

CHARTER COMMISSION MEETING
TUESDAY, MARCH 22, 2011 – 6:30 P.M.

Chair Gombar opened the regular meeting at 6:34 p.m., in Town Hall, Council Chambers. The following members were in attendance:

Jerome Begert [arrived following acceptance of minutes]
John Bird
William Gombar
Tianna Higgins
Ronald Regis
Michael Vallante
Jayne Flaherty [excused absence]

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

Motion made by Commissioner Vallante, seconded by Commissioner Regis to amend the starting time of the March 8th, 2011 minutes from 7 p.m. to 6 p.m.

VOTE: Unanimous.

Motion made by Commissioner Regis, seconded by Commissioner Vallante, to accept the March 8th, 2011 minutes as amended.

VOTE: Unanimous.

Chair Gombar stated the Commission would begin discussion regarding Attorney Christopher Vaniotis's recommendations in his letter dated February 18th, 2011. (Full letter appended to the minutes at the end).

“Section 102 (new section, "Town Governance").

In the last sentence, concerning the powers and duties of adjudicatory and advisory boards, I would add in a reference to state law, so that the phrase would read "such other duties as set forth in this Charter or State law...."

Commissioner Vallante moved, seconded by Commissioner Regis, to add “or State Law” as suggested by the attorney into Section 102.

VOTE: Unanimous.

Section 102 (powers of the Town).

I strongly urge the Commission not to delete the words "or convenience" in describing the powers of the Town. There are historical reasons, relating to the development of municipal corporations in the United States, why charters define municipal powers as "necessary or convenient." The words "or convenient" are important and should not be removed.”

Vice-chair Bird stated that on March 8, 2011, Atty. Vaniotis said that “With the law change to allow Home Rule, Charters have had this phrase placed in them, to allow the Town to use Home Rule as long as it is “convenient” or in the best interest of the community.” Vice-chair Bird felt that the Charter should use the second term, “in the best interest of the community” as that is what is mean instead of the term “convenient”.

Commissioner Vallante stated he was concerned about the ramifications it would cause if the term “or convenient” was removed from Section 102.

Commissioner Vallante motioned, seconded by Commissioner Regis, to add “or convenient” back into Section 102.

VOTE: Commissioners Vallante, Regis, Higgins and Chair Gombar, yes; Commissioner Begert and Vice-Chair Bird, no. Motion passes 4-2.

Commissioner Begert stated that Attorney Vaniotis did not say that taking these words out would make the Charter negatable when advising the Council to move forward to referendum. He just, as a matter of opinion, not legal analysis, would have preferred other words put back in.

“Section 201 (Town Council, School Board, Town Clerk).

The references to the School Board need to be deleted throughout Section 201. However, they should not be replaced with the proposed phrase "representatives to the education system" or any other replacement phrase. The Directors of the RSU elected from Old Orchard Beach are not officials of the Town. The RSU is a separate governmental entity. I will discuss the relationship between the Town and the RSU in somewhat more detail when we get to Article VI.”

Chair Gombar read Attorney Vaniotis’s recommendations for Section 201.

Commissioner Higgins stated she did not have a problem with the Regional School Unit being in the Charter, but they should be what they’re called, Representatives to the Regional School Unit.

Commissioner Beget said that he had a question that Regional School Representatives are not Town Officials and, as such, do not need to be addressed in 201. He advised that he asked Attorney Vaniotis for language that says the Regional School Unit Representatives are not officials of the Town, which Attorney Vaniotis had supplied. If the Charter does not say it, then they are not. In Attorney Vaniotis’s letter of March 11th regarding Article VI, section 602, he said that they were not officials, officers, or employees of the Town. For the future, Commissioner Beget said that he had wanted something to point to when people asked why they can’t recall RSU Representatives.

Vice-Chair Bird said this would tend to negate the rest of 602.

Commissioner Higgins asked if the Regional School Unit Representatives are always elected in November, to which the Town Clerk responded that they were.

Commissioner Regis stated he would like to see the local contract with the Regional School Unit.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to change globally, the term to “Representatives to the Board of Directors for the Regional School Unit” in all sections of the Charter that refer to that terminology.

Commissioner Begert stated he disagreed with Attorney Vaniotis’s concern regarding the terminology they had chosen as being too generic.

VOTE: 5-1 (Vice-Chair Bird, no). Motion passes.

Commissioner Begert motioned, seconded by Vice-Chair Bird, to remove all mention of the Education System from any part of the Charter until the Charter Commission reviews the local agreement.

VOTE: Vice-Chair Bird, Commissioner Begert, yes; Commissioners Higgins, Vallante, Regis and Chair Gombar, no. Motion fails 2-4.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to table any further discussion regarding the Regional School Unit discussion until the next meeting.

VOTE: Unanimous.

Vice-Chair Bird asked the Charter Commission if they should straighten out the term limits at this meeting.

