

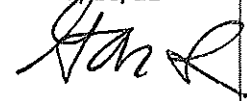
CHARTER REVIEW COMMITTEE  
MINUTES

July 11, 2022

Orleans Town Hall Nauset Room and by Zoom

Date approved

7/18/22



The meeting of July 11, 2022 was called to order at 5:30 pm by Chair Jon Fuller. Present were Vice-Chair Patricia Fallender; Members Robin Hubbard, Maxine Minkoff, and Walter North. Clerk Gail Meyers Lavin and Mark Berson attended via Zoom; New Select Board Liaison Michael Herman and Finance Chair Lynn Bruneau were present.

Jon Fuller began the meeting by welcoming Michael Herman as the CRC's new Select Board liaison.

The Minutes of June 27, 2022 were moved by Mark Berson, seconded by Robin Hubbard, and after several revisions, passed unanimously by roll call 6-0-1. Walter North abstaining.

Public Comment: None

Tracking sheet: Nothing to add

Resource Page: Gail Meyers Lavin said that she would like to add the MA Attorney General's letter of acceptance to the Town of all the CRC Articles that passed at the May Annual Town Meeting. It was agreed by consensus.

*Handwritten:* ORLEANS TOWN CLERK  
R. C. S. S.  
22 JUL 22 9:11 AM

**DRAFT ARTICLE E - Town Manager Discussion:** Mark Berson reviewed the Committee's prior discussions on the job description and qualifications and said he had then revised the entire Town Manager section and had taken a very simplistic straightforward approach, which was what he included in his presentation last time. He noted that one was detailed and one expansive, which would leave the details to the Select Board as essentially a Request for Proposal - a job description and a matter of contract rather than Charter. Mr Fuller said that his recollection was that the Charter would give the requirements to hold that position but would not have a job description, which would leave it to the Select Board to tailor the job description in their RfP when they went to interview and hire a Town Manager. Mr Berson agreed and said that one was "existing" - detail specific and more frozen and his proposal was more flexible.

Ms Lavin commented that we have not voted for Mr Berson's proposal and that she would be opposed to it. She said that she thought the Committee did not have time to wordsmith a change of the whole chapter. She said that the Committee had several things already voted for in Chapter 4, and she thought that the CRC could only bring to the Public Hearing the sections the Committee had voted, or language talked about enough to vote. She added that she had planned to make a proposal later in the meeting to bring to the Public Hearing those that had been considered and voted for so that the deadline could be met. She felt that with those done, members would have to face the fact that they would have to keep meeting over the summer, but not as often and with only the Chapter 4 on the agenda.

Mr Berson said he was not suggesting the entire proposal be adopted, just extract that one item regarding the qualifications, which was relatively simple, straightforward, and not very wordy, not proposing to do the whole chapter - just replace 4-2-1 with:

*"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."*

There was some confusion among members on which section was being discussed. Ms Lavin recalled that there had already been a vote taken on January 3, 2022 in support of the existing qualifications except to change the current two years to three years that was voted 6-1-0. and the vote (currently Draft Article D in the "DECISIONS FOR JULY 18, 2022 WORKING DRAFT THIRD ATTEMPT ARTICLES" document included at the end of these Minutes) on the table now was:

*"4-2-1 The Town Administrator shall be appointed on the basis of educational, executive and administrative qualifications and experience. The educational qualifications shall consist of at least a bachelor's degree, preferably in public administration, granted by an accredited degree-granting college or university. The professional experience shall include at least five years of prior full time compensated executive service in public or business administration. Alternatively, at least ~~two~~ three years of prior full time compensated executive service in public or business administration, and a master's degree in an appropriate discipline shall qualify an applicant."*

She added that she had sent some information on the Town Manager situation in Falmouth where the Select Board was hanging its whole ability to fire him on the Town Charter, not the contract nor the accomplished goals that had been set. She commented that she would rather keep 4-2-1 as it was before the last vote or keep the change to 3 years, but not drop the whole of the language.

