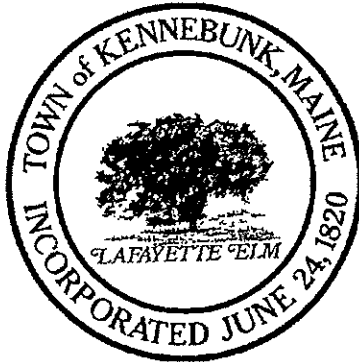


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, August 23, 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.

(amended 9/13/23 – additions shown in brackets)

Chairman Christian Babcock called the meeting to order at 6:31pm.

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; Heather Balsler, Town Manager.

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, now entitled Voters' Petitions) had been discussed. He noted that further changes had been made since then, and printed copies of a new draft were available for tonight, with changes highlighted in yellow. He also referenced the ongoing discussion by B. Robinson and S. Bloomfield on their proposal for a Code of Ethics Commission Committee.

4. New Business

(a) Presentation and Q & A on Form of Government by Don Gerrish

Guest speaker Don Gerrish introduced himself. He said he has more than 50 years of municipal government experience. He served as a Town Manager and interim Town Manager for several towns and, since 2009, has been a consultant, involved in facilitating more than 60 municipal searches for various positions. He was invited to discuss with the Charter Commission the various forms of government used in the state of Maine, to help kick off the Commission's consideration of whether or not to recommend a change to Kennebunk's current form of government.

A handout, *Forms of Local Government*, from the Maine Municipal Association, was provided for members and for the public. Kennebunk's current form is "Town Manager/Select Board/Town Meeting," which is common in smaller Maine towns. This form sends all approvals of budget and ordinances directly to voters, who attend a live town meeting to discuss, amend and vote on warrants. It was noted that although Kennebunk is still considered to use this form of government, an actual live town meeting has not occurred in many years, and voters approve budgets and ordinances using a standard regular or special election, via secret ballot.

Of 54 communities with a population of 6000 or more, 8 have the same form of government as Kennebunk, and 46 have a Council/Manager or Council/Manager/Town Meeting form of government. Of those 46, 38 use the Council/Manager model (no Town Meeting), which provides the Council with the authority to approve budgets and ordinances, in lieu of sending these to voters. Most Council forms of government include some limitations on bonding and purchasing, and voters must still approve spending over a certain amount; 8 towns also require voter approval of budgets. A process is written into the town charter to specify exactly what powers and duties the council has, and how public input is considered. State law provides a great deal of latitude for municipalities to create a system of checks and balances that meets individual town needs.

A Council/Manager form of government is a logical next step for towns that have reached a certain size, as the population is then too large to have even a small percentage of voters physically attend a meeting to debate and vote on warrant articles. There are typically 5 or 7 elected Council members; a few towns have 9. Although a small town can effectively use a town meeting form of government to make its decisions, this form of government becomes more cumbersome as a town grows and becomes more complex. The biggest advantage of a Town Council is that decisions can be made without waiting for an election to be held. Kennebunk will need to consider how the current town meeting form of government is working given the town's size and complexity, and if this form of government can remain sufficient to meet the town's future needs.

Commission members had various questions for D. Gerrish:

- C. Babcock asked if it was possible to limit Council authority on specific items such as budget.
 - D. Gerrish said yes, and other towns do this. State law spells out options of what can be done.
- C. Babbidge asked if voter approval for a budget could be accomplished if the town wanted to maintain this policy.
 - C. Gerrish said it could be done by specifying the process in the charter.

