

**TOWN OF NEWMARKET, NEW HAMPSHIRE
CHARTER COMMISSION
SEPTEMBER 9, 2013
TOWN COUNCIL CHAMBERS**

COMMISSIONERS PRESENT: Chair Clay Mitchell, Secretary Chris Hawkins, Bruce Hawkins, Sr., Toni Weinstein, Al Zink, John Badger, Leo Fillion, Kevin Cyr

EXCUSED: Vice Chair Phil Nazzaro

ALSO PRESENT: Town Administrator Steve Fournier, Town Attorney John Ratigan

Chair Mitchell called the meeting to order at 7:00 p.m., followed by the Pledge of Allegiance.

PUBLIC INPUT:

There were no members of the public in attendance. Commissioner Badger moved to close the Public Input session at 7:02 p.m. Commissioner Bruce Hawkins seconded. Motion carried unanimously, 8 – 0. There will be future Public Input sessions.

REVIEW OF ITEMS FROM LAST MEETING:

Continue Discussion with Town Administrator/Town Attorney:

Chair Mitchell said they had been discussing the CIP and the creation of a water/sewer district at the previous meeting. Commissioners had received copies of recently enacted Senate Bill 11 concerning water/sewer districts. He asked the Town Attorney if it was necessary to include the CIP in the Charter. Attorney Ratigan said it wasn't necessary as CIP authority was covered under RSA674, and Town Meeting had voted for its establishment. Chair Mitchell said that one of the concerns had been accountability, and he wondered if putting the CIP in the Charter would protect it from being dissolved and provide accountability. Attorney Ratigan said that putting something in the Charter would make it a requirement for which people could be held accountable. Mr. Fillion said he liked to have this included as it spelled out how many members there would be and whether they would be elected or appointed. He said it was easier for people to find items in a Charter than to look up ordinances.

Town Administrator Fournier cautioned against including employee titles for department heads in the Charter, as they could not delete a position that was no longer necessary or funded, add a new position or change the duties and title for a position. There are only 2 department heads in addition to the Police Chief that are listed in the present Charter. The Town Administrator and Town Clerk are mentioned as they have their own chapters and designations in the Charter. Mr. Chris Hawkins asked who had the authority to create, merge or eliminate departments. Administrator Fournier said the Charter stated an Administrator has to propose an administrative code for the Council's adoption within a certain number of days after the Charter takes effect. He said department heads would be a part of the administrative code, which is the outline of the departments within the town, and the code could be reviewed frequently.

Chair Mitchell's next question was whether the Charter should empower the Council to create a village district for water and sewer, or would this would be necessary with the passage of Senate Bill 11. Attorney Ratigan said the conclusion he had reached at the previous meeting was that it was not a bad thing, in the absence of clear direction, to include the authority in the Charter. He said that much of the authority in Senate Bill 11 was also in

RSAs 38 and 147. He said he didn't see any need to include this in the Charter, as Senate Bill 11, Chapter 31:136, Section I, lines 14 – 17 stated, *"For the purposes of this subdivision, the legislative body of any city or town shall have the authority by a majority vote to establish one or more water and/or sewer utility districts and designate a water and/or sewer utility commission to be the governing body to manage the activities of the district."* This meant that the Council at any time could establish a district by resolution, and he did not think it necessary to include the authority in the Charter.

To Commissioner Chris Hawkins' question, Administrator Fournier said that the Personnel Plan and Administrative Code were separate entities. Commissioner Chris Hawkins read from Section 6.2 of the Charter that amendments to the Personnel Plan would be submitted from time to time by the Administrator, and the Council would consider and act on amendments within 90 days. He asked what would happen if the Council didn't act. Administrator Fournier said that most city charters state that if an amendment is not acted upon within 90 days, the amendment goes into effect, but that language was not included in Newmarket's Charter. Attorney Ratigan read the section to mean that if the Council did not act within 90 days the amendment was dead. The newly amended Personnel Plan was to have its second reading in October. Commissioner Chris Hawkins said that "consider and act" could mean table indefinitely.

