

CHARTER COMMISSION MEETING  
TUESDAY, OCTOBER 12, 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:

Jerome Begert  
John Bird  
Jayne Flaherty  
William Gombar  
Paul Ladakakos  
Ronald Regis  
Michael Vallante  
Tianna Higgins (excused absence)

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

Motion made by Commissioner Vallante, seconded by Commissioner Flaherty, to accept the minutes of September 28, 2010.

VOTE: Unanimous.

Town Councilor Michael Tousignant and former Town Councilor, Joseph Mokarzel attended tonight's meeting, sitting at the table with the Charter Commission.

Mr. Tousignant introduced Mr. Mokarzel to the Charter Commission, stating that Old Orchard Beach once had a seven member Town Council, then a three-person Town Council, and then decided to go to a five member Council. Mr. Mokarzel has served on all three variations.

Mr. Mokarzel, 110 East Grand Avenue, said he has served 11 years on the Town Council in Old Orchard Beach. In 1972-1973, there was a seven-man Town Council. There were three people on one side of every issue, and three people on the other side of every issue. One group refused to meet with the other group. The 7<sup>th</sup> person was on vacation. They were unable to attain any quorums until the 7<sup>th</sup> person returned from vacation. There was also too much bickering.

Mr. Mokarzel stated that he led the parade for a three-member Town Council, with a \$1.00 per year stipend. Unfortunately, E. Emerson was ill most of the year and unable to attend the meetings, thereby leaving only Mr. Mokarzel and the other member to vote on all issues. Mr. Mokarzel then realized that having only a three-member Town Council was an error. He then proposed a five-member Town Council. He feels that works very well. On a five-member Town Council, three creates the majority (60%). On a seven-member Town Council, each person is only worth about 14% of the total vote. It takes four people for a majority (56%) of the vote, versus five for (60%) of the vote.

Mr. Mokarzel advised that currently, with issues like Contract Zoning, three or four people can change the regulations in this community with the sweep of a pen. With five people, it takes three to pass something. It's hard to get three people. With seven people, it takes a majority of four people. It's hard to get three people out of five to agree on something. If you have seven people to choose from, it's easier to get four people to agree. Outsiders or insiders can push an issue. Mr. Mokarzel advised that he served when televising meetings wasn't an option. With

television, all seven people will want to participate, just to show the viewing public that they're doing something.

He further stated that a five-member Town Council has worked extremely well in Old Orchard Beach. Five is the magic number. It has proven itself. There are an adequate number of candidates to run for the seats. A three-member Town Council is not enough, but a seven-member Town Council is too many. If it works, don't fix it. Five is the right number.

Chair Ladakakos stated he remembered the three and the seven member Town Councils, and they didn't work. He said the Charter Commission still isn't sure if it will go to referendum. It is still in the discussion stages. He told Mr. Mokarzel that maybe it didn't work back then, but this is 2010, and the Town may not have the same issues now. Seven may actually work at this point in time. If it does go to referendum, he advised Mr. Mokarzel that the voters will still have the opportunity to vote on the issue.

Commissioner Begert addressed Mr. Mokarzel, stating that the numbers he was discussing aren't just percentages—they're brains. Commissioner Begert originally wanted a nine-member Town Council, because there would be more brains. It's not a percentage, but a number of people. He has asked people in the community and got a lot of feedback on seven. It's great to have the information ahead of time so the Charter as presented at referendum will be affirmed on Election Day. His preference is to break the Charter down into several questions instead of possibly putting it down in one lump sum. He has heard from members of the public that they're not in favor of a seven-member Town Council.

Vice-Chair Bird stated he didn't understand Mr. Mokarzel's summation of the 56/60%. He said that Mr. Mokarzel is talking about people with opinions. Vice-Chair Bird said that he feels it's easier to get three people on someone's side than four people. It's obvious that it's not easier to get four people to agree to something than three since in order to get four, you first have to get three and then another one! Three people on a five-person Town Council can run as a block and run the Town any way they wanted to until the next election. The Town needs to have more people on the Town Council to be able to control the situation.

Mr. Tousignant said that Vice-Chair Bird's comments are valid debate information, but people are asking him why the Charter Commission is spending so much time on this issue when there are hundreds of other things in the Charter to discuss, further inquiring as to what is driving the need to discuss the number of Town Councilors and term limits. Why does the Charter Commission want to change those?

Commissioner Vallante stated that his comments were in regard to only one issue; the number of Councilors. The Town is better served by a seven-member Town Council. He did question the need for term limits. He doesn't understand how that will help the Town function.

Chair Ladakakos stated the Charter Commission agreed as a whole to go through each piece section by section. This section is no different than any other section. He has bad thoughts about a five-member Town Council, stating he was one [Vice-Chair Bird comment that he was on one as well and it didn't work well]. Chair Ladakakos further stated that the Charter Commission is being very thorough, and will have a third reading before any final decision is made.

