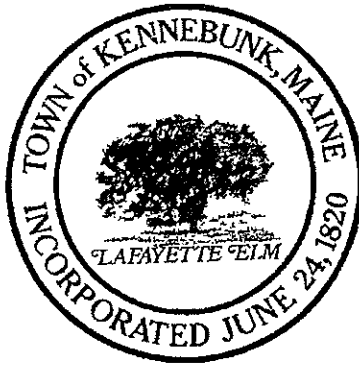


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, October 11, 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 6:33pm.
- b. Secretary Janice Vance called roll:
 - Present: Christian Babcock (Chair); Richard Smith (Vice Chair); Janice Vance (Secretary); Christopher Babbidge; Susan Bloomfield (via Zoom); Durward Parkinson; Brenda Robinson; Stephen Sayers; Edward Trainer.
 - Also present: Merton Brown, Town Clerk.

2. Public Comments

There were no public comments.

3. Old Business

C. Babcock summarized items that had been on the agenda of the September 27th meeting, including a review and approval of the proposed Article 6, Voters' Petition, the final agenda for the September 30th Public Forum, Commission member conduct, and a review of Articles 8-10. He confirmed that the next meeting, scheduled for October 25, will be a joint meeting with the Select Board to discuss a potential new Code of Ethics.

B. Robinson said she took comments received in response to her initial draft designed to create an updated code of Ethics/Conflict of Interest, and today made changes that reduce the length of the document to only 1.5 pages. In the copy, she referenced applicable Maine state statutes.

S. Sayers said since the previous discussion he has had second thoughts about including the Code of Ethics and Conflict of Interest policy in the Charter. If either of those items needed to be amended, would this require the formation of a new Charter Commission to do the amendment?

B. Robinson said if that occurred, the Select Board could have the option to amend just that section of the Charter.

M. Brown said the Select Board discussed the subject at its meeting the previous evening. E. Trainer said he attended that meeting and the process of how to amend the policy was raised. He said perhaps having the Charter provide a general statement that would be fairly safe from needing an amendment, along with giving boards the flexibility to adapt the core policy as needed, was an effective way to go. M Brown said that in the past minor revisions were made to the Charter without the creation of a new Charter Commission. They were decided by voters via referendum questions. If an issue needing amendment is substantive, however, a Charter Commission would have to address it.

B. Robinson asked how it could be handled if the state changed a statute, which then impacted what was laid out in the Charter. M. Brown said that was likely a question to be answered by Town Attorney Natalie Burns.

C. Babcock said as a matter of housekeeping, he wanted to let the Commission know that former Town Manager, Barry Tibbetts, was willing to speak at the November 8th meeting.

4. **New Business**

C. Babcock referenced an update that S. Sayers and J. Vance made to the previously-approved Recall article in response to comments received at the September 30th Public Forum. Comments indicated interest in adding a requirement after the Notice of Intent has been certified, but before Petition signatures were collected, that the Town hold a public forum at which the Agent would explain the reasons why an elected official should be recalled, with an option for the targeted official to appear to offer an explanation. The copy would read:

Section 7.05: Public Forum

After the Town Clerk has certified that the Notice of Intention as containing the minimum number of required signatures, he/she shall notify the Agent, the Select Board, and the Elected Official, who is the subject of the recall effort. The Select Board shall then, in conjunction with the Town Clerk, schedule a public forum to discuss the allegations made in the Notice of Intention. This public forum shall take place within 10 Business Days after certification. The purpose of the public forum is to ensure that the grounds for recall alleged in the Notice of Intention are asserted in good faith, that they are well-grounded in fact, and to give the Registered Voters of the Town sufficient information about the issues involved in the recall effort prior to circulation of the Petition for Recall described in Section 7.06. During the public forum, the validity of those allegations, and the facts underlying them, may be publicly discussed and debated.

This public forum shall be advertised on the Town's website and social media, and in the community's Newspaper of Record. All notices shall include the full text contained in the Notice of Intention, and shall identify the Agent.

