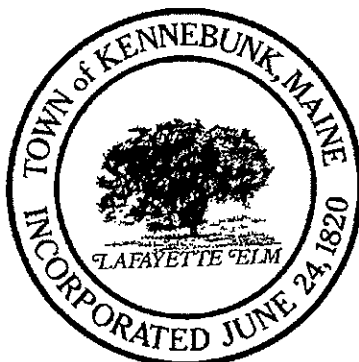


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES – PUBLIC FORUM

Saturday, September 30, 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.

1. Call to Order

- a. Chair Christian Babcock called the meeting to order at 10:00am.
- b. Secretary Janice Vance called roll:
 - Present: Christian Babcock (Chair); Richard Smith (Vice Chair); Janice Vance (Secretary); Christopher Babbidge; Susan Bloomfield; Brenda Robinson; Stephen Sayers; Edward Trainer.
 - Absent: Durward Parkinson.
 - Also present: Merton Brown, Town Clerk.
- c. Welcome and Overview

Chair C. Babcock welcomed members of the public in attendance, and those watching from home, and briefly summarized what the Charter Commission has accomplished to date. Three parts of the proposed new Charter are available in “final draft” form for residents to review – Recall of Elected Officials, Forfeiture of Office/Vacancy, and Voters’ Petitions. Examination of the Form of Government has been started, and this will be a major focus of the Commission in the near future. A Code of Ethics/Conflict of Interest policy is also underway. The Commission also has tackled Articles 1, and 8-10. Today’s public forum is to gather comments on the first three items.

2. Review Final Draft of Recall followed by public comments

C. Babcock said the creation of a new Recall of Elected Officials policy received many constructive comments at the first public forum held a few months earlier. The “final draft” copy includes all the references used during the process, which are drawn from Maine state law and the charters in place in several other area towns.

Using a Powerpoint display, he summarized the changes made from the existing Article 7:

- Addition of language describing the intent and purpose of recall as well as valid and invalid basis for recall (7.01-7.03);
- Increased the threshold for a Notice of Intent to file a petition to 500 signatures (current is 25);
- Increased the threshold for a complete petition to 2000 signatures (this replaces the percentage used now, which requires the Town Clerk to do a calculation prior to certification); the underlying percentage is comparable to other towns studied, and will be reviewed as time passes and the population increases;
- Clarifications to the recall process and increasing the time given to the Town Clerk to certify petition signatures (the current time requires significant staff overtime at taxpayer expense);
- Clarifications around election proceedings and ballot wording.

The intent behind the proposed revisions is to allow a process for registered voters to enact a recall of an elected official who has allegedly committed a serious breach of the public trust, but protect elected officials from frivolous harassment. It also allows sufficient time for the Town Clerk's office to verify the authenticity of signatures on the Notice of Intention to record a particular elected official, and also on the Petition for recall itself. The last petition resulted in excessive long hours of overtime for staff members due to the tight timeframe imposed by the old Article 7. The proposed draft represents several months of Commission work, and is the product of many discussions.

Public Comments:

- Marie-Louise St. Onge had two questions. One was how the proposed draft counted the 30 days given for circulators to obtain the necessary number of signatures on a petition for recall. C. Babcock replied that the process requires the Town Clerk to insert the date at the time the petitions are given to the Agent to begin collecting signatures, and that the copy specifies that the Town Clerk's date is not subject to change or question. The procedure is specified under Sec. 7.05. She also asked who checks to see if allegations and charges are, in fact, truthful and factual. C. Babcock said the Commission has had significant discussions about that, as the core issue with the previous recall attempt was that the "facts" alleged were fabrications that were actually not truthful.
- R. Smith said "one person's facts are another's fantasy" but the policy has been constructed in such a way that the Town Clerk is not put in a position of being the judge. He said the written policy sets out expectations that accusations need to be based on facts, but in some cases it might be necessary to let the process play out so that the real truth emerges along the way.
- S. Sayers said it is impossible to prevent people from trying to argue their opinions as "facts," but the new recall provisions, as written, should preserve a meaningful distinction between opinion and facts.
- M. St. Onge said that during the last recall there was no requirement that provable facts be used to support the need for recall.
- M. Brown said possibly a public hearing would help residents learn more about why a recall was being proposed.

