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## CHARTER REVIEW COMMITTEE

MUNICIPAL OFFICE BUILDING • 127 ELM STREET • MILLBURY, MA 01527-0632

### Minutes, January 7, 2010

**Present:** Francis King; Donald Gauthier; Kathy Anderson; John Bartosiewicz; Leslie Vigneau; Michael O'Connor; Thomas Reilly, Jack Alicandro

**Absent:** Sandra Cristo

The meeting was called to order at 7:01 p.m. in the Town Hall.

Members reviewed the minutes from December 17, 2009, comments and concerns were addressed.

M. O'Connor suggested and discussed some issues regarding the future procedures of the Millbury Charter Review Committee see Addendum 1.

Members continued to review the town charter going in increments of sections.

Next on the agenda was to review Article 3, Section 3-2(c) and after discussion the committee agreed to not make any changes.

Members agreed to not make any changes to the following of Article 4:

- Section 4-1
- Section 4-2
- Section 4-3
- Section 4-5

Changes were made to Article 4 Section 4-4(b) and changed the following from:

“(b) Vacancy - Any vacancy in the office of town manager shall be filled as soon as possible by the board of selectmen in the manner provided in section 4-1, but, pending such regular appointment the board of selectmen shall appoint a qualified town administrative officer or employee to perform the duties of the office on an acting basis. Such temporary appointment may not exceed three months but one renewal may be voted by the board of selectmen not to exceed a second three months. Compensation for such person shall be set by the board of selectmen.”

To the new proposed:

“(b) Vacancy - Any vacancy in the office of town manager shall be filled as soon as possible by the board of selectmen in the manner provided in section 4-1, but, pending such regular appointment the board of selectmen shall appoint **an individual** to perform the duties of the office on an acting basis. Such temporary appointment may not exceed three months but one renewal may be voted by the board of selectmen not to exceed a second three months. Compensation for such person shall be set by the board of selectmen.”

A motion was made by M. O'Connor to accept the proposed changes and seconded by D. Gauthier. Motion carried unanimously with a vote of 8-0.

Members agreed to not make any changes to the following of Article 5:

- Section 5-2
- Section 5-3

The Committee agreed to further review Article 5 Section 5-1(a) after the attorney meets with the Committee.

Members agreed to not make any changes to the following of Article 6:

- Section 6-1
- Section 6-2
- Section 6-3
- Section 6-4
- Section 6-5
- Section 6-6
- Section 6-7
- Section 6-8

K. Anderson proposed the following changes to Article 6-9 from:

“The town manager shall be the chief fiscal officer of the town. Warrants for the payment of town funds prepared by the town accountant in accordance with the provisions of the general laws shall be submitted to the town manager. The approval of any such warrant by the town manager shall be sufficient authority to authorize payment by the town treasurer, but the board of selectmen alone shall approve all warrants in the event of the absence of the town manager or a vacancy in the office of town manager.”

To:

“The town manager shall be the chief fiscal officer of the town. Warrants for the payment of town funds prepared by the town accountant in accordance with the provisions of the general laws shall be submitted to the town manager. The approval of any such warrant by the town manager shall be sufficient authority to authorize payment by the **town finance director**, but the board of selectmen alone shall approve all warrants in the event of the absence of the town manager or a vacancy in the office of town manager.”

A motion was made by K. Anderson to accept the proposed changes and seconded by D. Gauthier. Motion carried unanimously with a vote of 8-0.

K. Anderson proposed the following changes to Article 6-10 from:

“The board of selectmen shall provide for an independent audit of all financial books and records of the town whenever the Commonwealth fails, in any two year period, to provide for such audit, or whenever it deems an audit of the whole town, or, of any particular town agency, to be necessary.

Audits of the town’s financial books and records shall be conducted by a certified public accountant, or firm of such accountants, having no interest, direct or indirect, in the affairs of the town.”

To:

“The board of selectmen shall provide for an independent audit of all financial books and records of the town whenever the Commonwealth fails, in any two year period, to provide for such audit, or whenever it deems an audit of the whole town, or, of any particular town agency, to be necessary.

Audits of the town’s financial books and records shall be conducted by **the town finance director**, or firm of such accountants, having no interest, direct or indirect, in the affairs of the town.”

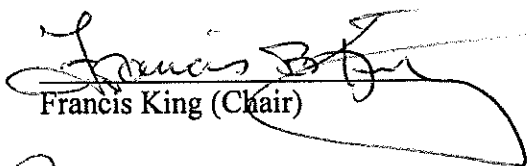
A motion was made by K. Anderson to accept the proposed changes and seconded by T. Reilly. Motion carried unanimously with a vote of 8-0.

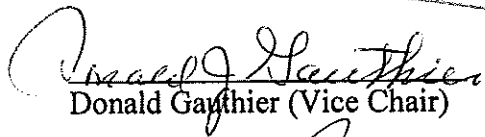
M. O’Connor then made a motion to change anywhere in the town charter that states town accountant and change it to finance director. Seconded by D. Gauthier. Motion carried unanimously with a vote of 8-0.

