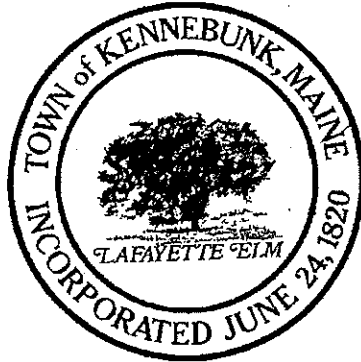


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, March 8, 2023

In-person meeting, Town Hall, 3rd Floor, 1 Summer Street, Kennebunk

This meeting was held in person and televised on Cable TV Channel 5.
It is available for public viewing at any time at TownHallStreams.com.

Chairman Christian Babcock called the meeting to order at 6:30pm.

1. Roll Call

Secretary Janice Vance called roll:

- Present: Susan Bloomfield, Janice Vance (Secretary), Brenda Robinson, Richard Smith (Vice-Chair), Ted Trainer, Stephen Sayers, Christopher Babbidge and Christian Babcock (Chair)
- Also present: Merton Brown, Town Clerk; Natalie Burns, Town Attorney

2. Consideration and Approval of Minutes:

- Regular meeting – January 11, 2023: C. Babcock moved to approve the minutes as written. The motion was seconded by T. Trainer. The vote to adopt was unanimous (8/0).
- Regular meeting – January 21, 2023: C. Babcock moved to approve the minutes as written. The motion was seconded by T. Trainer. The vote to adopt was unanimous (8/0).
- Regular meeting – February 8, 2023: C. Babcock moved to approve the minutes as written. The motion was seconded by B. Robinson. The vote to adopt was unanimous (8/0).
- Regular meeting – February 22, 2023: After discussion, C. Babcock amended his motion to approve the minutes as written to “approve as amended.” The motion was seconded by C. Babbidge. The vote to adopt as amended was unanimous (8/0).

3. Consideration and Approval of Proposed By-Laws

An updated version of proposed by-laws, written by B. Robinson with input from Town Attorney Natalie Burns, had been sent to members in an email, prior to the meeting, for review, with a printed copy available to each member at the table. Discussion took place regarding one phrase taken directly from State statute, which several members found confusing: "Vacancies occurring on the commission shall be filled by vote of the commission from the voters of the municipality, except that a vacancy among appointive members shall be promptly filled by the municipal officers." It was agreed that the "exception" section was readily understood to mean, in Kennebunk's case, that the Select Board would be responsible for filling the vacancy created by the recent resignation of C. Cluff, who was appointed by the Select Board. However, should one of the six Commission members elected by voters resign, the process to insert a replacement would be different, and members raised multiple ways the State language could be interpreted. N. Burns stated that it should be read to mean that the Charter Commission would vote to accept a new member who would have to be a registered Kennebunk voter. The application process would be the same as that of any resident who wishes to be considered for a town board, committee or commission, except that the Select Board would not be responsible for the appointment. C. Babbidge requested that if a vote had to be taken to approve a new member, he would prefer that it be done by a majority vote of the Commission. N. Burns suggested modifying this to "all members present at that time."

Discussion was held regarding which specific election would be used for voters to approve a completed new charter. B. Robinson used State language, which was somewhat unclear. It was confirmed that "next election" could be either a special or regular election, depending on the timing of when a charter was ready.

N. Burns also confirmed, in response to a question, that the By-Laws become null and void once the Commission has completed its work and disbands.

Other minor tweaks to the By-Laws were discussed, including clarifying whether the Chair or the Secretary was responsible for forwarding meeting agendas for posting, and whether a violation of ethics was indeed a violation of State law, or if that language should be modified to "town policy."

C. Babcock suggested two ways to handle finalizing the By-Laws: Vote to approve as proposed, or allow B. Robinson and N. Burns to do further updates as discussed this evening, with the goal of approving a final version at the next meeting. C. Babcock made a motion to approve as proposed. T. Trainer seconded the motion. The motion failed, 2 in favor and 6 opposed. *See #6 – "Review New Action Items."*

4. Old Business

Review Previous Action Items

- iPad Update: C. Babcock spoke with the town IT department regarding getting Word added to the iPads being used by Commission members to allow editing of documents. Excel and PowerPoint could also be added for members who would like those. He said that Town Manager Heather Balser offered a training session for anyone who needs additional help to use the iPads.

