

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)



MARK N. DION (5)
APRIL FOURNIER (A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

SPECIAL CITY COUNCIL MEETING - SEPTEMBER 1, 2022 AT 5:00 PM

The Portland City Council will hold a City Council Meeting in Council Chambers. The Honorable Kate Snyder, Mayor, will preside.

To submit written public comment on an agenda item, email publiccomment@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Council meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the order number (see below).

REMOTE ACCESS INFORMATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. The public may attend the meeting in person, however space in Council Chambers is limited. The public is therefore strongly encouraged to participate remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:

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PLEDGE OF ALLEGIANCE:

ROLL CALL:

5:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

ANNOUNCEMENTS:

Announcing Barron Center Nurse Manager Joshua Stevens' receipt of the Excellence in Long Term Care Award from the Maine Long Term Care Ombudsman Program and the Maine Health Care Association - by Kate Snyder, Mayor

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

**Approval of the August 8, 2022 draft Special City Council Meeting minutes
(Meeting 1 of 2, 4:00pm)**

**Approval of the August 8, 2022 draft Special City Council Meeting minutes
(Meeting 2 of 2, 6:15pm)**

PROCLAMATIONS:

**Proclamation 1-22/23 Recognizing September 2022 as African Heritage Month -
Sponsored by Kate Snyder, Mayor**

**Proclamation 2-22/23 Recognizing Portland Little League All-Star Baseball Team's
State Championship Win - Sponsored by Kate Snyder, Mayor**

APPOINTMENTS:

**Order 51-22/23 Appointing Sarah Colton Constable for the Department of Public
Works - Sponsored by Danielle P. West, Interim City Manager**

This item appoints Sarah Colton, the new Public Works Department Solid Waste Compliance Officer, as Constable to authorize her to enforce solid waste rules and regulations. This appointment is effective from the effective date of this order until 12:00 midnight, December 31, 2022, and is made pursuant to Portland City Code, Sections 20-19 and 20-19.5. Constables are not allowed to carry a firearm, concealed or unconcealed, in the performance of duties, or to make arrests or issue parking tickets.

The Department of Public Works employs Sarah Colton as a Solid Waste Compliance Officer, who can provide services in the enforcement of city ordinances, including those regarding the misuse of trash receptacles for domestic waste, and illegal dumping; and recycling carts for contamination. In order for this employee to have the authority to serve legal process and to enforce the ordinances, they must be appointed as a constable by the City Council. The Department of Public Works is hereby requesting that this employee be appointed as a constable.

Five affirmative votes are required for passage after public comment.

LICENSES:

**Order 52-22/23 Granting Municipal Officers' Approval of Cellardoor Winery Inc.,
dba Cellardoor Winery. Application for Outdoor Dining on Public Property at 127
Middle Street - Sponsored by Danielle P. West, Interim City Manager**

Application was filed on 8/3/22. New City and State applications. Establishment currently holds B/W/D license.

Five affirmative votes are required for passage after public comment.

Order 53-22/23 Granting Municipal Officers' Approval of Dock Fore Inc., dba Dock Fore. Application for Class A Lounge with Outdoor Dining on Public Property at 336 Fore Street - Sponsored by Danielle P. West, Interim City Manager

Application was filed on 8/12/22. New City and State applications. Establishment currently holds Class XI Rest/Lounge FSE with Outdoor Dining on Public Property.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

Order 48-22/23 Approving Proposed Ballot Question and Summary of Council-Initiated Charter Amendment Re Gender-Neutral Language - Sponsored by Ashley Rand, City Clerk

This item approves the summary of the Charter amendment proposed by the Council relating to gender-neutral language and submits the change to the voters at the November 8, 2022 election.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

Order 43-22/23 Approving Proposed Ballot Questions and Summaries Re: Charter Commission Modifications to Portland City Charter and Placing them on the November 8, 2022 Ballot - Sponsored by Ashley Rand, City Clerk

This order approves ballot questions and summaries of the changes to the City Charter being recommended by the 2020 Portland Charter Commission and submits the changes to the voters at the November 8, 2022 election.

The Charter Commission reviewed the existing City Charter over the past year. It has recommended the following revisions to the Portland City Charter.

Attachment 1—Preamble and Land Acknowledgement

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission to Amend the Preamble and Include a Land Acknowledgement as Summarized Below?

1. Proposed Summary:

This modification revises the existing Preamble of the Charter, restates the purpose of the city's government and of its system of public education, and adds a land acknowledgment to address and respect Portland's past.

Attachment 2—Governance

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Governance and Other Governance Related Matters as Summarized Below?

1. Proposed Summary:

These modifications establish an executive mayor, allow the council to remove or censure the mayor, change from a city manager to a chief administrator, increase the number of city council seats from nine (9) to twelve (12), and make other changes relating to governance as follows:

- Creates an executive mayor and replaces the city manager with the position of chief administrator;
- Grants the executive mayor the following powers: nominate for appointment and remove the chief administrator; nominate for appointment all department head positions; exercise veto power over the city budget and city ordinances subject to council override; recommend for adoption by the city council rules that govern communications between city staff and elected officials; issue executive orders to implement council policy; and introduce legislation to the council;
- Increases the mayor's compensation from one-and-a-half (1.5) times to two (2) times the median household income and ties city council and school board member compensation to a minimum of ten percent (10%) of the mayor's compensation;
- Establishes the chief administrator as responsible for the administration of all departments and delivery of city services and grants the chief administrator the right to remove department heads in consultation with the executive mayor;
- Changes the composition and size of the city council by increasing the number of districts from five (5) to nine (9) and maintaining the existing three (3) at-large councilors;
- Grants the city council the power to censure or remove the mayor for cause, and to order a recall election of the mayor, by super-majority vote;
- Requires that the city council elect from among its members a chair and vice-chair, who shall organize the council into various committees;
- Provides that the city council chair shall preside over city council meetings and set the council agendas;
- Requires that the city council create a review committee that shall (i) conduct regular evaluations of the performance of the corporation counsel and city clerk and (ii) hold regular meetings with the chief administrator and department heads to understand the general working conditions and morale at city hall; the mayor shall lead the annual performance review of the chief administrator;
- Changes the composition of the school board by increasing the number of districts from five (5) to nine (9) and eliminating the at-large seats so that all members will represent a district;
- Directs the school board and city council to establish a joint committee on budget guidance, consisting of four (4) city councilors and four (4) school board members, appointed by the council chair and school board chair, respectively, to develop a proposed non-binding budget guidance document for the city council and school board;
- Directs the city council to develop and implement a participatory budget development process for the city budget that involves input from as many Portland residents as possible;
- Modifies the capital improvement program process to require the chief administrator to jointly prepare with the superintendent a five-year capital improvement plan; and
- Modifies the vacancy provisions for the city council and school board to require a special election if the vacancy occurs more than six (6) months prior to the next municipal election. If the vacancy occurs within six (6) months prior to the next regular election, the city council or school board, as applicable, shall appoint a qualified person.

Attachment 3—Clean Elections

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Clean Elections as Summarized Below?

1. Proposed Summary:

These modifications establish a City of Portland Clean Election Fund to provide public campaign funds to qualified candidates for elected municipal offices, beginning in FY 2023-2024. Candidate participation shall be voluntary. The city council shall provide an independent allocation from the city's budget each year to sustain the Clean Election Fund and the city council shall by ordinance direct that the Clean Election Fund must:

- Limit the amount of funds a participating candidate may raise;
- Be limited to candidates who meet certain requirements, such as demonstrated public support and participation in a city-sponsored forum or voter education event; and
- Require that all unused funds be returned to the Clean Election Fund.

In addition to establishing the Clean Election Fund, these modifications:

- Prohibit corporate contributions to any candidate for municipal office;
- Prohibit ballot question contributions or expenditures from any entity that is substantially under foreign influence; and
- Require that all contributions to campaigns be reported to the city clerk and that the city clerk create a searchable online database of information contained in filed registrations and campaign finance reports.

Attachment 4—Proportional Ranked Choice Voting

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Proportional Ranked Choice Voting as Summarized Below?

1. Proposed Summary:

This Charter modification authorizes the city to use a proportional ranked choice voting method for elections in which more than one person is to be elected to a single office (i.e. a multiple seat election) and directs the city council to enact an ordinance to establish the proportional ranked choice voting method.

Attachment 5—School Board Budget Autonomy

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to School Board Budget Autonomy as Summarized Below?

1. Proposed Summary:

This Charter modification changes the current school budget adoption process by transferring school budget adoption authority from the city council to the school board. The city council has discretion to conduct a public hearing on the proposed school budget

and to provide a non-binding recommendation to the school board for its consideration, which the school board may or may not adopt, in whole or in part. The adopted school budget continues to be voted upon at the State-required budget validation referendum election, but if that is discontinued by the voters, the adopted school budget would be voted upon at a municipal school budget referendum.

Attachment 6—Peaks Island Council

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Peaks Island Council as Summarized Below?

1. Proposed Summary:

This Charter modification requires the city council to maintain the ordinance it has enacted establishing the Peaks Island Council as an elected advisory body to the city council and setting forth its powers, duties, membership requirements, and other provisions.

Attachment 7—Civilian Police Review Board

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Civilian Police Review Board as Summarized Below?

1. Proposed Summary:

This Charter modification replaces the current Police Citizens Review Subcommittee, established by current city ordinance, with a civilian police review board consisting of nine or more members, with powers, duties, funding and staffing as provided in the proposed Charter language and subject to city council's enactment of procedural ordinance provisions.

The civilian police review board shall:

- Be appointed by the city council;
- Receive complaints directly from civilians for referral to Portland Police Department Police Command and/or Internal Affairs for investigation;
- Review the Department's Command and Internal Affairs investigation reports for due process issues, including issues of fairness, thoroughness and objectivity, and may issue its own reports on those investigation reports; and
- Be funded, as needed by the city council, to provide for part-time or full-time staff, including a community liaison and a police liaison.

Appeals of the civilian police review board reports may be taken to the city council.

Attachment 8—Ethics Commission and Code of Ethics

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Universal Resident Voting as Summarized Below?

1. Proposed Summary:

This modification requires the City Council to form an independent Ethics Commission and to adopt a Code of Ethics recommended by the Ethics Commission.

- The Ethics Commission shall have discretionary power to render advisory opinions on matters of city business and violations of public trust.
- The modification also allows the Ethics Commission to recommend the hiring of an Accountability Officer to provide education to the public and officials; to serve as an independent ombudsperson in resolution of disputes in an advisory capacity; and to provide training to city officials on ethical matters.

This item was agended as a two-reading item to give the public additional time to review the recommendations and prepare comments. It was given a first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

Order 44-22/23 Appropriating an Additional \$255,800 in HOME Investment Partnership Program Funds to Community Housing of Maine: RE 83 Middle Street - Sponsored by the Housing & Economic Development Committe, Councilor Pious Ali, Chair

At the July 19, 2022 Housing & Economic Development Committee meeting, the Committee voted (4-0) to forward this item to the City Council and recommend passage.

Community Housing of Maine (CHOM) is requesting an additional subsidy from the City of Portland for their project currently under construction at 83 Middle Street. In September 2019, the City Council approved \$330,000 in affordable housing development funding for this project (Order 34-19/20) (\$193,266 HOME and \$136,734 Jill C. Duson Housing Trust Fund) and an Affordable Housing Tax Increment Financing Credit Enhancement Agreement (Orders 15 & 16-20/21). Due to the rising costs of construction and unexpected environmental remediation costs, the developer is seeking an additional subsidy of \$255,800 to fill the gap created by these unforeseen costs.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

Written Public Comment on Order 44-22/23

Order 45-22/23 Accepting and Appropriating a Federal Aviation Administration Airport Infrastructure Grants for Federal Fiscal Year 2022 as provided under the Bipartisan Infrastructure Law - Sponsored by Danielle P. West, Interim City Manager

This item accepts and appropriates grant funding of approximately \$4.8 million dollars administered from the Federal Aviation Administration (FAA) Airport Infrastructure Grant (AIG) program as provided under the Bipartisan Infrastructure Law for federal fiscal year 2022. The AIG program grants will cover 90 percent of project costs; the remaining 10 percent will be split equally between the State of Maine and local Jetport funds. The Jetport will use these funds for the following projects:

- in-pavement runway lighting and pipeline protection reimbursement;
- south general aviation apron extension;
- central air handler replacement;
- passenger boarding bridge replacement; and

- installation of electric ground service equipment/vehicle charging stations.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

Order 46-22/23 Accepting and Appropriating a \$279,000 Grant from Land For Maine's Future Program for North Deering Conservation and Recreation Land Project - Sponsored by Danielle P. West, Interim City Manager

This item accepts and appropriates a \$279,000.00 in Land for Maine's Future grant for land acquisition for the North Deering Conservation and Recreation Land project to create North Deering Park. These funds will be combined with previously approved federal grants as well as Land Bank and private funds to help complete the project.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

Order 47-22/23 Accepting and Appropriating a \$161,000 Donation from the Portland Parks Conservancy for the Riverton Trolley Park Project - Sponsored by Danielle P. West, Interim City Manager

This item accepts and appropriates \$161,000 in private funding towards the Riverton Trolley Park rehabilitation project. These privately-raised funds will be combined with approved federal grant funds and approved Capital Improvement Program funds to complete the project.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

Order 49-22/23 Adopting Amendment to Portland City Code Chapter 18 re: An Act to Restrict Cruise Ships - Sponsored by Councilor Andrew Zarro

This order would amend the Portland City Code Chapter 18 by adopting the language proposed in the Citizen Initiated Amendment to the Portland City Code Chapter 18, Article V, regarding Cruise Ship Permitting. If it is adopted by the City Council, it would not need to be voted on at the November 8, 2022 General Election.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

Order 50-22/23 Amending Portland City Code Chapter 18 re: An Act to Restrict Cruise Ships - Sponsored by Councilor Andrew Zarro

This order would amend the Portland City Code Chapter 18, Article V, regarding Cruise Ship Permitting (proposed to be adopted by the Council in Order 49-22/23) to change the effective date to January 1, 2026 in order to allow further discussion and development of approaches to cruise ship regulation by Council committees, City staff, impacted stakeholders, and members of the public before cruise ship regulation in the City and Port of Portland become effective.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 54-22/23 Accepting and Appropriating an \$11,472.50 Donation for the Western Promenade Gazebo - Sponsored by Danielle P. West, Interim City Manager

This item accepts and appropriates a \$11,472.50 donation from the Friends of Western Promenade for design services relating to the reconstruction of the historic Western Prom Gazebo. This donation represents 50% of the design services, with the other 50% being covered by existing City funds.

Five affirmative votes are required for passage after public comment.

Order 55-22/23 Approving a Memorandum of Understanding between Portland and the Friends of Fort Gorges - Sponsored by Danielle P. West, Interim City Manager

This order approves a Memorandum of Understanding between the City of Portland and Friends of Fort Gorges, which is a nonprofit 501c3 corporation. Under the MOU, the City and the Friends of Fort Gorges would enter into a five-year agreement with the Friends of Fort Gorges to set fundraising goals and special event parameters.

Five affirmative votes are required for passage after public comment.

Written Public Comment on Order 55-22/23

Order 56-22/23 Accepting Three Sidewalk Easements along Riverside Street - Sponsored by Danielle P. West, Interim City Manager

By this order, the City Council would accept three permanent sidewalk easements on Riverside Street to accommodate a new sidewalk proposed from the Forest Avenue intersection to the new Homeless Services Center at 654 Riverside Street. The Department of Public Works has designed a sidewalk that is both compliant with the Americans with Disabilities Act standards as well as conscientious of existing conditions on Riverside Street. The proposed designed sidewalk avoids going over the Public Right of Way line wherever possible, although some permanent easements are needed. Three entities providing the easements are:

- 172 Pleasant Street, LLC dba A2Z Grow, LLC
- Northern Utilities doing business as Unitil
- Intentionally Left Blank, LLC dba Restaurant Supply

Five affirmative votes are required for passage after public comment. Due to the proposed construction schedule for this project, staff is recommending that this item be passed as an emergency so that it can take effect immediately. Seven affirmative votes are required for passage as an emergency after public comment.

Order 57-22/23 Granting an Easement to Portland Water District at the Barron Center Re: Replacement of 12-Inch Water Main - Sponsored by Danielle P. West, Interim City Manager

This easement would assist in the accomplishment of the third phase of Portland Water District infrastructure improvements in the outer Brighton Avenue, Barron Center area.

The water mains on the Barron Center property are currently owned by the City of Portland. They were installed in 1931, and are in need of replacement. Portland Water District (PWD) has proposed replacing them with larger conduits and taking ownership as well as responsibility for future maintenance.

Staff is requesting that this item be passed as an emergency to allow construction to start immediately. Seven affirmative votes are required for passage as an emergency after public comment.

Order 58-22/23 Approving the Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor and Trades - Sponsored by Danielle P. West, Interim City Manager

This order approves the negotiated collective bargaining agreement between the City and the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00, Labor and Trades, for the period of July 1, 2022 to June 30, 2025. This proposal is presented after receiving guidance from the City Council in executive session and having reached a tentative agreement with Labor and Trades, which was voted on and approved by the members.

The tentative agreement provides for a 3% general wage increase for FY23; a 3% general wage increase for FY24; and a 2.5% general wage increase for FY25. The proposal also increases night and weekend shift differentials, upgrades to several positions in the pay plan and the addition of a 20+ year step to ensure that employees in those positions are paid competitively and in line with their peers who are performing comparable work. Finally, the proposal adds Juneteenth as a paid holiday, implements earned paid leave, removes gender-specific language and makes other minor adjustments in the agreement between the parties. The total estimated cost of the negotiated changes to L&T's 3-year contract is \$1,954,728.

This item must be read on two separate days. This is its first reading.

AMENDMENTS:

Order 59-22/23 Traffic Schedule Amendment Re: Thames Street - Sponsored by Danielle P. West, Interim City Manager

This traffic schedule amendment will introduce new parking restrictions on a portion of Thames Street (from the Ocean Gateway driveway to Freedom Way) proposed for acceptance on September 19, 2022.

The parking regulations include metered, 2-hour parking on the north side of the street, and unmetered, time-restricted parking (one-hour) on the south side. The unmetered time-restricted parking is intended to facilitate an extension of Residential Parking Zone 11, which is used by island residents.

This item must be read on two separate days. This is its first reading.

Order 60-22/23 Amendment to Portland City Code Chapter 34 re: Landcare Ordinance - Sponsored by the Sustainability & Transportation Committee, Councilor Andrew Zarro, Chair

On July 13, 2022, the Sustainability & Transportation Committee voted (3-0) to recommend amending Chapter 34 to regulate the use of fertilizers. The amendment would largely prohibit the use of synthetic fertilizers and require property owners to follow best management practices when using organic fertilizers. These measures would improve water quality in local waters by reducing the amount of excess nutrients running off both public and private property. Excess nutrients fuel algal blooms in local water bodies, damaging marine life and increasing acidification of local waters.

The amendment would also change the name of Chapter 34 from Pesticide Ordinance to Landcare Ordinance to reflect the chapter's emphasis on sound land management practices. The name of the Pesticide Management Advisory Committee would similarly be renamed the Landcare Management Advisory Committee.

This item must be read on two separate days. This is its first reading.

ADJOURNMENT:

ZOOM INFORMATION:

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Webinar ID: 899 1147 3409

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PLEDGE OF ALLEGIANCE:

Mayor Snyder led all present in the Pledge of Allegiance.

ROLL CALL:

Mayor Snyder called the meeting to order at 4:00PM

City Councilors Present:Councilor Rodriguez, Councilor Dion, Councilor Zarro, Councilor Trevorrow, Councilor Pelletier, Mayor Snyder.

Councilors Absent:Councilor Fournier, Councilor Ali, Councilor Chong

Councilor Fournier arrived during public comment.

Councilor Ali arrived at 4:40pm.

4:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

The Mayor opened the floor for public comment.

The following individuals spoke:

George Rheault (Hanover Street)

ANNOUNCEMENTS:

No announcements were made.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the July 11, 2022 draft Special City Council Meeting minutes (Meeting 1 of 2, 4:00pm)

Approval of the July 11, 2022 draft Special City Council Meeting minutes (Meeting 2 of 2, 6:15pm)

Motion was made by Councilor Zarro and seconded by Councilor Rodriguez for approval of the July 11, 2022 (Meeting 1 of 2 & Meeting 2 of 2) City Council Meeting Minutes. Passage 7-0-2 (Councilor Ali and Councilor Chong absent)

APPOINTMENTS:

Order 28-22/33 Appointing Andy Martin Constable for the Parking Division - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Zarro and seconded by Councilor Fournier for passage. Passage 7-0-2 (Councilor Ali and Councilor Chong absent)

Mayor Snyder opened the floor for public comment. The following individuals spoke: George Rheault (Hanover Street), John Peverada (Parking Division Head)

Order 29-22/23 Appointing Dena Libner to the Board of Directors of EcoMaine - Sponsored by Kate Snyder, Mayor

Motion was made by Councilor Zarro and seconded by Councilor Fournier for passage. Passage 7-0-2 (Councilor Ali and Councilor Chong absent)

Mayor Snyder opened the floor for public comment. The following individuals spoke: George Rheault (Hanover Street)

LICENSES:

Order 30-22/23 Granting Municipal Officers' Approval of Bar Harbor Lobster Co., dba The Clam Bar. Application for Class I FSE with Outdoor Dining on Private Property at 199 W Commercial Street - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Fournier and seconded by Councilor Zarro for passage. Passage 7-0-2 (Councilor Ali and Councilor Chong absent)

Mayor Snyder opened the floor for public comment. No one spoke.

Order 31-22/23 Granting Municipal Officers' Approval of Stars and Stripes Brewing LLC, dba Stars and Stripes Brewing. Application for Combined Entertainment at 3 Spring Street - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Councilor Zarro and seconded by Councilor Fournier for passage. Passage 7-0-2 (Councilor Ali and Councilor Chong absent)

Mayor Snyder opened the floor for public comment. No one spoke.

Order 32-22/23 Granting Municipal Officers' Approval of Root Wild LLC, dba Root Wild. Application for Combined Entertainment at 135 Washington Avenue - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Mayor Snyder and seconded by Councilor Fournier for passage. Passage 7-0-2 (Councilor Ali and Councilor Chong absent)

Mayor Snyder opened the floor for public comment. No one spoke.

Order 33-22/23 Granting Municipal Officers' Approval of Maine Charitable Mechanics Association, dba Mechanics Hall. Application for Indoor Entertainment at 519 Congress Street - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Mayor Snyder and seconded by Councilor Fournier for passage.
Passage 7-0-2 (Councilor Ali and Councilor Chong absent)
Mayor Snyder opened the floor for public comment. No one spoke.

Order 34-22/23 Granting Municipal Officers' Approval of Downtown Lounge LLC, dba Downtown Lounge. Application for Class A Lounge at 606 Congress Street - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Mayor Snyder and seconded by Councilor Zarro for passage.
Passage 7-0-2 (Councilor Ali and Councilor Chong absent)
Mayor Snyder opened the floor for public comment. No one spoke.

Order 35-22/23 Granting Municipal Officers' Approval of Summit LLC, dba Nosh. Application for Class I FSE with Outdoor Dining on Public Property at 551 Congress Street - Sponsored by Danielle P. West, Interim City Manager

Motion was made by Mayor Snyder and seconded by Councilor Zarro for passage.
Passage 7-0-2 (Councilor Ali and Councilor Chong absent)
Mayor Snyder opened the floor for public comment. No one spoke.

COMMUNICATIONS:

Communication 5-22/23 Monkeypox Update - by Tina Pettingill, Acting Public Health Director

As a communication, this item requires no public comment or formal Council action.
Anne McGuire (Assistant City Administrator) gave the latest update regarding this communication.

The following City Councilors provided comments: Councilor Zarro, Mayor Snyder

UNFINISHED BUSINESS:

Order 261-21/22 Amendment to the Portland City Code Chapter 35 Re: Panic Alarms and Retail License Revisions - Sponsored by Jen Thompson, Acting Corporation Counsel

Motion was made by Councilor Zarro and seconded by Councilor Rodriguez for passage.

Jen Thompson (Corporation Counsel) gave an overview of this order.

Motion was made by Councilor Fournier and seconded by Councilor Rodriguez to amend the order by striking the last paragraph:

~~*BE IT FURTHER ORDERED, that, notwithstanding the provisions of 1 M.R.S. § 302, the above amendment to Section 35-14 (Licensing Procedure) shall apply retroactively to include any and all actions and proceedings pending on May 18, 2020 or thereafter.*~~

Motion to amend passed 6-0-3 (Councilor Dion recused, Councilor Ali and Councilor Chong absent)

Mayor Snyder opened the floor for public comment. The following individuals spoke:

Councilor Fournier, Councilor Pelletier, Councilor Rodriguez, Jessica Hanscomb
(Director of Permitting & Inspections)

Motion for passage as amended 6-0-3 (Councilor Dion recused, Councilor Ali and
Councilor Chong absent)

Written Public Comment on Order 261-21/22

**Order 24-22/23 Approving the Contract between the City of Portland and the City
Employees Benefit Association - Sponsored by Danielle P. West, Interim City
Manager**

Motion was made by Mayor Snyder and seconded by Councilor Fournier for passage.
Passage 8-0-1 (Councilor Chong absent)

Tom Caizzo (Deputy Director of Human Resources gave an overview of this order)
Mayor Snyder opened the floor for public comment. The following spoke: Mayor
Snyder

**Order 25-22/23 Approving the Collective Bargaining Agreement with the
Communications Employees Association – Sponsored by Danielle P. West, Interim
City Manager**

Motion was made by Councilor Zarro and seconded by Councilor Fournier for passage.
Passage 8-0-1 (Councilor Chong absent)

Tom Caizzo (Deputy Director of Human Resources gave an overview of this order)
Mayor Snyder opened the floor for public comment. No one spoke.

**Order 26-22/23 Confirming the Maine Public Employees Retirement System
Special Plan 3C for Certain Union Members of the Communications Employees
Association - Sponsored by Danielle P. West , Interim City Manager**

Motion was made by Mayor Snyder and seconded by Councilor Zarro for passage.
Anne Torregrossa (Director of Human Resources) gave an overview of this order.
Mayor Snyder opened the floor for public comment. No one spoke.

Motion was made by Councilor Snyder and seconded by Councilor Zarro to amend the
order by including amended language as required by Maine PERS. Amendment
language is included in agenda backup materials.
Motion to amend passed 8-0-1 (Councilor Chong absent)

Motion for passage as amended 8-0-1 (Councilor Chong absent)

**Order 27-22/23 Increasing Tow Company Fees - Sponsored by the Sustainability &
Transportation Committee, Councilor Zarro, Chair**

Motion was made by Councilor Zarro and seconded by Councilor Rodriguez for
passage. Passage 8-0-1 (Councilor Chong absent)
Councilor Zarro (Committee Chair) gave an overview of this item.

Mayor Snyder opened the floor for public comment. The following individuals spoke: Ken Capron (Forest Avenue), George Rheault (Hanover Street), Councilor Rodriguez, Councilor Zarro, Councilor Pelletier, Mayor Snyder

ADJOURNMENT:

Motion was made by Councilor Ali and seconded by Councilor Zarro to adjourn. Passage 8-0-1 (Councilor Chong absent) at 5:00pm.

A TRUE RECORD

Ashley Rand, City Clerk

ZOOM INFORMATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. The public may attend the meeting in person, however space in Council Chambers is limited. The public is therefore strongly encouraged to participate remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/89911473409?pwd=NllpZXRiWms3Nm9HQTNwaVZSWHlhZz09>

Passcode: 115765

Or One tap mobile :

US: +19292056099,,89911473409#,,,*,115765# or +13017158592,,89911473409#,,,*,115765#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 646 931 3860 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 386 347 5053 or +1 564 217 2000 or +1 669 444 9171

Webinar ID: 899 1147 3409

Passcode: 115765

PLEDGE OF ALLEGIANCE:

Mayor Snyder led all present in the Pledge of Allegiance.

ROLL CALL:

Mayor Snyder called the meeting to order at 6:15pm.

City Councilors Present: Councilor Fournier, Councilor Rodriguez, Councilor Dion, Councilor Zarro, Councilor Trevorrow, Councilor Pelletier, Councilor Chong (Via Zoom), Mayor Snyder.

Councilors Absent: Councilor Ali

Councilor Ali arrived at 6:25pm (via zoom)

6:15 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Mayor Snyder opened the floor for public comment. The following individuals spoke:

George Rheault (Hanover Street), John Clark (225 Valley Street), Ken Capron (Forest Avenue), Ben Shaw (Peak Maine Cannabis), Dereck Shirley (Board member of the Maine Cannabis Coalition), Eli Simmons (no address given), Dillion (District 2), Joanna Russell (South Portland Resident & Caregiver business owner)

ORDERS:

**THE PORTLAND CITY COUNCIL WILL HOLD PUBLIC HEARINGS ON
AUGUST 8, 2022 ON THE FOLLOWING CITIZEN INITIATIVES**

**THE CITY COUNCIL WILL ALSO VOTE ON WHETHER TO SET PUBLIC
HEARINGS ON PROPOSED CHARTER CHANGES FOR SEPTEMBER 1, 2022**

Notice of Public Comment for Orders 36-22/23 through 40-22/23 was published in the Portland Press Herald on Wednesday, July 27, 2022. Chapter 9 of the Portland City Code requires notices regarding Citizen Initiatives to be published in their entirety.

Order 36-22/23 Setting an Election Date on a Citizen Initiative Amendment to the Portland City Code Re: An Act to Regulate Short-Term Rentals - Sponsored by Ashley Rand, City Clerk

Mayor Snyder opened Public Hearing.

The following individuals spoke: Chris Korzen (28 Hampshire Street), Charles Lerch (73 Payson Street), Rielly Musgrave (Rosemont District), Betty Caton (14 Holly Street), Karen Snyder (72 Waterville Street), Paul Waring (527 Brighton Avenue), Susan Terhune (20 Sheridan Street), Aaron (655 Congress Street), Estelle Glendon (262 Brackett Street), Ian Engelman (165 Congress Street), Jordan Thompson (14 Boynton Street), Matt Walker (655 Congress Street), Ashley Keenan (419 Cumberland Avenue), Katy Palmer (62 Monument Street), Dillon (District 2)

Mayor Snyder closed Public Hearing.

Motion was made by Councilor Zarro and seconded by Councilor Fournier for passage. Mayor Snyder opened the floor for Council discussion. The following spoke: Councilor Fournier, Councilor Ali

Motion to table the original motion was made by Councilor Ali and seconded by Councilor Rodriguez

Motion passed 6-3-0 Yes: (Councilor Fournier, Councilor Rodriguez, Councilor Ali, Councilor Zarro, Councilor Trevorrow) No: (Councilor Dion, Councilor Chong, Mayor Snyder)

Motion to take up a non-agenda item was made by Councilor Ali and seconded by Councilor Fournier

Council discussion on motion:

Councilor Trevorrow, Councilor Rodriguez, Councilor Dion, Councilor Chong, Councilor Zarro, Mayor Snyder

Motion failed 1-8-0 Yes: (Councilor Ali) No: (Councilor Fournier, Councilor Rodriguez, Councilor Dion, Councilor Zarro, Councilor Trevorrow, Councilor Chong, Mayor Snyder)

Motion to take the original motion off the table was made by Councilor Dion and seconded by Councilor Fournier

Motion passed 9-0

Original motion to approve Order 36-22/23 as written passed 9-0

Order 37-22/23 Setting an Election Date on Citizen Initiative Amendment to the Portland City Code Re: An Act to Reduce the Number of Short-Term Rentals in Portland - Sponsored by Ashley Rand, City Clerk

Mayor Snyder opened Public Hearing.

The following individuals spoke: Alex Breasley (Property Management Company Owner in Portland), George Rheault (Hanover Street), Wendy Harmon (District 5), Estelle Glendon (262 Brackett Street), Katherine (Russell Street), Ken Capron (Forest Avenue), Ian (Oakdale), Dillion (District 2), Sal Morai (Cumberland Avenue), Matt Walker (655 Congress Street)

Mayor Snyder closed Public Hearing.

Motion was made by Councilor Fournier and seconded by Councilor Zarro for passage. Mayor Snyder opened the floor for Council discussion. The following spoke: Councilor Pelletier, Councilor Chong

Motion passed 9-0

Written Public Comment on Order 37-22/23

Order 38-22/23 Setting an Election Date on Citizen Initiative Amendment to the Portland City Code Re: An Act to Protect Tenants - Sponsored by Ashley Rand, City Clerk

Mayor Snyder opened Public Hearing.

The following individuals spoke: Carol McCracken (158 North Street), Estelle Glendon (262 Brackett Street), Aaron (655 Congress Street), Rose Griffin (17 Belmont Street), George Rheault (Hanover Street), Ken Capron (Forest Avenue), Ned Payne (40 Stonewall Way, Westbrook), Bud Moore (Maine DSA, Webb Street, Peaks Island)

Mayor Snyder closed Public Hearing.

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage. Mayor Snyder opened the floor for Council discussion. The following spoke: Mayor Snyder

Motion passed 9-0

Order 39-22/23 Setting an Election Date on Citizen Initiative Amendment to the Portland City Code Re: An Act to Eliminate Sub-Minimum Wage - Sponsored by Ashley Rand, City Clerk

Mayor Snyder opened Public Hearing.

The following individuals spoke: Mary Allen Lindemann (Coffee by Design Co-Owner), Steve Dimilo (Pleasant Avenue), Josh Chaison (District 2), Geg Dugal (Hospitality Maine), Jillian (Parkside), Grace Sherratt (Bruno's Restaurant), Deah Hilton (3 Salem Street), Bruno Napolitano (Brunos Restaurant), Aaron (655 Congress Street), Kianna Plummer (Parkside, District 2), Christopher Bettera (PoBoys and Pickles Owner), Jason Sedlock (District 3), Louis Ouellette (Uber Driver within Portland), Jill Moses (Unknown address), Kelly Flagg (Executive Director of AGC Maine), Ed Ahlemeyer

(Uber Driver within Portland), Eamonn Dundan (Portland Regional Chamber of Commerce)

Mayor Snyder closed Public Hearing.

Motion was made by Councilor Zarro and seconded by Councilor Rodriguez for passage.

Mayor Snyder opened the floor for Council discussion. The following spoke: Mayor Snyder

Motion to amend original motion to add the term "tipped credit" to the summary as provided by Mayor Snyder. Moved by Mayor Snyder and seconded by Councilor Dion. Summary would now read:

An Act to Eliminate the Sub-Minimum Tipped Credit Wage, Increase the Minimum Wage and Strengthen Protections for Workers will increase the minimum wage in Portland to \$18 an hour over three years and will eliminate the sub-minimum Tipped Credit wage for tipped workers over the same three years. Tipped workers will then earn \$18 an hour plus tips. It also provides an \$18 minimum wage for workers currently not receiving the minimum wage including taxi drivers and other ride-hailing services, personal shoppers, delivery workers, and those doing work for a unit of government. It also creates a Department of Fair Labor Practices to ensure wage and worker safety laws are enforced.

Motion passed 9-0

Original motion passed as amended 9-0

Written Public Comment on Order 39-22/23

Order 40-22/23 Setting an Election Date Citizen Initiative Amendment to the Portland City Code Re; An Act to Restrict Cruise Ships - Sponsored by Ashley Rand, City Clerk

Mayor Snyder opened Public Hearing.

The following individuals spoke: Bill Webber (District 5, Portland Climate Action Team), Avery Yale Kamila (Grass Root Citizen Portland Protectors), Jack Humnik (Portland Long Shore Worker Association), Matt Schlobohm (State of Maine Governors Climate Council), Wes Pelletier (Maine DSA Campaign Committee), Ken Capron (Forest Avenue), Eamonn Dundan (Portland Regional Chamber of Commerce), George Rheault (Hanover Street), Matt Walker (655 Congress Street), Jordan (Congress Street), Jason Shedlock (35 Arlington Street), Ben Grant (Council to the Long Shorman Union), Carlton Winslow (Apartment owner in Westbrook)

Mayor Snyder closed Public Hearing.

Point of order:

Motion to continue City Council meeting past 10:00pm per City Council Rules & Procedures

Motion was made by Councilor Fournier and seconded by Councilor Ali for passage 9-0.

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage of Order 40-22/23.

Mayor Snyder opened the floor for Council discussion. The following spoke: Councilor Zarro, Mayor Snyder, Councilor Trevorrow

Motion to table the original motion was made by Councilor Trevorrow and seconded by Councilor Fournier

Motion passed 6-3-0 Yes: (Councilor Fournier, Councilor Rodriguez, Councilor Ali, Councilor Zarro, Councilor Trevorrow) No: (Councilor Dion, Councilor Chong, Mayor Snyder)

****Point of Order, after Order 49-22/23 was taken up, Order 40-22/23 was revisited.**

Motion to remove Order 40-22/23 from the table with original motion was moved by Councilor Trevorrow and seconded by Councilor Councilor Zarro

Motion passed 9-0

Original motion to approve Order 40-22/23 as written passed 9-0

Councilor Comment on original motion: Councilor Pelletier, Councilor Fournier, Mayor Snyder

Written Public Comment on Order 40-22/23

Order 41-22/23 Order Setting a Public Hearing on Council-Initiated Charter Amendment Re: Gender-Neutral Language - Sponsored by Kate Snyder, Mayor

Motion was made by Councilor Fournier and seconded by Councilor Zarro for passage. Passage 9-0

The Mayor opened the floor for public comment. No one spoke.

Order 48-22/23 Approving Proposed Ballot Question and Summary of Council-Initiated Charter Amendment Re Gender-Neutral Language - Sponsored by Ashley Rand, City Clerk

This is first reading. No action needed.

Order 42-22/23 Setting a Public Hearing on the Charter Commission's Ballot Questions and Summaries - Sponsored by Ashley Rand, City Clerk

Motion was made by Councilor Fournier and seconded by Councilor Zarro for passage. Passage 9-0

The Mayor opened the floor for public comment. No one spoke.

Order 43-22/23 Approving Proposed Ballot Questions and Summaries Re: Charter Commission Modifications to Portland City Charter and Placing them on the November 8, 2022 Ballot - Sponsored by Ashley Rand, City Clerk

This is first reading. No action needed.

Order 44-22/23 Appropriating an Additional \$255,800 in HOME Investment Partnership Program Funds to Community Housing of Maine: RE 83 Middle Street - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

This is first reading. No action needed.

Order 45-22/23 Accepting and Appropriating a Federal Aviation Administration Airport Infrastructure Grants for Federal Fiscal Year 2022 as provided under the Bipartisan Infrastructure Law - Sponsored by Danielle P. West, Interim City Manager

This is first reading. No action needed.

Order 46-22/23 Accepting and Appropriating a \$279,000 Grant from Land For Maine's Future Program for North Deering Conservation and Recreation Land Project - Sponsored by Danielle P. West, Interim City Manager

This is first reading. No action needed.

Order 47-22/23 Accepting and Appropriating a \$161,000 Donation from the Portland Parks Conservancy for the Riverton Trolley Park Project - Sponsored by Danielle P. West, Interim City Manager

This is first reading. No action needed.

Order 49-22/23 Adopting Amendment to Portland City Code Chapter 18 re: An Act to Restrict Cruise Ships - Sponsored by Councilor Andrew Zarro

****Order 49 was taken out of order directly after Order 40-22/23 was tabled.**

Councilor Zarro gave an overview of this item.

Mayor Snyder opened the floor to public comment. The following individuals spoke:

Amy Powers (No address given)

Motion to wave second read of the Order to pass as emergency (7 Votes needed to pass)

Council debate: Councilor Zarro, Councilor Chong

Motion failed 6-3-0 Yes: (Councilor Fournier, Councilor Rodriguez, Councilor Ali, Councilor Zarro, Councilor Trevorrow) No: (Councilor Dion, Councilor Chong, Mayor Snyder)

This item will come back before the Council for a second reading on September 1, 2022.

Written Public Comment on Order 49-22/23

Order 50-22/23 Amending Portland City Code chapter 18 re: An Act to Restrict Cruise Ships - Sponsored by Councilor Andrew Zarro

**Becuase Order 49-22/23 did not pass as an emergency. This item has no Council action. This Order will appear on the September 1, 2022 City Council agenda for second reading.

ADJOURNMENT:

Motion was made by Councilor Trevorrow and seconded by Councilor Pelletier to adjourn. Passage 9-0 at 10:55PM.

A TRUE RECORD

Ashley Rand, City Clerk

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**PROCLAMATION RECOGNIZING SEPTEMBER 2022 AS
AFRICAN HERITAGE MONTH**

WHEREAS, it has been more than 400 years since the first Africans were involuntarily brought to the shores of the Americas; and

WHEREAS, the descendants of enslaved Africans in the United States of America are known as Black Americans or African Americans and have for generations called Portland home; and

WHEREAS, over the past several decades many people have migrated from the African continent to settle in Portland and throughout the United States, and the two communities together are known as Africans in Diaspora; and

WHEREAS, immigrant Americans of African heritage in the United States come from all regions in Africa and do not constitute a homogeneous group, including people from different national, linguistic, ethnic, racial, cultural, and social backgrounds;

WHEREAS, the month of September is recognized as African Heritage Month in many parts of the United States; and

WHEREAS, members of the African Diaspora in Portland enrich the social fabric of our community and contribute significantly to the education, economy, and social vitality of this city; and

WHEREAS, African Heritage Month is an opportunity to support and celebrate the culture and heritage of the African Diaspora by increasing the visibility of this vibrant community in Portland.

NOW, THEREFORE, BE IT PROCLAIMED, that I, Kate Snyder, Mayor of the City of Portland, Maine and members of the City Council do hereby recognize September 2022 as African Heritage Month in Portland, Maine and encourage the residents of Portland to take time this month to appreciate and engage with our neighbors in the African Diaspora this month and every month.

Signed and sealed this 1st day of September, 2022


Kate Snyder, Mayor
City of Portland

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**PROCLAMATION RECOGNIZING PORTLAND LITTLE LEAGUE
ALL-STAR BASEBALL TEAM'S STATE CHAMPIONSHIP WIN**

WHEREAS, for the first time in Portland Little League history, the 9/10-year-old All-Star Baseball Team won both the District 6 Championship and the State Championship, ultimately representing Maine against teams from New England and the Mid-Atlantic region in the Eastern Regional Tournament in Cranston, Rhode Island; and

WHEREAS, ballplayers Charlie Armstrong, Louie Bechard, David King, David Rank, Eli Peltier, Emmett O'Brien, James Minervino, Joey Salvaggio, Lucas Nalli, Mason Roberts, Mickey Mullen, Simon Royle, and Wes Carlson, led and supported by Team Manager Mark Peltier and Coaches Ron Farr, Melvin Thomas, and Brian Bechard, demonstrated exemplary commitment and athleticism to secure the League's first-ever State Championship; and

WHEREAS, the Portland All-Stars gave Team Connecticut, the eventual Tournament winner, their only loss of the entire season during tournament play; and

WHEREAS, as one of many examples of the Portland All-Stars' perseverance and athletic excellence, they won seven straight games in the District tournament, ultimately defeating Falmouth to earn a spot in the State Championship tournament; and

WHEREAS, the Portland All-Stars then won another three straight games to win the State Championship title, beating Bangor in the final game; and

WHEREAS, during the Regional Tournament, Maine finished third in all of New England, making this the highest-level win any team from Portland in this age group has ever accomplished;

NOW, THEREFORE, BE IT PROCLAIMED, that I, Kate Snyder, Mayor of the City of Portland, Maine and members of the City Council do hereby recognize the Portland Little League 9/10-Year-Old All-Star Baseball Team for their hard-fought District and State Championship wins, and celebrate the team's tenacity and talent.

Signed and sealed this 1st day of September, 2022



Kate Snyder, Mayor

City of Portland

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam
DATE: August 16, 2022
SUBJECT: Order 51-22/23 Appointing Sarah Colton Constable for the Department of Public Works - Sponsored by Danielle P. West, Interim City Manager
SPONSOR: Danillelle P. West, City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/1/2022

Final Action

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: N/A

I. SUMMARY

Appointment as a Constable authorizes a person to issue a citation for a violation of City Code or serve notices, but it does not allow a person to make an arrest or carry a gun.

II. AGENDA DESCRIPTION

This item appoints Sarah Colton, the new Public Works Department Solid Waste Compliance Officer, as Constable to authorize her to enforce solid waste rules and regulations. This appointment is effective from the effective date of this order until 12:00 midnight, December 31, 2022, and is made pursuant to Portland City Code, Sections 20-19 and 20-19.5. Constables are not allowed to carry a firearm, concealed or unconcealed, in the performance of duties, or to make arrests or issue parking tickets.

The Department of Public Works employs Sarah Colton as a Solid Waste Compliance Officer, who can provide services in the enforcement of city ordinances, including those regarding the misuse of trash receptacles for domestic waste, and illegal dumping; and recycling carts for contamination. In order for this employee to have the authority to serve legal process and to enforce the ordinances, they must be appointed as a constable by the City Council. The Department of Public Works is hereby requesting that this employee be appointed as a constable.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Sarah Colton is the department's new Solid Waste Compliance Officer; this will allow her to perform her job duties in regards with enforcement of City ordinances as it relates to Solid Waste issues.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Appoint Sarah Colton as a constable.

V. FINANCIAL IMPACT

Enforcement by constables may lead to greater revenue in the form of fines for violations.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

This order is approved by Corporation Counsel as to form.

VIII. LIST ATTACHMENTS

1. Constable Appointment for Sarah Colton 9.1.2022

Prepared by:

Melissa Graffam

Date: 08/16/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPOINTING
SARAH COLTON CONSTABLE FOR THE PUBLIC WORKS DEPARTMENT**

ORDERED, that Sarah Colton of the Public Works Department is hereby appointed constable for the 2022 calendar year; and

BE IT FURTHER ORDERED, that this appointment shall be effective from the effective date of this order until 12:00 midnight, December 31, 2022; and

BE IT FURTHER ORDERED, that this appointment is pursuant to Sections 20-19 and 20-19.5, Portland City Code, and this constable is not allowed to carry a firearm, concealed or unconcealed, in the performance of duties, or to make arrests or issue parking tickets.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 17, 2022

SUBJECT: Order 52-22/23 Granting Municipal Officers' Approval of Cellardoor Winery Inc., dba Cellardoor Winery. Application for Outdoor Dining on Public Property at 127 Middle Street - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 8/3/22. New City and State applications. Establishment currently holds B/W/D license.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 2022.09.01_Cellardoor Winery

2. Cellardoor Winery_Council Packet

Prepared by:

Date: 08/17/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF
PORTLAND**
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:**

**Cellardoor Winery Inc., dba Cellardoor Winery. Application for Outdoor Dining on Public
Property at 127 Middle Street**

July 17, 2022

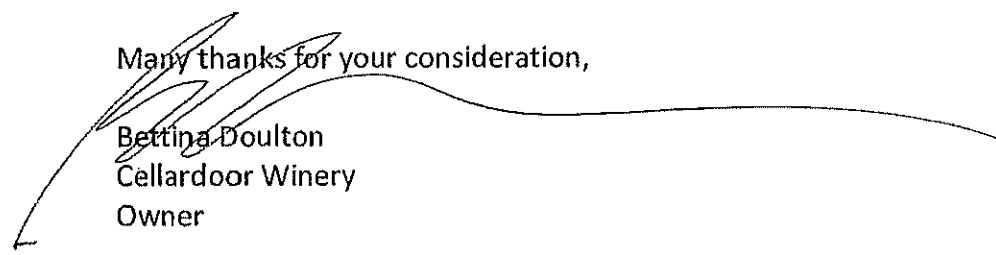
City of Portland
389 Congress St.
Portland, ME 04101

Dear Mayor Snyder and Members of the City Council:

With sincere appreciation to your Licensing Department which has proposed the possibility of a couple of sidewalk tables so we can offer some outside seating, Cellardoor asks you to consider our application for "Outdoor Dining on Public Property". As the season quickly moves along, it is clear not offering outside seating has negatively impacted our business prospects.

