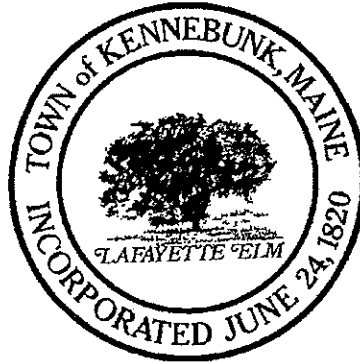


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, August 9, 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 (participating via Zoom), Brenda Robinson, Stephen Sayers, Ted Trainer.
- Also present: Merton Brown, Town Clerk; Natalie Burns, Town Attorney.

2. Public Comments

The Chair opened the floor for public comments on non-agenda items. There were no comments.

3. Old Business

The Chair summarized that during the previous meeting, the proposed Article 6 (referendum and initiative) had been partially discussed, so completion of discussion would be the first item of New Business. J. Vance requested, with apologies for the additional work involved, that the entire Article be reviewed from the beginning, as she and S. Sayers had edited it quite heavily in the interim, with the final draft distributed just a few days earlier after consultation with Town Attorney N. Burns.

4. New Business

Finish review and approval of Referendum and Initiative Article.

- Section 6.01, "Voters' Rights," was not changed from the previous version, so no discussion was needed. It will stand as written.

- Section 6.02, “Voters’ Petition to Enact or Amend Ordinances,” had been recently edited after discussion with N. Burns, when J. Vance and S. Sayers questioned the method by which land use ordinances, including contract zones, could be created or amended: did these require a citizens’ petition? Town Planner Brittany Howard advised J. Vance to review Article 13 of the Zoning Ordinance, which specifies how this process works currently; no petitions are required. As a result, J. Vance and S. Sayers decided to specify under “No Voters’ Petition created under this Article shall propose” that “Amendments of the Zoning Ordinance of the Town (such amendments are only permitted pursuant to the procedures specified in Article 13 of the Zoning Ordinance).” The addition of this bullet point was to clarify the current procedure as outlined in the Zoning Ordinance, and not allow changes to be proposed through a citizens’ petition.
 - S. Bloomfield asked if there was intended to be a time limit or deadline for a citizens’ petition to gather the required number of signatures. J. Vance said one draft of the Article stated there was no deadline, but that line was later removed after discussion, the feeling being that it was self-evident.
 - C. Babbidge asked N. Burns if other towns’ charters contained language that referred to proposals that could be considered “unconstitutional” or “unlawful.” N. Burns said yes. C. Babbidge said it was incumbent upon the petition sponsor to word the proposal correctly. He compared the town process to the State, and asked to identify which authority at the town level would decide what is illegal or unconstitutional. The proposed Article 6 assigns this task to the Town Attorney. He said although he questioned this assignment, there were other components in Article 6 he was in favor of: the requirement for 1000 voter signatures and that the Select Board would ultimately be involved in the process.
 - C. Babcock said, to him, the term “unconstitutional” would be something obviously against the law.
 - S. Sayers noted that the language proposed recommends that the creators of a petition obtain their own legal advice, which should assist in identifying anything unconstitutional prior to submission to the Town Attorney and Select Board. M. Brown concurred with this approach, and said an attorney could clarify any issues up front.
 - S. Bloomfield mentioned the language that allowed the creator an opportunity to correct any issues; otherwise the petition would not be considered for placement on a ballot by the Select Board. S. Sayers agreed that this was a guardrail designed to give a creator the necessary tools to use the opportunity wisely.
 - D. Parkinson said the intent of the wording was to weed out proposals that are clearly ill-considered and not simple differences of opinion on town procedures. He cited the town of Wells, which dealt with a problem ordinance that ended up in court. Requiring the up-front due diligence protects the town from potential court cases. He said Wells now uses the process we are proposing.
 - S. Bloomfield asked D. Parkinson about the Wells case; at what point was it determined to be illegal? She agreed it was good to have checks and balances.
 - C. Babbidge said his concern during the review process by the Town Attorney and Select Board was censorship of someone’s ideas.
 - N. Burns cited the city of Portland, which has a history of citizens’ referenda, as R. Smith had noted during a previous meeting. She said ordinances are sometimes proposed that definitely aren’t legal, and the courts have said these should not go to voters.
 - **C. Babcock took a straw vote to approve Section 6.02 as written:**

