

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
October 18, 2005**

Commission members present: Chairman Tom Mahon, Vice Chairman Heather Anderson (arrived at 6:35 PM), Secretary Fran L'Heureux, Peter Batula, Robert Kelley, Finlay Rothhaus, Tim Tenhave, Lon Woods, and David Yakuboff

Chairman Mahon convened the meeting of the Charter Commission at 6:12 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. The goal of the Commission is to have a draft form of the Charter ready at that time for public review and comment.

Public Comments

There was no public comment at this time.

Reports

Chair – Chairman Mahon noted that section VII (Finance) has been completed, but is not yet ready for the Commissioners. He has also looked at Section VIII (Conduct of Official/Ethics). This section includes the Town's Code of Ethics intact.

Vice Chair – none

Review Charter Draft

Article III – Governing Board

A motion was made by Peter Batula and seconded by Lon Woods to adopt Article III – Governing Board as follows:

Article III – Governing Board

3.1 Membership; Terms of Office

(a) 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.

(b) Term of Office

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

3.2 Organizational Meeting

The Councilors so chosen shall meet in their capacity as the Council at the first regularly scheduled meeting after certification of their election 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.

3.3 Selection of 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 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 the Chair. 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.

3.4 Qualifications of Councilors

(a) 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).

(b) Removal of Councilor

By a vote of five (5) Councilors, the Council may, on specific charges and after due notice and hearing, remove one of its own members for cause and declare a vacancy. Cause for purposes of this Section shall mean one or more of the following: the member has missed three regular scheduled meetings in sequence without leave of the Council; the member has missed one third of all meetings within a calendar year without leave of the Council; the member has falsified records; the member has misapplied Town funds or property; or the members has interfered with administration as defined in Section 6.9.

(c) 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 manager."

(d) 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.

3.5 Vacancies

In case a vacancy occurs in the Town Council for any reason, the remaining Town Councilors shall, by majority vote, appoint an acting Town Councilor from among person 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 Town election, the vacancy shall not be filled by appointment, but shall be filled at the next regular Town 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 serve forthwith.

3.6 Compensation and Expenses

The Town Council shall establish an annual salary and expense allowance for its members, 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 five (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 next schedule is adopted shall receive any benefit of the new schedule during the remainder of the Councilor's then-current term of office.

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

3.7 Exercise of Powers/Meetings/Rules of Procedure

(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 so determines.

(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 small number may adjourn the meeting to another time or date.

(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 be ordinance or resolution direct. Agendas shall be prepared and posted at least 72 hours in advance of each regular meeting.

Special meetings may be called by the Chair. Special meetings may also 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.

An emergency meeting may be called by the Chair when an 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.

(d) Rules of Procedure

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

3.8 Powers and Duties

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

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

3.9 Delegation of Powers

The Council may delegate to one or more Town agencies the powers vested in the Council by this Charter and Federal and New Hampshire State 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.

Upon questioning, Chairman Tom Mahon noted that a positive vote for this motion means that the language is being moved to the Draft Charter. He noted the Charter is still a work in progress. The Charter is not final until February 1, 2006 when it is presented to the Board of Selectmen. There will be a need to make sure that all sections are consistent and complete after they have been moved to the Draft Charter

The motion passed 6-2-0.

Charter Drafts

Article VI – Administration of Government

Chairman Tom Mahon noted he took section 6.7H to refer to the power that the Town Manager has to sign the manifest to ensure that employees are being paid the correct amount. This section also shows up in the Finance section of the Charter. He will conduct further research and present language at the next meeting.

Section 6.6 Vacancy

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

6.6 Vacancy

Any vacancy in the office of the Manager shall be filled as soon as practicable by the Council. The Council shall appoint an acting Town manager to perform temporarily the duties of that office.

The motion passed 8-0-0.

