

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
November 22, 2005**

Commission members present: Vice Chairman Heather Anderson, Secretary Fran L'Heureux, Peter Batula, Robert Kelley, Finlay Rothhaus, Tim Tenhave (arrived at 6:20 PM), David Yakuboff, and Lon Woods

Excused: Chairman Tom Mahon

Vice Chairman Anderson convened the meeting of the Charter Commission at 6:10 pm in the Conference Room of the Town Hall.

Announcements

Fran L'Heureux noted the 10th Annual Candlelight Walk would be held this Saturday at 6:00 PM.

Public Comments

There were no public comments at this time.

Reports

Vice Chair – Vice Chairman Anderson noted that all articles moved to the draft charter to date have been sent to the attorney. The attorney has received these, but there has been no response to date.

Article VII – Finance

A motion was made by Lon Woods and seconded by Fran L'Heureux to change the reference in Section 7.17 from Article 9.5 to Article 7.4.P. The motion passed 7-0-0.

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

Article VII

Finance

7.1 Fiscal Year

The fiscal and budget year of the Town shall begin on the first (1) day of July and end on the thirtieth (30) day of June unless other dates shall be fixed by action of the Town Council.

7.2 Preparation of Budget

At such time as may be requested by the Manager or specified by the Administrative Code, each officer or director of a department shall submit an itemized estimate of the expenditures and any revenues for the next fiscal year for the departments or activities under their control to the Manager. The Manager shall, based on these estimates and other data, prepare a recommended budget which shall, together with these department estimates, be submitted to the Council on such date as the Council shall establish. In presenting the budget to the Town Council, the Manager shall also include a detailed report of estimated revenues other than those to be derived from real estate taxes, paying particular attention to enterprise departments or activities, and an estimate of the impact on the Town portion of the tax rate. The Council shall review the budget for the following fiscal year and make such modifications and amendments as it desires.

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 at least 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, as well as the posting of the notice in at least two other public venues as the Town Council may designate, at least one week prior to said hearing.

7.4 Final Adoption of Budget

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

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

C. The first session of the annual budgetary meetings, 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 second Tuesday in April shall be deemed the annual meeting date for the purposes of all applicable statutes pertaining to hearings, notice, petitioned articles, and warrants, including, but not limited to: RSA 31:95-d, 32:5, 32:16, 33:8-a, 39:3 and 39:5.

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.

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

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.

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, which only such minor textual changes as may be required to cast the motion in the form of a question to voters.

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 32:3, V.

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.

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.”

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.

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

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

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

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.

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.

7-5 Borrowing Procedures

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.

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.

7.6 Lapse of Appropriations

All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, except as provided in RSA 32:7 as the same may be amended from time to time.

7.7 Quarterly Budget Reports

Quarterly, and more often if required by the Council, the Manager or his designee shall submit to the Council data showing the relation between the estimated and actual income and expenses to date, together with outstanding indebtedness and estimated future expenses, anticipated transfers, other major variances to the operating budget, active and anticipated risks to the Town which may impact the operating budget, and other reports related to present and future revenues and expenses which the Council may require.

7.8 Transfer of Appropriations

After the budget has been adopted, no money shall be drawn from the treasury of the Town nor shall any obligation for the expenditure of money be incurred except pursuant to a budget appropriation. The head of any department, with the approval of the Manager, may transfer any unspent balance or any portion thereof from one fund or agency within the department to another fund or agency within his department. The Manager, with the approval of the Council, may transfer any unspent balance or any portion thereof from one department to another.

7.9 Capital Improvements Plan

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.

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.

D. 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.

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.

7.10 Purchasing Procedures

A. Purchasing and Contract Procedure

The Administrative Code shall establish purchasing and contract procedure, including the assignment of all responsibility for purchasing to the Manager or his designee and

the combination purchasing of similar articles by different departments. The Council shall establish dollar limits for purchases and contracts which must be by competitive bid and shall establish the bidding procedures.

B. Purchasing Through State of New Hampshire or State of New Hampshire Bid Price
No competitive bids shall be required when purchasing through the State of New Hampshire or at the State of New Hampshire bid prices.

C. Waiving of Bid Requirements

Requirements for bids may be waived in specific instances by a vote of five (5) members of the Council.

D. Establishing Maximum Dollar Amounts for Purchases and Contracts Without Council Approval

The Council shall establish dollar amounts for purchases and contracts, over which no purchases shall be made or contracts entered into without the affirmative vote of a majority of the Council.

E. Authority of Manager to Make Purchases and Enter Contracts

If the Council has voted to make a purchase or enter into a contract, the Manager shall carry out the vote of the Council and enter into such transaction on behalf of the town.

7.11 Depository

The Council shall approve to the Treasurer the depository or depositories for Town funds and shall provided for the timely deposit of all Town monies. The Council may require such security for Town deposits as it deems necessary, except that personal surety bonds shall not be deemed proper security.

