

**MERRIMACK CHARTER COMMISSION  
REGULAR MEETING  
October 4, 2005**

Commission members present: Chairman Tom Mahon, Vice Chairman Heather Anderson, Secretary Fran L'Heureux, Peter Batula, Robert Kelley, Finlay Rothhaus (arrived at 7:40 pm), Tim Tenhave, Lon Woods, and David Yakuboff.

Chairman Mahon convened the meeting of the Charter Commission at 7:03 pm in the Conference Room of the Town Hall.

**Announcements**

Chairman Tom Mahon noted the Charter Commission will be holding a Public Hearing on November 8, 2005. This hearing will review the work completed to date. The Commission looks forward to hearing from the public at this hearing.

Copies of the Londonderry School District Charter, which deals only with the Official Ballot adoption of the school budget, was distributed to the Commission.

Chairman Mahon noted HB581 with amendments as proposed by the Secretary of State deals with the calendar and deadlines for charter approval. The effective date of any charter would be 60 days after its passage by the voters.

**Public Comments**

Andrew Sylvia, 28 Merrymeeting Drive, suggested that an Information Board be added to the appointed boards under the new charter. He also suggested the addition of a voter's guide to help inform the voters of the provisions of the proposed charter.

**Reports**

There were no reports at this time.

**Review Article II - Elections**

A motion was made by Peter Batula and seconded by Tim Tenhave to add the following language be added to Section 2.7:

If, within 30 days from the date of the 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.

A motion was made by Heather Anderson and seconded by David Yakuboff to move the Article II – Elections as follows:

Article II  
Elections: Election Officials: Conduct of Elections  
2-1 Composition of Board of Election Officers

The Supervisors of the Checklist, the Moderator, and the Town Clerk shall constitute the Board of Election Officers. The Moderator shall be chairman. The Town Clerk shall serve as the Clerk of the Board.

#### 2-2 Moderator

There shall be a Moderator of the Town who shall have all the powers and duties granted by this Charter and New Hampshire State Law. The Moderator shall be elected at large at the regular Town election for a term of two (2) years. The Moderator shall have the power to appoint all election officials except those which this Charter or New Hampshire State law requires to be elected or otherwise appointed. The Moderator shall determine whether all ballots from all polling places are to be counted in one (1) or more locations. Vacancies in the office of Moderator shall be filled pursuant to New Hampshire State Law.

#### 2-3 Supervisors of the Checklist

##### (a) Number of Supervisors and Length of Term

There shall be three (3) Supervisors of the Checklist who shall hold office for six (6) years (and until their successors are elected and qualified) on a staggered basis so that one (1) Supervisor is elected at each even year regular Town election. At their first meeting after each election, the Supervisors shall elect their own chairperson for a term of two (2) years.

##### (b) Vacancies

Vacancies in the board of Supervisors shall be filled by appointment made by the remaining Supervisors. If there is only one member of the board, or if the whole board shall be vacant, the Moderator shall make the appointments (RSA 669:64). A person appointed shall hold office until the vacancy or the unexpired term(s) is filled at the next Town election.

##### (c) Powers and Duties

The Supervisors of the Checklist shall have such powers and duties as are specified under New Hampshire State Law.

#### 2-4 Conduct of Elections

##### (a) Date of Elections

The election officers, whose duty it is to conduct regular and special elections, shall use a Non-Partisan Official Ballot System as detailed in the election laws of the State of New Hampshire, on the seconded Tuesday in April to choose Town Councilors and such other officials as specified by this Charter, each of who shall be elected by the voters of the entire town.

##### (b) Time and Place of Election

The election laws of the State of New Hampshire shall govern the hours of polling, the Town Council shall specify the polling place(s) of the Town and determine the hours the polls shall open and close at least thirty (30) days prior to any election.

##### (c) Qualification for Office

To be eligible for election to office in Merrimack, any candidate must meet the requirements of applicable New Hampshire State Law and constitutional provisions concerning such qualifications. In accordance with RSA 669:6, no person shall hold elected office unless the person has

a domicile in the town. In addition to other requirements, a candidate for Town Council must be a registered voter as well as having been a resident for a minimum of one year prior to the first day of the filing period for candidacy.

#### 2-5 Preparation of Ballots

The Town Clerk shall prepare separate ballots to be used at all local referenda and at elections at which Town officers are chose. The ballots shall contain in appropriate sections the names of all candidates, listed in alphabetical order, without party designation. Below the list of names of the candidates of each office, there shall be as many blank spaces as there are offices to be filled at the election. No titles, military, professional, or otherwise, shall accompany the name of any candidate on the ballot.

