

CHARTER COMMISSION MEETING  
TUESDAY, JUNE 22, 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:

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

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

Motion made by Commissioner Flaherty, seconded by Vice-Chair Bird, to approve the minutes of May 25, 2010.

VOTE: Unanimous.

Finance Director, Jill Eastman, was present for this meeting.

Vice-Chair Bird stated they had discussed Article VII at the last meeting; however they had questions for the Finance Director. He then inquired if Ms. Eastman had read his recommendations and if she had questions. The following are recommendations by Vice-Chair Bird:

“ARTICLE VII. FINANCIAL PROCEDURE / BUDGET

Sec. 701. Fiscal Year.

The fiscal year of the Town government shall be from July 1<sup>st</sup> of the current calendar year to June 30<sup>th</sup> of the next year. established by ordinance. Such fiscal year shall constitute the budget and accounting year as used in this Charter. The term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

Sec. 702. Preparation and Submission of the Budget.

The Town Council, at least six (6) months prior to the beginning of each budget year, shall notify the Town Manager and each Department Head of an expected budget limit figure within which they should formulate their next budget year's budget. This figure need only be a guideline, subject to changes throughout the budgetary process, but should serve as an expectation of the Council.

Each Department Head, at least one hundred and twenty (120) days prior to the beginning of each budget year, shall submit to the Town Manager a budget, a projected work plan and an explanatory budget message for next budget year.

The Town Manager, at least ninety (90) days prior to the beginning of each budget year, shall submit to the Council a budget and an explanatory budget message.

~~With respect to the Department of Education only, the budget authority of the Council shall be limited to the final determination of the total appropriation to be made to that Department.~~

The proposed budget prepared by the Manager, ~~and the Department of Education budget,~~ shall be reviewed by the Town Council which shall approve such budgets with or without amendment.

The Town Council shall fix the time and place for holding a public hearing on such budget, and shall give a public notice of such hearing. The Council shall thereafter review the budget and adopt ~~it them,~~ with or without change, no later than the day before the beginning of the fiscal year. In the event the Council shall fail to adopt the budgets before the beginning of the fiscal year, the budgets from the preceding fiscal year shall be extended, pro rata, month to month, until such time as the Town Council shall adopt a new budget as presented by the Manager and the Department of Education shall automatically become the budgets for the fiscal year.

The budget shall be compiled from detailed information furnished by the administrative officers and boards on such forms as may be designated by the Manager, and shall contain:

Sec. 702.1. An exact statement of the financial condition of the Town including all dedicated and undedicated fund balances;

Sec. 702.2. An itemized statement of appropriations recommended for current expenses, and for permanent improvements with comparative statements in parallel columns of estimated expenditures for the current year and actual expenditures for the two preceding fiscal years. An increase or decrease in any items shall be indicated;

Sec. 702.3. An itemized statement of estimated revenue from all sources, other than taxation; a statement of taxes required and comparative figures from the previous and next fiscal year;

Sec. 702.4. Such other information as may be required by the Town Council.

Sec. 703. Budget Establishes Appropriations.

From the date of adoption of the budget, the several amounts stated therein as proposed appropriations shall be and become appropriated to the several agencies, departments and purposes therein named.

Sec. 704. Budget Establishes Amount to be Raised by Property Tax, Certification to Town Assessor.

From the date of adoption of the budget, the amounts stated therein as the amount to be raised by property tax shall constitute a determination of the amount of the levy for the purposes of the Town in the corresponding tax year. A copy of the budget as finally adopted shall be certified by the Manager and filed with the Town Assessor, whose duty it shall be to levy such taxes for the corresponding year. A copy shall also be filed with the Town Clerk and posted on the Town web site along with the Budget Summary.

Sec. 705. Budget Summary.

At the head of the budget there shall appear a summary of the budget, which need not be itemized further than by principal sources of anticipated revenue, stating separately the amount to be raised by property tax. The budget summary shall also be itemized by departments and kinds of expenditures, in such a manner as to present to taxpayers a simple and clear summary of the detailed estimates of the budget.

Sec. 706. Expenditures and Departmental Revenue.

The budget for all departments, ~~including the Department of Education,~~ shall include all proposed expenditures. The Town Council shall make a gross appropriation for each department, ~~including the Department of Education,~~ for the ensuing fiscal year. The gross appropriation for each department shall not be exceeded except by consent of the Council and subject to the provisions of Section 708. ~~The Department of Education budget shall be expended under the direction and control of the School Board.~~

Sec. 707. Work Program, Allotments.

