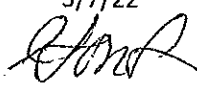


**CHARTER REVIEW COMMITTEE**  
**MINUTES**  
February 7, 2022  
*Virtual meeting convened via Zoom  
and recorded  
with remote participation*

Date approved:  
3/7/22  


The meeting of February 7, 2022 was called to order at 5:30 pm by Jon Fuller, Chair, via Zoom. Present by roll call were Mr. Fuller, Mark Berson, Patricia Fallender, Robin Hubbard, and Gail Meyers Lavin. Walter North joined the meeting at 5:54 pm. Maxine Minkoff and Meff Runyon, Select Board Liaison, were not in attendance. **This was a virtual meeting convened and recorded with remote participation via Zoom.**


**It was moved by Gail Meyers Lavin, seconded by Patricia Fallender, to approve the Minutes of January 31, 2022 as amended, and voted unanimously by roll call – 5-0-0.**


**Public Comment:** No one was present.

**Tracking Sheets:** No report.

**Resource Page Update:** Gail Meyers Lavin said that she would like to add a printout of the Warrant Article she had made from the Town Report that changed the name of the Board of Selectmen to Select Board and a copy of the subsequent Question voted at the Ballot the following year. She explained that the Town Clerk had received the draft Charter corrections from the eCode360 company on Friday while she was out of the office and had kindly sent them to Ms Fallender and her because she knew of their interest in getting a current, accurate, updated Charter on the website. She informed the Committee that although the company had done the corrections that she and Ms Fallender had provided, they discovered over the weekend that the omnibus change from Board of Selectmen to Select Board, which dated back to June 2020, had never been done. They confirmed in response to Mr Fuller’s question, that it had been changed and put into Town practice in June 2020, but had never been reflected in the online Charter that they are trying to make correct. It was agreed by consensus to add the printout to the Resource Page. Ms Lavin added that the Town Calendar now identified the Feb 11<sup>th</sup> meeting as a Public Hearing, and that she and Ms Fallender were working on getting the Public Hearing information added as noticeably as possible and an eBlast sent.

**Update and re-wording of Draft Articles from Town Counsel:** Ms Lavin suggested that she quickly read aloud the Notes she had sent to members following the meeting with Town Counsel, and then the Committee could go through the Articles individually before reviewing the Power Point presentation. She said that the **“NOTES after meeting with Town Counsel, Feb. 1, 2022,”** would be appended to the Minutes, and CRC Public Hearing Draft Articles and the CRC Draft Articles – PowerPoint (PDF) would be located on the [www.town.orleans.ma.us/charter-review-committee](http://www.town.orleans.ma.us/charter-review-committee) page.

 [CRC Public Hearing Draft Articles](#)

 [CRC Draft Articles - PowerPoint \(PDF\)](#)

**At DRAFT ARTICLE H Rationale:** Mr Berson asked for more information on why Town Counsel and the Town Administrator did not want the word “betterments” used, and strongly objected to it being removed. Ms Lavin read Mr Kelly’s reasoning that the word “betterments” was not an accurate phrase to use in this context, and that he and Mr Ford suggested that the language could say “to provide for the use of fee proposals” instead. After discussion, it was made clear that the word “betterments” was not in the Article itself, which only changed the language to add the words “and fees” to update that the sewer system had not been built at the time of the last Charter Review, the reference to betterments had only been mentioned in the Rationale, which was for the CRC’s purposes to use at the Public Hearing, and could be changed afterwards.

Mr Fuller asked if the Committee could go through the full DRAFT ARTICLES document with the actual language at this point, and Ms Lavin and Ms Fallender re-started the document, where there were no comments until Draft Article E. Ms Lavin stated that if a Draft Article did not need to be re-voted at this meeting, Town Counsel's comments were addressed in the "NOTES" appended to these Minutes.

**DRAFT ARTICLE E Rationale:** Ms Fallender read out the Rationale which she and Ms Lavin had been asked to re-draft before going to see Mr Ford. Walter North suggested in line 4, to substitute the words "*protections in place,*" instead of "*constraints in place.*" It was moved by Ms Lavin, seconded by Mr North to approve the revised Rationale, which was voted unanimously by roll call 6-0-0.

