

# ELIOT TOWN CHARTER COMMISSION

*MINUTES – November 12, 2014*

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PRESENT: Charles Rankie, Jr. (Chair), Gary Sinden, Rosanne Adams, Roland Fernald, Robert Fisher, Dennis Lentz, John Murphy, Maryann Place, Edward Strong.

Also Present: Fire Chief Jay Muzeroll and 7 members of the public (5 members of fire department)

Meeting opened at 7:00pm.

The Chair opened the meeting by acknowledging those present; making note that Commission member John Murphy was recently elected to the position of Selectman and reading the Commission's mission statement.

## BUSINESS

1. MOTION by Robert Fisher, 2<sup>nd</sup> John Murphy to approve the October 22, 2014 minutes, as corrected. VOTE: 9-0.
2. The Chair handed out agendas to members of the public.
3. Public Comment – None
4. Correspondence
  - a. Agenda for this Meeting (for Secretary files)
  - b. Charter Suggestion from Robert Pomerleau re: meetings open to the public (attached)
  - c. Reply 10/27/14 from Fire Chief re: Commission's letter of 10/20/14 with suggested wording re: the fire chief being responsible to the Town Manager per our present governmental structure.
5. Meeting with Fire Chief Muzeroll.
  - a. The Chair went over the information we have re: the fire department. He noted that our department is funded by the taxpayers, independently chooses its own officers – a chief, assistant chief, deputy chief, 5 lieutenants, a secretary, treasurer, and 3 trustees. The department consists of no more than 45 members. Neither the Eliot Board of Selectmen nor the Town Manager has a direct control or authority over the Eliot Fire Department other than funding. He noted that in the Town Manager's Eliot government organizational chart that there is no direct line of authority shown from the Town Manager to the Fire Chief. We have talked about adding something to Article 4. All

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- members of the Commission have a copy of the Ordinance and the Constitution and Bylaws of the Fire Department that each have reviewed independently.
- b. The Chair read the statement that is presently in the Charter and a suggestion for additional wording which was submitted to the Chief in our 10/20/14 letter. He then called for discussion.
- i. Chief Muzeroll said that he met with the fire department's executive board which consists of all the department's officers on Monday night and presented the information that was given him. In their discussion about the proposals and language he noted that just about all the issues that the group had have been brought up by the Commission or have been brought to the Commission. The consensus of the group was that the language proposed in the letter was vague. The Chair explained that it was intentionally left vague so that we would have this discussion. The Chair explained that the Commission is looking for a direct link between the fire department and the town. The Chief questioned whether that link might already be in place. No one has said, having reviewed the documents that are out there, that it has been determined that there is or is not that link. Based on past history that the Chief has been responsible to the governing body. The Chair explained that with a charter it needs to be in black and white and not just an assumption that currently there is no real string. Chief Muzeroll then stated that we are at the point where we need to ask "is that link currently there and if it is not there then what language will be in place and if that administrative link between the fire chief and the town manager is there then what language will be in place." It is a lot easier to change an ordinance than to change a charter. The Chief realizes that the Commission is merely looking to put something in that states that the fire chief is under the administrative control or duties of the Town Manager. As he has stated before the Fire Chief believes the position does [have that responsibility to respond to the governing body] and could be incorporated as to what the current ordinance is into the Charter, but if the Commission doesn't think it does then the language could be fine-tuned. If you need it in black and white, something that says what his responsibilities to the town manager are, then he has no problem with that. The other question raised at his executive board meeting was to the language for the other town departments. Edward Strong said that the others already are incorporated in the Charter with language that they fall under the Town Manager. Rosanne Adams read the charter Article that addressed the appointment of the department head and being subject to the direction and supervision of the Town Manager. The Chair explained that wording was put in the Charter, making the Fire Chief an exception to the appointment by the Selectmen, and referencing the Constitution and Bylaws of the Eliot Fire Department because the Commission recognized the Bylaws of the Fire Department and the ability of the 45 members of the Fire Department to choose the department head.