Before the beginning of the budget year, the head of each office, department or agency shall submit to the Town Council and when requested by the Town Manager a work program for the year, which program shall show the requested allotments of appropriations for such office, department or agency, by stated periods, and the purposes to which they are to be put, for the entire next budget year.

The Town Manager shall review the requested allotments in the light of the work program of the office, department or agency concerned, and may revise, alter or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total of appropriations available to said office, department or agency for the budget year.

Sec. 708. Transfer of Appropriations.

At the request of the Manager, or on its own initiative, the Council may by resolution transfer an unencumbered appropriation balance or portion thereof including surplus between the general accounts.

Sec. 709. Appropriations Lapse at End of Fiscal Year.

Except as otherwise provided by law, this Charter, and order of the Town Council, all appropriations shall lapse at the end of the fiscal year, and all surpluses shall be appropriated by the Town Council during the ensuing fiscal year.

Sec. 710. Borrowing in Anticipation of other Revenues.

In any fiscal year, in anticipation of the collection or receipt of taxation and of other revenues of that fiscal year, the Council may, by resolution, authorize the borrowing of money by the issuance of negotiable notes of the Town, each of which shall be designated "Special Revenue Note for the Year . . . ." Such notes may be renewed from time to time, but all such notes, together with the renewals, shall mature and be paid not later than the end of the fiscal year in which the original note ~~shall have been~~ was issued.

The following notes were also attached to the recommendations as items for discussion.

Discussion with the Finance Committee needed re: Financial Procedure & Purchasing Policy

Dedicated Funds:

Rescue Call Fees = Rescue Operation & expenditures

Public Works - \$1,553,827 = \$1,412,500 – Vehicle Excise Taxes, Reg., Street Opening, & State Road assistance

Solid Waste Disposal - \$665,000 = \$675,000 - Transfer Station Permits, Pay-to-Throw bags, Commercial Solid Waste

Waste Water Treatment & Comfort Station - \$1,111,700 = \$35,000 – various fees

Code Enforcement - \$202,850 = Permits, licenses & fines

“Undedicated Fund” “Overlay”

Discussion?

Distribution Notices on Tax Bills – RSU assessment, County assessment, sewer, solid waste disposal”

Ms. Eastman responded that a couple of items stood out—Section 702, the Budget. If the Town Council does not adopt a budget, she cannot commit or collect taxes. The Town may run into

cash flow issues that time of year, and may end up borrowing. If it is open-ended, a budget may not be adopted. She believes it should be left as is.

Vice-Chair Bird stated that as the Charter states right now, if the budget is not adopted by the Town Council by June 30<sup>th</sup>, the budget, as presented by the Town Manager, is adopted for the next fiscal year. He believes his recommended changes will give the Town Council the incentive to push to pass the budget.

Ms. Eastman stated that it has more meat as it is currently outlined in the Charter. If the Town Manager proposed a budget, and the Town Council amended but didn't adopt it, then the Town Manager's budget would be accepted. This already forces the Town Council's hands to adopt a budget. She then suggested the suggestion the amendment be sent to legal for review.

Commissioner Begert inquired if the Town Council could commit the taxes using the last fiscal year's rate.

Ms. Eastman responded that the Town Council would need to adopt a budget for the year.

Commissioner Regis stated that the Town Council cannot set the mil rate if the budget has not been adopted.

Commissioner Begert stated that department heads need to be more responsive to the Town Council requests.

Town Manager, Jack Turcotte, stated that it is his job to manage the department heads.

Commissioner Flaherty inquired if there has been a problem in the past with the budgets not being adopted on time.

Ms. Eastman responded that she has been the Finance Director for Old Orchard Beach for six years, and it hasn't been a problem in that time.

Commissioner Flaherty inquired why this is an issue and needs to be changed, if the budget is adopted on time. She said if the Town Manager is not doing his job, the Town Council needs to deal with that, to which Chair Ladakakos agreed.

Vice-Chair Bird stated he was concerned that currently, if the Town Council deadlocks or is negligent, the budget will be adopted as presented by the Town Manager. He urged that it go the other way.

The Charter Commission agreed to refer this budgetary question to legal.

Ms. Eastman was concerned about setting the dates for the fiscal year in the Charter. She stated it was much easier to change an ordinance than the Charter. The Town may never want to change it, again, from the current fiscal year, but it would be difficult to change the Charter.

