

**MERRIMACK CHARTER COMMISSION  
REGULAR MEETING  
October 13, 2005**

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

Chairman Mahon convened the meeting of the Charter Commission at 7:12 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 meeting will be held to review the draft charter to date. He noted that minutes and progress of the Commission are on the website. The next meeting of the Commission will be held on Tuesday, October 18, 2005 at 6:00 PM

**Public Comment**

Andrew Sylvia, 28 Merrymeeting Drive, noted that the Charter Commission could hopefully give the referenda more teeth. He noted he believes there is a need to change the Warrant Article system.

Tom Mahon noted that the Commission is limited by state law regarding what can be done with Warrant Articles.

**Reports**

**Chair** – none

**Vice Chair** – none

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

Tom Mahon noted that action has been taken on all section of this Article.

A motion was made by Robert Kelley and seconded by Lon Woods to adopt Article V as follows:

Article V - Administrative and Judicial Boards

5-1 Administrative Boards/Committees/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 officio member. There shall also be three (3) alternate members appointed in the same manner 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 Planning Board shall have all the powers 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 manner 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 to serve as an ex officio member. In addition, for 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 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 own Council, they shall be appointed for a one-year term. Vacancies shall be filled by appointment of the Town Council for the unexpired term. The Parks and Recreation Committee shall have all the power granted to Parks and Recreation Committees by New Hampshire State Law.

D. Heritage Commission. There shall be a Heritage Commission consisting of five (5) members. Three (3) 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. One (1) Planning Board member shall be appointed annually to serve as an ex officio member. There shall also be three (3) alternate members appointed in the same manner 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 Heritage Commission shall have all the powers granted to Heritage Commissions by New Hampshire State Law.

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

## 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 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.

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.

## 5.3 Judicial Boards/Committees/Commissions

A. 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.

## 5.4 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 or commission of the town, the Town Council shall fill that vacancy by appointment, such appointment to continue until the next regular Town election.

## 5.5 Terms of Appointive Office

The terms of the office of all members of appointed boards, committees, and commissions shall begin on July 1 and end of 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.

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

At least annually, and more often if town affairs warrant, the Town Council shall meet with the chairs of all standing and other Town boards, committees, and

commissions to review significant actions taken by the committees, project current under discussion, and anticipated activity for the coming year.

The motion passed 8-0-0.

Tim Tenhave questioned when the approved articles would go to the Commission's attorney and when they would be posted on the website. Heather Anderson noted that room is being prepared on the website for the drafts. Tom Mahon noted that the Commission is getting to the point when the approved articles should be submitted to the attorney. He noted he would like to send the first 5 articles to the attorney when they have been approved. Mr. Tenhave noted he would like feedback from the attorney before the Public Hearing.

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

#### **3.8 Powers and Duties**

Tom Mahon noted there are three ways the Commission can delineate these powers: the governing body is the legislative body, the Official Ballot process with the Deliberative Session, and the Town Meeting form with a budgetary town meeting. There was concern expressed by the Commissioners regarding a meeting of the public. There is concern that there is no place in town to hold a significant number of the voters. There was also concern expressed regarding the fact that since so few voters go to a town meeting or a deliberative session it is possible for a small faction to control what goes before the voters. Mr. Mahon noted it is possible to go the way of the Londonderry school district and require a quorum of the voters to attend a town meeting or deliberative session before any action can be taken. Peter Batula noted that his feeling is that the people are overwhelmingly opposed to the Deliberative Session and they would prefer to have the Town Council be the legislative body.

Tim Tenhave noted he is still not convinced that the town cannot have an official ballot with amendments made at the Town Council level. Finlay Rothhaus noted that the absence of a Deliberative Session would work for Merrimack. Heather Anderson noted she is inclined to run this idea up the flagpole and see if it passes muster. She feels that this idea would be the right thing for Merrimack. This is an improvement to the quorum idea.

