

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
SEPTEMBER 20, 2005**

Commission members present: Chairman Tom Mahon, Vice Chairman Heather Anderson, 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 7:02 pm in the Conference Room of the Town Hall.

Announcements

Chairman Mahon noted there will be a public hearing on November 8, 2005. The Commission should have a substantial portion of the Charter completed for public comment at that time.

Public Comments

There were no public comments at this time.

Reports

Chair – Chairman Mahon noted he contacted the Londonderry School District. They will send their Charter to the Commission. Chairman Mahon noted he would not be present at the next meeting of the Commission.

Vice Chair – Vice Chair Anderson noted that the crafted portion of the Charter will be put on the website. She noted she is still looking for a question or questions to put on the website for the polling of the public.

Review Response to queries to Attorney

The next order of business was the review of the three queries that the Commission sent to Attorney Krans. Chairman Mahon noted the first query was regarding a legal distinction between residency or domicile as a continuing qualification for elected office. The attorney suggested that candidates and officials be registered voters with an intent to stay in town. It was noted there is a need to trust in the integrity of the elected officials.

The second query was regarding whether the charter could create an official ballot with a public hearing, but no public meeting. The attorney responded that there is a need to have a public meeting. The motion voted on must be substantially the same as the article presented at the public meeting. The town cannot substitute 2 public hearings because the articles cannot be changed at public hearings. It appears that the statute does not permit the town not to use an official ballot process without a deliberative session.

The third query for the attorney regarded the ability of the commission to require a quorum at the deliberative session. It was noted there is nothing in the law regarding a

quorum. Mr. Mahon noted that a quorum is required in the Londonderry School District Charter. This makes the public meeting basically meaningless because everything goes to the ballot if there is no quorum present at the public meeting.

Heather Anderson noted it is her understanding that the Charter Commission would like to have a 2 tiered decision making process. She noted she could make a case that a public hearing at the town council could take the place of the public meeting as changes can be made by the town council. Tom Mahon noted he doesn't know how quickly state officials would respond so that changes could be made to the Charter before it is presented to the voters. Finlay Rothhaus noted that he feels that a charter without a public meeting is doable. Mr. Mahon noted that this does not seem to be permitted by law. Ms. Anderson noted it is clearly the will of the Charter Commission to remove the public meeting. Peter Batula noted that most of the area of charter creation is uncharted. He noted he would be willing to sit down with the Secretary of State to get an opinion if so desired by the Commission.

Review Drafting Procedures

Tom Mahon noted he reviewed and compared language. He noted there is little variation between charters in the sections to be reviewed this evening. He suggested that the Commission put something together and bring it back next week for review again before it goes to the attorney for his review. He noted that some charters are well organized and others are not. He noted he hopes to provide a logical progression in this charter. He noted the charter should be well-crafted and easy to use. The Charter will remain a work in progress. The Commission needs to be aware of the interconnections in the charter. He noted that RSA 49-C gives the Commission some structure, but does not dictate the contents of the Charter. He noted he has looked at the structure of other charters for a framework. He noted that the Commission may want to put in something that does not appear in any of the other charters. The Charter is completed when the Commission says it is completed.

Heather Anderson asked how often completed articles would be sent to Attorney Krans for review. Mr. Mahon noted it is unknown how often issues will be sent to the attorney for review. He noted the rubbing points will be the governing body, the legislative body, and the transition. It is not in the best interest of the Commission to send something to the attorney every week. Heather Anderson noted the attorney needs to review the articles and how they play together.

Charter Draft

Article 1 – Incorporation

Incorporation – A motion was made by Heather Anderson and seconded by Tim Tenhave to adopt the following for this portion of the charter:

The inhabitants of the Town of Merrimack in the county of Hillsborough shall continue to be a body politic and corporate under the name of the “Town of Merrimack” as incorporated on _____, 1746, and as such to enjoy all the rights, immunities, powers, and privileges and be subject to all the duties and liabilities now appertaining to or incumbent upon them as a municipal corporation. All

existing property of the Town shall remain vested in it, and all its existing debts and obligations shall remain obligatory upon it under this Charter.

The motion passed 9-0-0.