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- ii. There was discussion on the wording in the Fire Department Constitution and Bylaws which state that the Fire Chief is appointed by the Selectmen. Rosanne Adams explained that the Maine State Statute gives the 3 ways the fire chief comes into being and that she does not believe it says that the Selectmen have to then appoint the fire chief [after election by the members of the fire department]. Chief Muzeroll read the Maine Statute, showing those ways to be 1. appointed by the Selectmen, 2. being voted on by the members of the Fire Department, or 3. being voted in by the citizens of the town and that the Commission had a previous discussion of changing “confirmed by” rather than “appointed” [by the Selectmen]. John Murphy expressed the need to keep the Fire Department Ordinance and perhaps make reference to it. The Chief said that there is value in keeping the ordinance and changing the terminology. Several Commission members confirmed that it is not wanting to change the Fire Department Constitution and By-laws or to change the town Ordinance in any substantial way, merely to place the Fire Chief under the oversight of (direction of) the Town Manager.
- iii. Chief Muzeroll asked if the fact that the Chief is a town employee that doesn't the position already have administrative oversight. Edward Strong said that the present ordinance says that the Chief answers to the Board of Selectmen. Chief Muzeroll asked what would be the disadvantage to maintaining the ordinance with some language change and incorporating it into the Charter with what you have there for language. The Chair said there would be no disadvantage but the Charter would rule over the ordinance.
- iv. Gary Sinden expressed his concern with the language of “responsible to”, or “answers to”. He read from Maine Statute 30A-102 concerning the County Commissioners which says that they (the County Commissioners) “have final authority over all departments and all personnel whether elected or appointed” except when you get into the section governing the sheriff and the jail. The meaning of “final authority” has been the cause of much litigation. It is meant to be no authority over the technical running of law enforcement and meant to be administrative. If we are going to put that language in we have to put more than just “answers to” or “responsible to”. If the Fire chief reports to the town manager what is the Town Manager's authority relative to the Fire Department. Is it purely administrative to do with payroll and budgets or how they are going to put out fires?
- v. Roland Fernald asked about the tie in of the Fire Chief being a department head. If everything remained the same we still have the link that all department heads report to the Town Manager. Why would it be different for the Fire Chief since he runs a department like the public works department and is a paid employee of the town? The Charter outlines the authority of the Town Manager over

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department heads. The town pays the chief and he is a department head. Shouldn't he be treated as any other department head under the town manager? The Chair responded that it is different, as it is now, because the Fire Department is wholly controlled by their bylaws.

- vi. Chief Muzeroll suggested that the wording needed may be as simple as “the Fire Chief is the designated department head of the fire department”.
- vii. John Murphy asked if the relationship between the fire department and the town is anything like a contract. Is the FD Ordinance a sort of contract? The Chief said that the language in the Town Ordinance refers to Title 30 and what the responsibilities are minimally.
- viii. Edward Strong said that all we need is to state that the Fire Chief is a department head and answers to the administration of the Town Manager. Chief Muzeroll and other members of the Commission agreed with this.
- ix. Roland Fernald spoke to the need for the statement that any discipline aspects need to come under the Fire Department's By-laws. Because he is a department head then it would [as now in the Charter] come under the Town's personnel policy.
- x. Chief Muzeroll addressed Article 4.17B and suggested there was some redundancy in what is already there and what was suggested in the Commission's 10/2014 letter to him. The Chair said that is possible and the wording will be worked out.
- xi. The Chief said he agreed with what the Commission was trying to do but questioned just how it would be written so that it is clear. He agreed that the sentence – “The fire chief will be duly elected... “Should be left in and then remove the last sentence.
- xii. Rosanne Adams suggested that the Commission get the wording drafted and then submit to the Fire Chief and then look at it again. Chief Muzeroll agreed and said he would present it to his governing body and then get back to the Commission.
- xiii. Gary Sinden had a problem with the phrase in Article 4.17. “... shall be responsible to the town manager for all departmental affairs” is too broad and not in keeping with the Fire Department's Constitution. All “departmental administrative affairs” would be more in keeping with that. Some members voiced agreement.

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7. Discussion was opened for public comment before proceeding:

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- a. Robert Pomerleau said there were 3 categories of management responsibilities - ability to hire, ability to supervise (performance appraisals), ability to fire. He felt that the way the Town Fire Department Ordinance is written that today the Board of Selectmen have no authority to fire or dismiss the Fire Chief. He said it was a huge mistake to remove the Chief from being under the Town's personnel policies. There shouldn't be anything in the Charter that makes a distinction. He should be hired through the recruitment process like every other department head. You could have members of the Fire Department on that hiring committee. It needs to be clear and specific in the Charter that he is under these policies especially as regards employment practices, non-discrimination, etc.
- b. Brian O'Mearleigh (fire fighter) said he likes the way the Fire Department is presently in the hiring of members. He could see about the firing of people but felt the way it hires should stay the same. Brian wants to know that the person can be trusted with his life when they go into a building. The present hiring process, by members of the department, gives them assurance that they can trust the fellow firefighter's judgment that "they are going home".
- c. The Chair brought up the concern that Donald Webber expressed, at a previous meeting, that the Chief be available – released from whatever job they have - to be able to carry out his/her duties. Chief Muzeroll felt that that issue and concern would be better served by bringing it to the floor of the election meeting. If there was a question as to an individual being adequately available for the job it could be determined at that time. He also explained that the chain of command provides for someone to fill in for a member or officer who is absent. This suggestion hints at preventing people from becoming fire chief who are professional firefighters within the department.
- d. Doug Turner (firefighter) spoke to the job qualifications issue and said that over the years there have been some firefighters who are job qualified - some can be released from their jobs and some cannot. If you put that parameter on members of the fire department then you are going to have a hard time finding people to meet that qualification. The chain of command can go right down to the last man.
- e. Gary Berg (firefighter) said that if you want qualified people then professional firefighters are more qualified than volunteers. They have much more experience.
- f. James Roy (firefighter) said that volunteer firefighters have to do the exact same training as professional fire fighters to be qualified [certified]. Everyone has to have certain certifications. The State has a lot of requirements that have to be met and the volunteers put in a lot of time to be certified. Everyone knows everyone else's job. It is a lot of work to be a volunteer fireman and the Chief has double the work. It's not like it used to be. It's turned into a professional job.

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- g. Robert Pomerleau spoke to the training that volunteer firefighters need and having a disaster response plan, the purpose of these being to protect the firefighters. That it is very important. He confirmed that historically it has been in their best self-interest for fire fighters to elect their own people, but moving from the volunteer phase to a paid fire department a qualified fire chief can come from anywhere if he has the experience, training and knowledge.
- h. Jason Cullen (firefighter) spoke to the issue of having the Chief “available”. He takes it as an attack on his job and that of 5 others who work on the shipyard. He said that who’s to say whether an employer will let a firefighter respond to a call. They have a good group of guys. The Fire Chief cannot be at every call. That’s why we have officers. The officers are an extension of the Fire Chief. If a fire chief is not teaching the officers all aspects of how the fire service then he is not doing his job.
- i. Dennis Lentz said that from what he has heard it strengthens the need for the direct line from the Fire Chief and the Town Manager.
- ii. Maryann Place asked the Chief Muzeroll if he took an oath to which he replied “yes”. The town clerk administers the oath.
- iii. Maryann Place then questioned what might happen if Chief is not doing his job, how would he/could he be removed. Chief Muzeroll responded that the process is spelled out within the Fire Department Constitution and Bylaws. The method is provided to remove the Chief or any other member.
- iv. Dennis Lentz asked what happens next when the Chief is removed to which Charles Rankie replied that the Assistant Chief would take command. Dennis Lentz said he believes the Fire Chief should not be elected by the public. He likes the way it works now, but is concerned if we write the Selectmen link and Town Manager link out of there the people will have no voice at all in any of that. How we write that link is important. It is not a simple matter.
- v. Maryann Place asked what the purpose of the link is if neither the Town Manager or the Selectmen can do anything if the Chief is not doing his job Charles Rankie suggested that then the Town Manager could speak to the Fire Chief and then ultimately to the Fire Department’s executive board to have them deal with the problem. Chief Muzeroll noted that anyone could file a complaint with the executive board.
- vi. John Murphy noted that the obvious “string” that connects the department with the Town Manager is in the budget being presented each year.
- vii. Gary Sinden asked why the Commission had decided to take out the reference “as outlined in the Town of Eliot Personnel Policies”. The Chair thought that it was taken