Our location at 127 Middle St is licensed as FSE no prep and operates as a winery tasting room. Our use of the proposed 2 tables and 8 seats would be consistent with our interior options of wine tastings, glasses of wine, and charcuterie snacks.

Many thanks for your consideration,



Bettina Doulton
Cellardoor Winery
Owner



CITY OF PORTLAND
Permitting and Inspections Department

**Outdoor Dining Permit on Public Property
Supplemental Application**

\$280

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License
Valid April 1-November 15

☒ Legal Advertisement Deposit \$100.00
☒ Outdoor Dining on Public Property \$84.00 plus \$2.00 per Square foot \$2.00 X <u>48</u> SF = <u>96</u> . <u>\$180</u> 12' x 4' = 48
☐ Outdoor Dining on Public Property in a City Park \$84.00 plus \$6.30 per Square foot \$6.30 X _____ SF = _____

Business Information	
Establishment Name (d/b/a):	Cellardoor Winery Phone: 207 536 7700
Location Address:	127 Middle St Portland ME 04101 Zip: 04101
Mailing Address:	367 Youngtown Rd Lincolnville, ME 04849 Zip: 04849
Contact Person:	BETTINA Doulton Phone: 207 763 4478
Contact Person Email:	BETTINA@MAINEWINE.COM
Manager of Establishment:	Emily Auley Date of Birth: 7/14/81 Phone: 843 259-0963
Owner of Premises (Landlord):	RACKOFF BLOCK LLC
Address of Premises Owner (Landlord):	129 Middle St, Portland ME 04101 Zip: 04101

Owner Information

Corporate Name		Corporate Mailing Address	
Cellardoor Winery Inc.		367 Youngtown Rd, Lincolnville ME Zip: 04849	
Contact Person:	BETTINA Doulton	Phone:	207 763 4478
Principal Officers	Title	Date of Birth	Residence Address
B Doulton	owner	8/25/64	Camden, ME

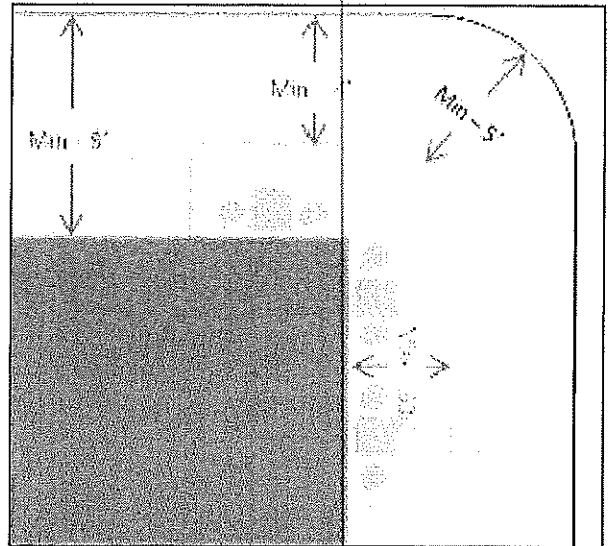


CITY OF PORTLAND
Permitting and Inspections Department

Class of License:	FSE no prep;	
Type of food served:	Pre-Prepared Cheese plates, BBA Charcuterie	
Please circle all that will be served:	Beer	Wine
Hours & days of operation:	Th - Sunday 12 - 7pm	
Number of Tables	3	
Number of Chairs	8	

Design and Construction

Existing Sidewalk Width (property line to curb)	Sidewalk Dining Allowed?
< 8'0"	No
≥ 8'0"	Yes – up to 60% of
Sidewalk Type	Sidewalk Passage Width
Standard sidewalk	4'0"
Street corner	5'0"

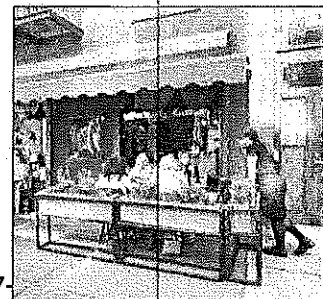


- ✓ Outdoor dining area shall not exceed 60% of the sidewalk width.
- ✓ A continuous, unobstructed sidewalk passage of 4 feet from the outer boundary of the seating area to the curb must be maintained. If the passage is not straight due to existing obstacles, then additional width may be required. Any changes to existing straight passage is at the discretion of the City.
- ✓ Egress must be maintained free of obstruction.
- ✓ Permanent fixtures, such as awnings, require a building permit separate from the Outdoor Dining permit and subject to approval by the Building Authority.
- ✓ Umbrellas do not require a permit.
- ✓ Umbrellas must be secured and maintain the height clearance for sidewalk passage.

Barriers

- ✓ If barriers are proposed, they must be free-standing. Physical attachments to a building are not allowed.
- ✓ Stanchions and ropes are encouraged. Sectional fencing is allowed with a high degree of visual transparency (at least 50% open). Solid or opaque barriers are not allowed.
- ✓ Shall not exceed 42" in height and may not include commercial signage.

Example barrier types that meet regulation





CITY OF PORTLAND
Permitting and Inspections Department

- ✓ Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- ✓ The permit holder is responsible for keeping the outdoor seating area clean.
- ✓ No food shall be prepared in the designated outdoor dining area.
- ✓ All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- ✓ Outdoor dining areas must meet ADA regulations and accessible seating is required.
- ✓ Request for the use of adjacent on street parking space for outdoor dining installations requires Parking Office and Building Authority review and approval.

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signature _____

Title _____

Date _____

Owner *7-17-2022*

For Administrative Use Only

Amount: _____
 Date Paid: _____
 CC _____ CA _____ CK _____
 Amount: _____
 Date Paid: _____
 CC _____ CA _____ CK _____

FD: _____
 Health: _____
 PD: _____
 Treasury: _____
 Zoning: _____

Request Date / Approval

Notes: _____

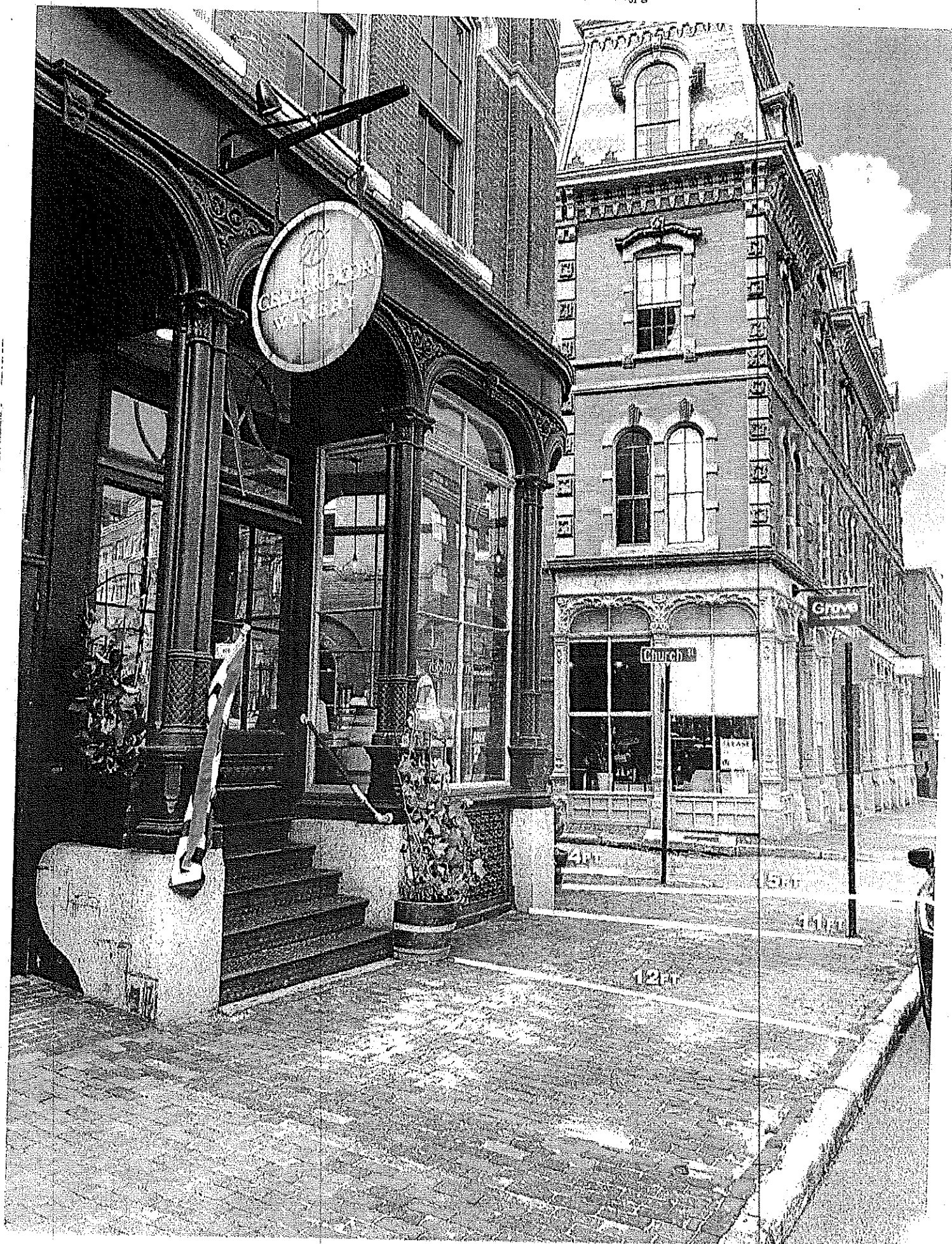
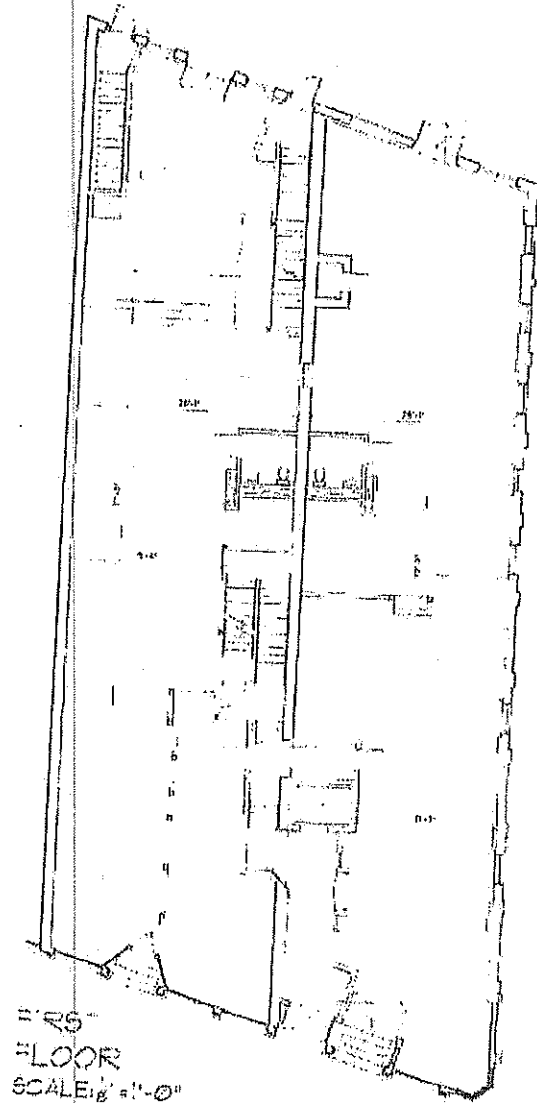


EXHIBIT A TO LEASE
DEPICTION OF THE PREMISES

RACKLEFF BLOCK



127 MIDDLE STREET



Zachary Lenhert <zlenhert@portlandmaine.gov>

Cellar Door Winery - 127 Middle

Matthew Coldwell <mcoldwell@portlandmaine.gov>

Tue, Aug 16, 2022 at 12:16 PM

To: Zoning <zoning@portlandmaine.gov>

Cc: Zachary Lenhert <zlenhert@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Eric Nevins <erickn@portlandmaine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>, Business Licensing <bl@portlandmaine.gov>

The legal use for this tenant space is retail and bar. This is ok with Zoning.

Thank you,

Mac

Mac Coldwell

City of Portland
Zoning Specialist
Permitting & Inspections Department
389 Congress ST, Room #315
Email: mcoldwell@portlandmaine.gov
he/him

[Quoted text hidden]



Zachary Lenhart <zlenhart@portlandmaine.gov>

Cellar Door Winery - 127 Middle

Eric Nevins <erich@portlandmaine.gov>

Tue, Aug 16, 2022 at 12:47 PM

To: Zachary Lenhart <zlenhart@portlandmaine.gov>

Approved

On Mon, Aug 15, 2022 at 3:40 PM Zachary Lenhart <zlenhart@portlandmaine.gov> wrote:

[Quoted text hidden]

--

Eric Nevins
Lieutenant
Portland Police Department
(207) 874-8513

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on September 1, 2022 at 5:00 P.M., virtually Cellardoor Winery Inc., dba Cellardoor Winery. Application for Outdoor Dining on Public Property at 127 Middle Street - Sponsored by Danielle P. West, Interim City Manager



CITY OF PORTLAND
Permitting and Inspections Department

August 26, 2022

Cellardoor Winery Inc
367 Youngtown Road
Lincolntonville, ME 04849

Re: Cellardoor Winery Inc., dba Cellardoor Winery. Application for Outdoor Dining on Public Property at 127 Middle Street

Dear Cellardoor Winery Inc:

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Thursday September 1, 2022 at 5:00 p.m.**, for the review of application for Outdoor Dining on Public Property at 127 Middle Street. The meeting will take place in person and virtually. The link can be found on the Meeting Agenda which will be posted on the City Website on August 29, 2022.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

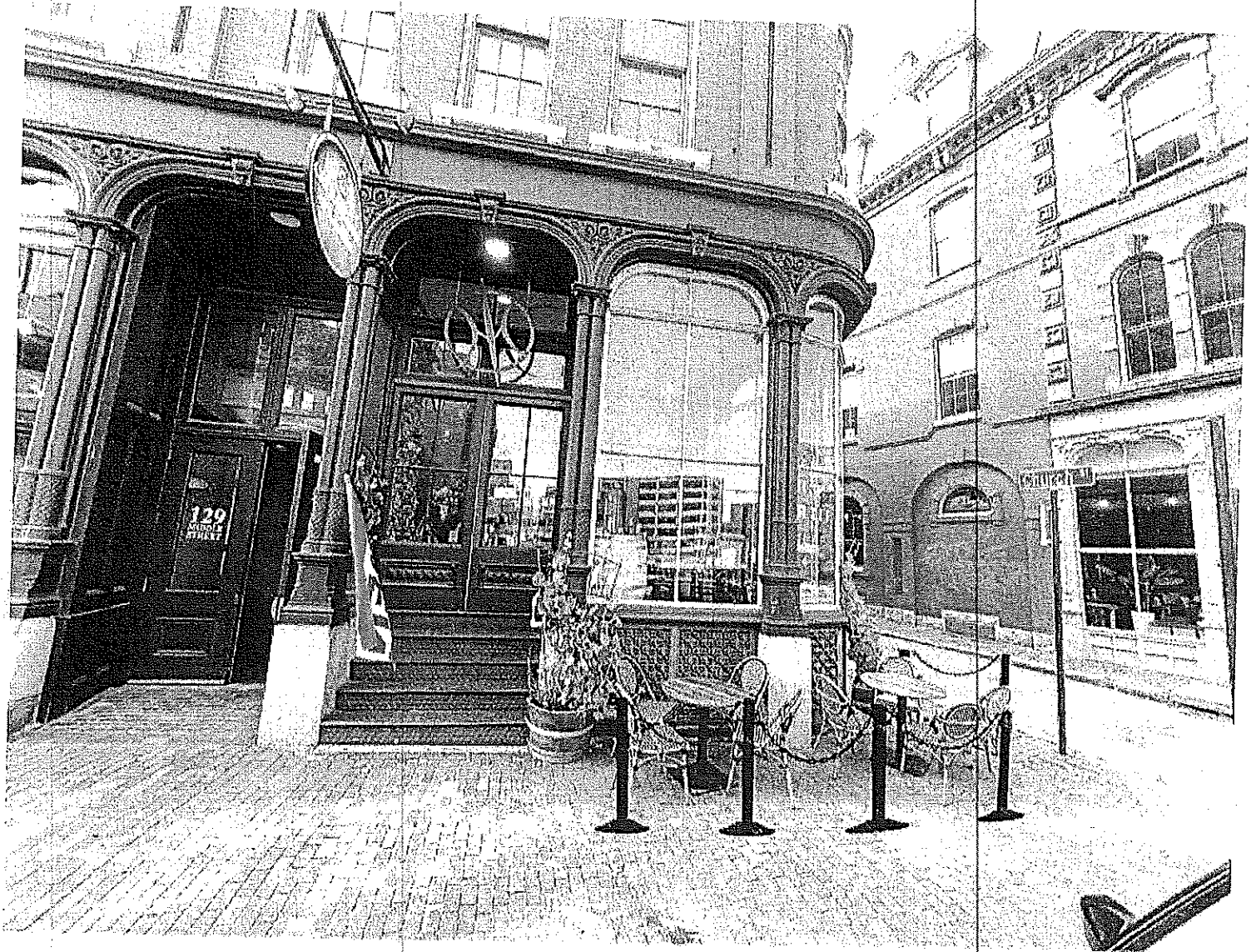
Sincerely,

Zachary J. Lenhert
Licensing and Housing Safety Manager



Proposed Seating:

- 2 tables + 8 chairs Total
- Proposed Barriers
- Proposed Dimensions 48" x 12' to ensure sidewalk clearance.



Middlest Prov.



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF ALCOHOLIC BEVERAGES AND LOTTERY OPERATIONS
DIVISION OF LIQUOR LICENSING AND ENFORCEMENT

Request for Extension of License Privileges for an On-Premises Establishment

Section I: Licensee Information:

Legal Business Entity Licensee Name (corporation, LLC):	Business Name (D/B/A):
Cellardoor Winery Inc	Cellardoor Winery
Individual or Sole Proprietor Licensee Name(s):	Physical Location:
	127 Middle St Portland ME
License Number:	Mailing address, if different:
FW53	367 Youngtown Rd Lisbonville, ME 04849
Mailing address, if different from DBA address:	Email Address:
367 Youngtown Rd, Lisbonville	BETTINA@MAINEWINE.COM
Telephone # Fax #:	Business Telephone # Fax #:
763-4478; 763 4475	763 4478; 763-4475

Location Ph 536-7700

Section II: Extension of Privileges Information:

1. Name, Address, and Contact Information of Property Owner (if property is rented or leased, please provide a copy of rental/lease agreement):

Name: RAE Rackleff Block LLC

Complete mailing address: 129 Middle St
Portland ME 04101

Telephone/Mobile Number: Steven Konstantino, 780-1500

Email Address: Steve@performancebuilding
supply.com

2. Type of Extension of Privileges: (check only one)

a. Temporary ☒ Inside ☐ Outside ☒
b. Permanent ☐ Inside ☐ Outside ☐

Seasonal

continue to next page

August 8,
3. Start Date: August, 2022 End Date (if applicable): Nov 1, 2022

4. Will dancing be permitted in this area? Pending City approval
Yes ☐ No ☒
a. If yes, does the establishment have a dance license? Yes ☐ No ☒
b. If yes, please provide a copy of the license from the State's Fire Marshall's Office

5. Will there be live entertainment in this area? Yes ☐ No ☒

6. Reason for this request:
Pandemic has proven guests prefer outside spaces. Providing outside tables allows us to sustain business/traffic in uncertain

Section III: Signature of Licensee enrconmnb

By signing this application, the licensee understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: July 17,
~~April 14~~, 2022

[Signature]
Signature of Licensee or Duly Authorized Person

BETTINA DONITON, Owner
Printed Name of Licensee or Duly Authorized Person

Submit completed forms to: Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement

Mailing address: 8 SHS, Augusta, ME 04333-0008
Courier delivery: 19 Union Street, 3rd floor, Suite 301-B,
Augusta, ME 04330

(continue to next page)

Section IV: Approval by Municipal/County Officers

Please note: The municipal/county officers where your establishment is located must approve all requests for extension of license privileges prior to filing with the Bureau. If your license is issued in an unorganized township, the county commissioners must approve this request, otherwise, it would be your municipal (town or city) officials.

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this extension of privileges for this on-premises licensee on this date: _____.

Check only one: ☐ City ☐ Town ☐ Unorganized Territory

Name of City/Town/Unorganized Territory: _____

Who is approving this application? ☐ Municipal Officers
☐ County Commissioners of _____ County

☐ **Please Note:** The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of license to be issued by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title

Continued to next page

Diagram for Extension of Privileges Area

The following restrictions apply to outdoor extension of privileges:

- There must be a stanchion or a fence completely enclosing the area.
- Signs must be posted stating "No alcohol beyond this point".
- There must be sufficient employees at the extension area of premises who would be able to control and monitor the area.

In an effort to clearly define your extension please draw a diagram below that will include the area you want for a temporary / permanent license premise. Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your where consumption will occur including methods of monitoring and containment of the area(s).

Attachments.

For Office Use Only:

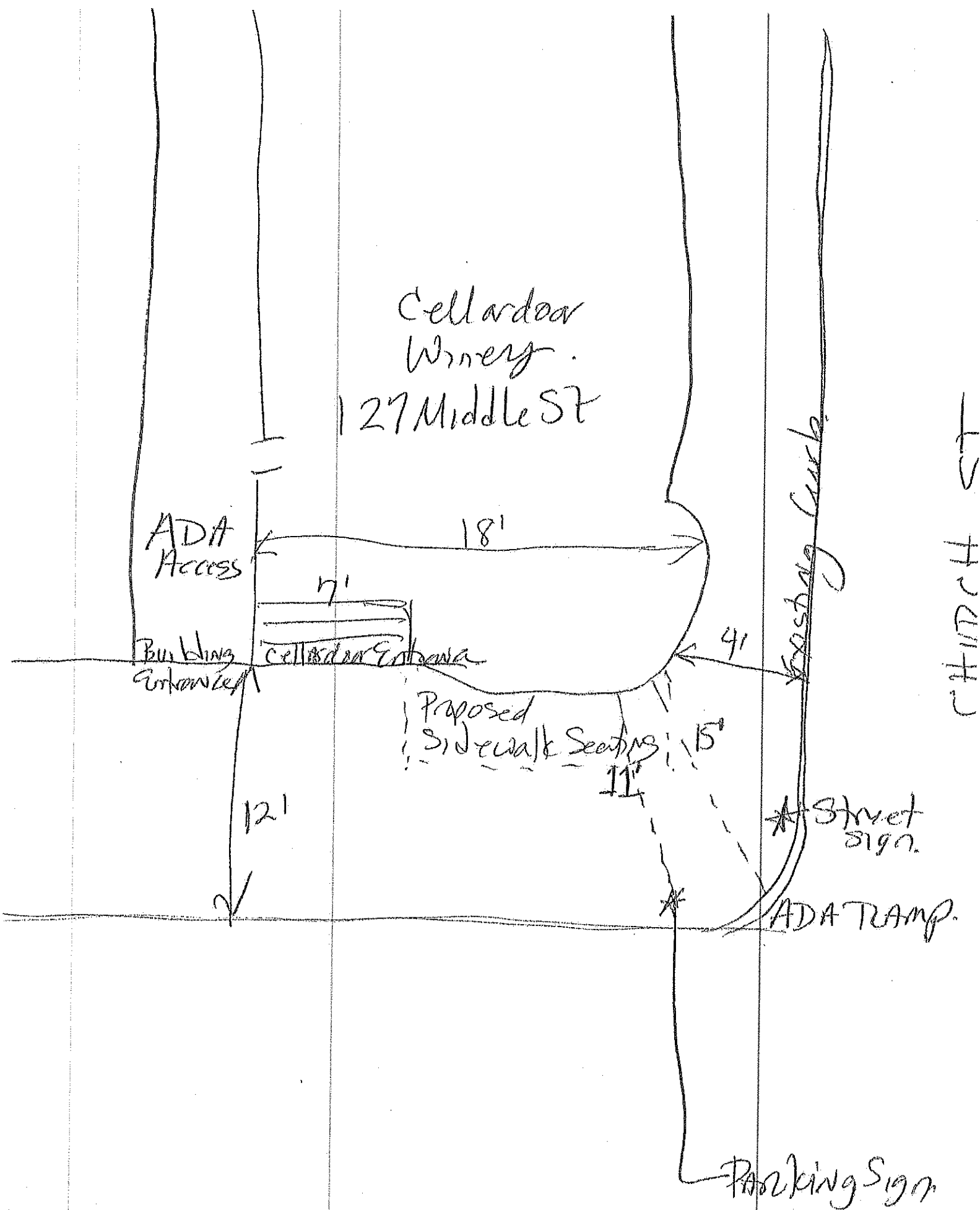
Date Filed: _____

Date Issued: _____

Issued By: _____

☐ Approved

☐ Not Approved



Cellardoor
Winery.
27 Middle St

ADA
Access

18'

7'

Building
Entrance

Cellardoor Entrance

Proposed
Sidewalk Seating

15'

11'

4'

Paving Curb

Street
sign.

ADA Ramp.

Parking Sign

to front

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 17, 2022

SUBJECT: Order 53-22/23 Granting Municipal Officers' Approval of Dock Fore Inc., dba Dock Fore. Application for Class A Lounge with Outdoor Dining on Public Property at 336 Fore Street - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 8/12/22. New City and State applications. Establishment currently holds Class XI Rest/Lounge FSE with Outdoor Dining on Public Property.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 2022.09.01_Dock Fore

2. Dock Fore_Council Packet

Prepared by:

Date: 08/17/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF
PORTLAND**
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Dock Fore Inc., dba Dock Fore. Application for Class A Lounge with Outdoor Dining on
Public Property at 336 Fore Street**



336 Fore St, PORTLAND MAINE, 04103
207-772-8619 , 450-8619

8/6//2022

Mayor Kate Snyder and members of the Portland city council

Mayor Snyder. This letter is to inform you that I have submitted my application for a class X liquor license and the Portland Outdoor dining program and am seeking your approval.

Thank You

Shaun McCarthy
President
Dock Fore inc.



CITY OF PORTLAND

Permitting and Inspections Department

Application for Food Service Establishment with Alcoholic Beverages License

Business Information	
Establishment Name (d/b/a):	DOCK FOLE
Location Address:	336 FOLE ST PORTLAND ME
If new, what was formerly at this location:	
Mailing Address:	SAME
Contact Person:	SHAWN MCCARTHY
Contact Person Email:	SMCCARTY@MAINE.LL.COM
Manager of Establishment:	Date of Birth:
Owner of Premises (Landlord):	DOCK FOLE INC
Address of Premises Owner (Landlord):	

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Corporate Name		Corporate Mailing Address	
DOCK FOLE LLC		336 FOLE ST PORTLAND ME 04101	
Contact Person:	SHAWN MCCARTHY	Phone:	4508619
Principal Officers	Title	Date of Birth	Residence Address
SHAWN MCCARTHY	Pres	1/19/62	500 BAXTER BLVD PORTLAND ME 04103
Class of Liquor License:		A Lounge	



CITY OF PORTLAND
Permitting and Inspections Department

Type of food served:	SEA, SALAD, PIZZA, Lobster rolls - SEE ATT-MENU	
Please circle all that will be served:	Beer	Wine / Liquor
Projected percentage of sales:	Generated from Food: 25	Generated from Alcohol: 75
Hours & days of operation:	MON-THUR 3:00-10:00, FRI SAT MON-MID SEASON-9	

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	☒ Y
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	☒ Y
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)	☒ Y
Will you permit dancing after 1:00 a.m.?	☒ Y
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	☒ Y
If yes, will the outside dining be on <u>PUBLIC</u> or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	☒ Y
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date?	SINCE 1980
Does the Issuance of this license directly or indirectly benefit any City employee(s)?	☒ Y
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	☒ Y
If Yes, please list business name(s) and location(s):	SMITH, DOCK FACE INC 336 FAL
Is any principal officer under the age of 21?	☒ Y
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	☒ Y
If Yes, please explain:	

I, SHAWN MC CARTHY do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature [Signature] Title [Signature] Pres. Date 8/5/02



CITY OF PORTLAND
Permitting and Inspections Department

**Outdoor Dining Permit on Public Property
Supplemental Application**

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License
Valid April 1-November 15

☐ Legal Advertisement Deposit \$100.00
☒ Outdoor Dining on Public Property \$84.00 plus \$2.00 per Square foot \$2.00 X <u>106</u> SF = <u>212</u>
☐ Outdoor Dining on Public Property in a City Park \$84.00 plus \$6.30 per Square foot \$6.30 X _____ SF = _____

Business Information	
Establishment Name (d/b/a):	<u>DOCK FACE</u> Phone: <u>72786619</u>
Location Address:	<u>336 FALLO ST</u> Zip: <u>04101</u>
Mailing Address:	<u>SAME</u> Zip: _____
Contact Person:	<u>SHAUN MCCARTHY</u> Phone: <u>45086619</u>
Contact Person Email:	<u>SMCCARTY@MAINE.ME.COM</u>
Manager of Establishment:	Date of Birth: _____ Phone: _____
Owner of Premises (Landlord):	<u>DOCK FACE INC</u>
Address of Premises Owner (Landlord):	<u>SAME</u> Zip: _____

Owner Information

Corporate Name		Corporate Mailing Address	
<u>DOCK FACE INC</u>		<u>336 FALLO ST PORTLAND ME 04103</u> Zip: <u>04103</u>	
Contact Person:	<u>SHAUN MCCARTHY</u>	Phone:	<u>45086619</u>
Principal Officers	Title	Date of Birth	Residence Address
<u>SHAUN MCCARTHY</u>	<u>CEO</u>	<u>10/19/02</u>	<u>500 BAYVIEW BLVD PORTLAND ME 04103</u>

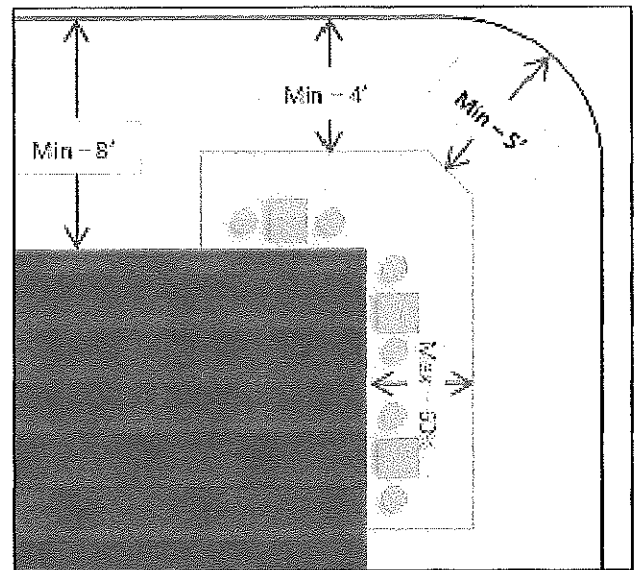


CITY OF PORTLAND
Permitting and Inspections Department

Class of License:	X
Type of food served:	SOUP, SALAD, PIZZA, LOBSTER TAIL, SANDWICHES
Please circle all that will be served:	Beer Wine Liquor
Hours & days of operation:	Mon-Thurs 3-10, Fri SAT Noon-11:30, Sun Noon-9:00
Number of Tables	3
Number of Chairs	4, 4 TABLE HAVE BENCH SEATING OF 4 EA

Design and Construction

Existing Sidewalk Width (property line to curb)	Sidewalk Dining Allowed?
< 8'0"	No
≥ 8'0"	Yes – up to 60% of
Sidewalk Type	Sidewalk Passage Width
Standard sidewalk	4'0"
Street corner	5'0"



- Outdoor dining area shall not exceed 60% of the sidewalk width.
- A continuous, unobstructed sidewalk passage of 4 feet from the outer boundary of the seating area to the curb must be maintained. If the passage is not straight due to existing obstacles, then additional width may be required. Any changes to existing straight passage is at the discretion of the City.
- Egress must be maintained free of obstruction.
- Permanent fixtures, such as awnings, require a building permit separate from the Outdoor Dining permit and subject to approval by the Building Authority.
- Umbrellas do not require a permit.
- Umbrellas must be secured and maintain the height clearance for sidewalk passage.

Barriers

- If barriers are proposed, they must be free-standing. Physical attachments to a building are not allowed.
- Stanchions and ropes are encouraged. Sectional fencing is allowed with a high degree of visual transparency (at least 50% open). Solid or opaque barriers are not allowed.
- Shall not exceed 42" in height and may not include commercial signage.

Example barrier types that meet regulation





CITY OF PORTLAND
Permitting and Inspections Department

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining area.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.
- Request for the use of adjacent on street parking space for outdoor dining installations requires Parking Office and Building Authority review and approval.

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signature [Signature] Title Agent Date 8/5/22

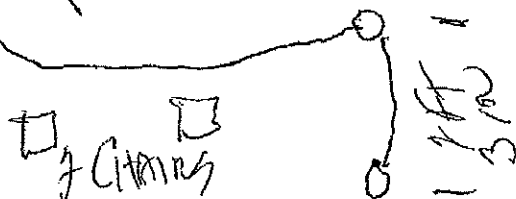
For Administrative Use Only

Amount: _____	Request Date / Approval	Notes: _____
Date Paid: _____	FD: _____ / _____	_____
CC _____ CA _____ CK _____	Health: _____ / _____	_____
	PD: _____ / _____	_____
Amount: _____	Treasury: _____ / _____	_____
Date Paid: _____	Zoning: _____ / _____	_____
CC _____ CA _____ CK _____		

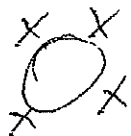
DOCK FORD UPDATED SIDEWALK DIAGRAM FOR OUTSIDE SIDEWALK DINING WITH REDUCED SE FOOTAGE

PROPERTY LINE 336-338 FORD

ENTRANCE TO 338 FORD



ENTRANCE TO DOCK FORD
336



16 FEET

9 FEET 9 IN

PROPERTY LINE 334-336 FORD

○ = BOLLARD / STATION

— = ROPING TO DESIGNATE DINING AREA

2 TABLES
8 CHAIRS

CURBING
BUILDING LENGTH 6 IN

LIGHT POLE
4' 6" FEET CLEARANCE TO
FIRST BOLLARD
SIDEWALK LENGTH 9 FT 9 IN









CITY OF PORTLAND
Permitting and Inspections Department

**Parklet Outdoor Dining
 Supplemental Application**

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License
 Valid April 15-November 1

- ☐ Legal Advertisement Deposit \$100.00
- ☒ 1 Parklet space \$3,000.00 ☐ 2 Parklet spaces \$5,000.00

Business Information			
Establishment Name (d/b/a):	DOCK FOLE INC		Phone: 722 866 19
Location Address:	336 FOLE ST PORTLAND ME		Zip: 04101
Mailing Address:	Zip:		
Contact Person:	SHAWN MCCARTHY	Phone:	450 866 19
Contact Person Email:	SMCCARTY@MAINE-LL.COM		
Manager of Establishment:	Date of Birth:	Phone:	
Owner of Premises (Landlord):	DOCK FOLE INC		
Address of Premises Owner (Landlord):	Zip:		

Owner Information

Corporate Name		Corporate Mailing Address	
DOCK FOLE INC		336 FOLE ST PORTLAND ME 04101	
Contact Person:	SHAWN MCCARTHY	Phone:	450 866 19
Principal Officers	Title	Date of Birth	Residence Address
SHAWN MCCARTHY	Pres	11/19/02	500 EXETER BLVD PORTLAND ME 04103

About Your Establishment

Class of License:	X (A Lounge)
Type of food served:	SOUP, SALAD, PIZZA, LOBSTER TAILS, SANDWICHES
Please circle all that will be served:	(Beer) (Wine) (Liquor)
Hours & days of operation:	Mon-THUR 3-10, FRI-SAT 11A-11P, SUN 11A-9
Number of Tables	2 & BACK TOP
Number of Chairs	20

Parklet Regulations

Pursuant to Chapter 25 of the City's Code of Ordinances, a permit is required for expanding food service to the outside of all properties. Outdoor dining permits for parking and other alternative public spaces will be issued under Chapter 25 and these regulations pursuant to the following requirements:

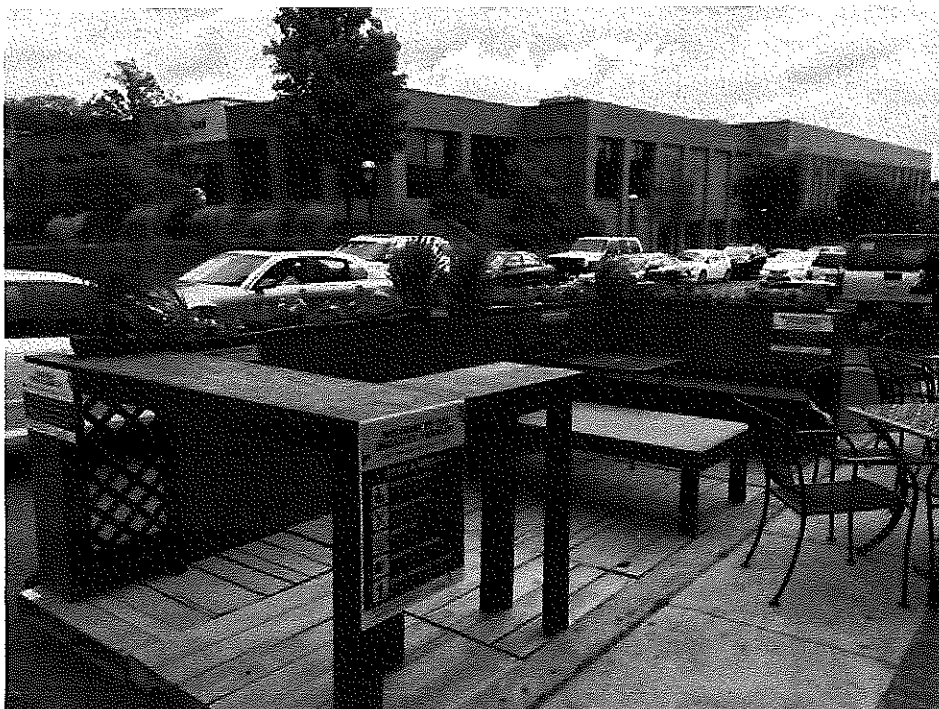
- Any food service operation located on City property pursuant to a permit issued hereunder must comply with state and local laws with respect to service of food and/or alcohol;
- For any outdoor dining operation located in a public parking space, the permit holder shall construct a platform, on which tables and chairs will sit. The platform must be built of durable, slip resistant materials such as composite plastic or construction-grade lumber. This platform may remain for the entire outdoor dining season (April 15-November 1) but must be removed upon conclusion;
- Any space occupied hereunder must be laid out in such a way that it complies with the requirements of the Americans with Disabilities Act. Including 5% of handicap seating. The required platform must be flush with any abutting sidewalk.
- Any movable items on the outdoor dining area must be secured against wind and theft and locked or removed when the business is closed.
- Any outdoor dining spaces permitted hereunder must be located immediately in front of the business. Where parking spaces are not striped (such as in multi-space meter areas) the location of any outdoor dining space must be located to minimize loss of effective parking spaces
- Only 2 hour metered parking spots can be utilized. Parking spot size is 8 feet by 20 feet.
- Any outdoor dining space must provide railings or other substantive barriers *along the edges* to protect patrons;
- Wheel stops satisfactory to the Permitting & Inspections Director must be placed at the front and rear sides of the outdoor dining platform, no less than 4 feet from the edges of the platform. In addition, flexible bollards shall be provided at the corners of the platform.
- Construction of the platform must allow water runoff to easily flow under platform;
- No attachments to the pavement or curbing are permitted;
- No covers are permitted over the outdoor dining space other than umbrellas;
- No advertising other than labels identifying the business is permitted on the outdoor dining space;
- No outdoor dining space in the vehicular right of way is permitted within 15' of an intersection;
- No outdoor dining space will be permitted within the vehicular right of way on a high traffic street, as determined by Public Works. Generally, these streets have a speed limit of over 25 miles per hour, a traffic volume of over 5,000 AADT, or a functional classification of Arterial or above;
- No outdoor dining space will be permitted on a street that does not have 12' clear in the middle after all parking and platforms are accounted for; and
- In any street that is entirely closed to traffic at certain times of the day, the street may be used for outdoor dining subject to relevant requirements listed above, adjusting for the unique condition of an entirely closed street.
- Street Closures include: Wharf Street, Dana Street, and Milk Street (between Exchange and Market only)
- After 4/15/22, Middle Street will go back to normal and the businesses will need to apply for a regular Parklet

Barriers

- Shall not include commercial signage.

Maintenance and Operations

- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining area.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.