Commissioner Higgins felt that a candidate should be able to serve two consecutive terms, whatever two terms they decide to serve (one year or three year). It would clean up the language.

Commissioner Higgins motioned, seconded by Vice-Chair Bird, to change the language that a Town Councilor cannot serve more than two consecutive terms.

Commissioner Begert thought it was unfair to limit a person who wants to serve a one-year term. He also thought it could cause a vacancy, because no one would want to serve the one-year term.

Motion and second withdrawn.

Commissioner Vallante motioned, seconded by Commissioner Regis, to amend the language in Section 201.1 to allow for a one-year break between terms instead of the recommended three.

Commissioner Vallante then stated he does not like term limits.

Motion and second withdrawn.

Commissioner Higgins motioned, seconded by Commissioner Vallante to end the sentence in Section 201.1 at “consecutively”.

VOTE: Unanimous.

The Charter Commission then began discussion on Section 201.4.

Commissioner Vallante motioned, seconded by Commissioner Higgins, to add “of voters” at the end of Section 201.4.

VOTE: Unanimous.

Vice-Chair Bird inquired if the Town Clerk could do ancillary jobs.

Commissioner Higgins suggested this section should be the same as other department heads.

Commissioner Higgins motioned, seconded by Vice-Chair Bird to remove the term “compensated” from Section 201.4.

VOTE: Vice-Chair Bird, Commissioner Higgins, Chair Gombar, yes; Commissioners Vallante and Regis, no; Commissioner Begert, abstained. Motion passes, 3-2-1.

Commissioner Vallante motioned, seconded by Commissioner Begert, to insert “compensated” back into Section 201.4.

VOTE: Commissioners Begert, Higgins, Regis, Vallante, Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 5-1.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to add “compensated” after “regular” in Section 1003.1.

VOTE: Vice-Chair Bird, Commissioners Higgins, Regis, Vallante, Chair Gombar, yes; Vice-Chair Bird, no. Motion passes 5-1.

The Commission began discussion on Section 202.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to add the definition of an Australian ballot to Section 202, “An Official ballot printed at public expense on which the names of all the candidates and proposals appear and which is distributed only at the polling place and marked in secret”, instead of the term.

VOTE: Vice-Chair Bird, Commissioners Vallante, Higgins, Begert, yes; Commissioner Regis and Chair Gombar, no. Motion passes 4-2.

Commissioner Vallante suggested also adding the term “Australian Ballot” in the sentence, as well, because most people are familiar with the term.

There was no further comment, and the Commission moved to Section 301.

Chair Gombar stated that Attorney Vaniotis suggested using the terminology “votes cast”.

Commissioner Vallante stated it is consistent with state law, and the attorney is giving good advice.

Commissioner Vallante motioned, seconded by Commissioner Regis, to amend Sections 301 and 302 by using the suggested language from Attorney Vaniotis, “on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election”. Part of the motion included a global change throughout the Charter to reflect this wording, but to keep the percentages.

VOTE: Unanimous.

Vice-Chair Bird motioned to amend Section 305.4 by adding the following words to this paragraph: If, of the total number of votes cast for and against the recall of the particular officials, the majority cast are in favor of recalling such official, he shall thereby be deemed to have resigned, and be removed, and the candidate chosen to succeed him shall hold office for the balance of the unexpired term.

There wasn't a second to Vice-Chair Bird's motion.

Vice-Chair Bird motioned, seconded by Commissioner Vallante, to amend Section 305.6 by accepting the wording suggested by the Town Attorney,

“Sec. 305.6. In the event of a request for the recall of the Town Clerk, the Registrar of Voters shall perform all the duties and functions of the Town Clerk under this Section 305. If, however, the Town Clerk is also the Registrar of Voters, then, upon receipt of a request for the recall of the Town Clerk under Section 305, the Clerk shall issue the petition blanks, inform the Town Council of the request, and thereafter cease to perform any of the duties and functions of the Clerk with respect to the recall request. The Town Council shall promptly select a qualified person other than the Clerk to serve as a Deputy Registrar of Voters on an interim basis, the Registrar shall appoint such person as a deputy, and such person shall perform the duties and functions of the Clerk under Section 305 until the recall process concludes.”

Vice-Chair Bird was concerned that the Town Council does not have the right to mandate who is appointed as Deputy Registrar of Voters.

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

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 102, Powers of the Town, to read as Section 103. The section regarding “Town Governance”, will be Section 102. The introductory paragraph in Article IV will be moved to Section 102 as the third paragraph, “It is the obligation of every public official and employee to carry out the lawful orders and policies of the Town Council. No public official, employee or appointee shall knowingly take any action inconsistent with the lawful orders or policies established by the Town Council and no public official or employee shall knowingly take any action which would be detrimental to the best interests of the Town.”

VOTE: Vice-Chair Bird, Commissioners Begert, Higgins and Chair Gombar, yes; Commissioners Vallante and Regis, no. Motion passes 4-2.

