

**MERRIMACK CHARTER COMMISSION
SPECIAL MEETING
January 5, 2006**

Commission members present: Chairman Tom Mahon, Vice Chairman Heather Anderson, Peter Batula, Robert Kelley, Finlay Rothhaus, Tim Tenhave, Lon Woods, and David Yakuboff. The Commission's legal counsel, Attorney Allan Krans was also in attendance at this meeting. Excused: Secretary Fran L'Heureux

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

Chairman Mahon gave a detailed explanation of his contacts with the state agencies reviewing the proposed charter over the last two weeks. He reported on the meeting he, Heather Anderson and Attorney Allan Krans attended on January 4, 2006 with representatives of the state agencies. Based on that meeting and the issues raised by the state, the Commission needed to take action on over 18 items to bring the proposed Charter into compliance with state law. Most of the issues are rather minor, consisting of grammar, spelling, and omitted phrases. However, there were several substantial issues that concerned the state.

The language for bonding and appropriations after adoption of the budget will require the attention of the Commission. The two major issues are the date of the Annual Meeting and the quorum needed for Deliberative Session action. The state agencies agreed that Merrimack could use the April date because the statute establishing the April date is more recent than the statute that limited charter communities to March or May meetings. The state agencies are opposed to the quorum basically because there is no authority in state law. The agencies were not persuaded by the Commission's reliance on the Londonderry School District charter that uses a quorum or the language in RSA 49-D regarding specifying the method for the adoption of the budget.

A lengthy and detailed discussion about the state's authority to object, the basis for the objection, the seeming inequity when the Londonderry charter is considered and absence in the law of specific language for a quorum, except for a Special Town Meeting ensued. Courses of possible action were discussed. After about an hour, the Commission moved on to the business at hand as presented in the memo that the Chairman sent to Commission members on January 4th.

Article 2. Definitions, (9) Majority Vote

EXPLANATION:

As defined in the proposed charter a “majority vote” shall mean a majority of those present and voting. This definition leaves unclear whether an abstention constitutes a vote for this purpose. The Secretary of State and the Attorney General’s Office have taken the position that only “yes” and “no” votes are considered in determining if a majority vote requirement is satisfied even when the pertinent statute is silent on this issue. To the extent the Commission intends that only “yes” and “no” votes be counted, using explicit language to that effect will avoid future questions as to the meaning of this provision.

Lon Woods, moved to drop the language for Majority vote from the Charter and renumber the following definitions. The motion was seconded by David Yakoboff. The motion was adopted 8-0-0.

Article 3-2. Moderator.

EXPLANATION:

This section in part states: “The Moderator shall determine whether all ballots from all polling places are to be counted in one (1) or more locations.” RSA 659:59 and RSA 659:62 set forth two limited alternatives for where ballots may be counted and if ballots are to be transported to the central polling place, the manner for doing so. This sentence, in section 3-2, could be read to allow only those options set forth in these statutes is not inconsistent with state law. However, to the extent that the sentence can be reasonably read to give the Moderator broader authority to have ballots counted anywhere other than within the rail at the polling place where the ballots were cast or within the rail at a single central polling place, it would be inconsistent with state law.

Chairman Mahon moved to amend the language to read: “The Moderator shall be governed by New Hampshire State Law when determining whether all ballots from polling places are to be counted in one (1) or more locations.” The motion was seconded by Tim Tenhave and adopted 8-0-0.

Article 7-4. Reprimand and Removal from Office, C. Procedures

EXPLANATION:

The sentence reads “Upon request of the Manager, shall be afforded a hearing, ...” Peter Batula moved to amend the sentence to read: “Upon request of the Manager, he or she shall be afforded a hearing, ...” The motion was seconded by David Yakuboff and adopted 8-0-0.

Article 7-7. Powers and Duties of the Manager, I Revenues

EXPLANATION:

The proposed charter maintains the position of Town Clerk/Tax Collector, who by law is responsible for the collection, accounting, deposit, and periodic reporting of certain town revenues. Including language recognizing that the Manager's scope of responsibility and authority does not encompass the duties assigned by law to the office of Town Clerk/Tax Collector would avoid ambiguity or misunderstanding of the relationship between the two offices. State law does assign the selectmen, and thereby the proposed Council, the duty to establish appropriate internal control procedures to ensure the safeguarding of all town assets.

Heather Anderson moved to amend the first sentence by adding "for proposing appropriate internal controls to the Town Council for approval" after "responsible" and before "for". The motion was seconded by David Yakuboff and adopted 8-0-0.

Article 7-8. Appointment/Removal of Department Heads and Appeal.

