

# Waterboro Charter Review Commission

## Minutes

June 6, 2011

Present: Chairman: Todd Abbott, Dianne Holden, Willis Lord, Dwayne Woodsome, James Carll, Douglas Foglio, Sr., Steve Ross and Gordon Littlefield. Absent: Scott Ohman

Also present: Board of Selectmen members: Jon Gale, David Woodsome and Dennis Abbott. Town Administrator: Nancy Brandt Town Attorney: Ken Cole

Call to Order: 7:08 PM

Correspondence: None

New Business:

Approval of May 16, 2011 Minutes: Dwayne made the motion to accept as written. Gordon seconded. Voted, passed.

Review & Discussion of Town Attorney's Answers to Current Charter/Questions from the Commission: (see attached Memorandum)

- Suggestion to be addressed in Charter: No employee can become a member of the Board of Selectmen while employed by the Town. When elected to the BoS, that employee would have to resign their employment position.
- Amendments to the Charter are for procedural changes only, and the BoS have the ability to ask for a vote for such changes without a Commission being created.
- A Charter Commission can only be in existence for two (2) years.
- Ratification of the Charter – suggests do as a ‘revised’ Charter = 1 vote for all. Amendments would need to be voted on individually. Can be done in two parts if overwhelming – vote on amendments at 2011 Nov. election and do revised Charter at 2012 Nov. election.
- Note that proposed charter changes must be approved by a majority of voters at an election satisfying a minimum voter turn-out requirement of at least 30% of the total number of voters who cast ballots in the last gubernatorial election in the municipality.
- Question if the Personnel Director can be anyone other than the Administrator. Atty. Cole answered that it's a tough question. Wouldn't recommend it. Could have a Deputy handled it.
- Atty. Cole noted that a Hiring Panel is not in any other Charter he knows of.
- Atty. Cole state that authority of Board of Selectmen can be granted to Administrator.
- Discussed Town Meeting vote to raise \$0. for a Department. BoS can come back and ask for monies at a Special Meeting, or reduce total by salary amount. Moderator can't accept vote to do away with Department. If voting were done by

referendum type of voting, it would have to go back to the people for a revote however the Charter states it should be handled.

- Need to streamline process for firing personnel. Charter should steer the process, but not micro-manage it.
- Town Clerk, Tax Collector and Treasurer positions are governed by State Law, so don't tie those positions to the Charter.
- Do not have personnel policy in Charter.
- Edit out SAD/RSU section.
- List only statutory committees, don't list others.
- In regards to Union employees, take wording out of Charter so BoS aren't handcuffed if Union folds; it would revert to Personnel Policy, which is more flexible.
- Planning Board members: 'in accordance with Zoning Ordinance'.
- Section 1007 – Continuance of Present Administrative Officers: can do non-elected, but not elected.
- Add to Charter: Employment does not include stipend/volunteer Fire Dept. or EMS positions.
- Insert 'pursuant to State Law, as amended'. Do not insert MRSA #'s as they change and get recodified on a regular basis.

**Next meeting:** June 20, 2011 at 7 pm.

**Adjournment:** Meeting adjourned at 8:35 PM. Motioned by Gordon, seconded by Doug. Voted, passed.

Respectfully submitted,



Dianne Holden, Committee Secretary



Attorneys at Law

## MEMORANDUM

TO: Waterboro Charter Commission

FROM: Kenneth M. Cole III, Esq. *KC3*

RE: Response to Questions from the Waterboro Charter Commission

DATE: May 31, 2011

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The Charter Commission has asked for our guidance on several specific questions that have arisen in the course of its review of the Town's Charter. Following are those questions and our responses.

### 1. Overview of Charter Commission Duties

Maine state law makes a distinction between the charter revision process and the charter amendment process. A charter "revision" (a major change in the form of local government) may not be adopted without a charter commission first being established by voter referendum. On the other hand, a charter "amendment" (a minor change in the form of local government) does not require the establishment of a charter commission. (30-A M.R.S.A. §§ 2102-2104.) In Waterboro, the voters decided in November 2010 to create a charter commission, which is now authorized to recommend to the voters a full Charter revision, one or more "amendments" or no changes at all to the existing Town Charter. The commission is statutorily obligated to hold an initial public hearing and should then hold regular public meetings throughout the year, as the commission reviews the current charter and considers possible changes. (30-A M.R.S.A. § 2103(5)(A).)

