

Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, June 28, 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: Christian Babcock (Chair); Richard Smith (Vice Chair); Janice Vance (Secretary), Christopher Babbidge, Susan Bloomfield, Durward Parkinson, Brenda Robinson, Stephen Sayers.
- Absent: Ted Trainer.
- Also present: Merton Brown, Town Clerk; Natalie Burns, Town Attorney; Heather Balsler, Town Manager.

2. Public Comments

Chairman C. Babcock opened the floor for public comments on non-agenda items. Seeing none, he closed the public comment period. He updated members on the "progress report" required at the nine-month mark, and said that after discussion with H. Balsler and a review of upcoming election dates, he would be requesting a time extension of "up to 24 months" to accommodate the necessary work and public hearings to meet a goal of placing the new charter on the November 2024 ballot for acceptance by voters. C. Babbidge asked for an update on the budget provided for Commission activities. M. Brown explained that there is \$40,000 allotted in the current June 2023-May 2024 town budget. H. Balsler added that because the Commission should be wrapping up its work by spring of 2024, she did not envision funding for a second budget year.

****NOTE: FOLLOW-UP BY M. BROWN 6/29/23 – THE BUDGETED AMOUNT IS \$35,000, NOT \$40,000.****

3. Old Business

- Review Recall Article
 - S. Bloomfield asked for confirmation from M. Brown that the description of Town Clerk office hours as stated in Sect. 7.05 met his needs, and he said it did.
 - S. Sayers inquired if S. Bloomfield had circulated the last version of definitions she is gathering, and she confirmed she had. He asked if members felt the newly-added definition of a “qualifying crime” covered what had been previously requested; it will be discussed further tonight. (The definition refers to a crime committed anywhere in the U.S. within 10 years of election/appointment of an official, with other specifics regarding the severity of such a crime, and carving out non-serious crimes that may have been committed when an official was a juvenile, due to previous Commission discussion on this topic.)
 - B. Robinson noted that the title of Section 7.03 differs in format from all the other section titles, and C. Babcock noted this was to garner sufficient reader attention. C. Babbidge suggested truncating it to read “Invalid Grounds for Recall,” and C. Babcock said members could circle back to this in further discussion, as the plan is to put the Recall section on the shelf temporarily and move ahead with other parts of the charter.
 - J. Vance noted that as the copy for the entire charter comes closer to completion, members should discuss and agree upon a “style manual” that defines how titles, proper names and other font-specific items are represented visually. B. Robinson said it might be wise to hire an editor/designer at the end to catch all remaining issues.
 - Gayle Spofford, a School Board member, asked about the definitions, and C. Babcock explained they are in progress, will continue to change during the life of the charter review process, and be finalized toward the end. She additionally inquired about how the Recall process laid out the number of days and methods petitioners could circulate petition forms, and asked if the next public workshop would cover this. C. Babcock affirmed it would.

4. New Business

- Review Forfeiture of Office and C. Babbidge’s feedback from the June 14 meeting
 - C. Babbidge referred members to the questions on his memo: *1. What are the cut-and-dry facts that would justify the Select Board’s enforcing the forfeiture provisions in the charter; 2. Are there accusations against an elected public official that would justify the Select Board to, unilaterally, activate the forfeiture provisions of the charter; OR 3. Should the serious but as yet un-adjudicated accusations against an elected public official instead be part of the recall process, where the final act of termination is in the hands of the ultimate authority that originally elected the officeholder, the people; 4. Consistent with the principle regarding the ultimate authority of the electorate, “the people giveth (election) and the people taketh away (recall),” instead of forfeiture for certain infractions as in the current charter, should we permit the Select Board, by public vote, to initiate a recall with reasons, OR 5. Should the criteria only be used through citizen activism and the full recall procedure?* He stated he was leery that the Recall and Forfeiture processes as currently proposed could be politicized or weaponized; that he felt the Select Board would be suited to initiate a recall process; and wanted to ensure the final procedures were very specific and not subjective.