Commissioner Chris Hawkins asked if Attorney Ratigan had a chance to look at Section 8.2, Initiative Petitions, which the Town Administrator said he wanted reviewed. He replied that the Section was consistent with state law, and it was rare that citizens took advantage of the Section because it involved quite a lot of work. He felt the Section was reassuring to citizens because it gave them authority to act between elections. Commissioner Filion said the CIP was done by initiative petition after the state passed legislation changing the authority from the Administrator to the CIP or Planning Board. Commissioner Weinstein said a 2009 initiative petition to remove a Councilor had not passed because this could not be done by that process. The Charter has a separate section, Section 8.6, Recall of Councilors. Chair Mitchell had noticed that the numbers required for an initiative petition and recall of Councilors were different in other Charters, and asked if the other Commissioners were happy with what Newmarket required. Commissioner Filion said there were 2 levels: 100 signatures for an initiative petition to recommend the Council put the proposal on the ballot, and 400 required for a referendum petition, which places the article on the ballot. Attorney Ratigan said for recall, he felt they should have a high threshold. Commissioner Chris Hawkins said he didn't see a need to change the numbers.

Commissioner Filion said that RSA 52 stated that village districts are formed by petition of 10 or more voters to the Board of Selectmen or governing body of a municipality, and thought that might be the process to follow. Administrator Fournier said he had a question of assets after a village district was formed, as currently the water and sewer assets were the property of the town. He said in the past, when there was a Commission and the town owned the assets, it was different from a village district, which created a separate form of government. Commissioner Filion said they could look at municipalities with village districts to see what they had done with their assets. Chair Mitchell said this was a policy issue and did not need to be in the Charter, as state law gave them the authority to have a district. His thought was to keep the Charter simple and compliant and in line with the Commissions goals. Commissioner Filion thought it would be helpful to have certain information in the Charter to let the voters decide how many would serve on a board and whether they would be elected or appointed, etc.

Commissioner Filion said it was stated that the duties would be determined by the municipality, and asked who that was. He questioned why "municipality" was used in one place and "governing body" in another. Attorney said that municipality usually means the legislative body, which is the Council in the Charter and Town Meeting is only the legislative body for the budget. In the case of petitions, the Council makes the decision of placing an article on the warrant, as stated in the Charter, and Town Meeting only has as much authority as it is given. He read from RSD 52, which said a village district could be created by a petition of 10 voters to the Board of

Selectmen, which in Newmarket would mean the Town Council. He said that was a different route as it was prescribed by statute. Commissioner Chris Hawkins said he felt the water/sewer district was a policy issue, and outside what the Commission was doing, and delineating its structure could be for something that might not exist. Commissioner Zink added that delineating the structure might potentially handcuff the town to the issues it was facing. Commissioner Chris Hawkins asked if there was any other way that the Charter could be changed outside of a Commission. Section 10.9 of the Charter states that, *“Amendments to this Charter may be initiated either by the Council or by initiative petition, public hearing, and voter election pursuant to RSA 49-B: 5.”* Administrator Fournier said that Charter Commissions were for significant, structural changes. Attorney Ratigan added that an amendment refers to a single purpose, whereas a revision refers to many. Both must go before the voters for approval.

DISCUSSION ON THE FORM OF GOVERNMENT

Commissioner Zink said that at the previous meeting, Commissioner Weinstein had spoken about what should be the goal of this meeting and that was in part to settle on the form of government. He said he could use an overview of the pros and cons of different forms and how they would apply to Newmarket. Administrator Fournier said he was not advocating or endorsing any form of government, but gave the reasons that Stanford, Maine, the largest town in Maine, had recently changed to a city form of government. In 5 years, Stanford had changed from a Board of Selectmen/Representative Town Meeting to a Council, and the previous year to a city. The city retained a City Manager position, which was not much different from a Town Administrator. He said the main reason for changing was not for government, but for economic development, as their findings were that businesses, in part because of pre-conceived notions, were more apt to do business with a city rather than a town. He said that Amesbury, MA had become a city as the people wanted a strong mayor. Lebanon was the last town in New Hampshire to become a city and in 1966 it decided to become a city because it wanted a Town Council which was not available to them at the time. He said the negatives for becoming a city in New Hampshire were that Town Meeting was eliminated altogether, and except for amending the Charter, the referendum process was also eliminated. He said there was not a large step between Newmarket’s Charter and a city charter except for the 2 examples he gave. He added that those with dependent school districts were incorporated before home rule was enacted.