Town Manager, Jack Turcotte, approached the Charter Commission and advised he did not forget his list of bullet points. As the Commission continues to change sections, his list is getting shorter. He wrote down the questions of the department heads, but since the Charter Commission has progressed, and Attorney Vaniotis, attended a meeting, the list has been reduced. He further stated he is not ready to give the list to them yet, because it is not cleaned up to the level of presentation.

Commissioner Higgins started discussion on Section 406. She said she believes “seated” explains it well enough.

Vice-Chair Bird stated “seated” is a legal term.

Commissioner Vallante motioned, seconded by Commissioner Higgins, to accept Attorney Vaniotis’s recommendation from his letter dated February 18th, 2011 on Section 406:

"A quorum for the transaction of business shall consist of a majority of the Councilors in office (not counting any vacant seats), provided that the affirmative vote of a number of Councilors equal to at least a majority of the whole Council when all seats are filled is required in order for the Council to take action."

VOTE: Commissioners Begert, Higgins, Vallante, Chair Gombar, yes; Vice-Chair Bird and Commissioner Regis, no. Motion passes 4-2.

Commissioner Vallante then motioned to accept the second half of Attorney Vaniotis’s recommendation, “It will then be necessary throughout the rest of the Charter to replace the words "a majority of the whole Council" with the words "a number of Councilors equal to at least a majority of the whole Council when all seats are filled."

Vice-Chair Bird and Commissioner Higgins stated they were not comfortable making this change globally throughout the Charter, and requested the Town Clerk check the Charter and advise what sections would be affected.

Commissioner Higgins then read Attorney Vaniotis’s recommendations regarding Section 409.1.

“Section 409.1 (Appoint the Town Manager).

I do not recommend changing the word "officer" to "employee" as suggested. The term officer better describes the position of Town Manager. An officer typically has both powers and duties prescribed by law. That is certainly the case of the Town Manager of Old Orchard Beach under the Charter.”

Commissioner Begert stated he thought the attorney’s argument was bogus.

Commissioner Vallante motioned, seconded by Commissioner Begert, to change “employee” back to “officer” in Section 409.1.

Commissioner Begert stated he thought this change was recommended because an officer can sign contracts, where an employee cannot.

Vice-Chair Bird motioned to table this item until next week.

There wasn't a second.

VOTE ON THE ORIGINAL MOTION: Commissioners Higgins, Regis, Vallante and Chair Gombar, yes; Vice-Chair Bird, no; Commissioner Begert abstain. Motion passes 4-1-1.

Commissioner Higgins read Attorney Vaniotis's recommendation for the second paragraph of 409.1.

"I note that the proposed change to the mandatory two-year contract for a town manager after probation is a very substantial departure from the current Charter. I believe the intent of the two-year contract provision in the current Charter is to provide some stability in Town administration and also to attract qualified candidates for the Manager's position. Under the proposed revised language, the Manager could become an employee at will. I would encourage the Commission to give some thought as to whether that is necessarily an appropriate change to the Charter."

Commissioner Higgins stated she had looked at it from a budget standpoint, not from an applicant's standpoint.

Chair Gombar stated he thought Attorney Vaniotis had some good points.

Commissioner Begert suggested the Charter Commission keep the same language as they currently recommend.

Meeting adjourned at 9:23 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 seven (7) pages is a true copy of the original Minutes of the Charter Commission Meeting held March 22, 2011 (also see attachment).

Kim M. McLaughlin

“February 18, 2011

Kim McLaughlin, Town Clerk
Town of Old Orchard Beach
1 Portland Avenue
Old Orchard Beach, Maine 04064-2245
Re: Charter Amendment Questions
Dear Kim:

I have reviewed the draft of proposed changes to the Charter which you provided to me on February 14th, and I have comments and suggestions as follows:

Section 102 (new section, "Town Governance").

In the last sentence, concerning the powers and duties of adjudicatory and advisory boards, I would add in a reference to state law, so that the phrase would read "such other duties as set forth in this Charter or State law...."

Section 102 (powers of the Town).

I strongly urge the Commission not to delete the words "or convenience" in describing the powers of the Town. There are historical reasons, relating to the development of municipal corporations in the United States, why charters define municipal powers as "necessary or convenient." The words "or convenient" are important and should not be removed.

Section 201 (Town Council, School Board, Town Clerk).

The references to the School Board need to be deleted throughout Section 201. However, they should not be replaced with the proposed phrase "representatives to the education system" or any other replacement phrase. The Directors of the RSU elected from Old Orchard Beach are not officials of the Town. The RSU is a separate governmental entity. I will discuss the relationship between the Town and the RSU in somewhat more detail when we get to Article VI.

Section 201.1 (Town Council).

I recommend restoring language that each councilor serves until a successor is elected and qualified. That assures continuity in the event that there is a delay in seating newly elected councilors (in the case, for example, of a challenged election).