At the beginning of the public forum, a moderator shall be appointed by the Town Clerk to make sure that all persons who wish to speak are given a full and fair opportunity to do so. The Agent shall first be required to appear, in person, to explain the reasons for the attempted recall, and he/she shall describe each of the facts that support the grounds for recall alleged in the Notice of Intention. The Elected Official whose recall is being sought shall then have the right, but not the obligation, to appear, in person or through an authorized representative, to controvert the facts alleged in the Notice of Intention, and to present a response to the allegations made in the Notice of Intention, as elaborated by the Agent at the public forum. Members of the public shall have the right to question the Agent fully about the accuracy of the factual assertions made in the Notice of Intention. After the Agent has made his/her presentation, and after all attendees have had their questions answered, or made their comments, the public forum shall be closed. The proceedings shall be aired, live, on the Town's public streaming facilities, and a copy shall also be made available to members of the public on the Town's website.

If the Agent decides to withdraw the Notice of Intention following the public forum, he/she shall notify the Town Clerk that the Notice of Intention has been withdrawn and the Town Clerk shall note that withdrawal in the Town Records Book, along with the date of the withdrawal. The Agent, and each of the signatories of the withdrawn Notice of Intention, shall then be prohibited from filing another Notice of Intention against the same Elected Official for a period of one year.

R. Smith said that only 7 members of the public attended the public forum held on September 30th, 2023, most of whom have attended Commission meetings regularly. He asked how the Commission could attract more attendees at future meetings, bringing “new blood with new ideas.”

C. Babcock asked members if they would like to consider picking a date in the first quarter of 2024 for another public forum, given that the upcoming holidays would lessen public attendance even more.

E. Trainer said that despite low turnout, the public forum resulted in the addition of a brand new addition to the Recall article that none of the Commission members had considered, and he was pleased with the public reaction to what the Commission has created thus far.

C. Babbidge said the attendees were a “small but mighty” group and that he thought Commission members left the meeting feeling good about what has been accomplished.

S. Sayers said that the Kennebunk Post, which goes to all residents each week, didn’t publish any mention of the public forum, and asked what we could do in the future regarding advertising. He agreed with C. Babbidge that attendees did not criticize the Articles discussed during the public forum, which was heartening.

M. Brown noted that since reporter Tammy Wells has retired from the Kennebunk Post, there has been a lapse in news coverage, but that a new reporter has recently come on board and is getting up to speed. He said he didn’t run an actual ad for the September 30th public forum but would consider doing so for the next public forum.

S. Bloomfield expressed a willingness to write up announcements and post them around the community.

C. Babcock proposed the third Saturday in March – March 16 – as a potential date for the next public forum. There was general consensus that this date would be “penciled in.” There are ten Commission meetings prior to that date, which should provide enough time to produce a substantive agenda for discussion.

B. Robinson asked about using social media – 3 Towns, 1 Community; Kennebunk Moms; Not Quite Kennebunk Moms – to promote the public forum. M. Brown said the Parks & Rec Facebook page, which has 3000 users, could be used. B. Robinson said promotion could pose questions to drive interest – “why attend” for instance.

C. Babbidge said it was good to have a document to discuss at public forums, but it was also good to have open discussion before all the details were locked in.

S. Sayers opened the discussion around the changes he and J. Vance made to the Recall copy. He said after listening to the public comments, he viewed the addition of a public forum as something that would make the overall Recall process stronger.

M. Brown asked about the “10 days” shown in paragraph 1 of the new Sec. 7.05. He was concerned this might not be sufficient to provide the required public notice. The Town website is used for public notice, and in certain cases, such as Planning Board public hearings, the Portland Press Herald is also used. He cited the cost of placing a classified notice as well as the fact that newspaper readership is lower than it used to be. Multiple means of communication are needed in order to reach all residents.

R. Smith asked if adding the required public forum to the Recall process was too large a barrier. If a petition is justified and well thought out, he supposed the process would play out correctly. He asked who would pay for the moderator, the public notice, and setting up the meeting space, etc. The expense should not fall on the shoulders of the petitioner.

S. Sayers said he assumed the Town would pick up the cost, particularly if it is not substantial.

D. Parkinson said that in his experience sometimes a moderator is paid (around \$100) but sometimes the moderator performs the service at no charge.