EXPLANATION:

This provision provides a generic procedure for removal, however, to the extent that it would be read to trump the specific procedures established for particular offices, such as chief of police, it would be inconsistent with state law. (RSA 105:2-a provides that the first and only appeal to a decision to remove a police chief is to Superior Court.)

Robert Kelley moved to amend the sentence to read: "The Manager shall have the power to appoint and remove, subject to the provisions of this Charter or New Hampshire State Law, all town department heads." The motion was seconded by Lon Woods and adopted 8-0-0.

Article 8-1 Fiscal Year

EXPLANATION:

This provision suggests that the Town Council has authority to choose any dates as the beginning and ending date of the town's fiscal year RSA 31:94 and RSA 31:94-a explicitly limit the choices available by law. This objection may be resolved by deleting everything after the word "June." Alternatively, this objection may be resolved by a sentence granting the Town Council the authority to change the fiscal year to any other dates that comply with New Hampshire law.

Heather Anderson moved to delete all the words after "June" in the second line and change (1) to (1st) and (30) to (30th). The motion was seconded by Lon Woods and adopted 8-0-0.

Article 8-3. Budget Hearings

EXPLANATION:

There was a question on the number of days prior to the first session. The adoption of the RSA 40:13 provisions will cure this issue.

Lon Woods moved the following:

The final date for posting notice of budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8-a shall be the second Tuesday in February. Budget hearings under RSA 32:5 and RSA 195:12 and hearings under RSA 33:8-a and RSA 675:3 shall be held on or before the third Tuesday in February. Warrants under RSA 39:5 and RSA 197:7 and budgets shall be posted and copies available to the general public on or before the last Monday in February.

The motion was seconded by Finlay Rothhaus. After some discussion about the complexity of the proposed change and the desire to retain certain hearing requirements, Mr. Woods withdrew his motion and Mr. Rothhaus withdrew his second.

Heather Anderson moved the following:

“The Council shall hold in convenient places as many public hearings on the budget as it deems necessary. However, at least one (1) public hearing on the budget shall be scheduled in accordance with the provisions of RSA 40:13, II-b. Notice of such public hearing and the first session of the Annual Meeting, together with a copy of the budget documents as required by New Hampshire State Law, shall be posted in at least two (2) 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 the first session of the Annual 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 (2) other public venues as the Town Council may designate in accordance with RSA 40:13, II-b.”

The motion was seconded by Tim Tenhave and was adopted 8-0-0.

Article 8-4, C and D.

EXPLANATION:

The state agencies want the term “RSA” inserted in front of each reference to state law in these two sections. In addition, the Commission should strike the reference to RSA 32:16 from Section C since the adoption of the Budget Committee is rescinded if the Charter is adopted.

Heather Anderson moved to insert “RSA” in front of each reference to state law in 8-4, C and 8-4, D and strike the reference to RSA 32:16 in 8-4, C. The motion was seconded by Lon Woods and adopted 8-0-0.

Article 8-4. Final Adoption of Budget, F. Second Session

EXPLANATION:

To further solidify the use of Official Ballot procedures and support the use of the April Annual Meeting date, the language in the Charter should more closely adhere to RSA 40:13 provisions regarding the Second Session of the Annual Meeting.

Lon Woods moved to adopt the following language to conform to RSA 40:13, III:

“The second session of the annual meeting, to elect officers of the local political subdivision by official ballot, to vote on questions required by law to be inserted on said official ballot, and to vote on all warrant articles from the first session on official ballot, shall be held on the second Tuesday in March, the second Tuesday in April, or the second Tuesday in May, as applicable. Notwithstanding RSA 669:1, 670:1, or 671:2, the second session shall be deemed the annual election date for purposes of all applicable election statutes including, but not limited to, RSA 669:5, 669:19, 669:30, 670:3, 670:4, 670:11, 671:15, 671:19, and 671:30 through 32; and votes on historic district ordinances, and building codes under RSA 675.”

The motion was seconded by David Yakuboff and adopted 8-0-0.

Article 8-4. Final Adoption of Budget, Section H.

EXPLANATION:

The wrong section of the statute is referenced in this section. It should read RSA 32:3, VI and not RSA 32:3, V. Heather Anderson moved to place the correct reference in this section. The motion was seconded by Lon Woods and adopted 8-0-0.

Article 8-4. Final Adoption of Budget, Section I. Default Budget.

EXPLANATION:

The Default Budget definition as currently used does not adhere completely to the RSA 40:13 language.

Tim Tenhave moved to adopt the following language in compliance with RSA 40:13, IX(b): “Default budget” means the amount of 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, and reduced by one-time expenditures contained in the operating budget. For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body, unless the provisions of RSA 40:14-b are adopted, of the local political subdivision.”

The motion was second by Lon Woods and adopted 8-0-0.

Article 8-4. Final Adoption of Budget, Section J.