Section 201.2 (School Board).

As I indicated above, this section should be deleted in its entirety. I will discuss term limits in Article VI.

Section 201.4 (Qualifications of Town Clerk).

In the new language, the position should be identified as "Registrar of Voters."

Section 202 (Municipal Elections).

Again, the reference to the School Board should be eliminated, because that is governed by the state statute on regional school units. I also recommend keeping the existing term "Australian ballot." That is a defined term, which is more precise than "secret ballot." The

term "Australian ballot" means "An official ballot printed at public expense on which the names of all the candidates and proposals appear and which is distributed only at the polling place and marked in secret." *Merriam Webster's Collegiate Dictionary*, 11 th Ed. (2003).

Section 203 (Nominations).

"School board" should be deleted.

Section 301 (Petition for Overture of Action of Council).

For the new language describing the requisite number of signatures, I suggest substituting the language which appears numerous times in the state statutes: "on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election."

Section 302 (petition for Enactment of Ordinances).

Again, I suggest using the statutory language concerning how the 10% is calculated.

Section 305 (Procedures for Recall).

My recommendation is that the references to the "School Board" throughout Section 305 be removed, and not replaced. While the question is open to debate, in my view the state statute governing regional school units is very specific on the method of election and the terms of office for RSU directors, and the statute does not contain any recall provisions. If the recall provisions for the RSU directors remain in the draft, I would not be able to provide the opinion required by 30-A M.R.S.A. § 2103(5)(D)(4) that the "charter revision does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws...."

Section 305.1 (Procedures for Recall).

Again, I would suggest using the statutory language referencing the number of votes cast in the last gubernatorial election - in both places where the phrase appears.

Section 305.2 (procedures for Recall).

Same comment concerning language relating to votes cast at the last gubernatorial election.

Section 305.6 (Procedures for Recall).

I suggest adding a new clause at the end (after the reference to sections 305.1 through 305.5 above), to read as follows: "unless the Town Clerk is serving as the Registrar of Voters, in which case the Town Manager, after consultation with the Chairperson of the Town Council, shall select another municipal employee to perform such functions."

Section 406 (Quorum).

Concerning the quorum requirement, I would suggest the language be revised slightly to read as follows: "A quorum for the transaction of business shall consist of a majority of the Councilors in office (not counting any vacant seats), provided that the affirmative vote of a number of Councilors equal to at least a majority of the whole Council when all seats are filled is required in order for the Council to take action." It will then be necessary throughout the rest of the Charter to replace the words "a majority of the whole

Council" with the words "a number of Councilors equal to at least a majority of the whole Council when all seats are filled."

Section 409.1 (Appoint the Town Manager).

I do not recommend changing the word "officer" to "employee" as suggested. The term officer better describes the position of Town Manager. An officer typically has both powers and duties prescribed by law. That is certainly the case of the Town Manager of Old Orchard Beach under the Charter.

I note that the proposed change to the mandatory two-year contract for a town manager after probation is a very substantial departure from the current Charter. I believe the intent of the two-year contract provision in the current Charter is to provide some stability in Town administration and also to attract qualified candidates for the Manager's position. Under the proposed revised language, the Manager could become an employee at will. I would encourage the Commission to give some thought as to whether that is necessarily an appropriate change to the Charter.

Section 409.3(a) and (b) (Confirm or appoint officers or officials...).

The proposed changes would actually make the Council the appointing authority for all the positions listed in subparagraphs (a) and (b), rather than the confirming authority as is currently the case in subparagraph (a). Also, because the proposed revision adds in some employment positions which are not currently required by the Charter (i.e., Plumbing Inspector, Electrical Inspector, Emergency Management Director, Parks Director), the introductory language to subparagraphs (a) and (b) should be changed to read as follows: "Appoint such officers and officials, after examination of their qualifications, as may be required by this Charter or State law or as the Town Council may deem appropriate, as follows:".

In subparagraph (b), I recommend taking out the word "annually." The risk is that, if the Council inadvertently omits to make the appointment annually, the authority of either the Town Attorney or the Town Auditor could be challenged. Traditionally, such appointments, unlike the appointments of board members who have fixed terms, are standing appointments.

In order for the grammar of the entire paragraph to work, the words "shall be appointed by the Town Council" need to be restored to subparagraph (b). And, in the last paragraph, the reference to Council appointees should now refer to both subparagraphs (a) and (b). Finally, I point out that the suggested language changes do represent a fairly substantial policy shift. There is, in practice, a difference between having the Manager appoint the subparagraph (a) positions, subject to confirmation by the Council, and having the Manager only nominate with the Council making the actual appointment decision. That change would involve the Council more deeply in personnel administration than is the case under the current Charter.

Section 409.4 (By ordinance create, change and abolish offices, departments or agencies...).

