

To the Town of Kennebunk Select Board

Final Report

Kennebunk Charter Commission

Setting the Stage for an Updated Town Charter

In 2022 a contentious recall election that caused community divisiveness greatly alarmed both the Select Board and Town residents. The recall effort was overwhelmingly defeated but put into the spotlight the significant weaknesses of the recall language contained in the current Town Charter. The Charter is a document that is designed to specify how Town government operates. In addition, over the years criticism has been repeatedly voiced about the time it takes to get ordinances approved in the Town.

Much has changed in Kennebunk since 2009 when the current Charter was last revised. Although some changes are outside the Town's immediate control, they affect daily life and the kind of decisions that need to be made by Town leaders. First of all, Kennebunk is growing. With a population of just under 12,000, Kennebunk is currently the second-largest non-city municipality in Maine. It is the 17th-largest town out of 400+ Maine towns. State projections indicate Kennebunk's population will grow another 7.8% by 2031. Other changes that affect the Town include new State laws designed to expand housing density, increased popularity as a vacation destination, including the proliferation of homes used for short-term rentals, and unprecedented economic pressures. For instance, the pace of damage from climate-change-driven storms has increased relentlessly. Town leaders need to make rapid repair decisions costing millions of dollars in order to maintain the safety and function of impacted neighborhoods and Town infrastructure.

Charter Commission Formation and Charge

After the recall election, the Select Board decided it was time to recommend to Town Voters that a Charter Commission be created. The Select Board wished to look into not only the flaws revealed in the current Charter's recall language and perform a "head to toe" analysis of other gaps, weaknesses, and obsolescence in the document. A new Charter Commission was created by the Voters in November 2022 pursuant to a State statute that required the creation of a 9-member Commission, 6 elected by Voters, and 3 appointed by the Select Board. The elected members were Christopher Babbidge, Brenda Robinson, Susan Bloomfield, Edward "Ted" Trainer, Stephen Sayers, and Christian Babcock. Those appointed by the Select Board were Janice Vance, Richard Smith, and Christopher Cluff.

The new Commission members brought to the table a variety of professional experience including legal, corporate, business, and governmental backgrounds. Most members also served currently or previously on other Town boards, commissions, and committees. Drawing from this bank of knowledge, the Commission's charge was to evaluate Kennebunk's current Town Charter and to recommend changes that would bring the document up to date to prepare the Town for the future.

The Charter Commission held an organizational meeting in January 2023 and elected Christian Babcock as Chair, Richard Smith as Vice-Chair, and Janice Vance as Secretary. Shortly after formation, one of its members, Christopher Cluff, resigned. The Select Board appointed Durward Parkinson, a local attorney with many years of experience in municipal law, in Mr. Cluff's place.

The Commission's overarching goal was to give the community ample opportunities to participate in the process of creating a new Charter. Regular meetings were scheduled for the second and fourth Wednesdays of every month at 6:30 p.m. Two special Saturday morning Public Forums were also held. All meetings took place at the Town Hall, were available on Spectrum channel 5, and were streamed online. All meetings were recorded and those recordings are available on the Town's website. Residents could participate either in person or via Zoom and could also offer comments by email. Residents also had the opportunity to complete an online survey to indicate their thoughts on the different forms of government being discussed.

The Proposed New Charter

After 18 months of research, meetings, public input and spirited discussions, the Charter Commission is pleased to present to the Select Board a proposed revised Town Charter. The Charter Commission believes that in order to address inefficiencies and position the Town Government to be able to more effectively serve the current and future needs of Town residents, the time has come to put a more streamlined and nimble governing structure into place. It is time to update the current Charter to better reflect current realities.

The revised Charter is significantly changed from the current Charter in format and depth of content. It is designed to be user-friendly while offering detailed guidance on Town governance. Because the changes proposed are extensive, the Commission acknowledges that attempting to create a "redlined" version of the old and new Charters for comparison purposes would be futile. The Commission requests, instead, that the Select Board and the public read the current and proposed Charters and then compare them using this document as a guide.

Therefore, pursuant to 30-A M.R.S. § 2013(5)(c), the Charter Commission requests the Select Board to conduct its review of this Charter revision by holding the required public hearings to gather further public comments and feedback. Finally, the Select Board is requested to place the revised Charter on the November 2024 ballot for approval by the Voters.

Methodology Used

- **RECALLS**

The current Charter has little guidance on recalls. Charter Commission members agreed that a mechanism had to be put in place to recall an elected official from office as a result of serious misbehavior while in office. However, the Commission was firmly of the view that such recalls should not be used as a means to harass officials over policy differences. The Commission received significant public input on this subject.

