

CHARTER COMMISSION MEETING
TUESDAY, APRIL 13, 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
William Gombar
Paul Ladakakos
Jerome Begert
Jayne Flaherty
Ronald Regis
Michael Vallante

Laura Bolduc, excused absence (attending Town Council Budget Workshop)
Tianna Higgins, excused absence (attending Town Council Budget Workshop)

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

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

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

VOTE: Unanimous.

The Commission agreed to start with section 502.3, which was then read by Chair Ladakakos.

Vice-Chair Bird suggested the following underlined and strikethrough language for section 502.3, stating the Town Manager agreed with the language at the last meeting:

Sec. 502.3. Prepare and submit to the Town Council as of the end of the fiscal year, a complete report on the finances and administrative activities of the Town for the preceding year, and cause such annual Town report to be published and made available to the public within ~~ninety (90)~~ thirty (30) days after the close of the fiscal year and receipt of the annual Town Audit Report;

Chair Ladakakos read section 502.4. There were no comments made.

Chair Ladakakos read section 502.5.

Vice-Chair Bird suggested the following underlined and strikethrough language for section 502.5—there were no other comments made:

Sec. 502.5. Attend the meetings of the Town Council, except when the Manager's removal is being considered, promptly provide answers to such questions as members of the Town Council may have, ~~and~~ keep the Town Council advised of the financial condition and future needs of the Town and make such recommendations as may seem desirable after consultation with respective department heads;

Chair Ladakakos read section 502.6.

Vice-Chair Bird suggested the following underlined language for section 502.6:

Sec. 502.6. See that all laws, orders and ordinances governing the Town are faithfully executed;

Commissioner Flaherty inquired if these recommendations were decided at a discussion with the Town Manager, to which Vice-Chair Bird responded that they were.

Chair Ladakakos read section 502.7.

Vice-Chair Bird suggested the following underlined and strikethrough language for section 502.7:

Sec. 502.7. Act as purchasing agent for all departments of the Town individually, jointly, or in concert with other municipalities and agencies, subject to provisions of this Charter and the Town Purchasing Policy, ~~except the Department of Education~~;

Commissioner Gombar inquired as to Vice-Chair Bird's reasoning for amending this section, to which Vice-Chair Bird responded that this amendment will allow the Town Manager to make combination purchases for all departments or with entities outside the Town, e.g.. RSU #23.

Commissioner Gombar stated that the Charter already gives the authority to the Town Manager to act as the purchasing agent.

Vice-Chair Bird responded there was an ordinance and the Ordinance Review Committee didn't think it was proper to be in an ordinance. This will give him some authority to negotiate.

Chair Ladakakos was concerned the Town Manager would be the one "chasing prices".

Vice-Chair Bird stated the Town Manager is the person that completes the process.

Commissioner Vallante inquired if the Ordinance Revision Committee was against the language in the Code of Ordinances regarding joint purchases [section 2-445].

Vice-Chair Bird stated some members wanted it out of the ordinance.

Michael Nugent, Code Enforcement Officer for the Town Of Old Orchard Beach, was present at tonight's meeting. He stated the Ordinance Review Committee was concerned with the language in Chapter 2 regarding joint purchases because they felt a municipal partnership with other municipalities could circumvent the Town Council. They were in favor of removing the section that makes joint purchases with other municipalities exempted from the ordinance.

Vice-Chair Bird noted that his recommendations included "subject to provisions of this Charter and the Town Purchasing Policy" and asked if that would take care of that issue, to which Mr. Nugent responded that it would.

Chair Ladakakos read section 502.8.

Vice-Chair Bird suggested the following underlined and strikethrough language for section 502.8. There were no other comments made:

Sec. 502.8. Prepare overall Town Personnel and Purchasing Policies Policy to be submitted annually to the Town Council for adoption by January first of each year and be responsible for their its administration after adoption;

Chair Ladakakos read section 502.9.

Commissioner Vallante suggested the following strikethrough language for section 502.9—there were no other comments made:

Sec. 502.9. Perform such other duties as ~~may be~~ prescribed by this Charter or required by the Council, not inconsistent with this Charter.