Vice-Chair Bird stated that it is important enough that it should be in the Charter to make it difficult to change. The associated problems with changing the fiscal year such as partial budget years, etc. are very disruptive.

Commissioner Begert stated the budget process should begin earlier.

Ms. Eastman responded that the staff starts the process in January—six months prior to adoption.

Commissioner Begert felt the Town Council should start around December 31<sup>st</sup> to give the Finance Director and Town Manager more time to put together the budget.

Ms. Eastman responded that direction from the Town Council is important.

Commissioner Begert inquired of Ms. Eastman if it was possible to place the warrant on the website.

Ms. Eastman stated that she will look into that. Some of the information is in MUNIS, and she's not sure if it can be placed into a PDF file.

Vice-Chair Bird then inquired about dedicated funds, using Solid Waste Disposal as an example. Setting up these types of funds in the Charter would show transparency and lessen the possibility of people questioning where their tax dollars go. By setting up dedicated funds, the fund can be rolled over year to year, dedicated for that particular purpose.

Ms. Eastman stated her concern is with the start up of the dedicated fund. She used the current Rescue Billing Fund as an example. The Town Council sets aside money from fees for ambulance services for police/fire vehicles. The Town Council is now going to use that fund for the new police station. It can be done. The only problem is the Town Council would need to put money in the budget to start the fund, because the expenses are already there. It will need seed money.

Vice-Chair Bird asked Ms. Eastman if the concept was viable, to which she responded in the affirmative.

Ms. Eastman then left the meeting at 7:40 p.m.

Chair Ladakakos stated the Commission will now discuss the strategy for going through the Charter a second time. He suggested they look the Charter over closely and make decisions as they go.

Vice-Chair Bird stated the Commission has gone through the Charter the first time, and made suggestions. Now the Commission needs to digest the information. They will then go through the Charter a second time and vote on suggestions, and make a draft Charter. Once the draft is put together, it needs to go to legal. A summary should be made available to explain the decisions made.

Chair Ladakakos felt that if people were interested, they would attend the public hearing or pick up the draft. He didn't feel it was necessary to also have a summary. He stated the Town Clerk will give the draft to legal.

Vice-Chair Bird stated that the Charter Commission did not discuss the Town Clerk's Office in Article V. He stated it needs to be done. The Town Clerk's Office is an essential office and part of the checks and balances for the Town. It needs to be defined in the Charter. The following are his recommendations:

“Sec. 505. Office of the Town Clerk

This Town Office is to be an independent, unbiased, and non-partisan office and shall be responsible for the running of fair and impartial elections, recording, archiving and maintaining clerical affairs of the Town, receive and post agendas, receive and maintain official copies of minutes of the Town Council and other bodies, and maintain other official duties including issuance of Birth, Marriage and Death Certificates, various other licenses and permits, the receipt of funds therefore and the recording of them according to policies set forth by State Law, this Charter and Town Ordinances. It shall be the official repository and manager of the Town Records.

The Town Clerk shall be independently elected by the Town as in Article II above, and shall appoint a Deputy Town Clerk.

Town Clerk, Powers and Duties.

The powers and duties of the Town Clerk shall be the same as are provided for Town Clerks under the general laws of the State of Maine.

The Town Clerk shall be the Deputy Registrar of Voters and in the absence of a Registrar, may be appointed and act as Registrar.

The Town Clerk shall monitor the membership and expiration dates of the seats of various boards, committees, etc. and notify the members and the Town Council of impending or actual vacancies and provide a list of persons who have applied for appointment or re-appointment to the same.”

Commissioner Regis stated that Boards/Committees do not get their minutes to the Town Clerk on time. There needs to be an authority mechanism.

Vice-Chair Bird stated they would address that in Article X.

Commissioner Gombar stated Article V is for the Town Manager. The Charter Commission should create another Article for the Town Clerk.

Vice-Chair Bird stated he would like to see the Article’s title changed to Town Administration since it already covers more than just the Town Manager.

Vice-Chair Bird then asked the Town Clerk to leave the meeting, so they could discuss her position. The Charter Commission wanted to discuss something about the position, not the person, and felt it was important to have the ability to discuss that issue without the direct presence of the incumbent in the room. The Town Clerk left the meeting and sat in the Channel 3 video room and took minutes from that location.

