



CHARTER REVIEW COMMISSION

AGENDA

October 6, 2020

9:00 AM

- **CALL TO ORDER / ROLL CALL**

- **OLD BUSINESS**

Review and approve the Minutes of the meeting held September 15, 2020

- **NEW BUSINESS**

Article IV Section 402 Town Manager: Selection and Appointment – improving the process: comments from Fred Lynk, Chair of the 2017 Town Manager Search Committee. (See paper prepared jointly with Pamela Sawyer, Search Committee member)

Managing the electoral process in Ogunquit: comments from Christine Murphy, Town Clerk

Article II – revision: continued from previous meeting. (See paper prepared by William Sawyer)

Discussion topic: Article IV S 402 Town Manager: Selection and Appointment Process

Choice of topic for October 20 meeting (See Topic List, previously circulated)

Article III – revision (time permitting)

- **ADJOURNMENT**



Ogunquit Charter Review Commission

Meeting Minutes

September 15, 2020

This meeting was conducted remotely via Zoom during the COVID-19 State of Emergency.

1. Welcome and Call to Order

The meeting was called to order at 9.10 am.

Members present:

- William Sawyer, Chair
- Gordon Lewis, Vice Chair
- Robin Millward, Secretary
- Amy Forbes
- Peter Griswold
- Patricia Hussey
- Wendy Levine
- Terry Ann Lunt

Others present:

- Town Manager Patricia Finnigan
- Town Clerk Christine Murphy
- Town Attorney Mary Costigan (Shareholder, Bernstein Shur)

Apologies:

- Gary Latulippe

Motion to excuse Gary Latulippe: moved by Peter Griswold, seconded by Wendy Levine. Agreed unanimously.

2. Old Business

Moved by Peter Griswold, seconded by Terry Ann Lunt, that the Minutes of the Charter Review Committee's Statutory Public Meeting held on September 2, 2020 be approved. Agreed unanimously.

3. Terms of Reference – Does Ogunquit Need a Charter?

Following discussion at the Statutory Public Meeting, the Commission had agreed to revisit this topic before continuing with its work program. Previous public input had been in favor of

retaining a Charter. Despite the Chair's invitation, there was no further input from members of the public present and no emails had been received via the Town's website.

Commission members all spoke in favour of retaining the Charter, emphasising the importance of streamlining and clarifying language in the document. Other points raised were:

- The Charter can offer clarity and guidance on how the Town does business and deal with situations unique to Ogunquit;
- It is a useful reference tool, particularly at live meetings. State documents can be consulted when necessary;
- In consultation with the Town Attorney, the Commission should adopt the idea proposed by Wendy Levine, that links to the relevant sections of State law be included;
- The new draft Charter should be enforceable and understandable, deleting any provisions which conflict with State law or which have been superseded.

The Chair thanked Peter Griswold for generating the discussion. On a show of hands, all members agreed to proceed with reviewing the Charter and making recommendations for change and the Chair declared that the decision whether to proceed had been resolved in the affirmative.

4. New Business

Summary of emailed public comments

The Chair summarised the comments received to date directly from the public by email:

- Eliminate term limits; clarify Board and Committee appointment terms / expiry dates; clarify language re: alternates filling empty seats mid-term (add language to 801); preclude non-resident Board members from serving as Chair – consider making advisory only; review Town Manager selection process; post all Town policies on Town website; review use of Robert's Rules – are they still relevant; review Municipal Ordinances
- "Beautiful place by the sea" is an incorrect translation and should not appear anywhere in the Charter
- Consider creating a Town Planning Committee to identify buildable land, conservation land and formulate a strategy for future land use
- Detailed comments on Sections 100 and 200 (circulated separately to Commission members)

It was agreed that the Secretary be added to the recipients of emails sent to the Town box. She will circulate any such emails to the Commission and keep a running list of points made, for consideration when the relevant section of the Charter is discussed.

