

CHARTER COMMISSION MEETING
TUESDAY, APRIL 26, 2011 – 6:30 P.M.

Chair Gombar opened the regular meeting at 6:37 p.m., in Town Hall, Council Chambers. The following members were in attendance:

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

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

Vice-Chair Bird motioned, seconded by Commissioner Begert, to table the minutes of March 22, 2011.

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to table the minutes of March 29, 2011.

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to discuss the summary first.

VOTE: Unanimous.

Commissioner Flaherty read her recommended summary:

“SUMMARY OF RECOMMENDED CHANGES TO THE OLD ORCHARD BEACH
TOWN CHARTER

The following are recommended changes to the Old Orchard Beach Town Charter. Many are only housekeeping changes. Some provide explanatory language to various Articles, to make it easier to understand how town government works.

One major change is that all references to the “OOB School Board” have been removed. The term “Educational System” is used, as the replacement, to include the RSU. A statement, has been included, assuring a return to The local school board system, if changes are made at state level.

We have also recommended two other major changes. We recommend that the number of Town Councilors be expanded to seven (7) and that they be term limited.

Specifically, it is recommended that the Town Council shall be composed of seven (7) members, with six (6) three-year terms and one (1) a one-year term. The six three-year

terms of the Town Council shall be staggered, and expire at three year intervals. The one-year term shall expire annually.

The six three-year terms will provide greater continuity, yet ensure that a majority of the Council will not turn over at any one election. The one-year term will provide an opportunity for candidates who may only wish to serve for a shorter time and make up the seventh member of the seven member Council.

No member of the Town Council shall be eligible to serve for more than seven years out of a ten (10) year period.

The Town Clerk's salary will be determined by averaging the top 8 salaries of department heads. This will bring in line that salary with those of similar communities in the state.

Previously unstated positions, jobs, and offices are listed in the new charter. They already exist in our municipal government.

Much time, research and thought have gone into this document. Our commission has always put the town's interests ahead of our own. We appreciate the input from town citizens, department heads, councilors and the Town Manager."

Commissioner Flaherty commented that several of the paragraphs were written by Vice-Chair Bird and wanted to also thank Commissioner Vallante and the other Commissioners for their input.

Chair Gombar read Commissioner Higgins' recommendations because she was absent:

"Thank you all for reading the Charter Commission's proposed changes to the Town Charter. This commission was initiated due to the formation of the RSU and the need to remove the School Department from the current charter.

The following are recommended changes to the Old Orchard Beach Town Charter. The larger changes are noted below. Some modifications provide explanatory language to various Articles, to understand how the town government is structured and then there are many housekeeping changes.

One major change is that all references to the "OOB School Board" have been removed. The term "Educational System" is used, as the replacement, to include the RSU. Please see Article X Section XX for the language that assures a return to the local school board system, if changes are made at state level.

We have also recommended two other major changes. We recommend that the number of Town Councilors be expanded to seven (7) and that they be given term limits.

Specifically, it is recommended that the Town Council shall be composed of seven (7) members, with six (6) councilors with three-year terms and one (1) councilor with a one-year term. The six three-year terms of the Town Council shall be staggered, and expire at three year intervals. The one-year term shall expire annually.

The six three-year terms will provide greater continuity, yet ensure that a majority of the Council will not turn over at any one election. The one-year term will provide an opportunity for candidates who may only wish to serve for a shorter time and make up the seventh member of the seven member Council.

No member of the Town Council shall be eligible to serve for more than seven years out of a ten (10) year period.

One other item that is new to the Charter is that the Town Clerk's salary will be determined by averaging the top 8 salaries of department heads with in the Town. This will bring in line that salary with those of similar communities in the state. The reason we are proposing the Charter set the salary of the Town Clerk is because this is an elected position, the only one in Town Hall, and the job including the salary should not be influenced by outside sources.

Much time, research and thought have gone into this document. Our commission has always put the Town's interests ahead of our own. We appreciate the input from town citizens, department heads, Councilors and the Town Manager. The final version of the revised charter will be up for your vote in the November election.”

Vice-Chair Bird then read his recommended summary:

“The following are recommended changes to the Old Orchard Beach Town Charter. Many are only housekeeping changes. Some provide explanatory language to various Articles, to make it easier to understand how town government works.

One major change is that all references to the “OOB School Board” have been removed. A statement, has been included, assuring a return to The local school board system, if changes are made at state level.

We have also recommended two other major changes. We recommend that the number of Town Councilors be expanded to seven (7) and that they be term limited.