Vice-Chair Bird then stated the Town Clerk’s Office is an extremely responsible one and is also set up for a “check and balance” on the Town Council should the Town Council not follow the Charter or be under recall provisions, etc. He felt the Town Clerk’s Office needed to be insulated more than it is. He stated that the Town Council controls the Town Clerk’s salary as

part of their budgetary powers, and the Town Council can raise/lower the salary depending on whether or not they like the Town Clerk. He stated the Town Clerk's compensation should be set up through the Charter, so the position is insulated, yet is still influenced by the Council's budgetary prerogative.

He stated that he thought that the Town Clerk's compensation should be set up by formula, taking into account the salaries of other similarly responsible department heads. He then passed out a sheet listing the wages of the department heads to the Charter Commission members. He stated the Town Clerk's salary was not currently commensurate with the amount of responsibility placed in that Office. He suggested the following:

“414.2 Compensation of the Town Clerk shall be set at the compensation equal to the average of that of the top eight (8) Department Heads.”

Commission Flaherty stated this should be run by legal. Vice-Chair Bird agreed.

Mr. Turcotte stated he understood the motivation, and that he would have to think about it. The concept makes sense, and he had no immediate objections.

Commissioner Flaherty inquired if the Town Clerk reported to the Town Manager, to which Mr. Turcotte responded no, that she answers to the voters, but participates as do all other department heads.

Chair Ladakakos also requested legal input.

Commissioner Regis stated he agreed with Vice-Chair Bird that it is an elected position, and the salary should be based on a formula.

Commissioner Begert stated that Vice-Chair Bird's math formula is one way to create insulation. Another way is to let the voters decide on the salary, and take it out of the Town Council's hands. He stated that in an economic downturn, other departments may be a luxury, but the Town Clerk's Office is necessary.

Chair Ladakakos then had the Town Clerk come back into the room.

Chair Ladakakos proceeded to read Article X, section 1001 through 1003—no comments.

Vice-Chair Bird had the following recommendation:

“Sec. 1003. Conflicts of Interest.

No elected Town official shall hold appointed office in the Town unless the law or ordinance creating the appointed office so requires or allows. Any elected official, employee or member of a Town board, commission or committee who violates or causes a violation of state law or this charter relating to conflicts of interest shall be guilty of malfeasance in office or position and shall forfeit said office or position. Violation of this section with the knowledge of the person or corporation contracting with or making a purchase or sale to the Town shall, at the option of the Town, render the contract or sale voidable.”



Chair Ladakakos read section 1003.1.

Vice-Chair Bird had the following recommendation:

“Sec. 1003.1. No appointed department head shall hold any other elected or appointed office, or position of employment with the Town, other than as specifically allowed by this Charter.”

Commissioner Begert commented that this is currently occurring, stating Gary Lamb [Planning Director] is on SLAWG [the Sea Level Adaptation Working Group].

Vice-Chair Bird stated that there are department heads in situations where they are doing extra things and being compensated for them. The Charter currently states they cannot do that.

Commissioner Flaherty suggested removing section 1003.1, stating that if the Charter is going to be changed to allow this to occur, why not just remove the whole section.

Two students arrived to attend the meeting at 8:25 p.m.—Nate Gordon and Cody Stack. The Charter Commission was happy that two students would take the time to attend the meeting, and they were asked to sit at the table with the Commission members.

Commissioner Begert recommended that section 1003.1 be kept in the Charter, and add that if the Town Council wishes to vary from this section to make an appointment, they must have a public hearing first.

Vice-Chair Bird stated that under the general provisions, that can only be done if the Charter makes the exception.

Commissioner Gombar felt they were getting granular at that point.

Chair Ladakakos read section 1004.

Vice-Chair Bird recommended the following:

“Sec. 1004. Public Bulletin Board.

There shall be a public bulletin board located in the Town Hall. The agenda of each meeting of the Town Council, ~~the School Board~~ and all other boards, committees, and commissions shall be posted on this bulletin board at least three (3) working days prior to the meeting and a copy of the agenda shall be printed as a legal advertisement in a newspaper of general circulation in the Town at least 24 hours prior to the meeting. No action shall be taken on agenda items which have not been posted and published in accordance with this section, unless the Council, ~~School Board~~, commission or board determines that an emergency exists. The declaration of emergency by the Council, ~~School Board~~, commission or board shall be conclusive. Dates, times, and meeting places of all regular and special meetings, public hearings and workshops shall also be posted on the bulletin board in accordance with the section.”