Chair Ladakakos read section 503.

Vice-Chair Bird was concerned about the ability to appoint “any” administrative officer” to the position of Town Manager in the absence of the Town Manager, stating there are offices that are incompatible, e.g. Treasurer and Town Manager.

Commissioner Vallante inquired if it was only Administrative Officers that could assume the duties of Town Manager.

Commissioner Gombar stated the job description of Assistant Town Manager should include that the position assumes the duties of Town Manager in the Town Manager’s absence. Commissioner Regis concurred.

Commissioner Gombar inquired if this position should be in the Charter.

Vice-Chair Bird stated the ordinance and the Charter should be consistent.

Commissioner Regis stated the qualifications of the Assistant Town Manager should be included.

Section 504 had been previously discussed with the Public Works Director, William Robertson, at the last meeting, and Section 505 had been discussed with the Finance Director, Jill Eastman.

Vice-Chair Bird stated they were going to discuss police and fire tonight, but both department heads had to attend the Town Council Budget Workshop meeting, and were unable to attend.

Commissioner Vallante inquired if the Town had a Department of General Assistance, to which the Town Clerk, Kim McLaughlin, responded the Town has a Director of General Assistance.

Commissioner Begert asked the Town Clerk to provide the General Assistance Ordinance.

Chair Ladakakos read section 508.

Commissioner Vallante inquired if there was a Department of Recreation, to which the Town Clerk responded affirmatively.

Vice-Chair Bird suggested the following underlined and strikethrough language for section 508:

~~This Town Department shall be responsible for providing a program of recreation for the citizens of the Town and overseeing the resources and facilities therefore.~~

The Recreation Director shall be nominated ~~appointed~~ by the Town Manager subject to confirmation by the Town Council.

~~The Old Orchard Beach Department of Recreation shall act as fiscal agent for the Adult Education program. The Department of Recreation may enter into contracts, agreements, or other arrangements with other municipalities or school administrative units for the purpose of providing joint adult education programs.~~

Jason Webber, the Recreation Director, was present at tonight's meeting. He explained what his department does, stating the department has changed tremendously over the past few years. They now run over 100 programs. They use the schools as their community center, and they collaborate with other Recreation Departments.

Chair Ladakakos asked Mr. Webber to explain some of the parts of his department.

Mr. Webber responded that he has an administrative division that is in charge of payroll, purchasing, etc., and he has a child care division for after school care and summer camps.

There was then discussion around the type of sport programs the Recreation Department offers.

Chair Ladakakos then inquired how the price for each program is determined.

Mr. Webber stated that they do a cost analysis. They add up the cost of the uniforms, balls, coordinators, publishing ads, how many kids will take part, and then divide. They never want be in the red, but they want to make sure they don't charge too much for the programs. He advised they do not get tax dollars for their programs. The Town only pays for the staff and office supplies.

Commissioner Regis inquired about the Recreation Department being in the Loranger School now that it has become part of an RSU.

Mr. Webber stated that it didn't change, further stating there were good people in the transition that protected the Recreation Department's rights to use the school.

Chair Ladakakos was concerned about the cost for parents who could not afford for their child to attend one of these programs, to which Mr. Webber responded that they have scholarship programs that they could apply for.

Chair Ladakakos inquired if they could obtain state funding for any programs.

Mr. Webber responded that Old Orchard Beach is not rural or urban enough to qualify for grants in either program, and the state funding is drying up.

The Town Clerk suggested the Commission also look at section 904 since the Recreation Director was present, in case they had any questions.

Commissioner Begert made a suggestion that when directors from other municipalities take their camps on field trips, to suggest they go to the Ballpark and other events occurring in Old Orchard Beach.

Mr. Webber stated the Recreation Directors have a great network, and Mr. Webber has posted all the OOB365 events on their website.

Chair Ladakakos read section 904.

Mr. Webber commented that he could see why a Recreation Committee was created, but they only meet once a year, and that's to fulfill the requirements of the Charter. Now that there is a full-time Recreation Director, there isn't a need for the committee.

