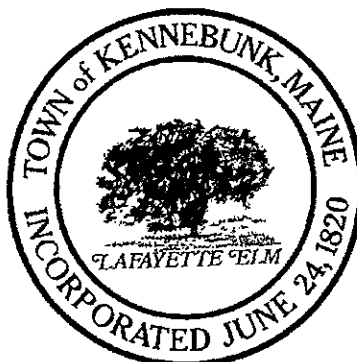


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, September 13, 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, 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 from the public.

B. Robinson said that a discussion of the Select Board's code of ethics was on the agenda for the previous evening's Select Board meeting, and she asked to speak to notify the Select Board that the Charter Commission wished to have a joint meeting in order to discuss the Commission's work thus far, including copy pertaining to a code of ethics. M. Brown said he would also like to set a joint meeting. Members discussed potential dates, including October 25th or November 8th.

C. Babcock reported that the Town's new Finance Director, Kayla Tierney, has agreed to a meeting with S. Sayers and J. Vance on the first Wednesday in October at 10am to begin preliminary work on the Budget article, and that former Town Manager Barry Tibbetts has agreed to speak with the Commission at either the September 27th or October 11th meeting.

3. Old Business

The Chair commented briefly on the August 23rd presentation and Q&A on form of government by guest speaker Don Gerrish and said he found it valuable as a kick-off to the Commission's upcoming work on this part of the charter.

4. New Business

(a) Review proposed agenda for September 16th public forum on Recall and Forfeiture of Office
Members noted the predicted arrival of Tropical Storm Lee, which is currently forecast to hit Maine around the time of the forum. While some Commission members were willing to come out for the forum despite the weather, most expressed concern that the public would not be, and given the risk of electric and internet outages, participating via Zoom might not be an option. It was noted that the public is welcome to attend all meetings, and speak to any part of the Charter, but because of known interest in changes to the recall language, the Commission recognized it was important to give the public ample opportunities to review and comment on the draft language. The Town Clerk's office has advertised the September 16th forum, and a date change means having to quickly communicate this to the public. C. Babcock proposed to hold off making a decision on holding the forum for one more day in order to get a more updated weather forecast, and designate September 30th as a rain date. After further discussion, as members weighed the pros and cons of proceeding with the forum, C. Babbidge made a motion to hold the forum as scheduled, but to schedule a second forum for September 30th so that any members of the public uncomfortable with travel on September 16th would have a second opportunity to participate. C. Babcock seconded the motion. The motion failed, 1 in favor, 2 abstentions (D. Parkinson, S. Sayers), 6 opposed. C. Babcock made a motion to simply postpone the September 16th forum to September 30th. B. Robinson seconded the motion, which passed with 8 in favor (1 abstention; D. Parkinson). The Town Clerk's office will communicate to residents that the forum will now take place on September 30th.

Members discussed the agenda and format of the public forum. C. Babcock expressed willingness to create a Powerpoint presentation, which would contain a summary, an outline of the new copy, the process used by the Commission to research the subject, and the objectives sought.

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

J. Vance said that the latest copy distributed to members for review reflected a few changes and additions made since the last Commission discussion, as S. Sayers took time to review relevant State statutes to ensure all proposals were compliant. Additions and changes, which were made 8/21/23, were highlighted in yellow. S. Sayers described a new section 6.04, entitled "Agent's Affidavit," which was written to assign accountability to any resident overseeing the creation and signing of a voter's petition.

- D. Parkinson referred to Section 6.07's language that reads *"By signing the Affidavit required by this sub-section, the Agent expressly represents that he/she can be prosecuted under Article 21-A, Sub-section 904 of Maine's revised Statutes, for any violation of the laws governing the circulation of Voters' Petitions, including the requirement that the circulator truthfully executed the Affidavit."* He said he was concerned that it attempted to create potentially criminal liability for submitting a false affidavit.

