

ORLEANS TOWN CLERK
Julie Higgins

**CHARTER REVIEW COMMITTEE
REVISED MINUTES**

June 6, 2022

Orleans Town Hall Nauset Room and by Zoom

Date approved as amended:
6/27/22
JML

The meeting of June 6, 2022 was called to order at 5:30 pm by Chair Jon Fuller. Confirmed present by roll call were Mr Fuller; Vice-Chair Patricia Fallender; Clerk Gail Meyers Lavin; Mark Berson, Robin Hubbard, and Maxine Minkoff. Walter North was unable to attend and Select Board Liaison Meff Runyon was not in attendance.

The Minutes of May 16, 2022 were moved by Robin Hubbard, seconded by Patricia Fallender, and unanimously approved by roll call 6-0-0. (Clerk's Note: - re-voted 5-0-1, as Mr Berson was not in attendance at the May 16 meeting.)

Public Comment: None

Tracking sheet: Patricia Fallender informed the Committee that she had gone through the spreadsheets to annotate the items that have been completed or dealt with, and will send a copy to members to review, add, and/or comment to review what is left before asking to put it in the Resource Folder.

Resource Page: None

Jon Fuller said that he had heard from the Town Clerk that the Attorney General had received the CRC Warrant Article votes and the Town Clerk's office will advise the Committee when the results of the AG's communication arrive.

Continued Review of Chapter 9: Jon Fuller and Maxine Minkoff noted that they had separately contacted George Meservey and/or Chet Crabtree, Planning Board Chair, and were surprised that neither were in attendance nor had responded after receiving the request to attend tonight's meeting. Mark Berson asked what the purpose was of the questions he had sent to Mr Fuller – would they be discussed before meeting with them or at what point? Mr Fuller indicated that he had taken them to Mr Meservey who said he would share them with Mr Crabtree but had not heard back and had been unable to follow up today. Ms Minkoff said she had spoken with one Planning Board Member and with Walter North as well but had no formal responses or suggested feedback.

Robin Hubbard reminded members that the Committee had discussed reversing the order in 9-1-3 to be Town Administrator/Manager, Select Board, and Town Meeting rather than the way it read now in the Charter. Mr Fuller said he felt that this order should be reversed to follow an appropriate chain of command. Ms Lavin recalled that the section might be another "legacy" from the time the Charter Commission switched the Planning Board from elected to appointed after a public hearing and had intended that it would have the power to take its recommendations directly to Town Meeting for its approval. Mr Fuller said that in the new division of responsibilities, the Town Manager could be appointing the Planning Board, so the order should be reversed.

It was moved by Ms Hubbard, seconded by Ms Minkoff to change the order of this section of 9-1-3 to read: "The Planning Board may make recommendations to the Town Manager, the Select Board, and the Town Meeting on all matters concerning the physical, economic, and environmental development of the Town." It was passed unanimously 6-0-0 by roll call.

Mr Berson expressed concern that the words "environmental, economic and physical" had no definitions, and that these were crucial in the life of a town now and going forward. He said that the questions he sent to Mr Fuller for the Planning Board were to gain an understanding of its mandate and whether that mandate was to implement the policy of the Select Board. He added that without definitions the words became a preamble rather than a charge. Mr Fuller noted that the Planning Board itself did not remain static, and as it changed

members, its interests evolved other than its statutory responsibilities. Ms Minkoff noted that the other Committees had charges, but Mr Berson noted that the Planning Board did not – and that was why it needed guidance through these definitions. Ms Hubbard said she believed that the Introduction to the Orleans Comprehensive Plan addressed the charge, and others noted that 9-1-2 referred to their “powers and duties as prescribed by General Law, this Charter, and by By-Law.”

Ms Lavin mentioned that she had come away from the last meeting thinking that the Committee was going to look at those three words and define them. She said she had also looked through old Town Reports and discovered that Orleans once had had an Economic Development Council similar to that which Mr Berson had raised when the CRC began its work, but that the Council, which she learned included Mr Mefford as a member, was established in 1997 and disbanded in 2002. But she added that she had been unable to locate any Minutes or reports and had hoped Mr Runyon had been present to ask.