C. Babcock agreed with R. Smith that the Agent should not be required to pay.

C. Babbidge said the “cost of democracy was on the table.” If the process is fair, he said, the Town must be neutral on the validity of the Petition, and the public forum is designed to educate the voter. The Agent should be present to explain his/her accusations, along with the accused, and the accused’s supporters also, if warranted. The public forum is a hurdle but it is not a punishment for the Agent.

D. Parkinson pointed out the language specifying that notice be given in the “newspaper of record.” He said a better phrase would be “of general circulation.” M. Brown said the law actually specifies the criteria for how Towns publish notice of public hearings.

C. Babcock suggested removing the reference to a newspaper and using whatever standard means of notification is used by the Town. He noted that by the time the public forum is ready to be scheduled, the Notice of Intent has been circulated and word of mouth alone will help incent those interested to attend the public forum.

E. Trainer said the person required to present the case for recall at the public forum should be the Agent or someone “designated” by the Agent.

J. Vance said she researched and created a definition for “newspaper of record” which could be used if this reference is retained.

M. Brown said the cost of notice as well as a moderator and other needs could be assumed by the Town.

R. Smith said the Town should choose the venue and be responsible for placing appropriate notice.

C. Babbidge asked if inserting the public forum into the process along with the required time to set it up would impact the dates of signature collection, and wondered if the date was too narrow. S. Sayers said the idea is to stay within 3-5 months for the entire process to conclude.

C. Babcock said in his view the important benefit of having a public forum was to create a permanent record so residents can review the recording on their own time schedule. He knows that some people who cannot attend on a specific date due to other commitments still want to see for themselves what was presented.

E. Trainer asked the legal difference between a public hearing and a public forum. M. Brown said this was a question for Natalie Burns.

B. Robinson asked if a calendar of the entire Recall process had been created. S. Sayers said he did write one down, and he will type his notes and distribute them to members for discussion. B. Robinson said she envisioned a “chart” that would provide an easily-understood visual. C. Babcock offered to take responsibility for the creation of a chart.

C. Babbidge said he thought 10 days may be tight. He wants to have the public forum well in advance of a petition drive.

In regard to the public notice, Miriam Whitehouse, Select Board member, said that once an Agent initiated the Notice of Intent, she was sure the community at large will learn about it very quickly.

C. Babcock asked S. Sayers and J. Vance to provide some tweaks to the proposed Article 7.05, and he will create a calendar to go along with it.

S. Sayers asked for discussion of the last paragraph of the new copy, which states that if an Agent opts to withdraw the recall effort after the public forum, he/she cannot file another Notice of Intention for a year. B. Robinson asked what starts the “year” – was it from the time of the initial filing, or from another date? S. Sayers suggested the date of the withdrawal of the Notice of Intention should be used, as recorded in the Town Records Book. D. Parkinson asked who defines “the same issue” as written in the copy. A concept can be tweaked just enough so that the Agent or someone else could claim it was different.

S. Sayers and J. Vance will provide edits to the Commission for further discussion.

C. Babcock introduced a discussion of Form of Government. He asked for volunteers to work on Article 3. He pointed to the document created by J. Vance that provides actual Charter language from multiple towns pertaining to Town Council form of government, as well as a brief summary that compares Select Board duties with those of a typical Town Council. He said he proposes that the Commission consider recommending a change to a Town Council, noting that the Town Meeting portion of Kennebunk’s form of government has not been used for many years. He understands the nostalgia of some members who attended town meetings in the past. He asked to go around the table and have each member voice an opinion.

E. Trainer said he was not ready to make a decision yet. He wanted to frame the debate to consider issues of balance of power between the key stakeholders. He said leadership and efficiency are important factors. He said it was noteworthy to him that State statutes defined the role of a Select Board very strictly, yet did not define how a Town Council should perform. He asked how a transition from a Select Board to a Town Council would work. The basic decision was between direct governance and a more representational form of government.

M. Brown said it was correct that a traditional Town Meeting was far in the past. He asked for consideration of what items should go to voters, and which items should be handled by a Town Council.

C. Babcock cited Don Gerrish, a municipal consultant who spoke to the Commission earlier in the fall. Having a Town Council would allow faster handling of ordinance changes and other day-to-day items. He said he felt the budget, however, should be decided by voters.