Vice-Chair Bird suggested oversight by the Town Manager instead of the Recreation Committee, and doing away with that committee. Mr. Webber agreed.

Commissioner Flaherty inquired if the Recreation Director reports to the Town Council, to which Mr. Webber responded he only does during budget season.

Commissioner Begert stated he believed one reason for the committee was for the public to attend and ask questions. He inquired of Mr. Webber if he has a flyer, to which Mr. Webber responded that he did. Commissioner Begert stated that communication now exists that hadn't before.

Mr. Webber stated he always has an open door policy, and invites anyone to suggest programs for his department.

Vice-Chair Bird verified with Mr. Webber, that he could do without the Board, and Mr. Webber said he could.

Commissioner Regis commented that the Town Council could create an ordinance if they feel the need to have one, but it may not be needed in the Charter.

Commissioner Begert stated there should be language in the Charter that the Town Council has the option of instituting this committee if need be.

Chair Ladakakos read section 509.

Gary Lamb, the Town Planner, was present for the meeting. He stated he had read sections 509 and 901. He suggested leaving 509 as it is, allowing the Town Manager the hire/fire authority.

Vice-Chair Bird stated they wouldn't be discussing the Planning Board (section 901) because that is later in the Charter and they're discussing administration now. He suggested Mr. Lamb

produce a description for the Planning Department. Vice-Chair Bird then suggested the following for an introductory to section 509:

This Town Department shall be responsible for enforcing the various civil codes of the Town and advise and assist the Town Council, Tax Assessor, Planning Board and other Boards and Commissions. It is an information resource that is available to them in formulating and maintaining various civil codes, ordinances and guidelines for the present and future development of the Town and shall promptly provide answers to such questions as they and other members of the Town Government may have.

Mr. Lamb stated that he is more than a resource.

Vice-Chair Bird said that it was the overall function of the Department that was being referred to not just him.

Vice-Chair Bird then suggested the following:

The Planning Department shall also be responsible for the following functions: Code Enforcement, Plumbing, Electrical and Building inspections, Business Licenses,

Mr. Lamb was concerned about placing business licenses under his office in the Charter. In previous years the business licenses were in the Town Clerk's Office.

Michael Nugent, the Code Enforcement Officer, was also present at the meeting. He thought it would be advisable to make the Charter as general as possible because times change.

Vice-Chair Bird stated that plumbing and electrical need to go somewhere, and they belong with the Planning Department.

Mr. Nugent read a section of the suggestions that Vice-Chair had presented to everyone at the beginning of the meeting:

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.

Mr. Nugent stated that we need to follow National Standards, and they cannot be entered in their entirety into an ordinance, since they are copyrighted. Adopting codes by reference are typically how it's done all over the country.

Vice-Chair Bird was concerned about the volumes of books someone has to go through every time they have a question, to which Mr. Nugent responded that they're mandated and that the Planning Department has no choice.

Commissioner Begert stated that he agrees with the importance of building codes and safety, but he does not believe that it is necessary to adopt every state law, feeling the Town should be allowed some discretion.

Mr. Nugent felt it could cause significant problems for the Town if we started picking and choosing which parts of state law we want to follow.

Commissioner Flaherty felt section 509 makes sense, and suggested to Mr. Lamb that once he puts together his suggestions, the Charter Commission will review them.

Mr. Lamb stated he would leave section 509 as is other than changing the title, and he would be willing to attend another meeting to review the section if need be.

Vice-Chair Bird stated he wants to make sure it's clear that the Town Planner is responsible for attending Planning Board meetings and the Code Enforcement Office is responsible for attending Zoning Board of Appeals meetings. He was concerned the way the Charter is written it requires both to attend these meetings, and Mr. Nugent concurred that it could be interpreted that way.

Mr. Lamb stated that it puts the onus on each one of them to get a designee if they're unable to attend their assigned meetings.

Commissioner Regis read the following section of 506:

“Any disciplinary action, including removal, demotion or suspension, taken by the Town Manager, against the Director of Public Safety shall be appealable to the Town Council, provided such appeal is made in writing within ten days of the Town Manager's decision. The decision of the Town Council, after notice and hearing, may be appealed to the Superior Court in accordance with M. R. Civ. P. 80B.”