Commissioner Begert suggested the words “education system” should be in place of School Board, instead of striking out the words.

There was discussion regarding if the Town can mandate the Regional School Unit to provide their minutes to the Town Clerk.

Vice-Chair Bird stated he wasn't sure if the Charter can influence their postings, and suggested it be sent to legal.

Commissioner Gombar inquired if the Town had legal control over the RSU to force them to also give agendas to the Town.

Chair Ladakakos read section 1004.1.

Vice-Chair Bird made the following recommendation:

“Sec. 1004.1. Public Access to Meetings.

All regularly scheduled meetings of the Town Council ~~and of the School Board~~ shall be videotaped and broadcast on a local cable access video channel pursuant to federal laws governing local access. Additionally, in the event an issue arises causing significant public interest or significant community changes which will be discussed at a meeting other than a regularly scheduled meeting, all reasonable attempts will be made by the Town Council Members ~~or School Board Members, as appropriate,~~ to have the meeting videotaped and shown as soon as possible on a local public cable channel. Two copies of all meetings so videotaped, shall be given to the Town Clerk, to be maintained as an archival record of said meetings and available to the public.”

Commissioner Begert inquired how these videotapes will be made available to the public.

Vice-Chair Bird stated that currently the recordings are stored at the Historical Society, and can be viewed there.

Fire Chief John Glass, who runs Channel 3, walked into the room and stated the videotapes are kept at Town Hall for one year and then transferred to the Historical Society.

Chair Ladakakos read section 1005.

Vice-Chair Bird made the following recommendation:

“Sec. 1005. Minutes of Meetings, Workshops and Public Hearings.

Drafts of aAll minutes taken at Town Council, ~~School Board~~, Planning Board, Zoning Board of Appeals, and Conservation Commission meetings, and marked “DRAFT”, shall be turned in to the Town Clerk's office within seven (7) days after the meeting. Final copies of all minutes taken at Town Council, Planning Board, Zoning Board of Appeals, and Conservation Commission meetings shall be turned in to the Town Clerk's office within seven (7) days after the meeting wherein they are accepted and as amended.

Minutes from all other boards, committees or commissions, whether appointed or elected, shall be turned in to the Town Clerk's office within thirty (30) days of their acceptance.”

Commissioner Gombar stated it should be added that the Town Clerk can enforce this section.

Chair Ladakakos read section 1006 through 1008—no comments.

Chair Ladakakos read section 1009.

Vice-Chair Bird made the following recommendation:

“Sec. 1009. Comprehensive Plan and Zoning Ordinance.

There shall be a comprehensive plan and zoning ordinance as required by state law. The comprehensive plan shall be updated every decade after the decennial census data is available.”

Chair Ladakakos read section 1010.

Vice-Chair Bird made the following recommendation to correct spelling and grammatical errors:

“Sec. 1010. Summons before Town Council.

The Clerks of the Supreme Judicial and Superior Courts may issue summonses for witnesses to attend and produce books, documents and papers at any meeting of the Town Council for the Town of Old Orchard Beach at which a hearing is had in any matter regarding any alleged dereliction, which summons shall be served as required to be sufficient in matters before the Supreme Judicial or Superior Courts. On complaint of failure to obey a summons, to the Maine Superior Court which court is expressly given jurisdiction to hear such complaints, said court[,] if it finds failure to obey said summons to be without reasonable excuse, shall impose a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than thirty (30) days, or by both. All rights of appeal are to be available as exist in the general laws of the State of Maine.”

Commissioner Begert inquired of the Charter Commission members if they agreed with the \$10-\$100 fine amount.

Nate Gordon stated there was a big difference between a \$100 fine and 30 days in jail, inquiring what the grounds were for either punishment.

Vice-Chair Bird responded that it would be a Judge’s decision.

Commissioner Gombar recommended a \$100-\$500 fine.

Commissioner Flaherty stated that it should start with \$100, but not be more than \$500, and Commissioner Gombar and Commissioner Begert were in agreement.

Chair Ladakakos read section 1011. He then stated he wants “of America” to be added in the first paragraph of the oath.

Vice-Chair Bird had the following recommendation:

“Sec. 1011. Oath of Office.

