

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
SEPTEMBER 27, 2005**

Commission members present: Vice Chairman Heather Anderson, Secretary Fran L'Heureux, Peter Batula, Robert Kelley, Finlay Rothhaus, Tim Tenhave, Lon Woods, and David Yakuboff.

Excused: Chairman Tom Mahon

Vice Chairman Anderson convened the meeting of the Charter Commission at 7:00 pm in the Conference Room of the Town Hall.

Announcements

Vice Chairman Anderson noted there will be a public hearing on November 8, 2005. She encouraged all interested people to attend.

Public Comments

There were no public comments at this time.

Reports

Chair – The chairman was not present.

Vice Chair – Vice Chairman Anderson noted that the Chairman sends his regards to the Commission as he is attending the International City/County Management Association annual conference.

Review Charter Drafts

Article 1 – Incorporation

A motion was made by Lon Woods and seconded by Peter Batula to move Article 1 – Incorporation forward as drafted. The motion passed 8-0-0.

Article 2 – Elections

There was some discussion regarding the election of the chairman of the Supervisors of the Checklist.

A motion was made to include section 2.3A to include the sentence in Section 2.3C regarding the election of the chairman. The original section 2.3D will become section 2.3C. The motion passed 8-0-0.

The Commission reexamined Section 2.9 – Certification of Election and Appointment. Heather Anderson noted that this information could still be captured in language in Article V. Tim Tenhave noted that a timeframe of 30 days would be appropriate since there are some boards which meet monthly. He noted this is best to be done in Article V. Ms. Anderson then noted that the governing board is not covered in Article V.

A motion was made by Lon Woods and seconded by Fran L'Heureux to put the following language in section 2.9:

If, within 30 days from the date of notice, such person shall not take, subscribe to and file with the Town Clerk an oath of office, such neglect shall be deemed a refusal to serve and the office shall be deemed vacant, unless the Town Council shall extend the time in which such person may qualify.

The motion passed 8-0-0.

Ms. Anderson noted that this section will be reconsidered at the next meeting.

Ballot Analysis

Heather Anderson noted a thanks to Tim Tenhave for his analysis of ballots from the past eight years and yielded the floor to Mr. Tenhave for his report.

Tim Tenhave noted that the Town Clerk provided copies of ballots and votes. She also provided total ballots and/or total registered voters for each year for those years she had the information available. A great number of people (about 80%) voted on all of the articles. The voters have passed most contracts presented to them. All of the planning articles approved by the Planning Board were passed except for one (the recent outlet mall article). The Town Clerk and her team were very cooperative with this effort.

Finlay Rothhaus noted this analysis speaks to reducing the size of the ballot. He noted the very good work done by Tim Tenhave.

Ms. Anderson noted the Commission should have time to mull over this information. She suggested that comments, etc. be given to Tim Tenhave over the week and any action needed should be taken next week.

Mr. Tenhave noted that the zoning articles take up about 29% of the articles on the ballot, but take up only about 20% of the paper. The elimination of these articles from the ballot would reduce the size of the ballot by about 1/5th.

Draft Charter

Article IV – Ordinances

1. Introduction – There was discussion regarding whether only one Councilor can introduce an ordinance or whether ordinances should be introduced by two or more Councilors.

A motion was made by Tim Tenhave and seconded by Peter Batula to move the following language to be added to the charter:

An ordinance may be introduced by any Town Councilor at any regular or special meeting of the Town Council. Upon introduction of any ordinance, the Town Clerk shall distribute a copy to each Town Councilor and to the Town Manager, shall file a reasonable number of copies in the office of the Town Clerk, and shall post a copy in at least 2 public venues as the Town Council may designate.

The motion passed 8-0-0.

2. Form – Heather Anderson noted the question to be answered by this section is whether land use ordinances should be passed by the Town Council or by the voters on the ballot. Tim Tenhave noted he would like to see these passed after Public Hearings.

A motion was made by Finlay Rothhaus and seconded by David Yakuboff to adopt the following language:

- (1) Every proposed ordinance of the Town Council shall be introduced in writing and in the form required for final adoption.
- (2) No ordinance shall contain more than one (1) subject.
- (3) Each ordinance shall be identified by a number and a title.
- (4) The enacting clause shall be “The Town of Merrimack ordains....”
- (5) Any ordinance which repeals or amends an existing ordinance shall set out in full the ordinance, sections, or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type, and shall indicate new matter by underscoring or by italics.