Commissioner Regis then inquired why the Department of Public Safety is the only department that has this wording in their section, feeling every department should have that.

Vice-Chair Bird suggested it could have been a problem between the Town Council and the police department at the time and they created this language as insulation. He stated he felt it is not appropriate now.

Commissioner Vallante stated that the Charter Commission has now discussed all sections of Article 5. They need another article to discuss the functions of each department, and agreed with Commissioner Regis that all departments need to be treated equally.

Commissioner Begert inquired what happens if an employee is fired—does the State Law protect? Is there a Union in Town Hall?

Town Clerk Kim McLaughlin responded that there isn't a Union in Town Hall.

Commissioner Begert asked if the State Law describes what a Planning Department does.

Mr. Lamb responded the State Law covers the Growth Management Act, but not the Planning Department.

Vice-Chair Bird confirmed with Mr. Lamb that any authority he gets comes through the State, the Town Council or the Planning Board to the Planning Department, to which Mr. Lamb

responded that it did. Mr. Lamb also stated that the Planning Board enforces the subdivision law.

Vice-Chair Bird said he read Mr. Lamb's notes that he had passed out, and inquired if the planner and the code enforcement officer did not want contracts.

Mr. Lamb stated he had no problem with taking that section out. He doesn't believe the Town Council should be involved in the hiring and firing. He wants to answer to the Town Manager.

Mr. Nugent agreed, stating it's not common in other municipalities to have a contract.

Commissioner Flaherty stated that as a teacher, she worked for the Superintendent and the Principal, and the School Board does not hire/fire the teachers.

Commissioner Begert said that the Charter says the Town Manager is the boss and any orders by the Town Council go through the Town Manager.

Mr. Lamb is concerned with the suggested language by Vice-Chair Bird that the Town Manager nominate a department head for a position instead of appointing, as well as being allowed to be removed by the Town Manager or the Town Council:

“Sec. 901.1. Subject to confirmation by the Council, the Town Manager shall nominate ~~appoint~~ a Town Planner and a Code Enforcement Officer for a six (6) month probationary period during which they may be removed by the Manager or Town Council with or without cause. After the probationary period, and subject to confirmation by the Council, the Town Planner and the Code Enforcement Officer may ~~shall~~ be given two (2) year contracts subject to removal for cause by the Town Manager Council during the term of the contract, after notice and hearing”.

Commissioner Vallante questioned why Mr. Lamb was suggesting the Town Council be removed from the language.

Mr. Lamb responded that department heads should be appointed by the Town Manager and approved by the Town Council.

Vice-Chair Bird then read his other suggestion for the section:

“The Town Planner and the Code Enforcement Officer shall be given at least 60 days notice of nonrenewal of a contract. A Code Enforcement Officer shall be appointed or reappointed annually by July 1st of each year.”

Commissioner Vallante would like to know the pros and cons of allowing the Town Council to be involved in the decision of whether to hire/fire a department head, asking what the primary problem would be with that.

Mr. Lamb stated the Town Council sets policy. The Town Manager should do the hiring and firing. He feels it's a bad idea to not have separation between the two. If the Town Council does not like what the Town Manager has done, they need to hire a different Town Manager.

Chair Ladakakos was concerned if two new people were elected to the Town Council, would they be prejudicial in firing a department head, being unaware of the background of the situation. He commented that the Town Council has to have faith in the Town Manager. The Town Council does not work with the department heads on a daily basis. They should not be involved in their termination.

Vice-Chair Bird inquired as to what the Town Council is able to do, for example, if a department head should be fired, but the Town Manager refuses to do so?

Commissioner Flaherty stated at that point the Town Council should hire a new Town Manager.

Chair Ladakakos felt the Town Council had too much power. They should adopt a personnel policy every year, and if there is an issue with a department head, that department head should be brought before the Town Manager.

Mr. Lamb stated there needs to be insulation between elected officials and management.