Mr. Tousignant inquired as to the need for term limits. There is someone on the Town Council that has been there 13 years. Why take away the right of the majority of the people?

Commissioner Begert stated that he voted along with everyone else on the motion that included term limits. He believes term limits throws the baby out with the bath water. If there is a need to remove someone from the Town Council, then there is a recall provision in the Charter. He doesn't want term limits in the third round of discussion, and he won't vote in favor of term limits.

Commissioner Flaherty stated she is not firm on term limits and may change her decision during the third round, as well.

Mr. Tousignant was also concerned about three-year terms, feeling it is too long for someone to commit to, especially seven people. He asked the Charter Commission to give this some thought, stating two years is plenty. What is the justification for three-year terms?

Vice-Chair Bird said he didn't quite understand Mr. Tousignant's comments, saying that on one hand he is stating that a candidate wouldn't want to spend three years as a commitment, yet on the other hand there is a candidate that wants to stay 15 years.

Chair Ladakakos stated that there have been Town Councilors elected to several terms and they weren't as valuable because they were there too long. He wants the Town Councilors there for a certain amount of time, leave, and be thankful for the time spent. He said the State has term limits. Time has come for term limits as far as the Town Council goes.

Commissioner Vallante said he never understood the reason behind term limits. When citizens vote, that is term limits. If the system needs to change, it is up to the voters to change the system. A lot of people don't pay attention to the Town Council meetings. People get name recognition even if they're not effective. The solution is to keep the voters informed. A candidate's job is to inform the people of why they're running.

Mr. Tousignant stated that term limits infringes on his right as a voter on who he can vote for.

Chair Ladakakos stated that the State law requires a nine-member Charter Commission, not a five-member Charter Commission. Why would the State mandate nine? They must feel that nine-members are better than five. It's not different than a seven-member Town Council.

Commissioner Regis said he was the Charter Commission member that brought up the need for a seven-member Town Council, and he believes in it. This is the second time the Charter Commission discussed this, and there will be a third time. He believes the voters should be allowed to vote on the issue. He said it should be broken down into three separate questions.

Commissioner Gombar stated he voted for seven, because he was really against having six, and it was a three/three vote. Most Charter Commission members wanted the increase, and he was concerned about having six Town Councilors.

Commissioner Vallante stated he has been watching Town Council meetings for years and there have been many dysfunctional Town Councils with a three/two split. Two people seem to be ostracized, and it's always the same two people. The dynamics come from many places. He stated that we can't fail to look at the group process, informing everyone that he works with

group dynamics for a living. A seven-member group is a very effective, functioning group—seven human beings that live in Town who are reasonable, rational people. He feels more comfortable having seven people decide issues for the Town. Seven dedicated people will give us a better outcome and decision than five.

Commissioner Flaherty commented that this is a healthy discussion, only enhanced when people like Mr. Mokarzel and Mr. Tousignant come to talk. Amending the Charter is a work in progress. In the end, it should be something the citizens are proud of.

Mr. Tousignant was concerned about the Charter Commission approaching this from a negative perspective. If a majority of the voters vote someone in, that should be the parameters.

Commissioner Begert commented that if only the positive needed to be regulated, there wouldn't be a need to regulate.

Chair Ladakakos stated every section they discuss may have a problem, not just this section. It's not a simple task. There are some sections that aren't problematic, and there are some sections that take longer to go through.

Commissioner Begert inquired of Mr. Mokarzel and Mr. Tousignant their feelings toward the following issues: 1) criminal background checks; 2) requiring candidates and registered voters to be United States citizens; 3) displaying government spending on the website for transparency; 4) sanctions for elected officials and staff who violate the Charter.

Mr. Tousignant stated he didn't have a problem with those, but inquired as to why they aren't there currently.

Mr. Tousignant and Mr. Mokarzel then left the meeting. The Charter Commission thanked them for attending and giving their input.

Chair Ladakakos then read Article III, Initiative and Referendum, sections 301 through 301.4, including the recommended changes discussed by the Charter Commission at previous meetings:

### “ARTICLE III. INITIATIVE AND REFERENDUM

Sec. 301. Petition for Overrule of Action of Council.

The following shall be subject to overrule by referendum as follows:

~~(A.) Sec. 301.1.~~ All ordinances;

~~(B.) Sec. 301.2.~~ Orders or resolves appropriating \$250,000 or more for a single capital improvement or piece of capital equipment;

~~(C.) Sec. 301.3.~~ Orders or resolves authorizing the issuance of general obligation bonds or notes of \$250,000 or more ~~for capital improvements or capital equipment.~~

~~(D.) Sec. 301.4.~~ Orders or resolves appropriating \$250,000 or more ~~from the Capital Improvement Fund.~~

Vice-Chair Bird motioned, and Commissioner Vallante seconded, to strike “for capital improvements or capital equipment” from the new section C.