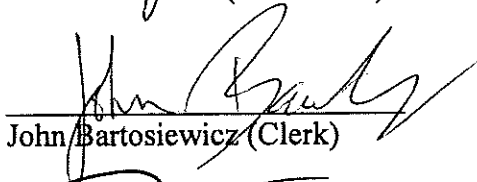
Motion made by T. Reilly to adjourn at 9:02 p.m. seconded by D. Gauthier. Motion carried unanimously. The next scheduled meeting is on January 14, 2010 at 7:00 p.m. in the Town Hall.

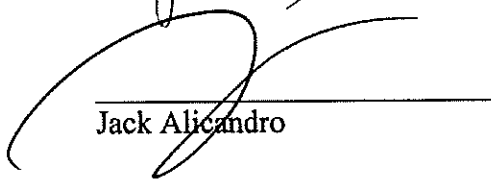
Respectfully submitted,

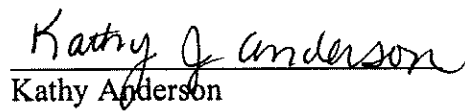
John Bartosiewicz, Clerk, Charter Review Committee

  
Francis King (Chair)

  
Donald Gauthier (Vice Chair)

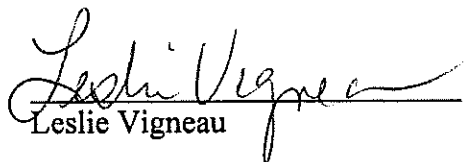
  
John Bartosiewicz (Clerk)

  
Jack Alicandro

  
Kathy Anderson

  
Michael O'Connor

  
Thomas Reilly

  
Leslie Vigneau

**ADDENDUM 1**

MGL Chapter 43B suggests that the committee may have a problem with timing and there may be limitations as to what the committee may be able to propose.

Clarifications should come from town counsel.

I have had discussions with the Town Clerk and the Town Manager on the following:

1. Chapter 43B, Section 10 states: (paragraph 1) "Amendments to a city or town charter previously adopted or revised under this chapter may be proposed by ...or the town meeting of a town by a two thirds vote .....and that only a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager."
2. Chapter 43B, Section 10 states: (paragraph 3) "Final action on such a suggested amendment shall be taken .....in the case of a town, not later than the first annual town meeting held at least six months after such filing date....."
3. Chapter 43B, Section 11
  - a. Paragraph 1 indicates that the board of selectmen shall call for an election at least two months after receipt of the final report of the commission under section nine. The final report from this committee will not happen until the committee first provides its proposal to the BOS for consideration and then only after the BOS schedules a hearing for the general public to provide input.
  - b. Paragraph 4 states: "Whenever an order proposing a charter amendment to the voters is approved by the mayor and city council or town meeting,....." This language indicates that the town meeting has to come before any town election.

The manager, clerk and I agreed that town counsel input would be in order.

## ADDENDUM 1

## The General Laws of Massachusetts

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## PART I. ADMINISTRATION OF THE GOVERNMENT

## TITLE VII. CITIES, TOWNS AND DISTRICTS

## CHAPTER 43B. HOME RULE PROCEDURES

## Chapter 43B: Section 10. Amendments to charter previously adopted or revised under this chapter; procedure

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Section 10. (a) Amendments to a city or town charter previously adopted or revised under this chapter may be proposed by the city council of a city or the town meeting of a town by a two thirds vote in the manner provided by this section; provided, that amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor, and that only a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager. In this section, the word "mayor" shall mean an officer elected by the voters as the chief executive officer of a city or an officer lawfully acting as such, and the term "two thirds vote" shall mean, in cities, a vote, taken by yeas and nays, of two thirds of the members of a city council present and voting thereon, and shall mean, in towns, the vote of two thirds of the voters present and voting at a duly called meeting.

(b) In addition to any amendment proposed by a city council or town meeting under subsection (a) the city council or town meeting shall consider and vote upon any suggested charter amendment which it would have the power to propose under subsection (a), and which is not substantially the same as an amendment already considered and voted upon by it within the last twelve months, and which is suggested to it in a written request signed by the mayor or city manager or any member of the city council in a city or by the town manager or any selectman of a town, or is suggested to it by a petition in substantially the form set forth in section fifteen, signed and completed in accordance with the instructions contained therein by at least ten registered voters in the case of a town and by as many registered voters, in the case of a city, as would be required to nominate a charter commission member in such city under section five, which written request or petition shall be filed with the city or town clerk.

At the earliest convenient time not later than three months after the date any suggested amendment is filed with the city or town clerk, the city council or board of selectmen shall order a public hearing to be held thereon before it or before a committee selected or established by it for the purpose, provided that any number of suggested amendments may be considered at the same hearing. Such a hearing shall be held not later than four months after the filing date of any suggested amendment to be considered, and at least seven days notice of such public hearing shall be published in a newspaper of general circulation in the city or town. Except where the hearing is held by a city council, the board or committee holding the public hearing shall report its recommendations to the city council or town meeting, as the case may be. Final action on such a suggested amendment shall be taken not later than six months after such filing date in the case of a city and, in the case of a town, not later than the first annual town meeting held at least six months after such filing date, provided that at any time after the public hearing two hundred registered voters of a town or twenty per cent of the total number of registered voters of such town, whichever is less, may in writing request the selectmen to call a special town meeting to consider the suggested amendment, and the selectmen shall thereupon call such meeting which shall be held not more than forty-five days after the receipt of the request.