Commissioner Badger said he thought they were going to look at the trends in population to see what form of government would be appropriate in 10 years. Administrator Fournier said that New Hampshire was not a state in which a town automatically becomes a city when its population reaches 10,000. Population was thought to have less to do with form of government than it had, although having a large population for Town Meeting form could be unwieldy. He said it wasn’t just population, but the type of community and the needs that had to be addressed, along with the tradition of the community. Commissioner Zink said that the Commission had discussed the difficulty in attracting citizen participation, and wondered if that would be a reason to become a city. Town Administrator Fournier said if the problem was lack of participation in Town Meeting, it might be a reason, but if the problem was in finding candidates to serve on boards, etc., the issue would remain the same whether there was a Council or Select Board. By statute, the Strong Mayors are the Chief Executives of the cities, as in Manchester and Nashua, and in all the other cities the City Managers are the Chief Executives with a Weak Mayor, who is more ceremonial and runs the Council. However, the duties and authority of a Weak Mayor differed by city.

Commissioner Weinstein said that if they were going to discuss changing the form of government, they would have to decide what problem they were trying to solve. Commissioner Filion said he thought they had decided 2 months ago that they didn’t have enough time to change the form of government. He felt they should be preparing recommendations for the Public Hearing to get feedback. The deadline for the preliminary report is October 30th, 170 days from the beginning of the process, and the certified copy must go to the state by

November 7th. Town Administrator Fournier said that the requirement for a Public Hearing was that it must be at the beginning of the process, although there was nothing to prevent the Commission from holding public input sessions, which he encouraged. The preliminary report is that which the Commission is proposing for the voters to act on and it must be circulated within the community when it is sent to the state. Chair Mitchell said he had notes that a draft of the report would be ready by October 14th to allow time for review, and they would finalize the report on October 28th. He thought they should decide what language they should start drafting. Commissioner Bruce Hawkins said he thought they had been working toward that with the process they had followed. He noted that Chair Mitchell had asked at every meeting if the Commissioners had enough information to make a decision, and said he thought the time had come. Commissioner Chris Hawkins said he had been writing down the suggested revisions throughout the process, and had a red line draft of the Charter. Commissioner Bruce Hawkins suggested they go through each section of the present Charter and determine if they had enough information to decide whether or not to make revisions.

Commissioner Zink said his sense was that they would go forward with the form of government they presently had, and he thought that decision would be a great first step. Commissioner Chris Hawkins said he felt they should go forward with the present form of government and make changes to the Charter. He thought changing the form of government should be the culmination of a process which would start with conversations in the community, and result in the Charter Commission responding to the will of the community. He said he did not see the impetus in the community to make a structural change. He felt they should, as a Commission, embrace the Town Council form of government and make clarifications and refinements to the Charter. Commissioner Zink felt it was important to add something that would allow the Charter to be reviewed more frequently than every 10 years. Commissioner Bruce Hawkins asked if this should be in the Charter, as amendments had been made within the 10 year period. Town Administrator Fournier acknowledged that amendments had been made, but, it was common in charters to ask the voters every 10 years if they felt the need for a Charter Commission to study and make revisions to the Charter.

MAJOR DECISIONS/PROCESS

Attorney Ratigan said the 170 days brought them to October 30th for the preliminary report deadline, and then the report is filed and copies made for distribution. Fourteen days later, the report is filed with the Secretary of State's office, and it goes to the Attorney General's office for review and, hopefully, approval. However, he said he would not want to send the report to the Attorney General before receiving at least tacit approval. He read from the statute, *"that if the Secretary of State, Attorney General and Department of Revenue do not approve the Charter or Charter amendment, then it shall not be placed on the ballot."* He stressed the need to have the report complete and in his hands at least 2 weeks prior to the deadline. He said that on the day after this meeting he would find out who in the Attorney General's office was reviewing Charters, and while the Commission was still working, discuss proposed changes even before the report was complete. Chair Mitchell felt they were not making any major changes. Commissioner Filion felt that a village district would be a major change, but Commissioner Chris Hawkins said that did not have to be in the Charter. Chair Mitchell said there was language in all the other Charters, which he presumed were approved, that said that the Council was authorized to establish a village district pursuant to state law.