Specifically, it is recommended that the Town Council shall be composed of seven (7) members, with six (6) having three-year terms and one (1) a one-year term. The six three-year terms of the Town Council shall be staggered, and expire at three year intervals. The one-year term shall expire annually.

The six three-year terms will provide greater continuity, yet ensure that a majority of the Council will not turn over at any one election. The one-year term will provide an opportunity for candidates who may only wish to serve for a shorter time and make up the seventh member of the seven member Town Council.

No member of the Town Council shall be eligible to serve for more than seven years consecutively.

The Town Clerk’s term was changed to four (4) years with the Town Clerk’s salary being determined by averaging the compensation of the top eight (8) department heads. This will bring that salary in line with those of the other Town department heads.

Previously unstated positions, jobs, and offices are now listed in the new charter. They already exist in our municipal government.

Much time, research and thought have gone into this document. Our commission has always put the town's interests ahead of our own. We appreciate the input from town citizens, department heads, councilors and the Town Manager."

Commissioner Flaherty motioned, seconded by Commissioner Vallante, to work from Vice-Chair Bird's summary, stating it hits the mark. It's the shortest and it's concise.

VOTE: Unanimous.

Chair Gombar said he would like it stated in the summary, that the number of Town Councilors and term limits will be separate ballot questions.

Commissioner Flaherty motioned, seconded by Commissioner Vallante, to add a sentence to the summary regarding separate ballot questions.

Commissioner Vallante inquired if there were going to be three questions on the ballot.

Vice-Chair Bird suggested four questions, stating that the RSU should be its own question in case everything else fails. The questions would basically be to eliminate all mention of the School Board except the paragraph to return to everything previously in the Charter should State law no longer govern it.

Commissioner Vallante suggested they rephrase the motion and put the number of questions in one paragraph in the summary.

Commissioner Vallante withdrew his second and Commissioner Flaherty withdrew her motion.

Commissioner Vallante asked Vice-Chair Bird if he wanted to include the RSU as a separate question.

Vice-Chair Bird replied that the Charter questions would be to eliminate the mentioned of the OOB School Board.

Commissioner Flaherty inquired why that would need to be a separate question.

Commissioner Vallante responded that if all else fails, they have to change that.

Vice-Chair Bird motioned, seconded by Commissioner Vallante, to have the following four questions on the ballot:

"In November, four questions will be asked:

1. Should the number of Town Councilors be increased from five to seven?
2. Should there be term limits for Town Councilors?

3. Should the references to the “OOB School Board” be removed from the Charter to comply with State law changes?
4. To approve all other recommended changes to the Charter.”

VOTE: Unanimous.

Commissioner Flaherty motioned, seconded by Commissioner Vallante, to accept the summary as amended.

VOTE: Unanimous.

Chair Gombar began discussion on Section 903, reading Attorney Vaniotis’s recommendations in his letter dated February 18, 2011:

“Section 903 (Conservation Commission).

The proposed changes to this section go well beyond the state statute, 30-A M.R.S.A. §3261 in terms of the powers given to the conservation commission. However, the Town may do so, since the state statute does not limit the powers a town may give to a conservation commission by charter or ordinance.

Some of the proposed new language is a little vague. I am not sure what it means for a commission, which typically does not have a physical office within the Town Office, to be a “supplemental repository” for public records. I also suggest that some attention be given to the idea that the conservation commission could “initiate” environmental testing for the Town. Typically environmental testing would require engaging the services of experts and consultants, and it could prove problematical to give a volunteer board that authority. At a minimum, I would include after the word “initiate” the parenthetical phrase “(subject to appropriation of funds by the Town Council).”

The proposed new final paragraph expands on language in the state statute, at 30-A M.R.S.A. §3261(2)(D)(1), which requires state agencies undertaking open space planning to notify a conservation commission 30 days before implementing such a plan. The proposed new language imposes that same requirement on Town departments, boards, etc. A problem with the proposed language (which is also a problem with the state statute) is the ambiguity of the term “planning operations.” I would suggest that the Commission may want to consult with the Manager and department heads about what kind of a burden this provision would impose upon them, and whether it would make sense as a matter cost/benefit analysis.”

Commissioner Begert recommended the Conservation Commission store their second copy at the museum in case of fire.