It seems to me that the proposal to remove the last sentence unnecessarily ties the hands of the Town Council in the management of the Town. It is very common for municipal

managers to wear multiple hats, holding several different Town offices. Many municipalities find that results in efficiencies and costs savings. I urge the Commission to consider retaining that flexibility, incorporated into the last sentence of Section 409.4.

Section 409.11 (Adopt, modify and carry out plans...).

I concur with the notion of removing the words "proposed by the Planning Board." However, I recommend leaving in the words "the clearance of slum districts." While the word "slum" is not in common usage nowadays, it is still utilized in the state statutes authorizing urban renewal and redevelopment projects, which this section is intended to reference.

Section 409.16 (Sell...surplus property...).

I think the changes proposed to Section 409.16 (which you indicated reflect some concerns about the scope of the eminent domain power) would work better if contained in a new Section 409.17, which might read as follows:

Sec. 409.17. Exercise the power of eminent domain as authorized by State law, except that the Council may not condemn land improved with homes or commercial or industrial buildings or structures for the purposes of private retail, office, commercial, industrial or residential development, for the primary purpose of enhancement of tax revenue, or for transfer to an individual or a for-profit business entity, except in an area identified as a blighted area pursuant to a redevelopment plan or urban renewal plan authorized by state law.

That language actually comes from a statute enacted by the Legislature several years ago in response to the U.S. Supreme Court Decision in *Kelo v. City of New London*, 545 U.S. 469 (2005). See 1 M.R.S.A. § 816 (copy attached). Therefore, it is not necessary currently to incorporate that language in the Charter. However, if the state law is later relaxed, having this language in the Charter would provide a more restrictive rule for Old Orchard Beach. That is a policy decision.

Section 410 (Public Hearing on Ordinances).

I would suggest adding a new sentence at the end, to read: "A failure or malfunction in the Town internet website shall not require the postponement of any hearing or action by the Councilor invalidate an ordinance otherwise enacted in compliance with the procedures of this section."

Section 411 (Council Not to Interfere in Appointments or Removals).

The proposed changes to the last sentence, which reverses the current rule and allows the Town Council to request the removal of a person from office or employment, is inconsistent with the concept of three-part government contained in the proposed new section on "Town Governance" at the beginning of the Charter. The rules contained in current section 411 appear in virtually every municipal charter establishing a council/manager form of government that I have ever seen. They reflect the principle that the elected/political body is the policy-making body, while personnel administration is left to the town manager. There are at least three reasons for such provisions: (1) they protect employees from feeling (or actually being) intimidated by elected officials; (2) they allow the manager to administer municipal employment without the potential interference of political considerations; and (3) they protect members of the council from

being pressured by employees to intervene in day-to-day employment situations. I urge the Commission to think seriously about changing the current rules about noninterference. As a point of reference, see 30-A M.R.S.A. § 2635 (copy attached), a provision in the statutory town manager plan adopted by many municipalities which do not have charters.

Section 412 (Conflict of Interest).

As to the last sentence, I would recommend against using the rather complicated concept of "degrees" of consanguinity or affinity. That makes it impossible for someone reading the Charter to understand what it means without going to some outside source. While it may get a bit wordy, I suggest instead that, as the current Charter does, the proposed Charter list specifically those relatives that count for determining a conflict of interest.

Section 414.2 (new subsection on compensation of Town Clerk).

While I understand the Commission's concern that the elected Town Clerk may have less bargaining power with respect to compensation than appointed department heads, I do not recommend establishing a minimum level of compensation within the Charter. The Charter is - by design - not a flexible document. What is an appropriate level of compensation for any municipal employee is subject to all sorts of variables and to changing conditions over time, which the Council should be able to take into account in determining salaries.

Section 414.4 (new subsection on salaries of appointees).

This proposed section is essentially unnecessary due to the changes in subparagraphs 409.3(a) and (b), since the Manager under that section no longer has any direct appointment power, but only nominates, with the Council doing all appointments.

Section 415 (Vacancies in Council).

Perhaps I am missing something, but I do not understand how adding the words "and more than six (6) months prior to the expiration of its term" adds anything to the requirement for a special election when a vacancy occurs more than six months prior to the next regular municipal election, since the terms all expire after the regular municipal election.

Section 501 (Town Manager, Qualifications).

I do not think it is realistic to expect a town manager coming in from out of state to become a resident of the Town before having a contract with the Town. I would therefore recommend against the proposed change to the last sentence.

Section 502.1 (Appoint department heads...).

With the changes suggested to section 509.3, the phrase "confirmation by the Town Council" needs to be changed to "appointment by the Town Council." Similarly, "confirmed by" needs to be changed to "appointed by" in the proposed new second paragraph.

For reasons I have expressed earlier, I do not think it is a good idea to specify an annual reappointment, especially with an annual reappointment date, in the Charter.