**DRAFT ARTICLE F Rationale:** Ms Lavin read out Town Counsel's suggestion to add a few more words to better clarify the reasoning: "*The deleted phrase was transition language used when the Charter was first adopted and is no longer relevant.*" It was moved by Mr North, seconded by Robin Hubbard to adopt Mr Ford's language as a clearer explanation in the Rationale, and voted unanimously by roll call 6-0-0.

**DRAFT ARTICLE H:** Ms Fallender explained that this Article had a series of sections all relating to the Board of Water and Sewer Commissioners; and under Section 6-8-2, where the CRC had been asked by the Commission Chair to consider increasing the number of Select Board appointments, Mr Ford suggested adding "..., bringing the total number to seven (7) members and two associate members." It was moved by Mr Berson, seconded by Ms Lavin to accept the clarifying language, and voted unanimously by roll call 6-0-0.

Referring back to the earlier discussion on Article H about the use of the word "betterments" in the Rationale for Section 6-8-3, it was moved by Ms Lavin, seconded by Mr North to delete the word "betterments" and insert "to provide for the use of fee proposals," and voted unanimously by roll call 6-0-0. It was again noted that Draft Article I was now part of Draft Article H, which will be shown at the Public Hearing Friday and in handouts at the Snow Library, in the Town Administrator's Office and online on the CRC page.

**DRAFT ARTICLE J -- formerly K when Draft Article I was added to H:** Ms Fallender read out the changes Town Counsel had suggested for the second sentence of 2-1-3: "Once the Moderator has declared a quorum is present and called the Town Meeting to order, the quorum necessary to continue Town Meeting business becomes zero." Mr North noted that previous language in the rationale had stated that reducing the quorum would prevent the possibility of having to re-do the whole Town Meeting if the quorum were lost. A discussion of "what ifs" occurred; and members also questioned whether because of this new language for 2-1-3, Section 2-1-4 should be deleted, which currently said, "*Any five or more members may challenge the existence of a quorum. If the Moderator determines the number in attendance to be less than the established quorum, the Moderator shall adjourn the meeting to a stated date, time and place.*" CRC members recalled discussing this previous issue, but it had not been in the Draft Articles taken to Mr Ford to question its deletion.

Members also discussed whether or not the language should add something like "after the Town Clerk certifies that there are 100 people present, the Town Moderator shall declare a quorum..." Ms Lavin felt strongly that the Town Moderator was in charge of the Town Meeting and however he got to the declaration was for him to decide, and Ms Hubbard suggested that he be asked for his thoughts after the Hearing. Mr North also suggested that Town Counsel be asked to comment on whether 2-1-4 was still needed. Mr Fuller agreed and Ms Fallender added that she felt that adding to the Rationale about adjourning the meeting to another day was no longer relevant.

Mr North asked if the Rationales could be changed after the Hearing, to which Mr Fuller replied that they could, and that they were for the purpose of the Hearing. Ms Lavin added that Rationales were not placed in the Warrant, rather that Summaries were written for each Article. She added that the Rationales were really to help the Committee rationalize its work for its own purposes and to debate the changes recommended but were also for the purpose of the Public Hearing where a brief explanation can be given.

It was moved by Ms Fallender, seconded by Ms Lavin, to approve the new language as written for 2-1-3, and voted unanimously by roll call 6-0-0.

**DRAFT ARTICLE K – formerly L:** Ms Lavin explained that Chapter 7 “Citizen Participation, Election and Recall” was her assigned chapter, which had not come up yet for review. But she said that when Ms Fallender and she were looking to see if any changes the Committee was considering might affect other sections; she realized that Chapter 7 needed to be made consistent with Chapter 2 and elsewhere, adding the website as a place where residents could find information. She noted that Town Counsel had remarked about 7-1-2 that he never thought the language made sense for the Select Board to call the annual July meeting and where it would be advertised in Section 1 without explaining its purpose until the next section; and she and Ms Fallender had agreed. She said that there was no change of language – just moving Section 7-1-3’s wording into the second sentence of 7-1-2. **It was moved by Ms Fallender, seconded by Ms Lavin to approve the changes to 7-1-2 and the appropriate moving of section numbers, and voted unanimously by roll call 6-0-0.**