Attorney Ratigan suggested that during the next 2 weeks the members electronically circulate revisions through him as legal counsel to not circumnavigate the Right to Know Law, and to give him the opportunity to comment. This would in effect be a public record. He thought that at the next meeting, they should be prepared to hash through the changes they want to make. He felt that after the meeting, while they would not have a final draft, there would at least be enough for him to take the revisions to the Attorney General. He said that would give time for the Attorney General to respond, and time for the Commission to finalize and publish the preliminary report by October 30th. Chair Mitchell asked if there would be a need for meetings after completion of the

preliminary report. Attorney Ratigan said only 2 things happen after the preliminary report: approval by the Attorney General and Secretary of State and an opinion letter from a New Hampshire attorney stating that the Charter amendments are in compliance with state law. The State has 60 days in which to respond to the report, but a response could come earlier if the State feels revisions should be made. He said he did not want to plan for that, and felt they should have a satisfactory report ready for the 30th. He suggested that they have another meeting before September 23rd, and the Commission agreed on the 16th with the site of the meeting to be determined. Attorney Ratigan said he would prepare his thoughts on the revisions for the 16th, but Administrator Fournier said he would not be able to attend either meeting.

Commissioner Chris Hawkins distributed the red lined copies of the Charter. He said it was not entirely complete and did not include the water district, and he had purposely left out the history of amendments. He said he had included the Administrator's suggestions, such as changing the times the polls are open. He had written the change as having the Town Council determine the hours in consultation with the Supervisor of the Checklist and Town Moderator. Attorney Ratigan agreed that specific hours should not be in the Charter. Administrator Fournier said many things were in the Charter as people were used to the town meeting process, and did not use the ordinance process to its fullest. Commissioner Chris Hawkins said the bulk of the revisions were in Article 4, as some of it would become part of the Administrative Code.

Commissioner Cyr said he did not see Section 4.13 Town Clerk/Tax Collector discussion about separating the position into 2 jobs. Commissioner Chris Hawkins said he did not feel there was consensus about this. Commissioner Cyr asked if anyone had any questions about whether or not they should split the position. Attorney Ratigan said that towns seem to go through phases on this, and very often it is because of the personality of the person holding the office and was done to solve a personnel problem. He did not think this was the case in Newmarket, and asked why they would want to have the position locked up by the Charter, as statute provides for the positions being joined. He felt the wording in the Charter could be changed to say that there would be a Town Clerk and Tax Collector whose positions were outlined by state statute. This would eliminate the need to amend the Charter in the future, as the statute allowed the positions to be held by either one or 2 people. Administrator Fournier said that under the form of government they had, the Council could not change the position of Town Clerk, only the Charter Commission could submit this to the voters for approval. He said the only reason this was brought up was that there was a vacancy in the position, and it had nothing to do with personalities. The RSA's required an elected Town Clerk, but not an elected Tax Collector. Commissioner Filion pointed out that if the positions were held by 2 people, there would have to be 2 offices. Attorney Ratigan said he would look further into this. Commissioner Cyr said this had nothing to do with personalities, but having a Tax Collector elected, meant that the person overseeing the revenue had no oversight. If there was a problem, it would be easier to dismiss an appointed person through the Personnel Policy than to remove an elected official from office.

Attorney Ratigan was asked to attend the meeting on the 23rd. The discussion with the Town Administrator and Town Attorney ended at 8:19 p.m.

REVISIONS

Commissioner Chris Hawkins suggested they discuss revisions to articles other than Article 4. He said he had tried to capture the sense of what was being discussed and had included the Town Administrator's suggestions and credited them to him.

Article 1

Town Administrator Fournier had suggested that Section 1.2 actually describe the form of government, which was the Town Council form with a Town Administrator under RSA 49D: 3.

Article 2

The next suggestion revision was to Section 2.3C. Town Administrator Fournier had expressed concerns that the Supervisor of the Check list had a 2 year term of office. He felt that could create a hardship, and the Supervisors felt it was unnecessary. Chair Mitchell said that as Town Moderator he agreed with them, as the position required a great deal of experience. There had been a brief discussion of Section 2.5B, which stated the polls would be open from 7:00 a.m. to 8:00 p.m. He suggested the times be determined by Town Council Resolution after consultation with the Town Moderator and the Supervisor of the Checklist. Section 2.5A should be changed from May to March for the Election Day. The Town Administrator had suggested that the word "separate" be removed from the 1st sentence of Section 2.6 as it was confusing. It would then read: "*The Town Clerk shall prepare ballots to be used at all local referenda and at elections at which the Town officers are chosen.*" In place of saying the candidates be listed in alphabetical order, he suggested they be listed according to state law.

