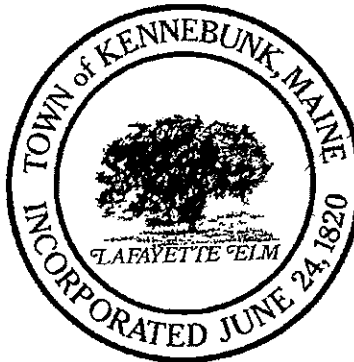


# Town of Kennebunk, Maine



## Charter Commission MEETING MINUTES

Wednesday, May 10, 2023

In-person meeting, Town-Hall, 3<sup>rd</sup> 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 [TownHallStreams.com](http://TownHallStreams.com).

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

### 1. Roll Call

Secretary Janice Vance called roll:

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

### 2. Public Comments

C. Babcock opened the floor for public comments on non-agenda items. Seeing none, he closed the public comment period.

### 3. Old Business

#### a. Recall Article Second Draft Review

- a. Town Attorney N. Burns asked to speak to proposed language that stated an elected official shall be suspended from participation on his/her board during the time a recall action was taking place. She said that provision does not appear in any other towns' charters, nor in State language, and felt it could be subject to legal challenge.
- b. Town Clerk M. Brown additionally stated his concern that a recall could take 2-3 months to resolve.
- c. R. Smith had misgivings about including that language, as there is a presumption of innocence and a recall does not mean someone is guilty of the charges. He felt this was not an appropriate way to handle such an accusation.

- d. Gayle Spofford, a School Board member, approached the podium to note that during last year's unsuccessful recall attempt, the School Board would have been under-represented if the two members involved could not participate for an extended period of time. She said a committee will be discussing this soon as part of a review of rules.
- e. S. Bloomfield felt it was fine for a board to ask a member to voluntarily step aside, but if State statutes didn't offer a mandatory suspension, she felt it was preferable to have this be a voluntary action.
- f. C. Babbidge said that Select Board members have committee assignments, not unlike members of the State legislature and Federal government, and barring someone from their committee work was a way to limit an elected official's participation while under recall. It could be a discretionary decision on the part of the Select Board.
- g. B. Robinson felt it didn't really matter if an official was barred from committee work or from sitting on a board, the effect would be the same, as it failed to honor the "innocent until proven guilty" assumption.
- h. T. Trainer said he was not in favor of a suspension; it was better for a commission/board to discuss the situation and handle it via preventive discipline.
- i. R. Smith reiterated his feeling that a suspension was not appropriate, and noted it appeared this opinion was becoming a consensus among the Commission members.
- j. C. Babcock noted that during the last meeting it appeared members were more in favor of a suspension so this language reflects that.
- k. S. Sayers said that was the reason why the language had been included, but it is easy to change it to reflect more of a "due process" policy.
- l. C. Babbidge said it was good that we were discussing it, and it was similar to earlier discussion that about whether recalls were necessary at all.
- m. B. Robinson agreed with the consensus that there be no suspension, and felt that an accusation could be discussed in Executive Session.
- n. T. Trainer wondered how much the charter should legislate in terms of a process for violations, and if requirements should be covered elsewhere.
- o. D. Parkinson asked "if not the charter, then where?"
- p. T. Trainer suggested that the Select Board could, for instance, put into place its own procedure, as could other boards.
- q. G. Spofford asked if the charter was intended to be a policy document or a process document.
- r. C. Babcock said he felt it was both.
- s. S. Bloomfield said, to T. Trainer's point, the policy and procedure should be in the charter, and it was best to deal with this now. Other documents, such as the Committee Handbook, could use the final version of the charter as a guide. She asked to also address comments made at the previous meeting by guest Nathan Poore, Town Manager of Falmouth. He had provided detail about Falmouth's Town Council and she wanted to point out that his comments about the functionality of a Town Council versus a Select Board were his opinion alone, and she would like to see other "testimonials" from other towns if possible. She also referred to his statement about a Town Council being a "plus in keeping town employees" and she wondered why this was.
- t. D. Parkinson said he thought it meant that the legislative powers of a Town Council provided more consistency for town employees. Approval of policy changes that

impacted employees were not subject to the whim of voters, but were instead made by those on the Town Council, a board that was closer to the situation.