**Article L – formerly M: Code of Conduct 3-2-4:** Ms Lavin reminded members that there had been an alternative Code of Conduct suggestion discussed on January 24<sup>th</sup>, but it had been rejected in favor of the one voted that night and taken to Town Counsel. She said she felt that she should bring it up for discussion in view of Town Counsel’s recommendation that the section as presented was not acceptable, and that it might help the Committee decide whether to table the Article to discuss it further, as Town Counsel advised, for the Fall Special Town Meeting. She read out the suggested language to 3-2-4: *“Consistent with the Open Meeting Law of the Commonwealth, the Board shall adopt a code of conduct for civil participation in Town affairs such as multi member body meetings and public hearings.”*

Members debated whether the one sentence Mr Ford suggested as an alternative met the needs that had been reviewed quite carefully at several meetings, whether the accuracy of the Town not being able to require employees’ behavior in the Charter because of their collective bargaining contracts, and for citizens not to be able to be held to certain behaviors in a Charter. Ms Lavin commented that when discussing the Code language with Mr Kelly and Mr Ford, the FinCom’s Code of Conduct had come up, which was very detailed, but in terms of the Charter, Mr Ford did not think that it was acceptable in its present form and recommended continuing to review it. Mr Berson remarked that he did not agree, adding that he had looked at a lot of towns and done a lot of research before presenting his draft, and that the language was not at all a unique concept. Ms Hubbard agreed, noted that the Town of Provincetown had recently passed a Code; and they and others discussed how some towns had regulated how people used social media, suggesting that the language could say “consistent with contractual obligations” regarding employees, or something similar. Ms Lavin reminded members that any Draft Article tabled now could come back in the Fall and would be on the same ballot in May 2023 just as those presented in May 2022. Mr Fuller agreed, adding that this still generated a lot of discussion, and moved, seconded by Mr North, to take Town Counsel’s advice, and to postpone and table this new section for further discussion. It was unanimously voted by roll call 6-0-0.

**Article L – changed from N and M: 3-3-4 Emergency Plan:** Ms Fallender explained that Mr Ford had said that the language was too prescriptive for a Charter; and after discussing it with Mr Kelly and Ms Lavin, she said that they had all concluded that it would be best to table this Article for further discussion. She said that Mr Kelly and Mr Ford agreed that the responsibility was the Fire Chief’s but Mr Ford said that the language as currently written was not Charter language. She added that after continuing to review it, he offered the following alternative: “The Board, acting through the Fire Chief, shall develop and annually update the Town’s Emergency Plan and publish publicize appropriate emergency response guidance to its citizens on the Town website and by any other means.” Members questioned whether this language was sufficient; but Mr Fuller moved for discussion, seconded by Mr North, that the Committee accept a delay, following what Mr Ford had said, and recommend that the Board develop a policy.

Mr Berson vigorously opposed this, arguing that the Committee had heard from the Fire Chief, Police Chief, Health Agent and DPW Director that a coordinated plan did not exist and had not been put into place the way it

was needed. He reminded members that the Town was operating on an understanding that emergency services had all been working but the planning needed shoring up. He said that to continue thinking that everyone will continue to do their jobs as well as the current staff was doing was very ill-advised. He felt that the language he had written tied all the elements together and laid out a real architecture to follow. It was agreed that the one sentence alternative was a watering down of what the Committee had wanted to achieve. Ms Lavin said that the Article seemed to warrant more discussion, and that somewhere between what Mr Berson wrote and the alternative, the Committee could get to language that Town Counsel and Mr Berson could feel better about if it were postponed now. She added that members could continue to debate this now instead of finishing the work needing to be done ahead of the Hearing. Mr Fuller said that he was willing to withdraw his motion, and Mr North agreed to withdraw his. All agreed that this issue was more important than the suggested one sentence. Mr Fuller moved, seconded by Mr North to table the Article for now and continue discussion of Section 3-3-4 for the Fall Town Meeting. It was voted unanimously by roll call 6-0-0.

**Article L – changed from previous L, M and O: Town Administrator to Town Manager:** Ms Lavin moved, seconded by Ms Hubbard, to go forward with the omnibus change of title from Town Administrator to Town Manager, and it was voted unanimously by roll call 6-0-0.