Mr Fuller said that he would disagree, that the Committee had been discussing the Town Manager for over a year, and this had been a primary thing at which the CRC had been looking. He stated that the Committee had to decide on it now because of the short notice given to the CRC as a time frame before the Special Town Meeting and Public Hearing. He added that only changing the title after a year or more was a pretty hollow vote, and that in his point of view a lot of Chapter 4 would go away, to which Ms Lavin responded that it was not her position.

Walter North asked about sections 4-2-1 and 4-1-2, which seemed to be duplicate sections and redundant. After discussion on the various documents drafted for the meeting, Ms Fallender summarized by stating that the second sentence written in blue in 4-1-2 in an earlier multi-colored working Chapter 4 document dated 12/20/21 that Mr Berson had originally suggested, was now being suggested to replace the existing 4-2-1. Members then discussed the separation between Section 4.1, titled Appointment, and Section 4-2, titled Qualifications.

Ms Minkoff moved, seconded by Mr Berson, that the existing 4-2 1 be replaced by: ***"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."*** The vote was No – 3, Yes – 2, Abstention – 1, and Mr Fuller pointed out that if he voted yes, it would be a tie; if he voted no or abstained, which he ultimately did, the suggested language would not pass. Ms Minkoff considered changing her yes vote to no. Ms Hubbard said that she would like to bring the decision back without the confusion around the other sections at a later time. **The ultimate vote by roll call was 2-3-2.**

Mr North moved to change the existing language for the Public Hearing from the ***"two years of prior full time compensated executive service..."*** to three, seconded by Ms Fallender, which was unanimously voted by roll call 7-0-0.

Mr Fuller said that the discussion of Chapter 4 should cut off at that point since the Select Board was going to have a consultant do a study of the Town Manager's office, so that it all might become moot. Ms Fallender moved to change the word ***"newspapers"*** to ***"news outlets"*** in Section 4-1-2 to be consistent with the earlier votes passed at the Annual Town Meeting and bring it to the Public Hearing, seconded by Ms Hubbard, and voted unanimously 7-0-0 by roll call.

Mr Fuller again said that the Committee needed to leave the Town Manager for the moment, but that it did not mean that there could not be a place holder for further votes. He stated that he did not want to go into Spring 2023 and present further articles because of the number of Articles that would already be on the Ballot. But Ms Hubbard thought it made sense to wait until the consultant finished his/her work on the organization of the Town Manager's Office, and asked Michael Herman if he knew how long that might be. He responded that it should probably not exceed 90 days or so. In response to Mr Berson asking what the purpose of the consultant

was, Mr Herman said it was to look at and do a structural analysis of the Town Manager's office – what currently existed and what it could be.

**DRAFT ARTICLE C - Formalize Code of Conduct (3-2-4):** It was noted that the Article was voted at the last meeting to go to the Public Hearing.

**DRAFT ARTICLE D - Emergency Plan (3-3-4):** Ms Minkoff recommended the reorganization of sentences and a few wording changes. It was moved by Ms Minkoff, seconded by Mr North and voted 7-0-0 by roll call to amend the following language and take it to the Public Hearing:

**3-3-4 EMERGENCY PLAN. This section is intended to grant as broad power as permitted by law or regulation to address any type of emergency or disaster. 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 Team shall organize and 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. 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.**

**DRAFT ARTICLE L - Chapter 8 Changes:** Ms Fallender said she had prepared the potential motions discussed at the last meeting with Lynn Bruneau, Chair of the Finance Committee, and the CRC, and that they could be found in the "DECISIONS" document. She began recommending Sections 8-1-1, 8-1-2, and 8-1-3, explaining that 8-1-6 had been moved to 8-1-1 to put the Finance Committee's responsibility at the beginning of the first section as follows:

**8-1-1** It is the responsibility of the Finance Committee to independently examine and analyze the Town's financial affairs, including proposed budgets, the Capital Improvements Plan and all other Warrant Articles which would have a financial impact; and to inform the citizens of the Town of its findings and recommendations. (Current 8-1-6 Existing language is moved to 8-1-1)

Lynn Bruneau was in attendance and pointed out a scrivener's error – a missing "s" on the Capital Improvements Plan. She then reminded the Committee of the rationale to move the term of the Finance Committee forward to enable it to remain involved in the last few adjustments to the budget prior year's budget, as follows:

**8-1-2** The Finance Committee, appointed by the Town Moderator, shall consist of nine members **and two associate members** appointed for three-year overlapping terms, **arranged so that the terms of at least three members shall expire at the end of the 15<sup>th</sup> day of the fiscal year, provided that no more than one associate member's term expires in any given year.**

**8-1-3** Any person duly appointed to the Finance Committee shall take up the duties of the office ~~upon the first day of the fiscal year,~~ **on the 16<sup>th</sup> day of the fiscal year,** provided that such ~~said~~ person shall have been sworn to the faithful performance of said person's duties by the Town Clerk.

Current 8-1-3 shall be **renumbered to 8-1-4** "Vacancies..." No change of language  
Current 8-1-4 shall be **renumbered to 8-1-5** "Any person..." No change of language  
Current 8-1-5 shall be **renumbered to 8-1-6** "No member..." No change of language

She also said that her members had reconsidered the proposed change she had suggested to reduce the full members of the FinCom from 9 to 7 and adding two associate members. She said that the FinCom had concluded that it would like to keep the body at nine members adding two associates, so that there could be a greater diversity of viewpoints and it could retain the ability to "huddle" as a group of four without running afoul of the Open Meeting Law. She described a recent "onboarding session" with the newest member, and if the Committee had been seven members, they could not have had the four who had been present for that. After discussing the numbers in various towns and noting that the Finance Committee would not vote to change back to nine members until Thursday, Mr North questioned the wisdom of going larger than 9, although he had no

problem with associate members who did not have a vote unless a member was absent and the Chair elevated him or her for that meeting.

Mr Fuller wanted the CRC to make the decision conclusively whichever way it was voted. Ms Lavin suggested going back to nine members, taking the reasonable chance that if the CRC voted to just add two associate members, the Finance Committee would vote to return their membership to its existing nine regular members as it currently existed in the Charter, adding two associates. **It was moved by Ms Lavin, seconded by Ms Hubbard that, regarding the Finance Committee, the existing 8-1-6 should be moved to 8-1-1, two associate members should be added to 8-1-2, the date of expiration of three members each year should change to the end of the 15<sup>th</sup> day of the fiscal year, and in 8-1-3, the date of taking up duties of the new three members should be on the 16<sup>th</sup> day of the fiscal year, and renumbering to 8-1-4, 8-1-5, and 8-1-6 (with complete details as shown above on page 3 of these Minutes). It was voted 6-1-0 by roll call with Mr North voting no.**

Ms Bruneau said that the FinCom had taken the advice of Town Counsel that the Charter was not the place for the specificity of its other recommendations (8-1-4, 8-2-9, 8-2-10, 8-3-3, 8-5-1 and 8-5-3) and should be keep it simple, and Mr Fuller pointed out that there was no Capital Planning Committee in any case as inserted in 8-5-1. Ms Minkoff questioned where preparing the Capital Improvements Plan then came in.