Commissioner Vallante motioned, seconded by Commissioner Flaherty, to add “subject to appropriation of funds by the Town Council”, after the word “initiate”, in Section 903, second paragraph, as follows:

“There shall be a Conservation Commission composed of five (5) members, and two (2) Alternates who shall be appointed by the Council. Members of the Conservation

Commission shall serve staggered three (3) year terms under 30-A M.R.S.A. § 3261 and shall serve until a successor has been appointed and qualified. The Conservation Commission shall be responsible for the care and superintendence of the municipal trees, public parks, Town-owned open and/or undeveloped spaces and significant natural resources, oversee and monitor any Conservation Easements known to or held by the Town, initiate, subject to appropriation of funds by the Town Council, provide for and be a supplemental repository for the results of any environmental testing for the Town, and shall have such powers and perform such duties as are provided by the laws of the State of Maine, this Charter and ~~the~~ ordinances duly adopted by the Council, including the powers and duties of tree wardens. The Conservation Commission shall have the power to form subcommittees and/or advisory boards as they deem necessary.”

VOTE: Unanimous.

Chair Gombar then read Attorney Vaniotis’s recommendations to Section 904 in his February 18th, 2011 letter:

“Section 904 (Recreation).

I wonder why the draft language singles out teachers as the representatives to the Recreation Board. Is there any reason why the Commission chose to exclude other representatives of the schools, such as administrators or coaches?”

Commissioner Flaherty stated they should leave this section as they currently have recommended it.

Chair Gombar read Attorney Vaniotis’s recommendations to Section 905 in his February 18th, 2011 letter, stating the Charter Commission has already addressed this.

“Section 905 (new section, Finance Committee).

The Town Council already has the authority to establish a finance committee, and has done so by ordinance. To put a provision in the Charter requiring a finance committee without prescribing its powers and duties really accomplishes nothing. It is not a good idea to have surplus language in the Charter.”

Chair Gombar read Attorney Vaniotis’s recommendations to Section 1003.1 in his letter dated February 18th, 2011.

“Section 1003.1 ([regarding conflicting offices].

The proposed changes make this a much less restrictive provision. The current language requires an appointed department head to act only in that capacity and not hold any other elected, appointed or employment position with the Town. Whether to relax that restriction is a policy question. If the Commission does decide to make the suggested changes, I would suggest inserting the word “Town” before the word “office,” to make it clear that it would not prohibit a department head from holding state, regional or county office.”

Commissioner Vallante motioned, seconded by Commissioner Flaherty, to insert the word “Town” between “appointed” and “office” in Section 1003.1 as follows:

“Sec. 1003.1. No appointed department head shall hold any other ~~elected or~~ appointed Town office, or regular compensated position of employment with the Town, except as specifically allowed by this Charter, Ordinance, or State Law.”

VOTE: Unanimous.

Chair Gombar read Attorney Vaniotis’s recommendations for Section 1003.1 in his March 3, 2011 letter.

“Section 1003.1 (prohibition against holding other office).

The proposed new word “regular” needs some definition. Is the intent to distinguish between permanent and temporary, between fulltime and part-time, or between some other characteristics of employment?”

Commissioner Vallante motioned, seconded by Commissioner Flaherty, to add “as defined by the Town’s Personnel Policy” between “regular” and “compensated” as follows:

“Sec. 1003.1. No appointed department head shall hold any other ~~elected or~~ appointed Town office, or regular, as defined by the Town’s personnel policy, compensated position of employment with the Town, except as specifically allowed by this Charter, Ordinance, or State Law.”

Vice-Chair Bird inquired if they should make this change globally.

The Charter Commission agreed to amend this section only.

VOTE: Unanimous.

Chair Gombar read Attorney Vaniotis’s recommendations to Section 1004 in his June 28, 2010 letter and his March 3, 2011, first paragraph.

“Section 1004 (Public Bulletin Board).

(6/28/10 answer) 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.”

(3/31/11 answer, 1st paragraph) If the Commission adds the language concerning posting to the town internet website, I would suggest adding a new sentence at the end of the section to read: “A failure or malfunction in the town internet website shall not require the postponement of any hearing or action by the Town Council or any other board, committee or commission provided the agenda was posted on the official public bulletin board as required by this section.”

Commissioner Vallante motioned, seconded by Commissioner Flaherty, to add Attorney Vaniotis's recommended language to Section 1004, as the last paragraph, as follows:

"A failure or malfunction in the town internet website shall not require the postponement of any hearing or action by the Town Council or any other board, committee or commission provided the agenda was posted on the official public bulletin board as required by this section."

VOTE: Unanimous.

Chair Gombar read the second paragraph of Attorney Vaniotis's recommendation in his March 3, 2011 letter, regarding Section 1004.