Town Form of Government – A motion was made by Heather Anderson and seconded by Robert Kelley to adopt the following language for this portion of the charter:

The administration of the fiscal, prudential, municipal and other affairs of the Town, with the governance thereof, shall be vested in a Town Council, shall be directed by a Town Manager, and shall consist of the various departments of the Town as established by this Charter, and from time to time by the Town Council. Except as expressly authorized by this Charter, no council member shall participate in the conduct of the administrative affairs of the Town.

There was some discussion regarding using the title of Town Administrator rather than Town Manager, but it was decided to keep the title of Town Manager.

The motion passed 9-0-0.

Construction – A motion was made by Heather Anderson and seconded by Tim Tenhave to adopt the following language for this portion of the charter:

- A. The powers of the municipality under this Charter are to be construed liberally in favor of the town, and the specific mention of particular powers is not intended to limit in any way the general powers of the municipality as stated in 1.1.
- B. Any word in this Charter which may be construed to be either masculine or feminine gender shall be considered gender-free.

The motion passed 9-0-0.

Intergovernmental Relations – A motion was made by Heather Anderson and seconded by Tim Tenhave to adopt the following language for this portion of the charter:

Subject only to express limitations in the provisions of the New Hampshire statutes, the Town may exercise any of its powers or perform any of its functions under this Charter and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the State of New Hampshire, or any political subdivision or agency thereof, or the United States of America or any agency thereof.

Tom Mahon noted that this portion deals with the affairs of the municipal portion of the town only.

The motion passed 9-0-0.

Article 2 – Elections

Composition of Board of Election Officers – A motion was made by Lon Woods and seconded by Robert Kelley to adopt the following language for this portion of the charter:

The Supervisors of the Checklist, the Moderator and the Town Clerk shall constitute the Board of Election Officers. The Moderator shall be Chairman. The Town Clerk shall serve as the Clerk of the Board.

The motion passed 9-0-0.

Moderator – A motion was made by Heather Anderson and seconded by Peter Batula to adopt the following language for this portion of the charter:

There shall be a Moderator of the Town who shall have all the powers and duties granted by this Charter and State law. The Moderator shall be elected at the regular Town election for a term of 2 years. The Moderator shall have the power to appoint all election officials except those which this Charter or State law requires to be elected or otherwise appointed. The Moderator shall determine whether all ballots from all polling places are to be counted in one or more locations. Vacancies in the office of Moderator shall be filled pursuant to State law.

The motion passed 9-0-0.

Supervisors of the Checklist – Tom Mahon noted there is some variation in this portion of the charters. The Commission requested that all references to state law use the term “New Hampshire State law”, rather than some other variation.

A motion was made by Finlay Rothhaus and seconded by Lon Woods to adopt the following language for this section of the charter:

- A. There shall be three (3) Supervisors of the Checklist who shall hold office for six (6) years (and until their successors are elected and qualified) on a staggered basis so that one Supervisor is elected at each even year Town election.
- B. Vacancies in the board of supervisors shall be filled by appointment made by the remaining supervisors. If there is only one member of the board, or if the whole board shall be vacant, the Moderator shall make the appointments (RSA 669:64). A person appointed shall hold office until the vacancy or the unexpired term(s) is filled at the next Town election.
- C. At their first meeting after each election, the supervisors shall elect their own chairperson for a term of 2 years.
- D. The Supervisors of the Checklist shall have such powers and duties as are specified under New Hampshire state law.

The motion passed 9-0-0.

Conduct of Elections – Tom Mahon noted that the charter may contain a residency requirement of up to one year. Finlay Rothhaus noted he felt this is not necessary as people vote based on what that person brings to the table. Tim Tenhave noted that residency shows commitment to the town. There is a need for stability in the town's elected officials.

A motion was made by Robert Kelley and seconded by David Yakuboff to adopt the following language for this section of the charter:

Date of Elections

The election officers, whose duty it is to conduct regular and special elections, shall use a Non-Partisan Official Ballot System as detailed in the election laws of the State of New Hampshire, on the second Tuesday in April to choose Town Councilors and such other officials as specified by this Charter, each of whom shall be elected by the voters of the entire town.