Preamble

The revised draft versions of the Preamble prepared by Commission members had been circulated for review prior to the meeting. The Chair proposed agreeing on a version or versions

for further discussion. Version 2 (Wendy Levine) and Version 4 (Peter Griswold) had received the most votes and the Commission agreed to move forward with these two drafts. The final version must conform with the contents of the Charter and should also be aspirational / inspirational, inviting people to read and understand the document. It was agreed to return to Versions 2 and 4 at the end of the review.

Article 1 – Grant of Powers to the Town

The key decision for Article 1 is whether to simplify it and delete the list of powers or to have an inclusive list. Alternative versions were presented for the Commission’s consideration. The simplified version is based on the Town of Wells’ Charter.

The Town Attorney advised that if a list appeared to be all-inclusive, it should be so in actuality. The provisions of Article 1 deal with the Town’s powers generally, but specific powers and duties which are exercised by the Select Board and the Town Manager are set out in later articles.

Some of Article 1’s language is obscure. For example, “Flat Pond” (referred to in 102.9) is Perkins Cove. There is no longer a physical Town Meeting: should it be clarified that this is a form of government which can be open or by secret ballot? There are several Town maps: which “map of the Town” is referred to in 102.17?

Peter suggested creating a “Definitions” section for the Charter, as is usual in legal documents. As the Commission works through the Charter, words requiring definition will be identified and defined, with the advice of the Town Attorney as appropriate.

After further discussion, it was agreed that Article 1 be redrafted to remove Section 103 and to add any relevant links to State law. The Chairman invited comments from the public on this matter.

Topics for discussion

The Chairman had proposed that at each meeting, the Commission consider one article and one topic. The topic should be a matter to be discussed before the relevant article(s) was / were reviewed. For example, the Search Committee had raised concerns about the process for hiring the Town Manager and it would be valuable to have input from Committee members before discussing Article 4.

For the Meeting Pack, the Secretary had compiled a list of topics raised by Commission members and/or received from members of the public. Those which had been raised by more than one person were highlighted.

Terry Ann said that conflicts of interest and the appearance of a conflict of interest should be included in the list.

Public input: reference was made to an earlier comment on removing term limits; it was stated that as the public had recently voted for term limits, the Charter should not overturn this decision which was in line with national support for term limits.

Article 2

Pat Hussey had prepared briefing material for the Commission (circulated with the Meeting Pack) looking at the definition of domicile and set out her concerns about the definitions of voter and domicile and what that means for Ogunquit. Difficult situations regarding eligibility had arisen recently: should the Commission recommend hiring a part-time registrar to review the voter rolls every few years?

The Town Attorney said that 30-A MRS §2501(2) of Maine State law set out the qualifications for voting in municipal elections and that the Town had no authority to make its own definition.

Note: The Town Attorney has subsequently provided an excerpt from the Maine Municipal Association's Elections Manual, included in these Minutes for information:

"Qualifications for Voting: The third aspect of Section 2501 requires reference to 21-A M.R.S. § 111, which sets forth the general qualifications for voting. Briefly, voter qualifications relate to citizenship (U.S.), age (18 or older), voting residence (a person must have established and maintain a "voting residence" in the municipality in which the person seeks to vote), and registration as a voter in the municipality in which a person seeks to vote. Section 112 defines "residence." Title 30- A M.R.S. § 2501 does not allow municipalities, whether by charter or ordinance, to vary any of the voter eligibility requirements, including the definition of "residence."

Peter proposed that the Commission ask the Town Clerk to describe the checks that she makes. This led to a wider discussion about implementing the provisions of the Charter and whether additional administrative guidance is needed.

The Chairman asked for input from members of the public attending: none was given.

Actions:

- Chairman – invite the Town Clerk to speak at the October 6 meeting on the Town's election management generally, including but not limited to the registrar process (for example, voter registration, updating the voter list), and on petitions and town meetings.
- Town Attorney – identify which Town Committees are required by State law (including reference); provide examples of types of petitions which are excluded by other municipalities

5. Next Meeting

Article for review: The next meeting will review Article 2 in detail with input from the Town Clerk. If time permits, review of Article 3 will begin.