Commissioner Begert agreed that for 90% of the day to day functions, the department head falls under the Town Manager; however, the Town Council is supposed to be the checks and balances.

Chair Ladakakos inquired if the Town Manager fires a department head, is that confirmed by the Town Council?

Mr. Lamb stated it was his understanding the Town Manager can fire a department head without approval by the Town Council.

Commissioner Begert does not feel the Town Council has too much power.

Commissioner Vallante is concerned with the suggestions being made, it will give the Town Council more power than they currently have. He welcomes input for discussion, and commented that there is a department head present at tonight's meeting. He wants to make sure he makes a decision knowing all of the facts. He also feels the Commission should develop a procedure for inquiries.

Commissioner Flaherty stated this has been in the Charter for a long time, and not based on current personalities. She's concerned about the Town losing a great candidate, and that good employees need protection. She feels the Town Manager is like the CEO of a business, and the Town Council has enough power and authority as needed.

Vice-Chair Bird is concerned that department heads could get too insulated, and do what they wish. He feels the Charter needs to decide a balance point—who gets the final say? The Town Council should have oversight, and the Charter will explain where the limits are.

There was then discussion regarding Planning Board qualifications. Commissioner Begert suggested that qualifications be placed in the Charter, to which Mr. Lamb responded that they operate under judicial rule.

Commissioner Begert said that candidates need to read the laws first before being appointed to any Board, at the very least.

Vice-Chair Bird responded that the Town Council needs to set that up and sort it out.

Chair Ladakakos read section 510.

Vice-Chair Bird suggested the following underlined section be added to the beginning of section 510:

“This Town Department shall be responsible for the Operation of the Waste Water Treatment, and Disposal Infrastructure of the Town.”

Christopher White, Superintendent of the Waste Water Treatment Plant was present, and explained the scope of his position to the Charter Commission.

Chair Ladakakos inquired how many employees are at the Treatment Plant.

Mr. White responded that he has six full-time union employees. He advised that all full-time employees in his department are union members except himself.

Chair Ladakakos inquired who was responsible for writing grants, to which Mr. White responded that it was his responsibility.

Vice-Chair Bird asked if the Waste Water Treatment Plant monitors the beach.

Commissioner Vallante responded that we are part of Maine Healthy Beaches.

Commissioner Regis commented that for infrastructure there are sewer impact fees. He inquired if the Treatment Plant receives the money or if it goes into the general fund.

Mr. White stated that with impact fees, the money is designated for the area impacted by the development. He also stated that everyone pays a connection fee that goes into the general fund. The Waste Water Treatment Plant then submits a budget.

Vice-Chair Bird suggested they look at dedicated funds for various departments.

Commissioner Regis said the Town should not need to go to bond, that money should be already available from impact fees.

Commissioner Begert inquired who tests the outflow from the Waste Water Treatment Plant, to which Mr. White stated they conduct in house testing for discharge from the facility, and some tests are done by certified labs. Commissioner Begert also was concerned about waste water flowing into Goosefare Brook, and Mr. White stated that their water does not flow into Goosefare Brook now.

Commissioner Vallante stated that Maine Healthy Beaches tests the brook by the Waste Water Treatment Plant. He then inquired of Mr. White what his thoughts were about the Town Council being involved in the hiring and firing process.

Mr. White responded there needs to be consistency for all department heads, and that insulation is very valuable. It would be difficult to work for five different people. Department Heads should answer to the Town Manager, who answers to the Town Council.

Commissioner Begert suggested to Mr. White that he should develop a statement defining what his visions are for the future, and give that to the newly created Comprehensive Plan Committee.

Mr. White stated he was definitely interested in looking at the Comprehensive Plan, and felt comfortable knowing he would be involved in future discussions.

Chair Ladakakos stated at the next meeting they will discuss section 506, Department of Public Safety, and asked the Town Clerk to have the Police Chief and Fire Chief present. They may also discuss the Town Clerk's Office before moving onto Article VI.

The meeting was adjourned at 9:10 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 eleven (11) pages is a true copy of the original Minutes of the Charter Commission Meeting held April 13, 2010.

Kim M. McLaughlin