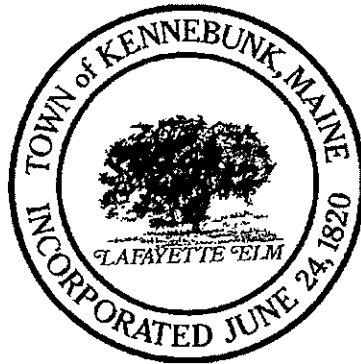


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, March 22, 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), Stephen Sayers, Christopher Babbidge and Christian Babcock (Chair). Ted Trainer attended via Zoom.
- Also present: Merton Brown, Town Clerk; Natalie Burns, Town Attorney; Heather Balsler, Town Manager.

2. Consideration and Approval of Minutes:

Regular meeting – March 8, 2023: B. Robinson moved to approve the minutes as amended. The motion was seconded by Richard Smith. The vote to adopt as amended was unanimous (8/0).

3. Consideration and Approval of Proposed By-Laws

Members reviewed and discussed changes to the most recent version of proposed by-laws, written by B. Robinson with input from Town Attorney Natalie Burns, using a Town-supplied template. Members began a sentence-by-sentence review and suggested small changes to format and organization. S. Sayers moved to have members provide these small changes to B. Robinson via email rather than in the meeting. The motion was seconded by C. Babbidge. The vote to accept the motion failed, with two votes in favor (S. Sayers and C. Babbidge). T. Trainer, C. Babcock, J. Vance, R. Robinson, R. Smith and S.

Bloomfield voting against (6/2). The review continued through all four pages of the document. C. Babcock moved to accept the preliminary draft with the changes discussed, and requested that B. Robinson would forward the final draft to members as soon as completed. S. Bloomfield seconded the motion. The vote to accept the preliminary draft as discussed was passed, 7/1, with S. Sayers voting against.

4. Old Business

- Review any previous action items – none were raised.
- Charter research sharing – C. Babbidge stated he had completed his review of several towns and would forward the summary to members and for inclusion on the master list held by the Secretary.

5. New Business

Discussion of Recall Article: S. Sayers and J. Vance have written a draft of recall language. The draft is still being edited after their meeting with Town Clerk Merton Brown and Town Manager Health Balsler to walk through the proposed language as it impacts the workload of the Town Clerk's office when certification of petition signatures is required. The draft will be forwarded to members for review prior to the next meeting. J. Vance went through an outline of the criteria she and S. Sayers considered during creation of the language.

There were five areas researched: (1) what other towns in York County and other towns of similar size outside of York County had as recall language in their charters, or their town ordinances; (2) state language regarding recalls; (3) how state statutes defined school board relationships with town residents versus relationships between other elected officials with Town residents; (4) what was physically involved in certification of signatures; (5) how recalls differ from forfeiture of office. J. Vance noted that forfeiture of office should be looked at outside of the recall language, although it is somewhat related, in that a situation has occurred that may make it untenable for an elected official to continue to serve.

Four primary levers were identified that would allow the town to support the democratic right of voters to recall an elected official from office, while preventing the use of a recall to harass elected officials:

1. Defining which elected officials can be subject to a recall;
2. Specifying behaviors that could warrant a recall;
3. Requiring a statistically significant number of qualified voter signatures on a recall petition for the action to move to a recall election, preceded by an appropriate number of signatures on a "notice of intention;"
4. Providing a detailed start and stop time for petition circulation, with sufficient time to gather the required signatures and for the necessary work to certify signatures.

There is a list of elected officials that could potentially be subject to recall:

- Select Board – 7 members, for staggered terms of 3 years;
- Kennebunk Light & Power Trustees – 5 members, for staggered terms of 5 years;
- Kennebunk, Kennebunkport and Wells Water District Trustee - 1 member, for a 3 year term (3 other seats are filled from the other towns served by the District);
- Kennebunk Sewer District Trustees – 5 members, for staggered terms of 3 years;

- Charter Commission – Ad Hoc Committee created for the purpose of updating the Town Charter; 9 members, 6 of which are elected to serve for 1 year;
- RSU 21 School Board Directors – 6 members, for staggered terms of 3 years (6 other seats are filled by the other two towns in the RSU, Arundel and Kennebunkport; plus 2 student members)

Research revealed that there is a statutory difference between School Board directors and other elected officials. J. Vance recommended reviewing the RSU21 website as a starting point in the discussion around this, as it contains several documents including a Q&A and a 2005 legal opinion that School Board directors, although elected by their respective towns, are considered a governing body and not a legislative body. Their allegiance is to the school system, not town residents. The decision of whether School Board members should be subject to recall needs careful and full discussion. In reviewing other towns' recall provisions, five towns were found that specifically exempted School Board members from recall (Berwick, Lebanon, Acton, Hollis, Mexico). The rest made no distinction, nor did State statute.