7.12 Bonding of Officials; Indemnification

Bonding

Any Town officer elected or appointed by authority of this Charter shall be bonded in an amount as required by New Hampshire State Law or dictated by prudent fiscal practice for the faithful performance of the duties of the office. The Manager and all officers receiving or disbursing Town funds shall be so bonded. All official bonds shall be corporate surety bonds, and the premiums thereon shall be paid by the Town. Such bonds shall be filed with the Town Clerk.

Indemnification of Officers, Board Members, and Employees

The Town shall undertake to indemnify and save harmless all its officers, officials, boards, commissions, employees, and volunteers from personal loss and expense. Expenses may include reasonable legal fees and costs, if any, arising out of any claim, demand, suit, or judgment by reason of negligent acts or omissions, if the indemnified person was acting in the scope of office or employment and in good faith in accord with the provisions of New Hampshire State Law.

7.13 Investments; Trust Funds

The Trustees of Trust Funds shall invest and account for the funds under their supervision in accordance with New Hampshire State Law.

7.14 Fiscal Control

The Administrative Code shall establish procedures governing fiscal control of all Town finances, including, but not limited to, a pre-audit of all authorized claims against the Town before payment.

7.15 Grants, Gifts

The Town Council may apply for, accept and expend monies received from the State, Federal, or other governmental units, or from private sources which become available during the fiscal year in accordance with RSA 31:95-b and RSA 31:95-e as the same may be amended from time to time.

7.16 Independent Audit

Independent compliance and financial audits shall be made of all accounts of the Town at least annually and more frequently if deemed necessary by the Town Council. Such audits shall be conducted according to auditing procedures of the American Institute of Certified Public Accountants, the National Committee on Government Accounting, and other such procedures which may be necessary under the circumstances, by certified public accountants experienced in municipal accounting. Summaries of the results of such audits, including findings and recommendations and any management letters, shall be made public. At least once every 5 years the Town Council shall change auditors. An annual report of the Town's business for the preceding year shall be made available to the public not later than 90 days after the close of the fiscal year.

7.17 Appropriations After Budget Adoption

No appropriation shall be made for any purpose not included in the annual budget as adopted unless approved by a vote of five (5) members of the Council after a public hearing. The Council shall, by resolution, designate the source of any money so appropriated. This provision shall not apply, however, to emergency appropriations adopted pursuant to Article 7.4-P of this Charter.

7.18 Town Treasurer

A. There shall be a Town Treasurer (hereinafter called "Treasurer") who shall have all the powers and duties granted by this Charter and New Hampshire State Law, provided however that in making investments of Town funds, the Treasurer shall follow the written investment policy as adopted or modified by the Town Council. The Treasurer shall be elected on an at-large basis to a term of three (3) years at the Town Election. Vacancies in the office of Treasurer shall be filled pursuant to New Hampshire State Law.

B. A Deputy Treasurer may be appointed in accordance with New Hampshire State Law.

(Tim Tenhave arrived at this time.)

The motion and second were withdrawn to allow Tim Tenhave to participate in any discussion.

The motion was remade as previously stated by Lon Woods and seconded by Robert Kelley. The motion passed 8-0-0.

Article XII – Definitions

Tim Tenhave noted that there might be other possible definitions.

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

Article XII
Definitions

Unless another meaning 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 8-0-0.

Review Draft Charter

Article I –

A motion was made by Tim Tenhave and seconded by Fran L'Heureux to change the first sentence in Article I, Section 1.2 to read ""The administration of all fiscal, prudential, municipal and other affairs of the Town with the governance thereof shall be vested in a Town Council except as otherwise provided for in this Charter." The motion passed 8-0-0.

Article II –

There was some concern expressed regarding the wording in Section 2.7.

A motion was made by Peter Batula and seconded by David Yakuboff to add the words 'within 30 days of the receipt of an official notices by certified mail' to section 2.7. The motion passed 7-1-0.

Article III –

A motion was made by David Yakuboff and seconded by Robert Kelley to leave the wording in Section 3.1(a) as drafted. The motion passed 8-0-0.

Tim Tenhave noted there is a need to have a very clear definition of the word "certified".

A motion was made by Tim Tenhave and seconded by Peter Batula to leave the wording in Section 3.4(b) as drafted. The motion passed 7-1-0.

A motion was made by Robert Kelley and seconded by Fran L'Heureux to add the words "after the expiration of the term of office for which the Councilor was elected" to section 3.4(d).

There was some concern expressed regarding the fact that this might mean that an elected official could not hold a position with the town until the end of the term for which the official was elected even if the official resigned within a short time period.

The motion passed 5-3-0.

A motion was made by Heather Anderson and seconded by Lon Woods to add the following words to section 3.8 "The Town Council shall set policies for town government and shall bear full responsibility for the implementation of said policies through the hiring and supervision of the Town Manager." The motion passed 8-0-0.

