

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
October 11, 2005**

Commission members present: Chairman Tom Mahon, Vice Chairman Heather Anderson (arrived at 7:20 pm), Peter Batula, Robert Kelley, Finlay Rothhaus, Tim Tenhave, and Lon Woods. Excused: Fran L'Heureux and David Yakuboff

Chairman Mahon convened the meeting of the Charter Commission at 7:07 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. The draft charter should be ready at this time for preliminary comment and review.

The Charter Commission will be meeting on Thursday, October 13, 2005 for a regular meeting. This meeting will be held at 7:00 PM in the Conference Room of the Town Hall. This meeting will be held to continue the work of the Commission.

Chairman Mahon noted he received a handbook from the National Civic League regarding the civic health of a community.

Article III – Governing Board

5.7 Filling of Town Council Vacancies

Tom Mahon noted that Heather Anderson has drafted something regarding the removal of a Councilor. This section was set aside until the arrival of Heather Anderson.

4. Qualifications of Councilors

Incompatible Positions

Tom Mahon noted that the Code of Ethics could be included in the Charter to the ordinance containing the Code of Ethics can be referred to in the Charter. There is a potential for the Town Council to manipulate a person appointed as Acting Town Manager. Heather Anderson noted that elected official should be elected not appointed.

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

Incompatible Positions

No Councilor shall, while serving a term, be eligible to hold any other Town position of remuneration. No Councilor, while serving a term, nor former Councilor, who has been out of office less than one year, shall be appointed as "acting town Manger".

The motion passed 7-0-0.

5.7 Filling of Town Council Vacancies (revisited)

Heather Anderson questioned what happens if the Charter is silent regarding the time period for filling of a vacancy on the Council. Tom Mahon noted he does not know what happens in this case. Ms. Anderson noted her concern is that if the Charter dictates this issue, the Chairman of the Town Council is required to make the call regarding the filling of the vacancy. She noted she does not like the language regarding the time period and appointment by the Chairman. There was concern regarding the fact that the decision to appoint a Councilor to fill a vacancy may be dictated by the courts. Lon Woods noted that the Charter needs to be written so that action must be taken within 21 days. There is a need to make the Town Council or other portion of the government deliberate.

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

Section 5.7 Filling of Town Council Vacancies

In case a vacancy occurs in the Town Council for any reason, the remaining Town Councilors shall, by majority vote, appoint an acting Councilor from among persons eligible to hold the vacant office, to serve until the next regular Town election, at which point the vacancy shall be filled by election for the remainder of the unexpired term, provided, however, that, if the vacancy occurs fewer than ninety (90) days prior to the next regular election, the vacancy shall not be filled by appointment, but shall be filled at the next regular election.

The Town Council shall act to fill a vacancy no later than 21 days after the vacancy has been officially declared. The person so appointed shall be sworn and commence to service forthwith.

Tim Tenhave noted that he has concerns regarding the 90 days prior to election. He noted that an even number of Councilors might cause gridlock. Ms. Anderson noted that the time right before the town elections is a chaotic time and it would not be a good time to throw in the issue of appointing a new councilor.

The motion passed 7-0-0.

6. Compensation; Expenses

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

Compensation; Expenses

The Town Council shall establish an annual salary and expense allowance for its member, subject to the following:

No increase in such salary or expense allowance shall be effective unless it shall have been adopted by a vote of 5 Town Councilors.

The new salary and expense schedule shall be included in the next Town budget process, and shall take effect in the fiscal period to which that budget applies.

No Councilor in office at the time the new schedule is adopted shall receive any benefit of the new schedule during the remainder of the Councilors' then-current term of office.

Notwithstanding the foregoing, any decrease in such salary and expenses shall be adopted by a majority vote and take effect immediately and apply to all Councilors holding office at the time the decrease is adopted.

The motion passed 7-0-0.

7. Exercise of Powers – Meetings – Rules of Procedure

A. Exercise of Powers

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

A. Exercise of Powers – Except as otherwise prohibited by New Hampshire State Law or this Charter, the powers of the Council may be exercised in a manner it determines.