- C. Babbidge said he would be troubled if a public hearing was used, not for public education, but instead, was to devolve into something else. He said a person accused of misconduct may not want a public hearing. He asked M. St. Onge if she supported the idea of a public hearing.
- M. St. Onge agreed that a public hearing could indeed be a problem if it was stacked with accusers who would pillory an elected official needlessly. Such a hearing would need to be well managed to protect everyone's rights.
- C. Babbidge said he was thinking in terms of education, with a hearing being an opportunity for the public to ask questions to get more information in order to make a decision.
- M. St. Onge said a public hearing is just that – no decisions are made, and a person accused is presumed innocent until proven guilty.
- S. Sayers said the reason why the Commission expanded the signature requirements was to provide guardrails. The number of signatures required has to reflect a high enough percentage of voters to ensure that there was genuine support in the community for the recall effort, rather than it being the effort of a minority of residents. The current 25 signature requirement to start the process represents just 0.2% – 0.3 % of the voting public in Kennebunk, depending upon whether the voting public is defined as (a) the total population of Kennebunk, or (b) the number of registered voters in Kennebunk, respectively. Nationally, 20 states do not permit recall elections. Of the 30 states that do allow recalls, the percentage of the electorate that must request the election varies from 10% to 66%, with the average being 30-35%. Other towns require anything from 10% to 30% of registered voters. Our position was to require more than the minimum number, but not to impose a number that would be unreasonably high or impossible, as a practical matter, to obtain.
- S. Bloomfield pointed to Sec. 7.02 – Grounds for Recall – which was added to provide benchmarks, and said this is important to have in the new Charter. Such a listing is not in the existing charter.
- C. Babcock agreed it was important not to give credence to an accusation without guidelines.
- E. Trainer said the proposed new copy is a combination of a political process and a legal framework, set up with guidelines that are as clear as possible.
- B. Robinson pointed out that in creating the new copy, the Commission undertook significant research, looking at towns that were both similar to, and different from, Kennebunk, searching for policies that protected the rights of everyone involved and created a good and fair process.
- Maggie Bartenhagen, a member of multiple committees including the Energy Efficiency Committee, thanked the Commission for its work. She noted the power of disinformation, which has been demonstrated in recent years at both the national and local level. She asked at what point the “proven” information was required to be provided. Members pointed to requirements laid out in the first several sections of the proposed new Article. C. Babcock said Recall is a

voter's tool. He would love to have a specific list of conduct violations that could be alleged but realizes that is not possible.

- C. Babbidge said the proposed copy has parameters designed to discourage irresponsible recalls. Someone could be tempted to create a recall petition simply because he or she disagreed with an official's position on a certain subject, which is why it is left to voters to decide whether an elected official has truly committed a violation. We cannot prevent an action, he said, but we can improve and clarify the process. In considering the suggestion of a public hearing, the idea is not to have an organized contingent of accusers and one lonely accused person. It should be an educational process.
- R. Smith had it was a balancing act, riding a fine line between a valid concern and protecting the integrity of those in office if they are accused wrongly. A decision by the voters is final, and that is how democracy works.
- S. Bloomfield said the Charter Commission was created to improve the existing Charter. She read a section of the current Charter aloud, which discusses rather broadly the ability of voters to recall an official, and deemed the language as being insufficient. The proposed copy spells out details and the intent. She read aloud the new proposed section that spells out the process.
- M. St. Onge said after listening to the discussion she now thinks a public hearing should be held, to force an accuser to explain himself.
- C. Babcock said that this is certainly something the Commission can consider. It was previously discussed, but with concerns that it could be difficult for all involved, the Commission had not included it in the final draft.
- Gayle Spofford, a member of the School Board, said she appreciated the fact the Commission's proposed copy is data-driven, and thanked the Commission for its work. She said that requiring a petitioner to speak at a hearing would provide the Select Board and the public an opportunity for deeper discussion than someone simply asking people to sign a petition to support his/her personal opinion. She cited Titles 20-A and 30-A of Maine's statutes as not always being in alignment when it came to specifying how School Boards are instructed how to handle disagreements. She also stated she was disappointed more members of the public had not attended today's public forum, as having a well-written town Charter is vitally important.
- Miriam Whitehouse, a Select Board member, spoke about including a public hearing in the recall process. She said that during the past recall effort, the end result was that, as word got out about the real intention of the petition, despite attempts by some circulators to tell potential signatories the petition was for another purpose entirely, that residents showed common sense when it came time to vote. She said she feels confident the new proposed language will go a long way in preventing unfounded accusations.
- Barbara Fleshman, a member of the Historic Preservation Commission, was in favor of requiring an accuser to appear at a public hearing or other venue to explain the provable reasons behind

the accusation. This would discourage people from taking what is really a serious action without having facts.