Topic for discussion: Town Manager Search process

Action: Chairman will co-ordinate input from Search Committee

6. Close of Meeting

Moved by Peter Griswold, seconded by Terry Ann Lunt, that the meeting be adjourned. By unanimous consent, the meeting was adjourned at 10.47 am.

Respectfully submitted,

Robin Millward

Ogunquit Charter Review Commission Secretary

Note: These minutes are not a transcript.

OGUNQUIT CHARTER REVIEW COMMISSION

October 6, 2020

9:00 AM

Supporting Documents and Discussion Papers

Discussion Document: Recommendations on the Town Manager Search Process (Article IV, Section 402) prepared by Fred Lynk and Pamela Sawyer

Discussion Document: Comments on Article II (William J Sawyer)

Discussion Document: Topics for Discussion at Future Meetings (recirculated)

For Information: Summary of Public Comments to date

**Ogunquit Charter Review Commission:
Town Manager Search Process**

These Recommendations on the Town Manager Search Process (Article IV, Section 402) have been compiled by Fred Lynk, Chair of the 2017 Town Manager Search Committee (TMSC), and Pamela Sawyer, Member.

We believe that that the current process is overly prescriptive, and there are too many requirements to involve the Select Board in the initial screening. Candidate vetting should be vested solely in the Search Committee. Other than to inform the Select Board of progress through a briefing by the TMSC Chair periodically, the Select Board's involvement should begin when the Search Committee provides a list of finalists.

In addition to, or in lieu of using resources available from MMA, the Town should consider hiring a search consultant to assist with arranging for and structuring interviews and doing background checks. This helped move the process along the last time. The Select Board Liaison should arrange for funding. The Town's use of Don Gerrish from Eaton Peabody to serve as both Interim Town Manager and Search Consultant may not have been an optimal arrangement. While the TMSC process was underway, Mr. Gerrish provided resumes of all the candidates who had applied for the job to the Select Board, and this was information overload.

The current Charter is silent on the Search Committee's doing candidate interviews. The most recent Committee unanimously wanted to interview candidates, and interviews were conducted to develop a list of finalists. Since most candidates were Maine-based, this was done in person. One interview was done via Skype. We have no point of view as to whether this should be incorporated in the Charter. Since the Town is now comfortable with using Zoom, it may make sense to use that means for interviews to save time and expense.

Seven is a good number for a Committee like this. Charter language in Section 402.2 A is ok.

Sections 402.3 – 402.6 are ok as is.

The requirement in Section 402.7 whereby the Select Board receives copies of the applications should not be spelled out in the Charter because the Select Board wouldn't have the depth of knowledge concerning the candidate base and wouldn't be able to evaluate one against another at this point. The Select Board should receive finalist resumes along with the list of finalists.

Section 402.8 reads "Before doing any interviewing, The Search Committee shall present to the Select Board a semi-final list of candidates for the position of Town Manager." This is ok but we suggest striking ~~By a majority vote the Select Board may add to the list of semi-finalists the name of one or more applicants taken from the list of all applicants.~~ The reason is that should the Select Board desire to add names to the TMSC finalist list, they should come from the semi-finalist list.

Section 402.9 should be eliminated. While requiring a questionnaire is something that the Committee may consider, it is of questionable value because it is difficult to compare the candidates because many wrote the same thing. If used as a tool, it need not be developed jointly with the Select Board. This slows the process down.

Suggested language for Section 402.10 ~~Strike After reviewing the questionnaires, the Search Committee shall present to the Select Board a list of finalists, not to exceed five (5). This is a good number because finalists can and do drop out at this stage.~~

402.11 By a simple majority vote, the Select Board may add to the list of finalists' additional finalists from the original list of semi-finalists, not to exceed two (2). This is ok.

