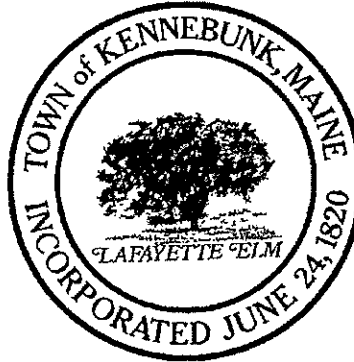


# Town of Kennebunk, Maine



## Charter Commission MEETING MINUTES

Wednesday, September 27, 2023

In-person meeting, Town Hall, 3<sup>rd</sup> 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](http://TownHallStreams.com).

Vice Chairman Richard Smith called the meeting to order at 6:33pm.

### 1. Roll Call

Secretary Janice Vance called roll:

- Present: Richard Smith (Vice Chair); Janice Vance (Secretary), Christopher Babbidge (departed at 7:30pm), Susan Bloomfield, Durward Parkinson (via Zoom), Brenda Robinson, Stephen Sayers, Edward Trainer.
- Absent: Christian Babcock, Chair.
- Also present: Merton Brown, Town Clerk; Natalie Burns, Town Attorney.

### 2. Public Comments

Vice Chair R. Smith opened the floor for public comments on non-agenda items. There were no comments from the public.

B. Robinson noted that she had discovered her Town-supplied iPad seemed to delete items sent via email after about 2 weeks. She contacted the Town's IT department, which advised users to seek deleted items under "Outlook Backup."

### 3. Old Business

The Vice Chair summarized that Old Business items included (a) a review of a proposed agenda for the September 16 public forum, which was postponed to September 30 due to weather; (b) a review of the current Referendum and Initiative (Article 7 "Voters' Petition") draft; and (c) discussion of the Form of Government. Some of these will be further discussed tonight under New Business.

#### **4. New Business**

##### **(a) Review and approve Article 6 Voters' Petition**

S. Sayers described the changes that were made to this Article after comments provided at the September 13<sup>th</sup> meeting. Sec. 6.05 "Agent's and Circulators' Affidavits" has more detail and clarity, with a reference to Maine state law pertaining to statements of fact. Sec. 6.07 has additional language that addresses how the Town would handle a deficient petition. Section 6.08 has been updated to give the Select Board discretion to allow a Voters' Petition to proceed if it does not meet all requirements set out in the Article. Section 6.09 specifies where and how the petition language is made available to voters. R. Smith noted a typo in that section, which was corrected, and Members discussed ensuring that the final draft of the Charter is checked for typos and references prior to submitting it to the Select Board and voters. S. Bloomfield recalled that, earlier this year, it was mentioned that funds are available for administrative services such as this. R. Smith noted that all Members would review the final draft also. D. Parkinson said the Town Attorney or a designee could provide a final review. N. Burns said she would likely have someone "other than me" look at it, for a fresh viewpoint. Members agreed that all reviews would take place at the very end of the process, when the separate Articles are combined.

S. Bloomfield asked if there was a way to know how long a typical petition process might take, given the schedule laid out in the draft. S. Sayers said that it would take about 3 months, on average, after the Voters' Petition had been filed in the Office of the Town Clerk. J. Vance said the time involved was heavily dependent upon how long it took for circulators to obtain the necessary number of signatures; she and S. Sayers had purposely not imposed a timeline for completion. M. Brown said the last petition filed with the Town started in August and the question appeared on the following March's ballot.

C. Babbidge asked for a discussion on the last part of Sec. 6.02, which said "No Voters' Petition created under this Article shall propose...any matter that is unconstitutional or unlawful." Members listed several examples of proposed ordinances that could potentially be considered "unconstitutional or unlawful," although S. Sayers said it is likely not possible for us to envision all the possibilities of what a resident could propose. The process is designed to have the Town Attorney provide an opinion on whether a proposal is legal, but the Select Board would be the final decision-making body (Sec. 6.08). J. Vance clarified that any proposed zoning changes would continue to be considered through the Town's Zoning Ordinance rather than through the Voters' Petition process.