- b. Recall Action Items
  - a. None.

#### 4. New Business

- a. Review Vacancy/Forfeiture of Office – first draft copy
  - a. S. Sayers provided a bit of background about the process he and J. Vance used as they worked on both the Forfeiture of Office and Recall copy. They both liked – and used - C. Babbidge’s proposed language that stressed the seriousness of conduct that could potentially trigger forfeiture/recall. He felt the Forfeiture copy was much easier to write, as there is a fairly narrow list of reasons, and they were far less subjective.
  - b. C. Babbidge discussed the difference between forfeiture criteria and recall criteria. With forfeiture, once a violation of the criteria occurred, an official was out no matter what other people had to say about it, because the criteria is objective, such as commission of a crime. He wondered if there was such a thing as a board-initiated recall, versus a publicly-initiated recall. No one expressed any knowledge of such a procedure.
  - c. S. Bloomfield pointed to #2 under Vacancy: “Failure to qualify for the office within 10 days after written demand by the Select Board” as J. Vance and S. Sayers noted on the copy that this language was found in most town’s charters, but they had no idea what it meant and so wanted discussion on it. She wondered if it referred to the qualifications someone would provide in a resume or on the form used to apply for participation on a volunteer committee. She knew the Select Board was recently discussing this.
  - d. N. Burns and D. Parkinson both said it likely referred to state law, but such a qualification could also refer to a failure on the part of an official to get sworn in (which is listed separately in the proposed copy). Qualifications also included such things as being a resident, a registered voter, etc. These are detailed in Title 30-A, Sect. 2526, Subsection 3 of the state statutes.
  - e. B. Robinson asked how someone could get into office without being qualified, and inquired what information was verified by the Town when someone presented papers to be nominated for election.
  - f. M. Brown said as Town Clerk he checked residency for anyone who took out papers. He also noted that there were other more esoteric situations that should be looked at, such as someone deciding to run for multiple offices at once and then choosing which one(s) to accept after winning, which he said he had actually happened.
  - g. C. Babbidge asked about #1 under Vacancy, which lists the reasons why a vacancy can occur. He agreed Death and Resignation were certainly valid reasons, but asked if it was really necessary to include “mental or physical disability” as it was quite possible to serve in office with less-than-total disabilities, and this language wasn’t ADA compliant. N. Burns pointed out this was the language in the State statute. Members agreed to remove that section.
  - h. Resident Barbara Fleshman approached the podium and asked what qualifications were necessary for someone to serve in office, and M. Brown noted residency, being over a certain age, registered voter, etc. B. Robinson suggested this be covered somewhere in the charter under “eligibility criteria.”

- i. C. Babbidge asked about residents who split their time between Kennebunk and another state; would we allow them to serve? M. Brown said that comes up sometimes when people register to vote, and he tells such part-time residents they must make a choice of which state is their official domicile, because they cannot vote in two places. He noted that those with second homes in Florida often choose that state after comparing the two states' tax rates. T. Trainer suggested it would be a good idea to have a legal definition for a resident in the list of definitions. S. Sayers pointed out the legal difference between a residence and a domicile, and that "domicile" was the term chosen for the proposed language. N. Burns concurred with this choice.
- j. C. Babbidge wondered if different boards could have different criteria for who could serve, or if we needed to be standard across all. Members did not have firm opinions on this.
- k. C. Babcock asked why the vacancy section is separate from the forfeiture section; logically, didn't these two sections belong together? Why was it set up this way? J. Vance said they simply carried that over from the previous charter, and that other towns used the same set-up. But in the next version they could certainly look to combine them. One does flow into the other from a logistics standpoint.
- l. C. Babbidge and T. Trainer both noted that the forfeiture criteria needed to be "cut and dried" because it's an internal process (hence the use of "shall" as a directive), but recall was up to the voters (more permissive language).
- m. G. Spofford pointed out that in response to the proposed forfeiture criteria "Failure to be sworn into office by the Town Clerk within 30 days of that person's election or appointment" that the School Board intends to now have all members sworn in at once, and that the School Board has a completely different oath of office than that used for the Select Board. During follow-up discussion, it was also pointed out that contrary to the language saying "sworn in by the Town Clerk" that a Notary Public could also swear in an official.
- n. R. Smith recommended removing the word "intentional" from #4: "Any intentional violation of the terms of this Charter" and others concurred.
- o. C. Babcock suggested in #8 that the copy lead with "Any public statement" and then give examples such as social media.
- p. S. Bloomfield asked about #5 regarding conflict of interest, did this mean a financial conflict of interest? N. Burns confirmed it was, per state law. Regarding #6, did each board have a separate code of ethics? M. Brown explained that the Select Board has one, but other boards and commissions may differ. J. Vance noted that the current charter has one that should apply to everyone. S. Bloomfield also asked about the "hearing" as shown in the last paragraph referring to what happens if an official has violated rules; was it public or private? J. Vance noted that in previous meetings public comments indicated accused individuals did not particularly want a public hearing. C. Babcock suggested making this a choice.
- q. C. Babbidge asked if #2 "Failure to attend 3 or more consecutive, regularly scheduled meetings, or 25% or more of meetings held during any six-month period, of the board, commission or committee upon which the elected or appointed official sits, when that failure has not been previously approved or subsequently approved by that board, commission or committee" was too harsh. Members who served on other boards felt there was historically a great deal of flexibility and member absences were handled on a per-board basis. C. Babbidge said he liked

