

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
November 15, 2005**

Commission members present: Chairman Tom Mahon, Vice Chairman Heather Anderson (arrived at 7:35 PM), Secretary Fran L'Heureux, Peter Batula, Robert Kelley, Finlay Rothhaus, Tim Tenhave, and Lon Woods

Excused: David Yakuboff

Chairman Mahon convened the meeting of the Charter Commission at 7:05 pm in the Conference Room of the Town Hall.

Announcements

Tom Mahon noted that Attorney Krans is leaving private practice, but will continue to advise the Charter Commission until its work is finished.

Public Comments

Andrew Silvia, 28 Merrymeeting Drive, questioned whether Adobe and HTML files might be available. He noted that the proposed Charter to date is an overall good first step.

Reports

There were no reports at this time.

Article X – General Provisions

Tom Mahon noted there is a query into the attorney regarding sections 10-5 and 10-11.

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

Article X

General Provisions

10.1 Agreements with Other Municipalities

The Council is authorized, as provided by New Hampshire State Law, to enter into agreements and regional compacts with neighboring cities and towns, state agencies, or private nonprofit corporations for the purpose of resolving their common problems for the mutual advantage and benefits of the Town and its neighboring cities and towns.

10.2 Authentication of Charter: Copies to be Kept on File

A. Authentication of Charter

Upon adoption, the official Charter, duly authenticated by affixing the signatures of all members of the Charter Commission and the Board of Selectmen, the Town Clerk and affixing the Town Seal, shall be filed with the Town Clerk and remain in the Town Clerk's office as the official Charter of the Town of Merrimack. At its first meeting, the Town Council shall affirm the validity of the Town Charter.

B. Amendments

All amendments to this Charter shall be authenticated by the Town Council and be filed with and remain a part of the official Charter.

C. Maintenance

The Town Clerk shall be responsible for the proper maintenance of the Charter. Copies of the Charter shall be available to the public, and the Town Clerk may charge a fee to defray printing costs.

10.3 Charter Amendments

Amendments to this Charter may be initiated pursuant to the provisions of New Hampshire State Law.

10.4 Indemnification of Town Officers, Board Members, and Employees

All Town officers and members of Town agencies shall be deemed to be public or municipal officers or officials. The Town shall indemnify any such officer or member for expenses or damages incurred in the defense or settlement of a claim against the officer or members which arose while acting in good faith within the scope of official duties or employment, but only to the extent and subject to the limitations imposed by New Hampshire State Law.

10.6 Municipal Budget Law Repealed

By adoption of this Charter, the voters and the Town of Merrimack expressly repeal and rescind the previous adoption of the provisions of the Municipal Budget Act.

10.7 Public Records and Meetings

All records of the Town and all meetings of the Council, boards, committees, commissions, authorities or other municipal bodies shall be open to the public, and their minutes and other records shall be available to the public in accordance with the provisions of New Hampshire State Law.

10.8 Reorganization Plans

A. Council Initiated

Except for those agencies established by this Charter or as otherwise prohibited by New Hampshire State Law, the Council may reorganize, consolidate, or abolish any existing Town agency in whole or in part or establish new Town agencies and prescribe the function of any Town agencies provided that such action shall not eliminate the statutory duties of Town officials. Such reorganization plans shall be accompanied by explanatory messages when proposed.

B. Manager Initiated

The Manager may prepare and submit to the Council for its approval proposed reorganization plans which may, subject to applicable law and this Charter, reorganize, consolidate or abolish any town agency in whole or in part, or establish new Town agencies as are deemed necessary or expedient. Such reorganization plans shall be accompanied by explanatory messages when submitted.

10.9 Severability

The sections of this Charter and the parts hereof are separable. If any portion or section of this Charter, or the application thereof to any person or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of the Charter shall not be affected thereby. If a clause, portion of or section of this Charter is so held invalid, then the applicable provisions of New Hampshire State Law, if any shall govern.

10.10 Specific Provisions To Prevail

To the extent that any specific provision contained in this Charter conflicts with any provision expressed in general terms, the specific provision shall prevail.

The motion passed 6-0-1.

Article VII – Finance

7.3 Budget Hearings

Tom Mahon noted that such hearings need to be posted 14 clear days before the date of the hearing. A copy of the budget needs to be in the Town Manager's or Town Clerk's office. The Commission decided that a copy of the budget should be in the Town Manager's office.