- E. Trainer said that what he believed he was hearing from commenters was that the proposed policy should require an accuser to make a public statement and not just gather signatures. Several members of the audience nodded in agreement.
- S. Bloomfield asked where and how a public statement or hearing would take place.
- G. Spofford suggested using an impartial moderator, rather than the Select Board.
- C. Babbidge suggested the Town Hall's first floor meeting room was an appropriate location.
- M. St. Onge said it was important for an accuser to be articulate when laying out the reasons for recall, and also said she thought the accused should have the option to attend.
- M. Bartenhagen agreed that a public forum using a moderator was likely the most impartial way to air the accusation.
- B. Robinson said it was a great idea to require an accuser to speak publicly, but worried that a person defending themselves against an accusation would be under extreme pressure. The process should be fair.
- J. Vance asked logistically at what point a public hearing should be held during the overall recall process; after the Notice of Intention and before a petition began circulating?
- Both M. Brown and C. Babcock agreed that was the most logical time.
- R. Smith said the idea needed to be discussed thoroughly. The flip side of having a public forum was that it could discourage and intimidate someone from bringing forth something valid.
- M. St. Onge said someone who felt strongly enough about the need for recall should be willing to stand up in front of the public to speak about the reason. Process is important. The last recall effort was high cost in terms of stress and worry for the accused, public division, and financially to the Town. Getting up to speak at a public forum would be no different from someone getting up to speak at a Select Board or Planning Board meeting.
- B. Fleshman said all public hearings are an opportunity for education, and it was important that voters be able to ask questions to learn more. She said it could be positioned as an "opportunity" to hear an accusation as well as discussion and defense. She also envisioned a hearing would take place after a Notice of Intention.
- G. Spofford said she liked the idea of a moderator, and agreed that such a hearing "is education." She expressed thanks that the Commission will consider adding this to the process.

- M. Whitehouse also said placing the hearing after the Notice of Intention makes sense. She said that if an official who is accused is not comfortable with speaking, others can speak in support. It is important to educate the public prior to anyone being asked to sign a petition.
- Nick Bartenhagen, a member of the public, said the upside of the previous recall attempt was that it pointed out deficiencies in the existing Charter, and there is now an opportunity to fix it, and make it better for the future.
- C. Babcock said the city of Windham, which has no recall process in its Charter and therefore defaults to the state recall process, which only allows for recalls in one very specific instance, contacted him to discuss adopting the draft recall language created thus far by the Commission. That, he said, helped make him confident the Commission's work was on target.
- B. Fleshman wanted to make sure it was clear that the proposal for a hearing is not to take a vote, but instead is intended for public education. She said during the last recall she heard that people had no knowledge of what they were being asked to sign, as there was little news coverage.
- S. Sayers said one way to educate the public is to have the reasons for recall submitted in writing for people to read prior to a hearing, plus requiring the agent to read it aloud prior to discussion. He pointed out Sec. 7.04 (c) which requires an accuser to spell this out specifically in the Notice of Intention.
- B. Fleshman noted the "he said/she said" nature of the last recall process, and that she heard even the people circulating the petitions didn't have firm knowledge of what the reason was.
- C. Babcock said he would bring the concept of a public hearing back to the Commission for further discussion.
- M. Brown wanted to add that his department was happy with the proposed number of required signatures, and time provided to complete the validation of the signatures.

3. Review Final Draft of Forfeiture of Office followed by public comments

C. Babcock summarized the changes made to the language in the current Charter:

- Clarified reasons for vacancy of office;
- Updated valid reasons for forfeiture of office;
- Clarified process by which an elected official would forfeit their position;
- Specifying that the governing body of the Town grants a hearing for the individual and ultimately decides if the individual will forfeit their position;
- This section moves into its own Article in the future Charter.

Public comments:

- M. Bartenhagen asked if this Article applies to appointed officials also, and C. Babcock acknowledged that it did.