I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signature _____

Title _____

Date _____

For Administrative Use Only

Fire: _____

Health: _____

Parking: _____

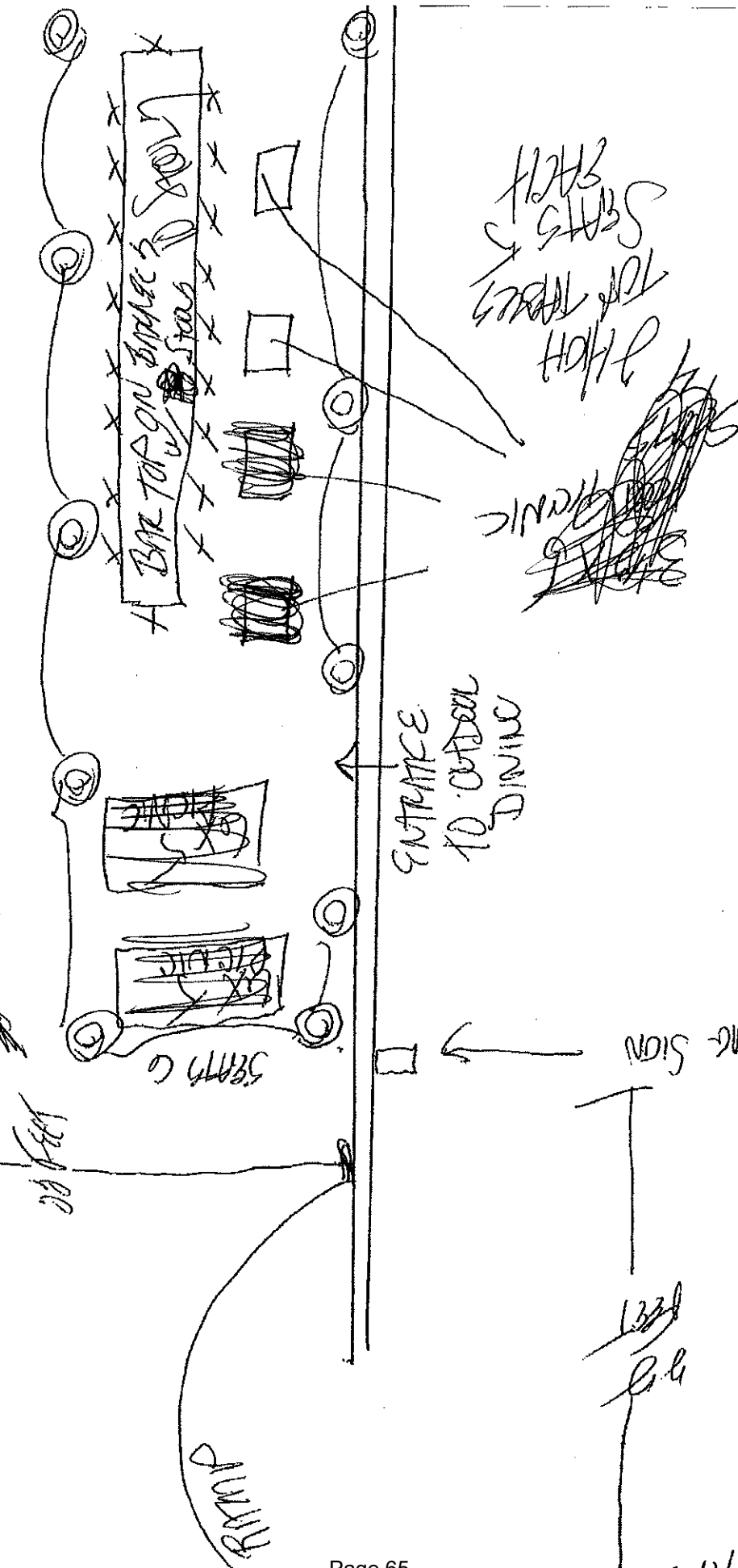
Permitting: _____

Police : _____

Treasury: _____

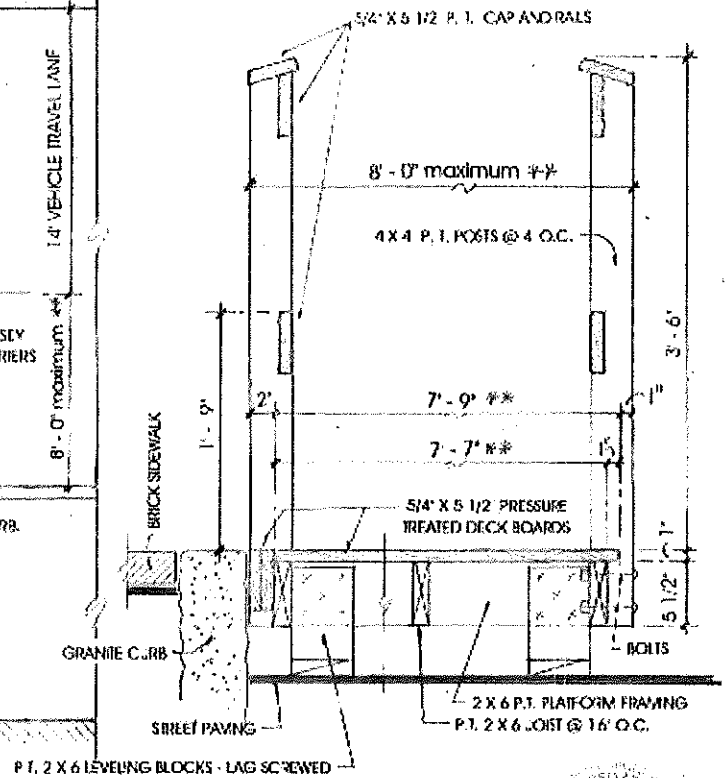
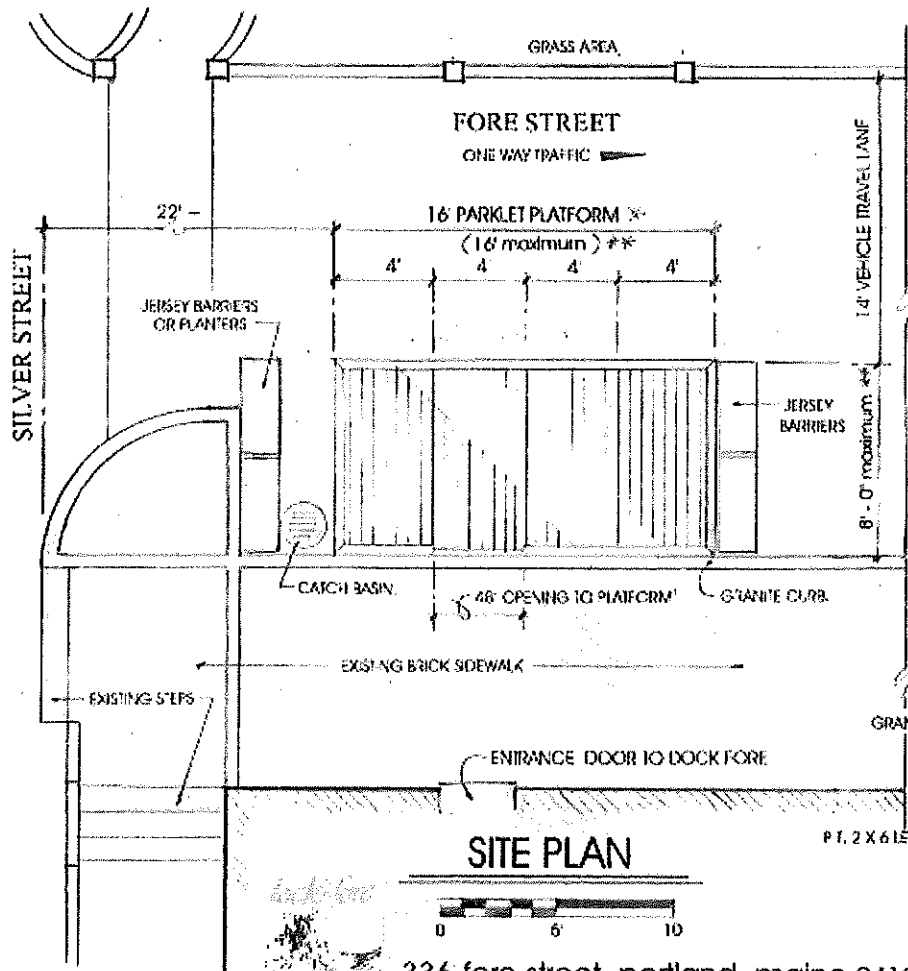
Boothby & Esplanade

20
PALLETS = 8 X 8



2nd FLOOR
TOP TABLES
SEAT 6
PICNIC

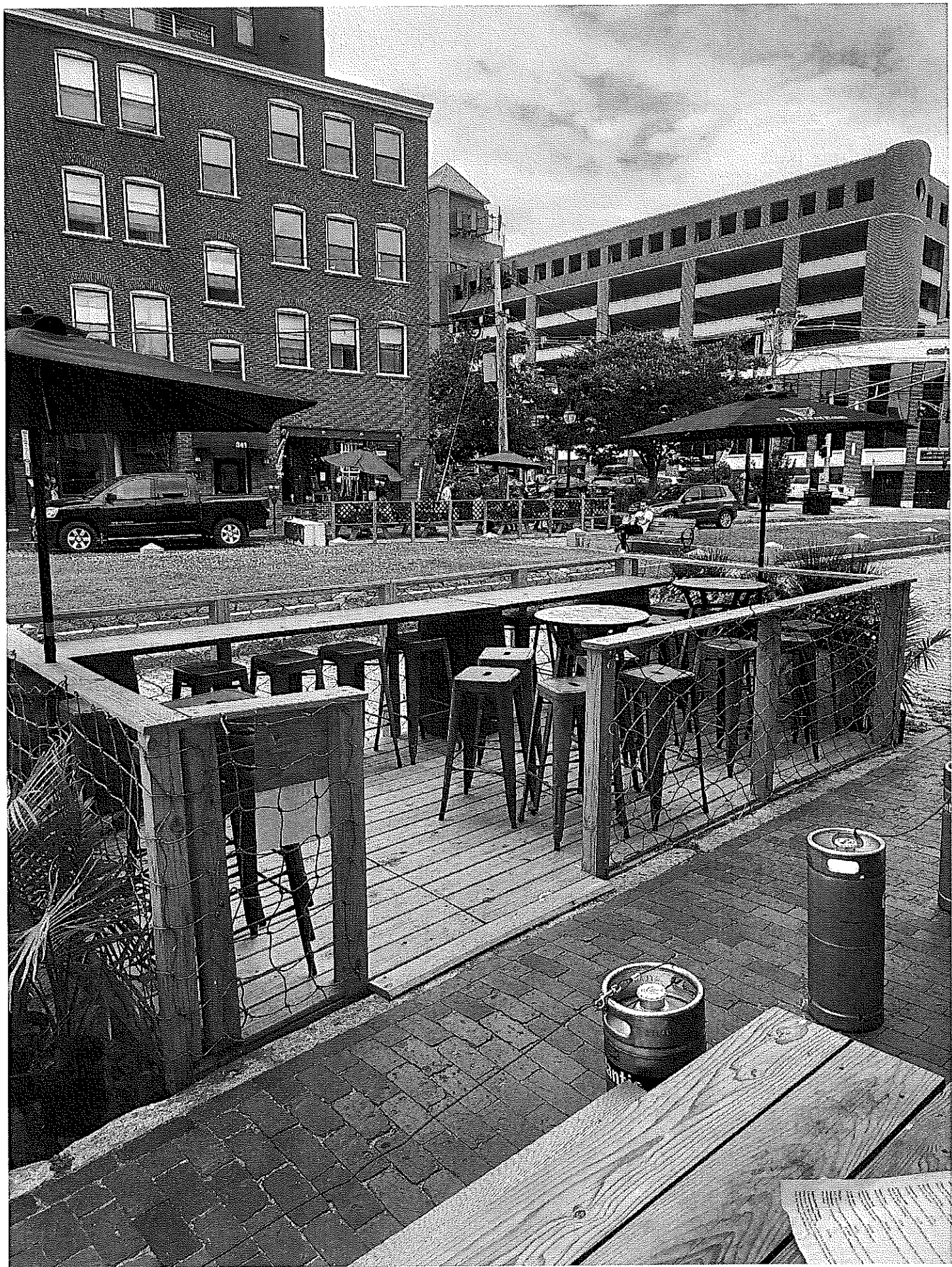
2nd FLOOR
TOP TABLES
SEAT 6
PICNIC

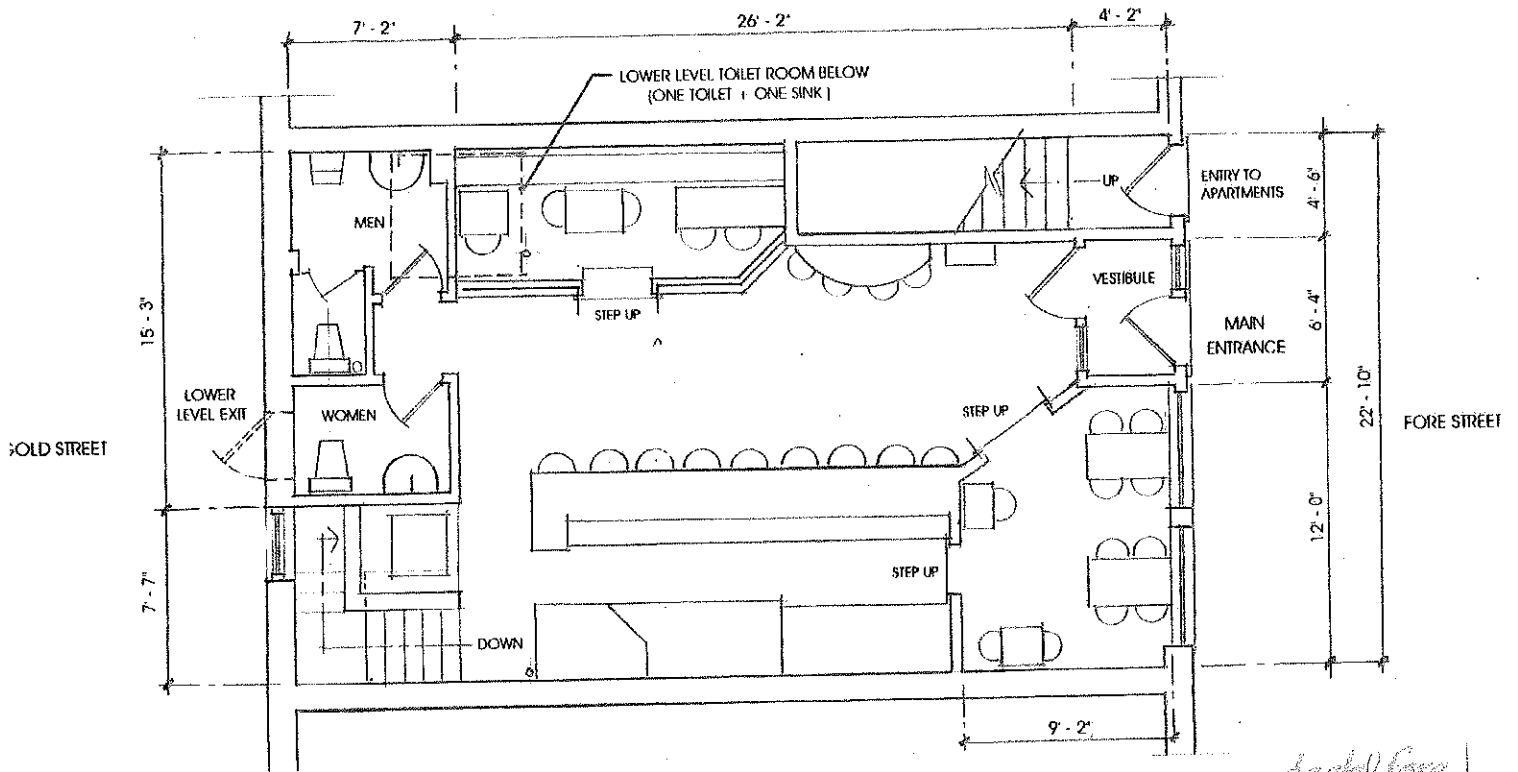


336 fore street portland, maine 04101. 4-4-2022

REVISED: 4-28-2022 **
REVISED: 4-26-2022 *







RESTAURANT FLOOR PLAN SCALE: 1/4" = 1'-0"



architect: brian e. duffy associates 3-16-2022

336 fore street portland, maine 04101



SOCK KORE FLOOR PLAN

□ = TABLES
X = STOOLS

ALL 12

DOWNSTAIRS
DIRECTLY BEHIND
KITCHEN, ROOM
ALL 12

FRONT DOOR
FRONT DOOR

34" WIDE 133" LONG 18 FEET LONG

Bar top

COULDER 4 L 10 S H E L V E S

STAIRS
TO
UPPER FLOOR

MEN'S ROOM
6' x 6'
SINK

LADIES ROOM
4 1/2' x 7'
SINK
TOILET

HANDS
HANDS

TOILET

dock & fore

Shrimp Cocktail

4 Colossal shrimp served with house made cocktail sauce \$9.95

Garlic hummus with pita chips \$5.25

Chips & Salsa \$5.25

Warm corn Tortilla Chips w/salsa

Mexican Flour Crisp \$5.25

Warm Flour Tortilla, melted colby-jack cheese, fajita seasoning, side of salsa

Add Hot Peppers \$1

Gazpacho \$5.25

Traditional Spanish Style Cold Soup

Chopped Salad \$5.25

Nice & Light – Chopped romaine with garbanzo beans, colby-jack cheese, and tomato. Choice of Italian or Ranch Dressing

Pasta Salad \$5.95

Rotini mixed with lots of fresh veggies, served with Italian dressing

Lobster Roll Market

Maine lobster over romaine on a hot dog bun, with a side of mayo

*Also available Keto style

Crab Roll \$15.95

Crab Salad over romaine on a hot dog bun

*Also available Keto style

Pizza \$8.95

10" fresh dough with homemade red sauce and a blend of mozzarella and provolone cheeses

Toppings \$1 each

Pepperoni, Hamburger, Ham, Bacon, Pineapple, Green Pepper, Onion, Greek Olive, Pepperoncini, Tomato

Specialty Pizzas \$14.95

Cheeseburger Pizza

Ketchup & Mustard, dill pickle slices, topped with pizza cheese,

Hamburger, tomato, onion, topped with shredded lettuce

Ask for today's specialty pizza



Zachary Lenhert <zlenhert@portlandmaine.gov>

Dock Fore - Reclassification

Zoning <zoning@portlandmaine.gov>

Wed, Aug 17, 2022 at 10:04 AM

To: Zoning <zoning@portlandmaine.gov>

Cc: Treasury Division <treasury@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Zoning <zoning@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Eric Nevins <erich@portlandmaine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>, Zachary Lenhert <zlenhert@portlandmaine.gov>

Zoning approves.

Thanks,
Jon

[Quoted text hidden]

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on September 1, 2022 at 5:00 P.M., virtually Dock Fore Inc., dba Dock Fore. Application for Class A Lounge with Outdoor Dining on Public Property at 336 Fore Street - Sponsored by Danielle P. West, Interim City Manager



CITY OF PORTLAND
Permitting and Inspections Department

August 26, 2022

Dock Fore Inc.
336 Fore Street
Portland, ME 04101

Re: Dock Fore Inc., dba Dock Fore. Application for Class A Lounge with Outdoor Dining on Public Property at 336 Fore Street

Dear Dock Fore Inc.:

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Thursday September 1, 2022 at 5:00 p.m.**, for the review of application for Class A Lounge with Outdoor Dining on Public Property at 336 Fore Street. The meeting will take place in person and virtually. The link can be found on the Meeting Agenda which will be posted on the City Website on August 29, 2022.

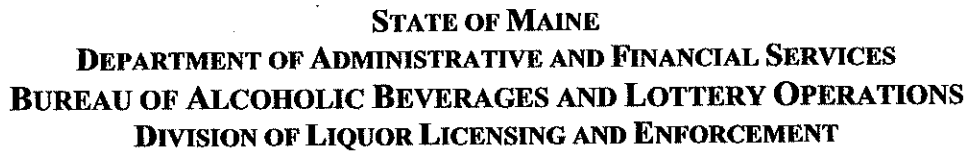
You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Z Lenhert".

Zachary J. Lenhert
Licensing and Housing Safety Manager



All Questions Must Be Answered Completely. Please print legibly.

**Section I: Licensee/Applicant(s) Information;
Type of License and Status**

1. New license or renewal of existing license? ☐ New Expected Start date: _____
☒ Renewal Expiration Date: 10/4/22

Food: 12,130.00 Beer, Wine or Spirits: 27,553 - Guest Rooms: 0

☒ Malt Liquor (beer) ☒ Wine ☒ Spirits

4. Indicate the type of license applying for: (choose only one)

- ☐ Restaurant (Class I, II, III, IV) ☒ Class A Restaurant/Lounge (Class XI) ☒ Class A Lounge (Class X)
- ☐ Hotel (Class I, II, III, IV) ☐ Hotel – Food Optional (Class I-A) ☐ Bed & Breakfast (Class V)
- ☐ Golf Course (included optional licenses, please check if apply) (Class I, II, III, IV) ☐ Auxiliary ☐ Mobile Cart
- ☐ Tavern (Class IV) ☐ Other: _____
- ☐ Qualified Caterer ☐ Self-Sponsored Events (Qualified Caterers Only)

Refer to Section V for the License Fee Schedule on page 9

5. Business records are located at the following address:

336 Fore St Portland ME 04101

6. Is the licensee/applicant(s) citizens of the United States? ☒ Yes ☐ No

7. Is the licensee/applicant(s) a resident of the State of Maine? ☒ Yes ☐ No

NOTE: Applicants that are not citizens of the United States are required to file for the license as a business entity.

8. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

☒ Yes ☐ No If Yes, complete Section VII at the end of this application

9. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

☐ Yes ☒ No

☐ Not applicable – licensee/applicant(s) is a sole proprietor

10. Is the licensee or applicant for a license receiving, directly or indirectly, any money, credit, thing of value, endorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person or entity within or without the State, if the person or entity is engaged, directly or indirectly, in the manufacture, distribution, wholesale sale, storage or transportation of liquor.

☐ Yes ☒ No

If yes, please provide details: _____

11. Do you own or have any interest in any another Maine Liquor License? ☐ Yes ☒ No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address

12. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
SHAW MCCARTHY	10/19/1962	PORTLAND

Residence address on all the above for previous 5 years	
Name	Address: 500 DARTMOUTH BLVD PORTLAND ME 04103
Name	Address:
Name	Address:
Name	Address:

13. Will any law enforcement officer directly benefit financially from this license, if issued?

☐ Yes ☒ No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

16. Has the licensee/applicant(s) formerly held a Maine liquor license? ☒ Yes ☐ No

17. Does the licensee/applicant(s) own the premises? ☒ Yes ☐ No

If No, please provide the name and address of the owner:

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: _____

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

FIRST FLOOR OF BRICK BUILDING WITH KITCHEN
AND STORAGE IN BASEMENT

20. What is the distance from the premises to the nearest school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: CATHEDRAL

Distance: 1 MILE

Section II: Signature of Applicant(s)

By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 8/5/22

Signature of Duly Authorized Person

SHAWN MCCARTHY

Printed Name Duly Authorized Person

Signature of Duly Authorized Person

Printed Name of Duly Authorized Person

Section III: For use by Municipal Officers and County Commissioners only

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this on-premises liquor license application.

Dated: _____

Who is approving this application? ☐ Municipal Officers of _____

☐ County Commissioners of _____ County

- ☐ **Please Note:** The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of establishment to be licensed by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title

**This Application will Expire 60 Days from the date of
Municipal or County Approval unless submitted to the Bureau**

Included below is the section of Maine's liquor laws regarding the approval process by the municipalities or the county commissioners. This is provided as a courtesy only and may not reflect the law in effect at the time of application. Please see <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec653.html>

§653. Hearings; bureau review; appeal

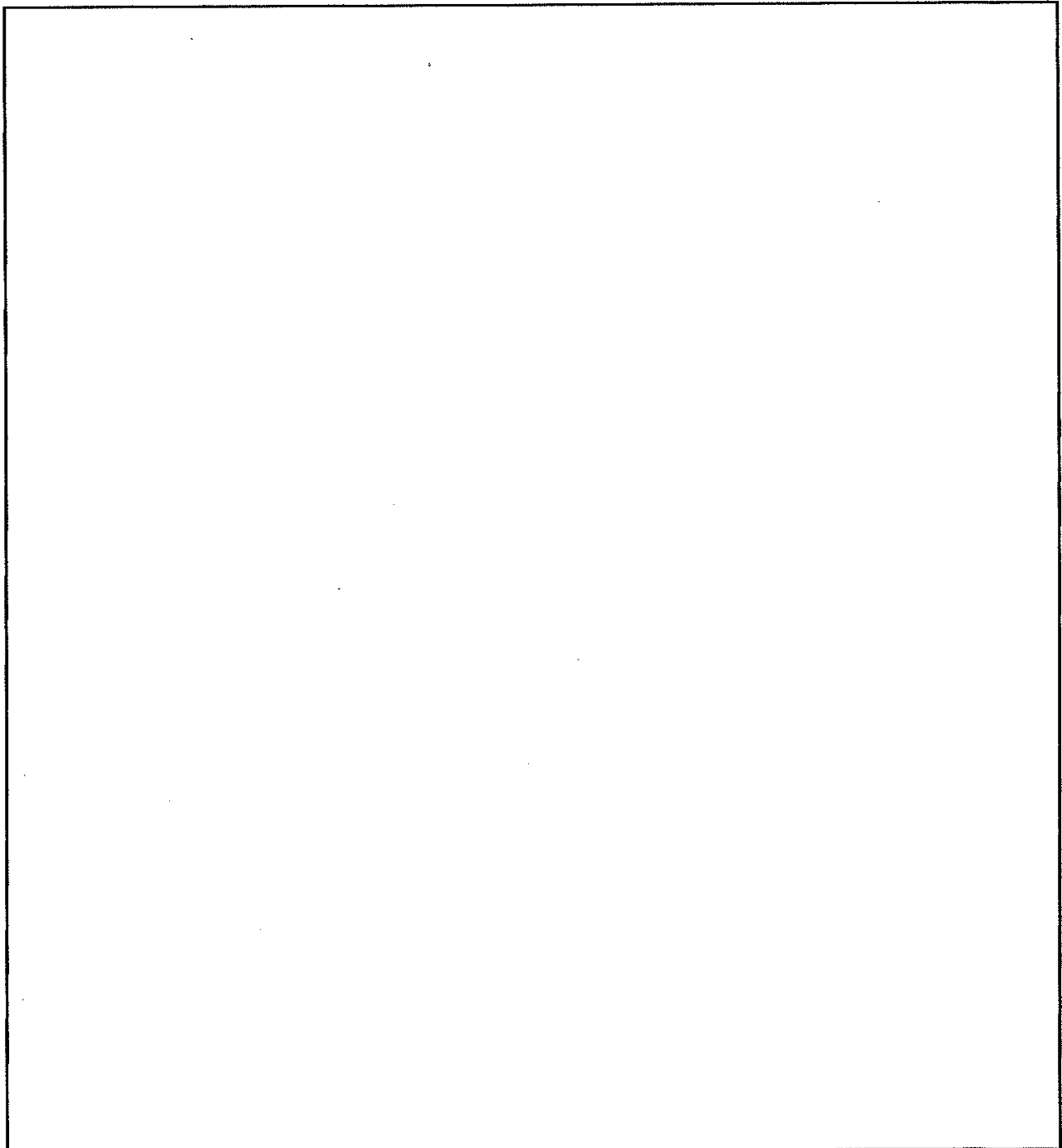
1. Hearings. The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

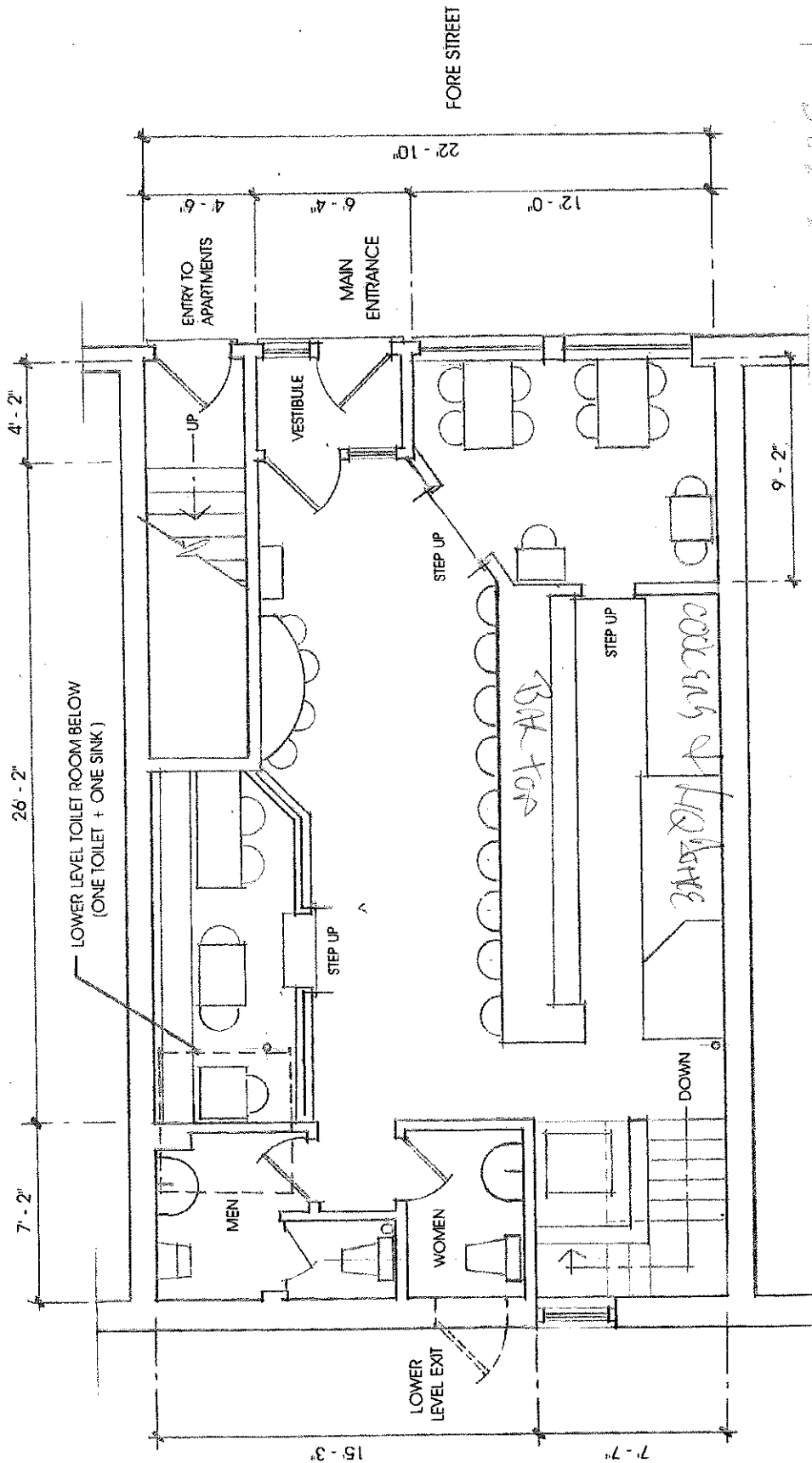
A. The bureau shall prepare and supply application forms.

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.

A large, empty rectangular box with a thin black border, intended for the applicant to draw and label their premises floor plan. The box occupies the majority of the lower half of the page.



RESTAURANT FLOOR PLAN SCALE: 1/4" = 1'-0"



architect: brian e. duffy associates 3-16-2022

336 fore street portland, maine 04101

Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

All Questions Must Be Answered Completely. Please print legibly.

1. Exact legal name: DOCK FARE INC
2. Doing Business As, if any: DOCK FARE
3. Date of filing with Secretary of State: 1989 State in which you are formed: MAINE
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
SHARON MCALPIT	500 HAZEN BLVD ORRIS	10/10/62	PRES	100%

(Ownership in non-publicly traded companies must add up to 100%.)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 12, 2022

SUBJECT: Order 48-22/23 Approving Proposed Ballot Question and Summary of Council-Initiated Charter Amendment Re Gender-Neutral Language - Sponsored by Ashley Rand, City Clerk

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: The charter amendments have been reviewed

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This item approves the summary of the Charter amendment proposed by the Council relating to gender-neutral language and submits the change to the voters at the November 8, 2022 election.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Setting an Election Date re Gender-Neutral Charter Amendment 8.8.2022
2. Portland City Charter Redline re Gender-Neutral Language 8.8.2022

Prepared by:

Date: 08/12/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING PROPOSED BALLOT QUESTION AND SUMMARY
OF COUNCIL-INITIATED AMENDMENT RE: GENDER-NEUTRAL LANGUAGE**

WHEREAS, the City Council hereby finds that it is not practical to print the proposed amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed amendment, and

WHEREAS, the attached summary fairly describes the content of the proposed amendment and does not contain information designed to promote or oppose the amendment;

NOW THEREFORE, BE IT ORDERED, that the summary of the Charter amendment proposed by the City Council is hereby approved as outlined in the following attachment and;

BE IT FURTHER ORDERED, that the City Clerk shall place the attached Question and Summary on the ballot at the Municipal election to be held on November 8, 2022.

Shall the municipality approve the Charter amendments recommended by the Portland City Council to adopt gender neutral language in the City Charter and summarized below?

These amendments make minor technical changes to the Charter and remove gender-specific references from the language of the Charter when gender-specific references are not necessary to accomplish the purpose and intent of a particular provision.

PART I CHARTER*

***Editor's note** Historical references are cited in parentheses at the end of each section. Such references cite only the various amendments adopted by referenda conducted pursuant to home rule powers granted by P.L. 1970, c. 563 (30 M.R.S.A. § 1911 et seq.). Prior to 1970 and home rule the charter and its various amendments were enacted by the Maine Legislature and such are not cited in said parentheses. A history of the charter and amendments is attached as Appendix A.

State law reference(s) Home rule, 30 M.R.S.A. § 2101 et seq.

Preamble

- Art. I. Grant of Powers to the City, §§ 1, 2**
- Art. II. City Council; Mayor, Ranked Choice Voting §§ 111**
- Art. III. Board of Public Education, §§ 16**
- Art. IV. Elections, §§ 111**
- Art. V. Recall, §§ 17**
- Art. VI. Administrative Officers, §§ 18**
- Art. VII. Business and Financial Provisions, §§ 116**
- Art. VIII. Miscellaneous Provisions, §§ 15**

PREAMBLE

We, the People of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the general health, safety and welfare of our community. In so doing, we build a government that meets the needs of the people it serves and whose character it reflects. Our government shall further cooperation, encourage leadership, solicit our input and support the active participation of our residents in their governance. Our government shall be effective and accountable and shall promote equal rights and representative democracy.

Our government shall provide public education that enables all residents to acquire the knowledge and skills necessary to participate fully in Portland's civic, intellectual, cultural and economic life, in order to enrich and strengthen our community and our common future.

(Referendum 11/2/10)

ARTICLE I. GRANT OF POWERS TO THE CITY

Section 1. Corporate existence retained.

The inhabitants of the City of Portland shall continue to be a body politic and corporate by the name of the City of Portland, and shall have, exercise, and enjoy all the rights, immunities, powers, privileges, and franchises and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise, pertaining to or incumbent upon such city as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable bylaws, regulations, and ordinances for municipal purposes, not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof as such bylaws, regulations, or ordinances shall provide. Such penalties shall not limit nor diminish in any way the city's authority to seek and obtain higher or different penalties provided by state or other law. (Referenda 12/4/72; 11/2/10)

Section 2. Powers and duties.

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the "school board"), and also except as otherwise provided by this charter, shall be and are vested in one body of nine members, which shall constitute and be called the city council, all of whom shall be inhabitants of the city, and shall be sworn in the manner hereinafter prescribed.

The members of the city council shall be and constitute the municipal officers of the City of Portland for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers and mayors of cities under the laws of this state.

All other powers now or hereafter vested in the inhabitants of such city, and all powers granted by this charter, except as herein otherwise provided, shall be vested in the city council. (Referendum 11/2/10)

ARTICLE II. CITY COUNCIL

Section 1. City to be divided into election districts.

For the purpose of all elections the city, including its islands, shall be divided into five (5) districts to establish compact and contiguous districts of approximately equal population.

The city council for voting purposes may by ordinance divide the election districts into voting districts. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/2/11)

Section 2. Composition, election, tenure of office.

The city council shall be composed of nine (9) members, including the mayor who shall be one of the nine (9) members of the city council, and shall hold office for a term of three (3) years and until their successors are elected and qualified, except as provided below for the term of mayor and for one at large seat in the election of 2013 only. Four (4) members, including the mayor, shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the five (5) districts heretofore provided for, from and by the registered voters of each district. References in this charter to the city council, councilors, council, its members or membership, shall be deemed to include the mayor, unless otherwise specifically provided.

For the municipal election in November of 2013, one of the two at large seats up for election shall have a one-time four year term ending in 2017. Thereafter, the council term shall return to be three (3) years for this seat. The city clerk shall designate which seat shall be for the four (4) year term prior to the availability of nomination papers for the 2013 election, and nomination papers shall be separately issued for each of the two at large seats. Each at large candidate may take out and file nomination papers for only one of the at large seats. The municipal ballot will list the 4-year and 3-year council seats as separate questions.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the five (5) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

Beginning with the regular municipal election in November, 2011, the at large position then up for election shall be designated as the mayor's position and shall continue as the

mayor's position thereafter. The position of mayor only shall be elected by majority vote as provided in section 3 of this article. The candidate(s) for mayor shall be nominated in the same manner as other at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two (2) consecutive terms. The election and position of mayor shall be a non-partisan, full-time position. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10; 11/6/12)

Section 3. Ranked choice voting; instant runoff tabulation.

For the positions of mayor, city councilor, and school board member, the city clerk shall implement a ranked choice voting protocol according to these guidelines:

(a) The ballot shall give voters the option of ranking candidates in order of choice.

(b) If a candidate receives a majority, i.e. at least one more than fifty percent (50%) of the first choice votes cast, that candidate is elected.

(c) If no candidate receives a majority of first choice votes, an instant runoff re-tabulation shall be promptly conducted by the city clerk and completed within five (5) business days of the election. The instant runoff re-tabulation shall be conducted in successive rounds, with the majority determined for each successive round by the number of votes cast in that round. The candidate with the fewest votes after each successive round in which no candidate receives a majority of the votes cast in that round shall be eliminated, and the votes in the successive rounds shall be re-tabulated among the remaining candidates until one candidate receives a majority of the votes cast in that round. In each successive round, each voter's ballot shall count as a single vote for whichever candidate the voter has ranked highest who has not been eliminated in a prior round, if any.

(d) After the first round, a majority is determined as at least one (1) more than fifty percent (50%) of the votes cast for a remaining candidate in a particular round.

(e) The city clerk may adopt additional regulations consistent with this subsection to implement these provisions. The ballot shall contain instructions on how to vote for each office.

(Referenda 11/2/2010; 3/3/2020)

Section 4. Compensation of councilors and mayor.

Except as otherwise provided in the paragraph below for the mayor's compensation, the city council shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, and specify when any compensation shall be payable, but no such order increasing their compensation, including that of the mayor, shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance.

Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than one and one-half (1.5) times the median household income for Portland as most recently published by the U.S. Census Bureau, American Community Survey, or successor index thereto, at the time such compensation is set or adjusted, plus customary city benefits.

No member shall hold any office or employment the compensation of which is payable by the city or school department during the term for which ~~the member he or she~~ was elected. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. Mayor's powers and duties.

The mayor shall be the official head of the city, responsible for providing leadership, and shall have the following powers and duties:

(a) To articulate the city's vision and goals and build coalitions to further such vision and goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that purpose;

(b) To convene and lead an annual workshop session of the city council to discuss and identify the city's goals and priorities in order to provide guidance for the city manager and to inform the public. The city manager shall attend this workshop session, and a summary of the session shall be made available to the public;

(c) To represent the city with other municipalities, levels of government, community and neighborhood groups, and the business community;

(d) To preside as chair of the city council, and vote upon all matters in the same manner as other members of the city council, except as provided in article VII, section 8. The mayor shall direct the city manager in the preparation of council meeting agendas;

(e) To facilitate the implementation of city policies through the office of the city manager;

(f) To consult with and provide guidance to the city manager in the preparation of all city budgets and to provide comments on such budgets at the time they are presented by the city manager to the city council for approval;

(g) To consult with and provide guidance to the city manager in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (i), and to provide comments on such program plan at the time it is presented by the city manager to the city council;

(h) To facilitate among the city manager, city council, board of public education and the public to secure passage by the city council of the annual city and school budgets;

(i) To exercise veto power over the annual city appropriation as provided in article VII, section 8;

(j) To establish performance guidelines in conjunction with the other members of the city council for regular evaluations, no less than annually, by the city council of the performance of the city manager, corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines

shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities;

(k) To chair any subcommittee with at least two (2) other city councilors to recommend the appointment or removal of the city manager, corporation counsel or the city clerk, but the full city council shall have the final decision in regard to such appointment or removal by a vote of at least five (5) members of the council; and

(l) To appoint the members and chairs of the city council committees and various ad hoc committees and communicate such appointments to the city council, which may override such appointments by a vote of at least six (6) council members.

Notwithstanding the foregoing, the city manager shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council.
(Referendum 11/2/10)

Section 6. Absence or disability of mayor; acting mayor.

In the temporary absence or disability of the mayor, the mayor may select an acting mayor from among the other council members and such person shall perform the duties of the mayor during such temporary absence or disability for a maximum of sixty consecutive (60) days or return of the mayor, whichever comes first. If through physical or mental incapacity the mayor is unable to select an acting mayor, or if the mayor's absence or disability exceeds sixty (60) consecutive days, the council shall select an acting mayor from among its membership until such time as the mayor is able to resume ~~his or her~~their duties or a vacancy is declared pursuant to section 7 below and a new mayor elected. (Referendum 6/13/78; 11/7/00; 11/2/10)

Section 7. Vacancies.

A vacancy in the membership of the city council shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which ~~that member he~~ or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or (6) the recall of a member pursuant to the provisions of article V. The council shall declare a vacancy in its membership to

exist upon the failure of a member to attend any six (6) consecutive regular meetings of the city council, or at least sixty (60) percent of the regular meetings of the city council held in any one calendar year unless such member shall be excused (by vote of at least four (4) other members) for health reasons or other good cause.

The council shall declare a vacancy in its membership to exist upon the qualification of any member for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

A member may in writing addressed to the council resign ~~the member's his or her~~ office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and such member's office shall become vacant on such specified future date.

If a vacancy in the membership of the city council occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

Section 8. Meetings of the council.

The city council shall meet at the usual place for holding meetings on the first Monday in December following the regular municipal election, or as soon thereafter as possible, and at such meeting the mayor and councilor select shall be sworn to the faithful discharge of their duties by a justice of the peace, or by the city clerk. The city council shall at such meeting establish by resolution or rule a regular place and time for holding its meetings, and shall meet regularly at least twice each month. (Referenda 6/13/78; 11/4/86; 11/7/00; 11/2/10)

Section 9. Special meetings.

Special meetings may be called by the mayor, and in case of ~~the mayor's his or her~~ absence, disability, or refusal, may be called by five (5) or more members of the city council. At least twenty-four (24) hours notice of the time and place of holding

such special meeting shall be given to all members of the city council. (Referendum 11/2/10)

Section 10. Quorum.

Five (5) members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referendum 11/2/10)

Section 11. Procedure.

The city council shall keep a record of its proceedings and shall determine its own rules of procedure and make lawful regulations for enforcing the same. The meetings of the city council shall be open to the public in accordance with state law. The city council shall act only by ordinance, order, or resolve. All ordinances, orders, and resolves, except orders or resolves making appropriations of money, shall be confined to one subject which shall be clearly expressed in the title. An appropriation order or resolve shall be confined to the subject of appropriations only.

No ordinance and no appropriation order or resolve shall be passed until it has been read on two separate days, except when the requirement of a second reading on a separate day has been dispensed with by the vote of at least seven (7) members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance, order, and resolve shall require on final passage the affirmative vote of at least five (5) members of the city council. No ordinance shall take effect until thirty (30) days after its passage and no order or resolve shall take effect until ten (10) days after its passage, except as herein otherwise provided for emergency ordinances, orders and resolves.

The city council may, by vote of at least seven (7) of its members, pass emergency ordinances, orders, or resolves to take effect at the time indicated therein, but such emergency ordinances, orders, or resolves shall contain a section in which the emergency is set forth and defined, provided, however, that

the declaration of such emergency by the city council shall be conclusive. (Referendum 11/2/10)

ARTICLE III. BOARD OF PUBLIC EDUCATION

Section 1. Composition, election, tenure of office, compensation.

The board of public education shall be composed of nine (9) members who shall hold office, except as hereinafter provided, for a term of three (3) years and until their successors are elected and qualified. Four (4) shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the five (5) districts heretofore provided for in section 1 of article II, from and by the registered voters of each such district.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the five (5) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

The city council shall by order establish the amount each member of the school board shall be entitled to receive as compensation for all services rendered, which compensation shall be the same as that received by members of the city council, other than the mayor. The city council shall provide additional compensation to the chair of the school board appropriate to reflect ~~his or her~~ ^{their} additional responsibilities as chair. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 2. Chair.

On the first Monday in December following the regular municipal election, or as soon thereafter as possible, the board of public education shall elect one of its members as chair for the ensuing year and until a successor is elected and qualified, and may fill for the unexpired term any vacancy as chair that may occur.

At a date and time to be mutually agreed upon by the chair of the school board and the mayor, the chair shall deliver an annual address on the "state of the public education system in Portland" to the city council and the public. (Referenda 11/2/76; 6/13/78; 11/7/00; 11/2/10)

Section 3. Organization.

The school board shall meet for organization on the first Monday in December following the regular municipal election, or as soon thereafter as possible. The members-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the city clerk, and a record made thereof. The members shall at such meeting, or as soon thereafter as possible, establish a regular place and time for holding meetings and shall meet regularly at such place and time. Five (5) members of the school board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referenda 6/13/78; 11/7/00; 11/2/10)

Section 4. Powers and duties.

The board of public education shall have all the powers, and perform all the duties in regard to the care and management, including sound fiscal management, conduct, and control of the public schools of the city, which are now conferred and imposed upon school committees and school boards by the laws of this state, except as otherwise provided in this charter. (Referendum 11/2/10)

Section 5. School budget.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.

The budget submitted by the superintendent to be reviewed jointly by the school board and the city council shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for joint review, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall submit to the city council a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, and shall thereafter provide the city council with such information relating to such budget as the city council shall require.

A budget hearing on such budget estimates shall be held prior to final action by the city council. The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall not be less than the sum required to be appropriated for such purposes by the general laws of the state. Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council. Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council. (Referendum 6/13/78; 11/2/10)

Section 6. Vacancies.

A vacancy in the membership of the board of public education shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which ~~the member he or she~~ was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony

while in office; or (6) the recall of a member pursuant to the provision of Article V. The school board shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the school board or at least sixty (60) percent of the regular meetings of the school board held in any one calendar year unless such member shall be excused (by a vote of at least four (4) of the members) for health reasons or other good cause. A member may in writing addressed to the school board resign ~~the member's his or her~~ office effective at a future date specified in the written resignation. Once submitted to the school board, such resignation may not be withdrawn and such member's office shall become vacant on the specified future date.

If a vacancy in the membership of the school board occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

ARTICLE IV. ELECTIONS

Section 1. Continuity in office.

In the event redistricting of the city shall cause a then council member or school board member to reside in a district other than that from which such person was elected, the office of such member shall not thereby be considered vacated but such member shall continue in office until a successor is duly elected and qualified. Each district councilor and district school board member in office on the effective date of any such redistricting shall be deemed to represent the newly constituted district of the same numerical designation as that formerly represented and shall continue to serve in that capacity until expiration of ~~the member's his or her~~ term. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 2. Regular municipal election.

On the first Tuesday after the first Monday in November of each year, the regular municipal election shall be held and the registered voters of the city or district, as the case may be, shall ballot for such councilors and for such members of the school board as may be necessary to fill the offices of those whose terms would then normally expire and fill any existing vacancy in an unexpired term of office. (Referenda 12/1/75; 11/2/76; 6/13/78; 11/4/86; 11/7/00; 11/6/01; 11/2/10)

Section 3. Wardens and ward clerks.

The wardens and ward clerks shall be nominated by the city clerk and appointed by order of the city council. They shall be and remain residents of the city and all other qualifications for appointment shall be as provided in Title 21-A of the Maine Revised Statutes. They shall hold their office for one year from the date of appointment, unless a shorter term is specified by the order of appointment, and until others have been chosen and qualified in their stead. The warden and the ward clerk shall be sworn to the faithful performance of their duties by a person qualified under the statutes of the state to administer oaths, and a certificate of such oath shall be entered by the clerk on the records of such ward. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/4/08; 11/2/10)

Section 4. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy five (75) nor more than one hundred fifty (150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

Section 5. Form of nomination petition.

The signatures to nomination petitions need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers of each petition, and that each signature appended thereto was made in ~~the circulator's his~~

~~or her~~ presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer giving the street and number of the street, or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

To the city clerk of the City of Portland

We, the undersigned voters of the City of Portland, hereby nominate, _____ whose residence is _____ for the office of _____ to be voted for at the election to be held in the City of Portland on the _____ day of _____, _____, and we individually certify that we are qualified to vote for a candidate for the above office.

Name _____ Street and Number _____, being duly sworn, deposes and says, that ~~he/she/they~~ ~~he (she)~~ is the circulator of the foregoing nomination petition containing _____ signatures, and that the signatures appended thereto were made in his/~~or her~~/~~their~~ presence and are the signatures of the persons whose names they purport to be.

(Signed) _____.

Subscribed and sworn to before me this _____ day of _____, _____.

Attorney, State of Maine Bar # _____
Notary Public

If this petition is deemed insufficient by the city clerk, ~~the city clerk he or she~~ shall forthwith notify by mail _____ at _____. (Referendum 11/2/10)

Section 6. Filing of nomination petitions, and acceptance of nomination.

The city clerk shall make nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to the election. The nomination petitions for any one (1) candidate must be assembled and united into one (1) petition and filed with the city clerk during normal business hours not earlier than eighty-five (85) nor later than seventy-one (71) days before the date of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing at the time of filing of such nomination petitions ~~the candidate's his or her~~ consent accepting nomination, agreeing not to withdraw

and, if elected, to qualify. Such nomination petitions and consent, once filed may not be withdrawn. Any challenge to a nomination petition must be submitted to the city clerk in writing, setting forth the specific reasons for the objection, no later than five (5) days, excluding Saturdays, Sundays, and legal holidays, from its date of filing, or it is barred. No person shall take out nomination papers for more than one position at the same election, nor be nominated, nor shall any person consent to being nominated, at the same election for any other elective office provided for by this charter, and no person shall simultaneously hold more than one (1) elective office provided for by this charter. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/6/01; 11/4/08; 11/2/10)

Section 7. Form of ballot.

All official ballots for use in all municipal elections shall be prepared by the city clerk and furnished by the city, consistent with the voting machines used and the form of any state ballot(s), and the use of ranked choice voting. Ballots for use in elections under this charter shall contain the names of the various candidates, with their residence, and the office for which they are candidates, and instructions on how to mark the ballot. The candidates for each office shall be grouped under the title of each office, plainly and distinctly marked. There shall be as many blank spaces under the name of each office as there are vacancies to be filled. The procedure for counting write-in votes shall be governed by Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern. Notwithstanding the foregoing, in the event of an emergency such as the illness, death or disqualification of a nominee for municipal office prior to the general election, the time frame for accepting a declared write-in candidate may be shortened by the city clerk. Such ballots may also contain such measures as may be submitted to the voters of the city by the legislature or by the city council and shall be without party mark or designation.

In preparing all ballots for election under this charter, the city clerk shall arrange the names of all qualified candidates for each office in alphabetical order according to surnames. (Referenda 11/2/2010; 3/3/2020)

Section 8. Specimen ballots.

The city clerk shall cause specimen or sample ballots to be prepared and to be posted in public places in each ward and voting precinct and advertised in the newspapers not later than ten (10) days prior to the municipal election. Such specimen ballots shall be printed on colored paper and marked "Specimen Ballot," and shall contain the names of the certified candidates with the residence of each, instructions to voters, and such measures as may be submitted to the voters by the legislature or by the city council. Such specimen ballots shall also be without party mark or designation. (Referendum 11/6/01; 11/2/10)

Section 9. Count of ballots.