As to the proposed last paragraph in section 502.1, I again point out the inconsistency

between involving the Council in personnel decisions and the proposed new statement at the beginning of the Charter defining the roles of the three "branches" of municipal government. Making the Council a personnel appeals board could undermine the ability of the Manager and department heads to manage. In addition, the proposed language allowing "any disciplinary action" to be appealed to the Council could become burdensome for the Council. There is no legal requirement that there be an internal appeals process for personnel decisions. If the Commission thinks it is important to have one, it might want to consider the creation of an independent personnel appeals board, rather than the Town Council. Such a board would be in the "Adjudicatory and Advisory" part of town government.

Section 502.3 (Prepare and submit [annual] report...).

Since, as I understand it, the receipt of the annual audit report is typically greater than 30 days after the close of the fiscal year, I would simply make the requirement 30 days after receipt of the annual audit report.

Section 503 (Absence of Town Manager).

I suggest that this section not be changed. The relationship between the Town Manager and the Assistant Town Manager is currently governed by the ordinance which creates the position of Assistant Town Manager, and that position might not always exist (it is not a charter position).

I also understand that the Commission had a question as to whether there is anything inconsistent between section 503 and the prohibition in section 409.4 against assigning the duties of one office to another. I do not believe there is an inconsistency, because section 503 speaks only to a temporary absence or disability, in which case the "office" is not vacant and the council is not rearranging the duties of the office.

Sections 504 through 510 ([Department heads and other positions]).

If the Town Manager is now going to simply nominate rather than appoint department heads, the language has to be changed to make it clear that the Council makes the appointment after nomination by the Town Manager. (The word "appoint" is important, because state law requires a number of statutory positions to be appointed by the municipal officers (Town Council).)

Section 505 (new section, Office of the Town Clerk).

In a theme you will hear me repeat in my comments on several subsequent sections, I think it is not desirable to include such detailed job descriptions in the Town Charter. The Charter should be, in essence, the skeleton of the municipal body, with the other features left to grow and change over time, subject to basic limitations set forth in the Charter. Especially with respect to the office of the Town Clerk, both the technology of recordkeeping and the state laws governing recordkeeping are likely to change in the future. I recommend that this type of job description be left out of the Charter and instead become part of a personnel policy or an ordinance enacted by the Council.

Section 507.2 (former section 505, Department of General Assistance).

Note that in this section a change needs to be made so that the appointment is made by the Town Council after nomination by the Town Manager (assuming that the Commission does not intend to treat this position differently from others).

Section 507.3 (new section, Tax Collection).

There is a heading here "Tax Collection," but no text.

Section 508 (Recreation Department).

This needs to be changed to be subject to "appointment" by the Town Council.

Section 509 (Town Planner).

Again, the word needs to be "appointment."

Section 510 (new section, Code Enforcement Officer).

Again, "appointment" is the word.

Section 511 (former section 510, Waste Water Department).

As with my comments concerning the Town Clerk's position, I recommend against having this kind of detailed job description within the Charter.

Section 512 (?) (former section 801, Division of Assessment).

Again, the appointment must be by the Town Council. Otherwise, I point out that this is a change from current Section 801, under which the Assessor is appointed for a two-year term, but is not required to be given a contract.

Article VI (School Board/Department of Education).

As the Commission has correctly recognized, Article VI needs major surgery as a result of the change from a municipal school system to participation in a regional school unit. I would begin by adding a new sentence at the beginning of the prefatory language which I had previously suggested and the Commission adopted. That new sentence would read: At the time of adoption of this Charter, the Town does not maintain a municipal school department but participates in a regional school unit created pursuant to Chapter 103-A of Title 20-A of the Maine Revised Statutes, which regional school unit is identified as RSU #23. In the event that RSU #23 should cease to exist or the Town no longer participates in the regional school unit and no other provisions have been made for the operation of public schools in Old Orchard Beach....I would then probably number that prefatory language as Section 601.

Section 601 (Qualifications).

As I previously stated, because the RSU is a separate legal entity created by state law, the Town, through its Charter, cannot exercise any direct control over how the RSU is structured or operates. In my view, all the Town can do is "fill in the blanks" in areas where the state law is silent. One of the areas where the state law is silent (surprisingly) is in setting forth any qualifications for directors of the RSU. Consequently, I think that the Town can prescribe qualifications which are not otherwise inconsistent with state law. And, although there is room for debate, I think the Town may have the authority to prescribe term limits as a qualification for the representatives from Old Orchard Beach (the statute sets forth the length of term for RSU directors, but does not speak one way or another to any limitation on the number of terms an individual member may serve). With those principles in mind, I would suggest that Section 602 (currently 601) should read as follows: Directors of Regional School Unit #23 elected from Old Orchard Beach shall be registered voters of the Town and shall have their principal place of residence in the

Town during their terms of office. No RSU director elected from Old Orchard Beach shall be eligible to serve more than two consecutive terms in the RSU.

Also note that I have removed the language that prohibits holding any Town office or Town employment. While that language could be incorporated into the Charter, I am not sure that the reasons for having it exist any longer, now that the schools are no longer being run by a Town department. That is, however, a policy decision for the Commission to consider.

