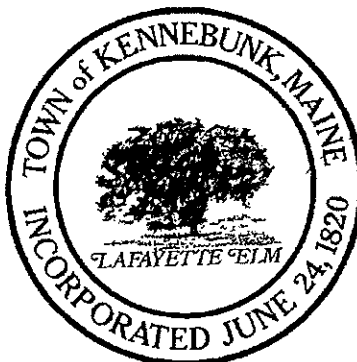


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, May 24, 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 6:32pm.

1. Roll Call

Secretary Janice Vance called roll:

- Present: Christian Babcock (Chair); Richard Smith (Vice Chair); 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

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

3. Old Business

- Review Forfeiture of Office
 - C. Babcock postponed discussion of this until the next meeting.
- Recall Action Items
 - None.

4. New Business

- Discuss Code of Ethics Volunteers
 - B. Robinson and S. Bloomfield have begun researching other towns' charters and are assembling data from them. S. Bloomfield had sent emailed samples and initial research to members for review. The first question they have is if the Commission would like to

include a Code of Ethics in the charter. They observed there is quite a bit of difference in how other towns handle it. Some do not mention Code of Ethics in the charter; others do include copy, and some specify which officials a Code of Ethics applies to. R. Smith said he had also noticed this variation when looking at other town charters earlier this year. B. Robinson noted that in Kennebunk there is a Code of Ethics applicable to the Select Board (posted on the wall of the Town Hall meeting room) and the Town's Committee Handbook includes a second one that is slightly different. There is, however, no process outlined for dealing with violations of the Code of Ethics. S. Bloomfield agreed with this assessment and would like to continue to review other towns' charters to glean good points for ours, which she believes could be improved. She suggested we discuss the Code of Ethics with the Select Board, to see if members agree with the idea of unifying the different versions and establishing a process.

- Members discussed the advantages and possible downsides of including a Code of Ethics in the charter. General consensus was to move in the direction of including it, with the following guidance: to recommend that the Town use just one version; that the language should be concise and as brief as possible (the Town of York was used as an example of copy being too long and the process cumbersome); it should be applicable to all volunteer boards and commissions; and we should discuss the proposal with the Select Board. Both S. Bloomfield and B. Robinson felt drafting the Code of Ethics would be straightforward and wanted to limit the copy to 1 or 1-1/2 pages.
- C. Babcock noted that the idea of including a Code of Ethics came up when violating it was listed as criteria for Forfeiture of Office, and if the Commission voted not to include it in the charter, the Forfeiture reasons would need to be adjusted accordingly. He made a motion, seconded by J. Vance, to have B. Robinson and S. Bloomfield draft a Code of Ethics applying to elected and appointed officials for potential inclusion in the Charter. The vote, in favor, was unanimous. C. Babcock asked if anyone else wanted to work with B. Robinson and S. Bloomfield on the project, but it was ultimately decided to stay with a two-person team. C. Babcock noted that as S. Sayers had pointed out previously, this was one of several parts of the charter that could be tackled as separate projects without touching the "big rock" – the form of government – which will need far more public input and discussion. These separate pieces can then be placed on the shelf for assembly into the final draft of the charter after the "big rock" question is settled.
- Members raised a procedural question of how the charter would be presented for adoption by Town voters after the final draft was completed, and N. Burns advised that sections could be split up so voters could weigh in on them individually. For instance, if a change to the form of government was recommended, that could be presented as a choice; however, N. Burns explained that we would need to be clear on what would happen if a specific provision was not adopted by voters, and how that would affect the whole charter. She advised that charter language prevails when there is conflicting language at the State or Federal level, so it is important to understand how separate sections could function.
- M. Brown said that one proposal floated for form of government is to increase the number of Select Board members but give them more legal authority than they currently have. That is somewhat different from a Town Council.
- C. Babbidge explained that his past experience working on similar projects was that legal counsel typically wrote and presented language for consideration and discussion by committee members, rather than the practice the Commission is currently using by

having small teams initiate language. He expressed thanks to the work done thus far. T. Trainer added that it is far easier to have a document to work with.