- **9 in favor, 0 opposed, 0 abstentions.**
- Section 6.03, “Agents’ Responsibilities,” which was not substantially changed from the version discussed during the previous meeting, had one change suggested by T. Trainer: to use the word “unlawful” in place of the word “illegal” in order to be consistent with the word used in Sec. 6.02, and supported by members at the prior meeting.
- Section 6.04, “Review and Certification of Voters’ Petition by Town Clerk,” and Section 6.05, “Defective Voters’ Petition,” had been edited since the previous version, to clarify the hand-off of a valid petition from the Town Clerk to the Town Attorney; to declare petitions lacking sufficient signatures null and void; and to specify that the subject of an invalid petition could not be filed again for another 12 months.
 - S. Sayers said that while working on Section 6.05 he wondered if someone who wished to stop another person from presenting a petition on a specific issue could intentionally stonewall the process by getting just a signature or two, which would prevent the subject matter from being considered for a year.
 - Members agreed this could be abused, debated language changes that would prevent it from happening, and also proposed that the sentence referring to the 12 month limitation should simply be removed, with the caveat that it was possible for multiple competing petitions to be created that the Town Clerk’s office then had to certify.
 - S. Bloomfield said it wouldn’t seem fair to penalize someone who was acting honestly.
 - B. Robinson raised the possibility of losing signatures because signatories died or moved, making the total number insufficient through no fault of the circulators.
 - N. Burns noted that even though there was no deadline for gathering signatures, the creator of a petition needed to shoot for a specific election, so the time needed to complete the process was necessarily compressed.
 - M. Brown said that when someone moved out of town and registered to vote in a new town, that the Town Clerk’s office was notified, so the person could be removed from the voting rolls. It was certainly possible for someone to move and not register in their new town, but the total number of signatures that could be affected was fairly small. He said that in the past his office was careful to explain pitfalls in the petition process to those considering one.
 - **C. Babcock took a straw poll to approve Section 6.05 as written:**
 - **1 in favor, 8 opposed, no abstentions.**
 - **C. Babcock took a straw poll to approve Section 6.05 with removal of the sentence “A new Voters’ Petition that covers substantially the same subject matter cannot be filed until 12 Calendar Months have passed after the date upon which the defective Voters’ Petition was filed.”**
 - **8 in favor, 0 opposed, 1 abstention.**
 - The sentence will be removed.
- Section 6.06, “Town Attorney to Review Voters’ Petition,” was heavily edited since the previous version was presented. Three versions of the language relating to the Town Attorney’s specific tasks were made available for members to discuss and consider, which S. Sayers outlined verbally:

Version 1: to ensure there are no unconstitutional provisions or other illegalities being proposed.

Version 2: to correct non-substantive typographical or grammatical errors and to ensure there are no unconstitutional provisions or other illegalities being proposed.

Version 3: to ensure that it does not propose the adoption of measures that are unconstitutional or unlawful, and that it does not contain basic typographical or grammatical errors, or language that is unclear or ambiguous.