Commissioner Flaherty was concerned about the \$250,000 still being valid.

Commissioner Begert stated it should be dropped to \$200,000.

Vice-Chair Bird said the Town Council is taking on debt for the Town.

Vice-Chair Bird made a point of procedure, seconded by Commissioner Begert to first change the designations of 301.1, 301.2, 301.3, and 301.4 to A, B, C, and D.

VOTE ON THE POINT OF PROCEDURE: Unanimous.

VOTE ON THE PREVIOUS MOTION TO AMEND SECTION C: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Vallante to strike “from the Capital Improvement Fund” from the new section D.

Commissioner Gombar said he was concerned that any budgeted item over \$250,000 would need a referendum question. He wanted to know the implication of striking that language, requesting the question be referred to Atty. Vaniotis for a legal opinion.

The second was rescinded and the motion rescinded, and the question will be referred to legal counsel.

Chair Ladakakos read the paragraph in section 301, following the new section D, with proposed amendments:

“If within ~~twenty (20)~~ **thirty (30)** days after the enactment of any such ordinance, order or resolve, a petition signed by not less than 10% of the number of the registered voters having voted in the last gubernatorial election of the Town of Old Orchard Beach is filed with the Town Clerk requesting its reference to a referendum, the Council shall call a public hearing to be held within thirty (30) days from the date of the filing of such petition with the Town Clerk, and shall within fourteen (14) days after said public hearing call a special Town election for the purpose of submitting to a referendum vote the question of adopting such ordinance, order or resolve. Pending action by the voters of the Town, the referred ordinance, order or resolve shall be suspended from operation until it has received a vote of the majority of the voters voting on said question. ~~The Town Council shall not repeal any ordinance, order, or resolve adopted by referendum for a period of one hundred eighty (180) days from the date of the referendum.~~ An ordinance, order or resolve defeated at a referendum shall not be reintroduced for a period of one hundred eighty (180) days from the date of the referendum.”

Commissioner Gombar was concerned about the voting list not being current.

The Town Clerk, Kim McLaughlin, responded that the voting list is more current than it ever has been. The State passed a law that compares vital records (deaths) and driver's license numbers in Maine to the voting list to keep the lists current, as it is a State system now.

Vice-Chair Bird motioned, seconded by Commissioner Vallante to change twenty (20) to thirty days, add "having voted in the last gubernatorial election" and strike the sentence, "~~The Town Council shall not repeal any ordinance, order, or resolve adopted by referendum for a period of one hundred eighty (180) days from the date of the referendum.~~"

VOTE: Unanimous.

Commissioner Regis motioned, seconded by Commissioner Gombar to change 180 days to 365 days in the last sentence, "An ordinance, order or resolve defeated at a referendum shall not be reintroduced for a period of ~~one hundred eighty (180)~~ three hundred and sixty five (365) days from the date of the referendum."

VOTE: Unanimous.

Chair Ladakakos read section 302:

"Sec. 302. Petition for Enactment of Ordinances.

Not less than 10% of the number of the registered voters having voted in the last gubernatorial election of the Town may at any time petition for the enactment of any proposed lawful ordinance by filing a petition, including the complete text of the ordinance, with the Town Clerk. The Town Clerk shall then forward the proposed ordinance to the Town Attorney who shall review the proposed ordinance before a public hearing is held. The Town Attorney is authorized to correct the form of the proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions, and to assure accuracy in its text and references and clearness and preciseness in its phraseology, but shall not materially change its meaning and effect.

The Council shall call a public hearing to be held within thirty (30) days from the date of the filing of the petition with the Town Clerk. Within thirty (30) days after the public hearing, the Council shall call a special Town election for the purpose of submitting to a referendum vote the question of adopting the ordinance, unless the ordinance shall be enacted by the Council prior to the call for the special town election. The ordinance shall take effect on the 10th day after the conclusion of the referendum, provided a majority of those voting thereon shall have voted in the affirmative. ~~The Town Council shall not repeal or amend any ordinance, order, or resolve adopted by referendum for a period of one hundred eighty (180)~~ three hundred sixty days from the date of the referendum."

Commissioner Regis motioned, seconded by Commissioner Gombar to add all the recommended underlined changes, but to include changing 360 days to 365 days.

VOTE: Unanimous.

Chair Ladakakos read section 303:

Sec. 303. Referendum on Certain Expenditures.

The Town Council shall submit the following actions to the voters at a regular or special election following one or more public hearings:

(i) any order or resolve appropriating \$500,000 or more ~~for a single capital improvement or for a single item of equipment;~~

(ii) any order, resolve or ordinance authorizing general obligation bond issues of \$500,000 or more ~~for capital improvements or equipment.~~

~~These provisions shall apply whether or not payment for the capital improvements or single item of equipment is to be made in more than one fiscal year.~~

The questions shall be submitted to the voters at the next regular municipal election held not less than thirty-five (35) days after the order, resolve or ordinance is passed; or the Town Council may order that the question be submitted to the voters at a special election to be held not less than thirty (30) days from the date of the order, resolve or ordinance.”

