

**CHARTER REVIEW COMMITTEE MEETING**  
**BENNINGTON TOWN OFFICE – CONFERENCE ROOM**  
**205 SOUTH STREET**  
**BENNINGTON, VERMONT 05201**

**OCTOBER 17, 2017**

**MINUTES**

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Robert Plunkett-Co-Chair (left at 5:37pm); Jonathan Cohen; Michael A. Keane; Daniel Malmborg; Robert Ebert and P. Lynn Green.

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Beth Antognioni; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 4:30 pm, Co-Chair Robert Plunkett called the meeting to order.

**1. PUBLIC COMMENTS**

Ms. Oller and Mr. Plunkett met with a couple of firemen who gave them suggested language to become part of the Charter. Mr. Plunkett will send this language to Mr. Barlow for his comments and both will be on a future Committee agenda.

**2. DISCUSSION OF ANY PUBLIC COMMENTS RECEIVED**

None.

**3. APPROVE MINUTES OF OCTOBER 11, 2017**

*Michael Keane moved and Jonathan Cohen seconded to approve the Minutes of October 11, 2017 as submitted. The motion carried with P. Lynn Green abstaining.*

**4. REVIEW OF CHAPTER 4 - TOWN MANAGER; DISCUSSION TO INCLUDE APPLICABILITY OF SECTIONS TO PUBLICLY ELECTED POSITION**

*"§401. Appointed by Select Board*

*The Select Board members shall appoint a Town Manager for an indefinite term, and upon such conditions as they may determine and review annually."*

Jim Barlow submitted the following language from the Town of Hartford's Charter:

*"The Town Manager shall be appointed for a period not to exceed 3 years and may thereafter be appointed for successive terms for not more than 3 years."*

Discussion ensued as follows:

- The consideration of a 3 or 5-year term should be renewable with annual reviews by the Select Board with all Select Board members publicly indicating that they want to retain the Town Manager within 30-60 days prior to the expiration of his/her term.
- If the evaluation is too in depth, perhaps a bi-annual evaluation would be appropriate.

- The Town Manager should remain an at-will employee.

*It was the consensus of the Committee, that the Town Manager should be reviewed annually.*

It was noted that this shows the voters the accountability of the Select Board to the Town Manager and the Town Manager to the Select Board. The Select Board to annually review the Town Manager should be written into the Select Board's Policies and Procedures.

***Michael Keane moved and Sean-Marie Oller seconded to amend Subchapter 4. Town Manager §401. Appointed by selectors as follows:***

***In §401. Appointed by selectors - Change "selectors" to "Select Board"***

***Line 1, Change "Selector Board members" to "Select Board"***

***Line 1, Change "for an indefinite term, and" to "for a 3-year term which may be renewed for successive terms"***

***Line 2, Change "they" to "it"***

***Line 2, After "determine." Add "Notwithstanding the above, the Town Manager position shall continue to be subject to "Section 406. Removal". The Select Board shall review the Town Manager's performance annually."***

***The motion carried unanimously.***

***\*\*The motion will be sent to Jim Barlow for his comments.\*\****

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***§402. Manager nonpartisan***

***(a) The Manager shall be chosen solely on the basis of his/her executive, administrative, and professional qualifications.***

***(b) The Manager shall not take part in the organization or direction of a political party, serve as a member of a party committee, nor be a candidate for election to any public office."***

Discussion:

- Send the question to Jim Barlow to see if the nonpartisan requirement is in the Statutes.
- Should the Assistant Town Manager also have the nonpartisan requirement? Mr. Monks is presently on the Bennington School District Board which is not a town school board. Most school boards in the State are town school boards.

***P. Lynn Green moved and Jonathan Cohen seconded to amend Subchapter 4. Town Manager §402. Manager nonpartisan as follows:***

***In §402. Manager nonpartisan - Change "Manager" to "Town Manager"***

***(a) Line 1, Change "The Manager" to "The Town Manager"***

***(a) Line 1, Change "The Manager" to "The Town Manager"***

***The motion carried unanimously.***

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*"§403. Oath and bond*

*Before entering upon his or her duties, the Manager shall be sworn to the faithful performance of his or her duties by the Town Clerk and shall give a bond to the Town in such amount and with such sureties as the Select Board members may require."*

Discussion:

- The League of Cities and Towns insurance covers the bond for town managers and treasurers.