- **DELAYS IN DECISIONS**

The current Charter requires that all new, amended, or repealed Town ordinance and Land Use Ordinances must go to Voters. There has been much legitimate criticism that delays caused by this process sometimes leave affected residents and businesses in limbo for many months resulting in friction between the Town government and its citizens. Also, some individuals proposed that ordinance changes were so minor that it seemed impractical to wait for an election. The Commission also saw that, historically, in comparison with budget and candidate questions, a significant percentage of Voters left ordinance and land use ordinance referendum questions blank, leading the Commission to believe that some residents did not feel sufficiently informed to make decisions on these items. This belief was supported by an observation by

Town Clerk, Merton Brown, that during actual elections many voters asked questions about ordinance-related ballot questions.

- VALUE OF VOLUNTEERS

The Commission recognized that volunteer committees fill an important role in enabling Town leadership to provide cost-effective services to residents. The Commission wanted to clarify the roles and responsibilities of all parties involved so that residents receive the benefits of effective partnerships between volunteers and Town staff. The current Charter leaves these important topics almost completely unaddressed.

- FORM OF GOVERNMENT

Commission members were interested in comparing the Select Board/Town Meeting/Town Manager form of government with the Town Council/Town Manager form of government. As part of this research, the Commission studied the Town Charters of more than two dozen Maine towns, in order to understand commonalities, legal requirements, and best practices. Town Charters reviewed included Arundel, Bar Harbor, Berwick, Biddeford, Buxton, Eliot, Falmouth, Freeport, Gorham, Hollis, Kennebunkport, Kittery, Lebanon, Limington, Lyman, North Berwick, Old Orchard Beach, Orono, Saco, Sanford, South Berwick, Waterboro, Wells, Westbrook, Windham, Yarmouth, and York. The Commission also invited two municipal consultants to meetings, for in-depth discussions about the different forms of government used in Maine. The Commission also heard from a number of town managers, all of whom commended the improvements made by going to Town Council. Typically, towns with less than 5,000 residents have a Select Board, and cities with more than 20,000 residents have a City Council (in York County, that includes Sanford, Biddeford and Saco). Those towns in between, including Gorham, Falmouth, Old Orchard Beach, Windham, Yarmouth, Freeport and Bar Harbor, have moved to a Town Council form of government. Of the numerous towns that have modernized their charters by adopting a Town Council form of government, none have reverted back to a Town Meeting/Select Board model.

- PROCESS

The first items to be re-written by the Commission were Recall, Forfeiture of Office, Code of Ethics, Voters' Petitions, and sections that were common to other Town Charters in Maine. As the Commission moved into the current Charter more thoroughly, each newly-written section was discussed and amended during meetings. Multiple "straw votes" were taken to ensure that a majority of members were in favor of the new language in each proposed section. In March, 2024, a first draft of the separate new sections was assembled into one document and review continued.

- COLLABORATION:

During the review process, the Commission worked closely with Kennebunk's Town Manager, Town Clerk, and Town Attorney, bringing in additional staff members and the Select Board as needed to discuss a variety of options for improving the Charter. The Town Attorney reviewed drafts of the Charter and provided feedback for all necessary edits so that the information presented conforms to State law.

Highlights of the Proposed New Charter

FORM OF GOVERNMENT

First, and most important, is the Commission's recommendation that the time has arrived to change Kennebunk's "Form of Government" from the current Select Board/Town Manager form to the Town Council/Town Manager form with budget and borrowing continuing to be reserved exclusively to the Town's voters for approval. This was the very last decision made by the Commission during the review process and was decided after nearly everything else in the proposed new Charter had been completed. A straw vote to recommend calling the form of government a Town Council was 5 in favor, 4 opposed. The primary reason for opposition was concern that voters would not approve the proposed new Charter because the concept of a Town Council was new and unfamiliar.

- The Town Council, as proposed, has the same duties and authority as the current Select Board but with one core exception. The Town Council will vote on new, amended, or repealed Town and Land Use Ordinances rather than these items being sent to the voters for a referendum vote. The Commission provided a mechanism for Voters who disagree with the Town Council decision to use an expedited Voters' Petition process to pause and override these decisions. Other Maine towns use this same mechanism for checks and balances.
- Town Councils in most municipalities also vote on Town Budget and borrowing. However, the Commission thought it was important for voters to continue to make these financial decisions for themselves at the annual municipal election; thus, the Commission opted not to give the Town Council this ability. These issues affect all Town voters one way or another. The Commission decided that it is only right and proper that the Voters, as a body, should approve or disapprove major financial matters. That said, a more defined set of financial procedures was created for the Town Council to use in the event of future emergencies such as storm damage in the form of a limited power to utilize funds in the unassigned fund balance.