- Lower Village Committee: J. Vance is to contact committee members to discuss status and potentially hold a neighborhood meeting, perhaps in June. She has not yet reached out to members. There are currently no officers; the last two meetings did not have a quorum, which was required to elect officers. A community meeting could potentially be scheduled for June.
- West Kennebunk Committee: B. Robinson reported this committee is currently in flux, with a new chair. There is a possibility of using the Masonic Hall for a community meeting, for 2 hours on a Saturday morning, in April or May.

5. New Business

Discuss issues raised by C. Cluff's resignation email

C. Cluff resigned on February 24, and subsequently shared some frustrations about the Charter Commission with Select Board members, which were forwarded, with his permission, to Commission members. C. Babcock invited members to discuss the situation. T. Trainer felt the resignation may have been premature, as C. Cluff had only attended two meetings, during which the full range of subject matter to be tackled during the charter review had yet to be covered, which likely contributed to C. Cluff's contention that "most members" were focused on a single subject. Because public perception is important to the success of the project, T. Trainer was concerned that residents who were privy to C. Cluff's comments might gain an erroneous impression. B. Robinson concurred, reiterating that two meetings was likely insufficient in which to assess the overall efforts. C. Babbidge stated he was sorry C. Cluff resigned as he had a long history as a dedicated town servant and more viewpoints were welcome on the Commission. R. Smith stated that Chair C. Babcock did a good job addressing each of C. Cluff's comments, and that he personally does not see the issues that C. Cluff felt existed among Commission members; the Commission's charge is to review all of the Charter, not just part of it. J. Vance said she was sorry to lose C. Cluff, as his experience as a former Select Board member was a valuable perspective to have, but observed that the Commission may be able to apply his perception and comments as a learning [experience] as members begin to look at the communications and functions of town boards, committees and commissions.

Finish Charter Research sharing

- S. Sayers: Had sent analysis of two charters by email previously, and asked members to please refer to those.
- C. Babbidge: Is still working on full analysis of his assigned towns, and will provide more detail at the next meeting. For Eliot, it seems as though the town recently switched from an administrative assistant to a town manager; it also has a Select Board. There is a special options meeting during which residents may choose to amend the budget. Recalls require just 5 voters to petition; town clerk has 10 days to provide petition forms. A recalled official can be on a subsequent town ballot. He noted the minor differences in the number of signatures and deadlines between towns he is seeing, and asked N. Burns how a recall is handled if a town does not have a written procedure in place. N. Burns explained that if a town does not specify a

procedure in its town charter or in its ordinances (in the absence of a charter), that the process defaults to the state statute for recalls.

- There was brief discussion about how best to capture and make easily available “nuggets” of information about other towns’ charters and ordinances. J. Vance explained the Excel spreadsheet she sent out to members earlier in the week, which attempts to organize some of it. One sheet is an overview of all towns the Commission is looking at, with a link to each town’s charter or ordinances; a second sheet summarizes the recall procedures of each town. This is easy information to capture in an Excel format. Where it gets challenging is when we want more detailed language, and that is hard to do with Excel. She has begun capturing that in Word documents. That includes definitions, which members expressed a desire to include. Members may send her any nuggets that would like to see, and she will continue to organize the information and get it back out for use during meetings. She noted S. Bloomfield’s suggestion of including a Table of Comments as being something it appeared other members wanted to include as well. C. Babcock said he hoped at some point the information gathered could be housed on the Town website for review by those interested.