R. Smith asked for a straw vote for approval of Article 6. J. Vance made a motion to approve as written (with typo fixed). B. Robinson seconded the motion. The vote to approve was 8 in favor, 0 opposed, and 1 absent.

##### **(b) Discuss agenda for public forum 9/30**

The agenda for the forum shows Article 6 as one of the items to be discussed; however, J. Vance noted that tonight's agenda was for final review of Article 6, and, if it was posted now to the Town website, it would not allow residents much time to read it prior to the forum. M. Brown said that he has already posted this version on the Town's website, so residents have had access to it.

Chair C. Babcock had prepared a Powerpoint presentation for the forum, which was distributed to Commission Members to review. R. Smith complimented C. Babcock on how well it was constructed. A

few small items need to be tweaked, and M. Brown will try to reach C. Babcock, who is traveling, to see if these items can be addressed prior to the public forum.

R. Smith said he wanted to discuss an opinion piece that C. Babbidge had written and which appeared in the September 15<sup>th</sup> issue of the Kennebunk Post. The piece stated that Form of Government would be discussed at the public hearing on September 16 (the meeting that was postponed to September 30); however, the Charter Commission has only begun reviewing that part of the Charter and it is not on the agenda. The opinion piece may create an incorrect expectation on the part of the public. S. Bloomfield said it should be clear that the meeting will only cover what's on the agenda (Recall, Forfeiture of Office, Voters' Petition). She said Form of Government is a "monster" subject which needs dedicated attention; B. Robinson said she agreed. C. Babbidge said he wanted people to know about the public forum and that he would assure people there would be another meeting on Form of Government; the creation of "civic activism" was his goal. J. Vance said she was not comfortable with any member of the Commission submitting pieces to the press without the knowledge or approval by the Chair and other Members of the Commission.

R. Smith noted that (d) on tonight's agenda was to "Discuss Commission Member conduct." He read a statement outlining his concerns about the submission of a piece that had not been brought to the Commission first. The error in C. Babbidge's piece can be rectified, he said, but the Commission has been diligent about ensuring that there is transparency in everything discussed and released. Proper protocol for a member who wants to submit pieces into the public realm would be to bring a proposal to the Chair, for addition to a meeting agenda for all Members to discuss.

C. Babbidge said he had been writing pieces for the newspaper during the eight years he served as a State legislator, and he said this was no different. He said private citizens and elected officials both have the right to speak freely. He wanted people to know about what we, as a Commission, are doing, and wanted to get the word out about the public forum.

R. Smith noted that there are 9 people on the Commission, with each having the same degree of investment in the Commission's work. None of them had any advance warning that C. Babbidge was planning to submit the article, which came out two days after the last meeting. C. Babbidge said he had written it quickly during the evening before the September 13<sup>th</sup> meeting, and that he had never received notice from the paper that it would be published.

B. Robinson said she was "shocked" to see that one member took it upon himself, without authorization, to submit the article. Members of the Commission, she said, need to be transparent, and act as a unified body when public statements were made about deliberations. C. Babbidge is no longer a legislator. Members of the public had asked her "who gave the authorization" and she had to respond that she did not know. She said the Commission is a team, which acts together, and she needs him to be a team member.

S. Sayers said he appreciated that we all have First Amendment rights. That right, however, comes with the duty to have respect for the opinions of other Members, and the Commission as a collective organization. So far, this Commission has functioned with full respect for the differing opinions of its Members and has spoken with one voice in dealing with the Town's residents. This is the way government should work. He was surprised that one of our Members had taken it upon himself to write

the piece without any advance notice to the others. He said it would have been considerate to let the others know ahead of time. Any pieces like that appear to come from the entire group, and, of course, this one did not.

T. Trainer said he felt it was a mistake that had been made in good faith, and it allowed us to reconfirm our policy, which is that submissions to the public or press should be run through the Chair.

S. Bloomfield said that when she saw the article, she assumed C. Babcock had indeed approved it, but it made her “wince” because she knew nothing about it. She agreed that future pieces should be reviewed and approved. She noted that the Kennebunk Post publishes everything submitted, and does not question or censor.