Upon closing of the polls, ballots shall be counted in accordance with Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern, and the results thereof delivered to the city clerk by the wardens. (Referendum 11/2/10)

Section 10. Canvass of returns.

The city clerk shall examine the records of the several voting places and within forty-eight (48) hours after such election shall determine and declare the successful candidates as follows: The person or persons, not exceeding the number to be voted for at any one time for any office, having the majority of votes cast at such election, shall be determined and declared to be elected. If no candidate for mayor, city council, or school board has a majority of the votes cast as provided in article II, section 3, the city clerk shall conduct an instant runoff tabulation as provided in such section until the candidate with the majority of votes cast is determined. The city clerk shall provide written notice of the election results to all candidates. (Referenda 11/6/01; 11/2/10; 3/3/2020)

Section 11. State election laws applicable.

The laws of the state in Title 21-A of the Revised Statutes relating to the qualifications of electors, registration, the manner of voting, the duties of election officials, and all other particulars in respect to preparation for conducting and managing elections, so far as they may be applicable, shall govern all municipal elections in the City of Portland, except as provided below regarding 42-day pre-election reports and as otherwise provided herein.

In addition to the reports required for municipal candidates by Title 21-A of the Maine Revised Statutes, 42-day pre-election reports must be filed by municipal candidates no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Nothing in this charter shall prohibit the use of electronic or revised voting methods and procedures to the extent authorized by state and/or federal law. (Referenda 11/4/08; 11/6/2018)

ARTICLE V. RECALL

Section 1. Applicability.

Any member of either the city council or the school board may be recalled and removed from office by the registered voters of the City of Portland, as hereinafter provided, except that this provision shall not apply to a member of either body who has one (1) year or less to serve in ~~the member's his or her~~ term, i.e., any petition to recall a member must be certified by the clerk no later than November 30 of the year prior to that member's next scheduled November re-election date. (Referenda 11/4/86; 11/2/10)

Section 2. Petition for recall.

In the case of either an at large member of the city council or of the school board, any five hundred (500) registered voters of the city may affirm and file with the city clerk an affidavit containing the name of the member of the city council or of the school board whose removal is sought, together with a statement of the reasons why such removal is desired. In the case of a district member of the city council or of the school board, any two hundred and fifty (250) registered voters of the member's district may affirm and file with the city clerk an affidavit containing the name of the district member whose removal is sought, together with a statement of the reasons why such removal is desired. Members of the city council and of the school board shall not be included on the same affidavit and only one member's name shall be on an affidavit.

Within seven (7) calendar days of receipt of such an affidavit, the city clerk shall prepare a sufficient number of petitions which shall contain the signature of the city clerk,

the clerk's ~~his or her~~ official seal, the date, and the name of the person whose removal is sought. In addition, the statement of reasons for removal referred to above shall either be printed on such petitions or attached thereto. Such petitions shall be on paper of uniform size with as many individual sheets as reasonably necessary.

The city clerk shall file the completed petitions in the city clerk's ~~his or her~~ office. During the thirty (30) days following their filing, the city clerk shall arrange to have petitions, noting that removal is being sought as well as the reasons therefor, available for signature both at city hall and also at public places as indicated below. Notice of the location of the public places where petitions may be signed shall be given by publication at least forty eight (48) hours in advance and such notice shall contain the specific location of such public place or places, the dates it or they will be open, and the times during which petitions may be signed. In the case of either a district councilor or a district school board member, the city clerk shall select one (1) site outside of city hall, but within the district of the member whose removal is sought, and such location shall be open for four (4) days between the hours of noon and 8:00 p.m. In the case of at large councilors or members of the school board, the city clerk shall select four (4) sites outside of city hall and such locations shall be open for four (4) days each between the hours of noon and 8:00 p.m.

The city clerk shall designate election clerks to supervise each such site. Election clerks shall be residents of Portland and at least eighteen (18) years of age. They shall be sworn to the faithful performance of their duties by the city clerk. Each qualified voter who signs a petition shall include ~~his or her~~their place of residence, providing either the street and number or a description sufficient to identify the place.

To mandate a vote in the case of an at large councilor or an at large member of the school board, the recall petition must be signed by at least three thousand (3,000) registered voters of the city, or in the case of a district councilor or district member of the school board, by at least fifteen hundred (1,500) registered voters of that member's district. (Referenda 12/1/75, 11/4/86; 11/2/10)

Section 3. Verification of recall petition.

At the expiration of the thirty (30) day period for signing petitions described in section 2, the city clerk shall declare

the petition closed and, within ten (10) days thereafter, shall ascertain whether or not the petitions have been signed by the requisite number of registered voters. The city clerk shall attach ~~the clerk's his or her~~ certificate, showing the results of such examination, to the petitions.

If the clerk's certificate should show that the petitions are insufficient, ~~the city clerk he or she~~ shall advise both the city council and also the person or persons whose removal was sought of that fact. A finding of insufficiency shall not prejudice the filing of a new petition for the same purpose, except that such new petition shall not be filed within twelve (12) months from the date of the receipt of the clerk's certificate by the city council. (Referenda 11/4/86; 11/2/10)

Section 4. Calling of recall election.

If the clerk's certificate should show that the petitions are sufficient, ~~the city clerk he or she~~ shall submit them, together with the clerk's certification, to the city council at its next regular meeting following certification, and shall also notify the person or persons whose removal is sought. The city council shall, within ten (10) days of receipt of the clerk's certificate, order an election to be held not less than fortyfive (45) nor more than ninety (90) days thereafter; except that, if a regular municipal election should occur within ninety (90) days after receipt of the certificate, the city council may, in its discretion, schedule the recall election for the same date as the regular municipal election. The recall election shall be called and held as other elections under this charter, except for the specific limitations imposed by this article.

All registered voters in the city may vote on the recall of an at large member of the council or school board; only the registered voters of the applicable district may vote on the recall of a district member of the council or school board. (Referenda 11/4/86; 11/2/10)

Section 5. Form of ballot.

Unless the member or members whose removal is sought shall have resigned within ten (10) days after the receipt by the city council of the clerk's certificate, the form of the question to be submitted to the voters shall, as nearly as possible, be: "Shall (name of official and ~~the official's his or her~~ title) be recalled?" (Referendum 11/4/86)

Section 6. Count of ballots.

In case a majority of those voting for and against the recall of any official shall vote in favor of recalling such official, ~~the official~~ ~~he or she~~ shall be thereby removed, and, in that event, the candidate to succeed such person for the balance of the unexpired term shall be determined as provided for in the case of a vacancy in the office.

If a majority of those voting should decline to recall a particular official, then no proceedings, seeking the recall of that same official, shall be initiated under this article within twelve (12) months from the date of the election in which ~~the official's~~ ~~his or her~~ recall was sought. (Referendum 11/4/86)

Section 7. Election may be ordered.

If a member of either the city council or school board who is recalled should either request a recount or dispute the election as permitted by law, then that member shall remain in office until the recount or dispute has been finally determined; and the provisions of article II, section 7 and article III, section 6, relating to vacancies in the city council or school board, shall be stayed. (Referendum 11/4/86; 11/2/10)

ARTICLE VI. ADMINISTRATIVE OFFICERS

Section 1. Appointments.

(a) The following officers shall be appointed by vote of at least five (5) members of the city council: city manager, city clerk, and corporation counsel, and they may appoint constables at large.

(b) All department heads shall be appointed by the city manager, subject to confirmation by the city council.

(c) All attorneys employed in the corporation counsel's office shall be appointed by the corporation counsel, subject to confirmation by the city council.

(d) All other employees shall be appointed by the city manager upon recommendation of the heads of their departments. (Referendum 11/4/86; 11/2/10)

Section 2. Organizational powers.

The city council shall have power to provide by ordinance for the organization, conduct, and operation of the departments, agencies, offices, and boards of the city, for the creation of additional departments, agencies, offices, and boards and for the division of any such departments, agencies, offices, and boards; and for the alteration, abolition, assignment, or reassignment of all such departments, divisions, agencies, offices and boards; provided, however, there shall be a director of finance to perform the functions specified in article VII of this Charter. The city council shall, by ordinance, designate those department heads responsible for performing duties required by state law. (Referendum 11/4/86)

Section 3. Civil service rules.

The city council shall provide by ordinance for a system of civil service rules for the appointment, promotion, demotion, layoff, reinstatement, suspension, and removal of the members of the police department and of the fire department, other than the chiefs of such departments, and for a civil service commission to administer the same.

Section 4. Compensation and tenure of offices.

The city council shall fix by order the salaries of the appointees of the city council. Salaries of the appointees of the city manager shall be fixed by the city manager, subject to the approval of the city council. All appointive officers shall hold office during the pleasure of the appointing power.

Section 5. Appointment; qualifications; powers and duties of the city manager.

The city manager shall be chosen by the city council solely on the basis of character and executive administrative qualifications, and may or may not be a resident of the City of Portland or of the State of Maine at the time of appointment. Such person shall give bond for the faithful discharge of ~~his or her~~ their duties to the City of Portland and in such sum as the city council shall determine and direct, and with surety or sureties to be approved by the city council. The premium on such bond shall be paid by the city. Such person shall be the administrative head of the city and shall be responsible to the city council for the administration of all departments. Neither the mayor nor members of the city council shall direct, request

or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment. Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards and commissions, council committees, neighborhood and other groups and organizations, on city work.

The city manager's powers and duties shall be as follows:

- (a) To see that the laws and ordinances are enforced, but shall delegate to the chief of the police department the active duties connected therewith regarding criminal conduct.
- (b) To exercise control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.
- (c) To implement the policy decisions of the city council.
- (d) To coordinate city programs and operations and recommend improvements in such programs and operations to the council.
- (e) To prepare city budgets, in consultation with and incorporating policy guidance of the mayor, and to present such budgets to the council.
- (f) To make appointments as provided in this charter.
- (g) To attend meetings of the city council, except when ~~the city manager's~~ ~~his or her~~ removal is being considered, and recommend for adoption such measures as ~~the city manager~~ ~~he or she~~ may deem expedient.
- (h) To keep the city council fully advised as to the business and financial condition and future needs of the city and to furnish the city council with all available facts, figures, and data connected therewith when requested.

(i) To prepare a five (5) year rolling capital improvement plan for annual presentation to the city council, which plan includes the following:

1. A one (1) year plan of specific projects and their cost;
2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; and
3. A discussion of the basis for the plan and the factors which went into its development or amendments.

(j) To prepare and submit to the city council such reports as are requested or ~~the city manager he or she~~ deems advisable; and

(k) To perform such other duties as may be prescribed by this charter or required by ordinance of the city council. (Referenda 11/4/86; 11/2/10)

Section 6. Vacancy in office of city manager.

During any vacancy in the office of city manager, and during any absence or disability of the city manager of more than sixty (60) days, the city council shall designate a properly qualified person to perform the duties of manager and fix such person's compensation. During a temporary absence of sixty (60) days or less, the city manager may designate a qualified person to perform the duties of manager during such absence. While so acting, such person shall have the same powers and duties as those given to and imposed on the city manager. Before entering ~~the city manager's his or her~~ duties, ~~the city manager's designee he or she~~ shall give bond to the City of Portland in a sum and with surety or sureties to be approved by the city council. The premium on such bond is to be paid by the city. (Referendum 11/2/10)

Section 7. Duties of administrative officers.

Duties of administrative officers shall be prescribed by the appointive power, but such duties shall not be inconsistent with this charter or any ordinance enacted by the city council as provided herein. (Referendum 11/4/86; 11/2/10)

Section 8. Continuity in office.

Any and all officers, department heads, and employees of the City of Portland on the effective date of this charter shall continue in such capacity until a successor is appointed and qualified as provided herein, unless sooner removed by the appointive power designated herein. (Referendum 11/4/86; 11/2/10)

ARTICLE VII. BUSINESS AND FINANCIAL PROVISIONS

Section 1. Accounts and records.

Accounts shall be kept by the director of finance, showing the financial transactions of all departments of the city, and the school department. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the city. The director of finance shall furnish to the city manager each month a report containing in detail the revenues, expenses and expenditures of the city on all accounts, and for each appropriation item the expenditures made and the obligations incurred during the preceding calendar month and the total unencumbered balance. All the accounts of the city and the school department shall be audited annually by a qualified certified public accountant to be chosen by the city council. (Referendum 12/1/75; 11/2/10)

Section 2. Collaboration between city and schools.

To the extent practicable and lawful, the city and the school department shall endeavor to share staff and resources and otherwise cooperate with one another in order to provide better city and school services in a cost effective manner. (Referendum 11/2/10)

Section 3. Reports.

The director of finance shall publish each month a set of financial statements reflecting the financial condition of the city and the school department, and such other financial information as may be required by the city council.

The director of finance shall produce a comprehensive financial report on an annual basis which conforms to "Generally Accepted Accounting Principles." (Referendum 11/2/10)

Section 4. Fiscal year.

The fiscal year of the city shall be July 1 through June 30, or such other fiscal year as the city council shall determine. (Referenda 6/13/78; 11/4/86; 11/2/10))

Section 5. Annual budget.

Not later than two (2) months before the end of the fiscal year, the city manager shall submit to the city council a proposed city budget prepared by the city manager for the ensuing fiscal year. The mayor shall submit comments on the proposed city budget, along with any proposed modifications, concurrently with the manager's submission.

The city council shall fix a time and place for holding a public hearing upon the proposed city budget prepared by the manager, and shall give not less than ten (10) days prior public notice of such hearing, which hearing shall be at least ten (10) days before the final passage of the appropriation resolve. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 6. Budget content.

The proposed city budget prepared by the manager shall provide a complete financial plan of city general and enterprise funds and activities for the ensuing fiscal year. In organizing the budget, the city manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating proposed tax levies, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year.

The total of proposed expenditures shall not exceed the total of proposed income. (Referenda 6/13/78; 11/2/10)

Section 7. Appropriation resolve.

The city council shall adopt the annual appropriation resolve for the next fiscal year on or before the last day of the twelfth month of the fiscal year currently ending. Such resolve shall appropriate those amounts deemed necessary for general city purposes and additionally one gross amount for school purposes as required by section 5 of article III. The

total amount appropriated shall not exceed the estimated revenue of the city.

If it fails to adopt such resolve by this date, the city council may make appropriation for current departmental expenses, chargeable to the appropriation for the year, when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force. These continuing appropriations shall not be subject to the mayor's veto in section 8 below.

The city council may by resolution appropriate to any purpose or object for which there shall have been no appropriation for the current year, or for which the appropriation for the current year has proved insufficient, any accruing revenue of the city not appropriated as hereinbefore provided and any unencumbered appropriation balance, or portion thereof, remaining after the purpose of the appropriation shall have been satisfied or abandoned. Such appropriations shall not be subject to the mayor's veto in section 8 below. (Referenda 6/13/78; 11/2/10)

Section 8. Mayoral veto of general city purposes appropriations in the appropriation resolve.

Within five (5) business days of the meeting at which the city council adopts the annual appropriation resolve, the mayor may veto the appropriation for general city purposes in such resolve by written communication to the other members of the city council. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

Any such veto of the appropriation for general city purposes shall not affect city payment of debt service obligations on previously authorized bonds, nor shall it affect the school budget appropriation.

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be overridden by a vote of at least six (6) members of the city council. The mayor shall not vote on such override item.

If a veto is overridden, the general city purposes appropriation will take effect on the first day of the fiscal

year, or on the day immediately following the override vote, if such vote is after the first day of the fiscal year.

If a veto is not overridden, then at the same meeting the override vote is taken, the general city purposes appropriation which was vetoed shall become an item for further consideration by the city council, without the need for a motion for reconsideration, and the city appropriation may be modified, amended, or otherwise acted upon to secure passage at that meeting or a subsequent meeting without the need for two readings prior to passage.

In the event the city council does not override the veto or does not secure passage of the annual appropriation for general city purposes prior to the start of the fiscal year, or has not otherwise acted to provide continuing appropriations under the second paragraph of section 7 above, then the appropriations for general city purposes in effect for the prior fiscal year shall go into effect as of the first day of the fiscal year, with expenditures chargeable to the appropriation for the year, until the appropriation for general city purposes is approved.
(Referendum 11/2/10)

Section 9. Unexpended appropriations.

All appropriations in the annual budget shall lapse at the close of the fiscal year unless specifically continued by order of the city council, and the unexpended appropriations shall be transferred to the appropriate fund balance account. (Referendum 11/2/10)

Section 10. Borrowing.

The borrowing of money by and for the city shall be limited as to form and purpose by section 11 and section 12 of this article. The credit of the city shall in no manner be loaned to any individual, association or corporation. (Referendum 11/2/10)

Section 11. Bond issues.

Money may be borrowed, within the limits fixed by the constitution and statutes of the state, now or hereafter applying to Portland, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings, the proceeds to be used for the acquisition of land, the construction, reconstruction, major alteration, extraordinary repairs, and equipment of buildings and other permanent public

improvements, the purchase of departmental equipment, for economic development to the extent determined by the City Council to serve a valid public purpose, to create reserves to settle workers' compensation obligations, to fund, refund, pay or to create reserves for the payment of the city's unfunded pension fund liabilities and for the payment of refunding bonds, notes and other evidences of indebtedness previously issued, or for any other purpose permitted by state law.

No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in two (2) public places in the City of Portland and publishing such notice at least twice in a newspaper of general circulation in Portland at least two (2) weeks before final action of the city council. In addition, the city council may, in its discretion, provide that such notice shall be published on the city's website and in such other additional media as the city council determines are appropriate to notify the general public of the public hearing.

Any order authorizing the issue of bonds must be approved by vote of at least seven (7) members of the city council. (Referenda 11/4/86; 11/5/91; 11/8/94; 11/2/99; 11/2/10)

Section 12. Temporary loans.

Money may be borrowed in anticipation of receipts from taxes during any fiscal year but the aggregate amount of such loans outstanding at any one (1) time shall not exceed eighty (80) percent of the revenue received from taxes during the preceding fiscal year. All such loans shall be paid within the year out of the receipts from taxes for the fiscal year in which the loans are made. Money may be borrowed in anticipation of money to be received from the sale of bonds to be issued, in case such bond issue has been authorized; all such loans shall be subject to the provisions of the laws of the State of Maine in relation thereto. This section shall not limit in any way the power granted to towns and cities to borrow money as contained in the Revised Statutes of the State of Maine and acts amendatory thereof and additional thereto. (Referendum 11/4/86; 11/2/10)

Section 13. Payments.

The director of finance shall establish adequate financial controls to reasonably ensure that all payrolls, bills and other claims and demands against the city are in proper form, correctly computed, duly certified and legally due and payable.

The director of finance may require any claimant to make oath to the validity of the claimant's ~~his or her~~ claim, may investigate any claim and for such purpose or purposes may examine witnesses under oath. (Referendum 11/2/10)

Section 14. Bonds of officers.

The city council shall require a bond with sufficient surety or sureties, satisfactory to the city council, from all persons trusted with the collection, custody or disbursement of any of the public moneys; and may require such bond from such other officials as it may deem advisable; the premium charges for such bonds to be paid by the city. (Referendum 11/2/10)

Section 15. Collection and custody of city moneys.

All moneys received by any officer, employee or agent of the city belonging to the city, or for or in connection with the business of the city, shall forthwith be paid by the officer, employee or agent receiving the same into the city treasury, and shall then be deposited by the director of finance with a federally insured banking institution or institutions or insured credit union or unions. All interest from all deposits of money belonging to the city shall accrue to the benefit of the city. (Referendum 11/2/10)

Section 16. Voter referendum required for certain city council actions.

(a) The city council shall submit the following to voter referendum:

- (1) Orders or resolves authorizing the issuance of general obligation securities of the city in a principal amount greater than five onehundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment; or
- (2) Orders or resolves directly or indirectly obligating the city to expend, over a term greater than one (1) municipal year, municipal tax funds in excess of an amount greater than seven and onehalf onehundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment.

(b) The provisions of this section shall not be applicable to any order or resolve authorizing (i) the refunding of any securities or other obligations of the city; (ii) the issuance of general obligation securities, or other direct or indirect obligations, of the city for streets, sidewalks, or storm or sanitary sewers; or (iii) any construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other declared emergency. For purposes of this section, the city council may by vote of at least seven (7) of its members adopt emergency orders or resolves authorizing construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other emergency and such orders or resolves shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the city council shall be conclusive.

(c) Any order or resolve described in subsection (a) of this section shall be approved by separate action of the city council.

(d) No order or resolve described in subparagraph (a) of this section, not excepted by subparagraph (b), shall become effective until approved by a majority of voters voting at a regular or special municipal election. In the event that the total number of votes cast for and against the question for the referred order or resolve should be less than ten (10) percent of the registered voters of the city, then such order or resolve shall be deemed to be approved and effective.

(e) The form of the ballot question for the referred order or resolve shall be substantially as follows:

Shall the order or resolve entitled "____
____", be approved?
(Referendum 11/4/86; 11/2/10)

ARTICLE VIII. MISCELLANEOUS PROVISIONS

Section 1. No personal interest.

No member of the city council or school board or board or commission thereof and no officer or employee of the city or school department shall:

- (a) Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland or the school board, except ~~his or her~~their employment contract, or in the sale to or by the city or school department of any land, materials, supplies or services when such officer, employee or member exercises on behalf of the city or school department any function or responsibility with respect to such contract or sale. All contracts or sales made in violation hereof are void, and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such transaction.
- (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties.
- (c) Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Referenda 11/4/86; 11/2/10)

Section 2. Ordinances, rules and regulations continued.

All ordinances in force at the time that this charter takes effect, not inconsistent with this charter, shall continue in force until amended or repealed. All rules and regulations of the municipal officers or of any office of the City of Portland in force at the time that this charter takes effect, not inconsistent with the provisions hereof, shall continue in force until amended or repealed.

Section 3. Continuity of actions.

All rights, actions, proceedings, prosecutions and contracts of the city or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent therewith shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Section 4. Summons before city council and civil service commission.

The clerks of the supreme judicial and superior courts may issue summonses or subpoenas for witnesses to attend and to produce books, documents and papers at any meeting of the city council or of the civil service commission of the City of Portland at which a hearing is had in any matter regarding any alleged dereliction, which summonses shall be served as summonses are required to be served in matters before the supreme judicial or superior courts. Failure to obey a summons or subpoena shall be punished by the appropriate court in the same manner as contempt is punished under the general law. (Referendum 11/4/86)

Section 5. Effect of private and special laws.

Private and special laws which apply to the City of Portland in effect on November 4, 1986 shall continue in force until amended or repealed. (Referendum 11/4/86)

APPENDIX A

Charter Legislative History

1. Town of Portland incorporated by Act of Commonwealth of Massachusetts on July 4, 1786; Town of Portland Records, p. 1
2. City of Portland incorporated by adoption of charter on March 26, 1832; original charter can be found in Chapter 248, Special Laws of Maine 1832, p. 380; amendments as follows:
 - c. 325, S.L. 1833, p. 501
 - c. 500, S.L. 1834, p. 749
 - c. 402, S.L. 1838, p. 511
 - c. 541, S.L. 1839, p. 648
 - c. 33, P & SL 1842, p. 25
 - c. 200, P & SL 1845, p. 258
 - c. 266, P & SL 1845, p. 310
 - c. 233, P & SL 1849, p. 333
 - c. 330, P & SL 1850, p. 458
 - c. 167, P & SL 1853, p. 158
 - c. 35, P & SL 1857, p. 48
 - c. 103, P & SL 1857, p. 93
 - c. 109, P & SL 1857, p. 100
3. A total revision of the charter was accomplished in 1863; c. 275, P & SL 1863, p. 257; amendments as follows:
 - c. 348, P & SL 1870, p. 316

c. 647, P & SL 1871, p. 624
c. 21, P & SL 1875, p. 16
c. 8, P & SL 1881, p. 9
c. 86, P & SL 1881, p. 86
(c. 450, P & SL 1897, p. 707 Revision of charter rejected by voters in 1897)

c. 384, P & SL 1901, p. 569
c. 68, P & SL 1903, p. 116
(c. 287, P & SL 1905, p. 328 abolishing common council rejected by voters April 24, 1905)

c. 344, P & SL 1907, p. 638
c. 427, P & SL 1907, p. 758
(c. 148, P & SL 1921, p. 513 "Murray Bill" charter revision rejected by voters September 13, 1921)
(c. 149, P & SL 1921, p. 532 "Brewster Bill" charter revision rejected by voters September 13, 1921)

4. A total revision of the charter was accomplished in 1923 by adoption by voters of "Brewster Bill" on September 11, 1923; c. 109, P & SL 1923, p. 596; ("Nichols Bill" c. 104, P & SL 1923, p. 557 was rejected same date); amendments as follows:

c. 56, P & SL 1929, p. 484
(c. 112, P & SL 1929, p. 604 Mayor Alderman form rejected by voters on September 10, 1929)

c. 31, P & SL 1931, p. 353
c. 50, P & SL 1945, p. 629
c. 113, P & SL 1945, p. 736
c. 144, P & SL 1945, p. 71
c. 72, P & SL 1947, p. 722
c. 72, P & SL 1949, p. 765
c. 103, P & SL 1949, p. 803
c. 28, P & SL 1953, p. 528
c. 108, P & SL 1955, p. 756
c. 88, P & SL 1957, p. 707
c. 143, P & SL 1959, p. 873

5. A total revision of the charter was accomplished in 1961; c. 194, P & SL 1961, p 1125; amendments as follows:

c. 64, P & SL 1963, p. 966
c. 65, P & SL 1963, p. 967
c. 157, P & SL 1963, p. 1187
c. 177, P & SL 1963, § 1, p. 1291
(c. 6, P & SL 1965, p. 649 rejected by voters on December 6, 1965)
c. 7, P & SL 1965, p. 650
c. 81, P & SL 1965, p. 760
(c. 127, P & SL 1965, p. 849 rejected by voters on December 6, 1965)
c. 221, P & SL 1967, p. 136
c. 83, P & SL 1969, p. 1628
c. 136, P & SL 1969, p. 1792
c. 146, P & SL 1969, p. 1820
(c. 185, P & SL 1969, p. 1958 rejected by voters on November 3, 1970)

State constitutional law reference Municipal home rule, Const. of Maine, Art. VIII, Pt. 2.

Referenda 12/4/72	Art. I, 1
Referenda 12/1/75	Art. II, 2
	Art. IV, 2
	Art. IV, 4
	Art. V, 2

Referenda 11/2/76** Art. VII, 1
 Art. II, 1
 Art. II, 4
 Art. III, 1,2,5
 Art. IV, 2,3,4,6
 Art. V, 2
 Referenda 6/13/78 Art. II, 1,2,3,5
 Art. III, 1,2,3,4
 Art. IV, 1,2,3,6
 Art. VII,3,4,5,6
 Referenda 11/4/86***Art. II, 1,2,4,5
 Art. III, 1,5
 Art. IV, 1,2,3,4,6,7,9
 Art. V, 1,2,3,4,5,6,7
 Art. VI, 1,2,5
 Art. VII 7-10 (Rpld)
 Art. VI, 11-12 (Rnbd as Art. VI,
 7-8)
 Art. VII, 3,4,9,10,16
 Art. VIII, 1,4,5
 Art. VIII, 6 (Rpld)
 Referenda 11/3/87 Art. II, 2
 Art. III, 1
 Referenda 11/5/91 Art. VII, 9
 Referenda 11/8/94 Art. VII, 9
 Referenda 11/2/99 Art. II, 4
 Art. III, 5
 Art. VII, 9
 Referenda 11/7/00 Art. II, 3,5
 Art. III, 2,3
 Art. IV, 2
 Referenda 11/6/01 Art, IV, 2,6,8,10
 Referenda 11/4/08 Art. IV, 3,4,5, 6,7,11
 Referenda 11/2/10**** Charter Revisions recommended
 by the Portland Charter Commission
 established on November 4, 2008, and passed
 by the voters on November 2,2010

****Editor's note**The amendment establishing district councilor elections became effective January 1, 1976, except that for the purpose of nomination and election of district councilors such amendment shall apply as the presently occupied district seats become available thereafter by normal expiration of term or by vacancy and to every district election thereafter.

*****Editor's note**A referendum passed Nov. 4, 1986 and effective July 1, 1987, repealed former sections 7 through 10 of article VI to eliminate references to obsolete offices (assistant assessors, director of public welfare) and renumbered former sections 11 and 12 as 7 and 8 respectively. Former sections 7 through 10 derived from the legislation enumerated in the first editor's note to this Charter.

*****Editor's note**A referendum passed Nov. 4, 1986, effective July 1, 1987, amended section 4 of article VIII to clarify the summonssubpoena power and to provide that failure to obey either a summons or a subpoena will subject offenders to contempt. Former section 5 of this article was deleted as a result of the amendment to section 4 and a new section 5 added to preserve certain rights granted to the city by special acts of the legislature. Former

section 6 was deleted to conform to 30 M.R.S.A. § 1915(4) which establishes the effective date of Charter revisions. See the editor's note to the Charter for derivations of deleted sections.

******Editor's note--**Portland voters approved a referendum passed on November 4, 2008 to establish a Portland Charter Commission to make recommendations to revise the Portland City Charter. Those recommendations were subsequently passed by the voters on November 2, 2010, and incorporated the provisions on the popularly elected mayor in Article 2, as well as making changes to the School and Elections articles and technical amendments throughout the document.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 12, 2022

SUBJECT: Order 43-22/23 Approving Proposed Ballot Questions and Summaries Re: Charter Commission Modifications to Portland City Charter and Placing them on the November 8, 2022 Ballot - Sponsored by Ashley Rand, City Clerk

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: no

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This order approves ballot questions and summaries of the changes to the City Charter being recommended by the 2020 Portland Charter Commission and submits the changes to the voters at the November 8, 2022 election.

The Charter Commission reviewed the existing City Charter over the past year. It has recommended the following revisions to the Portland City Charter.

Attachment 1—Preamble and Land Acknowledgement

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission to Amend the Preamble and Include a Land Acknowledgement as Summarized Below?

1. Proposed Summary:

This modification revises the existing Preamble of the Charter, restates the purpose of the city's government and of its system of public education, and adds a land acknowledgment to address and respect Portland's past.

Attachment 2—Governance

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Governance and Other Governance Related Matters as Summarized Below?

1. Proposed Summary:

These modifications establish an executive mayor, allow the council to remove or censure the mayor, change from a city manager to a chief administrator, increase the number of city council seats from nine (9) to twelve (12), and make other changes relating to governance as follows:

- Creates an executive mayor and replaces the city manager with the position of chief administrator;
- Grants the executive mayor the following powers: nominate for appointment and remove the chief administrator; nominate for appointment all department head positions; exercise veto power over the city budget and city ordinances subject to council override; recommend for adoption by the city council rules that govern communications between city staff and elected officials; issue executive orders to implement council policy; and introduce legislation to the council;
- Increases the mayor's compensation from one-and-a-half (1.5) times to two (2) times the median household income and ties city council and school board member compensation to a minimum of ten percent (10%) of the mayor's compensation;
- Establishes the chief administrator as responsible for the administration of all departments and delivery of city services and grants the chief administrator the right to remove department heads in consultation with the executive mayor;
- Changes the composition and size of the city council by increasing the number of districts from five (5) to nine (9) and maintaining the existing three (3) at-large councilors;
- Grants the city council the power to censure or remove the mayor for cause, and to order a recall election of the mayor, by super-majority vote;
- Requires that the city council elect from among its members a chair and vice-chair, who shall organize the council into various committees;
- Provides that the city council chair shall preside over city council meetings and set the council agendas;
- Requires that the city council create a review committee that shall (i) conduct regular evaluations of the performance of the corporation counsel and city clerk and (ii) hold regular meetings with the chief administrator and department heads to understand the general working conditions and morale at city hall; the mayor shall lead the annual performance review of the chief administrator;
- Changes the composition of the school board by increasing the number of districts from five (5) to nine (9) and eliminating the at-large seats so that all members will represent a district;
- Directs the school board and city council to establish a joint committee on budget guidance, consisting of four (4) city councilors and four (4) school board members, appointed by the council chair and school board chair, respectively, to develop a proposed non-binding budget guidance document for the city council and school board;
- Directs the city council to develop and implement a participatory budget development process for the city budget that involves input from as many Portland residents as possible;
- Modifies the capital improvement program process to require the chief administrator to jointly prepare with the superintendent a five-year capital improvement plan; and
- Modifies the vacancy provisions for the city council and school board to require a special election if the vacancy occurs more than six (6) months prior to the next municipal election. If the vacancy occurs within six (6) months prior to the next regular election, the city council or school board, as applicable, shall appoint a qualified person.

Attachment 3—Clean Elections

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Clean Elections as Summarized Below?

1. Proposed Summary:

These modifications establish a City of Portland Clean Election Fund to provide public campaign funds to qualified candidates for elected municipal offices, beginning in FY 2023-2024. Candidate participation shall be voluntary. The city council shall provide an independent allocation from the city's budget each year to sustain the Clean Election Fund and the city council shall by ordinance direct that the Clean Election Fund must:

- Limit the amount of funds a participating candidate may raise;
- Be limited to candidates who meet certain requirements, such as demonstrated public support and participation in a city-sponsored forum or voter education event; and
- Require that all unused funds be returned to the Clean Election Fund.

In addition to establishing the Clean Election Fund, these modifications:

- Prohibit corporate contributions to any candidate for municipal office;
- Prohibit ballot question contributions or expenditures from any entity that is substantially under foreign influence; and
- Require that all contributions to campaigns be reported to the city clerk and that the city clerk create a searchable online database of information contained in filed registrations and campaign finance reports.

Attachment 4—Proportional Ranked Choice Voting

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Proportional Ranked Choice Voting as Summarized Below?

1. Proposed Summary:

This Charter modification authorizes the city to use a proportional ranked choice voting method for elections in which more than one person is to be elected to a single office (i.e. a multiple seat election) and directs the city council to enact an ordinance to establish the proportional ranked choice voting method.

Attachment 5—School Board Budget Autonomy

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to School Board Budget Autonomy as Summarized Below?

1. Proposed Summary:

This Charter modification changes the current school budget adoption process by transferring school budget adoption authority from the city council to the school board. The city council has discretion to conduct a public hearing on the proposed school budget and to provide a non-binding recommendation to the school board for its consideration, which the school board may or may not adopt, in whole or in part. The adopted school budget continues to be voted upon at the State-required budget validation referendum election, but if that is discontinued by the voters, the adopted school budget would be voted upon at a municipal school budget referendum.

Attachment 6—Peaks Island Council

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Peaks Island Council as Summarized Below?

1. Proposed Summary:

This Charter modification requires the city council to maintain the ordinance it has enacted establishing the Peaks Island Council as an elected advisory body to the city council and setting forth its powers, duties, membership requirements, and other provisions.

Attachment 7—Civilian Police Review Board

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Civilian Police Review Board as Summarized Below?

1. Proposed Summary:

This Charter modification replaces the current Police Citizens Review Subcommittee, established by current city ordinance, with a civilian police review board consisting of nine or more members, with powers, duties, funding and staffing as provided in the proposed Charter language and subject to city council's enactment of procedural ordinance provisions.

The civilian police review board shall:

- Be appointed by the city council;
- Receive complaints directly from civilians for referral to Portland Police Department Police Command and/or Internal Affairs for investigation;
- Review the Department's Command and Internal Affairs investigation reports for due process issues, including issues of fairness, thoroughness and objectivity, and may issue its own reports on those investigation reports; and
- Be funded, as needed by the city council, to provide for part-time or full-time staff, including a community liaison and a police liaison.

Appeals of the civilian police review board reports may be taken to the city council.

Attachment 8—Ethics Commission and Code of Ethics

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Universal Resident Voting as Summarized Below?

1. Proposed Summary:

This modification requires the City Council to form an independent Ethics Commission and to adopt a Code of Ethics recommended by the Ethics Commission.

- The Ethics Commission shall have discretionary power to render advisory opinions on matters of city business and violations of public trust.
- The modification also allows the Ethics Commission to recommend the hiring of an Accountability Officer to provide education to the public and officials; to serve as an independent ombudsperson in resolution of disputes in an advisory capacity; and to provide training to city officials on ethical matters.

This item was agended as a two-reading item to give the public additional time to review the recommendations

and prepare comments. It was given a first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Charter Commission Ballot Questions and Summaries 8.8.2022
2. Perkins Thompson Opinion for Charter Questions 1, 2, 4, 6, 7 and 8
3. John Brautigam Opinion for Charter Question 3 (Clean Elections)
4. Drummond Woodsum Opinion Opinion for Charter Question 5 (School Board Budget Autonomy)
5. 2022 Portland Charter Commission Final Report
6. Memo to City Council Re_ Charter Modification Summaries for 9.1.2022

Prepared by:

Date: 08/12/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING PROPOSED BALLOT QUESTIONS AND SUMMARIES
RE: CHARTER COMMISSION MODIFICATIONS TO PORTLAND CITY CHARTER
AND
PLACING THEM ON THE NOVEMBER 8, 2022 MUNICIPAL BALLOT**

WHEREAS, the City Council hereby finds that it is not practical to print the proposed modifications on the ballot and that a summary would not misrepresent the subject matter of the proposed modifications, and

WHEREAS, the attached summaries fairly describe the content of the proposed modifications and do not contain information designed to promote or oppose the modifications;

NOW THEREFORE, BE IT ORDERED, that the summaries for the Charter modifications recommended by the Portland Charter Commission are hereby approved as Attachment 1, Preamble and Land Acknowledgement, Attachment 2, Governance, Attachment, 3, Clean Elections, Attachment 4, Proportional Ranked Choice Voting, Attachment 5, School Board Budget Autonomy, Attachment 6, Peaks Island Council. Attachment 7, Civilian Police Review Board, and Attachment 8, Ethics Commission and Code of Ethics, on the following pages; and

BE IT FURTHER ORDERED, that the City Clerk shall place the attached Questions and Summaries on the ballot at the Municipal election to be held on November 8, 2022.

Attachment 1

Preamble and Land Acknowledgement

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission to Amend the Preamble and Include a Land Acknowledgement as Summarized Below?

1. Proposed Summary:

This modification revises the existing Preamble of the Charter, restates the purpose of the city's government and of its system of public education, and adds a land acknowledgment to address and respect Portland's past.

Attachment 2

Governance

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Governance and Other Governance Related Matters as Summarized Below?

1. Proposed Summary:

These modifications establish an executive mayor, allow the council to remove or censure the mayor, change from a city manager to a chief administrator, increase the number of city council seats from nine (9) to twelve (12), and make other changes relating to governance as follows:

- Creates an executive mayor and replaces the city manager with the position of chief administrator;
- Grants the executive mayor the following powers: nominate for appointment and remove the chief administrator; nominate for appointment all department head positions; exercise veto power over the city budget and city ordinances subject to council override; recommend for adoption by the city council rules that govern communications between city staff and elected officials; issue executive orders to implement council policy; and introduce legislation to the council;
- Increases the mayor's compensation from one-and-a-half (1.5) times to two (2) times the median household income and ties city council and school board member compensation to a minimum of ten percent (10%) of the mayor's compensation;
- Establishes the chief administrator as responsible for the administration of all departments and delivery of city services and grants the chief administrator the right to remove department heads in consultation with the executive mayor;
- Changes the composition and size of the city council by increasing the number of districts from five (5) to nine (9) and maintaining the existing three (3) at-large councilors;
- Grants the city council the power to censure or remove the mayor for cause, and to order a recall election of the mayor, by super-majority vote;
- Requires that the city council elect from among its members a chair and vice-chair, who shall organize the council into various committees;
- Provides that the city council chair shall preside over city council meetings and set the council agendas;
- Requires that the city council create a review committee that shall (i) conduct regular evaluations of the performance of the corporation counsel and city clerk and (ii) hold regular meetings with the chief administrator and department heads to understand the general working conditions and morale at city hall; the mayor shall lead the annual performance review of the chief administrator;
- Changes the composition of the school board by increasing the number of districts from five (5) to nine (9) and eliminating the at-large seats so that all members will represent a district;

- Directs the school board and city council to establish a joint committee on budget guidance, consisting of four (4) city councilors and four (4) school board members, appointed by the council chair and school board chair, respectively, to develop a proposed non-binding budget guidance document for the city council and school board;
- Directs the city council to develop and implement a participatory budget development process for the city budget that involves input from as many Portland residents as possible;
- Modifies the capital improvement program process to require the chief administrator to jointly prepare with the superintendent a five-year capital improvement plan; and
- Modifies the vacancy provisions for the city council and school board to require a special election if the vacancy occurs more than six (6) months prior to the next municipal election. If the vacancy occurs within six (6) months prior to the next regular election, the city council or school board, as applicable, shall appoint a qualified person.

Attachment 3

Clean Elections

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Clean Elections as Summarized Below?

1. Proposed Summary:

These modifications establish a City of Portland Clean Election Fund to provide public campaign funds to qualified candidates for elected municipal offices, beginning in FY 2023-2024.

Candidate participation shall be voluntary. The city council shall provide an independent allocation from the city's budget each year to sustain the Clean Election Fund and the city council shall by ordinance direct that the Clean Election Fund must:

- Limit the amount of funds a participating candidate may raise;
- Be limited to candidates who meet certain requirements, such as demonstrated public support and participation in a city-sponsored forum or voter education event; and
- Require that all unused funds be returned to the Clean Election Fund.

In addition to establishing the Clean Election Fund, these modifications:

- Prohibit corporate contributions to any candidate for municipal office;
- Prohibit ballot question contributions or expenditures from any entity that is substantially under foreign influence; and
- Require that all contributions to campaigns be reported to the city clerk and that the city clerk create a searchable online database of information contained in filed registrations and campaign finance reports.

Attachment 4

Proportional Ranked Choice Voting

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Proportional Ranked Choice Voting as Summarized Below?

1. Proposed Summary:

This Charter modification authorizes the city to use a proportional ranked choice voting method for elections in which more than one person is to be elected to a single office (i.e. a multiple seat election) and directs the city council to enact an ordinance to establish the proportional ranked choice voting method.

Attachment 5

School Board Budget Autonomy

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to School Board Budget Autonomy as Summarized Below?

1. Proposed Summary:

This Charter modification changes the current school budget adoption process by transferring school budget adoption authority from the city council to the school board. The city council has discretion to conduct a public hearing on the proposed school budget and to provide a non-binding recommendation to the school board for its consideration, which the school board may or may not adopt, in whole or in part. The adopted school budget continues to be voted upon at the State-required budget validation referendum election, but if that is discontinued by the voters, the adopted school budget would be voted upon at a municipal school budget referendum.

Attachment 6

Peaks Island Council

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Peaks Island Council as Summarized Below?

1. Proposed Summary:

This Charter modification requires the city council to maintain the ordinance it has enacted establishing the Peaks Island Council as an elected advisory body to the city council and setting forth its powers, duties, membership requirements, and other provisions.

Attachment 7

Civilian Police Review Board

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Civilian Police Review Board as Summarized Below?

1. Proposed Summary:

This Charter modification replaces the current Police Citizens Review Subcommittee, established by current city ordinance, with a civilian police review board consisting of nine or more members, with powers, duties, funding and staffing as provided in the proposed Charter language and subject to city council's enactment of procedural ordinance provisions.

The civilian police review board shall:

- Be appointed by the city council;
- Receive complaints directly from civilians for referral to Portland Police Department Police Command and/or Internal Affairs for investigation;
- Review the Department's Command and Internal Affairs investigation reports for due process issues, including issues of fairness, thoroughness and objectivity, and may issue its own reports on those investigation reports; and
- Be funded, as needed by the city council, to provide for part-time or full-time staff, including a community liaison and a police liaison.

Appeals of the civilian police review board reports may be taken to the city council.

Attachment 8

Ethics Commission and Code of Ethics

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Universal Resident Voting as Summarized Below?

1. Proposed Summary:

This modification requires the City Council to form an independent Ethics Commission and to adopt a Code of Ethics recommended by the Ethics Commission.

- The Ethics Commission shall have discretionary power to render advisory opinions on matters of city business and violations of public trust.
- The modification also allows the Ethics Commission to recommend the hiring of an Accountability Officer to provide education to the public and officials; to serve as an independent ombudsperson in resolution of disputes in an advisory capacity; and to provide training to city officials on ethical matters.

PERKINS THOMPSON

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Portland, ME 04112
Office 207.774.2635
Fax 207.871.8026

Physical Address
One Canal Plaza
Portland, ME 04101

www.perkinsthompson.com

James N. Katsiaficas
jkatsiaficas@perkinsthompson.com

Direct Dial (207) 400-8108

July 7, 2022

Michael Kebede, Chair
Portland Charter Commission
389 Congress Street
Portland, ME 04101

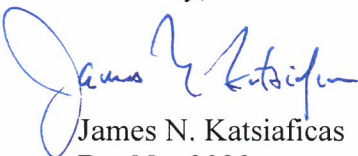
Re: 2021-2022 Portland Charter Commission
Request for Legal Opinion

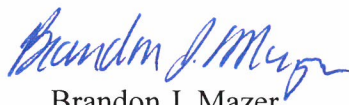
Dear Chair Kebede and Commissioners:

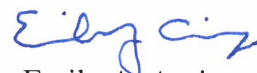
We have acted as legal advisor to the Portland Charter Commission with regard to its Charter revision process during 2021 and 2022. Pursuant to 30-A M.R.S. § 2103(5)(D)(4), we hereby provide our written legal opinion concerning City of Portland Charter modifications/Ballot Questions #1, #2, #4, #6, #7 and #8. These each are set forth in the Commission's Final Report. We are attorneys admitted to the bar of the State of Maine. We have examined the Final Report containing the proposed Charter modifications created by the Commission, as well as the law and such records of the Commission and other papers as we deem necessary to render this opinion.

Based upon our representation of the Commission and the foregoing, we are of the opinion that the proposed Charter modifications/Ballot Questions #1 (Preamble and Land Acknowledgement), #2 (Governance), #4 (Proportional Ranked Choice Voting), #6 (Peaks Island Council), #7 (Police Oversight) and #8 (Ethics Commission) do not contain any provision prohibited by the United States Constitution, the Constitution of the State of Maine or the general laws as they presently exist.

Sincerely,


James N. Katsiaficas
Bar No. 3029


Brandon J. Mazer
Bar No. 4865


Emily A. Arvizu
Bar No. 6585

MEMORANDUM

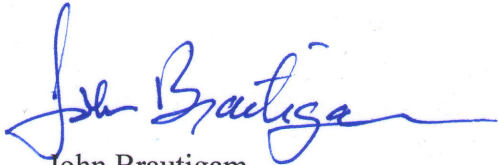
To: Michael Kebede, Esq.
Chair, City of Portland 2021-22 Charter Commission

From: John Brautigam, Esq.

Date: July 7, 2022

Re: Opinion of Attorney re: Legality of Proposed Charter Modifications

Pursuant to 30-A M.R.S.A. § 2103(5)(D)(4), it is my opinion that the Charter language in BALLOT QUESTION #3 (attached) does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.