Ms Hubbard recommended that members consider adding definitions for “environmental, economic and physical” when they considered the Definitions section that they had discussed moving from Chapter 10 to Chapter 1. Members reflected on whether that could be a place to insert which multi-member bodies were related to each. Ms Fallender reminded the CRC that Chapters 1 and 10 would be on the agenda and that additional definitions could be considered at the end of the month when those chapters were reviewed. Mr Fuller agreed that Chapter 1 might be a more appropriate place than Chapter 9 and reminded members to think of possible definitions to bring to that meeting.

9-2-4: Ms Minkoff said that she had made some changes in this section to emphasize the need for all multi-member bodies to be part of the Comprehensive Plan process and that there should be a way for them to be included, which others agreed.

9-2-6: She also suggested a new section 9-2-6, where several amendments were suggested.

Ms Fallender questioned, having voted the change from “shall” to “may” in 9-2-5 at the Annual Town Meeting, whether using the word “shall” for status reports to be presented annually was appropriate for this section. She recalled that they were not presented annually when her husband John served as a long-term member of the Planning Board. Ms Minkoff explained that this section referred to implementation, not alteration of the plan to provide accountability. Mr Berson asked whether the Orleans Comprehensive Plan had any mandate to be implemented by the multi-member bodies and officials. Mr Fuller stated that the Plan was to be updated annually, and had been set up with immediate, medium, and long-term goals. He explained that the Planning Board asked each department in early fall to update which of each of its goals identified in the Plan had been accomplished and provided a report to the Planning Board. The PB would then to compile the data into a report for the Select Board by November 15th. Mr Berson asked him to confirm then that the Planning Board had oversight over the other departments, which he did. Ms Minkoff pointed out that this was what she wanted to emphasize in 9-2-4 - that the Planning Board should be guided by it.

Members continued to discuss the updating of the Plan and noted that the last one, a spreadsheet, had not been updated since 2019, pre-pandemic. As the Committee discussed potential revisions of Ms Minkoff’s proposed new language, Ms Lavin spoke of the distinction between reporting to Town Meeting, which had been voted to say “may” in 9-2-5 and using “shall” to write a status report for the Select Board, which was what was being considered for 9-2-6. Mr Fuller commented that in his view it should be the Town Administrator presenting the Plan to Town Meeting, not the Planning Board, which prepared it but should end its involvement at that point. Ms Lavin remarked that she was disturbed that no member of the Planning Board nor George Meservey had been present tonight to provide their input and feedback before the Committee would possibly vote on it. As an aside, she noted that in the Town Code, the Orleans Comprehensive Plan was still called the Official Town Plan, which needed to be changed.

It was moved by Ms Fallender, seconded by Ms Hubbard to vote new language for 9-2-4 to read: "The Orleans Comprehensive Plan shall be considered in revising the Zoning By-Law. The Planning Board shall also utilize the Plan in making its recommendations to the Town. It shall also be used by other multi-member bodies in discharging their responsibilities. serve as a guide by the Zoning Board in revising the Zoning By-Laws, the Planning Board in making its recommendations to the Town, and by other multi-member bodies considering and making recommendations to the Town Administrator and Select Board." It was voted unanimously by roll call 6-0-0.

It was moved by Ms Hubbard, seconded by Ms Fallender to vote a new section 9-2-6 to read: "Status reports on the implementation of the Orleans Comprehensive Plan shall be updated annually by the Planning Board and shall be based on data gathered by the Town Administrator and participating multi-member bodies. Explanations for delays in the implementation of the Plan shall be included. These reports shall be shared with the Town Administrator and the Select Board." It was voted unanimously by roll call 6-0-0.