#### 2-6 Preservation of Ballots

All the ballots cast at each election shall be preserved, maintained, and sealed as required by New Hampshire State Law.

#### 2-7 Certification of Election and Appointment

Except as otherwise provided by New Hampshire State Law, before performing any act under this election or appointment, each person elected or appointed shall take and subscribe to an oath to qualify him or her to enter upon the duties of office within thirty (30) days. If, within 30 days from the date of the 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.

A record of the taking of such oath shall be made by the Town Clerk. Any oath required by this section may be administered by any officer authorized by NH State Law to administer oaths.

#### 2-8 Contested Elections

The election laws of the State of New Hampshire shall govern the resolution of any contested election.

The motion passed 8-0-0.

### **Review Article IV – Ordinances**

A motion was made by Lon Woods and seconded by Robert Kelley to move Article IV – Ordinances as follows:

Article IV  
Ordinances

#### 4-1 Introduction

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 two other public venues as the Town Council may designate.

#### 4-2 Form

- (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.

#### 4-3 Public Notice

- (1) After passage of the ordinances 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 or said hearing by at least seven (7) calendar days.
- (3) Publication for purpose of this Section shall mean the publication of a notice in any paper distributed in the Town of Merrimack as well as the posting of the notice in at least two other public venues as the Town Council may designate, 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.

#### 4-4 Adoption

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 provided by 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 provided in the initiative and referendum procedures of this Charter.

#### 4-5 Emergency Ordinances

##### (a) Legal Subject Matter

Notwithstanding other provisions of this Charter to meet a public emergency affecting life, health, property, or the public peace, the Council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by a public

- utility for its services, or authorize the borrowing of money, except as provided in [Section RE: Emergency Appropriations/Expenditures] 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 by an affirmative vote of five (5) 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 RE: Emergency Appropriations/Expenditures] 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.

#### 4-6 Recording

- (a) 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 Town Council Chair and the Town Clerk, and the Town Seal, and kept on file in the office of the Town Clerk.
- (b) 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.
- (c) 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.

## **Complete Preliminary Review of Article V – Administrative & Judicial Boards**

### **5-1 Administrative Committees/Boards/Commissions**

Heather Anderson noted that section 5.1.E was tabled along with section 5.2. The Commission at their last meeting wanted to make limited changes.

Tim Tenhave noted that the current make up of the Heritage Commission is 5 members: 3 appointed, 1 from the Board of Selectmen, and 1 from the Planning Board. There are also 3 alternate members. There is nothing in the current form of government indicates that representatives of the Board of Selectmen or Planning Board cannot hold offices on the Heritage Commission. Tom Mahon noted that any representative noted as ex officio is a member noted allowed to hold office. He noted that it is his intent to make sure that a list of definitions is added to the Charter before presentation of the Charter to the town.

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

#### **5-1 Administrative Committees/Boards/Commissions**

A. Planning Board. There shall be a Planning Board consisting 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 to serve as an ex-officia member. There shall also be three (3) alternate members appointed in the same way as regular appointed members, except no more than one alternate appointed member's terms 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 power granted to Planning Boards by New Hampshire State Law.

B. Conservation Commission. There shall be a Conservation Commission consisting of seven (7) members. 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 to serve as an ex-officio member. There shall also be two (2) alternate 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.

C. Parks and Recreation Committee. There shall be a Parks and Recreation Committee consisting of twelve (12) residents of the Town of Merrimack. The Town Council shall appoint seven members of the Committee for three-year terms and two alternates who will serve for a period of three (3) years each. One (1) Town Council member shall be appointed annually as an ex-officio member. In addition, four members shall be appointed by Merrimack organizations. There shall be one voting member from each of the following organizations: the Merrimack Youth Association (MYA), the Senior Citizen's 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-year term. Vacancies shall be filled by appointment of the Town Council for an expired term. The Parks and Recreation Committee shall have all the powers granted to Parks and Recreation Committees by New Hampshire State Law.

The motion passed 8-0-0.

A motion was made by Heather Anderson and seconded by Lon Woods to adopt the following language:

D. Heritage Commission. There shall be a Heritage Commission consisting of five (5) members, and three (3) alternate members who shall be appointed by the Town Council. Each member shall be a resident of Merrimack. One (1) Town Council member shall be appointed annually as an ex-officio member. One (1) Planning Board member shall be appointed annually as an ex-officio member. Other members shall be appointed for terms of three (3) years. The Council shall fill any vacancy for the period of the unexpired term. The Heritage Commission shall have all the powers granted to Historic District Commissions by New Hampshire State Law.

(Finlay Rothhaus arrived at this time.)