Time and Place of Elections

The election laws of the State of New Hampshire shall govern the hours of polling. The Town Council shall specify the polling place(s) of the Town and determine the hours the polls shall open and close at least thirty (30) days prior to any election

Qualifications for Office

To be eligible for election to office in Merrimack, any candidate must meet the requirements of applicable state law and constitutional provisions concerning such qualifications. In accordance with RSA 669:6, no person shall hold elected office unless the person has a domicile in the town. In addition to other requirements, a candidate for Town Council must be a registered voter as well as having been a resident for a minimum of one year prior to the first day of the filing period for candidacy.

Mr. Mahon noted that the residency requirement is for councilors only. Lon Woods noted there is no language in this section regarding who may vote for town councilors. Heather Anderson noted it is the responsibility of the Supervisors of the Checklist to make sure that voter voters on the list are able to vote.

The motion passed 8-1-0.

Preparation of Ballots – Tom Mahon noted that this section is set by state law. The language in this section is consistent across all of the charters he saw.

A motion was made by David Yakuboff and seconded by Peter Batula to adopt the following language for this section of the charter:

The Town Clerk shall prepare separate ballots to be used at all local referenda and at elections at which town officers are chosen. The ballots shall contain in appropriate sections the names of all candidates, listed in alphabetical order, without part designation. Below the list of names of the candidates of each

office, there shall be as many blank spaces as there are offices to be filled at the election. No titles, military, professional, or otherwise, shall accompany the name of any candidate on the ballot.

Finlay Rothhaus noted he would research the issue of placement on the ballot and the votes cast that appear to be based upon placement of names.

A motion was made by Tim Tenhave and seconded by Lon Woods to table further action on this issue until next week.

The motion To Table failed 4-5-0.

The main motion passed 7-2-0.

Preservation of Ballots – A motion was made by Heather Anderson and seconded by Tim Tenhave to adopt the following language for this portion of the charter:

All the ballots cast at each election shall be preserved, maintained and sealed as required by the New Hampshire state election laws.

The motion passed 9-0-0.

Certification Election and Appointment – Heather Anderson noted that this function may be cumbersome for the town staff. Tom Mahon noted that the timing of this can be changed to calendar days or business days. Tim Tenhave noted this makes a lot of bureaucracy. Finlay Rothhaus noted there is an issue with appointed positions. He noted that elected offices may be prescribed by law. Ms. Anderson suggested that someone sit down with the town clerk and person handling appointments to see if there is a process such as this in place. Mr. Rothhaus noted that these rules evolve. Mr. Mahon noted that this issue would be revisited in the future.

Contested Elections – A motion was made by Heather Anderson and seconded by David Yakuboff to adopt the following language for the charter:

The election laws of the State of New Hampshire shall govern the resolution of any contested election.

The motion passed 9-0-0.

Display of Local Campaign Materials at Polling Place – The consensus of the Commission was that this section does not need to be included in the charter.

Other Business

Survey on Web – Heather Anderson asked what question(s) should be put on the website. The Commission after some discussion decided that putting questions on the website was unscientific and the public reading the questions and responses may feel that it is more scientific than it is. This could lead to misunderstandings and misconceptions. The Commission decided that as the public has the ability to make

comments to the Commission via the website that questions would not be put in a survey form on the website.

Ballot Analysis – Tim Tenhave noted that he would like to present his ballot analysis at next week's meeting. He noted in his preliminary review that the number of registered voters varies from year to year. He noted that more than 85% of the voters vote on all articles on the ballot.

Questions from the Press

There were no questions from the press at this time.

Minutes of September 6, 2005

A motion was made by Heather Anderson and seconded by Fran L'Heureux to accept the minutes of September 6, 2005 with changes. The motion passed 9-0-0.

Public Comments

Andrew Silva, 28 Merrymeeting Drive, questioned the residency requirement of 1 year. Heather Anderson noted this is 1 year up to the filing date for the office.

Adjourn

A motion was made by Lon Woods and seconded by Robert Kelley to adjourn the meeting at 9:20 PM. The motion passed 9-0-0.

Respectfully submitted,
Rita Carlton, Recording Secretary