(c) Whenever an order proposing a charter amendment to the voters is approved by the mayor and city council or town meeting, a copy of the proposed amendment shall be immediately submitted to the attorney general and to the department of housing and community development and such order shall not take effect for four weeks after the date of such submission. Within such four weeks the attorney general shall furnish the city council or board of selectmen with a written opinion setting forth any conflict between the proposed amendment and the constitution and laws of the commonwealth. A copy of the opinion shall at the time be furnished to the department of housing and community development. If the attorney general reports that the proposed amendment conflicts with the constitution of laws of the commonwealth, the order proposing such amendment shall not take effect except as may be specified by further proceedings of the mayor and city council or town meeting under subsection (a). If the attorney general reports no such conflict, such order shall become effective four weeks after its submission to the attorney general.

(d) No order or vote under subsection (a), (b) or (c) shall be subject to referendum or shall, except as provided in subsection (a), require the concurrence of the mayor.

**ADDENDUM 1**

(e) The provisions of subsections (a), (b), (c) and (d) shall apply to amendments of laws having the force of a city or town charter by virtue of section nine of Article LXXXIX of the Amendments to the Constitution as well as to amendments of a charter previously adopted or revised under this chapter.

ADDENDUM 1

# The General Laws of Massachusetts

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## PART I. ADMINISTRATION OF THE GOVERNMENT

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#### CHAPTER 43B. HOME RULE PROCEDURES

##### Chapter 43B: Section 11. Proposed charter or charter revision; submission to voters; ballot; copies of final report or proposed amendment; adoption of alternative or conflicting provisions

Section 11. Upon submission of the final report of a charter commission under section nine, the city council or board of selectmen shall order the proposed charter or charter revision to be submitted to the voters of the city or town for their approval at the first regular city election, or at the first annual or biennial town meeting for the election of town officers, held at least two months after such submission, but a charter commission report which does not recommend the adoption or revision of a charter shall not be submitted to the voters. Such an order shall not require the concurrence of the mayor in cities and shall not be subject to referendum. A proposed charter amendment shall be similarly submitted to the voters at the first such election or meeting held at least two months after the order proposing such charter amendment becomes effective under section ten. The question of adopting a charter or revising a charter as recommended by a charter commission shall be submitted to the voters as a single question unless the report of the charter commission provides for the separate submission of proposed revisions. Unrelated charter amendments proposed by a city council or town meeting shall be submitted to the voters as separate questions.

The question of approving the adoption of or any revision of or amendment to a charter shall be placed on a written or printed ballot, which ballot, including ballot labels where voting machines are used, shall be prepared by public authority and at public expense. A copy of the ballot question and summary prepared in accordance with the following instructions shall be filed with the city or town clerk no later than thirty-five days before the election, and the form of the question shall be substantially as follows:

“Shall this (city) (town) approve the (insert ‘new charter recommended by the charter commission’ or ‘charter revision recommended by the charter commission’ or ‘charter amendment proposed by the (city council) (town meeting)’, as appropriate) summarized below?”

YES.	<input type="checkbox"/>
NO.	<input type="checkbox"/>

(Where a new charter or single charter revision is being submitted at an election, set forth here a brief summary of its basic provisions (composition and mode of selection of the legislative and executive branches and school committee or, if a change of none of these is involved, the most significant proposed change). Where separate revisions or any amendments are being so submitted, set forth here the substance thereof in a manner also sufficient to distinguish each from any other amendments or revisions to be considered at the same election. The charter commission shall prepare the summaries of its own proposals and the city solicitor or town counsel shall prepare the description of proposed amendments.)

The city council or board of selectmen shall cause the final report of a charter commission, or a charter amendment proposed in an order which has become effective under section ten, to be printed and a copy to be distributed to each residence of one or more registered voters. Such distribution shall occur not later than two weeks before the election at which the question of adopting, revising or amending the charter is to be submitted to the voters. Additional copies of such final report or proposed amendment shall be filed with the city or town clerk for distribution to registered voters requesting the same and one such copy shall be posted in his office.

A new charter or charter revision approved by a majority of the voters of the city or town voting thereon shall take effect on the day specified in such charter or revision, and any proposed amendment so approved shall take effect upon the date specified therein or in the city council order or town meeting vote proposing the same. If two or more charter adoption, revision or amendment proposals are submitted to the voters in the alternative and are approved, only the alternative proposal receiving the highest number of affirmative votes shall take effect. If two or more charter adoption, revision or amendment proposals containing conflicting provisions are submitted to the voters, but not as alternatives, and are



**ADDENDUM 1**

approved, all such proposals shall take effect, but the proposal receiving the highest number of affirmative votes shall be construed to prevent all conflicting provisions contained in other proposals from taking effect.