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

7.3 Budget Hearings

The Council shall hold in convenient places as many public hearings on the budget as it deems necessary, but at least one public hearing on the budget shall be scheduled at least 20 days before the first session of the Budgetary Town Meeting at such time and place, convenient to the public, as the Council shall direct. Notice of such public hearing and Budgetary Town Meeting, together with a copy of the budget as submitted, shall be posted in two public places. A copy of the budget shall be available to the public at the office of the Town Manager during regular business hours. In addition, notice of such public hearing and Budgetary Town Meeting shall be published in a newspaper of general circulation in the Town, and posted on the town web site, at least one week prior to said hearing.

The motion passed 7-0-0.

Proposed Municipal Property Tax Levy Cap

Fran L'Heureux noted this will only affect the town side of the tax bill, but it is a good idea and it will help.

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

The Town Council is prohibited from adopting a budget, which will result in a percentage increase in the municipal property tax levy that exceeds the percentage increase in the annual Consumer Price Index (CPI=U/Boston) for the preceding calendar year. This limitation may be overridden by a ballot vote in conjunction with the annual election.

Tim Tenhave questioned whether this would make a difference. Mrs. L'Heureux noted she thinks it will. It would protect the taxpayers in the future.

Peter Batula questioned whether the cap would create an incentive to meet the cap.

(Heather Anderson arrived at this time.)

Finlay Rothhaus noted he has mixed emotions on a tax cap. He noted that the Official Ballot precludes the need for a tax cap.

Tom Mahon noted that places where a tax cap is in effect are usually cities where all appropriations are in the hands of the governing/legislative body. He questioned whether a simple majority would be needed to override the tax cap.

Mrs. L'Heureux noted that changes could be made.

Mr. Mahon noted that this tax cap might have an impact on the town's bond rating.

Mr. Batula questioned whether this might have an impact in emergency situations. Mr. Mahon noted that this might be the case. He also noted that the history of the town's portion of the tax rate is very stable.

Heather Anderson noted that in the proposed Charter the Town Council cannot adopt a budget.

Mr. Batula noted that the concept is a good one, but there is a Deliberative Session to override the suggested budget of the Town Council. He questioned whether a double check is needed.

Tim Tenhave noted a concern that the Deliberative Session has been scrapped with the addition of a quorum requirement. He questioned whether there would be higher budgets if there were greater revenues. Ms. Anderson noted that if there were a significant budget increase there would be no problem obtaining the quorum numbers for the Deliberative Session.

Mr. Mahon noted this cap would decrease participation at the Deliberative Session. He noted this cap is a two edged sword; it could make people lazy, and infrastructure could deteriorate.

Lon Woods noted that some increases in costs are not foreseen.

The motion failed 1-7-0.

7.4 Final Adoption of Budget

Lon Woods questioned whether the Charter needs to be referenced in paragraph P.

Tim Tenhave noted that no money is attached to emergency meetings for ordinances.

Heather Anderson questioned whether there is a reason for the RSA citations in this section. Tom Mahon noted that, hopefully, the process is clear. He has no problem with language simplification. Finlay Rothhaus noted that keeping the RSA citations helps with clarity and precision. Mr. Mahon noted that any change in state law might provide for more flexibility. The charter still has the separability provision. Peter Batula noted that if state law is changed, the changes will show.

A motion was made by Fran L'Heureux and seconded by Finlay Rothhaus to reconsider the vote for the quorum of 400 at the Deliberative Session. The motion passed 5-3-0.

A motion was made by Fran L'Heureux and seconded by Finlay Rothhaus to move a quorum at the Deliberative Session of 250 voters.

Ms. Anderson noted she is willing to listen to arguments in favor of this move, but is not in favor of it at this time.

Mr. Rothhaus noted that if a lower quorum is required a larger percentage could be required for passage. Mr. Mahon noted that this is probably not legal. He noted that most action taken at the Deliberative Session is done through a simple majority.

Mr. Batula noted the Commission has discussed this issue before. The Commission is ready to return to the Deliberative Session with a quorum that is attainable, but challenging. Ms.

Anderson noted she agrees with Mr. Batula. The Commission decided that it does not want special interest groups pushing decisions in their favor. The people need to participate. There is no argument to change the already adopted quorum.

Mr. Woods noted he has no inclination to lower the quorum number. He noted the people need to have confidence in the Charter. He noted he cannot support any quorum lower than 400 voters.

The motion failed 1-6-1.

Ms. Anderson questioned the use of specific RSAs rather than the phrase "New Hampshire State Law". Mr. Rothhaus noted it might be wise to leave of specific RSAs and just put in New Hampshire State Law. Mr. Tenhave noted that these are very specific laws and there may be trouble if the wording is changed. Robert Kelley noted he likes the specific quotes. Mr. Mahon noted he struggled with this. He noted it is easier to cite the RSA reference than to dig through the law books to find the reference. Mr. Woods note it is best to leave the references in to provide precision.