The motion passed 7-0-0.

B. Quorum

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

B. Quorum – A quorum of the Council for the transaction of any business shall be four (4) of the members currently in office. However a smaller number may adjourn the meeting to another time or date.

The motion passed 7-0-0.

C. Meetings

Heather Anderson noted it is important to have the meeting agendas available. She noted the agendas should be posted and could be amended. She noted that if a specified issue is not noted on the agenda, no action could be taken on that issue. Tom Mahon noted that if a process is set up the Council must learn to work within that framework. The rules can be suspended by a supermajority vote. Ms. Anderson noted her intent is to have an agenda presented, but to give the Council latitude to amend it if necessary.

A motion was made by Heather Anderson and seconded by Peter Batula to adopt the following language:

C. Meetings – All meetings of the Council shall be public to the extent required by New Hampshire State Law.

Regular meetings shall be held at such time, date and place as the Council shall by ordinance or resolution direct. Agendas shall be prepared and posted at least 72 hours in advance of each regular meeting.

The motion passed 7-0-0.

Special Meetings

A motion was made by Heather Anderson and seconded by Peter Batula to adopt the following language:

C. Meetings (3rd paragraph)

Special meetings may be called by the Chair. Special meetings also may be called at the written request of the Manager or at least three (3 Councilors, and upon such request the Chair of the Council shall call such special meeting. Written notice of said meeting shall be given to the public and to each Councilor at least twenty-four (24) hours prior to the call of the meeting, excluding Saturdays, Sundays and legal holidays.

The motion passed 7-0-0.

Emergency Meetings

A motion was made by Heather Anderson and seconded by Tim Tenhave to adopt the following language:

C. Meetings (4th paragraph)

An emergency meeting may be called by the Chair when immediate, undelayed action is deemed to be imperative by the Chair, who shall employ whatever means are reasonably available to inform the public and all Council members that an emergency meeting is to be held.

The motion passed 7-0-0.

D. Rules of Procedure

Tom Mahon noted that the intent is to not require a roll call vote for every issue as every issue does not require such a vote. Peter Batula questioned how the Council would handle tabling an issue. Mr. Mahon noted that this could be done on a voice vote unless a roll call vote is called for.

Tim Tenhave noted he does not think that the reason for an abstaining vote should be required.

A motion was made by Tim Tenhave and seconded by Robert Kelley to add the word "may" in the second sentence after "and" and before "give".

Lon Woods noted that a Councilor might not want to give a public statement regarding their reason for abstaining and take the judgment of the voters at the next election regarding their actions.

The motion passed 5-2-0.

A motion was made by Heather Anderson and seconded by Lon Woods to adopt the following language for the 1st sentence of this paragraph:

The Council shall establish rules for its proceedings not inconsistent with this Charter, including, but not limited to: recording of votes, posting and amending of agendas, and such parliamentary or other meeting procedures.

The motion passed 7-0-0.

A motion was made by Peter Batula and seconded by Tim Tenhave to reconsider Paragraph D. The motion passed 6-1-0.

A motion was made by Tim Tenhave and seconded by Robert Kelley to adopt the following language for the second sentence of Paragraph D:

Every matter coming before the Council for action shall be put to a vote and all members shall vote “aye”, “nay”, or abstain and give a reason for abstaining.

Lon Woods noted that the Councilors are not required to give a reason for a “yes” or “no” vote, but are required to give a reason for an abstaining vote. Peter Batula noted that the voters expect you to vote and they want to know why you didn’t.

The motion failed 4-3-0.

A motion was made by Tom Mahon and seconded by Finlay Rothhaus to adopt the following language for the second sentence of Paragraph D:

Every matter coming before the Council for action shall be put to a vote and all members shall vote “aye”, “nay”, or abstain.

The motion passed 6-1-0.

Tom Mahon noted that the Council could require a reason by its own rules.