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- out because it might lead us to somewhere we didn't want to go. Dennis Lentz said that there are still performance and evaluation questions that still need to be addressed.
- viii. Gary Sinden suggested that we need to be looking to the future, to a different time and different people. Unless that “link” is clearly defined we will have problems, based on personalities. He asked if we have defined the authority of the Town Manager precisely enough. The Chair suggested the need for some professional advice from MMA before this goes forward.
  - ix. Robert Fisher said he has been living in Eliot since the early 1950s and has seen many Fire Chiefs. They have all been good people and there have been no problems with them. The only difference today is that the Chief will be reporting to the Town Manager.
  - x. Edward Strong read from the Fire Department Town Ordinance and interpreted that to mean that the fire department is bound by all the “rules” and “regulations” of the town that are in effect. He assumes the Town Manager would have the same interpretation or would ask for a legal opinion.
  - xi. The Chair noted that all at the table were in agreement as to the chain of command but that we needed to work out the language of it. The Chair suggested that we draw up the wording and pass it by MMA then share with the Chief.
  - xii. Chief Muzeroll noted that he is the Emergency Management head which is currently an integral part of the fire department and is appointed by the Board of Selectmen. It was AGREED that we need to remember to see that this is included in the Charter. The Chair asked Dennis Lentz to make note of it.
  - xiii. Chief Muzeroll noted that there have been some good lines of communication opened between his department and the Commission and he thanked the members. The Chief left the meeting at 8:43pm.
8. Article 4.17 – Fire Chief (draft 10/22/14): There was discussion concerning the wording. The Chair noted the CONCENSUS to be that Article 4.17A (Duties) – the statement of “duties” to be replaced with our suggested wording from our letter. The Commission then worked on the exact wording. Gary Sinden suggested a wording change that would exclude non-administrative matters related to the Fire Department coming under the jurisdiction of the Town Manager. There was agreement on this wording, followed by further discussion.

The Chair suggested sending the wording to MAA for review. Rosanne Adams recommended that if it is sent to MMA that copies of the Town Ordinance and the Constitution and Bylaws of the Fire Department be sent along with it so that they can see the full implications of the wording regarding “things of an administrative nature”. It was questioned by Edward Strong, Gary

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Sinden and others the need to send to MMA right now. Edward Strong suggested and it was AGREED that the wording first be submitted to the Town Manager and Fire Chief and get their input and ask them if the Town Manager feels that we need an opinion on it from MMA. Dennis Lentz then read the suggested wording as was AGREED upon by the members – “The Fire Chief shall be experienced in firefighting procedures and protocols and be duly elected by the Eliot Fire Department in accord with their constitution and bylaws. The Fire Chief, as department head, will be responsible to the Eliot Town Manager for all relative issues of an administrative nature.”

- a. It was AGREED to eliminate the wording of Article 4.17B – Duties
9. Article 4 – Administrative Organization: The Chair suggested and it was AGREED to postpone further discussion until the town manager is able to be present. He was to be here tonight but is ill.
  10. Press Release – none
  11. Public Comment:
    - a. Robert Pomerleau – He said he was not sure how the Fire Department’s Bylaws address administrative disciplinary issues but is a violation of law to exempt the Fire Chief from federal laws such as sexual harassment. If there is an overlap between the Bylaws and the Town’s policies he believes that the Town’s Personnel Policies supersede the Fire Department Bylaws.
    - b. Robert Fisher stated that the non-discriminatory policies, etc. are already in the Charter.
    - c. Edward Strong agreed that we don’t want to limit the Town Manager to administer these policies to make sure all laws are being followed.
    - d. Roland Fernald asked if there is a statement that the Charter could make that would cover that?
    - e. Doug Turner suggested that leaving the word “relevant” in the wording just discussed would give the Town Manager the authority to act and get issues sorted out with the Chief, the executive board or the whole fire department and address Mr. Pomerleau’s concern.

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12. New Business:

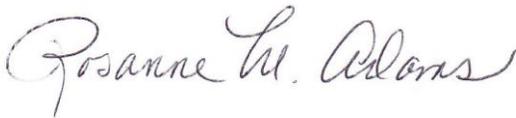
- a. The Chair reported that there has been no reply from either the Planning Board or the Board of Appeals. He proposed and it was AGREED that we write another letter and give the date of our first meeting in January as a deadline for a reply.

13. Roundtable:

- b. Denny reported that he reminded the Chair of the Planning Board that they hadn't discussed the Commission's letter. The Chair brought out the letter and it was read with some discussion at the meeting. The Planning Assistant was to frame a letter to the Commission for their review.

14. Next Meetings: December 3<sup>rd</sup>, 17<sup>th</sup>.

Meeting adjourned at 9:12 pm upon the MOTION of Robert Fisher, 2<sup>nd</sup> John Murphy. VOTE: 9-0.



Rosanne M. Adams  
Secretary

Approved: December 3, 2014

CC: Committee Members  
Eliot Town Clerk