"I also think it is not advisable to get so specific as to require the public bulletin board to be located outside the Town Clerk's Office. What if 10 years from now the Town has a new Town Hall, or has renovated the existing Town Hall, and there is a better place for the public bulletin board than outside the Town Clerk's Office?"

The Charter Commission agreed to leave this section as they currently have recommended it.

Chair Gombar read the third paragraph of Attorney Vaniotis's recommendations in his March 3, 2011 letter.

"Finally, the Commission may want to think about whether the newspaper publication requirement of existing Section 1004 is perhaps overly broad as it applies to all boards, committees and commissions. While publication might make sense for meetings of the Council and for certain other boards such as the Planning Board or Board of Appeals, it creates substantial expense when applied to all the advisory boards and committees and subcommittees."

Vice-Chair Bird stated the Charter Commission did not need to react to this recommendation, and the Charter Commission agreed.

Chair Gombar read Attorney Vaniotis's recommendations to Section 1005, in his letter dated March 3, 2011.

"Section 1005 (Minutes of Meetings, Workshops and Public Hearings).

This is the only municipal charter I have seen which contains any requirement at all concerning how minutes are taken and kept. That is a matter of administrative procedure, typically governed by rules or ordinances. I would also urge the Commission to discuss with staff the consequences of requiring videotaping of meetings of the Planning Board, Zoning Board of Appeals and Conservation Commission, both in terms of overall cost to the Town and in terms of scheduling meetings at times and places where they can be videotaped."

Commissioner Vallante stated the Charter Commission had already discussed this and agreed on their current recommendation.

Commissioner Flaherty stated the police department is now set up as a second location for video-recording.

Chair Gombar read Attorney Vaniotis's recommendations to Section 1014, in his letter dated March 12, 2010, June 28th, 2010 and March 3, 2011.

(March 12, 2010 answer) "Currently, there is no sanction or punishment for violating a provision of the Charter. With respect to elected public officials, the voters have the ability to institute a recall. Otherwise, there is a state statute which is of little utility. 30-A M.R.S.A. § 2607 provides that "[a] municipal official who neglects or refuses to perform a duty of office commits a civil violation for which a fine of not more than \$100 for each offense may be adjudged, when no other penalty is provided. The fine shall be recovered on complaint to the use of the municipality." In 25 years of practice, I have never seen that statute invoked. One disincentive to utilizing it is the fact that the costs of going to court to procure the penalty would far outweigh the amount the Town could recover.

I have not seen any charters in Maine which contain a penalty or punishment provision. That is probably because a charter is analogous to a constitution, and constitutions typically do not contain penalty or punishment provisions. Rather, they leave enforcement and penalties to the legislative body (which, in Old Orchard Beach, is the Town Council). I did come across one municipal charter (Ketchikan, Alaska) which contains the following language: "[t]he council by ordinance shall have the power to prescribe the punishment for violations of the charter and ordinances of the city." I am aware of nothing in Maine law which would preclude a municipal charter from having language to that effect. If the Charter Commission is interested, I could draft some language specifically for the Old Orchard Beach Charter."

(June 28, 2010 answer) "...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 am enclosing 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.

(March 3, 2011 answer) “As I have previously indicated, I think this provision is high problematical, and I would suggest that it is really not necessary. Under the current Charter and laws, if an elected official violates the Charter, that official can be recalled. If an appointed official violates the Charter, that appointee can be removed. And if an employee violates the Charter, that employee can be disciplined (which could include removal).

To involve the Council in employee personnel matters would be contrary to all the other provisions of the Charter which make the Town Manager the chief administrator of the Town. And requiring the Council to hold a hearing based upon a complaint filed by five voters could prove intimidating to municipal officials trying to do their jobs. Any board that reviews applications and says yes to some and no to others is often going to displease one group or another interested in the application. This provision would allow any person displeased by a board decision to gather four additional signatures and then complain to the Town Council. Over the past several years, a number of Maine municipalities have had a difficult time finding volunteers willing to serve on their boards. I would think subjecting such volunteers to the potential for this kind of a process might have a chilling effect on the Town’s ability to attract residents willing to serve the Town.”

Commissioner Begert read a letter he wrote, himself, to the Charter Commission, which is attached to these minutes.

Commissioner Vallante motioned, seconded by Commissioner Begert, to amend Section 1014, second paragraph, last sentence, by changing “shall recuse himself” to “shall be recused”:

“Upon receipt of a verified written complaint filed by 5 voters of the Town, the Town Council shall, within 30 days, conduct a hearing to determine whether a violation has occurred. The municipal official, employee or member of a Town board, commission or committee accused of the violation must be given notice and the opportunity to be heard. In the event that more than one municipal official, employee or member of a Town board, commission or committee is named in the complaint, the Council shall hear and decide the complaint against each official, employee or member of a Town board, commission or committee separately. If the complaint alleges a violation by a member of the Town Council, such Councilor shall be recused from the matter.”