Members expressed concern about whether the newly proposed articles for the Special Town Meeting in October should use the term Town Manager rather than Town Administrator since the term voted on at Town Meeting in May 2022 will not be confirmed until the ballot vote until May 2023. Ms Lavin asked for clarity on this from Town Counsel, and after further discussion, Mr Fuller agreed that Ms Fallender should write to Michael Ford through the Town Administrator's office, explaining the issue and seeking his legal opinion. Ms Hubbard reminded the Committee that the change from Board of Selectmen to Select Board had been missed when the eCode 360 webpages were updated, and the same thing might occur in this case. Mr Berson suggested using a phrase stating that anywhere the term Town Administrator is used in the Warrant will become Town Manager on the affirmative ballot vote in May 2023 to avoid that. Mr Fuller recommended that a motion be passed as follows:

It was moved by Ms Lavin, seconded by Ms Minkoff, that any votes taken previously using the words Town Manager in place of Town Administrator shall return to Town Administrator until a subsequent decision. It was voted affirmatively 5-0-1 with Mr Berson abstaining.

Mr Fuller asked that these and any other motions as action items for articles be prepared by Ms Lavin and Ms Fallender for the fall town meeting.

Formalize Town Manager's Job Description: Mr Berson began by reviewing what had previously been discussed in earlier drafts but said now that there were basically two ways of doing required qualifications – to either put the pretty specific qualifications in the Charter or make them a matter of contract and agreement – essentially like an "RFP" in that these would be the "specs" for the job of Town Manager. He reminded the Committee that when the CRC first began discussing the specific changes that might occur with a change from the Town Administrator responsibilities to a new Town Manager job description, he had sent suggestions that would first offer clarification in connection with the job description. Then we had further discussion, and he suggested that he could offer something more comprehensive and would demonstrate how this position should work relative to policy making. He said that on May 4th, he sent a new draft provision for the Town Manager, and in 4-1-2 he listed the qualifications with an open-ended approach:

4-1-2 - "The Town Manager shall be a person of demonstrated ability with administrative experience in public management or business administration and who is qualified by reason of education and experience."

He stated that it was broad and flexible and did not prevent any kind of contractual qualification that one might want, making it simpler. He also said that he had totally taken out the elaborate system of removal and suspension of § 9 of Chapter 4 – first because of his hard personal experience, which he described as horrific, and second, the Select Board would be able to remove a Town Manager by majority vote and basically pay that person off. He added that it would take away all the adjudication, a hearing officer, counsel, etc., and the Town could cut its losses. He said that he had come full circle from using the structure that the Town already had –

and suggested that unless making this change, the existing § 9 would be “pretty tough” for a non-lawyer to do without knowledge of the rules of evidence, etc.

Mr Fuller said that he liked Mr Berson’s language better in that it was more general, did not get tied up in the specifics in the Charter, and agreed that much of the detail should be in the contract structure so that if a change were wanted for what the Board wanted that person to do, it would not require a charter change to do it.

Ms Lavin asked to clarify whether members were looking at the specifics of the May 4th document that Mr Berson sent to Mr Fuller. Mr Fuller responded that members would now be looking at a general plan to make the Town Manager’s job more general in the Charter and that the specifics would be done in a contract. Mr Berson confirmed that he was suggesting the inserted language near the bottom of page 3 in substitution for 4-1-2 in the current Charter, which reads:

“The Select Board in its search for a Town Administrator, shall advertise in the International City Management Association (ICMA) Newsletter or similar professional publication and in at least two newspapers having state-wide or regional circulation.”

After several attempts to clarify, Ms Fallender asked if the Committee was discussing replacing the whole original Chapter 4 in the Charter with tonight’s document. Ms Lavin suggested that in 4-1-6 of Mr Berson’s new language, there was too much text and had asked if it could be re-numbered or lettered such as in the existing § 3, so that it would be split up as “4-1-6 a, b, c, d,” to be more noticeable. She commented that the Town Manager’s “Powers and Duties,” which were significant, seemed to her buried under “**1. Appointment.**” She added that the rest of the Charter was divided into “little chunks” with headings – and she thought it would be important to highlight “Powers and Duties,” since it is the essence of the Town Manager’s responsibilities, in a pattern consistent with the rest of the Charter