Mr. Mahon noted that the idea of a quorum meets the letter, if not the spirit of the law. He noted that under the official ballot law it is not permitted to have amendments to ballot questions made at the Town Council level without a Deliberative Session.

Lon Woods noted it is not the role of the Charter Commission to take a position that is not allowed to it. He suggested that the Commission go with making the Town Council the governing and legislative body. He noted with this suggestion that the Commission needs to take a long hard look at the issues of referendum and initiative to protect the people.

Peter Batula questioned a fair quorum. He noted that 500 voters is less than 3.5% of registered voters in town. Mr. Rothhaus noted that if there is no quorum then it means that the voters are happy to let others take the lead. He noted that the dilemma is that the form of government must allow the citizens to vote and have a final say about the

ballot. Mr. Batula noted he is not opposed to public debate, but is looking at the ability of small groups to make changes. He noted he feels that the public has asked for something better than this. He noted a representative quorum is needed at a Deliberative Session and suggested 10% or 1,500 people.

Ms. Anderson questioned the cost of the Deliberative Session. Mr. Mahon noted that this can cost anywhere from about \$6,000 to \$12,000 depending on the electronics needed. He noted that the town does not have a place to hold 1,500 people. This quorum would force the meeting to be held in 2 or 3 places simultaneously. He noted that 14 other communities have the Town Council be the governing and legislative. None of these communities is considered spendthrifts. The Town Council is not running amok with people's money in these communities. They are sensitive to the people at the Public Hearing process. He noted that a small group of people can influence the Town Council through the Public Hearing process.

Mr. Woods noted that although the town spending is stable the Deliberative Session cannot take credit for this. There is a space problem for a voters' meeting. He suggested that the town should perhaps look at a different way to govern itself. The people still have a say with the election of the Town Councilors, initiative, and referendum. He noted it is time to move on and give the governing of the town to the Town Council.

David Yakuboff noted he agrees with Mr. Woods. He noted if the town cannot trust its Councilors the voters can remove them or vote them out of office.

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

Powers and Duties

A. Except as herein otherwise provided, the Council shall have all the powers conferred upon and discharge all the duties impose upon town councils, town meetings, boards of mayor and aldermen, and selectmen of towns by law.

Robert Kelley noted this will refine and channel further discussion. Mr. Tenhave noted that the passage of this language will create a charter that will fail. Mr. Rothhaus noted that this is the crux of the matter. He noted it is difficult to come back from this decision. He noted he is not in favor of this resolution.

The motion passed 5-3-0.

Mr. Mahon noted that there is always the possibility of alternate language if it is proposed and adopted. The Commission still needs to deal with this. Mr. Mahon noted that bond issues could be moved to the ballot along with the budget. Ms. Anderson noted that in the finance section of this charter the Commission could require that all bond issues go to the ballot.

## **Complete Preliminary Review of Article VI – Administration of Government**

### **1. Town Manager**

A motion was made by Heather Anderson and seconded by David Yakuboff to adopt the following language:

#### **Town Manager**

The chief administrative officer of the Town shall be the Town Manager (hereinafter called the “Manager”). The Council shall appoint a person especially qualified by experience and training, who received the votes of at least five (5) members of the Town Council, to be Manager. The Manager shall serve at the pleasure of the Council, which shall fix the manager’s salary and terms of employment.

The motion passed 8-0-0.

### **2. Qualifications**

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

#### **Qualifications of Manager, and Oath and Bond**

##### **Qualifications of Manager**

The Manager shall be appointed solely on the basis of qualification for the office, with special reference to education, training and previous experience in public or private office. The manager need not be a resident of the Town or of the State of New Hampshire at the time of appointment, but must establish residence in the Town within a period fixed by the Town Council. The Manager shall devote full time to the office and shall not hold any other public office, elective or appointive, except as authorized by this Charter, nor engage in any other business or occupation unless with the approval of the majority of the Town Council.