The Commission must prepare and circulate a preliminary report on its progress within 9 months of its election (by August, 2011). (30-A M.R.S.A. § 2103(5)(C).) A final report must be submitted to the Board of Selectmen within 12 months of the commission's election (by November, 2011). (30-A M.R.S.A. § 2103(5)(D).) A one-year extension is permitted. (30-A M.R.S.A. § 2103(5)(E).) After the final report is filed, the Board of Selectmen must order the charter changes, if any, to be submitted to the voters at the next regular or special election. (30-A M.R.S.A. § 2103(6).) The Charter Commission can submit any proposed changes as a single question (a Charter Revision) or as separate questions (Charter amendments). (30-A M.R.S.A. §§ 2104-2105.)

Under Maine law, municipalities have broad authority to craft or propose changes to their charters (See *School Committee of Town of York County v. Town of York and York Charter Commission*, 626 A.2d 935 (Me. 1993)); however, this power is subject to the voter approval requirement. To become law, any proposed charter changes must be approved by a majority of voters at an election satisfying a minimum voter turn-out requirement of at least 30% of the total number of voters who cast ballots in the last gubernatorial election in the municipality. (30-A M.R.S.A. § 2105 (4)(B).)

2. Sec. 210: Legislative Authority of Town Meeting – Referendum Budgetary Process

The Charter Commission may recommend that the Charter be revised to mandate that budget approval be done by referendum vote. Section 210 of the Charter could be modified to indicate which warrant articles are to be voted on by referendum (i.e., secret ballot vote) versus at the Town meeting. Currently, the Charter indicates that several town officials, ordinances proposed by the citizens and any other business deemed advisable by the Board of Selectmen be voted on by “written ballot.” A written ballot is not the same as a referendum or secret ballot vote, which involve voting booths, voting hours and absentee voting rights. A written ballot is used by voters to record their votes during a town meeting; people must be present to vote. Even if no substantive changes are made to this section, we would recommend changing the term “written ballot” to “secret ballot” or “referendum ballot” if the intention is to allow absentee voting for those items. As a general matter, the benefit of having the budget approved by referendum vote is that more citizens are likely to participate because they do not have to be present on the day and at the time of the town meeting to do so. A downside to passing a budget by referendum is that there is no opportunity for floor discussion and/or amendment of the budget articles on the day of town meeting. It would be possible to have each department’s budget voted on as a separate warrant article, but those budgets can not be further broken out so that each line item becomes a separate warrant article.

3. Definition of Town Administrator vs. Town Manager – what is ‘legal’ difference? What can the Charter add to or remove from each position?

In the context of a charter, there are no *legal* differences between the terms “town administrator” and “town manager.” That is because a charter may establish virtually whatever democratic form of local government is desired by the municipality, so the functions and powers of those positions can be described in any number of different ways. Nonetheless, there are usually practical differences between the titles. The position of town manager is generally established as the administrative arm of the local government in lieu of the board of selectmen, whereas a town administrator tends to act as more of an administrative assistant to the board of selectmen, which retains its designation as the official executive and administrative branch. In municipalities without charters that have adopted the statutory “town manager plan,” the powers and duties of the town manager are prescribed by statute.

The Waterboro Charter currently includes the position of town administrator. The Charter Commission may modify the job description or title of this position as it sees fit.

4. Art. 5 Adm. Officers & App't Boards: Simplify wording on hiring and firing as currently it can take 6-8 months to complete.

To simplify the removal provisions, the Charter could be amended to delete the current removal language and insert a general provision stating that the Board of Selectmen can remove the enumerated administrative officers for just cause, after notice and hearing. The personnel policy can then be amended to provide more details regarding the procedural requirements.

The hiring procedures could be set forth in one paragraph that covers all of the positions.