- B. Robinson discussed the conflicts of interest and ethics copy that she and S. Bloomfield are currently working on, as this project is somewhat applicable to the questions C. Babbidge is raising. They have reviewed the Select Board code of conduct, the town HR document, and committee codes of conduct, and found there are many differences between them. They saw further variation in other towns' ordinances. She felt it would make sense to have one combined code that is fair, just and objective. Doing so, she felt, would help provide clarity for C. Babbidge's procedural questions. S. Bloomfield said she and B. Robinson had originally intended for the Ethics copy to be short, but now that they are in the midst of researching what the copy could and should cover, it is becoming apparent it may end up being longer. They do not know the source of the copy used by the town. They noticed that multiple towns have identical language regarding penalties for non-compliance. Some of the language, she and B. Robinson felt, is nebulous, and as time goes on, could potentially become irrelevant.
- C. Babcock asked if the intent is to incorporate that final "single code" in the charter, along with the proposed (#7) reference to it in the Forfeiture section.
- C. Babbidge stated he liked the idea of one code. R. Smith felt there could be more than one set of a code of ethics; one for the Select Board and one that could be used more widely; or different boards could use specific versions based on board function. He agreed that over time parameters could change. Penalties do need to be defined, and applied. However, perhaps non-adherence to a code of conduct should not be a reason to forfeit office.
- S. Bloomfield proposed that it might not be the Commission's responsibility to create a new code of conduct/ethics, but simply refer to it. It could be a separate document.
- G. Spofford asked if there is a formal policy of conduct and ethics available for towns to use and adapt. N. Burns said she did not believe there is a state statute but the Maine Municipal Association may have some model language that could be reviewed.
- B. Robinson said she felt the Select Board could create a code/ethics list that applies to both elected officials and volunteers. Such a list would be easier to update through regular meetings than it would be to change it through a future charter amendment.
- Regarding the Forfeiture reasons, C. Babbidge stated he does not believe the proposed reference to "disability" belongs in the copy. S. Sayers stated that the Maine Constitution uses similar "disability" language, and that there should be a process in place to handle a situation such as if an elected official developed, for instance, dementia, but still felt capable of decision-making when other board members observed deficiencies. Miriam Whitehouse, a Select Board member, noted that things can happen to an elected official after an election takes place that impacts their ability to serve (a stroke for example), and that she felt retaining the language referring to disability was appropriate. C. Babbidge felt an elected board was not in a position to make a judgment on a medical condition.
- C. Babbidge questioned the "violations of the terms of this charter" reason. This, he felt, was subjective and could give the Select Board a license to focus on something small and insignificant that an elected official may have done.
- C. Babcock asked to clarify member comments; was C. Babbidge proposing to reduce the number of Forfeiture reasons, and was S. Sayers seeing value in adding more? He went on to say he felt the Vacancy section did not work well with the Forfeiture language. J. Vance said that she and S. Sayers had discussed this as well, and believed

that the Vacancy section was better suited to appear in an overall Boards/Commissions/Committees Article that she has partially written. It was kept in this order for now to allow discussion, but could certainly end up getting tweaked further as the final document is assembled in a new order that provides a more logical transition from subject to subject.

- o D. Parkinson suggested taking a straw vote on each of the Forfeiture reasons in the current document to help the group put this to bed and be able to progress to work on the next parts of the charter. C. Babbidge asked for discussion on which reasons should ideally be under Recall and which should remain under Forfeiture, as he had laid out on his memo; he also felt a few items could be considered to be “qualifications,” a third category. B. Robinson agreed with the concept of qualifications versus forfeiture reasons. J. Vance asked if the group wanted to create that third category, as it could easily be done. There was no consensus on this, so C. Babcock initiated the process of going through the document and voting to approve each item. The copy below comes from the document, with suggested changes, and votes in favor of and opposed to (one member absent, as noted):

SECT. ____ VACANCIES AND FILLING VACANCIES

A vacancy ~~may~~ shall occur on a board, commission or committee for any of the following reasons:

Per N. Burns, “may” is not mandatory, but “shall” is; members expressed a desire to make the language more rigid. **VOTE: 8 IN FAVOR/0 OPPOSED/1 ABSENT**

Members suggested changing the order of the reasons listed, and moving #2 under Forfeiture to this list. The new order is shown below, with votes in favor, opposed and absent:

1. *An Elected or Appointed official's ceasing to have his/her domicile within the Town;* **VOTE: 7/1/1**
2. *Death, resignation, or a permanent physical or mental disability that results in an Elected or Appointed Official's inability to perform the required duties of his/her office;* **VOTE: 7/1/1**
3. *Failure to take the oath of office within 30 days of a person's election or appointment to office;* **VOTE: 8/0/1**
4. *Recall of an Elected Official from office pursuant to Article 7 of this Charter; and/or* **VOTE: 8/0/1**
5. *Forfeiture of an Elected or Appointed Official's position, as specified in Section ____ below.* **VOTE: 8/0/1**

When a vacancy in an appointed office has occurred for any of these reasons, the Select Board shall appoint ~~someone~~ a qualified individual to fill the vacancy within 60 days of its occurrence. When a vacancy occurs in an elected position, that position shall be filled at the next special or general election.

(NO VOTE TAKEN ON THIS CHANGE)

Sec. ____: FORFEITURE OF OFFICE:

Public service in any elected or appointed position is a privilege that carries with it a corresponding responsibility to work honestly and diligently in the best interests of the Town and its residents, ~~to avoid even the appearance of impropriety;~~ and to act, at all times, in conformity with the ~~ethical and conflict of interest~~ requirements of this Charter. Accordingly, an Elected or Appointed Official may be subject to forfeiture of his/her office or position for any of the following reasons: **VOTE TO EDIT THIS PARAGRAPH**

AS SHOWN: 8/0/1

1. ~~A violation of the terms of this Charter;~~ **VOTE: 1/7/1 (vote failed; this line will be deleted)**
2. *Failure to attend 3 or more consecutive, regularly scheduled meetings, or 25% or more of meetings held during any 6-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;* **VOTE: 8/0/1**
3. *Malfeasance in office;* S. Bloomfield read the proposed definition of “malfeasance,” which is a deliberate commission of an unlawful act on the part of an official while in office. **VOTE: 7/1/1**
4. *Repeated Misfeasance or Nonfeasance in office;* **VOTE: 5/3/1** Alternative wording was proposed by J. Vance after members discussed the advisability of having an elected official faulted for a one-time violation: *A pattern of Misfeasance or Nonfeasance in office;* **VOTE: 6/2/1 (retain the alternative wording)** S. Bloomfield read the proposed definitions: misfeasance is an improper act committed by an official, and nonfeasance is an omission, or failure to act, when there is duty to do so.
5. *Failure to disclose a conflict of interest, as defined under Maine state law;* (added extra clarification provided by N. Burns); **VOTE 7/1/1**
6. *Failure to follow the code of ethics set out in Article ___, Section ___ of this Charter, and any other code of ethics that is applicable to a particular appointed or elected office or position;* **TABLE FOR NOW, PENDING DECISION WHETHER TO INCLUDE A CODE OF ETHICS IN THE CHARTER.**
7. ~~*Misconduct involving dishonesty, such as fraud, theft, misappropriation of public funds, obtaining money by false pretenses, embezzlement, bribery, counterfeiting or corruption;*~~ **VOTE 3/5/1 (vote failed; delete this line and discuss adding something that pertains specifically to public funds)**
8. *Conviction of a “qualifying crime,” as defined in the “Definitions” contained in Article 2 of this Charter; or* **VOTE: 8/0/1** S. Bloomfield read the proposed definition.
9. *Making any public statement that discriminates against a protected person or group on the basis of race, skin color, hair color or style, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability or individual medical condition; including, but not limited to, a statement or statements made in social or other media that could be seen or heard by any member of the public.* **TABLE FOR NOW, NEEDS FURTHER DISCUSSION AND LEGAL AFFIRMATION.**

Discussion of the final part of the Forfeiture section dealing with process was tabled until the next meeting.

5. Consideration and Approval of Minutes

C. Babcock moved to approve the minutes of the June 14, 2023 meeting. The motion was seconded by S. Bloomfield. A change to the spelling of D. Smith’s name was made. The vote to approve as amended was unanimous.

6. Adjourn

A motion to adjourn the meeting at 8:42pm was made by C. Babcock and seconded by B. Robinson. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