C. Babbidge asked if he should write a correction to the paper. Members agreed he should not, and that there was consensus that future proposals for submissions to the public or the press should be discussed with the Chair, and the Commission, before airing them publicly.

(C. Babbidge left at 7:30pm to attend another meeting for an organization for which he is a director. Per his request, his opinion piece has been added below:)

**Babbidge: Big decisions facing Kennebunk Charter Commissioners**  
**Christopher W. Babbidge** Portsmouth Herald  
Published 8:28 p.m. ET Sept. 12, 2023

*During my 12 years in the State House, I often wrote articles to inform the Kennebunk community. Term limits brought an end to that, and, also, I am now sleeping better, but momentous decisions are still on my plate as a member of the Kennebunk Charter Commission. Kennebunk residents should be aware that a municipal Constitutional Convention is occurring every two weeks on the third floor of Town Hall. A hard-working group of nine residents, six elected and three appointed are rewriting the Town Charter. Who runs the town, and your means, degree, and method of participation as citizens, will be spelled out. An important ingredient to a successful charter process is individual expression of opinion from the community. An important date in that process is this Saturday, Sept. 30. The commission is asking for feedback from 10 a.m. to noon in Room 300/301 at Town Hall. What are your answers to questions such as the following? Regarding forfeiture of office, what behavior justifies a Select Board to vote by majority to remove a town officeholder? Is it the same whether the officeholder is appointed or elected? Regarding recall, forcing a decision by voters, how do we retain the people's democratic right to recall misbehaving elected officials without facilitating a path for abuse of the process to harass capable public officials? When determining thresholds for forfeiture and recall, do matters of fact versus matters of judgment factor in determining the process? How easy should it be to initiate an action for recall, or a change in town rules, by voters gathering signatures? Once a portion of voters have expressed their will through signed petitions, who should have the power to say “no” ... the town attorney? The elected Select Board? The town's voters? Finally, and importantly, we will have to answer this: “Is the town better served by a modified town meeting or by an elected town council? We will weigh the efficiency and effectiveness of representative government with the individual citizen's right to decide by vote in direct democracy. The collaboration we've done to date has not been without disagreement, but it has been a process of respect and shared vision for the town. You can access the all-important wording on the Charter Commission's website at <https://www.kennebunkmaine.us/1138/Charter-Commission>. Halfway down the page look for Final Draft of Forfeiture of Office (PDF) and Final Draft of Recall (PDF), but don't be put off with the designation “final.” We still have a way to go, and we'll appreciate your attendance Saturday.*

*Chris Babbidge served six terms in the Maine Legislature and has served on Kennebunk's Charter Commission before and after that service.*

D. Parkinson said he felt that this had been a productive discussion, and had cleared up any misunderstanding about future actions.

(c) Discuss Code of Ethics meeting between CC and SB

The Select Board recently began discussing an update to the current Code of Ethics used by the Board, and created a Subcommittee (Miriam Whitehouse and Kevin Therrien) to work on the project. M. Whitehouse and K. Therrien asked to meet with J. Vance and B. Robinson to review the information that the Charter Commission has gathered thus far, to see if an amalgamation of efforts would result in a better product. A meeting took place September 21<sup>st</sup>.

B. Robinson said it was a very productive meeting. She said she covered the history of her prior research and work with S. Bloomfield and noted they became stymied on where to go after looking at the multiple policies available for consideration. S. Sayers and J. Vance had additionally written a draft of a core Code of Ethics/Conflict of Interest policy for Article 8, "General Considerations," which was now also available for use. In addition, J. Vance provided a copy of the policy used by Cape Elizabeth, which had some very good information.

Consensus at the September 21<sup>st</sup> meeting was that it would be best to create just one policy that could apply to all elected and appointed officials, and could also be used in the Charter. At the meeting, B. Robinson offered to author a draft using the copy available.