Commissioner Gombar recommended that the changes to section (i) and (ii) be sent to legal to find out if there are any implications to these changes.

Commissioner Vallante recommended that the Town Clerk check with the Town Manager, Jill Eastman [Finance Director] and legal.

Chair Ladakakos read section 304:

Sec. 304. Form of Question.

The form of the ballot for the proposed ordinance, or repeal of such ordinance, order or resolve, shall be in accordance with state law. The form of question shall be substantially as follows: "Shall the ordinance, order or resolve entitled ` \_\_\_\_\_ ' be adopted? (or repealed?)"

There weren't any comments on section 304.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to accept section 304 as is currently written.

VOTE: Unanimous.

Chair Ladakakos read section 305:

“Sec. 305. Procedures for Recall.

Any seven qualified voters may begin at any time proceedings to recall a Town Councilor, ~~Representative to the Board of Directors of RSU #23 School Board member,~~ Town Clerk or other elected official by a request in writing to the Town Clerk for appropriate petition blanks. These voters shall be referred to as the recall committee. All copies of the petition shall contain a statement of the reason or reasons for recall and the

names of the members of the recall committee. Each petition shall be limited to the recall of a single individual.”

As the Charter Commission in a previous meeting had voted to change “Representative to the Board of Directors of RSU #23” to “Representative to the Education System”, there weren’t any further recommended changes.

Chair Ladakakos read section 305.1:

“Sec. 305.1. The recall committee shall have thirty (30) days from the date of issuance of appropriate petition blanks to cause the petition to be signed by 20% of the number of the registered voters having voted in the last gubernatorial election of the Town. The petition shall be signed in the presence of the Town Clerk or of a qualified voter of the Town who shall certify to the authenticity of the signatures collected. Within ten (10) days after the circulation period ends the Town Clerk shall certify to the Town Council as to whether the petition has been signed by not less than 20% of the registered voters of the Town. Should less than 20% of the number of the registered voters having voted in the last gubernatorial election of the town sign the petition, the petition shall have no further force or effect, and no new petition asking for recall of the same person can be initiated until one hundred eighty (180) days from the end of the previous filing period.”

Vice-Chair Bird motioned, seconded by Commissioner Gombar to accept the underlined recommended changes to section 305.1.

VOTE: Unanimous.

Chair Ladakakos read section 305.2:

“Sec. 305.2. Upon receipt of certification by the Town Clerk that a recall petition has been signed by at least 20% of the number of the registered voters having voted in the last gubernatorial election of the Town, the Town Council shall within thirty (30) days submit to the voters the question of recall. The Councilor, Representative to the Board of Directors of RSU #23 School Board member, Town Clerk or other elected official shall be recalled when a majority of those voting thereon have voted in the affirmative. Any elected official against whom recall proceedings have been initiated may continue to hold office until recalled.”

Commissioner Regis motioned, seconded by Commissioner Flaherty to accept the underlined recommended changes for section 305.2. Again, the Charter Commission in a previous meeting had voted to change “Representative to the Board of Directors of RSU #23” to “Representative to the Education System”.

VOTE: Unanimous.

Chair Ladakakos read section 305.3, 305.4 and 305.5. There weren’t any recommended changes.

Vice-Chair Bird motioned, seconded by Commissioner Flaherty to accept the sections as currently written.



VOTE: Unanimous.

Chair Ladakakos read the recommended new section 305.6:

“Sec. 305.6. In the event of a recall petition referring to the Town Clerk, the Town Registrar of Voters shall take the Town Clerk's place and shall perform all of the functions of the Town Clerk as outlined in Sections 305.1 through 305.5 above.”

Vice-Chair Bird motioned, seconded by Commissioner Vallante, to add the following as the new section 305.6:

“Sec. 305.6. In the event of a recall petition referring to the Town Clerk, the Town Registrar of Voters shall take the Town Clerk’s duties for the purposes of the recall, and shall perform all of the functions of the Town Clerk as outlined in Sections 305.1 through 305.5 above.”

VOTE: Unanimous.

Chair Ladakakos stated the Charter Commission will begin with Article IV, Town Council, at the next meeting.

The meeting was adjourned at 8:56 p.m.

Respectfully Submitted.

Kim McLaughlin  
Town Clerk

I, Kim McLaughlin, Town Clerk of Old Orchard Beach, do hereby certify that the foregoing document consisting of nine (9) pages is a true copy of the original Minutes of the Charter Commission Meeting held October 12, 2010.

Kim M. McLaughlin