

Minutes, Charter Commission, January 7, 2019

Michael Gurtler, Chair, opened the meeting at 7 PM.

Members Present: Julie Berberian, Joseph Cough, Anna Durand, Jill Goldthwait, Michael Gurtler, Patricia Samuel, Martha Searchfield and Peter St. Germain. Absent: Christopher Strout, excused.

1. It was moved (P. St. Germain, J. Cough) to adopt the Agenda as printed. Motion passed.

2. It was moved (M. Searchfield, P. St. Germain) to accept the minutes of the previous meeting, Dec. 17, 2018. Motion passed.

3. Schedule for Charter Comm. work, Home Rule state regulation: draft charter within 9 months of starting the work; final Draft within 12 months of starting; Town Meeting Vote in June 2020.

4. M. Gurtler introduced the members of the Commission; each member spoke 2 sentences about themselves.

5. M. Gurtler opened the Public Hearing and explained the ground rules for speaking.

(A) Lynne Williams, (Conserv. Comm., Planning Bd., Harbor Com – Vice-Chair) Majority of Town Council members (6) currently live downtown; please consider designating 3-4 positions on Council by district, e.g. Town Hill, Hulls Cove, etc., (possibly, as does Bangor) to be elected by all voters, with the remaining members to be designated at-large.

(B) John Dargis (10 yrs Warrant Com., 5 as Chair): Thanked Charter Comm. members for working. One of the values of the Warrant Com. especially is that it is a large, diverse group of town citizens who learn the workings of town government. Warr. Com. members have seen things that other town committees haven't; errors & flaws in proposed legislation have been found by Warr. Com.. He has recommended that Warr. Com. members attend TC budget meetings to learn how the budget comes to be. Stated that Warr. Com. wants a new nominating process and made this recommendation to Town Council: 21 (or 15) members with 3-year terms of office, 1/3 of the members to be elected each year. The large size of the Warr. Com. opens up participation in government to more people. Current attendance policy is no more than 2 unexcused absences in a row are allowed. (Questions from J. Goldthwait, P. Samuel, M. Searchfield.)

(C) Liz Case (Warrant Com, education sub.com.): (1) Please keep in mind inclusion, especially young people; they are interested. Warrant Com. service involves teaching and learning, especially about the budget. Warr. Com. is connected strongly to the community at large, people feel comfortable talking with Warr. Com. members. (2) Warr. Com. needs a good variety, diversity, range of ages of membership.

(D) Jim O'Connell: (1) Town Meeting needs broad participation, or government may not carry out the wishes of the community; (2) Make the major Town Meeting in November, to coincide with state & federal elections; hold Open Town Meeting on the Saturday before the election. Towns our size (5000) do this; it helps increase attendance; (3) All citizens should elect the Planning Board.

(E) Seth Libby (Warr. Com. 5 years, 3 years Secretary, currently Chair): (1) Supports full cooperation with Charter Comm.; (2) supports Warr. Com. as part of Town Meeting government; (3) Warr. Com. serves as a sounding board for all warrant articles, not simply review of the budget; it is not a rubber stamp, and not support insubordination; (4) He supports a 21-member Warr. Com., as described by J. Dargis; it is impossible to get 22 new members every year, a reason for many long-serving members.

(F) Carol Chappell (40-year resident, teacher, Ferry Term. Re-use task force): (1) supports Town Meeting government with Council and Manager; (2) recommends 2 books from Maine Muni Assn., "Local Government in Maine" and the "Citizens Guide," which points out that many towns have a separate budget com.: not a rubber stamp, critical but not adversarial ; (3) she supports having a Warrant Com.; it gives a place at the table for divergent points of view and it supports our structure of government with its checks & balances.

(G) Tom St. Germain (current Chair, 7 yrs. on Planning Bd): (1) town spent \$100K on consultant for repeal & replace, Warr. Com. opposed. PB has asked Warr. Com. members to attend: should they review LUO items? If Warr. Com. continues to recommend on land use ballot items, there must be better communication. Questions:

(1) P. Samuel: Would back-and-forth discussion between Planning Bd, Planner, & Warr. Com. be helpful? T. St. Germain responded that there is no regular back-and-forth discussion between Planning Bd. & Warr. Com., which is frustrating. He commented that there is no mechanism for the public to speak at Warr. Com. meetings, unless specifically asked.