- C. Babbidge referenced the word “efficient” and posited that the efficiency may be achieved because public participation was more limited with a council; is there a way for the public to appeal a council decision?
 - D. Gerrish said state law provides for a voters’ petition to appeal decisions.
- J. Vance asked what the role of a Budget Board would be if the council was responsible for the budget.
 - D. Gerrish said the charter needs to spell out exactly what duties each board would handle, and that it was possible, if desired, to give the council the ability to override a board’s decision if a disagreement arose.
- S. Bloomfield asked how a transition from one form of government to another was handled; if a town switched from a Select Board to a Town Council, did the members simply become members of that new organization, or was a special election required?
 - D. Gerrish said most towns write that “transition” into the charter, and the town attorney can help with this.
- R. Smith referenced the *Forms of Government* handout and noted that other than a name change, he doesn’t see a lot of difference between Select Board and Town Council duties.
 - D. Gerrish said a primary difference was the ability to pass ordinances without a town vote; and to accept Federal funds. Some of the budget items now seen on town warrants would go away, because the Town Council could also make those decisions. The exact authority, and duties, can be customized by individual towns.
- C. Babcock noted how long the descriptions on town warrants often are, and M. Brown added that voters have commented that they felt that had no choice but to approve, or not vote at all, on budget items because the average voter doesn’t have the necessary knowledge of whether the item is advisable or not.
- T. Trainer asked if state law provided specifics for towns to follow when assessing the functions of a Select Board versus a Town Council.
 - D. Gerrish said state law is very detailed in laying out the duties of a Select Board, but not a Town Council. The charter would have to be written to cover the exact duties and responsibilities of a Town Council.
- T. Trainer referenced the earlier discussion around “efficiency” and said it was important to keep in mind the public’s right to be involved in town decisions.
- D. Parkinson asked how much time it typically took staff to put together a town meeting.
 - D. Gerrish said 1-2 months, or 80-90 hours of staff time, to do it with no errors. Warrant articles need to be correct, with wording that is easily understood and has correct numbers. Once the articles are completed, they cannot be changed. If they go to voters with a mistake, another election has to be held to re-vote on a corrected warrant. Multiple staff members are involved in the process, including the Town Clerk and the Town Attorney. He cited examples of errors made in other towns, and the impact they have on town staff as well as voters.
- S. Sayers asked if D. Gerrish knew of any towns that changed to a Town Council, but later went back to a Select Board/Town Meeting form of government.
 - D. Gerrish said he knew of none.
- B. Robinson asked D. Gerrish how many towns with a Select Board/Town Meeting form of government had switched to a Town Council form.
 - D. Gerrish said he guessed 10-15 that he was aware of. He noted a few other towns, as they grew, such as Sanford, had gone to a City Council form of government, with

councils comprised of some members from specific neighborhoods (wards) and others “at large.” Members noted examples of such cities that have, over time, reduced the number of wards to make things simpler.

- B. Robinson asked how much a town meeting typically cost Kennebunk to execute.
 - M. Brown said it depends on the number of warrant articles and complexity of political races; the last Presidential election cost around \$10,000, but other elections usually cost less than this.
- C. Babbidge asked if “efficiency” was basically getting rid of special town meetings?
 - D. Gerrish said towns can still do a special town meeting/election if the need arises.
- C. Babbidge noted that over the years in Maine, that state elections now take place with less frequency than in the past. He recalled that gubernatorial elections used to be held every year or two, but now they are held every four years. He said cost is a legitimate concern [but it should not be the determining factor]. He asked if there was a cost factor Kennebunk should consider in making a decision of whether to change its form of government.
 - D. Gerrish said the primary reason for considering a change is process; cost is not a big factor. What should be considered is flexibility, with a specific process that allows citizens to feel they have sufficient input into decision-making. It’s important to have multiple public hearings, with an aggressive communications policy so residents are aware of what’s being discussed, and why.
- B. Robinson asked if there are any inherent dangers we should be aware of in making a change.
 - D. Gerrish said the charter needs to be specific in explaining the process, and there needs to be a way for the public to override a decision they really don’t agree with, with clear direction in the charter.
- S. Sayers said the current “town meeting” is not really a meeting. All ordinances and budget questions are already final by then, and printed on the ballot. There is no opportunity for voters to debate anything, which is the purpose of a town meeting.
 - D. Gerrish agreed; voters use a secret ballot now to vote, and there is no debate as there would be if Kennebunk used a true town meeting format. In small towns that still have actual town meetings, it is possible for participants to change what is being proposed, sometimes markedly.
- C. Babbidge described a town meeting he attended years ago when he was a new teacher in a rural Maine town, and it was eye-opening to see and hear residents speak, [and that it showed him how important it was for all those present to hear and see the same information and having witnessed the process] of how decisions were made.
- M. Brown recalled a Kennebunk town meeting in 1999, when 690 residents showed up to discuss conversion of the Park Street School to community use, and the meeting had to be moved to the high school auditorium to accommodate that unexpected crowd.
 - D. Gerrish said the town of Wiscasset experienced the same situation when it was considering removing the town from the RSU. But he said that, in general, the number of people who are able to attend a town meeting has declined markedly over the years, which is why many towns have moved to a secret ballot system instead.
- S. Bloomfield described going to a town meeting in Wells years ago and being impressed with the power of one person being able to get up and speak so effectively that other people were swayed to make changes; she said she misses that dynamic. She said it is a “weighty responsibility” to consider this change. Is the current system broken? She wants to make government easier and more accessible for citizens; so many are not familiar with what they’re

asked to vote on. Others think town government works just fine, so there is no need for them to insert themselves into the process, or come to Select Board meetings.