402.12 The Select Board shall, as a group, interview in person in executive session, each of the finalists for the position of Town Manager. This is ok. Further we recommend that the TMSC participate in these interviews through the Chair and/or Vice Chair. In the subsequent discussion about candidates, TMSC representation can validate that the same things are being said to both groups.

402.13 Appointment of a Town Manager requires a majority plus one vote of the entire Select Board. Ok

402.14 In the event the Select Board is unable to meet the requirements for appointing a Town Manager, the position shall be advertised again and the search re-started. Strike this.

402.15 If the office of Town Manager becomes vacant for any reason within ninety (90) days of the appointment of the Town Manager, the Select Board may choose a new Town Manager from the list of finalists in the previous search. Strike this.

One element of the last search that worked was to invite the two Select Board finalists to meet the Town residents in a meet and greet. While this is a nice gesture, the residents are not hiring the Town Manager. The Select Board is. At a minimum a meet and greet should occur between the finalists and Department Heads.

We believe that the most important requirement for serving on the TMSC is the ability to maintain confidentiality. This was not a problem in 2017. All members were instructed to return all materials as well as individual notes and work papers to the Dunaway Center for destruction. One official file of materials is maintained by the Town.

September 28, 2020

Ogunquit Charter Review Commission:

Thoughts on Article II – William Sawyer

ARTICLE II

TOWN MEETINGS

Section 201 PURPOSE

The purpose of Town Meetings is to allow voters to exercise their powers under the Town Meeting- Select Board – **Town** Manager form of government and to provide for the election of municipal officials and other elected officials, appropriation of funds, approval of warrants, adoption of ordinances and any other business that may legally come before the meeting.

Section 202 QUALIFICATION OF VOTERS AND DEFINITION OF RESIDENT VOTERS

202.1 Eligibility of voters shall be as determined by the Statutes of the State of Maine. **ADD LINK TO STATE STATUTE**

“Qualifications for Voting: The third aspect of Section 2501 requires reference to 21-A M.R.S. § 111, which sets forth the general qualifications for voting. Briefly, voter qualifications relate to citizenship (U.S.), age (18 or older), voting residence (a person must have established and maintain a “voting residence” in the municipality in which the person seeks to vote), and registration as a voter in the municipality in which a person seeks to vote. Section 112 defines “residence.” **Title 30- A M.R.S. § 2501 does not allow municipalities, whether by charter or ordinance, to vary any of the voter eligibility requirements, including the definition of “residence.”**

Consider adding the specific process used by the Ogunquit Town Clerk to register voters and used to keep the voter rolls current.

202.2 Resident Voter shall be defined as: **MOVE TO DEFINITIONS**

A person who appears on the Town’s voter registration rolls maintained by the office of the Town Clerk certifying eligibility to vote in the Town in local, State and national elections, having listed in such rolls the name and place of ~~domicile~~ **residence** (home address) located within the border of the Town.

~~**202.3** Domicile shall be defined as:~~

~~That place where an individual has his/her true, fixed and permanent home and principal establishment and to which whenever he/she is temporarily absent has the intention of returning.~~

Section 203 TOWN ELECTIONS

Provisions of the Laws of the State of Maine relating to the qualifications of voters, registration, the manner of voting, the duties of elected officials and all other particulars respective to preparation for, conduct of and management of elections, as far as they may be applied, shall govern all Town elections except as otherwise provided in this Charter. Title 30-A, MRSA as amended shall govern the manner of voting in Town elections, provided that all voting shall henceforth be conducted by secret ballot pursuant to the provisions of Section 2528 thereof. In addition, voting on budgetary matters shall be conducted in accordance with the provisions of Section 503 of this Charter.

203.1 TERM LIMITS

Term limits shall be established for all elected members of the Town of Ogunquit Select Board and Budget Review Committee. Term limits shall consist of two (2) consecutive terms. Limits shall include any term or portion of a term of office. An individual who is affected by the term limit restriction shall be eligible for election to a Board or Committee once a one (1) year period has passed since the restriction took effect.