CLARIFICATIONS AND CLEAN-UP

- The term "Town Meeting" is replaced by the term "Municipal Election" as the historically interactive Town Meeting was replaced by our current referendum elections many years ago.
- The Voters' Petition process was simplified by specifying a flat number of valid signatures needed for a petition (500) rather than calculating a percentage of voters who participated in the most recent Gubernatorial election (the means of calculation that has been used in the past).
- A detailed four-step Recall of Elected Officials process was created to ensure that all proposals to recall an official are justified, fair to all involved, and that the public is fully informed about the facts:
 - Step 1: A Notice of Intention is filed with the Town Clerk by an "Agent," which requires 500 signatures explaining why an elected official should be recalled from office. The Town Clerk validates the signatures;
 - Step 2: A public forum is held so that residents and the Town Council can hear and discuss the Agent's reasons for filing the Notice of Intention. If the Agent decides to proceed, the Town Clerk will issue Petition for Recall forms for distribution. There are strict requirements regarding deadlines and the number of required signatures (1,000);

- Step 3: The Agent gathers the signatures which are validated and certified by the Town Clerk;
 - Step 4: The recall, if successfully validated, is put to a formal vote by Special Municipal Election (or regular Municipal Election if the timing can be coordinated). This election is required to have a minimum turnout of 3,000 voters in order to be official. A turnout of less than 3,000 voters will result in the election to be null and void.
- A more specific budget and capital improvements process is included. The number of Budget Board members (5, with 2 alternates) is equal to the number used for other similar boards.
 - More detail about Boards, Commissions and Committees has been incorporated, to address the importance of training, and communications, between volunteers and Town staff.

NEW SECTIONS TO DESCRIBE IMPORTANT TOWN ADMINISTRATION POSITIONS

- New sections include the Town Clerk and Finance Director descriptions. This mirrors how other towns depict these positions in their Charters. Both positions require a corporate surety bond in order to protect the Town and residents from potential misconduct.

USER-FRIENDLY FORMATTING

- Creation of a new Table of Contents and Appendix of Definitions is included. Grouping of “like” subject matter (all municipal government functions are together; all functions that relate to elections are together) and inclusion of references to the Maine State Statutes that govern municipalities have also been added.

WHAT REMAINS THE SAME

- Town Elections take place the same way they do now (just with a new name).
- Town Manager duties and responsibilities are virtually unchanged.
- Town Budget process and timing are the same with some procedural items clarified.
- Duties of the Town Council are virtually the same as the current Select Board with the one exception noted above.
- “Boiler-plate” items required by State law are the same and have been reformatted.

SUMMARY OF ARTICLES

As a comparison, the current Town Charter contains 10 Articles: *Grant of Powers to the Town; Town Meetings; Select Board; Town Manager; Budget Process; Initiative and Referendum; Recall of Elected Officials; General Considerations; Transitional Provisions; and Date Charter Becomes Effective*. The Charter Commission decided to group all “like” subject matter together for easier use.

- **Article 1: Grant of Powers to the Town**
This is a procedural article common to all Charters in Maine. It simply updates and re-formats what appears in the current Charter.
- **Article 2: Municipal Government**
This article covers the composition, functions, and limitations of the Town Council; Town Manager; Town Clerk; Town Finance Director; Boards, Commissions and Committees; Standards of Ethical Conduct; Vacancies; and Forfeiture of Office.

- **Article 3: The Annual Town Budget, 5-Year Plan and Related Fiscal Matters**
This article describes in detail the budget process, Budget Board, 5-year capital improvements plan, borrowing, emergencies, the independent annual audit, and all other financial matters pertaining to the town.
- **Article 4: Elections, Voters' Petitions and Recall of Elected Officials**
This article covers conduct of elections, how citizens can use the Voters' Petition process to initiate changes to ordinances, and lays out the steps necessary to recall an elected official.
- **Articles 5-7: General Considerations, Transitional Provisions, and Periodic Review**
Like Article 1, this information is procedural and common to all Maine Charters. It is updated and reformatted from the current Charter. These sections cover general Town policies and specify how government functions are continued during the transition from an old Charter to a new Charter.
- **Appendix of Governing Definitions**
This is a new section that defines terms used in the Charter.

ACKNOWLEDGEMENTS

The Charter Commission wishes to thank its members for their hard work, respect for differing points of view, and careful consideration of the issues raised during discussions that were sometimes difficult to have. The Commission also wishes to thank the multiple elected Town Officials who came to many meetings and remained engaged throughout the process, providing valuable input. Heartfelt appreciation goes to our highly experienced Town Clerk, Merton Brown, who attended every meeting as our advisor and cheerfully provided hard-to-find data upon request; Town Attorney Natalie Burns, who pointed the Commission to specific State regulations and useful examples of other Towns' Charters that were salient to discussions; Town Manager Heather Balsler, who provided perspective from the point of a leader who has served in other town government in various parts of the country; and the members of the public who attended multiple meetings, asked important questions, and provided a reminder that the Charter represents the interests of all residents.

The Path Forward

The Commission will participate with the Select Board in the public review of this revised Charter. The ultimate goal is to have the Charter placed on the November 2024 election ballot to be approved by the Voters as our new Town Charter.

Respectfully Submitted,

Christian Babcock
Chair, Town of Kennebunk Charter Commission

Dated: July 24, 2024 UPDATED