Mr Berson said that all he was talking about was 4-2-1 and he did not expect the Committee to go through the whole chapter. Ms Minkoff said she understood that we should look at the explanation holistically, but again asked the question of whether Mr Berson was discussing taking a pen and crossing through the whole of the current Chapter 4 and replacing it. After further attempts to clarify, Ms Fallender agreed that she would like to compare the old Chapter to this new Chapter but that some of the old Chapter 4 might need to be retained. Mr Berson stated that this was written as a strong Town Manager chapter, and his intent was to remove all the layerings of approval that after the Town Manager hired someone, he/she did not have to take them to the Select Board for approval. Ms Minkoff said that she thought that the duties would be in the contract not in the Charter – and asked for more time to review the chapter. Mr Fuller stated that he believed that there was agreement to generalize the qualifications and the role of the Town Manager in the Charter, leave the rest to be placed in the contract between the Select Board and the Town Manager but leave it that the Board could overrule in certain instances and by however many votes.

Ms Lavin expressed concern that as written this would appear to give the Town Manager hiring power of the Fire and Police Chiefs and commented that this it would not “fly” in Orleans, to which Mr Fuller noted that it would be illegal for the Fire Chief in any case, given his hiring under the Strong Chief statute. He added that hiring of the Finance Director remained one of the grey areas to be resolved and by what majority of the Select Board. Ms Lavin reminded the Committee that it had taken a number of votes that this chapter would replace, and she had started to put together all the previous votes proposed for the Fall Special Town Meeting as Articles, which she would provide as soon as possible, and Mr Fuller agreed that the Committee would have to look at them. Mr Fuller ended the discussion by stating that he wanted to stick to a more general concept for Chapter 4 and bring it back for review but not at the next meeting.

Code of Conduct: Mr Berson noted that he and Mr Fuller had proposed different views of a Code in previous iterations and that Mr Fuller’s was more open-ended and general. Mr Berson expressed his problems with a lack

of specificity in the more open language because it made the Code more like aspirational recommendations. Ms Lavin read the draft Article voted on 2/1/21 that she and Ms Fallender had taken to review with Town Counsel with the last batch of proposed articles and reminded members that whatever was written, town employees had to come out because they were already contractually obligated. She noted that at that time, Mr Ford had recommended the following: *"Consistent with the Open Meeting Law, the Board shall adopt a code of conduct for civil participation in Town affairs such as multi-member body meetings and public hearings,"* but the Committee had concluded that this language was not enough. Mr Berson remarked that he had seen Codes that regulate the internet, Facebook, telephone calls and other minutiae, and that in terms of Mr Ford's comment that employees should not be included, he said that the Code could simply be presented as part of the next collective bargaining negotiations to resolve this.

He suggested a compromise that would bind everyone who took positions of responsibility - from state employees under the law to volunteers - putting everyone on the same page. Ms Minkoff remarked that in the school system, there was language in the contracts that defines what is OK or not OK and adhering to any directive from another body would probably not be acceptable. Mr Berson discussed an example from Facebook where someone - a town employee - wrote something inappropriate, yet it fell under a free speech issue, and he urged that there be some kind of baseline. He suggested at least saying that multi-member bodies "shall" come up with a code of conduct but questioned again how the Select Board could get everyone on the same page consistently. Members referred to already adopted codes of conduct in the Town - the Police and Finance Committee as two, and Ms Fallender said that the rest, including the Select Board and a number of multi-member bodies, needed to have consistent direction on how to conduct oneself civilly and appropriately.

Ms Lavin commented that members knew what they thought should be done but were wasting a lot of time discussing what every other body was doing. She urged members to pick one or another of the texts previously drafted and discussed by the CRC, come into meetings ready with the texts and their edits, and then vote, or time will run out on which articles they planned to take to Town Meeting in the Fall. Ms Minkoff suggested taking the words of Mr Fuller's January 23rd draft Code of Conduct that was voted on February 1st, and just removing "Town Employees, with some language that there was an expectation that their employee system will have its own code of conduct. Ms Hubbard said that the goal was to give people clear expectations of appropriate behavior for visiting the Select Board and other multi-member bodies, and if a school committee or some towns already had a policy, the section could state that the Select Board could create one for anyone who came before them.