The motion passed 8-0-0.

Heather Anderson noted that with this language land use ordinances would be brought forward to the Town Council by the Planning Board.

3. Public Notice – Heather Anderson noted this section speaks to the number of times an ordinance needs to be read before passage by the Town Council. The first reading is the introduction of the ordinance to the Town Council. The second reading would be at a public hearing, and the third reading would be when action is taken by the Town Council. The time delay would be between the 1st and 2nd reading. The Charter could create a default timeframe for adoption of ordinances passed.

A motion was made by Peter Batula and seconded by Robert Kelley to require at least 7 calendar days between the first and second reading of any proposed ordinance. The motion passed 8-0-0.

A motion was made by David Yakuboff and seconded by Lon Woods to require at least 7 calendar days between the Public Hearing and final action by the Town Council. The motion passed 8-0-0.

A motion was made by Tim Tenhave and seconded by Finlay Rothhaus to adopt the following language:

- (1) After passage of the ordinance’s first reading, it shall be published at least once together with a notice of the time and place when and where it will be given a public hearing and be considered for final passage.
- (2) The first such publication shall precede the date of said hearing by at least seven (7) calendar days.
- (3) Publication for purposes of this Section shall mean the publication of a notice in any paper distributed in the Town of Merrimack, stating the number and title of the ordinance and either the text of the ordinance in full or if the full text is not published, then a brief explanation of the purpose of the ordinance and

information as to where and when any interested person may obtain a copy of the complete ordinance.

(4) Final action on said ordinance shall not be taken by the Town Council until at least 7 calendar days after the public hearing on it.

Heather Anderson noted that the language regarding the publication of the public hearing should include the language regarding this publication in 2 public venues.

The motion passed 8-0-0.

4. Adoption – A motion was made by Robert Kelley and seconded by Lon Woods to adopt the following language:

No ordinance shall be passed finally on the date on which it is introduced, except in cases of emergency involving the health or safety of the people or their property. Every adopted ordinance, except as otherwise provide in this Charter, shall become effective upon passage or at any later date specified therein. No ordinance shall be amended or repealed except by another ordinance adopted in accordance with this Charter, or as provide in the initiative and referendum procedures of this Charter.

The motion passed 8-0-0.

5. Emergency Ordinances – A motion was made by Tim Tenhave and seconded by Peter Batula to adopt the following language:

(a) Legal Subject Matter

Notwithstanding other provisions of this Charter to meet a public emergency affecting life, health, property, or the public peach, the Town Council may adopt one of more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by the public utility for its services, or authorize the borrowing of money, except as provided in Section 1.3.10 of this Charter.

(b) Introduction

An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms.

(c) Adoption

An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced but an affirmative vote of five (5) Town Councilors shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances.

(d) Enactment

An emergency ordinance shall become effective upon adoption. Every emergency ordinance, except one made pursuant to Section 1-3-10 of this Charter, shall automatically stand repealed as of the sixty-first (61) day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this Section if the emergency still exists.

(e) Repeal of Emergency Ordinances

An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

The motion passed 8-0-0.

6. Recording – Heather Anderson noted it is the responsibility of the Town Clerk to maintain the system for indexing, recording, printing, and maintaining the ordinances of the town.

A motion was made by Tim Tenhave and seconded by Peter Batula to adopt the following language:

Recording

All ordinances, including any amendments thereto, shall be recorded in full, uniformly, and permanently, by the Town Clerk. Each ordinance so recorded shall be authenticated by affixing the signatures of the Council Chair and the Town Clerk, and the Town Seal, and kept on file in the office of the Town Clerk.

Indexing, Printing, Publication and Maintenance

The Town Clerk shall be responsible for the systematic indexing, printing, publication and maintenance of the ordinances of the Town. Copies of all ordinances shall be available to the public, and the Town Clerk may charge a fee to defray the printing costs.

Revision or Codification

The Town Council, not later than 18 months after taking office under this Charter, and at least every fifth year thereafter, shall have prepared a revision or codification of the ordinances of the Town which are appropriate for continuation as local laws of the Town.

The motion passed 8-0-0.