Heather Anderson noted a concern regarding roll call votes. Finlay Rothhaus noted that if an issue is touchy with one member of the Council then a roll call vote could happen. He noted the threshold for a roll call vote is low and he is comfortable with the proposed wording. Tom Mahon noted that language can be struck and ask the Council to decide for themselves when roll call votes will be used, but this also causes problems. Mr. Rothhaus noted that the call for a roll call vote could create a “circus” atmosphere. Mr. Mahon noted that the Chair could rule a call for a roll call vote out of order if this language is not in the Charter.

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

D. Rules of Procedure – The Council shall establish rules for its proceeding not inconsistent with this Charter, including, but not limited to: recording of votes, posting and amending of agendas, and such

parliamentary or other meeting procedures. Every matter coming before the Council for action shall be put to a vote and all members shall vote “aye”, “nay”, or abstain. A roll call vote shall be taken upon the request of a single member of the Council. The results of such voting shall be duly recorded.

The motion passed 7-0-0.

E. Council Objection

A motion was made by Heather Anderson and seconded by Lon Woods to strike this paragraph. The motion passed 6-0-1.

8. Powers and Duties

The Commission separated this section into parts A and B.

A motion was made by Tim Tenhave and seconded by Heather Anderson to adopt the following language:

B. All officers and members of all boards, commissions and committees, and vacancies thereto shall be appointed by the Council from among Town residents unless otherwise provided by this Charter.

The motion passed 7-0-0.

A motion was made by Lon Woods and seconded by Finlay Rothhaus to table action on Paragraph A until the entire Commission is available for the vote. The motion passed 7-0-0.

9. Delegation of Powers

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

Delegation of Powers

The Council may delegate to one or more Town agencies the powers vested in the Council by this Charter and New Hampshire State Law and Federal Law to grant and issue licenses and permits, and may regulate the granting and issuing of licenses and permits by any such Town agency, and may in its discretion, rescind any such delegation without prejudice to any prior action which has been taken.

Finlay Rothhaus noted that fees have been increased by boards rather than by the Board of Selectmen. He noted he would like to see such fees increased by the Town Council only. He will look into this and report back to the Commission.

The motion passed 7-0-0.

10. Inquiries and Investigation

The Commission was concerned as to whether this would be a duplication of effort with the Ethics Commission.

A motion was made by Heather Anderson and seconded by Tim Tenhave to table action on this section. The motion passed 7-0-0.

11. Board Procedures

Tom Mahon noted that these procedures have already been covered.

Other Provisions

Tom Mahon noted that these have been taken care of in another area of the Charter.

4. Qualification of Councilors
B. Removal of Councilors

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

By a vote of 5 Councilors the Council may, on specific charges and after due notice and hearing, at any time remove one of its own members for cause, including prolonged absence from or other inattention to duties, crime or misconduct in office, or as specified in this Charter.

Tom Mahon noted that absence from meetings does not include absence from special or emergency meetings.

The motion passed 7-0-0.

Article V – Administrative and Judicial Boards

5.2 Elected Boards/Committees/Commissions

Heather Anderson noted she sent out some draft language. The town language matches state laws.

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

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.

The motion passed 7-0-0.

B. Library Trustees

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

B. Library Trustees. There shall be a board of five (5) Trustees of the Library whose powers and duties are provided by New Hampshire State Law. Library Trustees 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.

The motion passed 7-0-0.

C. Ethics Committee

A motion was made by Lon Woods and seconded by Tim Tenhave to adopt the following language:

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.

The motion passed 7-0-0.

Committee Comments

Heather Anderson noted that Article V will be available for review at the Committee meeting on Thursday, October 13, 2005. Article III is almost ready for final review. The Committee will discuss Articles VI and VIII on Thursday.

Tom Mahon noted that a Committee meeting could be scheduled for Thursday, October 20, 2005, if needed. The meetings can go beyond 10:00 PM if necessary. The meeting on Tuesday, October 18, 2005 will begin at 6:00 PM rather than the regular time of 7:00 PM.

Adjourn

A motion was made by Lon Woods and seconded by Robert Kelley to adjourn the meeting at 9:50 PM. The motion passed 7-0-0.

Respectfully submitted,
Rita Carlton, Recording Secretary