

Charter Commission FAQ

Why did Kennebunk form a Charter Commission?

The Charter Commission was set up by the voters and the Select Board in 2022 to revise the recall article and propose any other necessary revisions to the Charter. The Charter Commission formation was approved by voters 4043 Yes to 2168 No in the November 2022 election. Six residents of the town were elected at the same time and three additional residents of the town were appointed by the Select Board at a later date.

Does Kennebunk still have a Town Meeting?

No, Kennebunk does not have a traditional New England Town Meeting. The former Charter Commission from 2008 proposed a revision which was approved by voters that eliminated the traditional Town Meeting. A traditional Town Meeting allows for open discussion during the Town meeting and debate about ballot items and allows the attendees of the meeting to change the ballot measures in response to those discussions. At the end of the meeting an open vote is taken by a show of hands to pass ballot measures. This differs from our current municipal election because the referendum questions on the ballot are set by the Select Board months in advance of the vote, and all votes are cast by secret ballot, without discussion or debate.

What is a Select Board?

Traditionally, a Select Board is the elected body that supports the execution and administration of the Town Meeting in a traditional New England Town Meeting form of government. A Select Board derives all of its power from measures enacted by the Town Meeting. This leads a traditional Select Board to have little to no legislative authority that isn't explicitly given to it by the supporting Town Meeting.

If we don't have a Town Meeting, why do we have a Select Board?

This occurred because of the way the former Charter Proposal was submitted for approval. Rather than proposing a singular Charter Proposal, the Commission in 2008 submitted a proposed revision for each article of the Charter. There was a revision to the Town Meeting article that effectively changed it to a referendum vote and there was a revision proposed to the Select Board that proposed empowering the Select Board to have additional enumerated powers. The Town Meeting proposal was approved while the Select Board proposal was voted down. This led to the creation of the form of government we have now where the Select Board approves or denies static referendum measures that appear on the ballot and then voters vote on them. These measures include budget items, borrowing items, and land use ordinance measures. The intent of the former Commission was to have both revisions be approved in concert to enable the Select Board and the referendum vote to work together. Unfortunately this didn't come to fruition.

Why is the Commission proposing to change to a Town Council?

As described in the previous two questions, a Select Board is the conventional name of the elected body that supports a New England Town Meeting. We no longer have a Town Meeting so it is misleading to call our elected body a Select Board. Ultimately, the elected body could be

called anything the citizens might want it to be called. What really matters is the enumerated powers given to the elected body as opposed to the voters. Currently, the enumerated powers of the voters are to approve the budget, approve town borrowings, and approve land use ordinances. The Select Board is empowered to do “everything else” required to run the town, including approval of non-land use ordinances.

Why is the Commission proposing to give the Town Council land use ordinance approval?

There are several reasons for this. The Commission was recommended by the current Select Board, Town Employees, and residents to find ways to enable our municipal government to be more efficient and nimble. One of the largest time delays that elected officials and town employees note is the amount of time it takes to take a land use ordinance change from formation to approval. Land use ordinances must first be proposed to the necessary town boards such as the planning board. They then must receive two public hearings as well as a hearing from the Select Board. Only then can the Select Board determine if the proposed change should go to voters. The Select Board currently has a one sided power where they can effectively deny an ordinance change from appearing on the ballot, which effectively makes it a power to deny but not a power to approve. The Select Board also places its vote recommending the land use change on the ballot with the measure which typically reads: “The Select Board recommends approving this measure X in favor, Y opposed.” The residents have never voted against the Select Board recommendation in these cases.

Additionally, land use ordinances usually have a direct impact on a minority of residents whereas budget and borrowing measures impact all residents. Land use ordinances are also typically complex issues and as is shown by data and reported by our Town Clerk, this leads many voters to leave these questions blank on their ballots or seek clarification and help from poll workers to understand what is being asked.

Ultimately, the process for a land use ordinance change can take a year or more from start to finish. There are several recent examples where residents of the town have had to wait an inordinate amount of time for the process to complete so they could effectively change their own property to suit their needs. This has led to frustration for many residents involved in the process.

Finally, the Select Board currently has approval authority over other types of ordinance changes in Town. Allowing the elected body to have uniform approval authority over all ordinances across the board helps eliminate any confusion about what ordinance goes to the elected body versus what goes to the voters for approval.