Tim Tenhave noted that the Heritage Commission is covered by two separate articles. He noted the towns are allowed to create Heritage Funds. He questioned who expends these funds. He noted currently the Heritage Commission can expend these funds after a Public Hearing with a majority vote.

Tom Mahon noted that funds are not usually delineated in the Charter. Mr. Tenhave questioned whether part of the current administrative code will be invalidated in the transition plan. Mr. Mahon noted that in most transition plans things continue on as they currently exist. Peter Batula noted that if an issue is not directly addressed it stays as it currently exists.

The motion passed 9-0-0.

A motion was made by Lon Woods and seconded by Heather Anderson to change the word "way" in section 5-1-B to "manner". The motion passed 9-0-0.

Heather Anderson noted that section E would cover all of the other currently existing boards/commissions/committees. This would give the Town Council the means to review all boards/commissions/committees.

#### 5-2 Elected Boards/Committees/Commissions

Tom Mahon noted that currently a vacancy in the Library Trustees is filled by the Board of Selectmen. He noted that some charters allow the Trustees to fill their own vacancies. Robert Kelley noted that he recommends that Trustees not be allowed to fill their own vacancies.

Tom Mahon noted that the administrative code requires that the Ethics Committee consist of 5 residents of the town. This is the only committee for which this restriction applies.

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

5-2 Elected Boards/Committees/Commissions

A. Trustees of 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 3 years, staggered so that no more than 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-year terms on a staggered basis. A quorum of three 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.

An amendment was made by Robert Kelley and seconded by Finlay Rothhaus to change the first sentence in section 5-2-C Ethics Committee to read as follows:

The Ethics Committee shall consist of five (5) *members, who shall be elected* for three-year terms on a staggered basis.

The amendment passed 9-0-0.

A motion was made by Tim Tenhave and seconded by Heather Anderson to table action on Section 5-2. The motion passed 8-0-1.

5-3 Judicial Boards/Committees/Commissions

A motion was made by David Yakuboff and seconded by Lon Woods to adopt the following language:

Judicial Boards

Zoning Board of Adjustment. There shall be a Zoning Board of Adjustment appointed by the Town Council, consisting of five (5) members each serving a three-year term and three (3) alternates each serving a three-year term. Such terms shall be staggered. The Town Council shall fill any vacancy for the period of the unexpired term. The Zoning Board of Adjustment shall have all the powers granted to such boards under New Hampshire State Law.

The motion passed 9-0-0.

#### 5-4 Vacancies in Elected Office

Tom Mahon noted that for consistency and clarity this should be a separate section. The word "regular" should be added between the words "next" and "Town"

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

##### Vacancies in Elected Office

Unless otherwise specified in this Charter, or as otherwise provided by New Hampshire State Law, in the event of a vacancy in an elected office, board of commission of the Town the Town Council shall fill that vacancy by appointment, such appointment to continue until the next regular Town election.

The motion passed 9-0-0.

#### 5-5 Vacancies in Appointive Office

Tom Mahon noted there is a need to set a date certain for the beginning and ending of vacancies. The Commission agreed that these dates should coincide with the fiscal year.

A motion was made by David Yakuboff and seconded by Lon Woods to adopt the following language:

##### Vacancies in Appointive Office

##### Terms of Office.

The terms of office of all members of appointed boards shall begin on July 1 and end on June 30. If an appointee receives an appointment subsequent to July 1 of the year in which the term of office originally commenced, the term to which the person was appointed will end June 30 in the year that it was scheduled to end.

The words "committees/commissions" were added by the consent of the maker and the second after the word "boards".

The motion as amended passed 8-1-0.

#### 5-6 Committee Review

Tom Mahon noted this section was left in to require the Town Council to keep in touch with the Boards, Committees, and Commissions of the town. It is open ended to give flexibility.

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

##### Annual Review of Town Boards/Committees/Commissions

At least annually, and more often if town affairs warrant, the Town Council shall meet with the chair of all standing and other Town boards/committees/commissions, to review significant actions taken by the committees, projects currently under discussion, and anticipated activity for the coming year.

The motion passed 8-1-0.

### **Begin Review of Article III – Governing Board**

A motion was made by Finlay Rothhaus and seconded by Lon Woods to adopt the following language:

#### Terms of Office

The Councilors shall be elected from the Town at large for 3-year staggered terms. All members shall take office following the certification of their election and after being duly sworn in, and shall hold office until successors are duly elected and certified.

The motion passed 9-0-0.

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

#### Membership

Except as otherwise provided in this Charter, all of the powers of the Town as authorized by New Hampshire State Law shall be vested in a Town Council, hereinafter referred to as the Council, or seven (7) Councilors.