Other Provisions – The Commission members present agreed that there is no need to put these in.

Article V – Administrative and Judicial Boards

1. Administrative Committees/Boards/Commissions – Heather Anderson noted that the desire is to keep this as close as possible to the current form.

A motion was made by Robert Kelley and seconded by David Yakuboff to adopt the following language for the Charter:

A. Planning Board. There shall be a Planning Board consisted of seven (7) members as provided by New Hampshire State law. Six (6) of these members shall be appointed by the Town Council for terms of three (3) years, such terms to be staggered. One (1) Town Council member shall be appointed annually at the Council's first meeting to serve as an ex officio member. There shall also be three (3) alternative members appointed in the same way as regular appointed members, except no more than one

alternative appointed member's term shall expire in a single year. The Town Council shall fill any vacancy for the period of the unexpired term. The Planning Board shall have all the powers granted to Planning Boards by New Hampshire State law.

The motion passed 8-0-0.

A motion was made by Peter Batula and seconded by Lon Woods to adopt the following language:

B. Conservation Commission. There shall be a Conservation Commission consisting of seven (7) members. The seven (7) appointed members by the Town Council shall be appointed for terms of three (3) years, such terms to be staggered. There shall also be two (2) alternative members appointed in the same way as regular appointed members, except no more than one alternate appointed member's term shall expire in a single year. The Town Council shall fill any vacancy for the period of the unexpired term. The Conservation Commission shall have all the powers granted to Conservation Commissions by New Hampshire State law.

The motion passed 8-0-0.

A motion was made by David Yakuboff and seconded by Fran L'Heureux to adopt the following language:

C. Parks and Recreation Committee. The Committee shall consist of twelve (12) residents of the Town of Merrimack. The Town Council shall appoint seven (7) members of the Committee for three (3) year terms and two (2) alternates who will serve for a period of one (1) years each. In addition, four (4) members shall be appointed by Merrimack organizations. There shall be one (1) voting member form each of the following organization: the Merrimack Youth Association (MYA), the Town Council, the Senior Citizen Club, the School Board, and a representative from the Merrimack High School student body. Such organization members shall be recommended by their organization and, if approved by the Town Council, they shall be appointed for a one (1) year term. Vacancies shall be filled by appointment of the Town Council for the unexpired term.

An amendment was made by Tim Tenhave and seconded by Finlay Rothhaus to allow alternatives to serve the same terms as members. The motion passed 8-0-0.

A motion was made by Tim Tenhave and seconded by Finlay Rothhaus to state that the Town Council member does not have the right to hold office. The motion passed 8-0-0.

The main motion now reads:

C. Parks and Recreation Committee. The Committee shall consist of twelve (12) residents of the Town of Merrimack. The Town Council shall appoint seven (7) members of the Committee for three (3) year terms and two (2) alternates who will serve for a period of three (3) years each. In addition, four (4) members shall be appointed by Merrimack organizations. There shall be one (1) voting member form each of the following organization: the Merrimack Youth Association (MYA), the Town Council, the Senior Citizen Club, the School Board, and a representative from the Merrimack High School student body. The Town Council representative shall have all

the rights of membership excluding the right to hold office. Such organization members shall be recommended by their organization and, if approved by the Town Council, they shall be appointed for a one (1) year term. Vacancies shall be filled by appointment of the Town Council for the unexpired term.

The motion passed 8-0-0.

Planning Board – A motion was made by Tim Tenhave and seconded by David Yakuboff to reconsider the language regarding the Planning Board. The motion passed 8-0-0.

A motion was made by Tim Tenhave and seconded by David Yakuboff to adopt the following language for the Charter:

A. Planning Board. There shall be a Planning Board consisted of seven (7) members as provided by New Hampshire State law. Six (6) of these members shall be appointed by the Town Council for terms of three (3) years, such terms to be staggered. One (1) Town Council member shall be appointed annually at the Council's first meeting to serve as an ex officio member. This representative shall have all the rights of membership excluding the right to hold office. There shall also be three (3) alternative members appointed in the same way as regular appointed members, except no more than one alternative appointed member's term shall expire in a single year. The Town Council shall fill any vacancy for the period of the unexpired term. The Planning Board shall have all the powers granted to Planning Boards by New Hampshire State law.

The motion passed 8-0-0.