VOTE: Unanimous.

Chair Gombar read Attorney Vaniotis's recommendations to Section 1015 in his March 3, 2011 letter.

"Section 1015 (new section, Capital Improvement Program).

I would change the first few words of the first sentence to read "The Town Council shall establish..." Also, in the last paragraph, I would change the last clause to read "unless the Town Council declares that an emergency exists and passes an order adopted in the same manner as an emergency ordinance according to Article IV, Section 410.1, authorizing the emergency expenditures." The reason for that change is that an emergency ordinance is only temporary, so that the Council would have to act twice – first with an emergency ordinance, followed up with a non-emergency ordinance to give final authorization to the appropriation. The language I have suggested retains the requirement of a supermajority and the requirement that the Council declare the emergency, but allows the Council to do so by order."

Vice-Chair Bird said "No" to both of the recommendations. The Town does not want to depend on the Town Council to establish it. It should be established by Charter.

Chair Gombar stated he didn't think Attorney Vaniotis's recommendation violates Vice-Chair Bird's intent.

Vice-Chair Bird responded that Attorney Vaniotis wants it done by order. It should be done by ordinance.

Chair Gombar read Attorney Vaniotis's recommendations to Section 1016 in his June 28, 2010 letter.

"Section 1016 (new section, Dedicated Expense Accounts).

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."

Vice-Chair Bird stated Attorney Vaniotis is speaking to something entirely different and irrelevant.

Chair Gombar said the Charter Commission has given authority to the Town Council to create accounts.

Vice-Chair Bird commented that if the Town Council doesn't want the accounts, they don't have to use them.

Chair Gombar read Attorney Vaniotis's recommendations to Section 1101 in his March 3, 2011 letter.

“Section 1101 (Validity).

While the language change is helpful, I would actually recommend deleting this section altogether. There is really no reason not to print the transitional provisions with printed versions of the Charter.”

Vice-Chair Bird commented that this is current language in the Charter.

Chair Gombar read Attorney Vaniotis's recommended changes to Section 1102 in his March 3, 2011 letter, first section.

“Section 1102 (First Election).

This transitional provision gets a little tricky because you have indicated that the Commission is contemplating putting the provision concerning change in the composition and terms of the Town Council on a separate ballot question. In order to do that, it will be necessary to have two separate transition provisions, one attached to the Town Council question and the other part of the general Charter revision.

The Town Council provision would read as follows:

Section 1102.2. Terms of Current Officials and First Election.

Notwithstanding Section 201.1, the terms of all members of the Town Council elected prior to the effective date of this Charter shall expire on November 19, 2012. In order to establish the staggered terms provided for in Section 201.1, at the November 2012 regular municipal election, two members of the Town Council shall be elected for three-year terms, two members for two-year terms, and three members for one-year terms. Candidates for Town Council in the November 2012 election shall specify on their nomination papers whether they are seeking election for a three-year term, a two-year term or a one-year term and may be elected only for the term so specified.

The effect of that language would be that new councilors elected at the November 2011 election would serve a short, one-year term. Then the new system of six three-year terms and one single-year term would commence with the November 2012 election. (I will explain the dates when I come to Section 1103, below.) That is the same method of which Section 1102 of the existing Charter used when the Town changed from concurrent terms to staggered terms for Town Councilors.”

Vice-Chair Bird motioned, seconded by Commissioner Begert, to replace the current Section 1102 with the following new Section 1102, Transition to New Charter, as follows:

“Sec. 1102. Transition to New Charter

The provisions of Section 202 notwithstanding, the terms of the Town Councilors elected in 2011 for 2-year terms shall expire normally in 2013 and the first regular municipal election in November 2012 shall elect two (2) Town Councilors for three-year terms and two (2) Town Councilors for two-year terms, and one (1) Town Councilor for a one-year term. All succeeding elections under this Charter shall elect two (2) Town Councilors for three-year terms and one (1) Town Councilor for a one-year term, thereby providing elections for a Town Council composed of seven (7) members, with six (6) Town Councilors having three-year terms and one (1) Town Councilor having a one-year term by the year 2014.

The six three-year terms of the Town Council will be staggered, and expire at three year intervals. The one-year term will expire annually.

Candidates for Council shall specify on their nomination papers whether they are seeking election for a one-year term or a three-year term and may be elected only for the term so specified.