J. Vance added that B. Robinson and S. Bloomfield had identified as a stumbling block the "process" that would be followed if an official did in fact engage in behavior that violated any such Code of Ethics. M. Whitehouse and K. Therrien had pointed out that the Forfeiture of Office and Recall sections, already approved by the Commission, spell out the process. So it wasn't necessary to include that in a Conflict of Interest/Code of Ethics policy.

T. Trainer asked if it was indeed possible to come up with a single Code that could be used for multiple purposes. B. Robinson said that was the goal, to create a general Code of Ethics that uses Maine law as its core. K. Therrien said it could be called a Code of Conduct, if desired, and could be tweaked slightly to address any unique differences between boards, committees and commissions.

S. Bloomfield asked if the Charter would still direct the Select Board to create the policy. M. Whitehouse, who was in attendance in the audience, said there would be no need for the Select Board to do this if the Charter Commission could create an overall policy that works for all purposes – the charter, Select Board policy, and the Committee Handbook. S. Sayers read some of the draft copy (Sec. 8.03 "General Considerations") aloud as an example of what a policy could address. M. Whitehouse said having the Charter Commission create the policy would avoid any possible political influence; K. Therrien, who was also in attendance in the audience, agreed. R. Smith said it was a somewhat volatile subject. He cautioned that he wanted to avoid having the entire new Charter rejected by voters if that one article was a problem for voters.

Consensus was that B. Robinson would continue work to create a draft for discussion, and that the Charter Commission would be responsible for the project. M. Whitehouse and K. Therrien will report

back to the Select Board with this plan. There will be joint meeting between the Select Board and the Charter Commission in the near future.

(d) Discuss Commission Member conduct  
(See (b) above for the discussion).

(e) Review Articles 8-10

S. Sayers summarized the changes he and J. Vance had made to the Articles, using the original Charter and other towns' copy as templates. They eliminated a few items they felt were extraneous, and combined a few others. Article 8.01, regarding publication of the Charter and ordinances, created potential difficulties, as it mandated a codification of all ordinances every 5 years. They wanted more information from the Town Clerk and Town Attorney regarding the codification process. N. Burns explained that there are few York County towns that have not yet codified all of their ordinances, but Kennebunk is one. M. Brown said the process is budgeted to take place this year, but it is a huge project, and he acknowledged that, even though previous Charter language had required such a codification, it had never actually been done. N. Burns explained that it involves going through all ordinances, most of which were enacted at different times, to make sure they are not duplicative, that they contain updated references and wording, are not contradictory, and are organized so that a website user than easily find them in a search. If enough problems or errors are found during codification, it may require a town meeting to repair discrepancies. The first effort is the most difficult. When done more often, the process becomes a little simpler.

J. Vance said Sec. 8.02 "Oath of Office" and Sec. 8.06 "Appointments to Boards, Committees and Commissions" could potentially be moved into a new proposed Article that deals with boards, commissions and committees. R. Smith said Sec. 8.03 "Ethical Standards and Conflicts of Interest" would be left alone pending B. Robinson's work on this content. S. Bloomfield asked if Sec. 8.04, "Town Policy on Equality and Non-Discrimination," contained all possible items pertaining to protected persons, and N. Burns confirmed that it did conform to state law. It was noted that Sec 8.05 "Severability" is standard, but necessary language.

S. Sayers explained that Article 9, "Transitional Provisions," had been tightened up from the language contained in the original Charter, and that Article 10, "Periodic Review," simply directed that, at least once every 10 years, the Charter was to be reviewed to determine whether it needed to be updated.

(f) Discuss drafting Articles 3 and 1.02 related to Form of Government

Members agreed to table this discussion for now, as the Commission has not yet delved deeply enough into the subject at this time to begin writing these sections. J. Vance will re-send the Article 1 draft for Members to review.

## **5. Consideration and Approval of Minutes**

B. Robinson moved to approve the minutes of the September 13, 2023 meeting. The motion was seconded by T. Trainer. The motion to approve, with changes, passed 7/0, with two Members absent for the vote.

## **6. Adjourn**

A motion to adjourn the meeting at 8:30pm was made by B. Robinson and seconded by T. Trainer. The vote to adjourn was unanimous.

Respectfully submitted,  
Janice Vance (Secretary)