Ms Bruneau wanted to press for the insertion of a new sentence in Section **8-8-1** to read:

*"The result of the annual audit shall be reported each year to a joint meeting of the Select Board and Finance Committee."*

Ms Fallender commented that this inclusion was not something she would want to be added. She said that the way it was written already gave the opportunity for the Finance Committee and any person to review the Audit, and if there were any questions, those should go to the Select Board. Ms Bruneau reminded CRC members that the FinCom was not always invited to participate in the meeting with the Select Board, although this year it had been, which members appreciated, and which had been very helpful because they were able to identify several errors and were always looking for the opportunity to have dialog. Mr Fuller responded that it was the Select Board not the Charter Review Committee's purview, and he did not think the issue warranted a Charter change. Mr North disagreed, stating that the budget process was the Town's most important effort, adding that the Charter chose the Moderator to select the Finance Committee to create that separation from the Select Board, but Mr Fuller pointed out that the FinCom's responsibility was to advise the Town Meeting, not the Select Board. Mr North responded that he supported the need for an opportunity for the FinCom to seek information, and asking questions was a legitimate oversight responsibility; but he agreed with Ms Fallender that the Charter should not make it a demand.

Mr North asked to confirm that, in the Chapter 8 Article in the "DECISIONS" paper, the red texts were the Finance Committee recommendations, but if the CRC did not vote any changes, the text in each section would remain as currently written in black. He asked if a vote was needed, and it was agreed by consensus not to accept the writing in red in that draft Article L. Mr Fuller concluded the discussion by reminding the Committee and Ms Bruneau that there was nothing to prevent the FinCom members from coming to the Public Hearing and bringing the issues back.

**DRAFT ARTICLE A - Move contents of Chapter 10 to Chapter 1:** Ms Fallender described the proposed changes as written in the DECISIONS Third Working Draft, some of which had been discussed several months ago but not voted. She said that she recommended moving **Section 1-7-1 – Purpose** - to **1-2-3** so that it was not at the end of the Chapter. Sections **1-3-1 through 1-3-5** she said had been sections the Committee had considered for removing, but Town Counsel said that they should remain. She recommended, however, that the Committee vote to remove the words "as in existence on January 1, 1988" which were left over from the original Charter document, and to change the word "agency," which was part of the original language no longer used elsewhere, to "**department**" and insert "**multi-member bodies**" to replace "committees, commissions, councils, boards." Mr Berson left the meeting at 6:30.

However, Ms Fallender said that regarding 1-5-1, the Committee had concluded that the language was rather nebulous. She said when Ms Lavin and she were preparing the document for tonight, they felt that it might be better presented by itself because the rest of the sections were essentially moving existing language from Chapter 10 to Chapter 1, updating numbers and letters, and adding definitions; but this was a re-written section. She said that if this were to be controversial for any reason, the whole Article could go down, but noted that she had taken the new language from the Chatham, MA Charter, and would like a vote to take the following language to the Public Hearing:

**DRAFT ARTICLE B - § 5. Specific Provisions to Prevail**

~~1-5-1 To the extent that any specific provision of this Charter shall conflict with any provision in general terms, the specific provision shall prevail.~~ The Charter shall govern whenever there exists a conflict between Charter provisions and the provisions of Town by-laws, rules, regulations, orders, general laws, special acts, and acceptances of general laws. All Town by-laws, rules, regulations, orders, and special acts not superseded by this Charter shall remain in force.

It was moved by Ms Hubbard, seconded by Ms Minkoff, to delete the existing language of Section 1-5-1 and replace it with the language of the new 1-5-1 under §5 Specific Provisions to Prevail, and voted unanimously by roll call. 6-0-0.

**DRAFT ARTICLE A continued:** Returning to moving the sections of Chapter 10 to Chapter 1, Ms Fallender explained that there would be a new § 7 called Charter Operations and Maintenance in Chapter 1, exactly as worded in Chapter 10 with the current §1 Charter Amendment Section 10-1-1 becoming 1-7-1; § 2 Transition Requirements 10-2-1 becoming 1-7-2, and §3 Enforcement 10-3-1 becoming 1-7-3. Lastly, she referred to the §4 Definitions, and 10-4-1 followed by the list of (a) through g) which would now be moved to become § 8 Definitions in Chapter 1 to be 1-8-1 (a) through (g) along with 4 new definitions following for “news outlets,” “Physical Development,” “Economic Development,” and “Environmental Development,” with thanks to Ms Minkoff who helped craft the last three, which were referred to in Chapter 9 but nowhere defined.