*Michael Keane moved and Jonathan Cohen seconded to amend Subchapter 4. Town Manager §403. Oath and bond as follows:*

*Line 1, Change "the Manager" to "the Town Manager"*

*Line 2, Change "and shall give a bond to the Town" to "and the Town Manager shall be bonded"*

*Line 3, Change "Board members may" to "Board may"*

*The motion carried unanimously.*

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*P. Lynn Green moved and Daniel Malmberg seconded to amend Subchapter 4. Town Manager §404. Duties for Manager as follows in bold italics:*

*In §404. Duties for Manager - Change "for Manager" to "for the Town Manager"*

*Add "The Town Manager shall be the Chief Executive Officer of the Town, and;"*

*\*\*Currently reads\*\* "(a) The Manager shall be the Chief Executive Officer of the Town and shall carry out the policies established by the Select Board, to whom the Manager shall be responsible."*

*Delete "(a) The Manager shall be the Chief Executive Officer of the Town"*

*Line 1, Change "and shall" to "(a) shall"*

*Line 2, Change "the Manager" to "the Town Manager"*

*Line 2, Change "responsible" to "accountable"*

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*\*\*Currently reads\*\* "(b) The Manager shall attend all meetings of the Select Board, except when his or her compensation or removal is being considered, shall keep the Select Board members informed of the financial condition and future needs of the Town, and shall make such other reports as may be required by law, requested by the Select Board members, or deemed by him or her to be advisable."*

*(b) Change "The Manager shall" to "shall"*

*Line 2, Change "Board members informed" to "Board informed"*

*Line 4, Change "Board members," to "Board,"*

*\*\*Currently reads\*\*“(c) He or she shall perform all other duties prescribed by this charter, required by law, or resolution of the Select Board members.”*

**(c) Change “He or she shall” to “shall”**

**Line 1, Change “charter” to “Charter”**

**Line 1, Change “or resolution” to “or by resolution”**

**Line 2, Change “Board members” to “Board”**

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*\*\*Currently reads\*\*“(d) The Manager shall be an ex-officio member of all standing committees except the Zoning Board, but may not vote.”*

**(d) Change “The Manager shall” to “shall”**

**Line 1, Change “Zoning Board” to “Development Review Board”**

**Line 2, Change “but may” to “and shall”**

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*\*\*Currently reads\*\*“(e) The Manager shall prepare an annual budget, submit it to the Select Board members, and be responsible for its administration after adoption.”*

**(e) Change “The Manager shall” to “shall”**

**Line 1, Change “Board members,” to “Board,”**

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*\*\*Currently reads\*\*“(f) The Manager shall compile for general distribution at the end of each fiscal year a complete report on the finances and administrative activities of the Town for the year.”*

**(f) Change “The Manager shall” to “shall”**

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*\*\*Currently reads\*\*“(g) The Manager shall provide to the Select Board a monthly financial statement, with a copy to the Town Treasurer.”*

**(g) Change “The Manager shall” to “shall”**

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*\*\*Currently reads\*\*“(h) The Manager shall perform all duties now conferred by law on the Road Commissioner within all areas of the Town, except within such villages as may vote not to surrender their charters under this charter, notwithstanding the provisions of 24 V.S.A. §1236(5).”*

**(h) Change “The Manager shall” to “shall”**

**Line 3, Change “charter” to “Charter”**

**NOTE: Check with Jim Barlow on 24 V.S.A. §1236(5).**

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**\*\*Currently reads\*\*** *"(i) The Manager shall perform all duties now conferred by law on the Collector of Delinquent Taxes."*

**(i) Change "The Manager shall" to "shall"**

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**\*\*Currently reads\*\*** *"(j) The Manager, under policies approved by the Select Board members, shall be the General Purchasing Agent of the Town and purchase all equipment and supplies and contract for services for every department."*

**(j) Change "The Manager," to "shall,"**

**Line 1, Change "Board members, shall" to "Board,"**

**Line 3, Change "department." to "department pursuant to the purchasing and bid policies approved by the Select Board."**

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**\*\*Currently reads\*\*** *"(k) The Manager shall be responsible for the system of accounts."*

**(k) Change "The Manager shall" to "shall"**

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**\*\*Currently reads\*\*** *"(l) The Manager shall be responsible for the operation of all departments, including by specification the Police and Fire Departments."*