John Brautigam
Maine Bar #8223

BALLOT QUESTION #3—Clean Elections

1. Proposed Summary

QUESTION #3

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Clean Elections as Summarized Below?

Summary: These modifications establish a City of Portland Clean Election Fund to provide public campaign funds to qualified candidates for elected municipal offices, beginning in FY 2023-2024. Candidate participation shall be voluntary. The city council shall provide an independent allocation from the city’s budget each year to sustain the Clean Election Fund and the city council shall by ordinance direct that the Clean Election Fund must:

- Limit the amount of funds a participating candidate may raise;
- Be limited to candidates who meet certain requirements, such as demonstrated public support and participation in a city-sponsored forum or voter education event; and
- Require that all unused funds be returned to the Clean Election Fund.

In addition to establishing the Clean Election Fund, these modifications:

- Prohibit corporate contributions to any candidate for municipal office;
- Prohibit ballot question contributions or expenditures from any entity that is substantially under foreign influence; and
- Require that all contributions to campaigns be reported to the city clerk and that the city clerk create a searchable online database of information contained in filed registrations and campaign finance reports.

2. Charter Language

Note: This contains only the provisions related to the Commission proposals in **Question # 3** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

Amend ARTICLE IV., ELECTIONS, to add Section 12, Public financing of municipal elections, and Section 13, Campaign finance rules, as follow:

Section 12. Public financing of municipal elections.

The city council shall establish and fully fund a City of Portland Clean Election Fund (hereinafter, the “Clean Election Fund” or the “Fund”) to provide public campaign funds to qualified candidates for elected municipal offices. The Clean Election Fund must be available to candidates in municipal elections beginning in FY 2023-2024. Candidate participation in the Clean Election Fund shall be voluntary.

Beginning in FY 2023-2024 to allow for implementation for the November 2023 election, the

city council shall provide an independent allocation from the city's budget each year to ensure the Clean Election Fund is sustained at a level that facilitates competitive campaigns for participating candidates who meet qualifying criteria. The Clean Election Fund shall be administered by the city clerk and the city council shall appropriate sufficient funds to ensure there are adequate resources, including paid staff, to effectively administer the Fund.

The city council shall maintain an ordinance directing the operation of the Clean Election Fund. The ordinance shall direct that the Clean Election Fund must:

- (a) Limit the amount of private funds a participating candidate may raise;
- (b) Be limited to candidates who
 - i. demonstrate public support;
 - ii. enter into a binding agreement stating that the candidate will not accept private contributions other than those which are permitted by the Clean Election Fund; and
 - iii. agree to participate in at least one (1) city-sponsored forum or voter education event.
- (c) Require that all unused funds from a participating candidate's campaign be returned to the Clean Election Fund within one hundred (100) days after the date of the election.

The city council may adopt additional regulations and ordinances not inconsistent with this section.

Section 13. Campaign finance rules.

- (a) **Corporate Contributions.** A business entity may not make contributions to any candidate for municipal office. The term "business entity" refers to a firm, partnership, corporation, incorporated association, or other organization, whether organization as a for-profit or a nonprofit entity. A separate segregated fund committee may not make contributions to any candidate for municipal office using funds that derive, in whole or in part, from a business entity. Where a business entity establishes a separate segregated fund committee, that business entity may provide the separate segregated fund committee with the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the business entity.
- (b) **Foreign Contributions.** The city council shall by ordinance enact a prohibition on ballot question contributions or expenditures from any entity that is substantially under foreign influence, including any entity owned by a foreign government and any entity with substantial foreign ownership. The city council shall promulgate rules to specify compliance requirements and otherwise to enforce this ordinance.
- (c) **Additional Rules by Ordinance.** The city council may adopt additional regulations and ordinances governing campaign spending, not inconsistent with this section.

- (d) **Campaign Contributions Reporting.** All contributions to campaigns for candidates or ballot questions must be reported to the city clerk, in conformance with any applicable State law. The clerk must establish a searchable, online, and publicly-accessible database of all information included in all registrations and campaign finance reports filed with the clerk.

June 29, 2022

Delivery via email to mkebede@portlandmaine.gov and jkatsiaficas@perkinsthompson.com

City of Portland Charter Commission
c/o Perkins Thompson
P.O. Box 426
Portland, ME 04112
Attn: James N. Katsiaficas, Esq.

RE: Opinion on Proposed School Budget Charter Revision

Dear Charter Commission:

We serve as counsel to Portland Public Schools. At the request of Portland Public Schools, we provide this opinion to the Charter Commission with respect to the proposed City of Portland Charter revision to the school budget adoption procedures, which is attached hereto as Exhibit A (the “School Budget Charter Revision”).

It is our understanding that the Charter Commission intends to use this opinion to satisfy the statutory requirement that its final report to the City Council “include . . . [a] written opinion by an attorney admitted to the bar of [Maine] that the proposed charter or charter revision does not contain any provision prohibited by the United State Constitution, the Constitution of Maine or the general laws.” 30-A M.R.S.A. § 2103(5)(D).

This letter is in three parts. In Part A, we summarize the School Budget Charter Revision and address some preliminary matters; in Part B, we explain our legal analysis; and in Part C we provide our legal opinion.

A. PRELIMINARY MATTERS

1. What is the School Budget Charter Revision?

The School Budget Charter Revision directs the School Board to submit its proposed budget to a public hearing and to the City Council. After receiving public comment and City Council recommendations, if any, the School Board then determines the school budget. The City Council then submits the School Board’s total budget directly to the City of Portland voters for final approval at a budget validation referendum (BVR) or, if the City voters elect to eliminate the BVR, at a municipal school budget referendum. The School Budget Charter Revision would thus change the City Council’s role to an advisory one in the school budget process. The School Board, rather than the City Council, would determine the total proposed school budget that is submitted to the City voters. The City voters would continue to hold final authority to approve the total school budget at a referendum.

2. Who is our client?

In all matters with respect to the Charter Commission, we have been clear that our client is Portland Public Schools. That includes this opinion letter.

3. May the Charter Commission rely upon our opinion?

Although the Charter Commission is not our client, we recognize that the Charter Commission intends to include our opinion in its final report to the City Council. On the question of whether a charter commission may rely upon the opinion only of its own attorney, and may not rely on the opinion of another party's attorney, we note that the only statutory limitation is that the attorney be a member of the Maine Bar. We further note that the home rule chapter in Title 30-A, where the provision for charter revisions and the requirement for a legal opinion are housed, "shall be liberally construed to accomplish its purposes." 30-A M.R.S.A. § 2109. We also note that the Maine Law Court appears to have largely addressed this question in *Nasberg*, a case that involved the parallel situation of a petitioned charter amendment.¹ See *Nasberg v. Augusta*, 662 A.2d 227 (Me. 1995). In *Nasberg*, the Augusta city attorney wrote an opinion to the mayor and city council that a proposed charter amendment violated the Maine Constitution. The city council advised the charter amendment proponents that in order to get the amendment on the ballot, "they would have to obtain a written opinion by an attorney stating that the proposed charter amendment did not violate any law or constitutional provision." *Id.* at 228. The proponents then sought an injunction ordering the city to place the amendment on the ballot. The Court noted, however, that the proponents did so "[w]ithout securing an attorney's letter." *Id.* The Superior Court granted the city's motion to dismiss, and the Maine Law Court affirmed. Accordingly, in circumstances where the city attorney did not provide "an attorney's letter," the failure to secure a written opinion from another member of the bar to accompany the charter report was the basis of the dismissal. The Court thus effectively said that the written opinion could be provided by an attorney other than the city attorney. For these reasons, we believe the Charter Commission may rely upon this opinion letter for purposes of its final report to the City Council.

4. Is there a conflict of interest?

As previously stated, we are counsel only to the Portland Public Schools, but we acknowledge responsibility to be objective in this opinion letter. In this type of circumstance, a lawyer may have a conflict of interest if there is a significant risk that the representation of the client (Portland Public Schools) would be materially limited by the lawyer's responsibilities to a third party (the Charter Commission); however, even with the existence of such a conflict of interest, in appropriate circumstances, the lawyer may represent the client with the client's informed consent, confirmed in writing. Under the circumstances here, we do not believe there is a significant risk that our duties to Portland Public Schools would be materially limited by our responsibilities to provide an objective opinion letter to the Charter Commission. In any case, we have explained the matter to Superintendent Xavier Botana and School Board Chair Emily Figdor, who requested this letter on behalf of the School Board, and we have obtained informed, written consent to prepare and submit this letter to the Charter Commission.

¹ The *Nasberg* case involved a charter amendment by petition under section 2104 rather than a charter commission revision under section 2103, but the two sections use identical language to require a "written opinion by an attorney admitted to the bar of this State." Compare 30-A M.R.S.A. § 2103(5)(D)(4) (attorney opinion for charter commission revisions) with § 2104(5)(B) (attorney opinion for petitioned charter amendments).

5. *How is this opinion letter different from our Memoranda to Portland Public Schools?*

We have provided various memoranda to Portland Public Schools on proposals to change the budget approval process by charter revision (collectively, “DW Memoranda”). The following DW Memoranda have been circulated previously and the subject of public discussion, and for convenience, they are attached to this letter:

- Memorandum 1: “Portland Charter—School Governance, Policy, and Management Matters,” dated August 11, 2021 (providing a general overview of school governance and charter authority, including the responsibility of the city council or “other municipal legislative body” to determine the total school budget);
- Memorandum 2: “Portland Charter—School Governance, Policy, and Management: The School Budget Approval Process and Bonding Authority,” dated November 5, 2021 (addressing whether the “other municipal legislative body” could be the voters);
- Memorandum 3: “Proposals for Charter Provisions Regarding School Budget Approval Procedures and School Bonding Authority,” dated January 24, 2022 (addressing whether the “other municipal legislative body” could be the school board); and
- Memorandum 4: “Charter Revisions Regarding School Budget Approval Procedures—Review of Charter Commission Education Committee Proposal,” dated April 4, 2022 (providing additional legal analysis regarding the role of the school board as the “other municipal legislative body”).

The DW Memoranda address various subjects, while our opinion in this letter is limited to the School Budget Charter Revision. We express no opinion except as expressly set forth in Part C of this letter.

6. *Is our opinion letter a so-called “clean” opinion or a reasoned opinion?*

This is a reasoned opinion different in function from a third party legal opinion in a commercial transaction. As a reasoned opinion, it reflects our judgment on the current state of the law and our opinion that a court faced with this issue would likely rule that the School Budget Charter Revision is not prohibited by Maine law. This is not a guarantee. As we have noted in our DW Memoranda, there are arguments favoring other legal views on this matter and, consequently, the matter is not without legal risk. We refer you, for example, to the arguments advanced by Attorneys Jim Katsiaficas and Emily Arvizu in their memoranda to the Charter Commission dated December 14, 2021 and April 13, 2022. Portions of our analysis in Part B of this letter address these arguments.

B. ANALYSIS

This Part B provides a summary of our analysis and reasoning for our legal opinion in Part C.

1. *Municipal charter power is broad and entitled to a presumption of validity.*

The Legislature intended municipal home rule authority—including the power to enact and revise a municipal charter—to be a broad grant of local authority. The municipal statute provides that the home rule power, “being necessary for the welfare of the municipalities and their inhabitants, shall be

liberally construed to accomplish its purposes.” 30-A M.R.S.A. § 2109. Thus, charters are entitled to a presumption of validity by Maine courts under home rule principles articulated in the *York* decision and many other cases. See *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993) (holding that there is no express or implied denial of a municipality’s home rule power to enact a charter provision divesting school committee of authority to determine school budget presented to voters and placing that authority in a separate budget committee). Accordingly, the burden rests on the person attacking a charter provision to prove that it exceeds municipal home rule authority, and not on the municipality to prove that it does not.

2. No provision of the School Budget Charter Revision is expressly prohibited by the U.S. Constitution, the Maine Constitution, or the general laws of Maine.

The general grant of charter power is circumscribed (i) when state law expressly prohibits local regulation or (ii) when state law is silent with respect to local regulation and a court determines that the Legislature intended to prohibit local regulation because such local action would frustrate the purpose of a state law. Together, these limitations are known as the doctrine of preemption.

The first category (express preemption) is obvious because the prohibitions to locally regulate a subject area or the division of regulatory powers are expressly written into state law. With respect to the School Budget Charter Revision, we could find no provision in the United States Constitution, the Maine Constitution, or the general laws that expressly prohibit the School Budget Charter Revision.

To the contrary, the express language of the relevant law states that the school budget meeting “must be a meeting of the municipal council or other legislative body established by the charter with authority to approve the budget.” 20-A M.R.S.A. § 2307(1) (emphasis added). This provision expressly defers to charters to establish a legislative body with authority to approve the school budget. We see no express denial here of Portland’s charter authority to allow the School Board to be the “other municipal legislative body” for purposes of the school budget meeting.

3. No provision of the School Budget Charter Revision appears to be prohibited by necessary implication by the U.S. Constitution, the Maine Constitution, or the general laws of Maine.

With respect to the second category (implicit preemption), the analysis is more complex, but over a dozen Maine court cases are on point. These can be summed up as follows: First, and as previously stated, the general rule is that a charter is presumed valid. Second, it is not enough for a court to find that there is a conflict or an inconsistency between a state law and a charter provision. In order for municipal legislation to fail, a court must find that the Legislature has enacted a comprehensive and exclusive scheme for regulating the same subject matter (*i.e.*, that it has intended to “exclusively occupy the field”) and that the local regulation is so inconsistent with state law that it would frustrate the purpose or actual operation of state law.²

² See *Portland Pipe Line Corp. v. City of S. Portland*, 2020 ME 125, 240 A.3d 364; *Dubois Livestock, Inc. v. Town of Arundel*, 2014 ME 122, 103 A.3d 556; *State of Maine v. Brown*, 2014 ME 79, 95 A.3d 82; *Smith v. Town of Pittston*, 2003 ME 46, 820 A.2d 1200; *Sawyer Env'tl. Recovery Facilities v. Town of Hampden*, 2000 ME 179, 760 A.2d 257; *Perkins v. Town of Ogunquit*, 1998 ME 42, 709 A.2d 106; *International Paper Co. v. Town of Jay*, 665 A.2d 998 (Me. 1995); *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993); *Central Maine Power v. Town of Lebanon*, 5711 A.2d 1189 (Me. 1990); *Midcoast Disposal, Inc. v. Town of Union*, 537 A.2d 1149 (Me. 1988);

In the DW Memoranda, much of our preemption analysis focuses on Section 2307 of Title 20-A, which provides that “[n]otwithstanding any other law, municipal school budgets . . . must follow the same school budget requirements as regional school units.” These requirements are described in detail in our November 5, 2021 DW Memorandum but, in short, the school board prepares and approves a budget, which is then submitted to the budget meeting. Alone, that sentence of section 2307 arguably requires a budget meeting of voters, as that is the requirement for regional school units. In the case of charter municipalities, however,³ the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S.A. § 2307(1) (emphasis added).

Based on our review of Section 2307 and its context within the municipal and school statutes, the legislative history of Section 2307, and applicable case law, it does not appear that the School Budget Charter Revision is prohibited by necessary implication by Maine’s general laws for the following reasons:

- First, subsection 1 of section 2307 plainly does not prescribe what body can serve as the municipal legislative body for purposes of determining the total school budget. Rather, Section 2307 appears to prescribe a *role* of a municipal legislative body (i.e., to approve the school budget), but not its *identity*—this is left for a charter municipality to specify through its charter powers. Likewise, nowhere else does the school statute, nor does the municipal statute, circumscribe the identity of a municipal legislative body. In fact, the state law definition of “municipal legislative body” plainly provides that such a body can be a town meeting, a city council, or something else—namely, “[t]hat part of a municipal government that exercises legislative powers under a law or charter.” 30-A M.R.S.A. § 2001. Indeed, several municipalities in Maine have at one time or another established municipal legislative bodies that were something other than the familiar “town meeting” or “council” forms of a legislative body.
- Second, in the vast majority of school systems across the state, the statutory scheme provides no decision-making role at all for municipal officers in the school budget approval process. Although not official numbers, we estimate 86 school districts (RSUs, MSADs, and CSDs) in Maine, whose members include towns as well as about 25 charter municipalities. We count ten school districts composed of single municipalities (including Old Orchard Beach and Orono, both themselves charter municipalities). These operate under completely separate governance for school and municipal functions. According to our count, there are 136 town meeting towns operating as single municipality school systems. In all these cases, elected school boards are able to submit their proposed budgets directly to their voters for approval and no municipal officials are involved in the process. We have found only 24 charter municipalities that are municipal school units like Portland. It can be fairly said that the School Budget Charter Revision will align the City’s school budget approval process more closely to the statutory process the Legislature enacted for use all over Maine.

Tisei v. Town of Ogunquit, 491 A.2d 564 (Me. 1985); *Ullis v. Town of Boothbay Harbor*, 452 A.2d 153 (Me. 1983); *Schwanda v. Bonney*, 418 A.2d 163 (Me. 1980); *Begin v. Town of Sabattus*, 409 A.2d 1269 (Me. 1979).

³ Notably, subsection 1 of section 2307 defers to home rule authority of charter municipalities to establish an “other legislative body . . . with authority to approve the budget,” but not to home rule authority of town meeting towns to do something similar by ordinance. This distinction between types of municipalities suggests that no implicit purpose would be frustrated by the School Budget Charter Revision.

- Third, case law seems to support the School Budget Charter Revision. In the *York* decision—the single case where the Maine Law Court has considered whether a municipality may use its charter powers to change the school budget approval process—the Court upheld the charter amendment against legal attack.⁴ Notably, the Court called the school budget submitted to voter referendum “advisory” and so it is. Every year, in a few school units, Maine voters reject the school board’s proposed budget at the BVR. The school board must then prepare a revised budget and resubmit the budget to the voters. Likewise, under the School Budget Charter Revision, the voters are ultimately responsible for adopting the “advisory” school budget (either through the BVR, or if the BVR is eliminated by the voters, at a municipal school budget referendum).
- Fourth, we do not read Section 2307 or the school statute as a whole as mandating by implication a role for a school board that is separate and distinct from the role of a municipal legislative body. Section 2(2) of Title 20-A provides that the state policy for education is that “[i]t is the intent of the Legislature that the control and management of the public schools be vested in the legislative and governing bodies of local school administrative units as long as those units are in compliance with state statutes.” Nowhere, however, does Title 20-A define or delimit “legislative bodies.” Further, school boards are defined to mean “the governing body with statutory powers and duties.” 20-A M.R.S.A. §§ 1(28), (29) (emphasis added). It appears to us that Title 20-A reserves to school boards considerable statutory authority to exercise not only governing powers but also statutory powers that are legislative in nature. These include the statutory power to “adopt policies that govern the school administrative units,” 20-A M.R.S.A. § 1001(1-A); the power to enter into multiple year contracts of different kinds, *see e.g.*, 20-A M.R.S.A. § 15915 (service contracts and financing contracts for certain building systems up to 20 years in term); and even the authority for some types of school boards to issue bonds. *See* 20-A M.R.S.A. §§ 1311(7), 1490(7) (MSAD and RSU boards, bonding authority under 1% of valuation); 20-A M.R.S.A. §§ 1654(2)(B), 1702 (CSDs board bonding authority). We discern no implied separation of governing and legislative powers into separate bodies in Title 20-A generally, but rather a situation where the governing body has “statutory powers and duties,” many of which would be generally understood to be legislative in nature.
- Fifth, we note that Section 2307(1) and (2) are *exceptions* to the mandate that municipal school units must follow the same school budget procedures as regional school units: Section 2307(1) clarifies that, notwithstanding the statutory mandate, charter municipalities are not restricted to the town meeting for the first part of the school budget approval, but may use their own legislative body—namely, the “municipal council or other municipal legislative body established by the charter.” Section 2307(2) clarifies that municipal charters may circumscribe the role of a municipal council or other municipal legislative body to determining the total amount of the school budget. Thus, Section 2307 gives charter municipalities substantially more discretionary authority than other school administrative units to specify the details of the school budget approval process. Applying the liberal construction governing implied limits on home rule authority, it is appropriate

⁴ Specifically, the Court upheld a town charter provision that created an elected municipal budget committee, separate from the school committee and the select board, vested with the power to amend the individual articles of the school budget and the total budget before it was submitted to voters for ultimate approval at referendum. *See Town of York*, 626 A.2d at 937, 942 & n. 4. The Court determined that the charter provision establishing this budget approval process was valid because there was no direct conflict between it and any statute and because it did not interfere with the purpose of the school statute or the municipal statute. *Id.* at 946. As we noted in the August 11, 2021 DW Memorandum, since the *York* decision, the school budget approval process was modified to require a budget meeting followed by a budget validation referendum.

to ascribe broad intent to the legislative exception in section 2307(1), and so we do not believe the School Budget Charter Revision to be prohibited.

C. OPINION

Subject to and based upon the foregoing, including without limitation our legal analysis and reasoning in Part B of this letter and the DW Memoranda, and the qualifications and limitations expressed therein, in our opinion the School Budget Charter Revision does not contain any provision prohibited by the United States Constitution, the Maine Constitution, or the general laws. For purposes of this opinion, “prohibited” means in violation of the law, expressly or by necessary implication, extant as of the date of this letter. *Cf. Nasberg*, 662 A.2d at 229 (stating that “[t]he intent of the requirement for an attorney’s letter is to prevent clearly unconstitutional provisions from being placed on municipal ballots,” but declining to address the constitutionality of the written opinion requirement). We provide this letter for the purpose stated above and for no other purpose.

Very truly yours,



Agnieszka A. Dixon



E. William Stockmeyer

cc: Xavier Botana, Superintendent of Schools (via email)
Emily Figdor, School Board Chair (via email)

EXHIBIT A

Amend ARTICLE III., BOARD OF PUBLIC EDUCATION, Section 5, School Budget, as follows:

Prior to the submission of a school budget, the school board and city council shall establish a Joint Committee on Budget Guidance, consisting of four city councilors and four school board members, appointed by the Mayor and school board chair, respectively. The purpose of the joint committee is to develop guidance for the city and school district on budget priorities and constraints, covering a two-year period and updated annually. The joint committee shall obtain public comment on the guidance prior to submitting the guidance as a proposed non-binding joint resolution to the city council and school board for their approval.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

~~During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated representatives.~~

The budget submitted by the superintendent ~~to be reviewed jointly by the school board and the city council~~ shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for ~~joint~~ review by the school board, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall ~~submit to the city council~~ prepare a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~

The school board shall hold a budget hearing on such budget estimates ~~shall be held at least seven (7) days prior to final action by the city council determining the total amount of the school budget. Within a reasonable period of time, the city council may, at its discretion and after holding a public hearing, provide a nonbinding resolution with its recommendations to the school board for consideration. The school board may or may not adopt, in whole or in part, the recommendations of the city council.~~ The city council shall thereafter submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally

raised funds and the amounts for each cost center summary budget category proposed by the school board.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the budget validation referendum or, if discontinued, at the school budget referendum or (ii) not be less than the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council or the voters. (Referendum 6/13/78; 11/2/10)

MEMORANDUM

TO: Xavier Botana, Superintendent Portland Public Schools FROM: Melissa Hewey, Agnieszka Dixon, and Elek Miller Drummond Woodsum DATE: August 11, 2021 RE: Portland Charter—School Governance, Policy, and Management Matters

As the newly elected City of Portland Charter Commission (the “Commission”) begins its work to evaluate and recommend modifications to the City of Portland Charter (the “Portland Charter”), you have asked us to provide an overview of the law governing the powers and duties of the Commission to address matters of school governance, policy, and management.

In Part I of this memorandum, we provide a legal overview of the Constitutional and statutory limits on the authority to amend the Portland Charter with respect to matters of school governance, policy, and management. In Part II, we identify and discuss the existing provisions in the Portland Charter which concern the school board, and we compare those provisions with the charter language of other populous Maine charter cities.

Finally, in Part III, we conclude that, while the Commission has broad authority to recommend modifications to the provisions of the Portland Charter for consideration by the voters, that authority is constrained with respect to matters of education. We therefore recommend that the school board continue to evaluate the Commission’s work through the lens of the legal framework presented next, and to seek legal review of any proposals affecting school governance, policy, or management.

I. AUTHORITY OF THE COMMISSION WITH RESPECT TO EDUCATIONAL MATTERS— A LEGAL OVERVIEW

At the outset, it should be understood that the scope of the Commission’s authority is constrained by the Maine Constitution and state law, which extensively regulates public education in the state and thereby limits the scope of any charter commission’s authority over matters of education.

A. The Legislature has plenary control over public education.

In Maine, the Legislature has plenary authority over public education. *School Committee of the Town of Winslow v. Inhabitants of the Town of Winslow*, 404 A.2d 988, 991-992 (Me. 1979). Exercising this authority, the Legislature has created a system of local school administrative units to provide free public education to Maine children. A “school administrative unit” is defined by statute as “the state-approved unit of school administration and includes a municipal school unit.” 20-A M.R.S. § 1(26). A “municipal school unit” is defined as a state-approved unit of school administration composed of a single municipality. 20-A M.R.S. § 1(19). Public education in Portland is provided by the Portland municipal school unit, which is a creature of the Legislature and not a subdivision or department of city government.

The Maine Supreme Judicial Court, acting as the Law Court, has made it clear that municipal school boards “are agents of the state and are legally distinguished from municipalities.” *Pickering v. Town of Sedgwick*,

628 A.2d 149, 150 (Me. 1993). The separate roles of the municipal school unit and the municipal government are well-defined and do not overlap.

The school board is the governing body of a municipal school unit. *See* 20-A M.R.S. § 1(28). State law provides that “the control and management of the public schools shall be vested in the legislative and governing bodies of local school administrative units, as long as those units are in compliance with appropriate state statutes.” *See* 20-A M.R.S. § 2(2). Thus, the school board has sole authority to oversee the affairs of a municipal school unit, including adoption of policies, management of the schools (including custody, care, and repair of school buildings), selection of the superintendent (who is the chief administrative officer of the municipal school unit), employment of administrators, and employment of teachers. *See* 20-A M.R.S. §§ 1001, 1051, 13201, and 13302. As discussed in greater detail in Part I.C, below, a city council has no statutory duties or authority with respect to public education, with the exception of approving the total amount of the school budget to be submitted to the voters in a budget validation referendum provided that a municipal charter confers that authority upon the council. *See* 20-A M.R.S. § 2307(2). The authority to allocate funds within the total budget and expend those funds is reserved to the school board. *Id.*

The school board is not subordinate to the city council but derives its duties and authority directly from the Legislature. “Its members,” the Law Court has observed, “are chosen by the voters of the town, but after election they are public officers deriving their authority for the law and responsible to the State for the good faith and rectitude of their acts.” *Shaw v. Small*, 124 Me. 36, 41 (1924).

B. The Commission’s authority over public education is circumscribed by the Maine Constitution and state law.

While the Legislature has plenary authority over public education and has delegated local control over education to school administrative units and their elected school boards, the home rule provisions of the Maine Constitution and state law authorize the voters of a municipality, by charter, to impose local regulation of public education only if Legislature has not expressly prohibited local regulation or where the Legislature “has intended to occupy the field and the legislation would frustrate the purpose of a state law.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993).¹

The Law Court reaffirmed this home rule limitation last year, stating that the Maine Constitution grants municipalities the power to amend their charters “on all matters, not prohibited by Constitution or general law, which are local and municipal in character” and further stating that the Constitution “commits the general power to promote education to the Legislature” *MSAD 6 Bd. of Dir’s v. Town of Frye Island*, 2020 ME 45, ¶¶ 17, 19, 229 A.3d. 514, 520-21 (internal quotations omitted). In the *Frye Island* case, the Court held that a town could not attempt to withdraw from its school administrative unit by amending its charter because such a charter provision implicated public school funding—“an issue falling squarely within the Legislature’s purview”—and was therefore not a valid exercise of the municipality’s home rule authority. *Id.* ¶¶ 19, 22 & n.7.

¹ In the *York* case, the Law Court upheld a charter provision that created a municipal budget committee, separate from the school board and the select board, with the power to approve the school budget before it was submitted to voters for approval. “The Legislature,” the Court wrote, “is free to delegate to municipalities all of its authority over education so long as the delegation is not unconstitutional.” *Town of York*, at 940. Since the charter provision did not conflict with the Constitution or state law regulating school budget approval, the Court said that the creation of the budget committee with authority over the school budget was within the authority of the charter commission. Subsequent to the *York* decision, the Legislature enacted a detailed statutory process for school budget approval assigning specific roles to the school board and the municipal legislative body, which presumably overruled the *York* decision to the extent that the *York* charter provision conflicts with that detailed process. That process is summarized in the next section.

C. A charter may modify the school budget approval process, but not the power of the school board to direct expenditures of education funds or the responsibility of the municipal legislative body to determine the total school budget.

Maine law now provides that municipal school budgets “must follow the same school budget requirements as regional school units.” 20-A M.R.S. § 2307. We are all now familiar with the school budget procedures that have been followed for over a decade, including school board formulation and approval of a budget organized by specific cost centers and warrant articles prescribed by law. The approved school board budget is then submitted to the “budget meeting.” In charter municipalities such as Portland, the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S. § 2307(1). The final step in budget approval is the budget validation referendum decided by the voters (although the voters may eliminate that step by referendum).

State law specifically provides:

In charter municipalities where the municipal charter confers upon a municipal council or other municipal legislative body the authority to determine the total amount of the school budget and confers upon the school committee or school board the authority to direct the expenditure of those funds for school purposes, the municipal council or other municipal legislative body shall determine the total amount of the school budget to be submitted to a budget validation referendum and the school committee or school board shall determine the allocation of the approved school budget among the cost centers of the cost center summary budget format.

20-A M.R.S. § 2307(2). In short, in a charter municipality like Portland, the municipal council or other municipal legislative body acts only on the total amount of the school budget, and the school board determines the budget allocation among cost centers. This delegation of authority over the school budget between the school board, on the one hand, and the municipal council or other municipal legislative body, on the other hand, is a subject matter where the Legislature appears to have “occupied the field”—and, in our view, a charter provision that alters it would likely be invalid.

Although, in our view, a charter provision may not modify the school board’s power to direct the expenditure of funds for school purposes, other charter provisions concerning the budget approval process may likely be modified or altogether eliminated. In that regard, it has been asked whether the Portland Charter may be revised to eliminate the city council’s responsibility to determine the total school budget. As noted above, state law provides that the budget meeting to approve a municipal school budget must be a meeting of either “the municipal council or other municipal legislative body.” 20-A M.R.S. § 2307(1) (emphasis added). Accordingly, we believe the Portland Charter may lawfully assign the final authority to approve the school budget to a municipal legislative body other than the city council.

We note that we know of no precedent within a city charter² regarding the form that such an alternative legislative body may take, however. In Maine, legislative bodies typically consist of (i) a town meeting

² We do know of at least one town charter which provides a municipal legislative body that is not a town council. The Town of York, which has a rather unique “Town Manager—Town Meeting by Secret Ballot Vote” form of local government, provides in its charter that its municipal legislative body is the town meeting consisting of the voters. See York Charter, Art. II, § 1 (*available at www.yorkmaine.org/DocumentCenter/View/691/Home-Rule-Charter-PDF*). There, an elected budget committee prepares the town budget and the school committee prepares the school budget, but final authority for approving a composite town and school budget, in line-item format, rests with the voters at a secret ballot budget referendum after public hearing. See *id.*, Art. II, §§ 4, 5, 10, 12. If the voters vote down a given line-item, the charter calls on the Town’s Board of Selectmen—that is, its governing body—to appropriate an amount equal to the budgeted appropriation for that line-item during the previous fiscal year. See *id.*, Art. II, § 14.C.

composed of all voters of a town, (ii) the school budget meeting composed of all voters of the member municipalities of a school administrative unit, or (iii) a representative council established by charter. Any proposal to establish a municipal legislative body, separate and distinct from a representative council, to approve the school budget would need to be thoroughly vetted against the statutory role of the school board, the continuing requirement for a budget validation referendum, and the statutory meaning of the phrase “municipal legislative body” in 20-A M.R.S.A. § 2307, among other legal considerations.

II. OTHER PROVISIONS IN THE PORTLAND CHARTER CONCERNING THE SCHOOL BOARD—A DISCUSSION AND A COMPARISON

The Portland Charter includes other provisions affecting the duties and powers of the school board, which we discuss next. For your reference, we have prepared, in [Appendix A](#), a table that identifies the key Portland Charter provisions affecting school boards and compares them with the charter provisions of other populous charter cities in Maine—namely, Auburn, Bangor, Biddeford, Lewiston, and Sanford. In [Appendix B](#), we have attached a copy of the Portland Charter showing the provisions affecting the school board highlighted in yellow.

A. In general, control over public schools is expressly delegated to the school board.

The Portland Charter, like all of the charters that we reviewed, contains a general provision excepting from the city council’s authority all duties and powers concerning the management, care, and control of the city’s public schools, and vesting that power and duty in the school board:

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, *except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the “school board”)*,¹ and also except as otherwise provided by this charter, shall be and are vested in one body of nine members, which shall constitute and be called the city council, all of whom shall be inhabitants of the city, and shall be sworn in the manner hereinafter prescribed.

Portland Charter, Art. I, § 2 (emphasis added); *see also* Biddeford Charter, Art. I, § 2 (same), Lewiston Charter, § 1.02(a) (same). Importantly, the Portland Charter does not purport to address educational policy or operation of the schools, and this approach is consistent with the Legislature’s scheme which assigns local responsibility for public education to the elected school board. Indeed, the Portland Charter explicitly acknowledges the broad responsibilities of the school board with regard to public education:

The board of public education shall have all the powers, and perform all the duties in regard to the care and management, including sound fiscal management, conduct, and control of the public schools of the city, which are now conferred and imposed upon school committees and school boards by the laws of this state, except as otherwise provided in this charter.

Portland Charter, Art. III, § 4; *see also* Bangor Charter, Art. III, § 1 (same), Biddeford Charter, § 3(a) (same), Lewiston Charter, § 5.03(a). As discussed in Part I, any departure from the principle that a school board controls the public schools would likely run afoul of the Constitutional and statutory scheme regarding governance of municipal school units and the limits on home rule authority.

B. The school board controls the preparation and expenditure of the school budget, while the city council approves and appropriates the total school budget.

The Portland Charter provides that the school board must submit to the city council an annual school budget, and any information relating to the budget, to the council. *See* Portland Charter, Art. III, § 5. The city council approves the total budget after holding a hearing and makes one gross appropriation for the

support of the public schools. *Id.* This separation of powers between the school board and city council rests in state law, as discussed, and is a common feature of other city charters. *See, e.g.,* Bangor Charter, Art. III, § 1; Lewiston Charter, §§ 5.03, 6.07(f); Biddeford Charter, Art V, § 4. Unique to the Portland Charter is a provision that the city council may not reduce the school board’s proposed budget except by vote of at least six of its nine members. *See* Portland Charter, Art. III, § 5.

C. The Portland Charter contains specific school budget reporting, consultation, and audit requirements, as well as provisions concerning borrowing and bonding, procurement, and capital improvements.

In addition to this general delegation of responsibility over the school budget, city charters sometimes include school budget reporting, consultation, and audit requirements which may affect how and when a school budget is prepared. For example, the last Portland charter revision in 2010 added specific provisions to the Portland Charter requiring the school board and the city council, or their designated subcommittees (the finance committees), to share information about, review, and consult on the school budget within certain timeframes. *See* Portland Charter, Art. III, § 5. The Portland Charter also requires detailed monthly reporting to the city’s finance director. *See id.; see also* Art. VII, §§ 1, 3. The Portland Charter also delegates responsibility to the mayor to “facilitate among the city manager, city council, [school board] and the public to secure passage by the city council of the annual city and school budgets” Portland Charter, Art. II, § 5(h).

Most of the city charters that we reviewed likewise contain some school budget-related consultation, reporting, and audit requirements—although the scope and detail of such requirements vary to a great degree, and some charters are largely silent on these details. *See, e.g.,* Bangor Charter. When charters do speak on these issues, they may:

- Include instructions on the transfer of funds among departments or functions. *See, e.g.,* Sanford Charter, § 613. (Note that we question whether the funds transfer limitation in the Biddeford Charter, Art. IX, § 3, is valid, as it appears to conflict with the school board’s cost center transfer authority under 20-A M.R.S. § 1485(2).)
- Impose deadlines for submitting the school budget to the council or budget committees and prohibitions on the expenditure of funds that exceed appropriation resolves. *See, e.g.,* Lewiston Charter, § 5.03.
- Contain contingency procedures for budget shortfalls. *See, e.g.,* Sanford Charter, § 619.3.
- Include detailed procedures for selecting auditors and conducting annual audits. *See, e.g.,* Auburn Charter, § 8.11.

These types of school budget consultation, reporting, and auditing provisions usually do not conflict with the ultimate authority of the school board to direct expenditures or that of the council to approve only the total school budget. Provided they also do not conflict with other provisions of state law, they likely fall within a charter’s home rule authority to modify or eliminate.

In addition, like most other charters, the Portland Charter houses other finance-related provisions—including requirements for the procurement of goods and services, borrowing and bonding, and capital improvement planning—that may affect school management decisions. For example, the Portland Charter encourages the city and school department to share staff and resources and cooperate to provide better services in a cost-effective manner. *See* Portland Charter, Art. VII, § 2.

The Portland Charter also imposes limits and procedures on the sale of bonds or notes pledged on the credit of the city. *Id.* Art. VII, § 11. The Charter is silent with respect to the issuance of bonds specifically for school construction or renovation projects; however, state law provides that in a municipal school unit

“where the responsibility for final adoption of the school budget is vested in the municipal council by municipal charter, a locally funded project may be approved without a referendum vote if the charter does not require a referendum.” 20-A M.R.S. § 15905-A. Care must be taken to adhere to legal requirements when modifying any bond issuance provisions in a charter, as they could affect the city’s ability to issue bonds. Review by bond counsel of any such modifications is strongly recommended.

Notably absent from the Portland Charter is the role of the school board in the capital improvement program (CIP) planning process. Other charters provide a clear roles for the superintendent and school board in preparing and authorizing CIPs, usually jointly with the city manager and council, which can thereby qualify school capital project for capital reserve funding. *See, e.g.*, Bangor Charter, §§ 8.9, 8.10; Sanford Charter, § 610.

D. The Portland Charter contains specific provisions affecting school board governance, including provisions concerning school board elections and conflicts of interest

The Portland Charter contains governance provisions affecting school boards, including the composition of the school board, election and recall procedures, how vacancies are filled, and compensation provisions. While most charters include such provisions, the specifics vary greatly. For example, the Portland Charter is the only charter we reviewed where school boards are elected using ranked choice voting. *See* Portland Charter, Art. II, § 3. In addition, unlike most charters, the Portland Charter contains detailed provisions concerning conflicts of interest and incompatibility of office. In contrast, most other charters are silent on these topics, presumably because there is already a rich framework of state law and case law on these two topics. Please refer to the table in [Appendix A](#) for a side-by-side comparison of how each of these provisions appear in the Portland Charter and in the other city charters that we reviewed.

III. CONCLUSION

This memorandum is intended to provide a general overview of the legal landscape affecting charter revision and public education. We encourage the school board to monitor the Portland Charter revision process and to provide input to the Commission on any school-related issues or proposals. The school board may also wish to make proposals to the Commission to change existing charter language, particularly with regard to the school budget process, consistent with the legal principles and recommendations discussed in this memorandum. We are available to assist the school board in evaluating or preparing any such proposals.

Enclosures:

Appendix A: A Comparison of Select Charter Provisions of the Most Populous Maine Charter Cities
Appendix B: Portland Charter, with School-Related Provisions Highlighted

APPENDIX A
A COMPARISON OF SELECT CHARTER PROVISIONS OF THE MOST POPULOUS MAINE CHARTER CITIES

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
General—Delegation of Authority over Schools	The council is vested with administering all fiscal, prudential, and municipal affairs of the city, “except the general management, care, conduct, and control of the schools.” (Art. I, § 2) The school board is vested with “the care and management, including sound fiscal management, conduct, and control of the public schools” as conferred on school boards by state law. (Art. III, § 4)	The council is vested with all powers granted by charter and state law, except the care and management of the public schools, which is vested in the school committee. (§§ 2.1, 4.1)	The council is vested with all powers granted by charter and state law, except the care and management of the public schools, which is vested in the school committee. (Art. II, § 1) The school committee is vested with “the care and management of the public schools” as conferred on school boards by state law. (Art. III, § 1)	The mayor and council are vested with administering all fiscal, prudential and municipal affairs of the city, except the general management, care, conduct, and control of schools, which is vested in the school committee. (Art. I, § 2) The school committee is vested with “the care and management of the City’s public schools” pursuant to state law. (Art. V, § 3(a))	The mayor and council are vested with administering all fiscal, prudential and municipal affairs of the city, except the general management, care, conduct, and control of schools, which is vested in the school committee. (§ 1.02(a)) The school committee is vested with the “care and management of the city’s public schools” pursuant to state law. (§ 5.03(a))	The school committee is vested with all the “care and management of the public schools” of the city as conferred on municipal school committees by state law. (§ 505.1). The Department of Education is governed and administered the school committee and superintendent, in accordance with state law. (§ 501)
School Budget—Approval, Appropriation, Expenditure	The school board must submit an annual school budget to the council, including any information relating to the budget that the council requires. The council approves the school budget after holding a hearing, and makes one gross appropriation for the support of the public schools. The appropriation may not be less than the school board budget, except by a vote of at least six councilors. (Art. III, § 5) The council adopts an annual appropriation resolve, which contains one gross amount for school purposes. The total appropriation must not exceed the city’s estimated revenues. (Art. VII, § 7) The mayor may veto the annual city appropriation but any such veto of the appropriation may not affect the school budget appropriation. (Art. II, §§ 2, 5(i); Art. VII, § 8) The school board has authority to expend the appropriation but may not exceed it except with the council’s consent. (Art. III, § 5)	Refer to § 8.9 for budget creation process, which is collaborative between city and school department. Authority rests with council to finally approve the budget. (§§ 2.6; 8.7; 8.9) The school committee must expend funds within the limits of the council’s appropriation resolves, together with any other revenues the school committee may receive. (§ 4.1)	The school committee must submit an annual estimated school budget to the council. On the basis of the estimated school budget, the council makes one gross appropriation for the support of the public schools. (Art. III, § 1) Expenditures are under the direction and control of the school committee. The council’s appropriation may not be exceeded except by consent of the council and certification of availability of unanticipated funds. (Art. III, § 1, 10)	The school committee must submit the school budget to a budget committee, which submits it to the council after review. The council decision is final, subject to budget validation referendum. (Art. V, § 4) The council adopts an annual appropriation resolve, which contains amounts necessary for general city purposes and for a contingency fund. (Art. XI, § 3) The school committee may not transfer funds from one function to another without a two-thirds vote of both the school committee and council. (Art. V § 4)	The school committee must submit the school budget to the council at least three months prior to the end of the fiscal year. (§ 5.03(a)) The council adopts the city budget, including the school budget, by resolution. If the council fails to do so at least 20 days prior to the end of the fiscal year, the school committee’s final budget is deemed to be automatically adopted. Adoption of the city budget by the council constitutes appropriations of the amounts specified as expenditures from the funds specified. (§ 6.07(f))	The school committee must submit to the budget committee a line-item balanced school budget containing a complete and detailed financial plan for all school funds and activities. The budget committee must hold public hearings to review the expenditures of each municipal agency or department proposed by the city manager, and of each school agency or department proposed by the superintendent. The council authorizes the school budget, which is then presented to the budget validation referendum. The budget committee’s budget may be changed only by a majority vote of the council. (§§ 505.2, 604, 607) Adoption of the municipal and school budgets by the council constitutes appropriations. The council may authorize the transfer of any unencumbered appropriations between the municipal budget articles, and the school committee may authorize the transfer of any unencumbered appropriations between the school budget articles. (§ 613) If it appears probable to the city manager or superintendent that revenues are insufficient to cover appropriations, the council may take action to prevent or minimize any deficit, including by reducing appropriations to the extent not inconsistent with 20-A M.R.S.A. §§ 15004 and 15613(8). (§ 619.3)

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
School Budget—Consultation, Reporting, and Auditing Requirements	The mayor is responsible for facilitating among the city manager, council, school board, and the public to secure passage by the city council of the annual city and school budgets. (Art. II, § 5(h)) The superintendent must submit a balanced budget estimate, which provides a “complete financial plan of all school funds and activities,” to the school board no later than 3½ months before the end of the fiscal year. During the 30 days following submission, the school board and council, or their designated subcommittees, must meet jointly at least twice to review the budget estimate. (Art. III, § 5) Accounts must be kept by the finance director of finance, showing the transactions of all departments of the city and the school department. The finance director must publish a monthly financial statement and furnish a monthly detailed report to the city manager of revenues, expenses, and expenditures on all accounts and, for each appropriation item, the expenditures made and the obligations incurred during the preceding calendar month and the total unencumbered balance. All city and school accounts are audited annually by an auditor selected by the council. (Art. VII, §§ 1,3)	An audit committee, composed of two councilors and two school committee members, select and direct the work of an independent auditor, and report back to a joint meeting of the council and school committee. The council selects the accountant upon recommendation of the committee. The committee also reviews the procurement policy and report to the council and school committee as to the strengths and weaknesses of the policy. (§ 8.11)	The city audits must be audited annually by a CPA chosen by the council. (Art VIII, § 2)	The council must provide an annual independent audit of all City accounts and may provide more frequent audits. (Art. III § 9)	The city administrator establishes a system of bookkeeping, auditing, purchasing and records pertaining to all financial transactions of the school committee, and may establish rules governing such procedure consistent with local and state law. (§ 5.04)	The school committee must present an "audit action plan" with remedies as appropriate to the council for review and approval. (§ 505.3)
Procurement	To the extent practicable and lawful, the city and the school department shall endeavor to share staff and resources and otherwise cooperate with one another in order to provide better city and school services in a cost effective manner (Art. VII, § 2)	The council must adopt a procurement policy for the city’s purchase of materials and services for all city departments, including the Department of Education. A procurement policy committee composed of two councilors, two school committee members, and a mutually selected fifth member develop the procurement policy, and report back to the council and school board. (§ 8.16)	The city’s purchasing agent purchase all supplies for the city, but educational supplies for the city schools are excepted and may be purchased by the purchasing agent upon requisition by the school committee (Art. VIII, § 5)		The city administrator establishes a system of bookkeeping, auditing, purchasing and records pertaining to all financial transactions of the school committee, and may establish rules governing such procedure consistent with local and state law. (§ 5.04)	The city manager will act as purchasing agent for all departments, except the school department. Whenever possible, the city manager must work with the superintendent to negotiate contracts for supplies, materials and equipment commonly purchased by both the city and school. (§ 402.13)
Capital Improvement Program (CIP)	The mayor must consult with and provide guidance to the city manager in the preparation of an annual CIP. (Art. II, § 5(g)) The city manager must prepare a 5-year rolling CIP for annual presentation to the council. (Art. IV, § 5(i))	The city manager and superintendent must jointly prepare and submit to a joint meeting of the council and school committee a multi-year CIP before submission of the budget, and must publish a general summary of the CIP. The CIP must be revised and extended each year with regard to capital improvements pending or in process of construction or acquisition. (§§ 8.9, 8.10) The council must adopt the CIP by resolution, with or without amendment, after a public hearing (§ 8.10(B))	The charter contains no specific CIP provision.	The charter contains no specific CIP provision.	The administrator prepares and submits to the council a 5-year CIP, including the CIP proposed for the school department. The planning board review the proposed CIP each year, and following public hearing, forward its recommendations to the council. After notice and hearing, the council by resolution adopts the CIP with or without amendment. Adoption does not constitute the appropriation of funds. (§§ 6.05, 6.06)	The city manager and the superintendent annually prepare and submit to the budget committee a 5-year CIP. The budget committee reviews the CIP and makes recommendations to the council for approval. The city creates annual reserves for the CIP by raising and appropriating at least 4% of the budget each year. Projects funded by the CIP include road maintenance, vehicular replacements, roofing projects, major building renovations, major equipment purchase, airport projects, new buildings and the like. (§ 610).