Discussion of Recall Article

- S. Sayers referred to the State language, which is quite specific about what an elected official can be recalled for. Most town language is far more subjective and can be abused. He would like to begin drafting some language for consideration by the Commission, as this can be done separately from other parts of the charter.
- C. Babcock stated he would look for a volunteer to work with S. Sayers on a draft, and asked members for their thoughts on copy.
- S. Bloomfield reported she had called the city of Westbrook— one of the charters she reviewed – because she did not see recall language and wanted to see if they had other documents she hadn’t found. She was told they did not have recall stipulations and did not feel they needed them. She cautioned that any legal terms the Commission uses for recall need to be carefully defined.
- C. Babcock stated S. Bloomfield was correct in her intent to be specific, because recalls could be used to intentionally disrupt town business. Certification of signatures requires significant resources.
- R. Smith said the language should seek to avoid creating opportunities for personal agendas, and that a proposed recall should be supported by facts. The procedure should be stringent.
- C. Babbidge said that recalls are a “tool of democracy to combat intransigent government” but shouldn’t be able to be weaponized. He said including certain terms such as “moral turpitude” and criminality as criteria for recall posed some challenge because they were either subjective or because people are considered innocent until proven guilty. Finding a balance between holding someone responsible for objectionable behavior or simply harassing someone was challenging.
- S. Sayers referred to two books by noted local government expert Prof. J. Zimmerman, one examining the town meeting model of municipal government and the other examining the

history of recall elections throughout the country and in each State. He summarized the number of states that have recall provisions and the low number of recalls that historically have resulted in removal of officials. He said that specific grounds for removal were needed, such as a conviction of a felony being one example. He also recommended requiring a high percentage of votes in favor of a recall.

- T. Trainer stated that recalls were essentially a political process, and the statement of reasons for recall was key. Too narrow a specification for recalls posed a danger in the form of lawsuits. He felt that increasing the logistics barrier via the number of required signatures was a good option. S. Sayers agreed.
- B. Robinson noted that in the recent recall, the "statement of reasons" provided were blatant lies, but there was no process in place that required the petitioner(s) to prove the truth of the statements. As a result, she said, good people were hurt, and the accusers were not held to account for their actions.
- S. Bloomfield said the parameters of the reasons were important, that a process needed to be in place so abusers couldn't get around them.
- J. Vance said recall criteria needs to be measurable and quantifiable, perhaps by a third party such as a law enforcement agency.
- C. Babbidge noted that newspapers were historically a resource for vetting claims, but the decline in local newspapers and investigative journalism now requires other means of determining what is true.
- T. Trainer asked about the actual process and procedure of the last recall, how it had impacted the workload for the Town Clerk and Town Attorney. He requested a way for the Commission to hear from them, and from Select Board members who were similarly impacted. The goal would be to lay out in writing a process that lessens the impact on town employees and volunteers.
- C. Babbidge echoed this, asking for identification of the difficulties involved. Recall qualifications will be key, in order to be fair to both residents and the town.
- C. Babcock stated he would block out time on the next agenda for such a discussion.

6. Review New Action Items

Draft of Recall Language

J. Vance volunteered to work with S. Sayers on this. C. Babcock noted that as a general procedure, as sections of new proposed charter language are drafted, members will review them and discuss changes. After a draft meets everyone's approval, it will go to N. Burns for legal review. Then it will come back to the Commission for final discussion and approval.

By-Laws

B. Robinson will take tonight's comments back and will work with N. Burns on changes.

Interviews

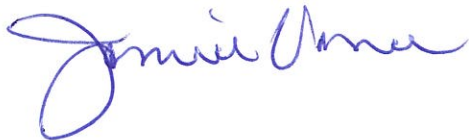
It was noted that the Commission will need to review the charter's language around the town budget. Because Town Finance Director Joel Downs is retiring very soon, the Commission will need to speak with him sooner rather than later. C. Babcock will reach out to him to set up a virtual interview; T. Trainer noted that interviews should be held during the Commission's regular meeting schedule and not in private.

7. Adjourn

A motion to adjourn the meeting at 8:40pm was made by B. Robinson and seconded by C. Babbidge. The vote was unanimous.

Respectfully submitted,

Janice Vance (Secretary)

A handwritten signature in blue ink, appearing to read "Janice Vance". The signature is fluid and cursive, with a large initial "J" and "V".