**(l) Change "The Manager shall" to "shall"**

**Line 1, Change "including by specification" to "including"**

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**\*\*Currently reads\*\*** *"(m) The Manager, under policies approved by the Select Board members, shall have exclusive authority to appoint, fix the salaries of, suspend and remove, all officers and employees except those who are elected or who are appointed by Select Board members. When the managership is vacant, this authority shall be exercised by the Select Board."*

**(m) Change "The Manager, under" to "shall, under"**

**Line 1, Change "Board members, shall" to "Board,"**

**Line 3, Change "by Select" to "by the Select"**

**Line 3, Change "the managership" to "the Town Manager position"**

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**\*\*Currently reads\*\*** *"(n) The Manager may, when advisable or proper, delegate to subordinate officers and employees of the Town, any duties conferred upon him or her."*

**(n) Change "The Manager may" to "may"**

**The motion carried unanimously.**

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**\*\*Currently reads\*\*** *"§405. Compensation*

*The Manager shall receive such compensation as may be fixed by the Select Board members."*

**Jonathan Cohen moved and Michael Keane seconded to amend Subchapter 4. Town Manager, §405. Compensation as follows:**

**Line 1, Change "The Manager" to "The Town Manager"**

**Line 1, Change "Board members" to "Board"**

**The motion carried unanimously.**

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**\*\*Currently reads\*\*** *"§406. Removal*

*(a) On 90 days written notice, the Manager may be removed without cause by a majority of the Select Board members so voting at a meeting called for the purpose of voting on removal. During the 90 day period, the Manager may be suspended with pay"*

**Jonathan Cohen moved and P. Lynn Green seconded to amend Subchapter 4. Town Manager, §406. Removal as follows:**

**Line 1, Change "notice, the Manager" to "notice from the Select Board, the Town Manager"**

**Line 2, Change "Board members so voting at" to "Board at"**

**Line 3, Change "the Manager" to "the Town Manager"**

**Line 3, Change "pay" to "pay; or"**

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**\*\*Currently reads\*\*** *"(b) The Select Board members may adopt at any time a resolution stating their intention to remove the Manager and the reasons therefore, a copy of which shall be sent to the Manager. The Manager may, within 10 days after such notice is sent, request a hearing which hearing shall be held by the Select Board members not less than 10 days nor more than 20 days from the date of such request, after which the Select Board members may dismiss the Manager. If no request for a hearing is filed in accordance with the foregoing, the Select Board members may dismiss the Manager immediately. During the period after the resolution of intention is adopted and until the Manager's dismissal, he or she may be suspended with pay."*

**Line 1, Change "Board members may" to "Board may"**

**Line 2, Change "remove the Manager" to "remove the Town Manager"**

**Line 2, Change "to the Manager" to "to the Town Manager"**

**Line 3, Change "The Manager" to "The Town Manager"**

**Line 3, Change "hearing which" to "hearing. This"**

*Line 4, Change "Board members not" to "Board not"*

*Line 5, Change "Board members may" to "Board may"*

*Line 5, Change "the Manager" to "the Town Manager"*

*Line 6, Change "filed in accordance with the foregoing" to "filed"*

*Line 6, Change "Board members may" to "Board may"*

*Line 7, Change "the Manager" to "the Town Manager"*

*Line 8, Change "the Manager's" to "the Town Manager's"*

*The motion carried unanimously.*

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## 5. OTHER FORMS OF TOWN GOVERNMENT. FURTHER DISCUSSION

The Petition that Mike Bethel has initiated was circulated among the Committee. It reads as follows:

*"We, the undersigned voters of the Town of Bennington, hereby petition the Selectboard to warn the two public hearings and the vote by Australian ballot to allow the following amendments to be made to the Bennington Town Charter:*

*Shall the Bennington Town Charter be amended by adding Section 103-407 to read as follows:*

§103-407. Mayoral form of government

(a) In lieu of a town manager, the voters may adopt a mayoral form of government, by vote at a duly-warned annual meeting, warned pursuant to a petition signed by five percent of the voters or on the Selectboard's own motion. Once a vote in favor of this form of government is successful, the voters shall elect a mayor at the next annual meeting. Once the mayor takes office, the Town Manager system of governance shall end for Bennington.

(b) The mayor shall be responsible for the management of the administrative affairs of the Town, in the same manner and with the same powers and responsibilities as the Town Manager, as stated in statute and this charter.