Heritage Commission – A motion was made by Lon Woods and seconded by Robert Kelley to table action on the Heritage Commission for further information. The motion passed 8-0-0.

Conservation Commission – A motion was made by Finlay Rothhaus and seconded by Fran L'Heureux to reconsider the language for the Conservation Commission. The motion passed 8-0-0.

Finlay Rothhaus noted he would like to include a Town Council member on the Conservation Commission with all the rights of membership, excluding the right to hold office.

Tim Tenhave noted the Conservation Commission has a limit of 7 members.

A motion was made by Finlay Rothhaus and seconded by Robert Kelley to adopt the following language for the Conservation Commission:

B. Conservation Commission. There shall be a Conservation Commission consisting of seven (7) members. The six (6) appointed members by the Town Council shall be appointed for terms of three (3) years, such terms to be staggered. The Town Council shall appoint a representative to the Conservation Commission annually at their first meeting. This representative shall have all the

rights of membership excluding the right to hold office. There shall also be two (2) alternative members appointed in the same way as regular appointed members, except no more than one alternate appointed member's term shall expire in a single year. The Town Council shall fill any vacancy for the period of the unexpired term. The Conservation Commission shall have all the powers granted to Conservation Commissions by New Hampshire State law.

The motion passed 7-1-0.

F. Other Administrative Committees – Tim Tenhave noted that his impression is that the Charter only needs to include committees/boards/commissions that are regulated by RSAs.

A motion was made by Robert Kelley and seconded by Finlay Rothhaus to adopt the following language for the Charter:

F. Other Administrative Committees. Other administrative committees may be established/continued as necessary by the Town Council.

Tim Tenhave noted that the transition plan should include the continuation of any currently existing boards/committees/commissions. Lon Woods noted that current boards, etc. want to know that they will be continuing. Peter Batula noted that this language would give the Town Council the right to establish commissions, etc.

An amendment was made by Tim Tenhave and seconded by Peter Batula to adopt the following language:

F. Other Administrative Committees. Other administrative committees may be established as necessary by the Town Council.

The motion passed 5-2-1.

The main motion passed 7-1-0.

2. Elected Boards/Committees/Commissions – A motion was made by Robert Kelley and seconded by Lon Woods to adopt the following language for the Charter:

A. Trustees of the Trust Funds. There shall be a board of three (3) Trustees of Trust Funds whose powers and duties are provided by New Hampshire State law. Trustees of Trust Funds shall be elected at the regular Town Election for terms of three (3) years, one Trustee each year. Vacancies shall be filled by appointment by the Town Council for the unexpired term.

B. Library Trustees. There shall be a board of five (5) Trustees of the Library who shall be elected at the regular Town election for terms of three (3) years, staggered so that no more than two (2) Trustees are elected at one time. Vacancies shall be filled by appointment by the Town Council for the unexpired term.

C. Ethics Committee. The Ethics Committee shall consist of five (5) residents of the Town of Merrimack for three (3) year terms on a staggered basis. A quorum of three (3) or more Committee members shall be necessary to hear any complaint that is filed. Should a vacancy in the Committee arise, the remaining

members of the Ethics Committee shall appoint a Town citizen to serve out the remainder of the term. Any tie shall be resolved by the vote of the Town Moderator. The members of the Ethics Committee shall elect a Chairperson on an annual basis.

Robert Kelley noted that vacancies on the Library Trustees have in the past been run through the Board of Selectmen.

A motion was made by Heather Anderson and seconded by Robert Kelley to table further action on this section for further review. The motion passed 8-0-0.

Minutes of September 13, 2005

A motion was made by Peter Batula and seconded by Fran L'Heureux to accept the minutes of September 13, 2005 with changes. The motion passed 7-0-1.

Other Business

Background information – Heather Anderson noted there is a lot of duplication of materials. The Commission decided that additional materials would be available at the meeting, but these materials would also be available on the web and via e-mail.

Questions from the Press

There were no questions from the press at this time.

Public Comments

There were no public comments at this time.

Commission Comments

There were no comments from the commissioners at this time.

Adjourn

A motion was made by Peter Batula and seconded by Robert Kelley to adjourn the meeting at 9:55 PM. The motion passed 8-0-0.

Respectfully submitted,
Rita Carlton, Recording Secretary