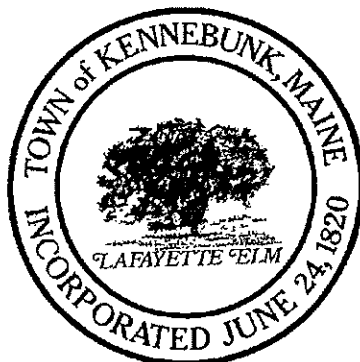


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, October 25, 2023

In-person meeting, Town Hall, 3rd Floor, 1 Summer Street, Kennebunk

Joint Meeting with the Select Board

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. Charter Commission Chair Christian Babcock and Select Board Chair Shiloh Schulte called the joint meeting to order at 6:34pm.
- b. Secretary Janice Vance called roll:
 - Present, from the Charter Commission: Christian Babcock (Chair); Richard Smith (Vice Chair); Janice Vance (Secretary); Christopher Babbidge; Susan Bloomfield; Durward Parkinson; Brenda Robinson; Stephen Sayers; Edward Trainer.
 - Present, from the Select Board: Shiloh Schulte (Chair); Miriam Whitehouse (Vice Chair); Lisa Pratt (Secretary); Kortney Nedeau; Kevin Therrien; Leslie Trentalange; William Ward (arrived 7:25pm).
 - Also present: Merton Brown, Town Clerk; Heather Balsler, Town Manager; and Attorney Benjamin McCall of Jensen Baird.

2. Public Comments

There were no public comments.

3. Old Business

C. Babcock briefly mentioned comments received at the September 30th Public Forum and the subsequent decision to add a "public hearing" component to the draft Article 7 (Recalls); and ongoing discussions on Form of Government and related Articles.

4. New Business

a. Joint discussion with Select Board on Code of Ethics

C. Babcock explained that B. Robinson and S. Bloomfield began the initial work of researching and drafting a possible Code of Ethics that could be used in the Charter for all elected and appointed officials. B. Robinson and J. Vance then met with M. Whitehouse and K. Therrien of the Select Board to discuss goals, and B. Robinson created a draft version for review. J. Vance additionally authored a draft version; hence two versions were available for discussion.

M. Whitehouse said the core question was whether the Charter should contain a basic Code of Ethics, which individual boards, committees and commissions could adapt to fit their own needs. She said she liked the idea of it being a part of the Charter because it would protect the concept from change by future boards. If there was agreement there are basic procedures all officials should follow regardless of the function and make-up of individual boards.

S. Schulte said that a Code of Conduct and a Code of Ethics overlap in some areas but are conceptually separate.

E. Trainer said he was in favor of a very basic portion of the Charter that could be put in an ethics policy, but one that gives boards the power to consider and adopt a detailed Code of Ethics that would apply generally to all elected and appointed positions in Town government. He noted that discussions so far revealed the fact it was difficult to create a policy that would apply to everything.

C. Babbidge said a Code of Ethics was important to setting and maintaining decorum in meetings. He said the ante was upped, however, with the draft of Forfeiture of Office provisions of the Charter. These allow removal of an official for violations of a Code of Ethics. He said he was concerned about the varying degrees of violations, but the Commission has been careful to word the Recall language so it isn't easy to abuse. Forfeiture is a quicker process, so the Commission wants to be equally careful when crafting the provisions that govern the Forfeiture process.

L. Pratt said a Code of Ethics does not really belong in the Charter. If the Charter addresses ethics, it should do so in a general way, and leave development of a detailed Code to the Select Board. She said she had looked at other towns' language and found them similar. Different boards could use a different version. She wanted to discuss enforcement and process, but the Code should be flexible to account for future societal changes.

C. Babcock said a Charter can be amended. He asked L. Pratt if she believed the Code of Ethics and Code of Conduct should be separate policies, and if Ethics could be defined as "static" but the Conduct be "flexible," and L. Pratt concurred.

S. Sayers said he did not believe that the Charter Commission has the authority to adopt a Code of Ethics/Conflict of Interest policy. He cited Title 30-A, § 2605 (7) of the Maine Code, which states that the Select Board, in its discretion, may adopt an ethics policy.

B. McCall said giving authority to the Select Board to draft the policy could be legally problematic and needs further clarification.

L. Pratt said any Charter amendment would be voted on by residents, which would take the onus off the Select Board. She prefers that the Select Board create the policy, rather than have it as part of the Charter. She said she feels the Select Board's current policy needs revision. The final policy needs to be consistent across all boards. A Code of Conduct should be a separate document.

R. Smith asked that if the Code of Ethics/Conflict of Interest policy was not in the Charter, did L. Pratt have a place she envisioned it to be housed. L. Pratt said it could be an ordinance. R. Smith expressed concern that if too onerous a Code of Ethics/Conflict of Interest policy was in the proposed new Charter, voters could opt not to accept it and "sink a lot of hard work." He agreed a policy should be fluid, short and to the point, and asked about compliance and enforcement.

S. Bloomfield noted that the current Charter does include a Code of Ethics/Conflict of Interest, with an associated compliance and enforcement policy. She asked L. Pratt if she envisioned the creation of an Ethics Commission in lieu of the Select Board's already-outlined duty to hear and possibly remove an official for violations. She expressed concern about creating another level of government that residents may not be in favor of, and how that group would handle enforcement. She asked if the Select Board has time to take on being the judge and jury if an official violates policy.