Article 3

Commissioner Chris Hawkins said there was only one suggested change to Article 3, but perhaps this would be a place to add Commissioner Filion's suggestions concerning the powers of the Town Council. He said the change would be in Section 3.8A Ordinances to reflect actual practice. The Town Clerk is not involved with distributing ordinances. Instead the language should state the Town Administrator or designee would distribute ordinances. Commissioner Zink said he had been approached before the meeting to bring up compensation of Councilors as outlined in Section 3.6. The person had asked if compensation for other boards might be an incentive for more people to be willing to serve, and he said he did not know the answer. Commissioner Bruce Hawkins felt that people who volunteer did it for reasons other than compensation. Commissioner Zink said the comment was also made, not by a Councilor, that the compensation had not changed in 20 years. He felt they should at least look at some of the town boards, although he had no idea what to suggest for compensation. They agreed to table this at this time. Chair Mitchell suggested that they look at other charters to see what was being done.

Section 3.1B also had to be corrected to change the May date to March. The date had been amended, just not inserted everywhere in the Charter. Commissioner Weinstein had noted a possible revision to Section 3.8C about publication of ordinances, and language suggested by the Merrimack Charter. Commissioner Chris Hawkins said he would put the language in so that they could look at both side by side. Commissioner Zink said, in reference to section 3.8B, that he did not believe ordinances included the enacting phrase "The Town of Newmarket ordains..." Commissioner Chris Hawkins said he would look into that.

Article 5

Section 5.3 should list the Budget Hearing as occurring on the third Tuesday in January. Commissioner Chris Hawkins said he was leaving Section 5.7 Capital Improvement Plan as written, as he had not found a strong consensus to change it. Commissioner Filion said this was not the language that was in the current Charter as it gave the Administrator authority to prepare the CIP. Commissioner Chris Hawkins said he could see this was wrong, and he would fix it. He asked that Commissioners prepare any changes and submit them so that the language would be side by side with the correct version. Commissioner Zink said he agreed with Commissioner Filion that they had wanted to institutionalize the CIP and delineate its responsibilities. Commissioner Cyr said this could be added to the article on boards. Commissioner Filion felt that the entire first paragraph should be deleted and the membership and election/appointment option of the CIP be added to Article 11.

Article 6

Attorney Ratigan was going to review Section 6.2 Personnel Policy. Commissioner Chris Hawkins said the section included some language that he had brought up during the meeting about Councilors acting on amendments within 90 days of the meeting. He felt this created ambiguity, and at this point wanted to draw attention to the language.

Article 7

Section 7.1B stated, *“No employee of the Town shall be eligible to serve as a Councilor.”* Commissioner Chris Hawkins said this had been brought up because a past Councilor had to withdraw from the Council after having received some pay as a volunteer firefighter. He suggested that the wording be changed to “any full-time employee of the town.” Commissioner Zink thought that would solve the “Dan” problem that had occurred in the past, and Chair Mitchell felt this still left the decision up to the voters. There was also a section on disclosing possible conflicts of interest in Section 7.2A, which gave the Council the right to decide it felt the person should recuse himself. He said there were Councilors who had had contracts with the Town to operate heavy equipment, and that had been disclosed and had not been a problem. Chair Mitchell said he felt they set the bar too high, as they had enough problems getting people to run for office. Commissioner Filion asked if Section 7.1C, *“Except as otherwise provided by this Charter, no department head of the Town shall be appointed to a Town office, board membership, commission membership or trusteeship.”*, should be changed to read “no full-time employee.” The section does not include department heads that are elected. Some department heads sit on committees as ex officio members.

Article 8

Commissioner Chris Hawkins said he had not heard that anything had to be changed to initiative petitions.

Article 4

Chair Mitchell asked if the Administrative Code should be drawn out and a section added that states there should be such a code with a list of what it should include, rather than having references to it in the Charter. It was mentioned in 4.12 and 4.6(b). The general consensus was to include Chair Mitchell’s suggestion and have Section 4.12, state that the Administrative Code shall include a written job description for each department head. Further discussion of this article will be at a future meeting.