- Review Recall Article Section 7.02

- C. Babcock said the recall reasons are necessarily more general than forfeiture reasons. Members had previously stated they wanted forfeiture to be “cut and dried” with more discretion given for recall provisions.
- S. Sayers covered the three recall bills currently being considered by the State Legislature. Rep. Dan Sayre’s bill, which applies to school boards, and lists reasons for recall, had some amendments made during the recent work session that slightly watered down the language. The other two bills seemed to be created to allow recalls of all municipal and school officials for any reason whatsoever. All three bills, however, required a petition to be signed by 25% of voters, which is in line with what we propose, and higher than many towns, and the state, currently require. He listened to live discussions and said the questions raised were very similar to our own discussions. He and J. Vance were impressed with language in D. Sayre’s bill that stated a recall couldn’t be initiated for an official just doing his prescribed duties, and so they incorporated a version of it as Section 7.03 of the draft recall language. He explained that they may amend the threshold slightly for a recall election to specify that a minimum number of voters actually turn out to vote before the results of the election can be considered valid; otherwise it would be possible to recall an official with a very small number of voters. J. Vance provided a brief status of the three bills: all have received public testimony, and the State and Local Government Committee, which is overseeing the bills, held a work session. The state website shows D. Sayre’s bill as “tabled,” with the other two in various stages of ONTP (“ought not to pass”) and OTP (“ought to pass”). She asked C. Babbidge to confirm what could happen next, and he said they would go to the floor, where a variety of actions could take place. There is no way to predict any will have enough votes for passage.
- C. Babbidge asked about the language in Sect. 7.02.c. which allows both a recall when an official is convicted of a crime with a term of 30 days. The same language is contained under forfeiture of office. He recalled that there had been discussion in an earlier meeting about using the state’s A, B, C, D, E labeling of felonies and that we had decided that was more complication than we felt was warranted. He asked how it would work, if someone had been convicted of a crime many years earlier, did their time, and were now a model citizen: would we subject them with forfeiture or recall for that? And how about OUI, which could carry a jail term, but was the most common “crime” committed? What threshold are we comfortable with, because both recall and forfeiture effectively negate the will of the people who have voted the officials into office. T. Trainer agreed we needed to be very specific in the type of crimes that were serious enough to warrant removal from office. C. Babbidge asked if there was a way for the Select Board to make the decision on whether an official’s misconduct warranted a recall, rather than it being initiated by a member of the public. N. Burns said she had never seen this done.
- Gayle Spofford, a School Board director, asked if it was advisable for candidates to be questioned about previous convictions as part of the “qualifications” for office, which also include such things as being a voter, town resident, U.S. resident, over a certain age, etc.