**Article M – changed from P and O –Timing for advertising and filling vacancy:** Ms Lavin explained that Town Counsel and the Town Administrator were concerned that changing the hire to be within four months as opposed to six months as currently written might not give the Board enough time to select the right person. Mr Fuller said that in his experience he had seen after a vacancy no action had been taken by the Select Board for several months, and he did not want to see that repeated. Members commented that it might be the first sentence about advertising “as soon as possible” that needed to be made more specific, and whether it might have language similar to the Article about Warrants - ie “within a month” or “at most” or “no more than.” Mr Fuller and Ms Lavin recalled separate incidents when the then Board did not follow the Charter at all either in timing or in following the stated qualifications for serving as Town Administrator. Mr Berson asked about an Acting Town Administrator. Mr Fuller explained that once a year the Board designated someone recommended by the Town Administrator to act in his/her absence, and Ms Lavin commented that the process had always seemed odd. She recalled that despite having had an Assistant Town Administrator in the past, that person had never been selected to serve in the Administrator’s absence. After further discussion on how the Article could be worded, it was pointed out that preparing for the Public Hearing was the CRC’s current goal, and now that the issue had been uncovered, it made sense to table it and return to it after the Hearing. It was moved by Mr Berson, seconded by Ms Lavin to table it for now and return to it after the Hearing. It was voted unanimously by roll call 6-0-0.

**Public Hearing Plans:** Ms Fallender suggested a brief run through the Power Point while going through the logistics of how the meeting would be organized, including reminding people at the beginning that there was an 8-page pdf document on the online CRC page [www.town.orleans.ma.us/charter-review-committee](http://www.town.orleans.ma.us/charter-review-committee) that viewers could print out and take notes if that was easier for them to follow, as well as the Power Point in pdf to review further after the meeting.

It was decided that Mr Fuller would open the Public Hearing after the first quick items of business, read the notice, explain that copies of the Draft Articles had been placed at the Snow Library and Town Administrator’s Office, and that viewers could continue to ask for them there. Ms Fallender suggested that Mr Fuller not read every slide, but rather give a general overview based on the first few descriptive slides about the work the CRC had been doing. He said that there would be no public comment at the beginning of the meeting – and if an audience member wanted to discuss something outside of the Draft Warrant Articles, he would advise them to email their ideas to [charterideas@town.orleans.ma.us](mailto:charterideas@town.orleans.ma.us) or attend the next CRC meeting.

Ms Fallender and Ms Lavin said that they would then go through the slides and explain the rationale, and Mr Fuller said that he would ask for questions after each Article, having people identify themselves before speaking. Other process questions were answered – that the Hearing had to go in Draft Article order as they were shown

on the Power Point pdf "share screen," given the already difficult issue of managing a Public Hearing virtually. Mr Fuller added that even if no one were in the audience, it was still necessary for the CRC to go through all the articles for the video.

**Future Agenda Items included:**

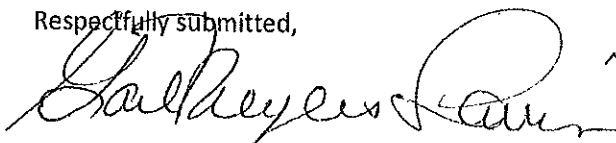
**Feb 11<sup>th</sup> - FRIDAY 5:45 pm Public Hearing**

**Feb 14 – MONDAY 5:45 pm** to go over what happened at the Public Hearing, make any changes and prepare for the meeting with the Select Board, which will be:

**Mar 2 – WEDNESDAY – Meeting with the Select Board – exact time tba**

**A motion to adjourn was moved by Mr Berson, seconded by Ms Hubbard and voted unanimously 6-0-0 by roll call at 7:17 pm.**

Respectfully submitted,



Gail Meyers Lavin, Clerk

The CRC PUBLIC HEARING will be held via Zoom at 5:45 pm on Friday, February 11, 2022.

The next CRC Meeting will be held via Zoom on Monday, February 14, 2020 at 5:45 pm.