- D. Gerrish noted that citizens have more options now than ever to educate themselves about what their town government is doing due to meetings being televised live and the ability to participate via Zoom, so they should have a better understanding of issues than in the past.
- D. Smith said it's been more than 20 years since Kennebunk had a true town meeting, because life has changed. The town has grown. Most families have two earners and less time to get involved with the community. He doesn't see us returning to that previous time in history. He liked the meetings because he enjoyed debating, and said there were times participants ended up coming to far different conclusions after discussion. That said, despite the nostalgia he feels for that time, he believes it's time to consider moving to a different format. But, the Charter Commission will not make the final decision to do this; it can only make recommendations.
- Public Input: Resident John Costin said he was the chair of the previous Charter Commission and voted against some of the provisions in it. He said he feels the ultimate decision-making authority should be the voters. He said public participation has declined at Select Board meetings and the power has shifted to professional staff, which has the effect of increasing the cost of government because more employees are needed to do what volunteers formerly did. He said the decision to move to a Town Council seems inevitable, but is not sure it's a positive change as he believes public participation will decrease even more. He said this is part of the decline in democracy we are seeing worldwide, and that small towns are a breeding ground for democracy; moving from a citizen-oriented process to a more representative form of government in each town transforms this hands-off concept to a greater role for the county and state. He would prefer not to move away from a participatory model.
- C. Babcock asked M. Brown for the highest percentage of voter participation observed at a traditional town meeting.
 - M. Brown said the year of the Park Street School decision was the highest, although that turnout was still a small percentage of town voters.
- C. Babbidge said low turnout at town meetings [could be] an "expression of apathy," [or an expression of support for what is proposed]but the flip side was that a small group of voters with an agenda could certainly turn out in numbers large enough to swing an election, or a decision.
- Public Comment: Resident and School Board Director Gayle Spofford asked D. Gerrish if he knew of any research that indicated which form of government worked best in managing its relationship to town committees.
 - D. Gerrish said a great deal depends upon how a town structures the duties and responsibilities of specific committees in its charter. The charter can, if desired, limit the powers of the Council in areas that committees handle, as well as dollar figures for bonding and major capital expenditures, and can specify which items have to be decided via referenda.
- Public Comment: Lisa Pratt, Select Board member, asked about wards; what happens if no one in a ward runs for the position?
 - D. Gerrish said that possibility can be covered in the charter, with a back-up plan to elect a Council member at large in lieu of someone representing a given geographic area.
- M. Brown noted that some towns – Portland and Sanford, for example – have reduced the number of wards, with more of a mix of wards and at large. It is really the larger towns/cities

that use such a system. In smaller towns all municipal officers are “at large.” He said that wards make the election process more complicated, as the ballots for each ward must be different to show only the candidates running in that area. N. Burns said all voters could be set up to select candidates for specific wards.

- Public Comment: G. Spofford suggested that a “budget validation process” could be used to simplify warrant articles on the ballot, with just one line that requests voters to approve, or not approve, the proposed budget.
- Public Comment: Rachel Phipps, town resident and former Select Board member, said she prefers the town meeting form of government. Voters, she said, should be the final authority on ordinances and budget expenditures. S. Bloomfield asked R. Phipps that if theoretically a Town Council form of government was adopted, did she feel her voice would not be heard, as public hearings would still take place the same way they do under a Select Board. R. Phipps said that a vote can be close, with a measure being approved by only a few people. Such vote counts indicate a “divided town.” She said she believed the ability to address concerns that are controversial would be lost in a Town Council form of government.

The Commission thanked D. Gerrish for coming to speak, and for providing a helpful overview of the differences between the two primary forms of government.

(b) Review and approve referendum and initiative (Voters’ Petition)

- a. This item was tabled until the next meeting.

(c) Start discussing form of government

- a. C. Babcock said the Commission will continue this discussion during the next several meetings, with final consideration of Article 6 (Voters’ Petition) worked in as well. S. Sayers and J. Vance have also been working on drafts of Articles 1, 8, 9, and 10, and will distribute those to members for review in the near future. The Select Board has been invited to attend discussions on form of government, as well as current and past Town Managers, in order to have as much input as possible. R. Smith asked to confirm the September date that has been set for a Public Meeting to review progress to date; that date is September 16 at 10am at Town Hall. M. Brown is trying to include promotion of this Public Meeting as part of the upcoming mailing of tax bills, and will see if it works out timewise. C. Babcock said he was contacted by an official from the town of Windham expressing interest in using some of the recently-drafted Recall of Elected Officials copy; N. Burns confirmed this interest.

5. Consideration and Approval of Minutes

C. Babcock moved to approve the minutes of the August 9, 2023 meeting. The motion was seconded by S. Bloomfield. The motion passed unanimously.

6. Adjourn

A motion to adjourn the meeting at 8:30pm was made by S. Bloomfield and seconded by C. Babbidge. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