- *Unconstitutional or Unlawful Proposals: If the Town Attorney concludes that the Voters' Petition contains proposals that are unconstitutional or unlawful, he/she shall notify the Select Board, and the Select Board shall inform the Agent of this and give him/her the opportunity to eliminate any such proposals from the Voters' Petition. If the Agent declines to do so, the Select Board shall inform the Agent that the Petition fails to comply with the requirements of Section 6.02 of this Charter, and shall take no further action on it.*
- *Typographical or Grammatical Errors, and Unclear or Ambiguous Language: If the Town Attorney finds any basic typographical or grammatical errors in the Voters' Petition, he/she shall notify the Agent of those errors, and it shall be the responsibility of the Agent to correct them. Similarly, if the Petition contains language that is unclear or ambiguous, it shall be the responsibility of the Agent to confer with the Town Attorney on ways to clarify that language and to remove any ambiguity.*
 - S. Bloomfield said she had been in favor of Version 3, but with deletion of the language around typographical and grammatical errors, but after hearing S. Sayers' description of why it was included, her original concern that the Town Attorney's action could be described as providing legal services to the creator of the petition had been satisfied.
 - D. Parkinson said this version is a positive improvement over the language in the version discussed at the last meeting and he feels it works better.
 - C. Babbidge said he would prefer that the Town Attorney not be mentioned in this Section at all, as his/her position with the town is both non-residential and non-elected and accordingly should not be empowered to make the decision if a petition was unconstitutional/unlawful, which he said could be overturned in court.
 - R. Smith said the Town Attorney would provide an opinion to the Select Board for consideration and possible action. He said he did not see an issue with the way the Section was written.
 - **C. Babcock took a straw poll to approve Version 3 of the language:**
 - **8 in favor, 1 opposed, 0 abstentions.**
 - Versions 1 and 2 are to be discarded.
- Section 6.07, "Public Hearing," was briefly discussed.
 - **C. Babcock took a straw poll to approve Section 6.07 as written:**
 - **9 in favor, 0 opposed, 0 abstentions.**
- Section 6.08, "Election," which was edited slightly since the previous version, was discussed. The timing given regarding the number of days that would elapse before a petition was voted on, was discussed. Ultimately members, in discussion with M. Brown and N. Burns, elected to change the number of days to 60 for a special election and 120 days for a regular election.
 - **C. Babcock took a straw vote to approve the language with those changes:**
 - **9 in favor, 0 opposed, 0 abstentions.**
- Section 6.09, "Time Limitations on Reconsideration," which required 3 years before a newly-passed ordinance or ordinance change could be reconsideration, was discussed.
 - S. Sayers referenced R. Smith's earlier comments about Portland's adverse experience with citizens' initiatives.

- C. Babbidge said a reconsideration should not be put before the same board that approved the change originally. He said at the State level it would go before a new Legislature, which would mean two years.
 - R. Smith said two years would allow enough time for fine tuning of an ordinance. He felt three years was better than the five years proposed in an earlier draft of Article 6.
 - N. Burns said that in other towns with a Town Council, there was a council limitation. Having 3 or 5 years would not work if Kennebunk changed to a Town Council form of government. In that scenario, only a citizens' petition could accomplish an ordinance reconsideration – the municipal officers (Town Council) would be prohibited from initiating a reconsideration.
 - S. Sayers said the "Constitution of the town" (the Charter) would dictate the details of how a reconsideration was handled, no matter what form of government a town uses.
 - R. Smith asked how to deal with proposed ordinances that are not passed by voters; would there be a different means of reconsideration for those?
 - C. Babcock said under the proposed Charter language there is no provision for that.
 - C. Babbidge said if there was an ill-conceived ordinance put to voters, and a small turnout at the polls, resulting in passage of a concept most townspeople are not in favor of, it would be better not to have a limitation on a petition to fix it.
 - **C. Babcock took a straw vote to amend the proposed language to "2 years."**
 - **7 in favor, 2 opposed, 0 abstentions.**
 - **C. Babcock took a straw vote to remove Section 6.09 completely.**
 - **3 in favor, 6 opposed.**
 - The language will be changed to read "2 years."
- Other overall discussion on various parts of Article 6 took place.
 - B. Robinson asked if the proposed language detailing when a new or amended ordinance becomes law ("on the next Business Day after the results of the election have been recorded in the Town Records Book") could actually happen this way. N. Burns confirmed it can.
 - N. Burns recommended using the phrase "Voters' Petitions" rather than the original title of the Article, as it more accurately describes what is happening.
 - Discussion took place around the process spelled out under "Election." It was noted that the required explanation and text of a proposed ordinance could be quite lengthy, and R. Robinson said she had heard from voters that they "didn't have time to read all that so I just skipped voting on it" when there was too much text. She noted there is a vast difference in reading skills, as well as desire for details. M. Brown said due to the detail needed to adequately explain referendum questions, voters' guides that gathered all the info could be 25-60 pages long.
 - Consensus was that the "Election" section should be shortened and the wording of the proposed new or amended ordinance should not require a stating of "benefits," and that a "brief summary" of the proposed ordinance would be sufficient, along with a statement that the full text, for those who desire it, would be available at the Town Clerk's office, or on the town website, as well as at the election itself.
 - J. Vance and S. Sayers will make the necessary edits and re-circulate Article 6 to members.