Section 602 (former section 610, Vacancies).

The topic of vacancies on a regional school unit board is comprehensively addressed in 20A M.R.S.A. § 1474 (copy attached). Accordingly, I do not believe the Town has any ability to address this topic in the Charter.

Section 701 (Fiscal Year).

I advise against making the proposed change. If, in the future, circumstances change in a way that would make it advisable to operate on a different fiscal year (a change in state funding formulas or in the schools' budget year, for example), the Council should have the flexibility to establish a different fiscal year. Most charters I have seen allow the Council to determine the fiscal year.

Section 702 (preparation and Submission of the Budget).

The proposed new first paragraph turns the budget process somewhat upside down. I wonder what data the Council would have available six months prior to the beginning of the budget year to be able to set a target figure. The current budget process contemplates that the Manager undertakes the research and analysis necessary to prepare the proposed budget, so that the Council has facts and figures upon which to base its budget discussions. I also think the second proposed new paragraph is not necessary. The Charter currently makes the Manager responsible for putting together the budget. In order to do so, the Manager, already has the authority to require department heads to submit whatever information the Manager deems appropriate.

Section 707 (Work Program, Allotments).

The proposed change requiring a submission to the Town Council, even for "informational purposes," is inconsistent with the concept that the Manager is the chief administrative officer and that the Town Council deals with the administrative service only through the Manager. The Manager always has the option of sending material to the Council, and the Council can always request it of the Manager. I do not think that it is appropriate to put a requirement in the Charter that department heads must communicate directly with the Council.

Section 708 (Transfer of Appropriations).

For the same reasons described in connection with section 707, above, I advise against the proposed change that allows the Council to transfer appropriations on its own initiative.

Section 709 (Appropriations Lapse at End of Fiscal Year).

I am not sure what the proposed changes add to the existing Charter language, or what the intent of the proposed changes is. To the best of my knowledge, there has not been a

problem in applying section 709 as written.

Section 901 (Planning Board).

I do not think the changes proposed to section 901 are appropriate in the Charter. The functions of the Planning Board are governed by state statute and by the Town's ordinances, both of which are subject to change from time to time. As an example, several years ago the Town of Freeport, by ordinance, divided the function of its Planning Board into two separate boards - the Planning Board to perform the planning functions, and a new "Project Review Board" to perform the review functions. That has worked out quite well, but the Town would not have been able to do that without a charter change had this kind of language been in the Freeport charter.

Section 901.1 ([regarding duties of Town Planner]).

I am comfortable with the grammatical changes in section 901.1, although I would prefer to see those attendance requirements removed from the Charter and left to applicable ordinances or to the control of the Town Manager in job descriptions. However, I recognize that the Charter currently does require the Town Planner and the Code Enforcement Officer to attend meetings of the Planning Board and the Board of Appeals, respectively.

Section 902 (Zoning Board of Appeals).

For the same reasons expressed above, I would not add the new first paragraph. The duties of the Board of Appeals are governed by the Town's ordinances and are substantially circumscribed by state law. There is no reason to add additional language to the Charter.

Section 903 (Conservation Commission).

The proposed changes to this section go well beyond the state statute, 30-A M.R.S.A. § 3261 (copy attached) 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.

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?

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.

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. As I understand it, that is as far as the Commission got at its last meeting and, accordingly, I will stop my comments at this point. I anticipate that you or the Commission may have questions about these comments, and I look forward to receiving them.

Enclosures

MRS Title 1 §816. LIMITATIONS ON EMINENT DOMAIN AUTHORITY

Title 1: GENERAL PROVISIONS

Chapter 21: EMINENT DOMAIN

§816. Limitations on eminent domain authority

1. Purposes. Except as provided in subsections 2 and 3 and notwithstanding any other provision of law, the State, a political subdivision of the State and any other entity with eminent domain authority may not condemn land used for agriculture, fishing or forestry or land improved with residential homes, commercial or industrial buildings or other structures:

A. For the purposes of private retail, office, commercial, industrial or residential development;

B. Primarily for the enhancement of tax revenue; or

C. For transfer to an individual or a for-profit business entity.

2. Blight exception. Subsection 1 does not apply to the use of eminent domain by any municipality, housing authority or other public entity based upon a finding of blight in an area covered by any redevelopment plan or urban renewal plan pursuant to Title 30-A, chapter 201, 203 or 205, but just compensation, in all cases, must continue to be made to the owner.

3. Utilities exception. Subsection 1 does not limit the exercise of eminent domain by or

for the benefit of public utilities or other entities engaged in the generation, transmission or distribution of telephone, gas, electric, water, sewer or other utility products or services.

4. Governmental purposes not affected. Nothing in this section may be interpreted to prohibit a municipal or county governing body from exercising the power of eminent domain for purposes not otherwise prohibited by subsection 1.