Notwithstanding anything to the contrary in Section 201.3, at the November 2012 election, the Town Clerk shall be elected for a term of two years.”

Vice-Chair Bird passed out a spreadsheet to explain the breakdown of the number of Town Councilors to be elected each year. He recommended the graph at the top because it does not allow a major turnover of the Town Council at any one election, and provides a smooth transition.

Sheet1
SERVICE YR.

ELECTION YR.	TERM	2011	2012	2013	2014	2015	2016
2009	2 - 2 YR.	2					
2010	3 - 2 YR.	3	3				
2011	2 - 2 YR.		2	2			
2012	2 - 3 YR.			2	2	2	
	1 - 1 YR.			1			
2013	2 - 3 YR.				2	2	2
	1 - 1 YR.				1		
2014	2 - 3 YR.					2	2
	1 - 1 YR.					1	
2015	2 - 3 YR.						2
	1 - 1 YR.						1
# of Councilors		5	5	5	5	7	7

SERVICE YR.

ELECTION YR.	TERM	2011	2012	2013	2014	2015	2016
2009	2 - 2 YR.	2					
2010	3 - 2 YR.	3	3				
2011	2 - 2 YR.		2	2			
2012	2 - 3 YR.			2	2	2	
	2 - 2 YR.			2	2		
	1 - 1 YR.			1			
2013	2 - 3 YR.				2	2	2
	1 - 1 YR.				1		
2014	2 - 3 YR.					2	2
	1 - 1 YR.					1	
2015	2 - 3 YR.						2
	1 - 1 YR.						1
# of Councilors		5	5	7	7	7	7

Chair Gombar likes the second graph on the page, stating that if people vote to approve the change, the Charter should get to seven Town Council members immediately following the election. Waiting will put people off. He will, however, agree with Vice-Chair Bird's recommendation if the majority of the Charter Commission does.

Commissioner Begert is concerned that a well-backed finance group could put a majority of the Town Council in their pocket. Staggering these terms, [as in the first graph] would avoid that.

Commissioner Flaherty said both plans are well thought out. If the voters agree to the change, they would probably want to do this sooner than later. She further stated she could go with either graph.

Commissioner Vallante stated he is leaning toward making it happen as soon as possible after the voters approve.

Vice-Chair Bird stated the major problem is the year 2012. There is the possibility of five new Town Councilors with the second method. There is a possibility a majority of the Town Council could be elected at the same time.

Commissioner Flaherty inquired when term limits would kick in.

Chair Gombar responded that they hadn't discussed that yet. They'll need a separate transitional phase.

VOTE [on Vice-Chair Bird's Transitional Section 1102]: Commissioners Vallante, Flaherty and Chair Gombar, no. Commissioner Begert and Vice-Chair Bird, yes. Motion fails 3-2.

Commissioner Vallante motioned, seconded by Commissioner Flaherty, to adopt a seven-member Town Council for the 2012 election, as follows:

"Sec. 1102. Transition to New Charter

The provisions of Section 202 notwithstanding, the terms of the Town Councilors elected in 2011 for 2-year terms shall expire normally in 2013 and the first regular municipal election in November 2012 shall elect two (2) Town Councilors for three-year terms and two (2) Town Councilors for two-year terms, and one (1) Town Councilor for a one-year term. All succeeding elections under this Charter shall elect two (2) Town Councilors for three-year terms and one (1) Town Councilor for a one-year term, thereby providing elections for a Town Council composed of seven (7) members, with six (6) Town Councilors having three-year terms and one (1) Town Councilor having a one-year term by the year 2014.

The six three-year terms of the Town Council will be staggered, and expire at three year intervals. The one-year term will expire annually.

Candidates for Council shall specify on their nomination papers whether they are seeking election for a one-year term or a three-year term and may be elected only for the term so specified.

Notwithstanding anything to the contrary in Section 201.3, at the November 2012 election, the Town Clerk shall be elected for a term of two years.

VOTE: Commissioners Begert, Vallante, Flaherty and Chair Gombar, yes. Vice-Chair Bird, no. Motion passes 4-1.

Chair Gombar stated term limits will take effect in 2013. There should be a separate transitional phase for all.

Commissioner Flaherty motioned, seconded by Commissioner Vallante, to add a new Section 1102.2 as follows:

“Sec. 1102 Term Limits.

Term limits shall go into effect with the 2012 election. Council seats elected prior to November, 2012 shall not calculate into the term limit formula.”

VOTE: Unanimous.