A motion was made by Heather Anderson and seconded by Finlay Rothhaus to adopt the following language:

A. Notwithstanding RSA 39:3-d, RSA 40:4-e, the Town of Merrimack shall utilize the official ballot for voting on all budgetary issues before the voters.

The motion passed 8-0-0.

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

B. The warrant for any annual budgetary meeting shall prescribe the place, day and hour for each of 2 separate session of the meeting, and notice shall be given in accordance with RSA 39:5.

The motion passed 8-0-0.

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

C. The first session of the annual budgetary meeting, which shall be for the transaction of all business other than voting by official ballot shall be held between the second Tuesday of March and the Saturday following the second Tuesday in March, at a time prescribed by the Town Council. A quorum of 400 registered voters must be present to conduct any business, including amending any warrant article and the Operating Budget.

The motion passed 6-2-0.

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

D. The first session of the meeting, government by the provisions of RSA 40:4, 40:4a, 40:4b, 40:4f, and 40:6-10, shall consist of explanation, discussion, and debate of each warrant article. Warrant articles may be amended, subject to the following limitations:

- 1) Warrant articles whose wording is prescribed by law shall not be amended.
- 2) Warrant articles that are amended shall be placed on the official ballot for a final vote on the main motion, as amended.

The motion passed 8-0-0.

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

E. All budgetary warrant articles shall be placed on the official ballot for a final vote.

The motion passed 8-0-0.

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

F. The second session of the annual meeting, to elect officers of the Town by official ballot, to vote on questions required by law to be inserted on said official ballot, and to vote on all budgetary warrant articles from the first session on official ballot, shall be held on the second Tuesday in April.

The motion passed 8-0-0.

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

G. The Town Clerk shall prepare an official ballot, which may be separate from the official ballot used to elect officers, for all warrant articles. Wording shall be substantively the same as the main motion, as it was made or amended at the first session, with only such minor textual changes as may be required to cast the motion in the form of a question to voters.

The motion passed 8-0-0.

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

H. "Operating Budget" as used in this section means a statement of recommended appropriations and anticipated revenues submitted to the budgetary town meeting as an attachment to, and as part of the warrant for, an annual or special meeting, exclusive of "special warrant articles", as defined in RSA 32:2, V.

The motion passed 8-0-0.

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

I. If no operating budget article is adopted, the Town either shall be deemed to have approved a "Default Budget", defined as the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, or the Town Council may hold a special meeting to take up the issue of a revised operating budget only; provided that RSA 31:5 shall not apply to such a special meeting. If no operating budget article is adopted the estimated revenues shall nevertheless be deemed to have been approved.

The motion passed 8-0-0.

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

J. The wording of the article on the operating budget shall be as follows:

“Shall the Town raise and appropriate as an operating budget, not including appropriations by special warrant articles, the amounts set forth on the budget posted with the warrant, for the purposes set forth therein, totaling \$_____? Should this article be defeated, the operating budget shall be \$_____, which is the same as last year, with certain adjustments required by previous action of the Town meeting, or by law or the Town Council may hold one special meeting, to take up the issue of a revised operating budget only.”

The motion passed 8-0-0.

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

K. Voting at the second session shall conform to the procedures for the nonpartisan ballot system as set forth in RSA 669:19-29, including all requirements pertaining to absentee voting, polling places, and polling hours.

The motion passed 8-0-0.

A motion was made by Lon Woods to adopt the following language:

L. Approval of all warrant articles shall be by simple majority except for questions which require a 3/5 or 2/3 vote by New Hampshire State Law, this Charter, Contract, or written agreement.

It was determined that this language is not necessary and the motion was withdrawn.

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

M. Votes taken at the second session shall be subject to recount under RSA 669:30-33 and RSA 40:4-c.

The motion passed 8-0-0.

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

N. Votes taken at the second session shall not be reconsidered except by warrant article at a subsequent annual or special meeting.

The motion passed 8-0-0.

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

O. The warrant for any special meeting shall prescribe the date, place and hour for both a first and second session. The second session shall be warned by a date not fewer than 28 days nor more than 60 days following the first session. The first and second sessions shall conform to the provision of this subdivision pertaining to the first and second sessions of annual meetings. Special meetings shall be subject to RSA 31:5 and 39:3 provided that no more than one special meeting may be held to raise and appropriate money in any one calendar or fiscal year, whichever applies, and further provided that any special meeting held pursuant to this section shall not be subject to RSA 31:5 and shall not be counted toward the number of special meetings which may be held in a given calendar or fiscal year.

The motion passed 8-0-0.