5. Sec. 502: Planning Board – Review

This section could be simplified by removing the last sentence regarding the planning board's specific obligations. Article 11 of the Town's zoning ordinance already sets forth the responsibilities of the planning board in detail and this sentence in the charter is not entirely consistent with that ordinance language. The zoning ordinance does not, however, establish the composition of the planning board or the term lengths of its members and does not require an annual written report to the Selectmen; thus, those items should stay in the charter unless they are added to the zoning ordinance.

6. Sec. 502: ZBA – Review -- Does state law control # members and length of term?

State law provides that the Board of Appeals must consist of five (5) or seven (7) members serving staggered terms of at least three (3) and not more than five (5) terms. (30-A M.R.S.A. § 2691.) Note that the Town's zoning ordinance provides for seven (7) members to serve staggered five (5) year terms, so any change to the charter in this regard will need to be reflected in the zoning ordinance.

7. Sec. 701: RSU

The RSU policies regarding elections are required to be consistent with state law, so it does not seem necessary to refer specifically to the RSU policy here – many Towns have deleted any reference to them from their Charter.

As for Section 705, State law provides that when there is a vacancy on the school board, the municipal officers of the municipality in which the board member resided shall select an interim board member from the municipality to serve until the next annual municipal election at which time a board member will be elected to fill the vacancy. (20-A M.R.S.A. § 1254 (3).) Thus, the Board of Selectmen can and should appoint an interim board member to fill a vacancy on the school board; however, that person may

not be a selectman because the positions of selectman and school board member have been determined to be incompatible offices. (Op. Me. Atty. Gen., May 15, 1968.)

While the Town's Charter mandates that a special election be called to fill the position, it seems that so long as this occurs on or before the date of the annual Town election, that practice is not in violation of state law and the ninety 90 day time period can be modified within that limitation.

8. Art. 8: Initiative & Referendum

The Commission may want to consider one clarifying change to this article, which is to revise the second sentence of Section 801 to add "or that are otherwise unlawful" at the end.

9. Art. 9: Business & Financial Provisions

- o Sec. 907: With LD1, monies can be set aside for Capital Programs, but they count toward the tax limitation calculation.

10. Art. 10: General Provisions – Atty. Review

- *Section 1001 – Repealing Clause.* It seems that this could be deleted.
- *Section 1002 – Separability Clause.* This could be re-titled "Severability Clause"
- *Section 1003 – Short Title.* This could be revised so that it is more generic and will need to be revised if they create a Town Manager position.
- *Section 1004 – Existing Contracts Not Invalidated.* This might be clearer as "all contracts or obligations entered into by the Town prior to the effective date of this Charter shall continue in full force and effect." They could add a separate section for "Pending Actions and Proceedings", which states something along the lines of "No actions or proceedings, whether civil or criminal, pending on the effective date of this Charter, brought by or against the Town or any department, board, commission or other Town agency thereof, shall be affected or abated by the adoption of this Charter or anything contained herein."
- *Section 1007 – Continuance of Present Administrative Officers.* This could be revised to provide that if the charter reduces terms, present terms could be reduced as well.
- *Section 1008 – Bonds of Officers.* Not statutorily required in all instances and doesn't need to be in Charter.
- *Section 1009 – Conflicts of Interest.* Consider adding to end of second sentence regarding Road Commissioner, "except as otherwise prohibited by law."

11. Do employment contracts end if funding ceases?

To the extent any of the Town's employees have employment contracts, the language of the employment contract would govern. Our understanding is that most if not all of the Town's employees do not have employment contracts and thus can be terminated in accordance with the provisions of the collective bargaining agreement or Town personnel policies, as applicable. However, if the position and/or department is eliminated or unfunded, employment would cease unless the contract provided otherwise.

12. If Dept. budget fails is it gone or reverts back to prior year?

The general rule is that if the vote at town meeting fails to pass a specific department's budget, the prior year's budget for that department would become the current budget, unless the department was eliminated altogether. The Selectmen could hold a subsequent special town meeting to try again to get voter approval of a revised budget.