Every officer of the Town shall, before entering upon the duties of office, take and subscribe to the following oaths, to be filed and kept in the office of the Town Clerk,

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will in all respects observe the provisions of the Town Charter and ordinances of the Town of Old Orchard Beach and that I will support the Constitution and will obey the laws of the United States and of this State so long as I shall continue a citizen thereof, so help me God." . and

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully discharge all the duties incumbent upon me as a \_\_\_\_\_ according to the Constitution and laws of the State, so help me God."

Provided that an affirmation in the above forms may be substituted, when the person shall be conscientiously scrupulous of taking and subscribing an oath.”

Chair Ladakakos read section 1012—no comments.

Chair Ladakakos read section 1013.

Commissioner Regis stated that any department head should have the right to appeal to the Town Council and to the Courts.

Vice-Chair Bird made the following recommendation:

“Sec. 1013. Removal of officers and employees.

Any officer or employee to whom the Town Manager, Town Council, or a head of any office, department or agency, may appoint a successor, may be removed by the Manager, Town Council, or other appointing officer at any time. The decision of the Town Manager, or other appointing officer, shall be final. Removal of the fire chief, the police chief and the senior rescue operations facilitator shall be by the Town Manager, only, for cause, with the right of appeal to the Town Council.”

Vice-Chair Bird then made the following recommendation to add section 1014:

“Sec. 1014. Violations of the Charter.

Besides the power of civil suit by citizens to enforce provisions of this Charter or to punish violations, which shall remain, the Town Council may also determine violations of the Charter by hearing as in Sec. 1010.

Upon complaint filed with the Town Clerk and attested to by at least three (3) citizens of the Town, the Town Council shall investigate the complaint and hold a public hearing on it within fourteen (14) days. Findings by the Town Council shall be by a minimum of five votes.

The Town Council shall have the power to prescribe punishment for violations of the Charter and ordinances of the Town after hearing, including fines, suspension, discharge, disqualification, or forfeiture of office or position.

Upon a finding of a violation of the Charter, fines may be imposed and withheld from the violators' compensation from the Town, if any.

Any elected official, employee or member of a Town board, commission or committee who violates or causes a violation of the Charter may also be found guilty of malfeasance in office, position or employment and, if so, shall forfeit said office, position or employment.

All rights of appeal are to be available as exist in the general laws of the State of Maine. Findings and punishment by the Town Council may be appealed to the Maine Superior Court which court is expressly given jurisdiction to hear such appeals.

Vice-Chair Bird stated the Charter Commission might change the amounts and the time frame.

Commissioner Flaherty recommended review by legal.

Commissioner Begert agreed with Vice-Chair Bird's recommendation.

Vice-Chair Bird then read section 1101—no comments.

Vice-Chair Bird then read section 1102 and had the following recommendation:

~~“Sec. 1102. First Election.~~

~~Notwithstanding the provisions of Section 202, there shall be no regular municipal election in November 1998 and the first regular municipal election under this Charter shall be held on the first Tuesday following the first Monday of November 1999. Notwithstanding anything to the contrary in Section 201.1, at the November 1999 election, three members of the Town Council shall be elected for terms of one year each and two members of the Town Council shall be elected for terms of two years each. Candidates for Council in the November 1999 election shall specify on their nomination papers whether they are seeking election for a one year term or a two year term and may be elected only for the term so specified. Notwithstanding anything to the contrary in Section 201.2, at the November 1999 election, three members of the School Board shall be elected for terms of one year each and two members of the School Board shall be elected for terms of two years each. Candidates for School Board in the November 1999 election shall specify on their nomination papers whether they are seeking election to a one year term or a two year term and may be elected only for the term so specified. Notwithstanding anything to the contrary in Section 201.3, at the November 1999 election, the Town Clerk shall be elected for a term of one year.~~

[\[To be re-written to fit\]](#)

Vice-Chair Bird read section 1103 and stated the date will need to change:

~~“Sec. 1103. Time of Taking Full Effect.~~

~~This Charter shall take effect for all purposes on July 1, 1998.”~~

Vice-Chair Bird read section 1104 and stated the dates will need to change in this section, as well:

“Sec. 1104. Terms of Current Officials.

The terms of members of the Town Council, ~~members of the School Board~~, and the Town clerk elected at the regular municipal election on ~~November 4, 1997~~ shall expire on the ~~third Monday in November, 1999.~~”

Vice-Chair Bird read section 1105—no comments.

Vice-Chair Bird read section 1106 and stated the date will have to be amended in this section, also:

“Sec. 1106. First Budget.