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

P. The Council may make emergency expenditures in accordance with the provisions of the New Hampshire Municipal Budget Law, (RSA 32) as the same may be amended from time to time.

The motion passed 8-0-0.

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

L. Approval of all warrant articles shall be as provided in New Hampshire State Law.

The motion passed 8-0-0.

Heather Anderson noted that in the past the town website has not been designated as a venue for posting of notices.

(Fran L'Heureux left at this time.)

A motion was made by Finlay Rothhaus and seconded by Lon Woods to reconsider the language in section 7.3. The motion passed 7-0-0.

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

7.3 Budget Hearings

The Council shall hold in convenient places as many public hearings on the budget as it deems necessary, but at least one public hearing on the budget shall be scheduled at least 20 days before the first session of the Budgetary Town Meeting at such time and place, convenient to the public, as the Council shall direct. Notice of such public hearing and Budgetary Town Meeting, together with a copy of the budget as submitted, shall be posted in two public places. A copy of the budget shall be available to the public at the office of the Town Manager during regular business hours. In addition, notice of such public hearing and Budgetary Town Meeting shall be published in a newspaper of general circulation in the Town, and at least 2 other venues as the Town Council may designate, at least one week prior to said hearing.

An amendment was made by Lon Woods and seconded by Heather Anderson to add the words "at least" after the word "in" and before the word "two". The amendment passed 7-0-0.

The main motion passed 7-0-0.

7.5 Borrowing Procedure

Tom Mahon noted this is taken directly from RSA 33. It is a 2-step process.

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

A. Subject to the applicable provisions of New Hampshire State Law and the rules and regulations provided by ordinance in the Administrative Code, the Council may authorize by resolution the borrowing of money for any purpose within the scope of the powers vested in the Town and the issuance of bonds of the Town or other evidence of indebtedness therefore and may pledge the full faith, credit and resources of the Town for payment of the obligation created thereby; provided that no notes or bonds shall be

issued by the Council in excess of \$100,000 per issue except by a vote of four (4) Councilors, and a vote at a regular or special Town Meeting called by the Council. Notification and posting of such bond issues in excess of \$100,000 shall be in the same manner as if it were a bond issue of a town pursuant to RSA 33, with voting by ballot at a regular or special meeting. There must be an existing appropriation, so that the borrowing does not incur expenditures in excess of the authorized voted appropriation.

The motion passed 7-0-0.

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

B. Borrowing for a term exceeding one (1) year shall be authorized by the Council only after a duly advertised public hearing.

C. The Council may borrow in anticipation of taxes.

The motion passed 7-0-0.

7.9 Capital Improvements Plan

Tom Mahon noted this is a part of the budget process. The Planning Board deals this with in the fall. This does not supplant nor is there any intent to supplant anything that is currently done by the Planning Board.

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

A. The Town Manager, after consultation with the Planning Board, shall prepare and submit to the Town Council a capital improvements plan at least one month prior to the final date for submission of the budget. The capital improvements program shall include:

- (1) A clear summary of its contents.
- (2) A list of all capital improvements including major replacements which are proposed to be undertaken during the next 6 fiscal year, including, but not limited to, equipment, infrastructure and facilities, or property, with appropriate supporting information as to the necessity for such improvements.
- (3) Cost estimates, methods of financing and recommended time schedule for each improvement.
- (4) The estimate annual cost of operating and maintaining the facilities to be constructed or acquired.

The motion passed 7-0-0.

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

B. The capital improvements plan shall be based on a period of not less than 6 years and shall be guided by the Master Plan for the Town.

C. The foregoing information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

The motion passed 7-0-0.

A motion was made by Robert Kelley and seconded by Tim Tenhave to delete section D. The motion passed 6-0-1.

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

E. A summary of the updated capital improvements plan with estimated costs shall be included in the Town report and the current year costs of the capital improvements plan shall be included in the Town budget.

The motion passed 6-1-0.

A motion was made and duly seconded to adopt the following language:

(F) The Town Council shall publish in one or more newspapers of general circulation in the Town a general summary of the capital improvements plan and a notice stating: (1) the times and places where copies of the capital improvements plan are available for inspection by the public; and (2) the date, time and place not less than 2 weeks after such publication, when a public hearing on said plan will be held by the Town Council.

(G) After the public hearing and on or before 60 days prior to the start of the ensuing fiscal year, the Town Council shall by resolution adopt the capital improvements plan with or without amendment, provided that each amendment must be voted separately and that any increase in the capital improvements plan as submitted must clearly identify the method of financing proposed to accomplish the increase.