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
Borrowing and Bonding	Money may be borrowed, within the limits fixed by the Constitution and state law, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings. The council issues an order providing for the issue of bonds after notice and hearing. A council order authorizing the issuance of bonds must be approved by at least 7 councilors. With some exceptions, the issuance of general obligation bonds greater than 0.05% of the city’s last state valuation or any obligation to expend tax funds over multiple years greater than 0.075% of the city’s last state valuation for a single capital improvement or piece of equipment and the issuance of must be submitted to voter referendum. (Art. VII, §§ 11, 16)	The city may issue bonds pledging the credit of the city in the manner prescribed by state law. The council votes to issue the bonds after notice and hearing. (§ 8.13)	Money may be borrowed by order of the council, within the limits fixed by the Constitution and state law, by the issue and sale of bonds or notes pledged on the credit of the city, or on other enumerated revenues. (Art. VII, § 13) With some exceptions, the issuance of general obligation bonds greater than 0.05% of the city’s last state valuation or any obligation to expend tax funds over multiple years greater than 0.075% of the city’s last state valuation for a single capital improvement or piece of equipment and the issuance of must be submitted to voter referendum. (Art. VIII, § 19)	Money may be borrowed, within the limits fixed by the Constitution state law, by the issue and sale of bonds or notes pledged on the credit of the city. (Art. XI, § 6)	Money may be borrowed temporarily in anticipation of taxes or of the issuance of bonds, in accordance with the provisions of 30-A M.R.S.A. § 5771 (§ 6.13)	The budget committee must review all bond requests presented by the council and school committee, and shall make recommendations for bonding to the city manager and superintendent when appropriate during the budget review process. (§ 604.4). Capital projects of the municipal and school departments to be financed through the issuance of bonds for \$250,000 or less may be approved by the council. (§ 705.1) See amended § 705 for more information on bonding, including for bonds over \$250,000.
School Board Composition and Election Procedures	The school board is composed of nine members, four at large and one from each of the five districts who hold office for a term of three years and until their successors are elected and qualified. All candidates must be residents of the city for a period of at least three months prior to the date on or before which nomination papers are to be filed. The candidate from each of the 5 districts must be a resident of such district. (Art. III, § 1) For the positions of mayor, city councilor, and school board member, the city uses a ranked choice voting protocol. (Art. II, § 3; Art. IV, § 10) Nominations are by petition, with minimum signature requirements. (Art. IV, § 4) For vacancy provisions, refer to Art. II, § 7; Art. III, § 6. Recall procedures are set forth in Art. V, § 2.	The school committee is composed of the mayor, or a city councilor selected by the mayor and 7 other members. Five members are elected, one from each ward by and from its registered voters. Two members are elected at-large. Members hold office for a term of two years. (§ 4.2). For vacancy provisions, refer to § 4. Recall procedures are set forth in § 9.1(C).	The school committee is composed of seven members elected at large who hold office for a term of 3 years with a term limit of 3 consecutive terms. (Art. III, § 2) The members of the school committee annually by majority vote designate one of its members to serve as Chair.(Art. III, Sec.3)	The school committee is composed of seven members at large who hold office for a term of 2 years, but no more than two members from any one ward, who shall hold office for a term of two years. The mayor is the ex officio chair with no veto power, who may not make a motion and may only vote to break a tie. (Art. V, §§ 1,2) For vacancy provisions, refer to Art. V, § 5. Recall procedures are set forth in Art. IX, § 2.	The school committee is composed of nine members, one elected from each ward, one at-large, and one council member nominated by the mayor and appointed by the council from any ward. Members hold office for a term of 2 years. (§ 5.01(a)) For vacancy provisions, refer to § 5.01. The charter contains no specific recall procedures.	The school committee is composed of five members, who are elected at-large and who hold office for a term of 3 years. Nominations are by petition, with minimum signature requirements. (§§ 501, 1103) For vacancy provisions, refer to § 503. Recall procedures are set forth in § 1201.
School Board Compensation	The council establishes the amount each member of the school board is entitled to receive as compensation, which must be the same as that received by members of the city council, other than the mayor. The council must provide additional compensation to the chair of the school board. (Art. III, § 1)	Compensation is set by the council through ordinance, upon recommendation from school committee. (§ 4.2)	The charter contains no specific school board compensation provision.	School committee members receive compensation at the rate of \$10 for every regularly scheduled meeting attended, not to exceed \$500 per year. (Art. V, § 1)	Compensation is set by the council through ordinance. (Sec. 5.01(b)).	Compensation is fixed each year by the school committee. (§ 507)

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
School Board Conflicts of Interest	No member of the council or school board or board or commission thereof and no officer or employee of the city or school department shall: (a) Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland or the school board, except his or her employment contract, or in the sale to or by the city or school department of any land, materials, supplies or services when such officer, employee or member exercises on behalf of the city or school department any function or responsibility with respect to such contract or sale. All contracts or sales made in violation hereof are void, and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such transaction. (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties. (c)Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Art. VIII, § 1)	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	No school committee member shall hold any other compensated city office or city employment, except as on-call emergency personnel, during their term of office. No school committee member shall hold any paid office or position of employment with the school department. If a member of the school committee ceases to possess any of these qualifications or is convicted of a crime punishable by imprisonment for more than six months, the office shall immediately become vacant. (§ 502)
Incompatibility of Office	No member shall hold any office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected. (Art. II, § 4)	Except where authorized by law, no member shall hold any other elected public office during the term for which the member was elected. No member shall hold any other city office or employment during the term for which the member was elected. No former member shall hold any compensated appointive city office or city employment until at least one year after expiration of the member’s elective term.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision. See above section for more information on prohibited positions.

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
Web Link	https://www.portlandmaine.gov/DocumentCenter/View/1102/City-Charter---Revised-332020?bidId	https://www.auburnmaine.gov/CMSContent/City_Clerk/charter.pdf (<i>See also</i> https://www.auburnmaine.gov/pages/government/city-charter-ordinances).	https://ecode360.com/14036615	City of Biddeford, ME City Charter (ecode360.com)	https://www.lewistonmaine.gov/DocumentCenter/View/181/City-Charter?bidId= (<i>See also</i> https://www.lewistonmaine.gov/151/City-Charter).	https://www.sanfordmaine.org/index.asp?SEC=B7910104-37A4-4F19-8A4E-58A42A843356&DE=FE82D1BD-194C-4DA6-856D-13123C3BD050&Type=B_BASIC (<i>See also</i> https://www.sanfordmaine.org/vertical/sites/%7B9A3D3C8D-76EE-4CC5-B86E-C19FDBF5E473%7D/uploads/Final_Report_Corrected_Website.pdf

APPENDIX B
PORTLAND CHARTER, WITH SCHOOL-RELATED PROVISIONS HIGHLIGHTED

PART I CHARTER*

***Editor's note**--Historical references are cited in parentheses at the end of each section. Such references cite only the various amendments adopted by referenda conducted pursuant to home rule powers granted by P.L. 1970, c. 563 (30 M.R.S.A. § 1911 et seq.). Prior to 1970 and home rule the charter and its various amendments were enacted by the Maine Legislature and such are not cited in said parentheses. A history of the charter and amendments is attached as Appendix A.

State law reference(s)--Home rule, 30 M.R.S.A. § 2101 et seq.

Preamble

- Art. I. Grant of Powers to the City, §§ 1, 2**
- Art. II. City Council; Mayor, Ranked Choice Voting §§ 1--11**
- Art. III. Board of Public Education, §§ 1--6**
- Art. IV. Elections, §§ 1--11**
- Art. V. Recall, §§ 1--7**
- Art. VI. Administrative Officers, §§ 1--8**
- Art. VII. Business and Financial Provisions, §§ 1--16**
- Art. VIII. Miscellaneous Provisions, §§ 1--5**

PREAMBLE

We, the People of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the general health, safety and welfare of our community. In so doing, we build a government that meets the needs of the people it serves and whose character it reflects. Our government shall further cooperation, encourage leadership, solicit our input and support the active participation of our residents in their governance. Our government shall be effective and accountable and shall promote equal rights and representative democracy.

Our government shall provide public education that enables all residents to acquire the knowledge and skills necessary to participate fully in Portland's civic, intellectual, cultural and economic life, in order to enrich and strengthen our community and our common future.

(Referendum 11/2/10)

ARTICLE I. GRANT OF POWERS TO THE CITY

Section 1. Corporate existence retained.

The inhabitants of the City of Portland shall continue to be a body politic and corporate by the name of the City of Portland, and shall have, exercise, and enjoy all the rights, immunities, powers, privileges, and franchises and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise, pertaining to or incumbent upon such city as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable by-laws, regulations, and ordinances for municipal purposes, not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof as such by-laws, regulations, or ordinances shall provide. Such penalties shall not limit nor diminish in any way the city's authority to seek and obtain higher or different penalties provided by state or other law. (Referenda 12/4/72; 11/2/10)

Section 2. Powers and duties.

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the "school board"), and also except as otherwise provided by this charter, shall be and are vested in one body of nine members, which shall constitute and be called the city council, all of whom shall be inhabitants of the city, and shall be sworn in the manner hereinafter prescribed.

The members of the city council shall be and constitute the municipal officers of the City of Portland for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers and mayors of cities under the laws of this state.

All other powers now or hereafter vested in the inhabitants of such city, and all powers granted by this charter, except as herein otherwise provided, shall be vested in the city council.

(Referendum 11/2/10)

ARTICLE II. CITY COUNCIL

Section 1. City to be divided into election districts.

For the purpose of all elections the city, including its islands, shall be divided into five (5) districts to establish compact and contiguous districts of approximately equal population.

The city council for voting purposes may by ordinance divide the election districts into voting districts. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/2/11)

Section 2. Composition, election, tenure of office.

The city council shall be composed of nine (9) members, including the mayor who shall be one of the nine (9) members of the city council, and shall hold office for a term of three (3) years and until their successors are elected and qualified, except as provided below for the term of mayor and for one at large seat in the election of 2013 only. Four (4) members, including the mayor, shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the five (5) districts heretofore provided for, from and by the registered voters of each district. References in this charter to the city council, councilors, council, its members or membership, shall be deemed to include the mayor, unless otherwise specifically provided.

For the municipal election in November of 2013, one of the two at large seats up for election shall have a one-time four year term ending in 2017. Thereafter, the council term shall return to be three (3) years for this seat. The city clerk shall designate which seat shall be for the four (4) year term prior to the availability of nomination papers for the 2013 election, and nomination papers shall be separately issued for each of the two at large seats. Each at large candidate may take out and file nomination papers for only one of the at large seats. The municipal ballot will list the 4-year and 3-year council seats as separate questions.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the five (5) districts must be a resident of such district

for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

Beginning with the regular municipal election in November, 2011, the at large position then up for election shall be designated as the mayor's position and shall continue as the mayor's position thereafter. The position of mayor only shall be elected by majority vote as provided in section 3 of this article. The candidate(s) for mayor shall be nominated in the same manner as other at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two (2) consecutive terms. The election and position of mayor shall be a non-partisan, full-time position. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10; 11/6/12)

Section 3. Ranked choice voting; instant runoff tabulation.

For the positions of mayor, city councilor, and school board member, the city clerk shall implement a ranked choice voting protocol according to these guidelines:

- (a) The ballot shall give voters the option of ranking candidates in order of choice.
- (b) If a candidate receives a majority, i.e. at least one more than fifty percent (50%) of the first choice votes cast, that candidate is elected.
- (c) If no candidate receives a majority of first choice votes, an instant runoff re-tabulation shall be promptly conducted by the city clerk and completed within five (5) business days of the election. The instant runoff re-tabulation shall be conducted in successive rounds, with the majority determined for each successive round by the number of votes cast in that round. The candidate with the fewest votes after each successive round in which no candidate receives a majority of the votes cast in that round shall be eliminated, and the votes in the successive rounds shall be re-tabulated among the remaining candidates until one candidate receives a majority of the votes cast in that round. In each successive round, each voter's ballot shall count as a single vote for whichever candidate the voter has ranked highest who has not been eliminated in a prior round, if any.

- (d) After the first round, a majority is determined as at least one (1) more than fifty percent (50%) of the votes cast for a remaining candidate in a particular round.
- (e) The city clerk may adopt additional regulations consistent with this subsection to implement these provisions. The ballot shall contain instructions on how to vote for each office.

(Referenda 11/2/2010; 3/3/2020)

Section 4. Compensation of councilors and mayor.

Except as otherwise provided in the paragraph below for the mayor's compensation, the city council shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, and specify when any compensation shall be payable, but no such order increasing their compensation, including that of the mayor, shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance.

Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than one and one-half (1.5) times the median household income for Portland as most recently published by the U.S. Census Bureau, American Community Survey, or successor index thereto, at the time such compensation is set or adjusted, plus customary city benefits.

No member shall hold any office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected.

(Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. Mayor's powers and duties.

The mayor shall be the official head of the city, responsible for providing leadership, and shall have the following powers and duties:

- (a) To articulate the city's vision and goals and build coalitions to further such vision and goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that purpose;
- (b) To convene and lead an annual workshop session of the city council to discuss and identify the city's goals and priorities in order to provide guidance for the city manager and to inform the public. The city manager shall attend this workshop session, and a summary of the session shall be made available to the public;
- (c) To represent the city with other municipalities, levels of government, community and neighborhood groups, and the business community;
- (d) To preside as chair of the city council, and vote upon all matters in the same manner as other members of the city council, except as provided in article VII, section 8. The mayor shall direct the city manager in the preparation of council meeting agendas;
- (e) To facilitate the implementation of city policies through the office of the city manager;
- (f) To consult with and provide guidance to the city manager in the preparation of all city budgets and to provide comments on such budgets at the time they are presented by the city manager to the city council for approval;
- (g) To consult with and provide guidance to the city manager in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (i), and to provide comments on such program plan at the time it is presented by the city manager to the city council;
- (h) To facilitate among the city manager, city council, board of public education and the public to secure passage by the city council of the annual city and school budgets;

- (i) To exercise veto power over the annual city appropriation as provided in article VII, section 8;
- (j) To establish performance guidelines in conjunction with the other members of the city council for regular evaluations, no less than annually, by the city council of the performance of the city manager, corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities;
- (k) To chair any subcommittee with at least two (2) other city councilors to recommend the appointment or removal of the city manager, corporation counsel or the city clerk, but the full city council shall have the final decision in regard to such appointment or removal by a vote of at least five (5) members of the council; and
- (l) To appoint the members and chairs of the city council committees and various ad hoc committees and communicate such appointments to the city council, which may override such appointments by a vote of at least six (6) council members.

Notwithstanding the foregoing, the city manager shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council.

(Referendum 11/2/10)

Section 6. Absence or disability of mayor; acting mayor.

In the temporary absence or disability of the mayor, the mayor may select an acting mayor from among the other council members and such person shall perform the duties of the mayor during such temporary absence or disability for a maximum of sixty consecutive (60) days or return of the mayor, whichever comes first. If through physical or mental incapacity the mayor is unable to select an acting mayor, or if the mayor's absence or disability exceeds sixty (60) consecutive days, the council shall select an acting mayor from among its membership until such time as the mayor is able to resume his or her duties or a vacancy is declared pursuant to section 7 below and a new mayor elected. (Referendum 6/13/78; 11/7/00; 11/2/10)

Section 7. Vacancies.

A vacancy in the membership of the city council shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or 6) the recall of a member pursuant to the provisions of article V. The council shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the city council, or at least sixty (60) percent of the regular meetings of the city council held in any one calendar year unless such member shall be excused (by vote of at least four (4) other members) for health reasons or other good cause.

The council shall declare a vacancy in its membership to exist upon the qualification of any member for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

A member may in writing addressed to the council resign his or her office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and such member's office shall become vacant on such specified future date.

If a vacancy in the membership of the city council occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

Section 8. Meetings of the council.

The city council shall meet at the usual place for holding meetings on the first Monday in December following the regular municipal election, or as soon thereafter as possible, and at such meeting the mayor and councilors-elect shall be sworn to

the faithful discharge of their duties by a justice of the peace, or by the city clerk. The city council shall at such meeting establish by resolution or rule a regular place and time for holding its meetings, and shall meet regularly at least twice each month. (Referenda 6/13/78; 11/4/86; 11/7/00; 11/2/10)

Section 9. Special meetings.

Special meetings may be called by the mayor, and in case of his or her absence, disability, or refusal, may be called by five (5) or more members of the city council. At least twenty-four (24) hours notice of the time and place of holding such special meeting shall be given to all members of the city council. (Referendum 11/2/10)

Section 10. Quorum.

Five (5) members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referendum 11/2/10)

Section 11. Procedure.

The city council shall keep a record of its proceedings and shall determine its own rules of procedure and make lawful regulations for enforcing the same. The meetings of the city council shall be open to the public in accordance with state law. The city council shall act only by ordinance, order, or resolve. All ordinances, orders, and resolves, except orders or resolves making appropriations of money, shall be confined to one subject which shall be clearly expressed in the title. An appropriation order or resolve shall be confined to the subject of appropriations only.

No ordinance and no appropriation order or resolve shall be passed until it has been read on two separate days, except when the requirement of a second reading on a separate day has been dispensed with by the vote of at least seven (7) members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance, order, and

resolve shall require on final passage the affirmative vote of at least five (5) members of the city council. No ordinance shall take effect until thirty (30) days after its passage and no order or resolve shall take effect until ten (10) days after its passage, except as herein otherwise provided for emergency ordinances, orders and resolves.

The city council may, by vote of at least seven (7) of its members, pass emergency ordinances, orders, or resolves to take effect at the time indicated therein, but such emergency ordinances, orders, or resolves shall contain a section in which the emergency is set forth and defined, provided, however, that the declaration of such emergency by the city council shall be conclusive. (Referendum 11/2/10)

ARTICLE III. BOARD OF PUBLIC EDUCATION

Section 1. Composition, election, tenure of office, compensation.

The board of public education shall be composed of nine (9) members who shall hold office, except as hereinafter provided, for a term of three (3) years and until their successors are elected and qualified. Four (4) shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the five (5) districts heretofore provided for in section 1 of article II, from and by the registered voters of each such district.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the five (5) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

The city council shall by order establish the amount each member of the school board shall be entitled to receive as compensation for all services rendered, which compensation shall be the same as that received by members of the city council, other than the mayor. The city council shall provide additional compensation to the chair of the school board appropriate to reflect his or her additional responsibilities as chair.

(Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 2. Chair.

On the first Monday in December following the regular municipal election, or as soon thereafter as possible, the board of public education shall elect one of its members as chair for the ensuing year and until a successor is elected and qualified, and may fill for the unexpired term any vacancy as chair that may occur.

At a date and time to be mutually agreed upon by the chair of the school board and the mayor, the chair shall deliver an annual address on the "state of the public education system in Portland" to the city council and the public. (Referenda 11/2/76; 6/13/78; 11/7/00; 11/2/10)

Section 3. Organization.

The school board shall meet for organization on the first Monday in December following the regular municipal election, or as soon thereafter as possible. The members-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the city clerk, and a record made thereof. The members shall at such meeting, or as soon thereafter as possible, establish a regular place and time for holding meetings and shall meet regularly at such place and time. Five (5) members of the school board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referenda 6/13/78; 11/7/00; 11/2/10)

Section 4. Powers and duties.

The board of public education shall have all the powers, and perform all the duties in regard to the care and management, including sound fiscal management, conduct, and control of the public schools of the city, which are now conferred and imposed upon school committees and school boards by the laws of this state, except as otherwise provided in this charter. (Referendum 11/2/10)

Section 5. School budget.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.

The budget submitted by the superintendent to be reviewed jointly by the school board and the city council shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for joint review, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall submit to the city council a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, and shall thereafter provide the city council with such information relating to such budget as the city council shall require.

A budget hearing on such budget estimates shall be held prior to final action by the city council. The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city

purposes, appropriate one gross amount for the support of the public schools, which amount shall not be less than the sum required to be appropriated for such purposes by the general laws of the state. Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council. Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council. (Referendum 6/13/78; 11/2/10)

Section 6. Vacancies.

A vacancy in the membership of the board of public education shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or (6) the recall of a member pursuant to the provision of Article V. The school board shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the school board or at least sixty (60) percent of the regular meetings of the school board held in any one calendar year unless such member shall be excused (by a vote of at least four (4) of the members) for health reasons or other good cause. A member may in writing addressed to the school board resign his or her office effective at a future date specified in the written resignation. Once submitted to the school board, such resignation may not be withdrawn and such member's office shall become vacant on the specified future date.

If a vacancy in the membership of the school board occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

ARTICLE IV. ELECTIONS

Section 1. Continuity in office.

In the event redistricting of the city shall cause a then council member or school board member to reside in a district other than that from which such person was elected, the office of such member shall not thereby be considered vacated but such member shall continue in office until a successor is duly elected and qualified. Each district councilor and district school board member in office on the effective date of any such redistricting shall be deemed to represent the newly constituted district of the same numerical designation as that formerly represented and shall continue to serve in that capacity until expiration of his or her term. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 2. Regular municipal election.

On the first Tuesday after the first Monday in November of each year, the regular municipal election shall be held and the registered voters of the city or district, as the case may be, shall ballot for such councilors and for such members of the school board as may be necessary to fill the offices of those whose terms would then normally expire and fill any existing vacancy in an unexpired term of office. (Referenda 12/1/75; 11/2/76; 6/13/78; 11/4/86; 11/7/00; 11/6/01; 11/2/10)

Section 3. Wardens and ward clerks.

The wardens and ward clerks shall be nominated by the city clerk and appointed by order of the city council. They shall be and remain residents of the city and all other qualifications for appointment shall be as provided in Title 21-A of the Maine Revised Statutes. They shall hold their office for one year from the date of appointment, unless a shorter term is specified by the order of appointment, and until others have been chosen and qualified in their stead. The warden and the ward clerk shall be sworn to the faithful performance of their duties by a person qualified under the statutes of the state to administer oaths, and a certificate of such oath shall be entered by the clerk on the records of such ward. (Referenda 11/2/76; 6/13/78; 11/4/86, 11/4/08; 11/2/10)

Section 4. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy-five (75) nor more than one hundred fifty (150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

Section 5. Form of nomination petition.

The signatures to nomination petitions need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers of each petition, and that each signature appended thereto was made in his or her presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer giving the street and number of the street, or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

To the city clerk of the City of Portland

We, the undersigned voters of the City of Portland, hereby

nominate, _____ whose residence is _____ for the office of _____ to be voted for at the election to be held in the City of Portland on the _____ day of _____, _____, and we individually certify that we are qualified to vote for a candidate for the above office.

Name _____ Street and Number _____, being duly sworn, deposes and says, that he (she) is the circulator of the foregoing nomination petition containing _____ signatures, and that the signatures appended thereto were made in his or her presence and are the signatures of the persons whose names they purport to be.

(Signed) _____ .

Subscribed and sworn to before me this _____ day of _____,

Attorney, State of Maine Bar # _____
Notary Public

If this petition is deemed insufficient by the city clerk, he or she shall forthwith notify by mail _____ at _____.
(Referendum 11/2/10)

Section 6. Filing of nomination petitions, and acceptance of nomination.

The city clerk shall make nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to the election. The nomination petitions for any one (1) candidate must be assembled and united into one (1) petition and filed with the city clerk during normal business hours not earlier than eighty-five (85) nor later than seventy-one (71) days before the date of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing at the time of filing of such nomination petitions his or her consent accepting nomination, agreeing not to withdraw and, if elected, to qualify. Such nomination petitions and consent, once filed may not be withdrawn. Any challenge to a nomination petition must be submitted to the city clerk in writing, setting forth the specific reasons for the objection, no later than five (5) days, excluding Saturdays, Sundays, and legal holidays, from its date of filing, or it is barred. No person shall take out nomination papers for more than one position at the same election, nor be nominated, nor shall any person consent to being nominated, at the same election for any other elective office provided for by this charter, and no person shall simultaneously hold more than one (1) elective office provided for by this charter. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/6/01; 11/4/08; 11/2/10)

Section 7. Form of ballot.

All official ballots for use in all municipal elections shall be prepared by the city clerk and furnished by the city, consistent with the voting machines used and the form of any state ballot(s), and the use of ranked choice voting. Ballots for use in elections under this charter shall contain the names of the various candidates, with their residence, and the office

for which they are candidates, and instructions on how to mark the ballot. The candidates for each office shall be grouped under the title of each office, plainly and distinctly marked. There shall be as many blank spaces under the name of each office as there are vacancies to be filled. The procedure for counting write-in votes shall be governed by Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern. Notwithstanding the foregoing, in the event of an emergency such as the illness, death or disqualification of a nominee for municipal office prior to the general election, the time frame for accepting a declared write-in candidate may be shortened by the city clerk. Such ballots may also contain such measures as may be submitted to the voters of the city by the legislature or by the city council and shall be without party mark or designation.

In preparing all ballots for election under this charter, the city clerk shall arrange the names of all qualified candidates for each office in alphabetical order according to surnames. (Referenda 11/2/2010; 3/3/2020)

Section 8. Specimen ballots.

The city clerk shall cause specimen or sample ballots to be prepared and to be posted in public places in each ward and voting precinct and advertised in the newspapers not later than ten (10) days prior to the municipal election. Such specimen ballots shall be printed on colored paper and marked "Specimen Ballot," and shall contain the names of the certified candidates with the residence of each, instructions to voters, and such measures as may be submitted to the voters by the legislature or by the city council. Such specimen ballots shall also be without party mark or designation. (Referendum 11/6/01; 11/2/10)

Section 9. Count of ballots.

Upon closing of the polls, ballots shall be counted in accordance with Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern, and the results thereof delivered to the city clerk by the wardens. (Referendum 11/2/10)

Section 10. Canvass of returns.

The city clerk shall examine the records of the several voting places and within forty-eight (48) hours after such election shall determine and declare the successful candidates as follows: The person or persons, not exceeding the number to be voted for at any one time for any office, having the majority of votes cast at such election, shall be determined and declared to be elected. If no candidate for mayor, city council, or school board has a majority of the votes cast as provided in article II, section 3, the city clerk shall conduct an instant runoff tabulation as provided in such section until the candidate with the majority of votes cast is determined. The city clerk shall provide written notice of the election results to all candidates. (Referenda 11/6/01; 11/2/10; 3/3/2020)

Section 11. State election laws applicable.

The laws of the state in Title 21-A of the Revised Statutes relating to the qualifications of electors, registration, the manner of voting, the duties of election officials, and all other particulars in respect to preparation for conducting and managing elections, so far as they may be applicable, shall govern all municipal elections in the City of Portland, except as provided below regarding 42-day pre-election reports and as otherwise provided herein.

In addition to the reports required for municipal candidates by Title 21-A of the Maine Revised Statutes, 42-day pre-election reports must be filed by municipal candidates no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Nothing in this charter shall prohibit the use of electronic or revised voting methods and procedures to the extent authorized by state and/or federal law. (Referenda 11/4/08; 11/6/2018)

ARTICLE V. RECALL

Section 1. Applicability.

Any member of either the city council or the school board may be recalled and removed from office by the registered voters of the City of Portland, as hereinafter provided, except that this provision shall not apply to a member of either body who has one (1) year or less to serve in his or her term, i.e., any petition to recall a member must be certified by the clerk no later than November 30 of the year prior to that member's next scheduled November re-election date. (Referenda 11/4/86; 11/2/10)

Section 2. Petition for recall.

In the case of either an at large member of the city council or of the school board, any five hundred (500) registered voters of the city may affirm and file with the city clerk an affidavit containing the name of the member of the city council or of the school board whose removal is sought, together with a statement of the reasons why such removal is desired. In the case of a district member of the city council or of the school board, any two hundred and fifty (250) registered voters of the member's district may affirm and file with the city clerk an affidavit containing the name of the district member whose removal is sought, together with a statement of the reasons why such removal is desired. Members of the city council and of the school board shall not be included on the same affidavit and only one member's name shall be on an affidavit.

Within seven (7) calendar days of receipt of such an affidavit, the city clerk shall prepare a sufficient number of petitions which shall contain the signature of the city clerk, his or her official seal, the date, and the name of the person whose removal is sought. In addition, the statement of reasons for removal referred to above shall either be printed on such petitions or attached thereto. Such petitions shall be on paper of uniform size with as many individual sheets as reasonably necessary.

The city clerk shall file the completed petitions in his or her office. During the thirty (30) days following their filing, the city clerk shall arrange to have petitions, noting that removal is being sought as well as the reasons therefor, available for signature both at city hall and also at public places as indicated below. Notice of the location of the public places where petitions may be signed shall be given by publication at least forty-eight (48) hours in advance and such notice shall contain the specific location of such public place or places, the dates it or they will be open, and the times

during which petitions may be signed. In the case of either a district councilor or a district school board member, the city clerk shall select one (1) site outside of city hall, but within the district of the member whose removal is sought, and such location shall be open for four (4) days between the hours of noon and 8:00 p.m. In the case of at large councilors or members of the school board, the city clerk shall select four (4) sites outside of city hall and such locations shall be open for four (4) days each between the hours of noon and 8:00 p.m.

The city clerk shall designate election clerks to supervise each such site. Election clerks shall be residents of Portland and at least eighteen (18) years of age. They shall be sworn to the faithful performance of their duties by the city clerk. Each qualified voter who signs a petition shall include his or her place of residence, providing either the street and number or a description sufficient to identify the place.

To mandate a vote in the case of an at large councilor or an at large member of the school board, the recall petition must be signed by at least three thousand (3,000) registered voters of the city, or in the case of a district councilor or district member of the school board, by at least fifteen hundred (1,500) registered voters of that member's district. (Referenda 12/1/75, 11/4/86; 11/2/10)

Section 3. Verification of recall petition.

At the expiration of the thirty (30) day period for signing petitions described in section 2, the city clerk shall declare the petition closed and, within ten (10) days thereafter, shall ascertain whether or not the petitions have been signed by the requisite number of registered voters. The city clerk shall attach his or her certificate, showing the results of such examination, to the petitions.

If the clerk's certificate should show that the petitions are insufficient, he or she shall advise both the city council and also the person or persons whose removal was sought of that fact. A finding of insufficiency shall not prejudice the filing of a new petition for the same purpose, except that such new petition shall not be filed within twelve (12) months from the date of the receipt of the clerk's certificate by the city council. (Referenda 11/4/86; 11/2/10)

Section 4. Calling of recall election.

If the clerk's certificate should show that the petitions are sufficient, he or she shall submit them, together with the clerk's certification, to the city council at its next regular meeting following certification, and shall also notify the person or persons whose removal is sought. The city council shall, within ten (10) days of receipt of the clerk's certificate, order an election to be held not less than forty-five (45) nor more than ninety (90) days thereafter; except that, if a regular municipal election should occur within ninety (90) days after receipt of the certificate, the city council may, in its discretion, schedule the recall election for the same date as the regular municipal election. The recall election shall be called and held as other elections under this charter, except for the specific limitations imposed by this article.

All registered voters in the city may vote on the recall of an at large member of the council or school board; only the registered voters of the applicable district may vote on the recall of a district member of the council or school board.

(Referenda 11/4/86; 11/2/10)

Section 5. Form of ballot.

Unless the member or members whose removal is sought shall have resigned within ten (10) days after the receipt by the city council of the clerk's certificate, the form of the question to be submitted to the voters shall, as nearly as possible, be: "Shall (name of official and his or her title) be recalled?"

(Referendum 11/4/86)

Section 6. Count of ballots.

In case a majority of those voting for and against the recall of any official shall vote in favor of recalling such official, he or she shall be thereby removed, and, in that event, the candidate to succeed such person for the balance of the unexpired term shall be determined as provided for in the case of a vacancy in the office.

If a majority of those voting should decline to recall a particular official, then no proceedings, seeking the recall of that same official, shall be initiated under this article within

twelve (12) months from the date of the election in which his or her recall was sought. (Referendum 11/4/86)

Section 7. Election may be ordered.

If a member of either the city council or school board who is recalled should either request a recount or dispute the election as permitted by law, then that member shall remain in office until the recount or dispute has been finally determined; and the provisions of article II, section 7 and article III, section 6, relating to vacancies in the city council or school board, shall be stayed. (Referendum 11/4/86; 11/2/10)

ARTICLE VI. ADMINISTRATIVE OFFICERS

Section 1. Appointments.

(a) The following officers shall be appointed by vote of at least five (5) members of the city council: city manager, city clerk, and corporation counsel, and they may appoint constables at large.

(b) All department heads shall be appointed by the city manager, subject to confirmation by the city council.

(c) All attorneys employed in the corporation counsel's office shall be appointed by the corporation counsel, subject to confirmation by the city council.

(d) All other employees shall be appointed by the city manager upon recommendation of the heads of their departments.
(Referendum 11/4/86; 11/2/10)

Section 2. Organizational powers.

The city council shall have power to provide by ordinance for the organization, conduct, and operation of the departments, agencies, offices, and boards of the city, for the creation of additional departments, agencies, offices, and boards and for the division of any such departments, agencies, offices, and boards; and for the alteration, abolition, assignment, or reassignment of all such departments, divisions, agencies, offices and boards; provided, however, there shall be a director of finance to perform the functions specified in article VII of this Charter. The city council shall, by ordinance, designate

those department heads responsible for performing duties required by state law. (Referendum 11/4/86)

Section 3. Civil service rules.

The city council shall provide by ordinance for a system of civil service rules for the appointment, promotion, demotion, lay-off, reinstatement, suspension, and removal of the members of the police department and of the fire department, other than the chiefs of such departments, and for a civil service commission to administer the same.

Section 4. Compensation and tenure of offices.

The city council shall fix by order the salaries of the appointees of the city council. Salaries of the appointees of the city manager shall be fixed by the city manager, subject to the approval of the city council. All appointive officers shall hold office during the pleasure of the appointing power.

Section 5. Appointment; qualifications; powers and duties of the city manager.

The city manager shall be chosen by the city council solely on the basis of character and executive administrative qualifications, and may or may not be a resident of the City of Portland or of the State of Maine at the time of appointment. Such person shall give bond for the faithful discharge of his or her duties to the City of Portland and in such sum as the city council shall determine and direct, and with surety or sureties to be approved by the city council. The premium on such bond shall be paid by the city. Such person shall be the administrative head of the city and shall be responsible to the city council for the administration of all departments. Neither the mayor nor members of the city council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment. Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards

and commissions, council committees, neighborhood and other groups and organizations, on city work.

The city manager's powers and duties shall be as follows:

- (a) To see that the laws and ordinances are enforced, but shall delegate to the chief of the police department the active duties connected therewith regarding criminal conduct.
- (b) To exercise control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.
- (c) To implement the policy decisions of the city council.
- (d) To coordinate city programs and operations and recommend improvements in such programs and operations to the council.
- (e) To prepare city budgets, in consultation with and incorporating policy guidance of the mayor, and to present such budgets to the council.
- (f) To make appointments as provided in this charter.
- (g) To attend meetings of the city council, except when his or her removal is being considered, and recommend for adoption such measures as he or she may deem expedient.
- (h) To keep the city council fully advised as to the business and financial condition and future needs of the city and to furnish the city council with all available facts, figures, and data connected therewith when requested.
- (i) To prepare a five (5) year rolling capital improvement plan for annual presentation to the city council, which plan includes the following:
 - 1. A one (1) year plan of specific projects and their cost;

2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; and
 3. A discussion of the basis for the plan and the factors which went into its development or amendments.
- (j) To prepare and submit to the city council such reports as are requested or he or she deems advisable; and
- (k) To perform such other duties as may be prescribed by this charter or required by ordinance of the city council. (Referenda 11/4/86; 11/2/10)

Section 6. Vacancy in office of city manager.

During any vacancy in the office of city manager, and during any absence or disability of the city manager of more than sixty (60) days, the city council shall designate a properly qualified person to perform the duties of manager and fix such person's compensation. During a temporary absence of sixty (60) days or less, the city manager may designate a qualified person to perform the duties of manager during such absence. While so acting, such person shall have the same powers and duties as those given to and imposed on the city manager. Before entering his or her duties, he or she shall give bond to the City of Portland in a sum and with surety or sureties to be approved by the city council. The premium on such bond is to be paid by the city. (Referendum 11/2/10)

Section 7. Duties of administrative officers.

Duties of administrative officers shall be prescribed by the appointive power, but such duties shall not be inconsistent with this charter or any ordinance enacted by the city council as provided herein. (Referendum 11/4/86; 11/2/10)

Section 8. Continuity in office.

Any and all officers, department heads, and employees of the City of Portland on the effective date of this charter shall continue in such capacity until a successor is appointed and qualified as provided herein, unless sooner removed by the appointive power designated herein. (Referendum 11/4/86; 11/2/10)

ARTICLE VII. BUSINESS AND FINANCIAL PROVISIONS

Section 1. Accounts and records.

Accounts shall be kept by the director of finance, showing the financial transactions of all departments of the city, and the school department. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the city. The director of finance shall furnish to the city manager each month a report containing in detail the revenues, expenses and expenditures of the city on all accounts, and for each appropriation item the expenditures made and the obligations incurred during the preceding calendar month and the total unencumbered balance. All the accounts of the city and the school department shall be audited annually by a qualified certified public accountant to be chosen by the city council.
(Referendum 12/1/75; 11/2/10)

Section 2. Collaboration between city and schools.

To the extent practicable and lawful, the city and the school department shall endeavor to share staff and resources and otherwise cooperate with one another in order to provide better city and school services in a cost effective manner.
(Referendum 11/2/10)

Section 3. Reports.

The director of finance shall publish each month a set of financial statements reflecting the financial condition of the city and the school department, and such other financial information as may be required by the city council.

The director of finance shall produce a comprehensive financial report on an annual basis which conforms to "Generally Accepted Accounting Principles." (Referendum 11/2/10)

Section 4. Fiscal year.

The fiscal year of the city shall be July 1 through June 30, or such other fiscal year as the city council shall determine.
(Referenda 6/13/78; 11/4/86; 11/2/10))

Section 5. Annual budget.

Not later than two (2) months before the end of the fiscal year, the city manager shall submit to the city council a proposed city budget prepared by the city manager for the ensuing fiscal year. The mayor shall submit comments on the proposed city budget, along with any proposed modifications, concurrently with the manager's submission.

The city council shall fix a time and place for holding a public hearing upon the proposed city budget prepared by the manager, and shall give not less than ten (10) days prior public notice of such hearing, which hearing shall be at least ten (10) days before the final passage of the appropriation resolve.
(Referenda 6/13/78; 11/4/86; 11/2/10)

Section 6. Budget content.

The proposed city budget prepared by the manager shall provide a complete financial plan of city general and enterprise funds and activities for the ensuing fiscal year. In organizing the budget, the city manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating proposed tax levies, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year.

The total of proposed expenditures shall not exceed the total of proposed income. (Referenda 6/13/78; 11/2/10)

Section 7. Appropriation resolve.

The city council shall adopt the annual appropriation resolve for the next fiscal year on or before the last day of the twelfth month of the fiscal year currently ending. Such resolve shall appropriate those amounts deemed necessary for general city purposes and additionally one gross amount for school purposes as required by section 5 of article III. The total amount appropriated shall not exceed the estimated revenue of the city.

If it fails to adopt such resolve by this date, the city council may make appropriation for current departmental expenses, chargeable to the appropriation for the year, when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force. These continuing appropriations shall not be subject to the mayor's veto in section 8 below.

The city council may by resolution appropriate to any purpose or object for which there shall have been no appropriation for the current year, or for which the appropriation for the current year has proved insufficient, any accruing revenue of the city not appropriated as hereinbefore provided and any unencumbered appropriation balance, or portion thereof, remaining after the purpose of the appropriation shall have been satisfied or abandoned. Such appropriations shall not be subject to the mayor's veto in section 8 below. (Referenda 6/13/78; 11/2/10)

Section 8. Mayoral veto of general city purposes appropriations in the appropriation resolve.

Within five (5) business days of the meeting at which the city council adopts the annual appropriation resolve, the mayor may veto the appropriation for general city purposes in such resolve by written communication to the other members of the city council. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

Any such veto of the appropriation for general city purposes shall not affect city payment of debt service obligations on previously authorized bonds, nor shall it affect the school budget appropriation.

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be overridden by a vote of at least six (6) members of the city council. The mayor shall not vote on such override item.

If a veto is overridden, the general city purposes appropriation will take effect on the first day of the fiscal

year, or on the day immediately following the override vote, if such vote is after the first day of the fiscal year.

If a veto is not overridden, then at the same meeting the override vote is taken, the general city purposes appropriation which was vetoed shall become an item for further consideration by the city council, without the need for a motion for reconsideration, and the city appropriation may be modified, amended, or otherwise acted upon to secure passage at that meeting or a subsequent meeting without the need for two readings prior to passage.

In the event the city council does not override the veto or does not secure passage of the annual appropriation for general city purposes prior to the start of the fiscal year, or has not otherwise acted to provide continuing appropriations under the second paragraph of section 7 above, then the appropriations for general city purposes in effect for the prior fiscal year shall go into effect as of the first day of the fiscal year, with expenditures chargeable to the appropriation for the year, until the appropriation for general city purposes is approved.

(Referendum 11/2/10)

Section 9. Unexpended appropriations.

All appropriations in the annual budget shall lapse at the close of the fiscal year unless specifically continued by order of the city council, and the unexpended appropriations shall be transferred to the appropriate fund balance account. (Referendum 11/2/10)

Section 10. Borrowing.

The borrowing of money by and for the city shall be limited as to form and purpose by section 11 and section 12 of this article. The credit of the city shall in no manner be loaned to any individual, association or corporation. (Referendum 11/2/10)

Section 11. Bond issues.

Money may be borrowed, within the limits fixed by the constitution and statutes of the state, now or hereafter applying to Portland, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings, the proceeds to be used for the acquisition of land, the

construction, reconstruction, major alteration, extraordinary repairs, and equipment of buildings and other permanent public improvements, the purchase of departmental equipment, for economic development to the extent determined by the City Council to serve a valid public purpose, to create reserves to settle workers' compensation obligations, to fund, refund, pay or to create reserves for the payment of the city's unfunded pension fund liabilities and for the payment of refunding bonds, notes and other evidences of indebtedness previously issued, or for any other purpose permitted by state law.

No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in two (2) public places in the City of Portland and publishing such notice at least twice in a newspaper of general circulation in Portland at least two (2) weeks before final action of the city council. In addition, the city council may, in its discretion, provide that such notice shall be published on the city's website and in such other additional media as the city council determines are appropriate to notify the general public of the public hearing.

Any order authorizing the issue of bonds must be approved by vote of at least seven (7) members of the city council.
(Referenda 11/4/86; 11/5/91; 11/8/94; 11/2/99; 11/2/10)

Section 12. Temporary loans.

Money may be borrowed in anticipation of receipts from taxes during any fiscal year but the aggregate amount of such loans outstanding at any one (1) time shall not exceed eighty (80) percent of the revenue received from taxes during the preceding fiscal year. All such loans shall be paid within the year out of the receipts from taxes for the fiscal year in which the loans are made. Money may be borrowed in anticipation of money to be received from the sale of bonds to be issued, in case such bond issue has been authorized; all such loans shall be subject to the provisions of the laws of the State of Maine in relation thereto. This section shall not limit in any way the power granted to towns and cities to borrow money as contained in the Revised Statutes of the State of Maine and acts amendatory thereof and additional thereto. (Referendum 11/4/86; 11/2/10)

Section 13. Payments.

The director of finance shall establish adequate financial controls to reasonably ensure that all payrolls, bills and other claims and demands against the city are in proper form, correctly computed, duly certified and legally due and payable.

The director of finance may require any claimant to make oath to the validity of his or her claim, may investigate any claim and for such purpose or purposes may examine witnesses under oath.
(Referendum 11/2/10)

Section 14. Bonds of officers.

The city council shall require a bond with sufficient surety or sureties, satisfactory to the city council, from all persons trusted with the collection, custody or disbursement of any of the public moneys; and may require such bond from such other officials as it may deem advisable; the premium charges for such bonds to be paid by the city. (Referendum 11/2/10)

Section 15. Collection and custody of city moneys.

All moneys received by any officer, employee or agent of the city belonging to the city, or for or in connection with the business of the city, shall forthwith be paid by the officer, employee or agent receiving the same into the city treasury, and shall then be deposited by the director of finance with a federally insured banking institution or institutions or insured credit union or unions. All interest from all deposits of money belonging to the city shall accrue to the benefit of the city.
(Referendum 11/2/10)

Section 16. Voter referendum required for certain city council actions.

(a) The city council shall submit the following to voter referendum:

- (1) Orders or resolves authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment;
or
- (2) Orders or resolves directly or indirectly obligating the city to expend, over a term greater than one (1)

municipal year, municipal tax funds in excess of an amount greater than seven and one-half one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment.

(b) The provisions of this section shall not be applicable to any order or resolve authorizing (i) the refunding of any securities or other obligations of the city; (ii) the issuance of general obligation securities, or other direct or indirect obligations, of the city for streets, sidewalks, or storm or sanitary sewers; or (iii) any construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other declared emergency. For purposes of this section, the city council may by vote of at least seven (7) of its members adopt emergency orders or resolves authorizing construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other emergency and such orders or resolves shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the city council shall be conclusive.

(c) Any order or resolve described in subsection (a) of this section shall be approved by separate action of the city council.

(d) No order or resolve described in subparagraph (a) of this section, not excepted by subparagraph (b), shall become effective until approved by a majority of voters voting at a regular or special municipal election. In the event that the total number of votes cast for and against the question for the referred order or resolve should be less than ten (10) percent of the registered voters of the city, then such order or resolve shall be deemed to be approved and effective.

(e) The form of the ballot question for the referred order or resolve shall be substantially as follows:

Shall the order or resolve entitled " _____
_____ " , be approved?
(Referendum 11/4/86; 11/2/10)

ARTICLE VIII. MISCELLANEOUS PROVISIONS

Section 1. No personal interest.

No member of the city council or school board or board or commission thereof and no officer or employee of the city or school department shall:

- (a) Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland or the school board, except his or her employment contract, or in the sale to or by the city or school department of any land, materials, supplies or services when such officer, employee or member exercises on behalf of the city or school department any function or responsibility with respect to such contract or sale. All contracts or sales made in violation hereof are void, and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such transaction.
- (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties.
- (c) Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Referenda 11/4/86; 11/2/10)

Section 2. Ordinances, rules and regulations continued.