- Members discussed limiting the time elapsed after a conviction, so that someone who had committed a crime at an early age but was now crime-free could avoid a forfeiture or recall based on that early crime. C. Babcock summarized comments made by members, perhaps “none within the past ten years,” and, as D. Parkinson suggested, that the “30 day” language around time served for the crime was somewhat arbitrary, and so this particular criteria needed to be reconsidered for the next draft. There was additional mention of an earlier reference that stated “crime committed while an elected official.” B. Robinson noted that it can take a long time from an arrest or indictment to when someone’s case is ultimately decided.
- D. Parkinson said he understood C. Babbidge’s question about creating what is essentially a third way to remove an elected official from office, by allowing the Select Board to initiate a recall proceeding; it avoids putting the onus on the Board to make the decision but communicates the Board’s belief that a serious enough violation has occurred that the public should be asked to weigh in on it.
- S. Sayers agreed that the language needed to be more precise, and a time value added, as well as which crimes are a concern. He also mentioned a “guilty plea” and “no contest” as worthy of consideration in addition to “convicted.” C. Babbidge added “plea bargains” to this list.
- There was discussion about whether to include the “crime” reason in both forfeiture and recall or just under Forfeiture. C. Babcock noted that reason “a” under Recall stating that “serious misconduct amounting to a breach of the public trust” basically covered a crime, and so in his opinion “c” that stipulates commission of a crime could be removed. T. Trainer asked whether what we propose should apply to both the school board and the other elected officials, or should the policies be different. Members elected to postpone discussion of how to treat the school board, and for the moment, the “crime” language will be reworded and temporarily retained in both sections for further discussion at the next meeting.
- Review Recall Article Section 7.04
 - C. Babcock received an email from G. Spofford commenting on the proposed language specifying how the number of days a petition could be circulated were calculated when the Expiration Date fell upon a national or State holiday or weekend. Her comment was “this appears to provide more than 30 days to get signatures as there is no way to guarantee no signatures are added after the 30th day or that the date of a signature is true.” C. Babcock said we would look at this language and discuss it.
 - C. Babbidge asked to back up slightly and look at Sect. 7.03, which spells out what criteria is NOT grounds for recall. He noted this is a “guide” and not a mandate. C. Babcock wondered if this section should become part of Sect. 7.01, which sets out expectations at a high level. After discussion, members decided to retain 7.03 as a separate section to call emphasis to it.
 - There was brief discussion around whether requiring 500 signatures for the Notice of Intention was an acceptable number. M. Brown said he was happy with that number, rather than requiring a percentage of voters, as it made the process simpler for the Town Clerk’s office. S. Sayers pointed out that he and J. Vance had met with M. Brown and H. Balsler to iron out the details of the numbers. R. Smith asked what number the 500 replaced, and C. Babbidge stated it had been 25.

- S. Bloomfield asked if language should be added to ensure that only originals of the notice of intention and petition could be used, that she understood copies had been substituted for originals in the 2022 recall. M. Brown said only originals were given out by the Town Clerk's office. C. Babcock said the issue was that petitions were circulated without a cover sheet, and some people signed them without knowing what they were signing. S. Bloomfield asked if the reasons stated for recall should require that supporting information be added as well. There was discussion about how to determine whether the "facts" presented were indeed true; that was the core problem with the last recall attempt. B. Robinson expressed concern that "b" - "a statement of the grounds for recall specified in Section 7.02 of this Article" - allowed for embellishment and fiction. M. Brown asserted he cannot vet any reasons given. C. Babcock said the last recall attempt used a town logo, which appeared to give an "official stamp of approval" that the "facts" were indeed true. The new language, and forms, will prevent this from happening again by removing that authority. The Town Clerk will need only to issue the paperwork and certify the final forms, and not vet the validity of statements made. T. Trainer said statements amounted to "arguments" rather than facts. C. Babcock said perhaps the charter language should read something along the lines of "citing publicly known facts" by referring to supporting documents mentioned by G. Spofford such as meeting minutes and financial reports. C. Babbidge said the only actual fact was that the person initiating the petition believed something, so perhaps the wording could be "in the opinion of the..."
- J. Vance suggested to B. Robinson that in the "b" reason a reference to Sect. 7.03 could be added to help address her concerns.

5. Consideration and Approval of Minutes

R. Smith identified one item on page 5 to be corrected. C. Babcock moved to approve the minutes of the May 10, 2023 meeting, as amended. The motion was seconded by T. Trainer. The vote to approve was unanimous.

6. Action Items

- Recall and Forfeiture of Office Draft
 - S. Sayers and J. Vance will make changes as discussed tonight and re-submit to members for discussion at the next meeting.
- Code of Ethics Research and Draft Copy
 - B. Robinson and S. Bloomfield will continue this project and send information out to members for review.

7. Adjourn

A motion to adjourn the meeting at 8:35pm was made by B. Robinson and seconded by R. Smith. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