After further conversation, Ms Lavin noted that she liked Mr Berson's proposed 60 consecutive days, and Mr Fuller said that it could be something the Board presented at its September orientation meeting. Members discussed the difficulty of enforcement but agreed that it was better to have a policy at which to point than not having one. Ms Lavin repeated that the Committee should not be continuing with this discussion because there were already several versions in play. She urged that members study the language they already had before each meeting from now on, and Ms Fallender asked that all past drafts be put together for proposed Articles and sent to all. Mr Fuller agreed and stated that it should be made a goal to vote after discussion on language from now on.

Mr Fuller read out his re-working of previously considered drafts and votes and revision of the existing language of 3-3-4 and asked for the following to be accepted for placement at the Public Hearing preceding the Special Town Meeting. It was moved by Mr Fuller, seconded by Mr Berson and voted unanimously 6-0-0 by roll call:

3-3-4 ~~"The Select Board shall develop and annually update the Town's Emergency Plan, and publish appropriate emergency response guidance to its citizens. establish the Town's Emergency Planning Preparedness Team. This section provides for the necessary organization and power to enable the timely and effective utilization of all available Town, State and Federal resources to prepare for, respond to, and recover from any emergency or disaster that may be declared by the Select Board, State or Federal authorities. It is intended to grant as broad power as permitted by law or regulation to address any type of~~

emergency and disaster. The Team shall provide the Select Board with a Comprehensive Emergency and Disaster Plan and it shall be reviewed biennially or sooner, if necessary, and published on the Town website and by any other means."

Future Agenda Items:

Mr Fuller stated that his goal was that preparation for the Special Town Meeting would be completed by the last meeting in August – review with Town Counsel, the Public Hearing, and the Select Board, etc. – for the Special Town Meeting in October. Ms Minkoff said that she had learned from Town Hall that October 17th was the proposed date for the meeting, which members agreed left them with very little time, and a debt exclusion ballot in December.

Ms Lavin described listening to the last Select Board discussion about a number of people on a number of multi-member bodies who had not been attending meetings, that Minutes were not being kept up and provided to the Town Clerk, and that the CRC was mentioned with regard to asking about adding associate members to every Town body in order to build in succession planning. Members commented that they thought there already was something about meeting attendance expectations somewhere, but if there was not, there should be. Ms Lavin said that she thought Andrea Shaw Reed was referring to associate members as "members in training" - a line of succession that way. There was further discussion about the Volunteer Handbook provided at the September meeting and if it needed more updating, and whether volunteers fully understood the commitment they were making and were aware enough of their responsibilities. Ms Lavin noted that Ms Reed had recently established monthly Chair meetings to foster communication among the Chairs, her and Vice-Chair Michael Herman and each other. Ms Fallender explained how she had handled her responsibilities while Chair of several committees, and that Chairs needed to recognize their own responsibilities to notify the Select Board if one or more of its members were missing meetings or if any other issues arose with their multi-member bodies.

June 27:

Approve amended Minutes of May 16, 2022 to correct approval to 5-0-1.

Mr Fuller: Chapter 8, possibly Code of Conduct, more Chapter 4

Ms Fallender: Chapter 10 - Chapter 1 – Send her draft definitions – economic, environmental, physical, others?

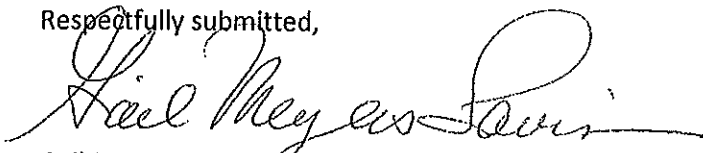
Ms Lavin: Review redundancies in 7-7-1, 6-1-8, 8-1-2 and consider consolidating

Answer from Town Counsel re whether **Town Administrator** or **Town Manager** should be used going forward
(Postpone David Lyttle/alternate hearing officer discussion – pending further Chapter 4 discussion)

Agree Summer Meetings

It was moved by Ms Hubbard, seconded by Ms Minkoff, and voted unanimously by roll call 6-0-0 to adjourn the meeting at 7:10 pm.

Respectfully submitted,


Gail Meyers Lavin, Clerk

The next CRC Meeting will be held in the Nauset Room and as a hybrid meeting (via Zoom) on MONDAY, June 27, 2022, at 5:30 pm.