EXPLANATION:

The language for the article on the operating budget must comply with RSA 40:13, XI(c). The phrase "...or as amended by vote of the first session," was inadvertently omitted.

Heather Anderson moved to amend 8-4, J by inserting "...or as amended by vote of the first session," after "warrant" and before "for". The motion was seconded by Robert Kelley and adopted 8-0-0.

Article 8-4. Final Adoption of Budget, L. Approval of Warrant Articles.

EXPLANATION:

The state agencies feel that the language is ambiguous and could lead to unintended consequences.

Heather Anderson moved the following:

"Warrant articles concerning the issuance of bonds or notes shall be placed on the official ballot for approval by the voters. Approval for all warrant articles shall be as provided by New Hampshire State Law."

The motion was seconded by Lon Woods and adopted 8-0-0.

Article 8-17. Appropriations After Budget Adoption.

EXPLANATION:

The State alerted us to the possibility that the current language would allow the Council to adopt a budget amount after the voting, essentially making the action of the voters advisory rather than mandatory. This was NOT our intent.

Lon Woods moved to eliminate the original sentence and substituted the following:

"Appropriations may be made, after budget adoption at the annual meeting, in accordance with the provisions of RSA 31:5, RSA 32:6, RSA 32:11 and RSA 39:4."

The motion was seconded by Robert Kelley and adopted 8-0-0.

10-2 and 10-3. Initiative Petitions and Referendum Petitions.

EXPLANATION:

There is no clear language on the process to be used to vote on these types of petitions. We were advised that we could consider a more traditional type of process where action was done on the floor and the item voted on at that meeting. This raises the real possibility that a number of voters far smaller than the number required for the

petition could dictate the action on the petition. Use of an Official Ballot process (first and second session) with all day voting could be specified.

Tim Tenhave moved to insert the following in 10-2, B and 10-3, B:

“The first session of the special election shall be scheduled within thirty-five (35) days of the Council’s final action and is to be conducted in accordance with the provisions of Article 8-4, O of this Charter.”

The motion was seconded by Finlay Rothhaus and adopted 8-0-0.

Article 8-5. Borrowing Procedures, A.

EXPLANATION:

The state asks us to clarify the language in this section for the issuance of bonds. The current language does not provide a clear process.

Tim Tenhave moved the following:

“A. Subject to the application 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 repayment for the obligation created hereby; provided that no notes or bonds shall be issued by the Council except by a vote of four (4) Councilors and a vote at a regular or special Town meeting as provide by Section 8-4 of this Charter. Notification and positing of such bond issues shall be in the same manner as if it were a bond issue of a town pursuant to RSA 33, with voting by official ballot at a regular or special Town meeting.” And, to remove section (B) in its entirety and reorder C. to B.

The motion was seconded by Heather Anderson and adopted 8-0-0.

Article 8-4 Final Adoption of the Budget, (C) Quorum.

EXPLANATION:

A charter provision of this type is currently not permitted. Chairman Mahon stated that this should not be a surprise as we have speculated in the past on the legality of such a measure and have cautioned that the state may not approve. Chairman Mahon explained that they are sympathetic to our rationale, but the only provision in state law for a quorum is for a Special Town Meeting for appropriations or rescinding an appropriation which requires that more than 50% of the registered voters must vote at the Special election for a measure to pass. Bedford faced this on several recent occasions when they were trying to pass the bond for a high school.

Tim Tenhave moved to strike the sentence regarding the quorum so that the section will read: "The first session of the annual meeting, which shall be for the transaction of all business other than voting by official ballot, shall be held between the first and second Saturdays following the last Monday in February, inclusive of those Saturdays at a time prescribed by the local political subdivision's governing body."

The motion was seconded by Finlay Rothhaus.

Another lengthy discussion took place among the members of the Commission. The possibility of legal action was again discussed. The possibility of retaining the language and submitting it again was discussed. Attorney Krans cautioned the Commission about the impact of a letter from the state with an objection. In the end, the motion was adopted by a vote of 6-2-0.

On a motion by Peter Batula and second by David Yakuboff, the Chairman was instructed to include a request for a detailed explanation of the state's legal rationale for objecting to the quorum. The motion passed 8-0-0.

6-2. Ethics Committee

EXPLANATION:

An entire phrase regarding the election process for the committee members was omitted.

Chairman Mahon moved to amend this section by deleting the entire first sentence and inserting the following: "The Ethics Committee shall consist of five (5) residents of the Town of Merrimack. Ethics Committee members shall be elected at the regular Town election for terms of three years, staggered so that no more than two (2) members are elected at one time."

The motion was seconded by Lon Woods and adopted 8-0-0.

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,
Thomas Mahon, Chairman