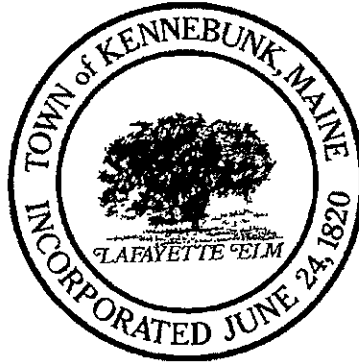


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, July 12, 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 6:33pm.

1. Roll Call

Secretary Janice Vance called roll:

- Present: Christian Babcock (Chair); Richard Smith (Vice Chair); Janice Vance (Secretary), Susan Bloomfield, Durward Parkinson (*via Zoom*), Brenda Robinson, Stephen Sayers, Ted Trainer.
- Absent: Christopher Babbidge.
- 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. There were no comments.

B. Robinson requested that documents presented for review contain a header/footer with the date and name of the document. J. Vance said she will make this change going forward.

3. Old Business

- Review Forfeiture of Office
 - There were no comments regarding changes made in red on the document in response to discussion at the June 28th meeting.

4. New Business

- Finish and finalize review of Forfeiture of Office

- Because certain “reasons for forfeiture” had been eliminated at the June 28th meeting, the numbering scheme under this section has changed. Additionally, J. Vance noted that #5, which is a reference to violations of the charter’s code of ethics, is marked as “on hold” until a final decision is made whether to include a code of ethics in the new charter. Members discussed #7, which proposed that public statements made by an official that discriminated against protect persons or groups were grounds for forfeiture. N. Burns felt this was problematic, as it would violate First Amendment rights and require accusations of such to be a judgment call for a board. T. Trainer, S. Sayers and R. Smith agreed that this may be better suited as a means for citizens to initiate a recall against an official under the general language in Section 7.02 (a) without actually specifying the details of such misbehavior. C. Babcock called for a vote to remove #7, which **passed 8 in favor, 0 opposed, and 1 member absent**. J. Vance will remove this reason.
- Members discussed the last part of the section, which describes the process followed if an official has indeed engaged in behavior that violates the charter. There were no changes to the copy, but J. Vance was requested to break up the copy into steps to be followed (by S. Sayers), and to create a title for this block of copy (by R. Smith). S. Bloomfield asked that if the Select Board would need to rewrite their current procedures to correspond to the charter, and N. Burns said that would be necessary.
- D. Parkinson said that the city of Portland had established an ethics commission to review and create a new code of ethics, and proposed that perhaps updating the code of ethics should be a project apart from the Charter Commission. B. Robinson said she was going to suggest that also. She had looked at other towns as well as state information, for ideas and guidance on how to establish such a process. S. Bloomfield asked if the Charter Commission could make recommendations, and whose responsibility it would be to establish an ethics commission. C. Babcock said that the charter itself, rather than containing a code of ethics, could state that the town “shall establish a commission to create a new code of ethics,” or the Charter Commission could discuss the formation of an ethics commission with the Select Board. N. Burns said it could be done either way.
- Miriam Whitehouse, Select Board member, said the Select Board had reviewed a proposed code of ethics at its meeting the evening before, and there was consensus that the entire document should be reviewed. She agreed that if an ethics commission was created, its work would make the Select Board’s job easier.
- T. Trainer said he liked the idea of combining and coordinating efforts between the Charter Commission and the Select Board.
- M. Brown noted that the employee handbook was very comprehensive and may be a source of inspiration. B. Robinson agreed there was very good information in it, but found some subject matter could ideally be grouped a bit differently.
- Both S. Bloomfield and T. Trainer asked if the Select Board would be willing to take on the formation of a Commission, and C. Babcock requested that they set up the ground work. M. Whitehouse said she could take the concept back to the Select Board. R. Smith agreed with approaching the project this way, as he believed the Charter Commission’s primary focus is to create a charter that will be approved by voters, and a code of ethics could prove to be controversial enough to impact that approval.

- Vote on final draft of Recall
 - Members discussed the most recent version. C. Babcock called attention to Section 7.09 (how the question was worded on the warrant to recall an elected official) and summarized that during previous meetings there was discussion about whether this ballot question should refer only to the recalled official, or if it should also offer voters a chance to vote for a replacement candidate. R. Smith said he thought consensus was to separate these. Both he and S. Bloomfield said combining the two actions didn't seem fair to either party, was confusing to voters, and could distract from the primary question, which was the recall. T. Trainer felt the ballot wording should be limited to recall "full stop."
 - D. Parkinson reiterated his concern from an earlier meeting, citing the "rare and not forever" possibility that an entire Select Board could be recalled at once. However, the potential of leaving government with no one in charge, he said, could be prevented by laying out a line of succession. S. Sayers noted that having an entire 7 member board recalled would require petitioners to successfully circulate 7 separate petitions, which would be difficult.
 - M. Brown said that in his experience voters wouldn't find the combination of a recall vote plus selection of a replacement candidate confusing, and that leaving a board short-handed for the time it would take to pull off a second election to select a replacement was concerning. This was particularly worrisome for the school board.
 - R. Smith asked why the title of Section 7.03 had not been changed to mirror the format of other sections, and J. Vance said she had missed this, and would make that change.
 - C. Babcock called for a vote to accept the Recall section as amended. **The vote to accept was 8 in favor, 0 opposed, and one member absent.**
- Discuss potential dates for public forum to review recall and forfeiture
 - C. Babcock suggested holding a public forum on a Saturday morning, as the Commission had done earlier in the year, and proposed July 29 as a possible date. Members, and M. Brown, felt this would not provide enough time to promote the forum to residents, and August was generally a difficult month to garner sufficient interest due to vacations. Members decided on Saturday, September 9 at 9am in Town Hall for a "public meeting." Well prior to that time, the draft Recall and Forfeiture of Office sections would be posted to the town website for public review. J. Vance asked about including the Initiation and Referendum section, which has been sent out to members for review. C. Babcock invited her and S. Sayers, who had co-authored it, to go through it for initial discussion. J. Vance summarized the first draft, reading parts of it out loud, explaining that the basic premise of a voter-initiated petition was similar to the recall process, but didn't require a notice of intention. The existing charter language was not "awful" but she and S. Sayers re-organized it and made small changes based on review of the same procedure in other towns. 1500 signatures would be required, and petitioners had 30 days to gather them. Initial comments included:
 - M. Brown said the proposal that the Town Clerk could assist petitioners with the process ran counter to the way petitions for ordinance changes have been handled in the past.
 - N. Burns agreed, and said that the final process described in this section will be determined, per state law, on whether the Town decides to maintain its current