J. Vance noted that most towns' charters either don't specify reasons for recall, or simply say that "reasons" must be stated on the petition. The only two instances with details found during research were:

- State of Maine: "An elected official may be the subject of a recall petition under this section only if the official is convicted of a crime, the conduct of which occurred during the official's term of office and the victim of which is the municipality."
- Ogunquit: "Must be limited to: a. failure to appropriately carry out duties and responsibilities of the office (such as failure to represent the will of the people of Ogunquit); b. engaging in conduct which brings the office into disrepute; c. engaging in conduct which displays an unfitness to hold the office; or d. for the indictment or conviction of a felony under the laws of the State of Maine or the laws of the United States, or the laws of any other State or Nation, or entry of a plea of guilty or no-contest to such an offense."

J. Vance stated she and S. Sayers felt they wanted to avoid any reasons for recall that were subjective, and instead use actions that were measurable and quantifiable. They asked the question: "What serious offense would make a resident reasonably sure an elected official should not be in a position of authority in our town?" Reasons they proposed are:

- A conviction of any crime (whether felony or misdemeanor) or a guilty plea or plea of "no contest" to any crime that potentially involves a term of imprisonment or involuntary confinement for a period of 30 days or longer, including any drug-related offense or physical assault, whether that confinement is suspended or served;
- Any case of adjudicated dishonesty on the part of the Elected Official, such as misappropriation of public funds, theft of Town property or other thefts, intentional damage to Town property, bribery, embezzlement and other such acts of moral turpitude.

J. Vance noted that just yesterday the Commission was informed that Rep. John Andrews (R) of Paris, Maine, has introduced a bill (LD 1181) that prohibits towns from using commission of a crime as criteria for recalling an elected official. She stated that it is fairly easy for the public to testify when the bill goes to committee and a public hearing is held.

In other towns that specify a minimum number of petition signatures, the range was between 10% - 25% "of the number of votes cast in the municipality at the last gubernatorial election." This definition raised questions about how to parse how many people voted just for the governor, or voted for the

other candidates on the ballot. J. Vance and S. Sayers suggested instead using a flat number: 2000 signatures, which is about 20% of 10,000+ registered voters, a number that, according to the Town Clerk, has been fairly static over the years. M. Brown stated that he believes this calculation works well. S. Sayers added that the actual petition circulation would be preceded by a Notice of Intention, where a group of voters with one designated point person would need to gather 500 signatures to qualify for the ability to circulate petitions. The start and stop time for a petition circulation would be 30 days.

Public and Commission Comments:

- Gayle Spofford, a school board member, stated that Rep. Dan Sayre has introduced a bill regarding recalls, "An Act to Establish a Recall Process for Municipal School Committee Members" which takes a far different approach than LD 1181. It is currently LR 405 and has not received an LD number yet. She also explained that the school board has its own provisions to deal with member issues.
- C. Babcock explained for the public that recall language is being tackled now, prior to the larger discussion of Form of Government, because a relatively large percentage of residents mentioned it during the January 21st public meeting, and because it's a subject easily handled apart from other parts of the charter.
- Lisa Megeaski, a Kennebunk resident, spoke to research she has compiled as part of her current thesis work on recalls. She noted that recalls are becoming more frequent across the country, and it is wise for towns and other governing bodies to have specific procedures in place. She said school boards are the biggest target. Nine recent recalls in the state resulted in the removal of officials. She said social media has fanned the flames of recalls. It is important to look at factors such as the code of ethics, patterns of personal behavior, public conduct, and use of social media. She said many towns going through recalls experience the same divisive and angry behavior seen in Kennebunk, and that maliciously conceived recalls undermine democracy.
- Art Leblanc, school board chair, explained that he was the target of the recent recall in Kennebunk. The current charter recall language allowed an affidavit with 25 signatures that listed reasons why he and another board member should be recalled, but there was no method in place to verify the truth of the accusations being made. He agreed that social media was used heavily to further antagonize the situation. He thanked the Commission for its diligence in working on new procedures.
- B. Robinson asked G. Spofford if it was helpful to invite school board members to discuss the recall language, and was it possible we had not one but two possible umbrellas in creating procedures for recalls – one for school board one for other officials? G. Spofford agreed this should be discussed and felt it would be valuable to have the two groups tackle it together. She stated as a school board director her first priority is to protect the school system and board from needless attacks. A. Leblanc agreed, stating he was not against recall but there needed to be clear procedures for the public and for all officials potentially impacted, and as B. Robinson suggested, it may make sense to have different policies for different categories of officials.
- S. Sayers proposed meeting with A. Leblanc and G. Sayers. T. Trainer reminded the Commission and members of the public present of the importance of this meeting being public rather than between a few members of each group. C. Babbidge concurred, stating it was best for all members to hear the same information live rather than second-hand. G. Spofford suggested using the same space the school board uses for meetings.

Next Meeting(s): C. Babcock stated that retiring Town Finance Director Joel Downs will attend the next meeting so the language regarding budgets can be started while J. Downs is still available for questions.

M. Brown suggested deferring further discussion of recalls as needed; J. Vance will send the final proposed recall language to members as soon as possible for their review. C. Babcock noted that H. Balser suggested having the Maine Municipal Association conduct a presentation on Forms of Government at a future meeting.

6. Adjourn

A motion to adjourn the meeting at 8:32pm was made by B. Robinson and seconded by C. Babbidge. The vote was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