The budget adopted for the fiscal year beginning July 1, ~~1998~~ shall remain in effect until the end of the then current fiscal year subject to modification in accordance with the terms of this Charter.”

Vice-Chair Bird read sections 1107 and 1108—no comments.

There were no further questions.

The meeting was adjourned at 9:03 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 fourteen (14) pages is a true copy of the original Minutes of the Charter Commission Meeting held June 22, 2010.

Kim M. McLaughlin

NOTE: The Charter Commission accepted the minutes of June 22<sup>nd</sup>, 2010 on July 27<sup>th</sup>, 2010, to include Attorney Chris Vaniotis' responses to the Charter Commission's questions—reprinted below.

I have reproduced the questions and inserted my answers below. Let me know if you need anything further.

1. Is it possible to add section 1014 to the Charter? It is outlined below. The Charter Commission had questions regarding enforcing violations of the Charter.

It is possible, but it would be highly unusual. A municipality's charter is the equivalent of a state's constitution or, in the case of the United States, the federal Constitution. Neither the Maine Constitution nor the United States Constitution provides directly for any punishments or penalties or defines any actions as "violations" of the constitution. The provisions of charters are "enforced" in several ways. First, a court can invalidate action taken by a municipality or a municipal official if that action is prohibited by the charter. Second, appointed officials who act contrary to the charter can be removed by the appointing authority. Third, elected officials are ultimately subject to the authority of the voters, who can choose not to reelect or to recall an elected official whose actions do not comport with the charter.

Beyond those general comments, I also see some potential issues with section 1014 as drafted. It is problematical to have the Town Council, which is a political body in the sense that it is popularly elected, serve as a neutral tribunal to determine "violations" and mete out "punishment." That is a function traditionally reserved to courts or to appointed administrative tribunals.

The suggestion that the Council could order removals and withhold compensation is inconsistent with other provisions of the charter, which already govern removal of officers and employees. And it would also be likely to set up conflicts with both state and federal labor and employment laws.

Also, this provision purports to confer jurisdiction on the Superior Court. A local charter cannot do that; that is exclusively within the power of the State Legislature.

I cannot provide the Commission with an example of a charter provision similar to section 1014, with its internal enforcement mechanism, because I have not seen one. I have seen provisions that indicate that a violation of the charter can be enforced by the courts in the same manner as ordinance violations are enforced (including civil penalties). I have put together and attached some language that would eliminate some of the potential legal problems with section 1014 as drafted but retain its basic concepts. It would require a companion ordinance to establish monetary penalties. I offer it to the Commission for its consideration.

2. Can the Charter be specific in setting up "Special Revenue Funds", i.e. Pay-as-you-throw? For example as people come in to purchase trash bags, all that money would go

into a special account for the purpose of Solid Waste only, and if there is money in the account, it would be rolled over each year.

Yes, the Charter can be specific in setting up special revenue accounts dedicated to particular purposes. I would caution, however, that the Charter Commission should always take the long view and be careful about locking into the Charter ideas which, while they may seem entirely appropriate currently, might not necessarily fit the Town's circumstances 10 or 20 years into the future. For example, considering the example of "pay as you throw," I know of one town where a citizen-initiated charter amendment was passed a number of years ago, at a time when pay-per-bag was new and not widely accepted. That town's charter now prohibits the town from having a pay-as-you-throw system unless the town goes through the process of amending the charter. Over time, economies change, technologies change and the wants and needs of the residents may change. The Charter, like a constitution, should focus primarily on basic government structures.

3. Can the Charter compel the Regional School Unit to turn in minutes to the Town Clerk? In the current Charter, the School Board must turn minutes into the Town Clerk, and they weren't sure if that could still be mandated. They also want it mandated for agendas.

No. The Charter cannot impose any requirements on the Regional School Unit. The RSU is a separate legal entity not governed by the Town's Charter.

4. Can the Charter Commission specify a certain formula be used to set the salary for an elected official?

Yes. Again, coming up with a formula to cover many years and potentially changing circumstances may be something of a challenge, but it is certainly something which could be included in the Charter.

5. When the Charter designates public hearing notifications under section 1004, does that also pertain to the Planning Board, and does the Charter supersede the Zoning Ordinance?

The requirements of section 1004 do apply to the Planning Board, but they do not supersede notice requirements of the Zoning Ordinance or in state statute. Section 1004 sets out minimum notice requirements (it uses the words "at least"). Both the Zoning Ordinance and state statutes can require more notice than section 1004.