Article VI –

A motion was made by Tim Tenhave and seconded by Fran L'Heureux to change the last sentence in section 6.1 to read "The manager shall serve at the pleasure of the Council with no fixed term of office. The Council shall fix the manager's salary and benefits and other terms of employment." The motion passed 8-0-0.

There was some confusion regarding section 6.4 and the differences between the processes of reprimand and removal. It was suggested that Tom Mahon be asked to draft some language and the Commission review this at a subsequent meeting.

A motion was made by Tim Tenhave and seconded by Fran L'Heureux to add the following words to section 6.7.c "in accordance with the "Personnel Plan"" after the words "The Manager" and to move section 6.7.g to 6.7.d and renumber subsequent sections. The motion passed 8-0-0.

A motion was made by Lon Woods and duly seconded to change the first sentence in the former section 6.7.g (now section 6.7.d) to read “The Manager shall proposed for adoption by the Town Council a system of personnel administration known as the “Personnel Plan””. The motion passed 8-0-0.

A motion was made by Tim Tenhave and duly seconded to change the first sentence in the third paragraph in section 6.10 to read “The head of each department shall have supervision of such department and with the approval of the Town Manager may prescribe rules and regulation for the conduct of such department, not inconsistent with general law, this Charter, the Administrative Code, and the provisions of the Personnel Plan.” The motion passed 8-0-0.

A motion was made by David Yakuboff and seconded by Tim Tenhave to accept section 6.8 as adopted. The motion passed 7-0-1.

Article VIII –

A motion was made by Lon Woods and seconded by Robert Kelley to keep Article 8 as adopted. The motion passed 8-0-0.

Parking Lot Items

Article III –

A motion was made by Tim Tenhave and seconded by Fran L’Heureux to remove the word “except” in section 3.8.b. The motion passed 8-0-0.

Article IV –

There was concern expressed by the Commission that there would be sufficient notice for public hearings, etc. The Commission noted it would be sufficient to leave the language as it currently is. The Commission could revisit this issue at a later date, if necessary.

Article V –

The issue has already been addressed.

Article VI –

This issue has already been addressed.

Article IX-

A motion was made by Tim Tenhave and seconded by Robert Kelley to change the word “ordinance” to “measure”. The motion passed 8-0-0.

A motion was made by Tim Tenhave and seconded by Robert Kelley to change the timing of elections in section 9.2.c and 9.3.d from 60 days between them to 90 days. The motion passed 8-0-0.

Article X –

Heather Anderson noted that this article is still in the hands of the attorney.

Article XI –

A motion was made by Tim Tenhave and seconded by Lon Woods to make sure that section 11.5 includes the maintenance of the Administrative Code under this Charter until it is updated as described. The motion passed 8-0-0.

Tim Tenhave noted he would bring draft language for this change to the next meeting.

Article XII –

These issues have already been addressed.

Numbering of Articles –

A motion was made by Tim Tenhave and seconded by Fran L'Heureux to move Article XII – Definitions to Article II and renumber subsequent articles. The motion passed 8-0-0.

Content/Process Inconsistencies –

Tim Tenhave noted that consistency is needed in the numbering of the articles and sections. He noted that the word “qualified” is used when the word “certified” should be used. He noted that in Article VIII the title of the article is “Conduct of Officials”, but that throughout the article the words “Code of Ethics” is used.

A motion was made by Tim Tenhave and seconded by Lon Woods to change the title of Article XIII to “Conduct of Officials/Code of Ethics”. The motion passed 8-0-0.

Mr. Tenhave noted that the Ethics Committee was omitted in section 11.2.b as an elected committee that will remain in place during the transition.

A motion was made by Tim Tenhave and seconded by Robert Kelley to add “and Ethics Committee” to section 11.2.b. The motion passed 8-0-0.

Mr. Tenhave suggested that the definitions for the following words be added to the list of definitions in the new article II: ex-officio, certified, RSA.

Minutes of November 1, 2005

A motion was made by Fran L'Heureux and seconded by Lon Woods to accept the minutes of November 1, 2005 as submitted. The motion passed 6-0-2.

Other Business

There was no other business at this time.

Commission Member Comments/Remarks

Finlay Rothhaus questioned the vote of 5-3 that moved language to the draft charter. It was noted that a majority of the Commission needs to vote in the affirmative to move an amendment to the draft charter, but that a supermajority is needed to move an amendment to the final draft. Lon Woods suggested that we address Mr. Rothhaus's concern this evening as it was the collectively decision of the group to allow the wording to go forward. Mr. Rothhaus stated that he did not want to pursue the matter.

Tim Tenhave noted that he is looking at the possibility of a longer or tiered signature time frame for the collection of signatures for an initiative or referendum petition. He will bring language regarding this possibility to the Commission.

Adjournment

A motion was made by Robert Kelley and seconded by Lon Woods to adjourn the meeting at 9:40 PM. The motion passed 8-0-0.

Respectfully submitted,
Rita Carlton, Recording Secretary