most of the reasons given for forfeiture but was concerned about any subjective reasons, which could potentially create a burden for the Select Board charged with making determinations on possible violations.

- r. T. Trainer asked about #6 regarding the code of ethics, noting nothing was detailed here about them. J. Vance explained that the Forfeiture and Recall articles actually come much later in the charter than the articles that deal with code of ethics and conflicts of interest, and that as she and S. Sayers worked on this copy they saw an opportunity to put these subjects within the greater framework of a unified Boards, Committees and Commissions section that would encompass everything pertaining to that overall category. In the current charter, the various sections are somewhat scattered around. She has a rough draft put together for review in the future.
  - s. B. Robinson said that during her long tenure on the Site Plan Review Board no one had ever mentioned a code of ethics. C. Babcock added that that S. Bloomfield and B. Robinson had volunteered to begin working on the conflicts of interest/code of ethics language.
  - t. N. Burns said that she wanted to respond to the question J. Vance and S. Sayers had noted regarding #3 under Vacancy: "Removal from office in any manner provided by law " They had asked what law pertained to this, as the same language is in other town charters. She said there isn't actually much law, but if the language was modified to include "state" that would cover any new legislation that was passed. B. Robinson noted that there are also Federal laws. N. Burns also recommended removing the reference to a special election in the last sentence of the Vacancy section.
  - u. C. Babbidge asked about the language "adverse effect" in the forfeiture criteria "Any neglect of duty when that neglect has had a demonstrated and significant adverse effect on the official's ability to perform the duties of his/her office, or that has materially impeded the ability of that board, commission or committee to achieve its stated goals or to perform its designated functions." Was this too subjective? He much preferred the other criteria that was more "cut and dried." Members agreed copy should avoid subjectivity as much as possible.
  - v. B. Robinson said it was important to make a clear distinction between forfeiture and recall in the final copy; members concurred.
- b. Review Recall Articles 7.02 & 7.03
    - a. Due to the late hour, C. Babcock suggested holding these until the next meeting.

## 5. Action Items

- a. J. Vance and S. Sayers to make changes to Forfeiture of Office copy as suggested.
- b. B. Robinson and S. Bloomfield to begin work on code of ethics/conflicts of interest copy.
- c. S. Bloomfield is assembling all definitions as members identify them; please forward these to her.

## 6. Approval of Minutes

C. Babcock moved to approve the minutes of the April 26, 2023 meeting. The motion was seconded by S. Bloomfield. The vote to approve was 8 in favor, with one abstention (R. Smith).

## 7. Adjourn

A motion to adjourn the meeting at 8:25pm was made by B. Robinson and seconded by J. Vance. The vote to adjourn was unanimous.

Respectfully submitted,  
Janice Vance (Secretary)

Janice Vance 5/25/23