Section 204 PROCEDURES

The Annual Town Meeting shall be held on the second Tuesday of June, **unless special circumstances, such as a State emergency, cause the date to be changed.** Notice of a Town Meeting, to include a specimen ballot, shall be conspicuously posted in at least three (3) public places **(I question if this is still necessary)** and on the town website (townofogunquit.org), at least thirty (30) calendar days in advance of the voting day. Notice of the meeting shall also be posted on the public access channel (WOGT) at least thirty (30) calendar days in advance of the voting day.

Town Meetings shall be initiated and conducted in the manner provided by applicable State Statutes. A quorum for the purpose of conducting the business and exercising all the powers of the Town Meeting shall consist of a number of eligible votes cast equal to at least twenty-five percent (25%) of the number of eligible votes cast in the Town at the last gubernatorial election.

Section 205 SPECIAL TOWN MEETINGS

The Select Board may call a Special Town Meeting whenever deemed necessary or on petition of the voters. If the Select Board ~~unreasonably~~ refuses to call a Special Town Meeting, it may

be called by a Notary Public in the County on the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election.

Notice of a Special Town Meeting, to include a specimen ballot, shall be conspicuously posted in at least **three (3) public places ???** and on the town website (townofgunquit.org), at least thirty (30) calendar days in advance of the voting day. Notice of the meeting shall also be posted on the public access channel (WOGT) at least thirty (30) calendar days in advance of the voting day; and in compliance with applicable State Statutes. A quorum for a Special Town Meeting shall be twenty five percent (25%) of eligible votes cast in the Town at the last gubernatorial election.

Section 206 WARRANT ARTICLE(S) BY PETITION OF VOTERS

Article(s) for the Warrant of any Town Meeting may be requested of the Select Board, **with the exception of Articles of a budgetary nature. Budgetary Articles must be reviewed by the Budget Review Committee as described in Article 5 herein.** The article(s) may be inserted in the Warrant of an Annual or Special Town Meeting upon receipt of the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the town at the last gubernatorial election but in no case less than ten (10). If a petitioned article calls for an illegal act, the Select Board may refuse to put it on the warrant since it would not be effective if adopted. **If the petitioned Article does not call for an illegal act and** if the Select Board ~~“unreasonably refuses”~~ to place a petitioned article on the warrant, ~~petitioners may seek relief from a notary public in accordance with 30-A M.R.S.A. §2521(4).~~ **it may be placed by a Notary Public in the County on the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election.**

**Ogunquit Charter Review Commission:
Discussion Document: Topics for Discussion (previously circulated)**

Note: This paper is based on a document provided by William Sawyer and incorporates points raised by Commission members and members of the public. Points raised by more than one person are highlighted. Others may be added at the meeting.

- 1) Article II Voter Qualification [also impacts Article VIII]
- 2) Article III section 302 additional / more detailed qualifications
- 3) Article III section 309.2 conviction of crime
- 4) Article III section 310.10 enhance role of external auditors; clarify Management and Select Board responsibilities for addressing recommendations
- 5) Article III section 310.3 and 310.4 Special Project Manager
- 6) Article III sections 311.2 / 310.1 – review duties of Select Board / Town Manager
- 7) Article IV section 402, interviews, questionnaire
- 8) Article IV section 405.5 removal of department head – notice and hearing
- 9) Article IV section 405.11 Financial report? response to questions?
- 10) Article IV section 405.14 grant applications approved by the Select Board
- 11) Article V section 504 taxation?
- 12) Article V section 506 audit report 90 days before Town Meeting
- 13) Article VIII section 801 Board of Assessment Review required by state statutes? Specify required Boards / Committees and clearly state which Boards preclude simultaneous membership of another Board.
- 14) Article VIII section 801.1 A.2.f include statement on ethics
- 15) Article VIII section 802.2 alternate terms end when?
- 16) Article VIII section 802.3.A.1 clarify procedure for filling vacancies on BRC
- 17) Article VIII section 803 appointed member forfeiture of office – not for a crime?
- 18) Article VIII section 804 Recall make consistent for all boards
- 19) Article VIII section 804.1 specific reason or specific crime?
- 20) Article VIII NEW SECTION establish Land Use Committee to oversee conservation and development of available land
- 21) NEW PROVISION: rules concerning number, design and placement of signs during political campaigns
- 22) NEW PROVISION: Code of Ethics for anyone dealing with the Town, including at the podium and online, consistent with the Code of Ethics for Boards & Committees
- 23) NEW PROVISION: Make job descriptions for all key positions available to public, and complete performance appraisals annually, each signed by the supervisor and employee
- 24) NEW PROVISION: Ensure Town policies / ordinances are available to the public electronically as well as in print