(2) Julie Berberian: When she served on Warr. Com., she liked the meeting with Planning Bd. about the Appendix C re-write; the two bodies need meetings together.

(3) Anna: Do you favor Warrant reviewing land use items? Response from T. St. Germain: It's up to us (Chtr. Comm.) to decide, but he recommends a delineated process where conversation occurs so Warr. Com. knows what Planning Bd. recommendations actually mean.

(H) Lilea Simis: Will there be other public hearings with the Chtr. Comm? E-mail? M. Gurtler responded "yes" to both questions & the Clerk (S. Linscott) gave the e-mail address, Face Book listing, web page address.

(I) Donna Karlson: (member Warr. Com., many yrs., government sub-com.): (1) Thanked Chtr. Comm. for our service; (2) Preserve Town Meeting – 1 person, 1 vote, do not diminish, preserve true local control of taxation, land use, and education; if we must have electronic voting then there must be appropriate back-up; (3) Wants no major changes in our form of government; (4) Encourage more citizen participation by (a) term limit on committee service; (b) non-resident committee members should not have a vote; (c) More transparency would encourage more citizen attendance; (d) more fairness worked in; (e) recommends Ethics Ordinance be moved to the Town Charter; (f) recommends some non-Council residents on the Council's nominating committee; (g) recommends two public

comment periods, at beginning, then at end, of discussion. By this point she had talked well beyond her allotted time and the Chair asked her to step down.

(J) Burt Wartell: (1) Strongly urges us to reject electronic voting machines as they have been shown to be untrustworthy; put this in the Charter; (2) If these machines must be used, they must have auditable open-source software, and the machines must be owned by the Town, not by the vendor, and the vendor's proprietary code is not to be used; (3) there must be a receipt for the voter and the Town. Positive response and thanks from P. Samuel.

(K) Paul Paradis (Pln. Bd., T. Council): (1) budget process is too cumbersome; it involves too many people and takes too long. Please look at how other communities do their budgets; wants a smaller budget review committee. He also favors a streamlined review of Land Use items.

Chair asked if anyone else in the audience wanted to speak; there were none. D. Karlson asked to speak again. Chair told her we would consider that but the Town Manager would be recognized first.

(L) Cornell Knight, Town Mngr.: (1) T. Council wants to use electronic clickers for voting at open town meeting, except on state-mandated school budget items, which must be voted using a ballot. Voting by electronic clicker is very efficient & time-saving; (2) budget process: he had 14 meetings with Warrant Com & its sub-committees last year; he recommends a joint budget meeting of Council & Warrant Com. before War. Sub-committees start working; other towns do this.; (3) regarding last year's petitions on Ferry Terminal site use, several Warrant Com. members circulated petitions and advocated strongly on this proposed change. They did not recuse themselves until the very end of the warrant review process.

Chair asked the Chtr. Comm. if we should allow members of the public to speak again. It was moved & seconded (J. Goldthwait, A. Durand) to allow anyone to speak for up to three minutes. Motion passed: 7 in favor, 1 (P. St. Germain) opposed.

Additional testimony:

D. Karlson distributed copies of a document written by another resident, A. Greif.

Jim O'Connell disagrees with C. Knight's comment about 3 Warr. Com. members circulating petitions re: Ferry Terminal use. C. Knight responded that there were three people, circulating one at a time. J. Goldthwait pointed out that this was a potential conflict of interest by the Warr. Com. member(s).

As no-one else wished to speak, it was moved & seconded (P. St. Germain, M. Searchfield) to close the public hearing. Vote in favor was unanimous.

M. Gurtler, Chair, urged the audience to please contact the Charter Com. with items to consider, e.g. by e-mail, letters, etc.

The Chair asked for agenda items for the next meeting, on Wed. January 23 at 8.30 AM.

Vice-chair J. Goldthwait suggested keeping a running tally of topics and suggestions and then treating the Charter section by section. There was general agreement to this suggestion by the Chair and the rest of the commission members.