Section 6.8 Appointment of Department Heads; Suspension; Appeal

There was some discussion regarding the wording of this section. Tom Mahon noted that the suspension could be immediate. He noted that most times the employee is suspended with pay or put on administrative leave. (Heather Anderson arrived at this time.)

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

Section 6.8 Appointment of Department Heads; Suspension; Appeal

The Manger shall have the power to appoint and remove, subject to the provision of this Charter, all town department heads. Such appointments shall be on merit and fitness alone and with confirmation of the Council. The Manager, for just cause, may suspend or dismiss department heads or take other appropriate disciplinary action. Said suspension, dismissal, or other disciplinary action shall be effected only upon the Manager's presentation to the department head of a written specification of the reasons therefore at least ten (10) days before said action is taken.

The said department head involved may, within five (5) days, demand a hearing before the Council, in which even the department head shall not be removed until such hearing has been held. The Manager may, however, suspend said department head from duty during said period, with or without pay. Such hearing shall be either private or public, as allowed under New Hampshire State Law, at the aggrieved party's request. The Council, by a vote of five (5) members may override the Manager's decision.

Mr. Mahon noted that the term "just cause" requires a high level of proof. He noted this term requires that warning(s) be given regarding the fact that certain actions may cause removal. There is a need for a fair investigation and proof. He noted he does not know what the labor contracts with the town contain for reasons for dismissal. He noted that the term "cause" does not require as high a level of proof.

The Commission decided to remove the word "just" from the third sentence of the first paragraph. The motion as changed passed 9-0-0.

6.9 Non-Interference with Town Administration

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

6.9 Non-Interference with Town Administration

The Council shall act in all matters as a body. Except as expressly provided elsewhere in this Charter, neither the Council nor any of its members shall direct or request the appointment of any person to office or employment; or direct the removal, suspension, discipline, adjustment in pay, benefits, or working conditions of any employee by the Manager or of any of the Town department heads.

No Councilor shall give orders to or interfere with the performance of the duties of any of the administrative officers or employees, either publicly or privately. Nothing contained in this section shall prohibit the Council from meeting with the Manger to discuss the operation or conduct of any department head or employee and to recommend an investigation and report by the Manager of any complaint.

Any violation of the provisions of this section by a Councilor shall constitute grounds for forfeiture of office under the provisions of Section 3.4b.

The motion passed 9-0-0.

6.10 Departments: Administrative Code

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

6.10 Departments: Administrative Code

The Town shall have departments, divisions, boards or committees as may be established by this Charter or as the Council may establish by ordinance. It shall be the duty of the Manager to draft and to submit to the Council within 9 months after assuming office, an ordinance consistent with this Charter to be titled as the "Administrative Code", which provides for the division of the administrative service of the Town into departments or agencies and defines the functions and duties of each.

The ordinance shall include, subject to any collective bargaining agreements that may be agreed upon, provision for a merit plan to ensure that all appointments and promotions in the service of the Town shall be made solely on the basis of merit and only after appropriate examination or review of the applicant's relative knowledge, skills, abilities and experience and provisions governing discipline and dismissal of personnel. Subsequent to the adoption of such ordinance, upon recommendation of the Manager, the Council by ordinance may amend it to create, consolidate or abolish departments, agencies or other divisions of the Town, define the functions and duties of each, or otherwise amend it.

The chief officer of each department shall have supervision and control of such department and shall have the power to prescribe rules and regulations for the conduct of such department, not inconsistent with general law, this Charter, the Administrative Code, and the provisions of the merit plan. Prior to adoption of the Administrative Code, the Manager shall have the power to establish temporary rules and regulations to ensure economy and efficiency in the several divisions of Town government.

Tim Tenhave noted he likes the idea of adding the Personnel Plan to this section. Tom Mahon noted that the Personnel Plan is the plan for the general management of the employees, including policies, sick leave, benefits, etc.

The maker of the motion and the second agreed to change the word "merit" in the first sentence of the second paragraph and in the first sentence of the third paragraph to the word "personnel".