**NOTES after meeting with Town Counsel, Feb. 1, 2022**  
Patricia Fallender and Gail Meyers Lavin, Charter Review Committee

**DRAFT ARTICLE A:** OK as written

**DRAFT ARTICLE B:** Mr Ford informed us that this change of Preamble language might be considered not within a Charter Review Committee role, rather more for an elected Charter Commission, and might be considered too political. He said that it could be argued that the original stated all that needed to be said. Ms Lavin noted that the statement "customary and traditional liberties" could be considered too vague – and the CRC wanted to modernize the language to meet today's sensitivities. He said he saw no legal reason it could not go forward but might encounter some pushback.

**DRAFT ARTICLE C:** OK as written, but Mr Ford wanted to confirm Associate Members voting in Home Rule Charters.

**DRAFT ARTICLE D:** OK as written

**DRAFT ARTICLE E:** OK as written

**DRAFT ARTICLE F:** OK - Mr Ford recommended changing the Rationale to say "The deleted phrase was transition language used when the Charter was first adopted, and is no longer relevant."

**DRAFT ARTICLE G:** OK as written

**DRAFT ARTICLE H:** OK, but Mr Ford recommended that 6-8-2 should add the phrase in the last line after "overlapping terms" to add a comma and add "bringing the total number to seven (7) members and two associate members."

**DRAFT ARTICLE I:** Mr Ford also recommended moving this Article (corrected section number should be 6-8-3) into DRAFT ARTICLE H, since they all referred to the Board of Water and Sewer Commissioners. He and Mr Kelly advised removing the word "betterments" as incorrect and adding "to provide for the use of fee proposals" instead.

**DRAFT ARTICLE J:** OK as written. Mr Ford mentioned as an aside that Harwich has a TEN- minute rule!

**DRAFT ARTICLE K:** Mr Ford recommended changing the second sentence of the Article to read: "Once the Moderator has declared a quorum is present and called the Town Meeting to order, the quorum necessary to continue Town Meeting business becomes zero."

Mr Ford recommended a language change to the second sentence of the Rationale to read, "*Once the Moderator has declared a quorum of 100 present and called the Town Meeting to order the quorum becomes zero, and all articles are considered and acted upon without the possibility of questioning the quorum.*"

**DRAFT ARTICLE L:** Mr Ford recommended moving what is currently 7-1-3 up as the second sentence of 7-1-2, so 7-1-2 would read, "The Select Board shall annually, in the month of July, call a public meeting in a public place. The purpose of the meeting shall be to provide non-resident taxpayers, voters, and other interested persons an opportunity to discuss problems, policies and progress. The meeting shall be advertised in at least ~~two issues of a newspaper of local circulation~~ on the Town website and as provided in 7-1-1.  
RE-NUMBER 7-1-4 to 7-1-3

**Still DRAFT Article L:** Sections 7-2-1, 7-2-2, 7-3-3 and 8-6-1: Mr Ford recommended changing "and in several public places" to "in at least three public places."

**DRAFT ARTICLE M:** Mr Ford recommending tabling this Article until the Fall to discuss further. He noted that the town employees were under contracts, which would be of concern, and he did not feel that the Charter should include citizens in such a section.

**DRAFT ARTICLE N:** Mr Ford said that the language was too prescriptive for a Charter. We discussed it a little with Mr Kelly as well and concluded that this should be tabled until the Fall as well. Suggestions included keeping 3-3-4 as is but identifying the Fire Chief as the person in charge and putting some words in to publicize on the website. He suggested something like:

**3-3-4** The Board, acting through the Fire Chief, shall develop and annually update the Town's Emergency Plan and ~~publish~~ publicize appropriate emergency response guidance to its residents on the Town Website and by any other means.

**DRAFT ARTICLE O:** OK as is. Mr Ford confirmed that the title could be changed throughout as an omnibus article as the Select Board change had been done.

Language would be: To see if the Town will vote to adopt the following proposed order of amendment to the Orleans Home Rule Charter:

By striking out the words "Town Administrator" wherever they appear, and inserting in place thereof, in each instance, the words "Town Manager." Or to take any other action relative thereto.

**DRAFT P:** OK as is, but both Mr Ford and Mr Kelly felt that reducing the number of months to fill the vacancy could potentially not give the Select Board enough time to choose the best candidate and added perhaps too much pressure.