Proposed dates for comm. Meetings through early May: every two weeks: January 23, February 6 & 20, March 6 & 20, April 3 & 17, May 1. There were a few conflicts, but not sufficient to reschedule

meetings: Jan. 23, M. Searchfield; Feb. 6, J. Goldthwait; Feb. 20, M. Gurtler, J Cough; April 17, A. Durand. The quorum is five members.

Other Business:

J. Goldthwait asked C. Knight (Town Mngr.) to please tell the comm. about any things happening around the state that would be relevant to Bar Harbor's situation. M. Gurtler (Chair) asked C. Knight if any towns recently changed from Town Meeting to another form of government. C. Knight answered that Sanford had become a city. M. Gurtler commented that the Chrt. Comm. needs to look at the systems of other towns governed by town meeting.

Adjournment moved & seconded (J. Cough, P. St. Germain). Unanimous vote to adjourn, Mtg. adjourned at 8.14 PM.

Respectfully submitted,

Patricia L. Samuel, Secretary

## POSSIBLE CHARTER CHANGES

January 6, 2019

Charter Section C-6 (D) – This provision limits action by the Town Meeting to “matters presented to it as warrant articles or as required by law.” This conflicts with Charter Section C-5 which provides “the legislative authority of the Town of Bar Harbor shall continue to be vested in the inhabitants of the Town of Bar Harbor acting by means of Town Meetings.” As the Warrant is prepared by the Town Council, limiting the Town Meeting to warrant articles, only, deprives the Town Meeting of its ultimate legislative authority. This would allow introduction of non-budgetary resolutions from the floor.

Charter Section C-7 should add a subparagraph D which provides: “No Councilor may serve more than two consecutive three year terms. Once any Councilor has completed a second consecutive term, that Councilor is ineligible to run for additional terms for a period of three years. Any Councilor serving more than a second consecutive term at the time this Charter provision becomes effective may nonetheless complete that term.”

Similar provisions should be considered for the Town’s other two elective bodies, the Warrant Committee and the Superintending School Committee. Term limits have served the state well and will likely draw more candidates for Council if the advantage of incumbency is diminished.

Charter Section C-10 (A) (1) (c), dealing with appointments to boards and committees, should have the following language added: “All voting members of any board or committee shall be residents of the Town of Bar Harbor who are registered to vote in the Town.” This is a common sense provision and will not prevent these committees from seeking advice from non-residents who could serve as committee members but have no voting role.

This same section should also add this language: “The Council shall, in its appointment role, seek the advice and consent of a five member Appointments Committee. The Appointments Committee shall consist of one Councilor designated by the Council, one Warrant Committee member designated by that Committee, and one Superintending School Committee member designated by that Committee. These three designated Appointments Committee members shall then choose two citizen representatives to complete this five member Appointments Committee.” Broadening the role that other elected bodies and the citizenry at large play in appointing board and committee members will broaden the perspective of these boards and committees and give them greater legitimacy.

Charter Section C-10 (A) (9) (e) should be replaced by a new Charter provision discussed below which creates an Ethics Committee as a formal part of the Charter.

Charter Section C-13, dealing with investigation of elected officials, should be replaced, as it conflicts with the current Ethics Code, which grants investigatory powers for Code of Ethics violations to a six member body consisting of two Councilors, two Warrant Committee members, and two Superintending School Committee members. A new Charter provision should provide: "Investigation of any elected or appointed official shall be conducted by a nine member Ethics Committee consisting of two Councilors designated by the Council, two Warrant Committee members designated by that Committee, and two Superintending School Committee members designated by that Committee. These six designated Ethics Committee members shall appoint three citizen members of the Ethics Committee who shall serve three year terms. The Ethics Committee shall have the exclusive power to investigate any elected or appointed official for his or her violation of the Maine or United States Constitutions, any state or local ordinance or law, this Charter, or the Code of Ethics that has been previously adopted by the Town Council, upon the written complaint of any registered Bar Harbor voter. It shall also have the exclusive power to amend or replace said Code of Ethics. It shall have the exclusive power to determine the appropriate sanction for any violation it has determined has occurred, which sanction may include removal from office. At all times it shall conduct its investigations in private, until a final decision is rendered, unless the official being investigated requests a public hearing. It shall at all points afford the official being investigated the due process of law, including the right of appeal of any sanction to the Hancock County Superior Court."

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