Article 11

Commissioner Zink said they had had quite a bit of discussion on this article on administrative and judicial boards about defining the membership and number of members on a board and placing the CIP in this article. Commissioner Chris Hawkins said he had not received a clear consensus on the article. He asked if they wanted to reduce the number of Budget Committee members. Commissioner Filion said the Committee had had 9 (elected) members for about 50 years. Commissioner Zink said, from his tenure on the Committee, he felt having 11 members made for large discussions on often rather insignificant issues, and he would personally recommend reducing the number. Commissioner Filion said the different viewpoints expressed were similar to a Town Meeting, and he did not think the number of members should be reduced. Commissioner Chris Hawkins felt that the reason the last proposed Charter had failed, was that they had attempted to change the budget process and eliminate the Committee. He felt that some people are resistant to change, and Chair Mitchell added that this could part of the trust deficit issue. Commissioner Chris Hawkins said he liked to think that they were clarifying the Charter, rather than changing it. He will prepare and distribute language including the CIP under this article.

Open Discussion

Commissioner Nazzaro had requested information comparing the Town Council recommended budget, Budget Committee recommended budget and the approved budget. There was a handout left on the table that represented part of the information. Commissioner Zink said that the information requested was to determine if the recommended budget, including operations and warrant articles, had been approved by the voters. Commissioner Filion said he liked the inclusion of the number who voted to recommend an article, and the 10% limitation. It was decided to wait for full discussion of Article 4, so that Commissions would have time to go over their own notes before the next meeting.

Commissioner Filion asked if the final proposed changes to the Charter would be voted on as a block, or by individual changes. Some thought that the changes would be grouped by subject matter, however, Commissioner Cyr said since the Charter was being revised, rather than amended, he felt the vote would have to be on the whole package. That will be clarified with the Town Attorney, who had made a statement about amendments but not about revisions. Commissioner Chris Hawkins said he had gone to the Council with some minor amendments it might consider when the last Charter failed. The Commissioners discussed the pros and cons of ways of presenting the Charter, and Commissioner Chris Hawkins stressed the importance of marketing the changes. They discussed the suggestion to separate the Town Clerk and Tax Collector positions, in light of the fact that the person who had held the position and was Chairman of the State Association had recommended they look at the article. There was discussion as to whether or not this was her recommendation. Chair Mitchell read that the provisions for making revisions to the Charter were identical to adopting a Charter, but it did not include information on how this was to be presented to the voters. This was true in the state statute and the Municipal Association's information. Commissioner Chris Hawkins said that there were not many Charters in the state, so the law could be largely undeveloped. They agreed to ask the Town Attorney for clarification.

Commissioner Zink asked if anyone was aware of any inconsistencies in Article 4. Commissioner Chris Hawkins said he would re-base line it, and begin with the memo from the Town Administrator. Commissioner Weinstein had a note about Article 11, Section 11.1E about adding the School Board to the list of Chairs of committees that the Council meet with annually, but although the Commission can ask the Council to meet, it cannot ask the School Board to comply. Commissioner Chris Hawkins will try to add some language to recommend a meeting. There was a discussion on the term "Administrative Committees", and what could be included. The questionnaires sent to past and present Town Councilors had just been mailed, so there were no responses at the time of the meeting, and Chair Mitchell said they could follow up with a date for their return.

Minutes of the August 26, 2013 Meeting

Commissioner Chris Hawkins moved to approve the minutes as presented. The motion was duly seconded. Discussion: Commissioner Filion said that the law cited under the Budget Committee discussion at the bottom of page 10, the numbers 2 and 3 should be changed to Roman numerals. He said the next sentence was confusing as it implied that the Council could eliminate the Budget Committee. He recommended that the wording be changed to state that the only way to eliminate the Budget Committee was by petition submitted to the Town Council or by warrant article. Commissioner Weinstein said there was a typo near the bottom of page 7, where the word "the" should be changed to "that". Motion passed unanimously with the 2 changes.

Adjournment/Next Meeting September 16, 2013

Commissioner Chris Hawkins moved to adjourn and Commissioner Zinc seconded. Motion carried unanimously, and the meeting adjourned at 9:19 p.m.

Respectfully submitted,
Ellen Adlington, Recording Secretary