought those positions should only be eliminated after a vote of the people. The Charter guarantees those positions are filled. That is probably why they were specifically included.

Commissioner Bolduc stated that using section 409.4, new positions are introduced through an ordinance.

Chair Ladakakos inquired about unions, and how the Town Council gets involved in union negotiations.

Commissioner Bolduc responded the Town Council wasn't involved in the negotiations under the last administration, but they are under the current administration.

Chair Ladakakos stated that a Town Councilor should be sitting in on all union negotiations.

Commissioner Bolduc stated the Public Works contract was finalized under the current administration by the Council Chair and the Town Manager. The last Town Manager didn't involve the Council and the Council was looked upon negatively when they said no. She believes a section regarding the Town Council participating in union negotiations could be placed under section 409, Financial Obligations. She made a note that when the Commission goes back through the Charter a second time, it can be discussed.

Vice-Chair Bird believed there needs to be a balance struck between when the Council should and should not be dealing with subordinates.

Commissioner Bolduc then stated there should be language created to allow Council liaisons to certain committees, similar to the School Board liaisons. She also advised that the compensation of the Town Council and compensation of the appointees of the Town Manager should be in separate paragraphs. She outlined a possibility of using 414.1 for the Town Council compensation, 414.2 for the Town Manager, and 414.3 for the Department Heads, and the process for each listed below that.

Vice-Chair Bird wondered about Council liaisons to Town Departments also.

Commissioner Vallante stated he agrees with the Chair there should be a statement under the responsibilities and duties of the Town Manager, to include the Town Council in union negotiations.

Chair Ladakakos thought that if the steward doesn't take action, the Town Council should be allowed to terminate the employees, as long as they give the reasons.

Commissioner Bolduc responded that labor laws are tricky, and is concerned about the Town Council having the ability to terminate someone within a department.

Chair Ladakakos stated he wants it in the Charter that two Council members be present during negotiations.

Commissioner Begert read section 415.

Vice-Chair Bird suggested to add the following underlined portion to the sentence:
“Otherwise, if a seat on the Council becomes vacant more than six (6) months prior to the next regular municipal election and more than six (6) months prior to the expiration of the term, the vacancy shall be filled for the unexpired term within ninety (90) days from the date that the vacancy occurred by a special election”.

Chair Ladakakos asked if the Commission was satisfied with the amount of three consecutive regular meetings, and suggested changing “may be removed” to “shall be removed”.

Commissioner Begert thought that “may” allows the Council discretion. He said that in executive session, Councilors may give valid reasons for their absence, and it may change the unexcused absence to an excused absence.

Commissioner Vallante remarked that it was good to be flexible.

Vice-Chair Bird said to make it clearer, maybe the word “residency” should be changed to “domiciled”.

Commissioner Vallante inquired why the next runner up would get the seat, but not the next runner up after that—why doesn't it just go down the line?

Commissioner Gombar was concerned that as the list goes down, the number of votes severely decreases, and the Town may get someone who is not qualified for the position.

Commissioner Begert thought there should be an amount of time a person should reside in the Town prior to running for office. They should prove they've involved in the town—possibly by being required to vote in the last 4-6 (November) municipal elections.

Vice-Chair Bird was concerned it may violate the Maine Constitution.

Commissioner Vallante suggested that a six-month registered voter requirement would work.

Commissioner Begert was concerned that a new person should not be making decisions for the Town.

Vice-Chair Bird suggested adding two new sections after 415:

“Sec. 416. Personnel Policy. The Town Council, with advice from the Town Manager, shall adopt an overall Personnel Policy for the Town employees.”

“Sec. 417. Purchasing Policy. The Town Council, with advice from the Town Manager, shall adopt an overall Purchasing Policy for the Town”.

Commissioner Bolduc inquired as to why that was necessary to be in the Charter.

Vice-Chair Bird said there is a different policy for each department, and there should be an overall policy.

Commissioner Bolduc responded that it would be a “comprehensive” policy.

Commissioner Begert suggested that there should be something on the Town’s website regarding the Finance Office’s operation. It should show the vouchers, and have an expenditure and memo page. All staff and residents could then see week by week what is being expended, and where items are being purchased from.

Vice-Chair Bird concurred, stating it would be good transparency.

Commissioner Bolduc also concurred, stating there is a user friendly software system that the State used.

The Commission then agreed to talk about Article V at the next meeting.

Vice-Chair Bird suggested the Commission invite Department Heads to the meeting.

Chair Ladakakos asked that the Town Manager and other named department heads be present at the next meeting, and asked the Town Clerk to inform them.

Commissioner Vallante stated he wanted to make a comment regarding the lack of space for meetings, and stated he wanted to encourage the Town Council to provide meeting space in the new police station.

Commissioner Bolduc responded that it was going to be included, as well as televising capabilities.

The meeting was adjourned at 9:12 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 ten (10) pages is a true copy of the original Minutes of the Charter Commission Meeting held March 9, 2010.

Kim M. McLaughlin