Review suggested Code of Ethics Commission/Committee wording.

B. Robinson and S. Bloomfield went through the document they had prepared to support their proposal to create a new commission/committee charged with authoring a new Code of Ethics. B. Robinson said they had questioned whether to present a complete section in the Charter, but after discussion concluded that doing so would not allow for adaptation to changing times, as the Charter would likely not be changed for several years after adoption. A commission/committee would be able to analyze and propose adjustments in response to changes in law and other circumstances. S. Bloomfield said she struggled with what provisions went too far in dictating how officials' actions were judged. They wanted to establish the process and purpose of a commission/committee, rather than the actual code. They looked at other towns, and Bridgton had what she and B. Robinson are proposing.

- C. Babcock said his high level impression from reading the document that it sounded as though a commission would be established each year. He asked how the need to create, amend and update the policy/code is triggered.
- T. Trainer said his high level impression was that a definition of such a commission needs to be created first, to define its role and authority. He asked if the commission was intended to be elected or appointed.
- J. Vance asked, in regard to references in the document to town employees, if the Charter in general was intended to apply not only to elected and appointed officials but also town employees. N. Burns said this is handled many different ways in other towns but that including employees in a charter has to be done very carefully, as employees are covered under employment contracts, state labor laws and sometimes through collective bargaining agreements.
- C. Babbidge asked how members of a commission would be chosen, as their actions as described are similar to "impartial jurors" on a trial. Would it be possible to find enough members who have no ties to other boards through participation or personal relationships? C. Babcock concurred, saying recusals from certain discussions would be required under the scenario proposed.
- S. Bloomfield said this was all part of the "morass" they considered during discussion. She cited personnel issues as an example of something they didn't want to get into; the town has an HR director to handle those. They did see that other towns included employees. She felt by having a commission/committee to develop an over-arching code, individual boards and committees would be able to use this template to develop policies that are specific to their needs.
- R. Smith said, in response to T. Trainer's comments, that the proposed commission/committee would be its own entity. The proposal seems to create a standing commission, but it appears to have powers that would set it up as judge, jury and executioner. For instance, he doesn't see a way for an accused individual to appeal a decision that finds him/her at fault. He wondered if the Select Board could create a temporary commission to create the code/policy, hold public hearings, vote on the policy, then disband the commission, rather than create a standing commission.
- S. Bloomfield said one of the issues they identified was that there are so many different types of positions that could be affected by a policy, ranging from appointed officials to elected officials to employees who represent the town. She said the structure in the draft Forfeiture of Office section drove this perception. She said she was unsure whether a commission should be short or long term.

- B. Robinson said the discussion was helpful and she and S. Bloomfield will continue to work on the proposal.

5. Consideration and Approval of Minutes

C. Babcock moved to approve the minutes of the July 26, 2023 meeting, with three minor typographical and grammatical corrections. The motion was seconded by R. Smith. The motion passed unanimously, with one abstention (T. Trainer).

6. Adjourn

A motion to adjourn the meeting at 8:40pm was made by B. Robinson and seconded by C. Babcock. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