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**MRS Title 30-A §2635. BOARD OF SELECTMEN TO ACT AS A BODY;
ADMINISTRATIVE SERVICE TO BE PERFORMED THROUGH TOWN
MANAGER; COMMITTEES**

Title 30-A: MUNICIPALITIES AND COUNTIES

Part 2: MUNICIPALITIES

Subpart 3: MUNICIPAL AFFAIRS

Chapter 123: MUNICIPAL OFFICIALS

Subchapter 2: TOWN MANAGER PLAN

**§263S. Board of selectmen to act as a body; administrative service to be
performed through town manager; committees**

It is the intention of this subchapter that the board of selectmen as a body shall exercise all administrative and executive powers of the town except as provided in this subchapter. The board of selectmen shall deal with the administrative services solely through the town manager and shall not give orders to any subordinates of the manager, either publicly or privately. This section does not prevent the board of selectmen from appointing committees or commissions of its own members or of citizens to conduct investigations into the conduct of any official or department, or any matter relating to the welfare of the town.

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MRS Title 20-A §1474. VACANCIES

Title 20-A: EDUCATION

Part 2: SCHOOL ORGANIZATION

Chapter 103-A: REGIONAL SCHOOL UNITS

Subchapter 3: SCHOOL GOVERNANCE; PROGRAM

§1474. Vacancies

1. Definition of vacancy. A vacancy on a regional school unit board occurs:

- A. When the term of office of a regional school unit board director expires;
- B. When a regional school unit board director changes residency from the municipality or subdistrict from which elected. Evidence that an individual is registered to vote in a municipality is prima facie evidence of that individual's residency;
- C. On the death of a regional school unit board director; or
- D. When a regional school unit board director resigns.

In addition to paragraphs A, B, C and D, except in municipalities having a municipal charter, when a director is absent without excuse from 3 consecutive regular board meetings, the regional school unit board may declare that a vacancy exists.

2. Regional school unit board. The regional school unit board shall notify the municipal officers of the municipalities within the regional school unit of a vacancy before the annual town meeting or before the regular municipal election.

3. Filling vacancies. A vacancy on a regional school unit board must be filled according to this subsection.

A. The municipal officers of the municipality in which the director resided shall select an interim director for the municipality or subdistrict to serve until the next annual municipal election. The interim director shall serve until a successor is elected and qualified.

B. The municipal officers shall provide at the next municipal or subdistrict election for the election of a director to fill the vacancy.

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MRS Title 30-A §3261. CONSERVATION COMMISSIONS

Title 30-A: MUNICIPALITIES AND COUNTIES

Part 2: MUNICIPALITIES

Subpart 5: HEALTH, WELFARE AND IMPROVEMENTS

Chapter 157: PARKS, TREES AND PLAYGROUNDS

Subchapter 2: CONSERVATION COMMISSIONERS

§3261. Conservation commissions

Unless otherwise provided under their home rule authority } municipalities may establish conservation commissions as provided in this section.

1. **Appointment of commissioners.** The municipal officers may appoint at least 3 } but not more than 7 } conservation commissioners. Members shall initially be appointed for terms of one } 2 and 3 years } such that the terms of approximately 1/3 of the members will expire each year. Their successors shall be appointed for terms of 3 years each. Members shall serve until the appointment of their successors. The commission may recommend to the municipal officers that associate members be appointed to assist the

commission as the commission requires. Associate members are nonvoting members. Their terms of office shall be for one } 2 or 3 years.

2. Duties of commission. The commission shall:

- A. Keep records of its meetings and activities and make an annual report to the municipality;
- B. Conduct research } in conjunction with the planning board } if any } into the local land areas;
- C. Seek to coordinate the activities of conservation bodies organized for similar purposes; and
- D. Keep an index of all open areas within the municipality } whether publicly or privately owned } including open marshlands } swamps and other wetlands } for the purpose of obtaining information relating to the proper protection } development or use of those open areas. The commission may recommend to the municipal officers or any municipal body or board } or any body politic or public agency of the State } a program for the better protection } development or use of those areas } which may include the acquisition of conservation easements.

(1) Any body politic or public agency of the State conducting planning operations with respect to open areas within a municipality having a conservation commission shall notify that conservation commission of all plans and planning operations at least 30 days before implementing any action under that plan.

3. Powers of commission. The commission may:

- A. Advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which it considers necessary;
- B. Have the care and superintendence of the public parks and, subject to the approval of the municipal officers, direct the expenditure of all money appropriated for the improvement of those parks;
- C. Acquire land in the municipality's name for any of the purposes set forth in this section with the approval of the municipal legislative body; and
- D. Receive gifts in the municipality's name for any of the commission's purposes and shall administer the gift for those purposes subject to the terms of the gift.

4. Park commission under previous law. This section does not require a municipality which has previously created a park commission under prior law to establish a conservation commission. Any such park commission previously created may continue to operate as originally established.

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