- C. Babbidge said Recall was designed to be used by the public, but Forfeiture is an internal process. He asked if the same criteria should apply to elected and appointed officials, or should it be different.
- B. Robinson said, in answer, that in the past while serving on multiple boards, committees and commissions she had witnessed actions that should have resulted in Forfeiture; she cited several examples without using the names of anyone involved. Those kinds of violations, she said, are mercifully a minority; most people on boards are committed to serving the Town. But everyone under Town auspices needs to be responsible, and therefore should be following the rules set out in the Charter.
- C. Babcock called out #5 under Grounds for Forfeiture, to note that this is tabled until the Commission makes a final decision on how to incorporate a Code of Ethics/Conflict of Interest policy into the Charter. The proposed language stipulates that violation of such a policy would constitute grounds for forfeiture. He noted there is a joint Select Board/Charter Commission meeting scheduled on October 25th to further discuss the Code of Ethics/Conflict of Interest policy.
- C. Babbidge said he agreed with B. Robinson's comments, and that he worried Forfeiture of Office could be weaponized, with ethics an example of a way. He said there is a different degree of vetting used for elected versus appointed officials.
- M. Bartenhagen asked if the Commission would address the function and support of committees as part of the Charter, as she believes many committee members would like more clarification on duties and the relationship of their work to the Town's overall goals. C. Babcock affirmed it would be.
- M. St. Onge asked about the code of ethics/conflict of interest policy; is there a process in place? J. Vance explained that preliminary work has taken place on drafting a policy that can be used for the Charter as well as the Select Board and all other appointed and elected officials.
- B. Robinson said research for the code of ethics/conflict of interest policy language proved there was consensus that we needed a better process. There are currently 3 different policies, and the Commission's goal is to unify them.
- B. Fleshman asked about the Forfeiture language that specifies a member who misses a certain number of meetings may be subject to Forfeiture; what about approved absences? C. Babcock said the Commission will look at this when it starts to work on the boards, committees, and commissions copy.
- E. Trainer said he hoped that boards could tweak an ethics policy to meet all needs, noting that government, staff and residents work in tandem for the betterment of the Town, and each group should be aware of how behavior and speech impact others.

- B. Robinson said Maine state statutes are one of the sources being used for the ethics policy, and she believed the final policy that results from the Commission’s work could be customized if needed.
- C. Babbidge suggested that members of all boards and committees should forward comments and suggestions. He asked if the “failure to attend...meetings” as a reason to forfeit office was helpful to include, or not. C. Babcock said he didn’t think it has so far been a real issue for boards and committees, which handle absences as they feel appropriate.

4. Review Final Draft of Voters’ Petition

C. Babcock summarized the changes made from what is currently in the Charter:

- Updated the title of the Article (formerly “Initiative and Referendum”);
- Provided clarifying language around process;
- Updated the language to include responsibilities of the roles in the process;
- Set the required number of signatures on the petition to 1000.

Public comments:

There were none at this time.

J. Vance clarified for the public that changes to Zoning ordinances would not be handled through the Voters’ Petition process, but would continue to be initiated through Article 13 of the Zoning Ordinance, which is how proposals are handled now.

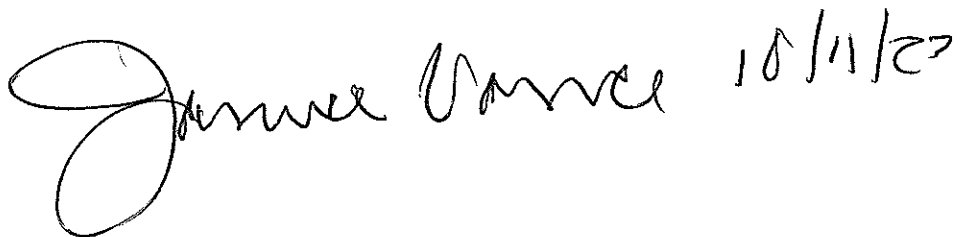
C. Babbidge asked if the Powerpoint document created by C. Babcock was posted to the Town’s website for residents to review, and M. Brown asserted it was.

M. St. Onge thanked the Commission for a constructive dialogue.

5. Adjourn

A motion to adjourn the meeting at 11:50am was made by B. Robinson and seconded by C. Babcock. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)



The image shows a handwritten signature in black ink that reads "Janice Vance". To the right of the signature, the date "10/11/23" is written in the same ink.