- town meeting/select board form of government, or change to a Town Council form of government.
- M. Brown said currently when a resident wants to change a town ordinance, the first step is to involve the head of the appropriate town department. Sometimes the resident finds that his concern is already being handled, or could be easily handled by a department without the need to go through a petition signature process. The Select Board can additionally assist by helping to determine how the resident's concern can be addressed.
 - R. Smith asked how the requirement of 1500 required signatures was determined. S. Sayers explained it represents a little over 10% of registered voters. The current charter uses 7%, but most towns (and the state) use 10%. M. Brown interjected that he was fine with 1500. R. Smith said he wanted to have a large enough number to ensure a small group of disgruntled people couldn't easily force an idea onto the entire town; there are rules and regulations in place for a reason. He cited the city of Portland, where referendums are often used to create ordinances, and a few times even the creators of the petition realized they were not tenable and asked voters to oppose them. S. Sayers agreed with these sentiments. R. Smith said he would like to see some language added specifying that if an ordinance is created or amended by referendum, that it can't be revisited via referendum for X number of years. N. Burns said some towns do have time periods to govern this, others do not. There is no legal requirement around it.
 - J. Vance asked for next steps, and members agreed she and S. Sayers should make the changes requested, and re-circulate for comments.
- Upcoming Areas of Focus/Action Items
 - C. Babcock said he would like to start discussions about Form of Government, which is one of the most significant items in the charter. S. Sayers suggested he initiate a meeting with the Select Board to hear directly from them their ideas and concerns.
 - J. Vance asked which other sections could be divided up and worked on, to keep the underlying process going while Form of Government was in progress. C. Babcock said S. Sayers had identified such sections a while back, via email, so that could be looked at.
 - D. Parkinson suggested that we speak with other town leaders including H. Balsler, current Town Manager, as well as prior Town Managers Mike Pardue and Barry Tibbetts, to get their views.
 - S. Bloomfield suggested looking at Town Councils in other municipalities; leaders who could provide "testimonials" that one thing or another worked well.
 - J. Vance asked if the Maine Municipal Association could provide a speaker, or means for us to ask questions about form of government. She said she pulled copy pertaining to town councils from the charters of about 5 towns that use that form of government, and tried unsuccessfully to create an Excel file to compare, duty by duty, what Select Boards and Town Councils typically do. It appeared that the main difference is that a Town Council can create and change ordinances without sending them to voters. N. Burns said Town Councils also have financial control that Select Boards do not have.
 - M. Brown said he has fielded questions from voters asking why budget questions have to be voted on, when the average citizen doesn't have the knowledge or background to

make an informed decision, along with the idea that budgetary issues should be handled by Staff and the appropriate board.

- D. Parkinson said he knows of an attorney in Bangor who consults on municipal matters and this person may be helpful for the Commission to talk to. N. Burns agreed this attorney is well qualified.
- To start members thinking about forms of government, J. Vance said she aggregated the Town Council duties from other towns in a Word file and will circulate this out for members to review.
- C. Babcock outlined action items:
 - He will email the Select Board to invite them to offer their comments at our next meeting; and will get in touch with M. Pardue and B. Tibbetts to ask for their thoughts and guidance;
 - H. Balsler and M. Brown will contact the Bangor attorney to request a half hour to an hour talk with the Commission;
 - J. Vance and S. Sayers will look at Sections 8, 9, and 10 of the charter and will provide a proposed re-write as necessary for members to review;
 - M. Brown will work with Staff to post the final drafts of Recall, Forfeiture and Initiation & Referendum to the town website and begin promotion of the September 9 public meeting;
 - B. Robinson and S. Bloomfield will put together a code of ethics framework to assist the possible creation of an Ethics Commission;
 - M. Whitehouse will take the concept of creating an Ethics Commission to Select Board members.

5. Consideration and Approval of Minutes

C. Babcock moved to approve the minutes of the June 28, 2023 meeting. The motion was seconded by S. Sayers. B. Robinson asked to provide minor grammatical changes, which she will submit directly to J. Vance, per C. Babcock, as they are not substantive. The motion passed unanimously, with one abstention (T. Trainer) and one absent member (C. Babbidge).

6. Adjourn

A motion to adjourn the meeting at 8:15pm was made by B. Robinson and seconded by R. Smith. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