- S. Sayers stated that the new proposed language merely reminds persons submitting affidavits of the penal provisions of existing State laws. He also pointed out that, by including the reference to State law, the intent was to communicate that Voters' Petitions are important, and that the State law affidavit requirements should be taken seriously due to the consequences of submitting false affidavits.
- C. Babbidge asked for a definition of an "Agent," which C. Babcock located for him in the copy, and to clarify that the Agent's name was included on petitions distributed by the Town Clerk's office, which M. Brown confirmed. C. Babbidge noted that the Agent him/herself would likely not be the only person soliciting signatures.
- N. Burns expressed concern about the Town Attorney's role in assessing whether a proposed petition contained "unconstitutional" actions, noting that the creator of a petition could disagree with the Town Attorney's interpretation of what was "unconstitutional." She said she would be more comfortable if the Town Attorney was charged with providing an "opinion" and not a definitive decision, and if opinion differed, that the creator would need to take his/her own legal counsel.
- C. Babbidge said he was concerned that a Town Attorney with an agenda could unilaterally stop a petition if he/she didn't personally agree with the concept. He noted that what is "constitutionally" acceptable can change over time. He said the Agent needs recourse if a Town Attorney says the content is unconstitutional.
- S. Sayers explained that the way the provision is currently written, the Town Attorney would provide a legal opinion to the Select Board, and it is within the Select Board's discretion to allow the Voters' Petition to proceed (Section 6.07 (a)).
- C. Babbidge said he agreed with this scenario, that a Town Attorney opinion with final determination by the Select Board was the best way to handle disagreements. Having the Select Board review it in a meeting would also provide important information for voters. However, the current proposed copy stipulates that "the Select Board shall inform the Agent that the Petition fails to comply with the requirements of Section 6.02....and shall take no further action on it." C. Babbidge, and other members, noted this doesn't allow the Select Board the discretion to do anything else.
- S. Sayers suggested changing the copy to read "...and may, at their discretion, make a determination on whether the Voters' Petition may proceed."
- C. Babcock called for a straw vote to determine if Section 6.07, with the change discussed, was acceptable to members. The vote to approve, as amended, was unanimous.
- Members reviewed the remainder of the copy. R. Smith noted that under the "Election" provision, the summary required by Sec. 8.02 (b) had to be available to members of the public. He noted that there was no parallel provision in the Public Hearing section. He requested similar language be included earlier in the public hearing section, so that voters will have access to the full Petition language prior to a public hearing. S. Sayers and J. Vance will look for a logical place to add this language, and re-send the copy to members for the next meeting.

(c) Discuss form of government

J. Vance said she has begun "pre-work" on the subject by assembling a document that includes text from the charters of several area towns with a Town Council form of government. The document also includes summary information of Select Board-run towns that members of the Commission gathered several months earlier during initial research. It is a large document and she will distribute it to members for their reference.

C. Babcock detailed a few of the basic differences between a Select Board and a Town Council, which he said could be summed up by saying a Town Council typically made many “smaller” decisions, but did these more often, and faster, than in a town that had to wait for a Town Meeting to vote on those proposals.

J. Vance asked if it was still possible to have recently-retired finance director Joel Downs speak to the Commission about the budget process. C. Babcock said he will look into this.

C. Babcock said he will not be able to attend the September 27th meeting due to a work conflict. R. Smith will chair the meeting.

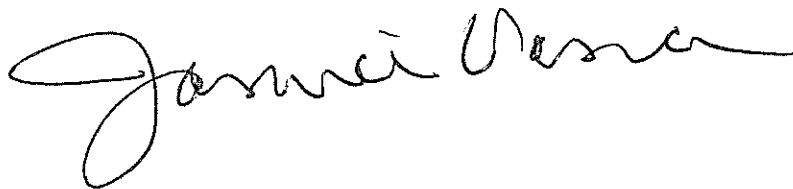
5. Consideration and Approval of Minutes

C. Babcock moved to approve the minutes of the August 23, 2023 meeting. The motion was seconded by B. Robinson. C. Babbidge requested J. Vance to make three editorial additions to the minutes to provide additional clarity to his statements. R. Smith asked for these changes to be shown in brackets to indicate they were later amendments. The motion to approve, with changes, passed unanimously.

6. Adjourn

A motion to adjourn the meeting at 8:10pm was made by B. Robinson and seconded by C. Babcock. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

A handwritten signature in black ink, appearing to read "Janice Vance". The signature is written in a cursive, flowing style with a large initial "J".