All ordinances in force at the time that this charter takes effect, not inconsistent with this charter, shall continue in

force until amended or repealed. All rules and regulations of the municipal officers or of any office of the City of Portland in force at the time that this charter takes effect, not inconsistent with the provisions hereof, shall continue in force until amended or repealed.

Section 3. Continuity of actions.

All rights, actions, proceedings, prosecutions and contracts of the city or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent therewith shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Section 4. Summons before city council and civil service commission.

The clerks of the supreme judicial and superior courts may issue summonses or subpoenas for witnesses to attend and to produce books, documents and papers at any meeting of the city council or of the civil service commission of the City of Portland at which a hearing is had in any matter regarding any alleged dereliction, which summonses shall be served as summonses are required to be served in matters before the supreme judicial or superior courts. Failure to obey a summons or subpoena shall be punished by the appropriate court in the same manner as contempt is punished under the general law.

(Referendum 11/4/86)

Section 5. Effect of private and special laws.

Private and special laws which apply to the City of Portland in effect on November 4, 1986 shall continue in force until amended or repealed. (Referendum 11/4/86)

APPENDIX A

Charter Legislative History

1. Town of Portland incorporated by Act of Commonwealth of Massachusetts on July 4, 1786; Town of Portland Records, p. 1

2. City of Portland incorporated by adoption of charter on March 26, 1832; original charter can be found in Chapter 248, Special Laws of Maine 1832, p. 380; amendments as follows:

c. 325, S.L. 1833, p. 501

c. 500, S.L. 1834, p. 749

c. 402, S.L. 1838, p. 511

c. 541, S.L. 1839, p. 648

- c. 33, P & SL 1842, p. 25
- c. 200, P & SL 1845, p. 258
- c. 266, P & SL 1845, p. 310
- c. 233, P & SL 1849, p. 333
- c. 330, P & SL 1850, p. 458
- c. 167, P & SL 1853, p. 158
- c. 35, P & SL 1857, p. 48
- 3. A total revision of the charter was accomplished in 1863; c. 275, P & SL 1863, p. 257; amendments as follows:
 - c. 348, P & SL 1870, p. 316
 - c. 647, P & SL 1871, p. 624
 - c. 21, P & SL 1875, p. 16
 - c. 8, P & SL 1881, p. 9
 - c. 86, P & SL 1881, p. 86
 - (c. 450, P & SL 1897, p. 707--Revision of charter rejected by voters in 1897)
 - c. 384, P & SL 1901, p. 569
 - c. 68, P & SL 1903, p. 116
 - (c. 287, P & SL 1905, p. 328--abolishing common council rejected by voters April 24, 1905)
 - c. 344, P & SL 1907, p. 638
 - c. 427, P & SL 1907, p. 758
 - (c. 148, P & SL 1921, p. 513--"Murray Bill" charter revision rejected by voters September 13, 1921)
 - (c. 149, P & SL 1921, p. 532--"Brewster Bill" charter revision rejected by voters September 13, 1921)
- 0. A total revision of the charter was accomplished in 1923 by adoption by voters of "Brewster Bill" on September 11, 1923; c. 109, P & SL 1923, p. 596; ("Nichols Bill" c.104, P & SL 1923, p. 557 was rejected same date); amendments as follows:
 - c. 56, P & SL 1929, p. 484
 - (c. 112, P & SL 1929, p. 604--Mayor--Alderman form rejected by voters on September 10, 1929)
 - c. 31, P & SL 1931, p. 353
 - c. 50, P & SL 1945, p. 629
 - c. 113, P & SL 1945, p. 736
 - c. 144, P & SL 1945, p. 71
 - c. 72, P & SL 1947, p. 722
 - c. 72, P & SL 1949, p. 765
 - c. 103, P & SL 1949, p. 803
 - c. 28, P & SL 1953, p. 528
 - c. 108, P & SL 1955, p. 756
 - c. 88, P & SL 1957, p. 707
 - c. 143, P & SL 1959, p. 873
- 4. A total revision of the charter was accomplished in 1961; c. 194, P & SL 1961, p 1125; amendments as follows:
 - c. 64, P & SL 1963, p. 966
 - c. 65, P & SL 1963, p. 967
 - c. 157, P & SL 1963, p. 1187
 - c. 177, P & SL 1963, § 1, p. 1291
 - (c. 6, P & SL 1965, p. 649 rejected by voters on December 6, 1965)
 - c. 7, p & SL 1965, p. 650
 - c. 81, P & SL 1965, p. 760

(c. 127, P & SL 1965, p. 849 rejected by voters on December 6, 1965)
c. 221, P & SL 1967, p. 136
c. 83, P & SL 1969, p. 1628
c. 136, P & SL 1969, p. 1792
c. 146, P & SL 1969, p. 1820
(c. 185, P & SL 1969, p. 1958 rejected by voters on November 3, 1970)

State constitutional law reference--Municipal home rule, Const. of
Maine, Art. VIII, Pt. 2.

Referenda 12/4/72	Art. I, 1
Referenda 12/1/75	Art. II, 2
	Art. IV, 2
	Art. IV, 4
	Art. V, 2
	Art. VII, 1
Referenda 11/2/76**	Art. II, 1
	Art. II, 4
	Art. III, 1,2,5
	Art. IV, 2,3,4,6
	Art. V, 2
Referenda 6/13/78	Art. II, 1,2,3,5
	Art. III, 1,2,3,4
	Art. IV, 1,2,3,6
	Art. VII,3,4,5,6
Referenda 11/4/86***	Art. II, 1,2,4,5
	Art. III, 1,5
	Art. IV, 1,2,3,4,6,7,9
	Art. V, 1,2,3,4,5,6,7
	Art. VI, 1,2,5
	Art. VII 7-10 (Rpld)
	Art. VI, 11-12 (Rnbd as Art. VI,
	7-8)
	Art. VII, 3,4,9,10,16
	Art. VIII, 1,4,5
	Art. VIII, 6 (Rpld)
Referenda 11/3/87	Art. II, 2
	Art. III, 1
Referenda 11/5/91	Art. VII, 9
Referenda 11/8/94	Art. VII, 9
Referenda 11/2/99	Art. II, 4
	Art. III, 5
	Art. VII, 9
Referenda 11/7/00	Art. II, 3,5
	Art. III, 2,3
	Art. IV, 2
Referenda 11/6/01	Art, IV, 2,6,8,10
Referenda 11/4/08	Art. IV, 3,4,5, 6,7,11
Referenda 11/2/10****	Charter Revisions recommended by the Portland Charter Commission established on November 4, 2008, and passed by the voters on November 2,2010

****Editor's note**--The amendment establishing district councilor elections became effective January 1, 1976, except that for the purpose of nomination and election of district councilors such amendment shall apply as the

presently occupied district seats become available thereafter by normal expiration of term or by vacancy and to every district election thereafter.

*****Editor's note--**A referendum passed Nov. 4, 1986 and effective July 1, 1987, repealed former sections 7 through 10 of article VI to eliminate references to obsolete offices (assistant assessors, director of public welfare) and renumbered former sections 11 and 12 as 7 and 8 respectively. Former sections 7 through 10 derived from the legislation enumerated in the first editor's note to this Charter.

*****Editor's note--**A referendum passed Nov. 4, 1986, effective July 1, 1987, amended section 4 of article VIII to clarify the summons-subpoena power and to provide that failure to obey either a summons or a subpoena will subject offenders to contempt. Former section 5 of this article was deleted as a result of the amendment to section 4 and a new section 5 added to preserve certain rights granted to the city by special acts of the legislature. Former section 6 was deleted to conform to 30 M.R.S.A. § 1915(4) which establishes the effective date of Charter revisions. See the editor's note to the Charter for derivations of deleted sections.

******Editor's note--**Portland voters approved a referendum passed on November 4, 2008 to establish a Portland Charter Commission to make recommendations to revise the Portland City Charter. Those recommendations were subsequently passed by the voters on November 2, 2010, and incorporated the provisions on the popularly elected mayor in Article 2, as well as making changes to the School and Elections articles and technical amendments throughout the document.

MEMORANDUM

TO:	Xavier Botana, Superintendent Portland Public Schools
FROM:	Agnieszka A. Dixon Drummond Woodsum
DATE:	November 5, 2021
RE:	Portland Charter—School Governance, Policy, and Management: The School Budget Approval Process and Bonding Authority

This memorandum follows our August 11, 2021 memorandum, in which we provided an overview of the law on behalf of Portland Public Schools governing the powers and duties of the City of Portland Charter Commission (the “Commission”) to address matters of school governance, policy, and management.

You have asked us whether the Portland Charter could be revised to task the School Board with approving the total amount of the school budget. As explained in Part I, below, the matter is not free from doubt. Nonetheless, we believe there is a strong legal basis to recommend that the Charter Commission propose a Charter revision to require the City Council to submit the total school budget to the voters, acting as the legislative body at a city-wide referendum. This would in effect limit the role of the City Council to calling and overseeing the school budget referendum.

You have also asked us whether the Charter could be revised to authorize the School Board to issue its own general obligation bonds to finance school construction and renovation projects. In Part II, below, we explain why this is not advisable, and we suggest a Charter revision whereby the City Council would continue to issue bonds for such projects but would direct the City Council to present any School Board recommended bond questions to the voters for ultimate approval.

I. THE SCHOOL BUDGET APPROVAL PROCESS

In the August 11 memo, we discussed the concept of home rule authority and the limits on that authority imposed by the Maine Constitution and state law. In short, under home rule, a municipality may, by charter, impose local regulation of public education unless state law has expressly prohibited local regulation or unless the Legislature “has intended to occupy the field and the legislation would frustrate the purpose of a state law.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993) (discussed below). With respect to the school budget approval process, and based upon the *York* decision, we stated that a charter could likely be revised to modify the school budget approval process as long as the power of the school board to direct expenditures and the responsibility of a municipal legislative body to determine the total school budget is not altered.

As you are well aware, municipal school budgets “must follow the same school budget requirements as regional school units.” 20-A M.R.S. § 2307. Accordingly, the school board prepares and approves a budget, which is organized by specific cost centers, and warrant articles prescribed by law. The school board budget is then submitted to the budget meeting. In charter municipalities, the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S. § 2307(1). The final step in budget approval is presentation of the total budget for ultimate approval by the voters in a budget validation referendum—although the voters are required

under state law to determine, every three years by referendum, whether or not to eliminate this step of the process. *See* 20-A M.R.S. § 1486(1).

State law contemplates that the school budget is approved by either “the municipal council *or other municipal legislative body*.” 20-A M.R.S. § 2307(1), (2) (emphasis added). It therefore appears that assignment of the authority to determine the total school budget to a municipal legislative body *other than* a city council is contemplated by the school statute. Accordingly, it may be argued that a charter provision that assigns this school budget function to a different body while leaving the decision for final budget authority with the voters would be within the municipality’s statutory home rule authority as articulated in the *York* decision.

In Maine, final approval of a school budget is typically the responsibility of (i) a town meeting composed of voters of a town, (ii) a school budget meeting composed of voters of the member municipalities of a school administrative unit, or (iii) a representative body, such as a council, established by charter. To our knowledge, most (if not all) city charters assign the responsibility for determining the total amount of the school budget to a city council. Of course, as a legal matter, just because something has not been done does not mean that it cannot be done. In evaluating the question posed, we could find no state law that would directly conflict with or be undermined by a charter provision that confers on the voters of a city the authority to act as the legislative body to approve a school board’s proposed total school budget. We therefore suggest that the Charter could be revised to direct the City Council to present the total school budget prepared and initially approved by the School Board to the voters for ultimate approval at a city-wide referendum.¹

Case law seems to support this school budget approval approach. In *York*, the Law Court upheld a town charter provision that created an elected municipal budget committee, separate from the school committee and the select board, vested with the power to amend the individual articles of the school budget and the total budget before it was submitted to voters for ultimate approval at referendum. *See Town of York*, 626 A.2d at 937, 942 & n. 4. The Court determined that the charter provision establishing this budget approval process was valid because there was no direct conflict between it and any statute and because it did not interfere with the purpose of the school statute or the municipal statute. *Id.* at 946. Moreover, the Court emphasized that, under the town’s charter framework, the “budget figures that are submitted to the voters are advisory” and that responsibility for the adoption of a final school budget is vested in the voters—vis-à-vis a budget referendum—and not the school committee. *See id.* at 941. Similarly here, a Charter revision directing the School Board to prepare the school budget and submit it to the City Council for the sole purpose of passing it on to the voters for ultimate approval would vest final approval of the total budget in a traditionally recognized municipal legislative body—the city’s voters.²

This approach also appears consistent with the plain language of the school statute. State law specifically provides:

1. Budget Meeting. In charter municipalities the budget meeting required by section 1485, subsection 3³ must be *a meeting of the municipal council or other municipal legislative body* established by the charter with authority to approve the budget.

¹ Specifically, under this approach, we envision a process by which the Charter would direct the City Council to call a budget validation referendum or, in the event the voters eliminate this step pursuant to 20-A M.R.S. § 1486, a municipal school budget referendum.

² As we noted in the August 11 memo and as we discuss next, since the *York* decision, the school budget approval process was modified to require a budget meeting followed by a budget validation referendum.

³ Section 1485, subsection 3 of Title 20-A provides:

2. Municipal charter. In charter municipalities where the municipal charter confers upon a municipal council or other municipal legislative body the authority to determine the total amount of the school budget and confers upon the school committee or school board the authority to direct the expenditure of those funds for school purposes, *the municipal council or other municipal legislative body shall determine the total amount of the school budget* to be submitted to a budget validation referendum and the school committee or school board shall determine the allocation of the approved school budget among the cost centers of the cost center summary budget format.

20-A M.R.S. § 2307 (emphasis added) (hereafter, “Section 2307”). In short, Section 2307 calls on a city council *or the municipal legislative body* to approve the total amount of the school budget at a meeting of the council or body. *See id.* In light of the presumptions in favor of home rule and the statutory authority of the voters to eliminate the budget validation referendum pursuant to 20-A M.R.S. § 1486(1), it can be fairly said that Section 2307 mandates a two-step school budget approval process: (1) preparation and initial approval of the school budget by a school board, followed by (2) ultimate approval of the initial budget by a municipal council *or* a municipal legislative body. It therefore does not appear to us to contradict or frustrate the purpose of Section 2307 for a municipal charter to direct the School Board to prepare and approve the school budget, and to then present the total proposed budget to a separate municipal legislative body, consisting of the voters at a City-wide referendum, for ultimate approval.

Likewise, the municipal statute appears to contemplate that there may be a municipal legislative body that is something other than a city council.⁴ It defines “municipal legislative body” as follows:

Municipal legislative body. “Municipal legislative body” means:

- A. The town meeting in a town;
- B. The city council in a city; *or*
- C. *That part of a municipal government that exercises legislative powers under a law or charter.*

30-A M.R.S. § 2001(9) (emphasis added). The third prong to this definition supports the proposition that a municipal legislative body can be something other than the town meeting or the city council so long as a law or charter establishes such a body and confers upon it the authority to exercise legislative powers. Certainly, it is conceivable that this third prong encompasses a referendum meeting of municipal voters, even though it is not enumerated in the above definition. Because the definition of “municipal legislative body” is housed in the municipal statute—and not in the school statute—it may well be that a court might not find it dispositive when interpreting the text of Section 2307. But, to the extent this definition may inform the analysis, in our view, a charter-enabled voter referendum would likely meet the state law definition of “municipal legislative body.”

In sum, although the matter is not free from doubt, it is our view that the Charter may be revised to direct the School Board to prepare and initially approve the school budget and to transmit it to the City Council, and to direct the City Council to submit the initially approved budget to the voters, serving as the legislative

Budget approval. A regional school unit’s cost center summary budget must be approved at a regional school unit budget meeting and by a budget validation referendum as provided in section 1486.

⁴ This concept is consistent with general principles of municipal law, which recognize that a municipal government has the power to create its form of local government pursuant to its home rule powers. *See* 2 McQuillin Mun. Corp. § 4:96 (3d ed.) (in general, the form of municipal government is subject to legislative control, but the power to adopt, alter, or revise a form of local government ordinarily may be delegated to a municipal corporation or its electors); *see also* 2A McQuillin Mun. Corp. § 9:2 (3d ed.) (stating that the effect of the adoption of a municipal charter “is to invest the governing authorities of the municipality—either a majority of the voters, or such officers as are prescribed—with the power of local government over inhabitants in that district”).

body, either via a budget validation referendum or, if it is discontinued by the voters pursuant to state law, a municipal school budget referendum for final approval.

In our role as legal counsel to Portland Public Schools, we have intentionally limited our analysis on this matter to the relevant legal considerations. We defer to others to deliberate on the policy implications and merits of pursuing such a change to the Charter. In weighing whether or not to pursue a revision to the Charter that would modify the established school budget approval structure, we encourage the School Board and the Commission to weigh the litigation risks, consider the policy implications, and evaluate alternative approaches that might address the underlying policy issues without raising the specter of lengthy and costly litigation.

II. BONDING AUTHORITY

The authority of a municipality to issue general obligation bonds is expressly set forth in the municipal statute. *See* 30-A M.R.S. § 5772. Likewise, the school statute grants certain types of school administrative units such authority. *See, e.g.*, 20-A M.R.S. § 1490 (authorizing regional school units to issue bonds or notes for school construction purposes); § 1311 (same for school administrative districts). Neither the municipal nor the school statute makes provision for the school committee of a municipal school unit to issue bonds in the name of the municipality. There is a strong legal argument that there is a comprehensive statutory scheme governing the issuance of municipal bonds and that a charter provision authorizing a municipal school committee to issue bonds would be deemed to be inconsistent with that scheme. Accordingly, a charter revision such as this likely would mean that a clean bond opinion could not be given and the bonds could not be issued.

Given that a statutory framework already exists for the issuance of municipal bonds, a simpler approach might be for the Charter to be revised to clarify that the role of the City Council with respect to the issuance of school construction or renovation bonds. Specifically, the Charter could be revised to (1) grant the School Board the authority to request the placement of a school construction or renovation bond question before the City voters at the next scheduled municipal election or at a special referendum, and (2) direct the City Council to call and oversee that referendum, thereby placing the question before the voters. In light of the presumptions in favor of home rule and given that the responsibility to approve school bonds under this approach would rest with the City voters, in our view, this approach would not likely run afoul of any home rule limitations.

We trust this memorandum is responsive to your inquiry. We are always available to answer any further questions you may have.

MEMORANDUM

TO:	Portland Public Schools School Board and Xavier Botana, Superintendent of Schools
FROM:	Agnieszka A. Dixon and E. William Stockmeyer Drummond Woodsum
DATE:	January 24, 2022
RE:	Proposals for Charter Provisions Regarding School Budget Approval Procedures and School Bonding Authority

At your request, we write in response to a memorandum prepared by Attorneys Jim Katsiaficas and Emily Arvizu to the Portland Charter Commission Education Committee, dated December 14, 2021 (which we refer to here as the “Perkins Thompson Memo”). In that memo, Attorneys Katsiaficas and Arvizu questioned (1) the scope of the City’s charter authority to assign the role of determining the total school budget to a municipal legislative body other than the City Council including, specifically, the School Board, and (2) the proper roles of the City Council and School Board in issuing school construction and renovation bonds. We respond to both of these issues in turn.

I. AUTHORITY TO REPLACE THE CITY COUNCIL WITH ANOTHER MUNICIPAL LEGISLATIVE BODY TO DETERMINE THE TOTAL SCHOOL BUDGET

As you know, in our memo dated August 11, 2021, we provided an overview of the law governing the powers and duties of the Charter Commission to address matters of school governance, policy, and management (the “August 2021 Memo”). You then asked us whether the Portland charter could be revised to task the School Board with determining the total amount of the school budget, and we responded that there appears to exist a strong legal basis to do so (the “November 2021 Memo”). Specifically, we stated in our November 2021 Memo that a charter provision that assigns the responsibility to determine the total school budget to a municipal legislative body other than the City Council while leaving the decision for final budget authority with the voters would likely be within the City’s charter authority.

In reviewing the Perkins Thompson Memo, it appears to agree with us on this point. Where our opinions seem to diverge is on the scope of the City’s home rule authority to identify *who* can serve as the municipal legislative body for this limited purpose.

In considering this question, we think it noteworthy that the Maine Law Court has not only held that the school statute did not implicitly preempt municipal charters from designating an entity responsible for preparing the school budget, but emphasized that the budget figures prepared by such an entity are “advisory” and that, perhaps, what mattered most was that “[r]esponsibility for the adoption of a final school budget . . . is vested in the voters, not the School Committee.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 940 (Me. 1993). Indeed, the Law Court unequivocally rejected the contention that interposing a budget committee between the school committee and the town meeting frustrated the legislative scheme set out in the school statute on grounds that it undercut state policy dividing school authority between the school board and the municipal legislative body. *Id.*

We think the *York* decision could lend credence to a variety of ways that the Portland charter could be revised to remove the City Council’s current role from the school budget approval process while respecting the plain language of Section 2307. We next discuss two of the various possible alternatives, and we respond to the objections to these two alternatives raised in the Perkins Thompson Memo.

- **Alternative #1: The voters determine the total school budget.**

The Perkins Thompson Memo states (correctly, we believe) that “the use of the phrase ‘or other [municipal] legislative body’ could be considered to allow Portland to amend its charter to transfer budget adoption authority from the City Council to a City-wide voter referendum.” (Perkins Thompson Memo at p. 4.) One alternative approach to the status quo, then, would be to have the charter direct the City Council to call a City-wide municipal school budget referendum for the purpose of determining the total school budget, followed by the statutory budget validation referendum (BVR). While the Perkins Thompson Memo objects to this approach, it does not appear to be on legal grounds but rather on the policy ground that holding two referendums (the first to set the total budget, and the second to ratify that budget) is a waste of effort. Yet there may well be sound policy reason for such a two-vote process.¹ Moreover, the Legislature established a two-vote process for nearly all school administrative units as a matter of state policy, and it also established a process by which voters can vote to discontinue the BVR should they find it to be an unnecessary duplication. In other words, the Portland voters could vote to eliminate the statutory BVR in short order, leaving a single referendum vote by charter to determine the total school budget.

- **Alternative #2: The School Board determines the total school budget, and the voters ultimately approve the budget.**

As we discussed in our November 2021 Memo, we can also envision a school budget approval process that removes the City Council from the budget process but does not require two referendums. Such a process stems from my suggestion during the Education Committee’s panel discussion that there appears to be no statutory prohibition on the School Board serving as the “municipal legislative body” for purposes of Section 2307. The Perkins Thompson memo objects to this alternative process primarily on grounds that Section 2307 was amended to “clearly delineate and balance the roles and power of the school board and the existing municipal legislative body having school budget approval authority.” (Perkins Thompson Memo at p. 4.)

This objection, however, contradicts the plain reading of Section 2307 and requires the inference that the phrase “or other municipal legislative body” confines charter municipalities to a single form of legislative body—the town meeting. Yet while it is true that in charter municipalities the council and the town meeting are the two traditional forms for the municipal legislative body, nothing about the language of Section 2307 indicates that other forms are excluded. Indeed, Sanford (as the Perkins Thompson Memo noted) and, arguably, York (as we’ve noted) have at one time or another established an “other municipal legislative body” that in each case was something quite different than a town meeting. Additionally, as we discuss in our November 2021 Memo, the definition of “municipal legislative body” in the municipal statute does not support such an inference. Finally, although a statute otherwise clear on its face might require a narrower interpretation in the face of a constitutional objection, the constitutional separation of powers doctrine does not generally apply to municipal bodies or school budget approval procedures. It strikes us that reading such an intent into the language or legislative history of Section 2307 goes too far when the constitutional ground does not exist. Rather, Section 2307 addresses the role of the

¹ For example, the initial referendum to determine the total budget could be an opportunity for the School Board to inform voters on the details of the budget through the presentation of the eleven cost centers and to get an early indicator of the voters’ proclivity; and the BVR would then serve to ratify the approved budget—which is, in fact, the role the BVR serves in school budget approval procedures for regional school units and school administrative districts throughout the state.

municipal legislative body, not its identity, and just as importantly, does so by affording greater deference to charters, not less.²

For these reasons, we think Section 2307 leaves room for the Portland charter to assign the School Board the advisory role of determining the total budget before it is finally adopted by the voters. We also think that such an approach would be consistent with the holding in *York*. And, while there are arguments favoring different legal views on this matter and a charter revision that assigns the role of determining the total school budget to a school board is not without legal risk, such a charter revision would be entitled to a presumption of validity by Maine courts under home rule principles the Court articulated in *York* and many other cases.

- **The school statute and case law leave ample room to explore alternatives to the current school budget approval process.**

Should the Charter Commission entertain the idea of removing the City Council from its current role in the school budget approval process, both the school statute and case law leave ample room to explore these or other alternatives. To that end (because more often than not it is helpful to read proposals rather than legal memos), we have enclosed examples of the two charter revisions discussed above. We also would be happy to discuss other possible school budget approval processes that we believe fall within the legal limits of municipal home rule authority and address the parity issues raised by the existing charter process.

II. BONDING AUTHORITY

There is clear agreement between us and Attorneys Katsiaficas and Arvizu that there is insufficient legal basis to reassign the authority to issue school construction and renovation bonds from the City Council to the School Board. Our suggestion in the November 2021 Memo, however, does not concern who issues such bonds; rather, we propose that, whenever such a bond exceeds a charter-established threshold so that it must be submitted to a referendum, the voters should have an opportunity to vote on the bonding amount and purpose proposed by the School Board, rather than the proposal of the City Council.

Accordingly, we suggest a charter revision that would have the City Council continue to issue such bonds and to call and oversee the referendum, but require the City Council to place the *School Board's* proposed question before the voters. To further clarify our intent, we have attached a suggested charter revision for your review and consideration.

We trust this memo is responsive to your request. We are available should you have further questions.

² Notably, Section 2307(1) and (2) are exceptions to the mandate that municipal schools must follow the same school budget procedures as regional school units: First, Section 2307(1) clarifies that, notwithstanding the statutory mandate, charter municipalities are not restricted to the town meeting for the first part of the school budget approval, but may use their own legislative body—namely, the “municipal council or other municipal legislative body established by the charter.” Second, Section 2307(2) clarifies that municipal charters may circumscribe the role of a municipal council or other municipal legislative body to determining the total amount of the school budget. Section 2307 indeed “delineates and balances” roles, but only by giving charter municipalities substantially more room than other school administrative units to apply the details of the two-step school budget approval process.

SUGGESTED CHARTER REVISIONS TO ARTICLE III, SECTION 5. SCHOOL BUDGET

EXAMPLE 1: The voters determine the total school budget at a school budget referendum.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.

The budget submitted by the superintendent to be reviewed jointly by the school board and the city council shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for joint review, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall submit to the city council a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~ The city council shall call a school budget referendum for the purpose of determining the total amount of the school budget. The budget

presented to the school budget referendum shall be the amount proposed by the school board. The warrant calling the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board. The school budget approved at the school budget referendum shall thereafter be submitted to a budget validation referendum until such time that the voters discontinue use of the budget validation referendum process.

A budget hearing on such budget estimates shall be held by the school board at least seven (7) days prior to ~~final action by the city council~~the school budget referendum.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the school budget referendum and ratified at the budget validation referendum, as necessary, ~~not be less than~~or (ii) the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council.

EXAMPLE 2: The School Board determines the total school budget, followed by a budget validation referendum or, if eliminated, by a school budget referendum.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.

The budget submitted by the superintendent to be reviewed jointly by the school board and the city council shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for joint review, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall ~~submit to the city council~~prepare a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~

The school board shall hold a~~A~~ budget hearing on such budget estimates ~~shall be held at least seven (7) days prior to determining the total amount of the school budget final action by the city council.~~ The city council shall thereafter

submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the school budget referendum and ratified at the budget validation referendum, as necessary, or (ii) ~~not be less than~~ the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council.

SUGGESTED CHARTER REVISIONS TO ARTICLE VII, SECTION 11. BOND ISSUES

Section 11. Bond issues.

Money may be borrowed, within the limits fixed by the constitution and statutes of the state, now or hereafter applying to Portland, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings, the proceeds to be used for the acquisition of land, the construction, reconstruction, major alteration, extraordinary repairs, and equipment of buildings and other permanent public improvements, the purchase of departmental equipment, for economic development to the extent determined by the City Council to serve a valid public purpose, to create reserves to settle workers' compensation obligations, to fund, refund, pay or to create reserves for the payment of the city's unfunded pension fund liabilities and for the payment of refunding bonds, notes and other evidences of indebtedness previously issued, or for any other purpose permitted by state law.

No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in two (2) public places in the City of Portland and publishing such notice at least twice in a newspaper of general circulation in Portland at least two (2) weeks before final action of the city council. In addition, the city council may, in its discretion, provide that such notice shall be published on the city's website and in such other additional media as the city council determines are appropriate to notify the general public of the public hearing.

Any order authorizing the issue of bonds must be approved by vote of at least seven (7) members of the city council, except as set forth in Section 11.A.

Section 11.A. Bond issues for school bonds.

The city council shall submit school project bonds to voter referendum in accordance with this section. When the school board has voted to propose that the city issue bonds for school construction, renovation, or other capital purposes in an amount that requires the city council to submit an order or resolve to voter referendum by Section 16 this Charter, the school board shall submit to the city council (i) a description of the project concept and concept budget; (ii) the major components of the project

concept budget, including as applicable sums for real estate acquisition, design and other services, construction and site development, equipment, infrastructure, and project contingencies; and (iii) the proposed sources and amounts of funding for the project budget, including project debt. The city council shall order the issuance of bonds for the school project as proposed by the school board, subject to voter ratification of its bond order as provided in Section 16, in an amount sufficient to fund the debt portion of the project concept budget after deduction of issuance and other costs. The city council shall submit its order authorizing the issuance of debt for the project to voter referendum at the next regular city election occurring at least 120 days after the school board has submitted the project concept to the city council or at an earlier election. The city council shall use a separate referendum question to submit its bond order for each school project as proposed, except that if the school board has consolidated school projects into a single concept that it has approved, then the city council shall use a single referendum question to submit its bond order for that consolidated school project as proposed.

MEMORANDUM

TO: Portland Public Schools School Board and Xavier Botana, Superintendent of Schools
FROM: Agnieszka A. Dixon and E. William Stockmeyer Drummond Woodsum
DATE: April 4, 2022
RE: Charter Revisions Regarding School Budget Approval Procedures —Review of Charter Commission Education Committee Proposal

At your request, we have reviewed the proposal of the Portland Charter Commission Education Committee to revise the school budget approval process, which was presented to the Charter Commission for a first reading last Wednesday, March 23, 2022 (the “Proposal”).

If accepted by the Charter Commission and adopted by the City voters, the Proposal would make two material changes to the school budget approval process:

1. Joint Budget Guidance Committee: The Proposal would establish a joint budget guidance committee composed of an equal number of City Council and School Board members to develop, prior to the preparation of the city and school budgets, non-binding guidance to the City Council and the School Board on budget priorities and constraints.
2. School Board Determines Total School Budget, Followed By Voter Approval: The Proposal would remove the City Council’s role from the school budget approval process and direct the School Board to determine the total budget, which would then be submitted to the voters for approval at a budget validation referendum (BVR) or, if the BVR is eliminated, at a municipal school budget referendum. This portion of the Proposal essentially incorporates the second of two alternatives that we identified and discussed in our memo dated January 24, 2022.

The establishment of an advisory joint budget guidance committee does not appear to us to run afoul of any limits on municipal home rule authority. Likewise, as we discussed in our January 24 memo, we think state law leaves room for the Portland charter to assign the School Board the role of determining the total school budget while leaving the decision for final budget authority with the voters, as set forth in the Proposal,¹ for the following reasons:

¹ Should the Charter Commission adopt the Proposal, we recommend a slight adjustment to the first and last sentence of the last paragraph of Article III, Section 5 of the charter to (1) clarify the process for appropriating funds for the school budget, and (2) provide some flexibility in how appropriated budget amounts may be exceeded (we make this latter recommendation because the process to secure voter consent can be lengthy whereas the need to do so may arise in emergency situations or otherwise when time is of the essence), so that the charter amendment would read:

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public school which amount shall equal the greater of (i) the amount adopted by the voters at the budget validation referendum or, if discontinued, at the school budget referendum, or (ii) not be less than the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council or the voters.

- The school statute, and specifically the plain language of Section 2307 of Title 20-A, does not prescribe who can serve as the municipal legislative body for purposes of determining the total school budget.
- The school statute does not confine charter municipalities to the two “classic” forms of the municipal legislative body—*i.e.*, the town meeting or the council. Indeed, several municipalities in Maine have at one time or another established municipal legislative bodies that were something other than these classic forms.
- The state law definition of “municipal legislative body” in Section 2001 of Title 30-A (the statute governing municipalities) plainly provides that a municipal legislative body can be a town meeting, a city council, or something else—namely, “[t]hat part of a municipal government that exercises legislative powers under a law or charter.”
- Section 2307 specifies the *role* of the municipal legislative body, not its *identity*, and does so by affording greater deference to charter communities, not less. Indeed, Section 2307 is an exception to the general state law mandate that municipal school units must follow the same school budget procedures as regional school units.
- Finally, while there are arguments favoring different legal views on this matter and, consequently, the Proposal is not without legal risk, charters are entitled to a presumption of validity by Maine courts under home rule principles articulated in the *York* decision and many other cases. Accordingly, the burden rests on the person attacking a charter provision to prove that it exceeds municipal home rule authority, and not on the municipality to prove that it does not.

We trust this memo is responsive to your request. We are available should you have any additional questions.

Portland Charter Commission

Final Report

Michael Kebede, Chair	(Appointed by Council)
Shay Stewart-Bouley, Vice-Chair	(District 1)
Peter Eglinton, Secretary	(Appointed by Council)
Dory Waxman	(Appointed by Council)
Robert O'Brien	(District 2)
Zack Barowitz	(District 3)
Marcques Houston	(District 4)
Ryan Lizanecz	(District 5)
Catherine Buxton	(At-Large)
Marpheen Chann	(At-Large)
Nasreen Sheikh-Yousef	(At-Large)
Pat Washburn	(At-Large)

**Submitted to the Portland City Council
July 11, 2022**

FOREWORD

The Portland Charter Commission hereby submits its Final Report.

The Commission filed its Preliminary Report on May 9, 2022. Since that Preliminary Report, the Commission has sought public input and comment on its recommendations for changes to the Portland City Charter.

After the filing of the Preliminary Report, the Commission held meetings as follows:

- Wednesday, May 11, 2022, 6 p.m.;
- Wednesday, May 25, 2022, 6 p.m. (including Public Hearing on Preliminary Report);
- Wednesday, June 8, 2022, 6 p.m.;
- Wednesday, June 22, 2022, 6 p.m. (Public Hearing);
- Wednesday, June 29, 2022, 6 p.m.; and
- Wednesday, July 6, 2022, 6 p.m.

In view of the continuing public health emergency due to the COVID-19 pandemic and the unpredictability of infection rates and variants, the Commission conducted these meetings by Zoom under its Remote Participation Policy adopted in accordance with State law.

Copies of this Final Report, commission meeting minutes, agendas and background materials may be found at <http://www.ci.portland.me.us/2665/Charter-Commission-2020-2022> and at www.portlandcharter.me.

Hard copies of this Final Report are in the Portland Public Library and Room 203 of Portland City Hall. You may also contact charter@portlandmaine.gov with your comments or concerns or send them to City of Portland, Room 211, Portland City Hall, 389 Congress Street, Portland, ME 04101.

Portland Charter Commission Final Report

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I. REPORT TO THE CITY COUNCIL

The Portland Charter Commission hereby submits its Final Report to the Portland City Council.

This Final Report has several sections: Section I includes a Background section outlining the Commission’s establishment process and timeline. Section II, Recommendations and Explanations, provides the rationale for proposed Charter revisions and modifications, and explains how the proposals differ from the current Charter. Section III contains the proposed Ballot Questions, including proposal summaries of these questions and the text of the proposed Charter modifications. Sections IV and V present Commission comments on the proposals through Minority Reports (Section IV) and a discussion of issues presented but not recommended and other considerations (Section V). Section VI presents the City Charter with all recommended changes, assuming all ballot questions are approved by the voters. Section VII contains the written legal opinions regarding the ballot questions.

This Final Report as well as all of the agendas and minutes of the Commission meetings are available on the Charter Commission’s section of the City’s website at www.ci.portland.me.us/2665/charter-commission-2020-2022 and at www.portlandcharter.me Videos of most of the Commission and its Committees meetings may be accessed on the City’s webpage by clicking on “Live Stream City Hall Meetings.”

A. BACKGROUND

On October 21, 2019, following lengthy discussion on the matter of whether to send a proposed clean elections fund measure to Portland voters as a charter amendment or through a vote on establishing a charter commission to consider the subject as a charter revision, the city council voted to send the question of whether to establish a charter commission to the voters. On June 8, 2020, Portland voters approved establishing a Charter Commission. On August 10, 2020, the Council appointed three commissioners and the voters elected nine more commissioners on June 8, 2021. The discussions and public debates during the election periods covered a large range of subjects, including changes to the elected mayor’s powers, the relationship between the school board and the city, ranked choice voting improvements, the possibility of permitting non-citizen residents to vote in local elections, and various changes to the number and size of city council districts and how councilors are elected.

Charter Commission Members

Michael Kebede (appointed by council) (Chair)

Peter Eglinton (appointed by council) (Secretary)

Dory Waxman (appointed by council)

Shay Stewart-Bouley (District 1) (Vice-Chair)

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Robert O'Brien (District 2)

Zack Barowitz (District 3)

Marcques Houston (District 4)

Ryan Lizanecz (District 5)

Catherine Buxton (At-Large)

Marpheen Chann (At-Large)

Nasreen Sheikh-Yousef (At-Large)

Pat Washburn (At-Large)

The Charter Commission held its first organizational meeting on June 28, 2021, and its first public hearing on July 28, 2021. Over the summer of 2021, meetings focused on: the range of issues for the Commission to consider, the process for moving forward on those issues, staffing and budget considerations for the Commission, and ways to engage the public in the process.

In late summer 2021, the Commission formed five committees and developed a community agreement to govern the conduct of Commissioners and the public, and began work on many of the 26 subject areas listed by the Commission after the public hearing. Those committees and their members are as follows:

Committee	Members	Chair
Departments	Houston, Lizanecz, Barowitz	Lizanecz
Education	Houston, Eglinton, Chann	Houston
Elections	Buxton, Chann, Washburn	Chann
Governance	Sheikh-Yousef, Lizanecz, O'Brien, Stewart-Bouley	O'Brien
Procedures	Barowitz, Waxman, Kebede, Washburn	Washburn

Through Commission and committee meetings combined, the Charter Commission has met dozens of times since June 2021. The Commission submitted its Preliminary Report to the city council on May 9, 2022, and following additional public hearings and deliberation, submits this Final Report which it adopted at its July 6, 2022 meeting.

B. Timeline

In its work, the Commission has followed the timeline that appears on the next page:

Portland Charter Commission Timeline

June-Aug 2020	Election to create Commission; Appointments of Appointed Members	June 8, 2021	Election of Voter Members	June 28, 2021	Organizational Meeting (at least 7 days' notice)	July 28, 2021	Public Hearing (within 30 days of Organizational Meeting and at least 10 days' notice)	2021-2022	Meetings; Hearings	May 9, 2022	Preliminary Report printed and circulated (9 months after election)	July 11, 2022	Final Report submitted to City Council (12 months after election)	August 10, 2022	Commission Terminates 30 days after submitting Accounting	Nov. 8, 2022	Election on Charter Commission's Proposed Final Report; Revision
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Revised 4-8-2022

II. COMMISSION RECOMMENDATIONS AND EXPLANATIONS

After extensive research, discussion and development of proposals in committee meetings; after presentation, public comment, deliberation, and votes in Charter Commission meetings; and after public hearing and public comments, the Charter Commission recommends that the present charter continue in force with only minor modifications, and so as authorized under 30-A M.R.S. §§ 2103 and 2105 (1) (A) recommends the following revisions to the City of Portland Charter in eight separate Charter modification questions. The Charter modifications submitted to the voters in 2010 were submitted in three separate questions and included recommended modifications for a popularly elected mayor, ranked choice voting, and changes to the school board, and so there is precedent for similar provisions recommended by this Charter Commission to be deemed “minor modifications.”

These recommendations and explanations are organized in the pages that follow by the committee in which they originated, and summarize the process and content for each proposal.

A. Departments Committee

1. Citizen Police Oversight Board Recommendation

Introduction

One overarching goal of the Charter Commission is to increase accountability and public trust in our city government. The Departments Committee has given special attention to the Police Department due to the fact that because mortal danger is inherent to police work, police reform has become one of the most pressing issues of our times.

However, the committee did not think that the charter is the appropriate forum to examine the intricacies of police procedures or the police budget. Instead, the focus was on improving the system of civilian oversight, specifically the practice of evaluating complaints brought against the police.

Portland's current oversight system is the Police Citizen's Review Subcommittee (PCRS) which is an appointed volunteer board that reviews completed investigation of complaints against the police as to whether the process met the standards of being "fair, objective, timely, and thorough" for which the PCRS submits an annual report to the city manager.

Because policing is a core function of municipal government, the committee recommends that citizen oversight should be in the Charter to elevate the status of the existing board in order to mitigate the potential for harm and to build broader public trust between civilians and police.

To these ends, the committee looked at various models and hybrid models, including:

- The early oversight (1920s-1960s) took the form of volunteer civilian review boards wherein investigations conducted by police command/Internal Affairs are reviewed for being thorough, timely, objective and fair. This is the least active form of oversight and is the model that we currently use as with the PCRS.
- In the 1970s-1980s some cities initiated investigative offices of trained staffers to investigate misconduct. This is a far more active, and far more expensive, form of oversight than review boards.
- Beginning in the 1990s municipalities began to employ a professional auditor to get a big picture assessment by reviewing cases, looking for patterns, and making recommendations accordingly.
- Newer theories are focusing on gaining a degree of civilian control of policies and procedures.

Despite advances in the field, the rule of thumb of civilian oversight is not "best practice" but best *fit*. Given that Portland has both an excellent Police Department and a low crime rate, the committee did not feel that chartering a professional investigative or auditing office was either operationally or fiscally necessary; and that such action is best left to the city council or another office. Rather, the committee recommends retaining the current review board system with several enhancements to strengthen community involvement and oversight capabilities.

Specifically, these enhancements include:

- Requiring that the board shall deliver an annual report and recommendations to the city council;
- Removing eligibility restrictions for board membership;
- Allowing complaints to be brought directly to the board and for the board to render advisory opinions on citizen appeals;
- Retention of the “police liaison”; and
- Hiring of a “community liaison” who shall assist the board in conducting outreach and other duties as the board may assign. The city council shall decide whether the community liaison and police liaison positions are part-time or full-time and/or whether the duties of these positions may be assigned to existing employees and/or the accountability officer.

Methodology

The departments committee consulted with a diverse range of experts, readings, and community members for their input on this topic. They are as follows.

October 4th, 2021:

1. Maria Testa: (Former Member of the Portland Police Citizen Review Subcommittee)
2. Dr. Brendan McQuade: (Professor of Criminology at University of Southern Maine)
3. Cameron McElhiney: (Director of Training and Education at National Association Civilian Oversight of Law Enforcement)

October 25th, 2021:

1. Dr. Lelia DeAndrade: (Former Member of Portland’s Racial Equity Steering Committee)
2. Emily West: (Current Chair of the PCRS)
3. Ali Ali: (Former Member of Portland’s Racial Equity Steering Committee & Currently with Maine Youth Justice)

November 1st, 2021:

1. Discussion with Commission Attorney Katsiaficas

November 15th, 2021:

1. Workshop on Police Oversight Board language

December 6th, 2021:

1. Workshop on Police Oversight Board language
2. Unanimous vote for passage out of committee

Documents & Research Consulted

- PCRS meeting minutes, videos and documents
- National Association for Civilian Oversight of Law Enforcement documents
 - “Guidebook for the Implementation of New or Revitalized Police Oversight”
 - “A Review of the Strengths and Weaknesses of Various Models of Police Oversight”
 - “Civilian Oversight of Law Enforcement: Assessing the Evidence”

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- “Civilian Review of Police: Approaches & Implementation” by Peter Finn; US Department of Justice, Office of Justice Programs, National Institute of Justice 2001
- Portland’s Racial Equity Steering Committee Final Report
- Memo from Commission Attorney Katsiaficas
- Memo and feedback from Portland Police Chief Heath Gorham

B. Education Committee

- 1. Vacancies**
- 2. School Budget Process and Autonomy**
- 3. Capital Improvement Program Process**

1. Vacancies Recommendation

Currently, the Charter provides that if a vacancy on the city council or school board occurs or is declared prior to the next regular election, it shall be filled by a special election to take place on the same date as the next scheduled State or municipal election that is at least 127 days after the vacancy occurs or is declared, unless the city council by vote of six or more members shortens the time to obtain and file nomination papers. That 127-day (or shortened time period) minimum presumably is to allow time for the city clerk to advertise the vacancy, make nomination papers available, accept and process nomination papers (to check validity of signatures), and to call and conduct the election.

This proposed amendment was spurred by a request from the school board, although it is more restrictive than the school board suggested. It would provide the school board and the city council with the ability to appoint a qualified person from the same district or at-large, as appropriate, to serve until the next regular municipal election if a vacancy occurs within six months of the next regular election. If the vacancy occurs more than six months from the next regular election, the city council maintains its ability to call a special election to fill the seat.

This proposal is similar to the process used in Auburn (as referenced in an 3/10/2022 memorandum from Perkins Thompson to the Charter Commission’s education committee chair):

If vacancy occurs more than 6 months prior to the next regular election, unexpired term is filled by special election, citywide or for a ward. If vacancy occurs within 6 months prior to next regular election, School Committee appoints a qualified person from same ward or at-large, as appropriate, to serve until next municipal election. (Article 4, § 4.3)

Brunswick also has similar language (as referenced in an 3/10/2022 memorandum from Perkins Thompson to the Charter Commission’s education committee chair):

Town Council to call a special election to fill the vacancy for the unexpired term unless the remainder of the unexpired term is less than 6 months, in which case the School Board appoints a qualified person to fill the vacancy. (Article IX, § 904(c))

2. School Budget Process and Autonomy Proposal Recommendation

One overarching goal of the members of the education committee was to establish a better sense of collaboration and parity between the school board and city council. During workshops, members heard from various school board members, past and present, that although parity was a goal of the last Charter Commission, that sense of equal footing was not always felt or seen. Currently, the Charter states that the school budget must be drafted by the superintendent, approved by the school board, approved by the city council, and then approved by the voters. This recommendation is intended to address recommendations received during workshops and public comment to increase the level of parity between the school board and city council when it comes to each body's budget processes. This recommendation would create a Joint Budget Guidance Committee consisting of four city councilors and four school board members to increase collaboration between the two bodies and to set budget goals and priorities covering a two-year period. In its current form, the Charter provides that the city council has authority over the bottom line number. This recommendation seeks to remove that part of the process and give that authority to the school board in an effort to establish a greater sense of parity between the school board and city council. The goals and intentions of this recommendation are to streamline the process, make it easier for voters to follow and understand, and to increase transparency and accountability.