In addition:

- 25) Determine whether within the CRC's remit to look at municipal ordinances and correct discrepancies
- 26) Eliminate use of "Beautiful place by the sea" – it's an inaccurate translation
- 27) Ensure Charter is accessible to blind / partially sighted people
- 28) Re-think rule by Minority (Article II 205, 206, and 804.1.A)

**Ogunquit Charter Review Commission:
For Information: Summary of Public Comments as at
September 30, 2020**

General

Update and streamline the Charter, use plain language, make it an easy reference document and minimize ambiguities that lead to different interpretations.

Put “teeth” into the Charter – specify consequences when it is violated.

Include “Definitions” page but call it Glossary / Glossary of Terms and put it after the Table of Contents. *[Note – I assume the writer means “immediately after”, as it will follow in any case.]*

Links to other documents – distinguish between links to Maine State law and references to a local ordinance / Town website document / map

Adopt Terry Ann’s suggestion of criteria for each section: purpose; whether broad governance or better dealt with by ordinance / administrative procedure; be more or less specific; in conflict with State law; how implemented. Secretary to prepare a list of points as discussion framework.

Review Municipal Ordinances (if falls within CRC’s remit to do so).

Post all Town policies on the Town website.

Limit the number and variety of signs which political candidates can put up and specify areas where signs cannot be posted.

Article 1 – Grant of Powers to the Town

On the basis that the “list” approach is retained:

New Explain how Departments other than those included in the list are established and maintained, e.g., Public Works

102.6 After “necessary” add “for the efficient operation of the Town”

102.9 Delete “Widen, deepen, extend and”

Article 2 – Town Meetings

203.1 Eliminate term limits

203.1 Do not eliminate term limits as this provision was recently agreed by voters

203.1 Specify that term limits include any term or portion of a term of office.

203.3 Domicile shall be defined as: That place where an individual has his/her true, fixed and permanent home and principal establishment and to which whenever he/she is temporarily absent has the intention of **will** returning. **Or returns** The word “intention” could mean an individual living in another jurisdiction for 10 years yet still be able to vote absentee in OGT because of an “intention” to return some day in the future. Doesn’t make sense.

204 After second paragraph, identify relevant State statutes

206 Final sentence: are quotation marks necessary – if the Select Board “unreasonably refuses” to place a petitioned article on the warrant? Should “unreasonably refuses” be defined?

Article 3 – Select Board

308.4 Review use of Robert’s Rules – are they still relevant? [also 801.B]

Article 4 – Town Manager

402.2 Review Town Manager selection process.

402.2 The Town Manager process should be streamlined

Article 8 – Boards, Committees and Commissions

801 Preclude non-resident Board members from serving as Chair and consider making their role advisory only

801.B Review use of Robert’s Rules – are they still relevant?

802.3 Add language to this section clarifying provisions for alternates filling empty seats mid-term

802.3 Terms for Boards and Committees should end with the end of the fiscal year, with specific powers for the Select Board to extend terms until the next scheduled election. [Note: arises from issues related to postponing the June 2020 Town Meeting.]

New Create a Town Planning Committee to identify buildable land, conservation land and formulate a strategy for future use