Chair Gombar read Attorney Vaniotis’s recommendations for adding Section 1102.1 in his March 3, 2011 letter.

“With regard to the Charter revision as a whole, whether or not the voters approve the changes to the Town Council, a transitional provision is still needed to carry out the change to a four-year term for the Town Clerk. In order to do that, the first term of the Clerk under the new Charter would have to be a two-year term, with the four-year term beginning at the November 2014 gubernatorial election. Accordingly, the transition provision would read as follows:

Section 1102.1. Terms of Current Officials and First Election.

Notwithstanding Section 201.3, at the November 2012 regular municipal election, the Town Clerk shall be elected for a term of two years. Beginning at the November 2014 regular municipal election, the Town Clerk shall be elected for a four-year term, as provided in Section 201.3.”

Commissioner Vallante stated it should state that the term limits do not pertain to the Town Clerk.

The other Charter Commission members felt that it was clear that it did not.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to move the last sentence in the new Section 1102 to a new Section 1102.3 as follows, to separate it from the Town Council transition question:

“Notwithstanding anything to the contrary in Section 201.3, at the November 2012 election, the Town Clerk shall be elected for a term of two years.”

VOTE: Unanimous.

Chair Gombar read Attorney Vaniotis's recommendations to Section 1103 in his March 3, 2011 letter.

"Section 1103 (Time of Taking Full Effect).

Under state statute, 30-A M.R.S.A. § 2105(4), the effective date of the new Charter, if it is approved at the November 2011 election, will be July 1, 2012 – the beginning of the next municipal year. That is not a matter of local option".

Vice-Chair Bird said that if that's what the state statute says, they should incorporate it.

Vice-Chair Bird motioned, seconded by Commissioner Flaherty, to amend Section 1103, as follows:

"Sec. 1103. Time of Taking Full Effect.

This Charter shall take effect for all purposes on July 1, ~~1998~~ 2012."

VOTE: Unanimous.

Chair Gombar read Attorney Vaniotis's recommended changes to Section 1104 in his March 3, 2011 letter.

"Section 1104 (Terms of Current Officials).

This section will be unnecessary, as I have incorporated it into Section 1102."

Vice-Chair Bird said the current recommended language works.

Chair Gombar read Attorney Vaniotis's recommended changes to Section 1106 in his March 3, 2011 letter.

"Section 1106 (First Budget).

Again, because the Charter will not take effect until July 1, 2012, the date in this section needs to be changed to July 1, 2012."

Vice-Chair Bird motioned, seconded by Commissioner Flaherty, to amend Section 1106 by changing the date to 2012 as follows:

"Sec. 1106. First Budget.

The budget adopted for the fiscal year beginning July 1, ~~1998~~ 2012 shall remain in effect until the end of the then current fiscal year subject to modification in accordance with the terms of this Charter."

VOTE: Commissioners Flaherty, Vallante, Vice-Chair Bird and Chair Gombar, yes. Commissioner Begert, no. Motion passes 4-1.

Commissioner Vallante asked the other Commissioners if they wanted to address the Town Manager's concerns.

Commissioner Flaherty said they addressed them while he was present.

Commissioner Vallante said there was discussion, but they didn't change anything. He then said the Town Manager's first concern was the appointment of a town attorney.

Commissioner Flaherty stated the Town Manager wanted flexibility.

Vice-Chair Bird motioned to amend section 409.3 by adding the word "Primary" before attorney.

Commissioner Begert seconded the motion, stated the Town Attorney's complaint was that the Town Council may forget to re-appoint. The Attorney was concerned the Town may be locked into a verbal agreement without this language. Vice-Chair Bird's motion allows for diversity.

VOTE: Unanimous.

Commissioner Vallante addressed Section 414.2, stating this is not about the person, but the position, stating the Town Manager had said he could not support a raise as others did not have a raise. He looked at salaries of other Towns. He said they're all coming in low. He called Towns and obtained salaries. He believes when they look at the current salary of similar jobs in other communities, the Town Clerk is average with other communities. It's working the way it is right now.

Vice-Chair Bird said that the Town Manager was being disingenuous. At the budget hearings, he gave several other employees raises. We should take into consideration if this is fair with other department heads in this Town. This is a department head and has responsibility for the legal functioning of the Town. This job is equivalent in its way to the Police Chief, Fire Chief, Code Enforcement Officer, Finance Director and Recreation Director. All of these are above the Town Clerk's salary. Maybe these salaries are out of line with other communities. Maybe other Towns don't pay their staff as well as OOB does. This one is out of line with other department heads.

Commissioner Vallante stated the Charter is not the place for salaries.