An amendment was made and duly seconded to the main motion to delete (F) and the first phrase of (G) from Section 7.9. The amendment passed. The main motion as amended passed 7-0-0.

A motion was made by Lon Woods and seconded by Robert Kelley to reconsider the vote on section 3.8. The motion to reconsider passed. A motion was made and duly seconded to add the words "except the adoption of a Town Budget" at the end of the first sentence in the first paragraph. The motion passed 6-0-1.

Article XII – Definitions

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

7. Majority Vote. Unless otherwise expressly provided and a voting quorum being present the words "majority vote" shall mean a majority of those present.

The motion passed 7-0-0.

Tim Tenhave noted there is no definition for "ordinance". There is use of the word "measure" and "ordinance" in the proposed Charter. Is the word "measure" less restrictive than the word "ordinance"?

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

Article XII
Definitions

Unless another meeting is clearly apparent from the manner in which the word is used, the following words as used in this Charter shall have the following meanings:

- (1) Charter. The word "charter" shall mean this Charter and any amendments to it made through any of the methods provided under RSA 49-B.
- (2) Council. The word "council" shall mean the Town Council as promulgated in Article 3 of this charter.

- (3) Days. The word “days” shall refer to calendar days.
- (4) Deadline/Due Date. When a “deadline” or “due date” falls on a Saturday, Sunday, legal holiday, or other day or date when no business is transacted due to a closure occasioned by a federal, state or Council declaration, the Deadline or Due Date shall be the next regular business day of the Town.
- (5) Emergency. The word “emergency” shall mean a sudden, unexpected, unforeseen happening, occurrence or condition which necessitates immediate action.
- (6) Initiative Measure. The words “initiative measure” shall mean a measure proposed by initiative procedures under this Charter, but excluding:
 - a. Matters relative to the organization or operation of the Town Council;
 - b. An emergency measure passed in conformity with this Charter;
 - c. The Town budget;
 - d. Tax anticipation notes;
 - e. Any appropriation for the payment of the Town debts or obligations;
 - f. Any appropriation of funds necessary to implement a duly adopted collective bargaining agreement;
 - g. Any proceeding, or part thereof, relating to the election, employment, appointment, suspension, transfer, demotion, removal or discharge of any Town officer or employee;
 - h. Any proceeding repealing or rescinding a measure, or a part thereof, which is protested by referendum procedures.
- (7) Majority Vote. Unless otherwise expressly provided and a voting quorum being present the words “majority vote” shall mean a majority of those present.
- (8) Measure. The word “measure” refers to a specific act, or proposal. The specific act or proposal may be a resolution, an ordinance, a referendum vote to be taken, or other proposed action, depending on the matter to be acted on.
- (9) Multiple Member Body. The words “multiple member body” shall mean any body consisting of two or more persons, whether elected, appointed, or otherwise constituted.
- (10) Number and Gender. The singular number may be extended and applied to several persons or things; words imparting the plural number may include the singular; words imparting the masculine gender shall include the feminine gender; and words imparting the feminine gender shall include the masculine gender.
- (11) Referendum Measure. The words “referendum measure” shall mean:
 - a. a measure protested by referendum procedures under this Charter, including a specific item in the Town budget, but excluding items a through g listed in the definition 6 initiative measures, or;
 - b. any proceeding of the Town Council providing for the submission or referral of a matter to the voters at an election.
- (12) State Law. The words “state law” shall mean New Hampshire State Law as embodied in the Revised Statutes Annotated (RSA) and rules adopted under law.
- (13) Town. The word “Town” shall mean the “Town of Merrimack”.
- (14) Agency. The words “Town Agency” shall mean any board, commission, committee, department, or office of the Town government.
- (15) Voters. The word “voters” shall mean registered voters of the Town of Merrimack.

The motion passed 7-0-0.

Minutes of October 25, 2005

A motion was made by Lon Woods and seconded by Robert Kelley to accept the minutes of October 25, 2005 as submitted. The motion passed 7-0-0.

Other Business

The Commission decided to move the meeting scheduled for Tuesday, November 29, 2005 to Wednesday, November 30, 2005 from 6:00 PM to 8:30 PM.

The meeting scheduled for Tuesday, November 22, 2005 will be held at 6:00 PM.

Commission Member Comments/Remarks

Finlay Rothhaus expressed his disappointment over the unsubstantiated remarks made by Peter Batula at the last meeting of the Commission that there was a solicitation of votes. Mr. Rothhaus felt these were unfounded.

Adjournment

A motion was made by Peter Batula and seconded by Lon Woods to adjourn the meeting at 10:32 PM. The motion passed unanimously.

Respectfully submitted,
Rita Carlton, Recording Secretary