##### **Oath and Bond**

Before entering upon the duties of office, the Manager shall be sworn to the faithful and impartial performance thereof, and a certificate to that effect shall be filed with the Town Clerk; and the Manager shall execute a bond in favor of the town for the faithful performance of the Manager’s duties in such sum and with such surety or sureties as may be approved by the Council.

The motion passed 8-0-0.

### **3. Evaluation of Manager’s Performance**

Tom Mahon noted that this issue is often dealt with in the Manager’s contract. This section will require an evaluation of the Manager’s performance on at least an annual basis.

A motion was made by Heather Anderson and seconded by David Yakuboff to adopt the following language:

Following the first anniversary of the Manager’s service to the Town and during each subsequent year, the Council shall conduct an evaluation of the Manager’s performance in office. After such evaluation, the Council shall determine whether the Manager’s overall performance in office has been satisfactory or

unsatisfactory. The Council shall also establish the Manager's compensation for the ensuing year.

Tom Mahon noted that Town Managers' contracts are usually multiple year contracts. Most of these contracts also provide for performance compensation. Heather Anderson noted that this section would provide for on-going dialogue between the Manager and the Council.

The motion passed 8-0-0.

#### 4. Reprimand and Removal from Office

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

(A) The Manager may be reprimanded or removed by a vote of five (5) members of the Council as herein provided. The Council shall adopt a resolution stating its intention, and the reasons, for reprimanding or removing the Manager, a copy of which shall be served on the Manager. Immediately upon delivery to the Manager of a resolution stating the intent of the Council to remove, the Manger shall be relieved office and all further duties. Immediately upon delivery to the Manager of a resolution stating the intent of the Council to reprimand, the Manager may be relieved of office and all further duties. The Manager shall continue to receive full salary until the effective date of a final resolution of reprimand or removal. If a final resolution of removal is not adopt the Manager shall resume office forthwith.

The motion passed 8-0-0.

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

(B) The Manager may reply to the resolution, in writing, within 10 days, and upon request, shall be afforded a hearing, either public or private in accordance with the provisions of New Hampshire State Law, which shall occur not earlier than 10 days nor later than 15 days after such hearing is requested. After the hearing, if one is requested, and after full consideration, the Council, by a vote of five (5) of its members, may adopt a final resolution of reprimand or removal within seven (7) days. The action of the Council in reprimanding or removing the Manager shall be final.

During the period between adoption of a resolution for removal under Paragraph (A) of this section and final action under Paragraph (B), the Council shall, by majority vote of all its members, appoint an Acting Manager to serve at the will of the Council for not more than 90 days.

The motion passed 8-0-0.

#### 5. Acting Manager

A motion was made by Tim Tenhave and seconded by Lon Woos to retile this section "Acting Manager", rather than "Temporary Incapacity" as suggested. The motion passed 8-0-0.

There was a concern regarding the fact that there is nothing in the proposed wording about what happens when a vacancy occurs. Tom Mahon suggested that another section about this vacancy should be created.

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

Acting Manager

If the Manger is determined by a vote of at least four (4) members of the Council to be temporarily incapacitated or unable to act or the Council may determine that the office has become temporarily vacant, the Council shall, within fifteen (15) days from such determination, appoint an Acting Manager in the same manner as in Section 6.1 who shall serve for not more than one hundred twenty (120) days or such lesser time until the incapacity shall be relieved.

The Acting Manager shall have all the powers and perform all the duties of the Manager except to the extent that said powers and duties may be specifically restricted by Council resolution. Said Acting Manager shall be paid such salary for services hereunder as may be prescribed by the Council. The Acting Manager may be reappointed for an additional term of one hundred twenty (120) days.

By a vote of at least four (4) Councilors, the Council may determine from credible medical or other evidence that the Manager is incapacitated and unable to perform any or all duties and the office may be declared vacant.

The motion passed 8-0-0.

#### 6. Vacancy

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

Any vacancy in the office of Town Manager shall be filled as prescribed by New Hampshire State Law.

A motion was made by Lon Woods and seconded by Robert Kelley to table action on this motion until wording can be refined. The tabling motion passed 8-0-0.