(c) The mayor shall have the power to make or break a tie, and shall have the power to veto any action of the Selectboard.

(d) The mayor shall serve as the voice of the Town of Bennington, taking responsibility for implementing the policies of the Selectboard, leading the Town toward greater prosperity and a healthy economy, and a better life for all its residents."

The Committee took a straw poll on the mayoral form of government and how it should look as follows:

Mr. Ebert: The people that he has asked about the mayoral form of government have basically two opinions - "1. A mayor would bring vision, leadership, and accountability to town government. And, 2. Stu Hurd has been here too long." These comments are referring to a 'strong mayor' and Mr. Ebert is against that

but doesn't see any reason not to try a 'weak mayor', who would be "first among equals", with the town manager position remaining intact.

Mr. Cohen: "Without some due diligence on this Committee's part", he is "reluctant to make a recommendation to the Select Board based on our opinions alone", and would vote no or abstain without further information. Educating the voters on the pros and cons of the mayoral forms of government should be done. Perhaps interviewing mayors and town managers - as Brattleboro did - plus financial information on the systems could constitute due diligence, but Mr. Cohen doesn't have a clear definition of 'due diligence' at this time.

Ms. Green: "There is a vehicle for raising the mayor form of government, and if this Committee is successful, that will come up as something for the public to vote on." If we are to introduce a new form of government we must consider how deep the position of town manager is to qualify for the job. "Any Joe can run" for mayor. Ms. Green doesn't feel that the Committee should unilaterally suggest a change to our form of government.

Mr. Malmberg: "What problem are we trying to solve?" An individual that would be elected that has a vision for the Town could be a good thing, however, the language of the existing petition is worry some. For example, there is no provision for overriding the mayor's veto over the Select Board. Mr. Malmberg doesn't see that there is a big problem but does see where people would be looking for a visionary leader.

Mr. Plunkett: In terms of the mayor issue, he has "not heard a very strong, or forceful, or convincing argument why we should have it". "To me a mayor is a city, and I don't want Bennington to be a city", and he would also like to hear of whom would be considered for the mayor position. Although Mr. Plunkett is in favor of the discussion for an alternative form of government, he is not in favor of the mayor concept for Bennington at this time.

Mr. Keane: Is "uncomfortable with the idea of a change in government when there is demonstrably so little and so poor knowledge among our citizens about what kinds and forms of government there are." The "externally focused mayors" in St. Albans and Barre are always pumping up their towns but are 'weak' mayors in that they do not have a lot of power. The 'weak' mayor model would be the one that Mr. Keane would support, however, the 5 or 6 people that he feels would be qualified for the job are too busy within their own businesses to take on the position. He is not aware of anyone else who is qualified. There should be a "stable of candidates" that could get you through the first 8 years of mayoral elections and we do not have that in Bennington.

Ms. Oller: "What would be the advantages to the citizens of Bennington to change the structure?" The Petition that is before the voters is "likened to a monarchy" and Ms. Oller would prefer to see 7 people making decisions that are not subject to the veto of one person. The citizens that she has spoken to are interested in accountability, job availability, and economic growth, and one person is not going to be able to accomplish that. More education on the mayor forms of government needs to be done for the public. The changes we have done with absenteeism, and a term and annual reviews for the Town Manager have addressed many of the concerns that the citizens have.

Further Committee discussion ensued:

- The Petition to change the Charter has too many unanswered questions; i.e., How long is the term? Why isn't there a Select Board veto override? Just how will it work?
- No Committee member seems to be in favor of a 'strong' mayor.



- The Committee's opinions/ideas are sufficient to recommend to the Select Board, as they and the voters, have the right to approve or not approve them.
  - Perhaps if we had a 'weak' mayor, a project such as the Putnam Block would have occurred sooner.
  - A mayor doesn't seem to be right for our town.
  - Staying informed throughout the years as to what other towns have done is doing due diligence.
  - The Committee should send a letter to the Bennington Banner updating the public as to what recommendations they have made so far.
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#### 6. DISCUSSION OF "LOCAL OPTION TAX"

Not done.

#### 7. REVIEW OF CHAPTER 5 - TAXATION

Not done.

*At 7:16 pm, P. Lynn Green moved and Daniel Malmberg seconded to adjourn the meeting. The motion carried unanimously.*

Respectfully submitted,

Nancy H. Lively

Secretary