M. Brown said that as Town Clerk, he has received many voter comments over the years saying they believe they shouldn’t have to vote on a budget, because they don’t have any real knowledge about it, and therefore the elected officials, who presumably do have the knowledge, should handle it. He also sees this reflected in the fact that so many ballots are turned in with “blank votes.” People avoid voting on referendum items they don’t readily understand.

S. Sayers said Kennebunk has a Town Meeting “in name only.” There are too many residents in town now to logistically hold one. It has been many years since there was a real town meeting. He noted that when Don Gerrish spoke, he was asked how many towns have ever reverted back to a Town Meeting format after changing from it, and there were none. But several towns had moved to a Town Council format.

S. Bloomfield said she has not yet decided whether a change is good or bad, and will keep an open mind as discussions proceed.

R. Smith said the last true Town Meeting held was in the late 1990s. Town meetings were well-attended only if there was a really controversial subject to discuss. The budget is the most important element that he would prefer be approved as a referendum item, rather than a Town Council making the decision. It is, however, time to move to a Town Council form of government. He is disappointed by resident apathy but understands time constraints, and we won't be able to solve those problems in the Charter. He asked if there are other parts of the government that should remain with the electorate if we adopt a Town Council form of government.

D. Parkinson suggested budgets remain with voters. He said moving to a Town Council bumps the effectiveness of Town government up a notch, which would better serve a populace he deems as being "quality."

B. Robinson said she realizes "we" (the townspeople) aren't what we say we are when we categorize our Town government as Town Meeting. Efficiency in government is important, as it results in cost savings. The role of those working on committees needs to be addressed. She said Heather Balsler, the new Town Manager, is doing a great job learning how the system is currently working, and is making small changes to improve efficiency and to use committees to best effect. Many things still need to be looked at: who reports to whom, the role committees play in Town government, the lack of a common process for committees to follow, and communications flow between committees. Currently there are "boxes" that committees operate within, and no one outside the box is privy to the details. There is a need for better coordination between committees and with staff and Select Board. She agreed with R. Smith about resident apathy and time constraints. It is time for us as a town to do a strengths/weaknesses/opportunities/threats evaluation.

J. Vance said that she had been impressed by Don Gerrish's explanation that Town Council duties were very customizable. Each town can set it up the way it works best there. She posited that it would be a good exercise to list any goals the Select Board would like to achieve that it can't accomplish under the current State mandates for Select Boards. Then it would be possible to begin looking at whether moving to a Town Council form of government would allow the board to fulfill those goals. She said she would like to have that conversation with the Select Board at the upcoming joint meeting; what they currently find frustrating or ineffective under the present system.

C. Babbidge said he was not sure at this point whether it was beneficial for the town to make a change to the form of government. He needs to weigh the benefits and will listen to the discussions as they evolve. He said he needs to see "grievances against the status quo."

C. Babcock said identifying the Town's strengths, weaknesses and goals was a great homework project for members. He asked that they list what those are for the next meeting. He said government is only as good as the people involved. He said he would work on a Letter to the Editor for members to review, to help raise public awareness of the upcoming discussions. A Code of Ethics/Conflict of Interest policy was the #1 task to complete.

5. Approval of Minutes

- a. C. Babcock made a motion to approve the minutes for the September 27th regular meeting. B. Robinson seconded the motion. C. Babbidge asked to amend the minutes to add that when he left the meeting, it was to attend the meeting of an organization for which he is a director. He also requested the addition of a copy of the opinion piece he had written for the Kennebunk Post, referenced in the minutes, which B. Robinson offered to send electronically to avoid re-typing it. B. Robinson also pointed out a typo on page 3. The vote to approve the minutes, as amended, was 9/0/0.
- b. C. Babcock made a motion to approve the minutes for the September 30th public forum. E. Trainer seconded the motion. The vote to approve the minutes as written was 8/0/1 (D. Parkinson abstained from voting.)

A motion to adjourn the meeting at 8:20pm was made by B. Robinson and seconded by E. Trainer. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

A handwritten signature in black ink, appearing to read "Janice Vance", written in a cursive style.