Mr North questioned whether the term of “appropriate local media” could now be substituted with “news outlets” as they seemed to be redundant. Ms Fallender responded that the Attorney General had mentioned in her letter to the Committee that there was no definition for “news outlets” provided when substituted for “newspapers” in the May 2022 Annual Town Meeting Articles and suggested it be defined. Ms Lavin understood his point and said she had meant to look for how many times “appropriate local media” was in the Charter, but had run out of time, and at this stage, it was easier to keep as is.

It was moved by Ms Fallender, seconded by Ms Hubbard to move all of the Charter’s existing Chapter 10 into Chapter 1, changing section numbers and under Definitions adding four new ones as shown in the extension of these Minutes, and voted unanimously 6-0-0 by roll call.

**DRAFT ARTICLE G:** Mr North reminded members of the proposed change in the Moderator sections to add an option for the Moderator to appoint a professional neutral hearing officer to avoid any potential conflict of interest in a small town. Mr North moved and Ms Lavin seconded to adopt the recommended changes to 4-9-4 and 5-3-1 regarding the professional neutral hearing officer. It was voted unanimously 6-0-0 by roll call.

**Future Agenda Items:**

Mr Fuller asked for a vote to set the Public Hearing date for Monday, July 25, 2022 at 5:45 pm.

It was moved by Mr North, seconded by Ms Hubbard to set the Public Hearing Date for July 25 at 5:45 pm, and approved unanimously by roll call 6-0-0. Ms Hubbard left the meeting at 7 pm.

Mr Fuller announced that the CRC meeting with the Select Board would be **Wednesday, August 10, 2022** at a time to be determined.

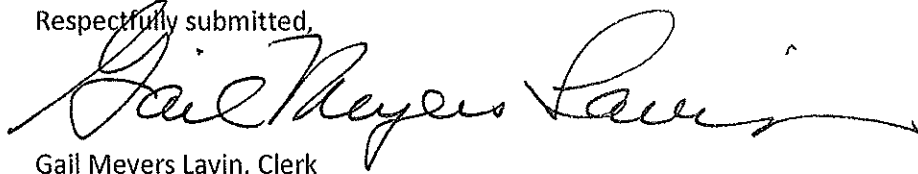
**July 18 Agenda:** Members mentioned the remaining Articles to review – Department of Municipal Finance; Architectural Review Committee; Chapter 5 to insert how elected officers are sworn in; Chapters 6 and 9 Planning Board recommendations; to decide if the Community Preservation Committee article, which had previously been voted for an appointment from the Recreation Advisory Committee would be proposed or

would the Select Board continue to appoint someone whose main interest was in Town Recreation. Mr Fuller noted that there would be an item to review any remaining Articles.

Ms Fallender said that the **meeting with Town Counsel is Tuesday, July 19, the day after the next CRC meeting.** Ms Lavin said that she would try to have a draft Power Point for the meeting on July 18, but the result of what Town Counsel advised can only be forwarded as Information Only until the day of the hearing. Ms Fallender added that she will draft the rationales and Ms Lavin will put them together with the updated Draft Articles to send Town Counsel by Friday, July 15.

**It was moved by Ms Lavin, seconded by Ms Minkoff to adjourn, which was voted unanimously 5-0-0 at 7:05pm.**

Respectfully submitted,

A handwritten signature in black ink that reads "Gail Meyers Lavin". The signature is written in a cursive style with a long horizontal flourish at the end.

Gail Meyers Lavin, Clerk

The next CRC Meeting will be held in the Nauset Room and as a hybrid meeting (via Zoom) on MONDAY, July 18, 2022, at 5:30 pm.