The motion passed 9-0-0.

### 2. Organizational Meeting

Finlay Rothhaus noted that the Town Council would want to have an organization meeting. Tim Tenhave noted that setting a particular date may cause problems. Heather Anderson noted the Council should have the ability to table action on the organization meeting, but it should be held as soon as possible after the annual town election. Mr. Rothhaus noted it is necessary to mention a recount. Tom Mahon noted that words regarding the certification of the election may be necessary also.

A motion was made by Heather Anderson and seconded by Robert Kelley to adopt the following language:

#### Organizational Meeting

The Councilors so chosen shall meet in their capacity as the Council at the first regularly scheduled meeting after all members are certified for the purpose of taking their respective oaths of office, adopting rules and for the transaction of business required by law or ordinance to be transacted in such meeting.

The motion passed 6-2-1.

### 3. Selection of Chair and Vice Chair

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

#### Selection of Council Chair and Vice Chair

The Council shall, by the affirmative vote of at least four (4) of its members, at its Organizational Meeting, choose one (1) of its members as Chair for a term of one (1) year. The Council shall choose one (1) of its members as Vice Chair for a term of one (1) year, who shall act in the absence or disability of chairman. In

the event of a vacancy occurring in the office of Chair, the Vice Chair shall serve out the unexpired term. The Chair shall be the official head of the Town for all ceremonial purposes, shall preside at all meetings of the Council, and may speak and vote at such meetings.

The motion passed 9-0-0.

#### 4. Qualification of Councilors

A motion was made by Tim Tenhave and seconded by Robert Kelley to adopt the following language:

##### Requirements

To be eligible for election as Councilor, a candidate must be a registered voter, must have been a resident domiciled in Merrimack for at least one year prior to the first day of the filing period for candidacy, and after election must remain a domiciled resident or relinquish the office, as provided for in Article 2.4.c.

The motion passed 9-0-0.

Tim Tenhave questioned whether it is necessary to put language regarding attendance in the section on vacancies in the Council. Finlay Rothhaus noted that if a Councilor is derelict in their duty the citizens of the town will remember.

Tom Mahon noted his concern regarding the broadness of the term “public conduct”. He noted this could turn such an issue into a witch hunt.

A motion was made by Tim Tenhave and seconded by Fran L’Heureux to adopt the following language:

##### Vacancies in the Council

The Council shall declare a vacancy in the event that a member is convicted of committing a federal or state crime punishable by imprisonment for more than one (1) year. A majority of the Council may, after investigation and hearing declare vacancy, if a member has missed three regular scheduled meetings in sequence without leave of the Council; has missed one third of all meetings within a calendar year without leave of the Council; or is found in violation of any article of the Town Charter by the vote of at least 5 Town Councilors. A vacancy occurring in the office of Councilor at any time shall be filled by appointment until the next regular election by a majority vote of the Council as specified by Article \_\_\_\_ of this Charter.

Mr. Mahon noted that this does not include any language preventing interference.

An amendment was made by David Yakuboff and seconded by Peter Batula to remove the clauses in the second sentence after the words “without leave of the Council. The amendment failed 2-7-0.

The main motion failed 2-7-0.

A motion was made by Finlay Rothhaus and seconded by Fran L'Heureux to table further discussion on this section. The motion passed 9-0-0.

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

**Incompatible Offices**

Except as otherwise provided in this Charter, members of the Council shall not hold any office or employment with the Town. Former members of the Council shall not be eligible for appointment as a compensated Town officer or employee until one year after the expiration of their service.

The motion passed 9-0-0.

**Minutes of September 20, 2005**

A motion was made by Heather Anderson and seconded by Fran L'Heureux to accept the minutes of September 20, 2005 as printed. The motion passed 9-0-0.

**Other Business**

**Ballot Analysis** – Heather Anderson noted that there is a need for better correlation between the graphs and the respective %'s to make the analysis easier to understand.

**Internet Connection** – Tim Tenhave questioned whether it is possible to make an internet connection available for computer access during meetings. Tom Mahon noted he will see what is available.

**Questions from the Press**

There were no questions from the press at this time.

**Commission Comments**

**Additional meetings** – The Commission determined that another meeting will be needed on Thursday, October 13, 2005. This meeting will be held at 7:00 PM in the Conference Room of the Town Hall.

Tom Mahon reported ordering and receiving the 8<sup>th</sup> Model City Charter and charter commission guide information from the National Civic League.

**Adjourn**

A motion was made by Lon Woods and seconded by Robert Kelley to adjourn the meeting at 10:00 PM. The motion passed 9-0-0.

Respectfully submitted,  
Rita Carlton, Recording Secretary