Vice-Chair Bird said the Commission addresses this because of fear of interference with the office.

Commissioner Vallante motioned to strike Section 414.2 from the Charter.

There wasn't a second to his motion.

Meeting adjourned at 9:08 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 nineteen (19) pages is a true copy of the original Minutes of the Charter Commission Meeting held April 26, 2011.

Kim M. McLaughlin

JEROME
BEGERT

CHARTER REVIEW COMMISSION
(SECTION 1014)

4-26-2011

(Responding to the chair's reading an attorney-opinion)

On Feb. 22, this Charter Review Commission voted to create section 1014: Violations of the Charter. We had two votes. A majority first voted against the vice-chair's wording, then the majority voted to approve Town Attorney Chris Vaniotis' wording, which became 1014.

After the attorney's language became 1014 (on Feb. 22), then there was his March 3 letter, his March 8 charter-meeting interview, and his March 12 email..... in which he expressed some apprehension about section 1014, which he himself composed.

He admitted that 1014 does not violate or contradict state-statutes, nor the state and federal constitutions. He even found a town in Alaska with the same idea as ours.

He was simply backpeddling, after giving to us his own wording (his legal expertise) which we voted to pass.

I don't care if someone (afraid of 1014) whispered in his ear, after our Feb. 22 vote.

I don't care if the town-attorney (now retired) got flashbacks of his 30-years of legal advice, and wondered if any of that advice had resulted in government-action which finessed (rather than feared) town charter law.

My only concern is that, without section 1014, the new charter (like the current one) will be nothing more than wallpaper, or worse.

For anyone who falls-back on that wag
(as, on March 8, when Chris said:)
"Charter Commissioners need to ask themselves
if there is a problem that needs to be fixed,
before they change the charter,"

to that I ask:

Have you never read a law book?
like THE HISTORY OF AMERICAN LAW?
like the chapter on municipal government?

For 222 years since the Bill of Rights, 224 years
since the U.S. Constitution, 235 years since the
Declaration of Independence, and for 519 years
since Europeans came here and began the process
of conquest, contract-law (over human affairs),
charters traded for tribute (bribes) to kings,
colonial usurpation, and revolutionary war against
imperial oppression.....
and throughout this 235-year experiment
at what sometimes resembles
democracy by CONSENT of the governed,

there have perpetually been problems that needed
to be fixed. Perpetually.

Whether problems from beyond or from within
municipal government, there are law-libraries and
public libraries filled with volumes of examples
of how power corrupts, and how absolute power

(such as a charter, without a section 1014, ENABLES)

how absolute power corrupts absolutely.

And if a complainer (who is allergic to 1014) bobs and weaves with allusions to sections 409.6 and 411, saying that town council can otherwise make inquiries.....but then said-complainer freaks-out when this commission (actually Mike Vallante, thank you sir) meticulously crafts and we almost pass a simple inquiry-process, under the town-council article.....freaks-out!

Does that not just strain credulity?
That causes ME to visualize someone whispering into someone else's ear (saying):

"Make Section 1014 go-away. We don't want transparency or accountability. We don't want democracy by CONSENT of the governed. We wanna exert power with impunity, immune from consent or DISSENT by the taxed and governed..

teflon/slip-knot, sweep it under the rug, nudge-nudge, wink-wink, say-no-more, know-what-I-mean?

You know, the Monty Python Flying Circus form of government. Make 1014 go-away. Boo hoo."

That alone validates 1014!

Without a 1014 to systematically investigate and target a charter-violation (deducing backwards from its negative consequences), all you are left with is the broadbrush-default of burdensome and expensive recall referenda and burdensome expensive replacement-elections.

At times in OOB history, if applied, that recall-broadbrush could've emptied every seat of the town council.

To say that council can terminate violators (without 1014) is not accurate. Our charter only allows council to fire the manager. Period.

To say (without 1014) the manager will fire staff who violate the charter, is presumptuous... by ignoring the possibility that a manager might be in collusion with the violation, or just refuses to cooperate because he cannot perceive/interpret that a violation has occurred.

Is there a problem that needs to be fixed? A study of history and human nature supplies the answer. Problems from within government have arisen for thousands of years.

We as citizens are just not always attentive enough to notice, until it is too late, after evidence gets shredded and deleted, swept under a rug, and we're all left to suffer the consequences.

Philosopher George Santayana warned: "Those who ignore history are doomed to repeat it."

Let's not repeat a past error of omission. I sincerely ask my colleagues on this commission to leave intact section 1014, about violations of the charter.