So residents will no longer have control over land use ordinance changes?

No, it was important to the Commission to ensure that residents could still refute a controversial ordinance change. The Commission introduced a section in the Voters’ Petition article which now gives residents the power to form a petition requiring 500 signatures to challenge land use ordinance changes the Town Council would approve. When a petition is successfully submitted in such a case, it immediately halts implementation of the ordinance change and forces a municipal vote on the ordinance for approval. The Commission felt this provided an adequate

check on the elected body's power which allows for the efficiency gain ultimately asked for by the various parties who gave input.

Why 500 signatures?

Traditionally in many Maine Town Charters, a convention of "7% of the last gubernatorial election turnout" is used as a standard "benchmark" for the amount of residents needed to start any sort of new initiative. In conferring with our Town Clerk, and understandably, using a percentage figure referring to a previous election creates extra work for the average reader to understand how many signatures they would need to collect for a given effort. In our most recent gubernatorial election, 7% was equivalent to 488 signatures. In an effort to make it clean and account for Kennebunk's annual growth rate, the Commission set the 'replacement' number at 500 instead of continuing "7% of the last gubernatorial election."

Were any other efficiency gains pursued?

Yes, another important proposed change to call out is empowerment of the elected body to allocate funds from the unassigned fund balance to address emergency situations such as natural disasters. The unassigned fund balance is a portion of the budget where any previous budgetary surplus is deposited and ultimately is not designated to any planned spend. The reason for this change can be seen in the recent January storms we had this year which caused \$2.5M of damage to our waterfronts. After the storms, the Select Board was only able to spend money from their contingency fund (\$150K) and up to 1% of the annual operating budget to address the damage. Ultimately this money needs to be allocated from a budget item and approved by the municipal vote which wouldn't happen until June. This limited amount was not enough to repair the damage and completely left the town in the situation where tourists would arrive at damaged beaches for the summer season. Given that a major economic driver for the town is summer tourism, this is obviously less than ideal.

If waiting for the municipal vote is inefficient, why not have more frequent municipal votes?

There are a few reasons. Logistically it takes between 60 and 80 days to schedule any vote due to the deadlines required for notification and the amount of time it takes to approve, prepare, and print the ballots. When the January storms hit, the March primary vote was already approved and prepared. The next plausible date for another municipal vote would have landed sometime in May. Given that it made sense to wait until the regularly scheduled June election to address the budget allocation. Fundamentally, requiring a public vote for approval adds multiple months to any process requiring it.

In addition to the logistical issues, public participation at the regular June municipal election is historically very low, about 20% or fewer of the registered voters in the town actually turn out to vote. A fair assumption is that increasing the number of municipal elections would only lead to an even lower turnout and additional costs for the town and taxpayers.

What about recall?

The Commission was ultimately formed in response to the issues that occurred when the recall election in 2021-2022 happened. The existing recall language has many gaps in its process.

Additionally, the existing recall language effectively allows 25 residents (about 0.2%) of the registered voters of the town to start the process of recalling a duly elected official. There are no reasons provided for what would constitute a valid reason to recall an elected official. Compare and contrast this with recall at the State level where an elected official may only be recalled for being convicted of a crime. This makes our existing recall language ripe for exploitation and weaponization as we have seen play out across the country in recent years.

The Commission collected feedback from many residents, the Select Board, and municipal employees for ways to improve the process for the future. We increased the amount of people required to start the process, required that the recaller(s) present their case for recall at a public forum, and clarified the language around the petition and voting process. In addition to recall, we also updated the language in forfeiture of office. Forfeiture of office can be seen as a tool for an official to be removed for clear “black and white” causes. Recall provides the residents a path to removing an official for any act or “gray” cases that might not be covered by forfeiture. Given the flexibility of the circumstances that may justify a recall to be applied to anything, a higher bar was set for the required number of signatories on the petition at 1000. This number, while higher, is still a minority of registered voters of the town (less than 10%) and is seen as being achievable should a public official commit an egregious act that doesn’t fall under the forfeiture of office requirements.

What is the Minority Report?

The Minority Report is a public document written by two of the nine Commissioners who officially disagreed with other Commission members on a number of issues and therefore opposed the full Charter proposal. The Report details their views regarding the proposed form of government change from Select Board to Town Council and what that means for voters regarding their power and participation.