Mr. Mahon noted that this section requires that within 9 months of the adoption of this Charter any proposed changes must be proposed by the Manager.

The motion passed 9-0-0.

6.11 Town Clerk/Tax Collector

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

6.11 Town Clerk/Tax Collector

A Town Clerk/Tax Collector shall be elected to a three (3) year term at a town election by ballot pursuant to the applicable provisions of New Hampshire State Law and shall have the powers and duties prescribed by New Hampshire State Law pertaining to Town Clerk and Tax Collectors.

The Town Clerk/Tax Collector may be removed from office in accordance with the applicable provisions of New Hampshire State law. Vacancy in the office of Town Clerk/Tax Collector shall be filled in accordance with the applicable provisions of New Hampshire State Law.

The motion passed 9-0-0.

Town Attorney

Tom Mahon noted there is nothing in this Charter regarding a Town Attorney. He questioned whether the town needs or wants such an entity and if it is needed or wanted, where it should be put. He noted he thinks it belongs in Article VI.

Finlay Rothhaus noted it is better to have a firm on retainer. Lon Woods noted the town will know when it needs an attorney.

Article IX – Citizen Initiatives

9.1 Citizen Concerns

Tim Tenhave noted this article speaks of ways citizens can be heard. The distinctions are petitions versus initiatives versus referendums. He noted that referendums can also change the budget.

Tom Mahon noted that an initiative requires action from the Town Council. He noted that if the Town Council does not act, then the process for a referendum can be initiated to put an issue on the ballot.

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

9.1 Citizen Concerns

The Council shall establish rules for residents to address the council at regular and other meetings. The Council shall provide a minimum time for individuals to address the Council and the total time that the Council will hear concerns or proposals at each meeting. The rules shall be reviewed annually.

Individual Petitions, Action Discretionary. The Council shall receive all petitions which are addressed to them and signed by a registered voter and may, in their discretion, take such action in regard to such petitions as they deem necessary and appropriate.

Group Petitions, Action Required. The Council shall hold a public hearing and act by taking a vote on the merits of every petition which concerns a matter in which the town is empowered to act; which is addressed to it; and which is signed by at least 100 registered voters. The hearing shall be held by the Council, or by a committee or

subcommittee thereof, and the action by the Council shall be taken not later than 60 days after the petition is filed with the Town Clerk. Hearings on two or more petitions filed under this section may be held at the same time and place. The Town Clerk shall mail notice of the hearing to 10 petitioners whose names first appear on each petition at least 7 days before the hearing. Notice shall be given by publication of a summary of the contents of a petition at least 7 days prior to all such hearings, at public expense. No hearing shall be held upon more than one petition containing the same subject matter in any 12-month period. No hearing or action by the Council under this section shall be required in the case of any petition to suspend the implementation of an ordinance adopting a budget or enacting a land use regulation.

Tim Tenhave noted that 100 registered voters are too many. He proposed that this figure be changed to 50. He also noted that the petitions should go to the Town Manager, not the Town Clerk.

Heather Anderson noted that language regarding the means of publication of the petition should be the same as were noted in prior sections of this proposed charter.

There was concern expressed by Peter Batula that a threshold of 100 voters would discourage people from getting involved.

An amendment was made by Tim Tenhave and seconded by Heather Anderson to change the number of registered voters needed on a group petition to 50 from 100, to change the Town Clerk to the Manager, and to remove the words "hearing or" from the last sentence of the "Group Petitions" paragraph. The amendment passed 8-1-0.

The main motion passed as amended 9-0-0.

Section 9.2 Initiative Petitions

The Commission debated whether a number of petitioners should be designated or a percentage of the voters at the last town election should be used. Tom Mahon noted that this is not meant to be an easy process. Tim Tenhave noted he prefers a fixed number. Mr. Mahon noted that a percentage takes into account the growth of the town. He suggested a 3% figure, which would be about 500 registered voters.