K. Therrien said a Code of Conduct and a Code of Ethics are different policies. The former governs how meetings are conducted and how communications are handled. The latter covers "heinous" violations which would be serious no matter what societal changes take place. Both should be straightforward documents.

C. Babbidge said whether a Code of Ethics was part of the Charter, or kept outside the Charter as an ordinance, he was worried about sanctions and compliance issues. He said situations are not cut and dried. A Charter is a more permanent document than an ordinance. He asked K. Therrien if the Code of Ethics should be an ordinance instead of in the Charter. K. Therrien referred to the draft Forfeiture of Office article in the Charter, which lays out a straightforward process to be followed.

B. Robinson spoke to the many Conflict of Interest policies from other towns that were reviewed during discussions. Some were short, others, such as York's, which is 9 pages long, are very involved and specific. The Commission has looked statewide, and, henceforth, has included in the draft policy a list of State statutes that cover Code of Ethics and Conflict of Interest. She said if the Select Board was charged with creation of a policy, it could find itself in a dilemma if a member of that Board was charged with wrongdoing; it could become, by default, its own judge and jury. She said she was in favor of language that allows the Select Board to change the policy in the Charter should the State laws be changed. Each board can develop its own Code of Conduct.

B. McCall said that allowing the Select Board to make changes to the policy in the Charter is a problem. If State law changed, the Charter should be amended by a vote of townspeople. Section 1 as proposed, which shows the State laws, is fine as is.

K. Nedeau asked how the process would be impacted if the Town decided to change its form of government from Select Board/Town Meeting to Town Council. B. McCall said the same process would apply.

L. Trentalange said it might not matter where the Code of Ethics “lived” because the Code of Conduct is the “fluid” piece. The Forfeiture process works. What is needed is a Code of Ethics all officials would live by.

C. Babcock referred to public comments received at the first Commission forum several months ago in regard to a Code of Ethics. He believes after reviewing them that the comments pertained more to a Code of Conduct.

S. Schulte said a Code of Ethics is “bedrock” but a Code of Conduct is flexible and could change periodically, and doesn’t preclude individual boards from creating their own rules. He asked if the Select Board had legal authority to impose rulings on other boards. B. McCall said the Charter is the Constitution of the Town, and unless it says otherwise, the Select Board does have authority over other boards.

S. Bloomfield asked S. Schulte if he was in favor of each board creating its own Code of Conduct, including the Select Board, and having the Charter contain a basic Code of Ethics applicable to all officials. The Select Board-created Code of Conduct could serve as a template for other boards to use. She asked if the Charter Commission created the Code of Ethics, and the Select Board created the Code of Conduct, would that be acceptable? S. Schulte agreed it would be.

B. Robinson asked how enforcement of a violation would be handled, and referenced discussion of this that took place at the first public forum. S. Schulte said there needs to be a review process outlined with steps to be taken for varying levels of issues. He cited previous problems with boards and a lack of clarity on how to address them.

C. Babbidge said the Code of Ethics would be bedrock, but asked for ideas on how “convictions” of violations could be handled. S. Schulte said if the Forfeiture process wasn’t used, another process would need to be created.

E. Trainer said in creating a Code of Ethics versus a Code of Conduct, that writing the actual language was a tough issue. The goal is to protect the institutions of the Select Board and other parts of Town government. Having a core Code of Ethics in the Charter “provides cover” for the Select Board in the future.

W. Ward asked how either policy would be enforced; we need a written process and guidelines so issues are handled fairly.

M. Whitehouse suggested taking straw votes to see if there was consensus between the Select Board and the Charter Commission on further direction. She envisioned one choice as having a basic Code of Ethics in the Charter, and allowing the Select Board to create a customizable Code of Conduct.

C. Babcock asked for a straw vote on two questions:

1. *Maintain the State Code of Ethics legal standards in the Charter, which connect to the process laid out under Forfeiture of Office; R. Smith asked to include Conflict of Interest as well.* There were 11 in favor, and 4 opposed.

2. *Have the Select Board create a Code of Conduct.* There were 14 in favor, 0 opposed, and 1 abstention.

B. Robinson asked about including Sections 4 & 5 (policy on non-discrimination and confidentiality). These could go into the Code of Ethics/Conflict of Interest policy, or be part of General Considerations.

C. Babbidge asked if proposed sanctions are covered by State law. B. McCall said he was not a criminal lawyer but he knew that violations of some of the applicable Statutes are handled in criminal courts.

b. Discuss strengths and weakness of current form of government

This was tabled. C. Babcock noted that there will be a future joint meeting of the Charter Commission and Select Board to discuss this.

c. Discuss goals for form of government

This was also tabled.

5. Approval of Minutes

C. Babcock made a motion to approve the minutes for the October 11th regular meeting. E. Trainer seconded the motion. The vote to approve the minutes was 9/0/0.

C. Babcock asked members to think about whether the second meeting in November should be cancelled, as it is the evening before Thanksgiving and people may be traveling.

6. Adjourn

For the Charter Commission, a motion to adjourn the meeting at 8:00pm was made by B. Robinson and seconded by R. Smith. The vote to adjourn was unanimous.

For the Select Board, K. Therrien made a motion to adjourn, which was seconded by L. Trentalange. The vote to adjourn was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