#### 7. Powers and Duties of the Manager

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

Powers and Duties of the Manager

A. The Manager shall be the chief administrative officer of the Town, shall supervise and be responsible for the administrative and financial affairs of the Town, and shall carry out the policies enacted by the Council. The Manager shall be charged with the preservation of the health, safety and welfare of persons and property and shall see to the enforcement of the ordinances of the Town, this Charter and general laws governing administration of the Town. The Manager shall supervise and direct the administration of the Town departments and personnel therein.

The motion passed 8-0-0.

There was some concern that the wording as proposed would require Council approval of the receptionist in the Manager's office.

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

B. Except as otherwise provided by this Charter, the Manager shall appoint upon merit and fitness alone, and may remove all officers and employees of the Town subject to the provisions of pertinent statutes, the Administrative Code and the Personnel Plan.

The motion passed 8-0-0.

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

C. The manager shall fix the compensation of all town officers and employees appointed by the Manager within the limits established by existing appropriations.

The motion passed 8-0-0.

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

D. The Manager shall have full jurisdiction over the rental and use of all Town facilities under the Manager's control. The Manager shall be responsible for the maintenance and repair of all Town property under ht Manager's control, within the limits of existing appropriations.

An amendment was made by Heather Anderson and seconded by David Yakuboff to adopt the following language:

D. The Manager shall keep a full and complete inventory of all property of the town, both real and personal. The manager shall have full jurisdiction over the rental and use of all Town facilities under the Manager's control. The Manager shall be responsible for the maintenance and repair of all Town property under the Manager's control, within the limits of existing appropriations.

Tim Tenhave questioned the definition of "personal" property. He noted he would like a legal definition. Tom Mahon noted this is best addressed in the personnel policy. It could be covered in the Administrative Code. He noted he would make a query to the attorney regarding personal and intellectual property.

The amendment passed 7-0-1.

The amended main motion passed 8-0-0.

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

E. The Manager shall be responsible for purchasing all supplies, material and equipment for all departments and activities of the Town.

The motion passed 8-0-0.

A motion was made by Heather Anderson and seconded by David Yakuboff to adopt the following language:

F. The Manager shall keep the Council informed of the needs of the Town and make such reports and recommendations as the Manager may deem advisable or as the Council, as provided by this Charter or by ordinance, shall direct.

The motion passed 8-0-0.

A motion was made by Heather Anderson and seconded by David Yakuboff to adopt the following language:

G. The Manager shall set rules and regulations and establish a system of personnel administration known as the "Personnel Plan". The Personnel Plan shall include provisions with regard to classification, compensation, selection, training, promotion, grievances, discipline, vacations, retirement and any other matters necessary to the maintenance of efficient service and proper working conditions.

The motion passed 8-0-0.

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

H. The Manager shall certify to the Council that employees of the Town and their compensation comply with approved pay rates.

A motion was made by Lon Woods and seconded by Peter Batula to table action on paragraph H. The motion passed 8-0-0.

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

I. The Manager shall be responsible for the collection, accounting, deposit and periodic reporting of all town revenues and expenditures in a secure and business-like manner in accordance with generally accepted accounting practices and proper internal controls.

J. The Manager shall have and perform such other powers and duties not inconsistent with the provisions of this Charter as now are, or may be, conferred or imposed upon the Manager by ordinance, or by New Hampshire State Law. The Manager shall attend all meetings of the Council unless excused by the Council. The Manager shall have the right to take part in the discussion of all matters before the Council, but not the right to vote.

The motion passed 8-0-0.

### **Other Business**

There was no other business at this time.

### **Questions from the Press**

There were no questions from the press at this time.

**Comments from Commissioners**

There were no comments from the Commissioners at this time.

**Adjourn**

A motion was made by Lon Woods and seconded by Tim Tenhave to adjourn the meeting at 9:55 PM. The motion passed 8-0-0.

Respectfully submitted,  
Rita Carlton, Recording Secretary