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

Section 9.2 Initiative Petition

A. The registered voters of the Town shall have the power to proposed ordinances to the Council.

B. Commencement of Proceedings. Initiative procedures shall be started by the filing of an initiative petition with the Manager. The petition shall be addressed to the Council, shall contain a request for passage of a particular measure set forth in the petition, and shall be signed by 500 voters or 3% of the total number of registered voters, whichever is less.

An amendment was made by Lon Woods and seconded by David Yakuboff to require 500 signatures or 3% of the registered voters, whichever is greater. The motion failed 3-6-0.

An amendment was made by Tom Mahon and seconded by Fran L'Heureux to require 500 signatures. The amended motion passed 9-0-0.

The main motion passed 9-0-0.

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

B. Signatures to an initiative petition need not be all in one paper. All such papers pertaining to any one measure shall be fastened together and shall be filed in the office of the Manager as one instrument, with the endorsement thereon of the names and addresses of the persons designated as filing the same. With each signature to the petition shall be stated the place of residence of the signer, giving the street and number, if any. Within 7 days after the filing of an initiative petition, the Town Clerk shall ascertain by what number of registered voters the petition is signed, and shall attach thereto a certificate showing the result of such examination.

The Manager shall forthwith transmit the certificate with the petition to the Council and at the same time shall send a copy of the certificate to the first person designated on the petition as filing the same.

When such certificate establishes that the petition appears to have been signed by the requisite number of registered voters, the petition shall be deemed to contain requisite signatures unless written objections are made with regard to the signatures thereon by a registered voter within 7 days after such certificate has been issued, by filing such objections with the Council and a copy thereof with the Town Clerk. The validity of any such objection shall be determined by the Council at their next regular meeting.

The motion passed 9-0-0.

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

C. Requirements for Passage and Submission to Electorate. If the Council determines that the petition contains the requisite signatures of registered voters, and the petitioned initiative measure may lawfully be passed by the Council, the Council shall within 20 days after the petition has been finally determined to be sufficient; (1) pass the measure without alternative; or, (2) schedule a special Town election to be held on a date not less than 30 nor more than 60 days thereafter, and submit the measure without alternation to a vote at that election. However, if any other Town election is to occur within 60 days after the petition has finally been determined to be sufficient, the Council may omit a special election and submit the measure to a vote at such other Town election.

The ballot presenting an initiative measure shall state the nature of the measure in terms sufficient to communicate the substance thereof. The question shall be whether the initiative measure should be adopted.

Concern was expressed regarding the length of the petition and how it should be presented on the ballot. Peter Batula questioned whether the petition, if passed, becomes a recommendation or a mandate. Finlay Rothhaus noted that there is no language that indicates that passage is binding, but the intent is that if the Council passes it, it is binding

and if the electorate passes it, it is binding. Tim Tenhave noted that the binding nature of this section needs to be ensured.

The motion passed 8-1-0.

Approve Minutes

September 7, 2005 – A motion was made by Lon Woods and seconded by Fran L’Heureux to approve the minutes of September 7, 2005 with changes. The motion passed 7-0-2.

October 4, 2005 – A motion was made by Robert Kelley and seconded by Lon Woods to approve the minutes of October 4, 2005 with changes. The motion passed 8-0-1.

Questions from the Press

There were no questions from the press at this time.

Public Comments

There were no comments from the public at this time.

Commission Member Comments/Remarks

Property – Tom Mahon noted that real property includes buildings and land, while personal property includes everything else, including intellectual property.

Website – Heather Anderson noted that all sections which have been moved to the draft charter are on the website. She noted that she is currently looking at major changes to the front page of the website to accommodate the space needed to include all the draft sections.

Adjourn – A motion was made by Fran L’Heureux and seconded by Lon Woods to adjourn the meeting at 9:50 PM. The motion passed unanimously.

Respectfully submitted,
Rita Carlton, Recording Secretary