Education Committee Work on Topic:

1. October 6th Workshop:

- a. This workshop took place early in the process after the committee received a memorandum from Drummond Woodsum giving an overview of what is in the purview of the Charter Commission surrounding education. Members of the committee held a workshop to learn more from elected officials about what has and has not worked in the past. Members of the workshop included:
 - i. Attorney Aga Dixon, Drummond Woodsum
 - ii. Portland Mayor Kate Snyder
 - iii. Former Portland Mayor Ethan Strimling
 - iv. Former Portland Mayor Michael Brennan
 - v. Former At-Large City Councilor Nick Mavodones
 - vi. Portland Superintendent Xavier Botana
 - vii. School Board Chair Emily Figdor
 - viii. City Councilor and Former School Board Member Anna Trevorow
 - ix. Corporation Counsel Danielle West
 - x. Commission Attorney James Katsiaficas

2. November 3rd Meeting:

- a. Commissioners discussed what was heard during the October 6th workshop and chose topics to research. Commissioner Eglinton chose to look at capital Improvement and collaboration around budgeting. Commissioner Houston chose to research parity between the board and council.

3. December 1st Meeting:

- a. Members of the committee present preliminary ideas and receive public comment. Commissioner Eglinton presents his idea for a Joint Committee on Budget Guidance to increase the collaboration between board and council on both budgets. Commissioner Houston presents his idea for increased budget autonomy for the school board.

4. December 15th Meeting:

- a. Members of the Committee receive a memorandum from Commission Attorney Katsiaficas regarding the 8/11 memorandum from Drummond Woodsum explaining why it may not be possible to give the Board authority over the bottom line number on the school budget under Maine State law.

5. January 5th Meeting:

- a. Commissioner Eglinton presents first proposal for the Joint Committee on Budget Guidance. Members of the committee discuss what this would look like in practice and what the scope of these conversations would be.

6. February 2nd Meeting:

- a. Members of the committee receive another memorandum from Drummond Woodsum that argues for more school board budget autonomy. Members receive a briefing from school board chair Emily Figdor on the memorandum. Members continue to workshop the Joint Committee on Budget Guidance Proposal.

7. February 16th Meeting:

- a. Commissioner Houston presents the proposal to give more budget autonomy to the school board. Commissioners Chann and Eglinton ask clarifying questions and Commissioners deliberate on how to proceed with two competing proposals and which proposal will be put forward for a public hearing and vote. Commissioners take public comment on the proposal.

8. March 3rd Meeting:

- a. Members of the committee held a public hearing on the school budget process and autonomy proposal brought forward by Commissioner Houston. During the public hearing, eight members of the public spoke in favor while eight members of the public spoke against the proposal. During deliberations, Commissioner Eglinton brought forward an amendment to include the Joint Committee on Budget Guidance at the beginning of the proposal. That motion to amend passes unanimously. On the main motion to Approve the School Budget Process and Autonomy Proposal as amended, the motion passed 2-1 with Commissioners Chann and Houston voting yes and Commissioner Eglinton voting no. The proposal was then sent to the full commission.

Memorandums Consulted Throughout the Process:

- 8/11/2021 Memorandum from Drummond Woodsum
- 12/14/2021 Memorandum from Perkins Thompson
- 1/24/2021 Memorandum from Drummond Woodsum

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- 4/4/2022 Memorandum from Drummond Woodsum
- 4/13/2022 Memorandum from Perkins Thompson

3. Capital Improvement Program Process Recommendation

This recommendation is intended to address recommendations raised in public comments to seek greater parity for the superintendent and school board in the discussions around and decisions affecting Portland Public Schools. The recommendation would explicitly include the superintendent in the capital improvement program (CIP) planning process on an equal footing as the city.

This recommendation is similar to the process used in Auburn, which has the following language in its Charter (as referenced in an 8/11/2021 memorandum from Drummond Woodsum to the superintendent of Portland Public Schools):

The city manager and superintendent must jointly prepare and submit to a joint meeting of the council and school board a multi-year CIP before submission of the budget, and must publish a general summary of the CIP. The CIP must be revised and extended each year with regard to capital improvements pending or in process of construction or acquisition. (§§ 8.9, 8.10)

Sanford also includes the superintendent in the development of the CIP process (as referenced in an 8/11/2021 memorandum from Drummond Woodsum to the superintendent of Portland Public Schools):

The city manager and the superintendent annually prepare and submit to the budget committee a 5-year CIP. The budget committee reviews the CIP and makes recommendations to the council for approval. The city creates annual reserves for the CIP by raising and appropriating at least 4% of the budget each year. Projects funded by the CIP include road maintenance, vehicular replacements, roofing projects, major building renovations, major equipment purchase, airport projects, new buildings and the like. (§ 610)

C. Elections Committee

- 1. Proportional Ranked Choice Voting**
- 2. Clean Elections**
- 3. Redistricting**

1. Proportional Ranked Choice Voting Recommendation

The elections committee prepared this recommendation to permit the use of Proportional Ranked Choice Voting (PRCV) in multiple-seat elections. In the election of at-large seats for the Charter Commission, multi-pass Ranked Choice Voting (RCV) was been used with a 50% threshold as required by the existing Charter, rather than the lower threshold recommended by the RCV Resource Center. There was some criticism of the election results for that reason. To address that criticism and to permit flexibility, the proposal allows the city clerk to choose a PRCV system that the city council has authorized. At least one commissioner observes that while regular RCV favors coalition building and PRCV may not have as great an effect in that respect, PRCV may achieve more representative voting results – that PRCV is fairer than RCV.

2. Clean Elections Recommendation

Clean Elections – Public Financing of Municipal Elections, Elections Committee

“Those who do not have the money or time, and who do not belong to pre-existing organizations with resources, are less able to participate and less likely to have their needs taken into account when policies are decided. The result is a system nominally based on equal rights but whose natural structure, without effort, will produce unequal participation and influence.... Tools designed to bring more small donors into the system are meant to enlarge the table – to help give more people, and different kinds of people, a meaningful voice. They work by giving those who do have the resources to mobilize – candidates, parties and other donor mobilizers – an incentive to pay attention to those who do not. This concern goes to the heart of successful democratic representation.”

- Michael J. Malbin and Michael Parrott, in *The Forum*, A Journal of Applied Research in Contemporary Politics

This report includes background, research, recommendations, and the proposed language for a program that provides public financing for campaigns to qualifying candidates. For clarity we will be calling the program “Clean Elections,” a term familiar to Maine voters as a similar program exists for statewide races under this name.

History of Clean Elections Advocacy in Portland:

The elections committee took up the issue of public financing of municipal elections as one of its first recommendations to consider, as it was this issue that sparked efforts to open the Charter for revision. **Nearly every candidate who ran reported that they supported a clean elections program in some form.**¹²

What is public financing of elections?

Public financing of elections is a widely popular idea with bipartisan support in the state and across the nation.³ These programs offer public campaign funds to candidates who meet qualifying criteria as set by ordinance or statute. Funds come from a public program – usually supported through tax revenue, municipal or state fees, private donations, and/or seed contributions from candidates.

Qualifying candidates must meet certain criteria spelled out by the program in order to participate and make use of the funds. How candidates qualify, the amount of funding they’re

¹ Portland Press Herald: <https://www.pressherald.com/2022/03/01/court-upholds-portlands-position-to-pursue-clean-elections-proposal-as-a-charter-revision/>

² Portland Press Herald: <https://www.pressherald.com/2019/10/22/portland-to-ask-voters-for-a-charter-commission/>

³Report on For The People Act, including Small Donor Public Financing Program for Federal Elections <https://campaignlegal.org/sites/default/files/2021-01/01-25-21%20HR%201%20Bipartisan%20Memo%20330pm.pdf>

offered, and other details vary from state to state and program to program. Generally programs put limitations on where donations come from and from whom, and often put contribution or fundraising limits. Some of the different clean elections programs that are in place across the country are described later in this report.

Why public financing for elections?

Public financing of elections has long been considered a key mechanism to mitigating corporate and moneyed interests in politics. These programs do so by limiting the amount, and often the source, of campaign contributions to candidates who elect to participate in the program.

Clean elections programs also increase opportunities for candidates to run for elected office. Just four years into the Maine Clean Elections program, the Maine Ethics Commission noted that the fund encouraged more first-time candidates, especially women, encouraged challengers to incumbents, and controlled spending growth overall for candidates.⁴ A Stanford study comparing Maine and Arizona programs found that clean elections improved the overall quality and competitiveness of candidates, especially non-incumbent challengers.⁵

By creating a more even playing field, Clean Elections empower candidates without access to wealth (whether personal, family, or from social networks) to run. As evidenced by these programs' success in other cities, a municipal clean elections program in Portland will help increase the diversity of candidates across race, gender, and socio-economic class, and offer more choices to voters at the polls.⁶

Across the country, the benefits of Clean Elections systems are felt. In a study by the think tank Demos, researchers found that in Connecticut, Clean Elections programs allowed legislators to spend more time interfacing with constituents. The program also helped voters engage more deeply in the legislative process around issues they cared about, and empowered legislators to pass more policies popular with the public.⁷

New York City also reported that public elections financing helped improve timeliness of candidates' campaign spending disclosures, thus increasing transparency of the electoral process.⁸

⁴ 2007 Report on the Maine Clean Elections Act,
https://www.mainecelelections.org/sites/default/files/research/2007_study_report.pdf

⁵ Malhotra, Neil, State Politics and Policy Quarterly, Vol. 8, No. 3 (Fall 2008): pp. 263–281 <https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf>

⁶ Elisabeth Genn et al., *Donor Diversity Trough Public Matching Funds*, Brennan Center for Justice and Campaign Finance Institute, 2006 <http://cfinst.org/pdf/state/ny/DonorDiversity.pdf>

⁷ Cha, J Mijin & Rapaport, Miles *Fresh Start: The Impact of Public Financing in Connecticut*, Demos, 2013

⁸ New York City Campaign Finance Board, “Impact of Public Funds” <https://www.nyccfb.info/program/impact-of-public-funds/>

Lastly, while Clean Elections funds cannot entirely override the influence of corporate or outside spending due to the influence of the U.S. Supreme Court ruling in *Citizens United*, Clean Elections programs allow candidates to spend less time fundraising and more time engaging with their constituents. Because they are guaranteed enough funds to run a competitive campaign, per the design of the program, publicly financed candidates find they are able to distinguish themselves in a field, even against privately funded candidates.

A program that prohibits Clean Elections candidates from utilizing any funds outside of their public allocation (as Maine’s statewide program does) could be the most effective at curbing escalating elections costs and the influence of corporate money in Portland.

What’s in Portland’s Clean Election Proposal?

The Clean Elections Proposal establishes a public fund, though it does not prescribe a specific type of program. The council by ordinance shall set up the specifics of the program.

The proposal requires the city to annually fund the program, and to ensure that there is adequate funding to offer candidates enough to run competitive campaigns.

The program is voluntary. This is *essential* to the constitutionality of the program. It is of utmost importance that the council in its ordinance ensures that measures passed do not jeopardize the voluntariness of the program.

Stipulations of the program include, as Maine’s statewide program does, that it must only be available to candidates who demonstrate public support. The Portland program must limit the amount of private funds that can be raised, but no specific limit is set in the Charter. Candidates must agree to only use funds provided by the program, except for the limited amount of private funds stipulated by ordinance.

After 100 days, all unused funds will be returned to the program.

An agreement of the program is that all candidates must participate in a city-sponsored forum or voter engagement event. This is modeled after Seattle’s Democracy Voucher ordinance, which requires candidates to participate in three debates.⁹

In Maine, the city clerk is the elections officer, and therefore this program will be overseen by the clerk's office, and provided, per this Charter proposal, with adequate paid staff for implementation.

Elections Committee Process:

The elections committee took up clean elections early in our process and hosted three public workshops:

⁹ Seattle City Code, Honest Election, 2.04.620,
https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT2EL_CH2.04ELCACO_SUBCHAPTE_R_VIIHOELSE_2.04.620DEVOIS

- **September 21, 2021**, we interviewed the following experts from both Maine and nationwide.
 - Anna Kellar - Executive Director of Maine Citizens for Clean Elections & the League of Women Voters
 - Emma Burke - Candidate Registrar, Maine Ethics Commission
 - Tom Watkowski - Democracy Policy Network, & Los Angeles for Democracy Vouchers
 - Cindy Black - Executive Director for Fix Democracy First, advisor for Seattle Democracy Voucher Program
- **December 7, 2021**: Elections committee workshopped the Clean Elections Proposal, drafted by Commissioner Buxton. Public comment included considerations to add campaign contribution limits, a corporate contribution ban, and restrictions on how funds could be spent.
- **December 21, 2021**: Elections committee workshopped a second draft of the proposal, which included some additional changes:
 - Stronger language mandating consistent funding provided by council, submitted by Commissioner Chann;
 - Stipulation to return unused funds to the program for all participating candidates;
 - Requirement to make campaign contributions searchable in online database, per advice of Maine Citizens for Clean Elections;
 - Added language about paid staff within the office of city clerk; and
 - Added new section on corporate contribution ban for municipal candidates.

Public Hearings & Votes:

- **January 10, 2022**: The Elections committee hosted a public hearing for the proposal.

During the hearing the following amendments were made:

- Language updated: Program to be administered by office of city clerk, with assistance of paid staff.
- Commissioner Buxton removed campaign contribution limit due to concern that making Clean Elections program *too* attractive for candidates might threaten voluntariness and therefore legality of the proposal.
- Commissioner Chann added a friendly amendment: fiscal note, utilizing LWV program cost estimate plus the cost of one mid-level staffer (60-80k per year).

The committee unanimously voted to send the proposal to the full commission.

- **January 19, 2022**: The proposal approved by the elections committee first read by the full Charter Commission.
- **March 9, 2022**: The proposal, tabled for some time while waiting on a Maine Superior Court decision regarding a lawsuit from Fair Elections Portland, is picked up again for a new first read and clarifying questions.

- **March 23, 2022:** The proposal has a public hearing and vote. Proposal is approved unanimously with the following amendments:
 - Commissioner O'Brien added an amendment to prohibit financial gain in the form of city contracts from individual major donors to campaigns.
Note: A similar such limitation exists in NYC.¹⁰
 - *NOTE: This amendment was later removed due to concerns around redundancy and concerns about constitutionality and low contribution limits.*

Proposal passes unanimously through commission. (11-0, Commissioner Stewart Bouley absent.)

During the process we also consulted with:

- John Brautigam, Esq. – Maine Lawyer, Fair Elections Portland board member, represented Maine's Clean Elections Law in front of US Supreme Court
- John Wayne - Maine Elections Commission
- Kathy Jones - Portland, Maine City Clerk

Types of Clean Elections Programs:

As noted, Clean Elections programs can take a number of different forms.

*Starred programs are formats the elections committee recommends the council consider in Portland.

- ***Block Grant Program:** Maine's statewide Clean Election program follows this format. Candidates qualify, often by gathering small, grassroots contributions. (For Maine legislators, a few dozen qualifying contributions of \$5 from 50-75 voters). Once qualified, candidates are given an allotted amount of campaign funds, and are restricted to using only those funds for their campaign expenses. Check out other rules for the Maine program here: [Maine Clean Elections Act Rules](#)
 - There are numerous benefits to this type of program. A number of research studies have shown Block Grant programs deliver on all the above-mentioned advantages of clean elections programs. This type of program can also help curtail overall spending on elections, and is widely popular across parties in Maine.
 - One noted place where it falls short: The Maine program doesn't go as far as other types of programs to encourage candidates to reach *outside* of their network. There are some incentives for voter engagement: Because candidates aren't as focused on fundraising they *can* spend more time with under-resourced neighborhoods or communities, but the program by design doesn't incentivize or require this. Candidates could, in theory, just get their 50 qualifying contributions from 50 friends, and only outreach to their likely voters or known networks.

¹⁰New York City Campaign Finance Board, Limits, <https://www.nyccfb.info/candidate-services/limits-thresholds/2017/>

- **Small-Donor Matching Fund Program:** Most familiarly used in New York & Los Angeles, Matching Fund programs will generally *match* grassroots or small donations below a certain threshold at a set rate. For example, in NYC and Los Angeles, the city matches small donations 6 to 1, with public dollars. There is usually a campaign contribution limit that cities will match up to (In NYC, it's up to \$175 per donor) and a total public contribution the city will give to any one candidate.
 - This program is widely popular, with about 90% of candidates in primaries and 75% in general elections in places that employ this. NYC lists a number of benefits of their program, from increasing candidate diversity to promoting more incumbent challengers to increasing diversity of donors, and increasing the influence of small donors over large wealthy ones.¹¹
 - Results vary across programs. For example, in Los Angeles the program has performed differently when compared to NYC. LA historically has matched at a lower rate (as low as 3 to 1) and their programs allow candidates to fundraise privately if they max out public funding available. Additionally, LA is more permissive of qualifying contributions outside of the geography of the candidate, whereas NYC asks candidates to fundraise these contributions more within their district. Research finds that NYC's small donors more accurately reflect the diversity of the city, whereas LA's does not deliver as similar results.¹²
 - There are some concerns that matching grants programs don't do enough to limit overall spending on elections.
- **Democracy Vouchers:** A newer innovation in campaign financing, Democracy Vouchers is a system currently in place only in Seattle, WA, though there are efforts in Los Angeles, New Hampshire, and in a number of other communities seeking to explore this system. The Democracy Vouchers system issues "vouchers" to all eligible voters, free of charge. Voters then can donate these vouchers back to their desired candidates. Candidates can redeem the vouchers for public campaign funds.

Voters don't have to contribute any of their own funds to use the vouchers. This is where the program differs from the others most: Democracy Vouchers capture the interests of voters who may not even be able to make those grassroots donations required in other programs.

- In Seattle every voter receives 4 vouchers of \$25 to donate to any participating candidate. They can donate all to one candidate, or split them up, or use none of the vouchers. Seattle started with mail vouchers, but they now have an online system.
- Implementation costs much higher than other programs, but experts we interviewed said that the program's benefits go beyond election financing.

¹¹ New York City Campaign Finance Board, 2022, <https://www.nyccfb.info/program/benefits/>

¹² Malbin & Parrot, 2017, Small Donor Empowerment Depends on the Details: Comparing Matching Fund Programs in New York and Los Angeles, The Forum <https://www.degruyter.com/document/doi/10.1515/for-2017-0015/html?lang=en>

Because of the accompanying education campaign for the vouchers, there was an automatic voter engagement effort built into the program.

- Adoption is slow, but studies have found positive results: Already the program has tripled the number of folks who contribute to candidates, and participation in the program doubled in just the second election cycle.¹³
- Researchers found that the voucher program meant that donors were much more representative of the city, particularly by race, *and* more evenly distributed geographically.¹⁴

For more information and reading about the different forms a clean elections program may take, please see the following resources as well as any of the research referenced in footnotes throughout this document:

- [Common Cause’s Public Financing of Campaigns Report](#): Offers helpful pros & cons of each type of existing program and example use cases across the country.
- [Maine Citizen for Clean Elections Powerpoint](#)
- [Democracy Vouchers Resources](#)
- [Elections Committee Resources Folder](#)

Additional components of Clean Elections proposal:

Section 13(a): Corporate Contribution Ban

In 2021, the Maine State Legislature passed LD 1417. It will go into effect in early 2023.

The law bans corporate contributions statewide to campaigns for elected office. In the Clean Elections proposal for Portland, the elections committee included a ban on the municipal level. While this replicates the existing statewide ban, this language was proposed so that in the event that the state wide ban is overturned by the legislature, Portland’s would remain in effect for city races. City of Portland races in the past have seen a huge influence of funding by private companies, with candidates sometimes raising nearly 40-50% of their funds from businesses such as real estate developers. The elections committee is so grateful to have LD 1417 passing in our state, and would like to ensure its legacy in Portland, regardless of what happens in Augusta.

On the advice of our attorney, we added a provision to allow employees of a business to donate personal funds to a separate segregated fund should a company want to allow employees to contribute in this way. This mirrors similar language in the Maine law as well.

Section 13(b): Foreign Contributions

¹³ Democracy Voucher Internal Report, City of Seattle, <https://www.seattle.gov/democracyvoucher/program-data/internal-program-reports>

¹⁴ McCabe & Heerwig, 2019 Diversifying the Donor Pool: How Did Seattle’s Democracy Voucher Program Reshape Participation in Municipal Campaign Finance?, <https://www.liebertpub.com/doi/pdf/10.1089/elj.2018.0534>

After receiving feedback from a number of constituents as well as fellow commissioners, this section of the amendment was introduced in order to set up some measures to curb spending on ballot questions. Court precedents have made it challenging to curb spending on ballot measures by corporations, but turning to foreign contribution limits or bans may be one route to curbing foreign spending on citizen referendums.

Per the *First National vs. Belotti* decision, limiting corporate spending on ballot questions is not allowed. However, there is some precedent in *Bluman v. FEC*, that says it is constitutional to exclude foreign *citizens* from activities of democratic self-government, like campaign spending. This can be applied to individuals within companies and corporate spending. Limiting contributions from companies with significant foreign control could in some small way limit corporate spending on local races.

We will leave specifics about the ban and who is included/excluded, including what percentage of foreign ownership a company must be under, to the council to establish by ordinance. We strongly recommend the council be specific in language about banning *companies* with foreign holdings, and to ensure individuals are not included in this ban.

Section 13(d): Searchable Elections Database

The Clean Elections Proposal also includes a stipulation that campaign contributions of all candidates, whether they use private or public funds, will be made available to the public in a searchable online database. One of the most important factors in having open, transparent elections, and curbing the influence of corporate money in politics is for the public to have easy access to all campaign contribution data. Currently, while Portland's campaign contribution information is available online, it is not available in a way that is easily accessible or searchable for the average voter. Instead voters have to comb through scanned, often hand-written documents, hidden deep on the city website, if they want to see what and how candidates are using funds.

This amendment would help move the city towards addressing greater transparency in campaign finance, which would be of even more importance should a public financing program be passed. Fortunately, the City of Portland has reported that they are already working on a more responsive electronic database for campaign spending reports, and it is the committees' hope that this clause in the Charter will motivate compliance and adoption as soon as possible. Likewise, there is pending legislation that may ask all towns with a certain population size to move their campaign finance reporting to the Maine Ethics Commission, who has a much more comprehensive and searchable system. This option would comply with the proposed charter revision.

**COST ESTIMATE FOR
CLEAN ELECTIONS PROGRAM IN PORTLAND, MAINE**

Cost Estimate Compiled By: Commissioner Marpheen Chann (At-Large), Chair, Charter Commission Ad Hoc Elections Committee

Initiative: Establishes a Clean Elections fund to be administered by paid staff within the Office of the City Clerk, funds to be allocated by the City Council on an annual basis.

COST ESTIMATE	FY 23-24	FY 24-25
POSITIONS	1.00	1.00
Personnel Services	\$87,733.73*	\$90,365.75
All Other	\$200,000**	\$200,000
 TOTAL COST ESTIMATE	 \$287,733.73	 \$290,365.75

3. Redistricting Recommendation

The Committee believes that a larger city council would provide more direct representation of more diverse populations and interests, would allow more councilors to introduce legislation and would reduce the overburdening of councilors with committee assignments and work that now occurs. A majority of commissioners saw during their campaigns that there was much interest among voters to broaden representation and diversity and for the council to be more directly representative.

The elections committee looked at nationwide research comparing compositions of city councils and how electives are represented: at-large, solely in districts, or a combination of both. We were especially interested in how these systems produced elected bodies that are representative of a population, and how candidates of color were served, or not, by these different methods. While at-large systems often disserve representation for minority populations, this is usually contingent on minority populations being geographically concentrated. Research shows that this does not hold true for populations that were more spread out or were a much smaller percentage of the larger population (as is the case for non-white populations in Portland).

The committee also heard from members of the public, as well as existing and former council members, that they found at-large seats were useful in building coalitions regardless of geography and for including a more city-wide perspective in council decisions and legislation. While increasing district seats will bring increased neighborhood representation to the council, maintaining at-large seats will provide three representatives on the council who will be elected by *all* Portland voters, plus the popularly elected mayor.

After a public hearing on the proposal and deliberation, the Commission amended the proposal to increase the number to twelve councilors -- nine district and three at-large. Recognizing the benefit of increased direct representation for the school board as well, the Commission further amended the proposal to provide that the three current at-large school board seats would become elected on a district basis. In this way, the city would have the same nine districts for the city council and the school board, city council representation would be increased, and more direct representation would be achieved on the school board. District lines would be drawn by the city council and adjusted as now happens under a state law requiring a reapportionment ordinance after each decennial census.

D. Governance Committee

1. Governance Model

2. Peaks Island Council Proposal

1. Governance Model Recommendation

Introduction to Governance Model

The recommended governance model represents the fruits of many hours of research and discussion. No single commissioner is responsible for it; no single commissioner can claim they got everything they wanted. It is based in considerable areas of agreement and offers significant improvements to Portland's system of government.

This proposal seeks to establish a balanced and thoughtful government that is accessible to citizens and responsive to their concerns. Under this plan, most decision-making is centered in the hands of elected officials—the mayor and city councilors—who are directly responsible to the ultimate source of governing power: the voters. At the root of the reforms proposed here is a desire to establish effective and transparent citywide policy leadership that is directly accountable to voters. The main changes are grouped below under subheadings. The final section describes the commission's methodology.

I. Executive Mayor and Strong Council

This proposed reform designates the mayor as the city's chief executive. The mayor in this proposal resembles the mayors of traditional council-mayor systems like those in Westbrook, Maine; Burlington, Vermont; and Salem, Massachusetts. Under this proposal, voters would retain the power to remove the mayor and councilors through the recall process.

This proposal would give the mayor the power to:

- propose the city budget,
- veto the budget (including supplemental appropriations),
- veto council ordinances,
- nominate the chief administrator and department heads,
- enact executive orders affecting city policies, and
- propose legislation to the council for a vote.

The proposal would give the council the power to:

- amend and set the budgets,
- intervene in executive orders,
- ratify all nominations,
- elect from among its members a chair and vice-chair,
- pass a communications policy for access to city staff,
- be informed of employment matters at city hall,
- halt the firing of the chief operating officer by the mayor,
- override the mayor's veto by a two-thirds majority (one additional vote), and
- remove or censure the mayor by a supermajority vote.

Crucially, the mayor would no longer be a member of the council. This will ensure that the council functions as an autonomous policymaking body and an independent watchdog over mayoral powers.

II. City Manager Becomes Chief Operating Officer

Under this proposal, the city manager position transitions to a chief administrator who is expected to contribute expertise and management of day-to-day activities, but to report to the mayor. This official would be hired through the same hiring process for department heads: nominated by the mayor and confirmed by the council. This official is modeled on Westbrook's city administrator, who has provided stable managerial expertise to decades of Westbrook mayors.

The chief administrator is supervised by the mayor, and the chief administrator supervises the department heads. The mayor's direction of department heads is intended to operate through the chief administrator.

III. How this Proposal Would Solve Flaws in the Current System

Critics of the current system argue that it misleads voters, sets mayors up to fail, concentrates too much power in the hands of an unelected official whom the voters cannot directly hold accountable, and pays the mayor too much for too little in return. This section will describe each criticism, and state how this governance proposal would help solve it.

a. The Current System Misleads Voters

To the average voter, the term "mayor" carries its ordinary definition: the head of the city's executive branch, and not its council chair. Indeed, some commissioners stated that when they first learned that Portland's mayor lacked many of the powers of traditional mayors – the power to propose a budget, for instance – they experienced shock, and felt misled. Some members of the public testified that they experienced something similar upon learning that Portland's mayor lacks the power to make important decisions – that that power rests with the City Manager. This governance proposal would cure the misnomer in our charter; if voters approve this reform, mayor will mean mayor.

b. The Current System Sets Mayors up to Fail

Voters understandably expect citywide policy leadership from mayors. Media coverage of mayoral races, and mayoral candidates themselves, sustain the illusion that Portland already has a mayor who can accomplish the policy goals they promise to accomplish. Yet, no popularly-elected mayor in Portland has won re-election. Some commissioners, and members of the public, have argued that this is partly because the mayor lacks enough power to implement a policy agenda.

Portland's first popularly elected mayor since the charter reforms of 1923, Mike Brennan, testified that one way to solve this issue is to give the mayor the power to propose the budget. This proposal would do that by giving the mayor the power to put their policy ideas in the first draft of the city's budget, and by giving the mayor power over the implementation of the city's policy priorities.

The current system relies on the elected mayor to convince the council and the administration of their policy objectives separately. If the council declines to take up the mayor's platform, or the

administration ignores the mayor’s goals, the only other avenue for the mayor is to pursue these outside of city hall. That means aligning with referendum campaigns, or forming public-private partnerships that exclude council oversight and coordination. The result is frequent legislation-by-referendum – lawmaking that is often out of sync with the council. Successful referenda laws cannot be altered for five years after passage, so bad laws remain on the books longer than the drafters might even intend. Giving the mayor the power to effectively pursue a platform promises to lead Portland out of the two poles of frustrated mayors, or conflict-ridden ones.

c. The Current System Gives Us Less Than We Pay For From Our Mayor

One way out of this conflict-or-frustration equation is for the mayor to serve not as what voters generally understand by the term “mayor,” but as a lame-duck politician coordinating the activities of the city council. Such a mayor is almost guaranteed to have no real policy legacy, leaving citizens and activists frustrated with the official, and threatening the government’s legitimacy. This is not what Portland taxpayers expect to pay for.

Indeed, critics have argued that Portland gets less than it pays for from its mayor. The mayor’s primary duty under the current system is to serve as council chair. Yet, the current charter gives the mayor a full-time salary of 1.5 times the city’s median household income – approximately \$92,000. The proposed system would change this by giving the mayor the duties traditionally associated with mayors. It would also increase the mayor’s pay to 2 times the city’s median household income with the goal of attracting highly qualified candidates.

d. The Current System Over-Empowers an Unelected Official

Critics have taken issue with the tremendous decision making power the City Manager wields in the current system. On decisions such as housing refugees, ending outdoor dining, phasing out the Community Support Fund, or ordering food trucks to move from the Eastern Promenade, Portland’s City Manager has, by design, had far-reaching influence.

Defenders of the current system have argued that these decisions are “operational” and not policy decisions. Regardless of the terminology, there is no getting around the fact that voters care deeply about some of these decisions, and many want the tools to hold the responsible officials accountable. Currently, the person who makes these decisions is accountable to only a simple majority of councilors.

The governance proposal would give voters the power to elect, re-call, or vote-out a mayor who makes unwise decisions. The proposal would also give the city council the power to censure or remove a destructive executive mayor. Thus, whereas the current system gives only the council the power to remove the city’s executive, the governance proposal gives that power to both the council and the voters.

IV. Methodology

The Governance Committee, as well as the entire charter commission, consulted a variety of experts, civil servants, and community members for their input on this topic. Some charter commissioners stated that their vote on various aspects of this final governance plan arose from conversations they had with constituents during the campaign trail. Commissioners also

consulted research on municipal government. Although it is impossible to account for every conversation and source, this list identifies some key personalities and research:

May 19, 2022 Workshop with:

- Westbrook Mayor Mike Foley
- Westbrook City Administrator Jerre Bryant

February 14, 2022 Workshop with:

- Dr. Jered Carr (perhaps the leading national expert on municipal government)
- Dr. Andrea Benjamin (an expert on quantitative political science)
- Dean Anthony Crowell (worked for ICMA, as chief counsel for Mayor Bloomberg's office, and as council for six charter commissions)
- Maine State Historian Earle Shettleworth Jr.,
- Tom MacMillan (masters thesis author about the Portland Charter)

November 10, 2021 Workshop with:

- Tanisha Briley (served as City Manager in several cities with a weaker mayor);
- Joe Gray (former City Manager of Portland just before the last charter changes);
- Kevin Sutherland (Town Manager of Bar Harbor, served as Chief of Staff to a strong mayor in Ithaca, NY, and later as City Administrator to a weaker mayor in Saco).

November 8, 2021 Workshop with:

- Dr. Chyrl Laird (political scientist knowledgeable about municipal leadership models);
- Dominick Pangallo (Chief of Staff to an executive mayor in Salem, MA);
- Dr. Jim Svara (editing researcher of the National Civic League's 9th edition of the Model City Charter)

Former and current Portland officials interviewed in October and November of 2021:

Mayors

- Kate Snyder
- Michael Brennan
- Jill Duson
- Jim Cohen
- Karen Gerghety
- Ethan Strimling

City Councilors

- Belinda Ray
- Pious Ali
- David Marshall
- Kimberly Cook

V. Research Consulted

In addition to interviewing experts, these are some of the peer-reviewed journal articles that informed the commissioners' thinking:

- Carr, Jered B. (2015). *What have we learned about the performance of council-manager government? A review and synthesis of the research*. Public Administration Review 75(5): 673–89.
- Carr, J. B., & Karuppusamy, S. (2008). *The adapted cities framework: On enhancing its use in empirical research*. Urban Affairs Review, 43, 875-886.
- Carr, J. B., & Karuppusamy, S. (2009). *Beyond ideal types of municipal structure: Adapted cities in Michigan*. American Review of Public Administration 39, 304-321.
- Besley, T. and S. Coate, (2003), *Elected versus Appointed Regulators: Theory and Evidence*, Journal of the European Economic Association, 1(5), 1176-1206.
- Deno, K. and S. Mehay, (1987), *Municipal Management Structure and Fiscal Performance: Do City Managers Make a Difference?* Southern Economic Journal, 53(3), 627-642.
- Choi, C.G., Feiock, R. C. and Bae, J. (2013). *The Adoption and Abandonment of Council Manager Government*. Public Administration Review 73(5): 727–36.

2. Peaks Island Council Recommendation

The Commission prepared this recommendation in response to this request from the Peaks Island Council sent to the Commission on Sunday, January 30, 2022:

Dear Commissioners,

At our last meeting, the Peaks Island Council unanimously voted to recommend that the Charter Commission draft language to codify the Peaks Island Council into our Portland City Charter. We have explained our rationale in the attached resolution.

We look forward to discussing this further with you.

Resolution

Whereas Peaks Island is a small community of Portland with very unique needs, different from those of any other neighborhood in the city.

Whereas Peaks Islanders have historically felt under-represented and underheard by City Hall. Whereas there has been an active secession effort on the island dating back to the 1880's, with the most recent secession effort in the 2000s leading to State Legislature action and eventually the creation of the Peaks Island Council in 2007.

Whereas the Peaks Island Council has met monthly since January 2008, with subcommittees of community members meeting regularly to cover topics such as Environment & Sustainability, Ferry Service, Anti-Racism, Parking, Community Priorities, and more.

Whereas now in its 15th year, the Peaks Island Council has become a stable and reliable institution providing a conduit between City Hall and the Peaks Island Community, advocacy on behalf of Peaks Islanders, and support for island organizations and special projects.

Whereas the members of the Peaks Island Council are elected every November at Peaks Island's precinct 1-3— the voting precinct with consistently the highest turn-out in the city. Whereas the Peaks Island Council was created by ordinance and is therefore the only office elected by the residents of Portland that does not exist in a city or district charter.

Be it resolved that the members of the Peaks Island Council request the Charter Commission protect the institution of the Peaks Island Council by codifying its role as an officially elected advisory body of the City Council into the Portland City Charter.

Signed,

Peter Eckel, chair

S.E. Rafferty, vice chair

Peter McLaughlin, secretary

Fred Somers

Jerzy Sylvester

Natasha Markov-Riss

Scott Mohler

The City of Portland, by adoption of Chapter 9, Article IV of its Code of Ordinances, established the Peaks Island Council as a body of seven voting members with listed duties and responsibilities. This proposal would recognize the Peaks Island Council through the City Charter as well as by ordinance.

E. Procedures Committee

- 1. Preamble and Land Acknowledgement**
- 2. Ethics Commission and Code of Ethics**
- 3. Participatory Budgeting**
- 4. Communications Policy**

1. Preamble and Land Acknowledgement Recommendation

In recent years, many institutions have considered their history and set out to make some kind of amends for the wrongs of the past. While we cannot say that our city is perfect, we can at least acknowledge the violent and genocidal nature of the events that led to its creation.

In crafting this acknowledgment, we have consulted with Native American leaders and historical resources. Many Indigenous people of the Wabanaki nation were killed and most were driven out of the ancestral lands where they had lived, hunted, fished, and raised their families.

By acknowledging those events and saluting the surviving Maine tribes in our preamble, we seek to ensure that such events never happen again, and to make clear that Portlanders of all races dwell on unceded land. We show respect and honor the truth -- both values that Wabanaki tribes hold dear -- while paying tribute to the original stewards of this place.

2. Ethics Commission and Code of Ethics Recommendation

Introduction:

Ethics boards, ordinances and charter amendments can be found in municipalities across the State of Maine and across the country. They provide guidelines for city officials to execute their duties in an ethical and forthright manner. This Proposal brings Portland up to speed with other municipalities across the state that have similar provisions.

What does this Proposal do?

- Requires the Portland city council to form an ethics commission (EC).
- Requires the city council to adopt a code of ethics ordinance as recommended by the EC.
- Grants discretionary power to the EC to render advisory opinions on a number of matters of city business.
- Allows the EC to recommend the hiring of an accountability officer to provide education to the public and officials; to serve as an independent ombudsperson in resolution of disputes in an advisory capacity; and to provide training to city officials on ethical matters.

Why are the Ethics Commission and Code of Ethics Ordinance needed?

Currently, Portland does not have an ethics board or any requirements of written disclosures of conflicts. While the existence of such instruments may not in and of themselves prevent a bad actor from seeking pecuniary gain or to otherwise use or abuse their power or position; it does provide standards and a process for which such matters may be addressed. Additionally, while incidences of waste, fraud, abuse, and corruption are relatively rare in most municipal governments; the most common breaches of ethical standards include improper sharing of information, improper gifts, and indecent treatment of colleagues. (*Siewert & Udani*). Finally, a code of ethics serves no purpose if it just sits in a drawer, it should be a living document. The existence of the ethics commission and the accountability officer, if recommended and hired, will ensure the utility of the code and supervise training of city officials to make certain that the standards are understood.

State law (30-A M.R.S. §2605) governs Portland's officials (elected and appointed) in matters of conflicts of interest. It requires that where elected and appointed officials directly or indirectly own at least a 10% interest in the business entity before them in the matter of a question or contract, they must disclose their financial interest in the matter before them and abstain from voting upon the matter. The law also limits or prohibits the ability of former city or school department officials from acting in a proceeding for another party in which they had a role on behalf of the city or school department, and directs that every municipal official "shall attempt to avoid the appearance of a conflict of interest by disclosure or abstention."

Portland's Charter currently provides that no city councilor (including the mayor), school board member, or city officer or employee of the city or school department shall have a direct or indirect substantial financial interest in any contract entered into by or on behalf of the city or the school board, except for his or her own employment contract and contracts entered into in the

course of his or her employment with the city or school department. It also prohibits these persons from purchasing or accepting anything from the city or school department unless these also are offered to the public under the same terms and procedures that apply to the public, and from accepting or receiving any free pass, ticket, or free service from any person or entity acting under a contract or license from the city or school department.

Portland’s non-union employee personnel policy generally applies the State conflict of interest law and the Charter prohibition on direct or indirect substantial financial interest and on gifts to city employees:

“In addition to adhering to general standards of conduct for employees of any organization, public employees are expected to treat everyone they serve with complete impartiality and are prohibited from using their official position for personal profit or the profit of friends and family. Employees must comply with the conflict of interest standards of State law 30-A M.R.S.A. Sec. 2605.”

However, unlike Maine cities such as Bangor and Waterville, Portland has no generally applicable ordinance that establishes standards of conduct for its elected and appointed officials and department heads. This proposal provides the framework for both the code of ethics and an ethics commission to administer it.

This proposal is not intended to imply that city officials currently act unethically. Rather, it is a provision that ensures our city maintains a code of ethical conduct for officials that will build public trust and ensure Portland government has high ethical standards. This proposal is a product of public comment, campaign discussions and research by commission members.

Other Purposes:

- Encourage proper use of office
- Compliance with advisory opinions
- Mitigate instances of personal gain, political favors, political solicitation, and favoritism.
- Protect against the “revolving door” of city officials, consultants, and contractors.

General Reasoning for an Ethics Commission:

- Protect whistleblowers.
- Fight and discourage corruption, waste, fraud, abuse, and favoritism from both elected and unelected individuals.
- Increase transparency and accountability in municipal government.
- Be a safe, independent place to send complaints and concerns regarding ethical conduct.
- Creates an ethics mission and code for the City of Portland.
- Cost effective, productive ethical conduct oversight that has proven to work elsewhere in Maine.
- To bring more voices to the table and the community-oriented decisions on what ethical conduct is, rather than one individual.
- Build public trust in municipal government.

Differences in Roles of Ethics Commission & Accountability officer

While the ethics commission considers actions and behaviors of officials that may not rise to the level of illegality but are still wrong (such as being visibly drunk at a public meeting); the role of the accountability officer is to resolve disputes, help streamline bureaucratic procedures, and provide training for city officials.

Ethics Commission Gives advisory opinions on behaviors that may be wrong but not illegal Examples:	Accountability Officer Resolves disputes & cuts red tape Examples:
Sharing of information that should not be shared.	Help avoid lawsuits and unneeded controversy.
Gifts (large and small)	Complaints against city staff from members of the public/red tape and overly-rigid adherence to administrative procedures concerning trivial matters. Make recommendations to staff when a process has gone off the rails.
Disrespectful behavior toward colleagues	Provide training for public officials on ethical matters.
Putting forth bad faith arguments in favor of a policy.	Obtain second opinions on legal matters/avoid lawsuits
“Bad faith” gathering of public input, for example scheduling meetings at the least convenient time for most stakeholders, and deliberately poorly advertised opportunities for public input. Withholding information critical to the deliberation of a policy.	Recognize when regulatory requirements are poorly communicated, improve public understanding of why regulations are in force Address situations when regulations are being poorly or selectively enforced, either by calling on policy makers to update the regulations or by updating administrative procedures for more judicious enforcement
Quid pro quo deals that do not rise to the level of actual bribes, but confer some kind of private benefit to the official or allies. These are distinct from the normal legislative deal making process.	Implementation of policy that is not being implemented Help standardize procedures against unyielding bureaucratic norms

3. Participatory Budgeting Recommendation

Participatory budgeting is a system that sets aside a portion of a municipality's budget to be allocated by residents directly. The commission spent two procedures committee meetings discussing the concept. Every member of the committee, and the members of the public who spoke, supported the concept, and expressed their desire to see it enshrined in city government. However, during deliberations, a consensus emerged that establishing the specifics of a participatory budgeting system is a task better suited for the city council. Accordingly, this proposal does not set forth specifics of such a system for Portland, but requires the city council to establish one.

4. Communications Policy Recommendation

Communications between City Staff and Elected Officials Under the Current Charter

Portland's current Charter allows the city manager to take a strict approach to how, when, and whether elected officials may talk with city staff. Portland's Charter gives the city manager the power to direct or make requests of city staff, and denies that power to elected officials. Article VI, Section 5 of Portland's current Charter provides:

Neither the mayor nor members of the city council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment.

Under the system that this section establishes, elected officials may make promises to constituents about how the city will function, and about how they will execute their vision. But realizing those promises depends on the cooperation of the city manager. The city manager has the exclusive power to direct city staff of every department, and to make requests of them. Indeed, the next sentence in the same section of the charter underscores this interpretation:

Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards and commissions, council committees, neighborhood and other groups and organizations, on city work.

This section empowers the city manager to prohibit or monitor communications between city staff and elected officials. Such a power is relatively expansive, even compared with other council-manager systems.

In recent years, this rule proved cumbersome for local officials. Indeed, it's very drafter, Attorney Jim Cohen, a former charter commissioner, has admitted as much to current charter commissioners. Accordingly, charter commissioners decided to consider a new structure for governing this area of municipal government.

Communications Under the Committee Recommendations

To answer the questions presented, commissioners combined analysis of the charters of a random selection of cities across the country, and interviews with the city clerks of some of those same cities. The research turned up three dominant models for governing this area of municipal government. The first model is *executive supremacy*. Under this model, a charter gives its city's chief executive relatively broad powers to restrict communications between city staff and elected officials. Some charters spell out those powers in some detail, and others leave those details vague and to be spelled out in the city code or policy manual. But they all give the executive the exclusive, or almost exclusive, power to govern communications between city staff and elected officials. The National Civic League's *Model City Charter*, Palo Alto, California (council-

manager) Hartford, Connecticut (council-mayor), and Austin, Texas all favor this model. The second model is *limited executive power*, where the executive branch proposes rules to the legislative branch, which the latter enacts after deliberation. Burlington, Vermont and Youngstown, Ohio both favor this model. The third dominant model is *legislative supremacy*, where charters grant a city's legislative branch the exclusive power to write the rules that govern communications between city staff and elected officials. Portland, Oregon uses this model.

Of the three models, the commission opted for limited executive power because it seemed most likely to foster cooperation between legislative and executive branches in a manner that leads to a smooth and workable culture of communication between city staff and elected officials.

III. BALLOT QUESTIONS – PROPOSED SUMMARIES AND CHARTER LANGUAGE FOR EACH QUESTION

The Charter Commission has determined that the revisions constitute “minor modifications” under 30-A M.R.S. § 2105(1)(A), recommends that the present Charter continue in force with only minor modifications, and finds it practicable that these proposed modifications be submitted to the voters in eight separate questions as set out in this Section III of the commission’s Final Report.

Because some of the proposed Charter modifications are more than a page in length or require changes to several existing Charter provisions, the Commission believes that in many instances, it would be impractical to print all of the text of the proposed Charter modification on the ballot. Therefore, we also provide proposed summaries for each proposed Charter modification/Ballot Question for the City Council to substitute for the text if the City Council determines that it is not practical to place all of the text of a proposed Charter modification on the ballot and that a summary would not misrepresent the subject matter of the proposed Charter modification.

BALLOT QUESTION # 1—Preamble and Land Acknowledgement

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission to Amend the Preamble and Include a Land Acknowledgement as Summarized Below?

1. Proposed Summary:

This modification revises the existing Preamble of the Charter, restates the purpose of the city's government and of its system of public education, and adds a land acknowledgment to address and respect Portland's past.

2. Charter Language

Note: This contains only the provisions related to the Commission proposal in **Question # 1** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend the Table of Contents as follows:

Preamble and Land Acknowledgement

2. Amend PREAMBLE by deleting the current language in its entirety and replacing it, as follows:

PREAMBLE

~~We, the People of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the general health, safety and welfare of our community. In so doing, we build a government that meets the needs of the people it serves and whose character it reflects. Our government shall further cooperation, encourage leadership, solicit our input and support the active participation of our residents in their governance. Our government shall be effective and accountable and shall promote equal rights and representative democracy. Our government shall provide public education that enables all residents to acquire the knowledge and skills necessary to participate fully in Portland's civic, intellectual, cultural and economic life, in order to enrich and strengthen our community and our common future.~~

(Referendum 11/2/10)

We, the people of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the health, safety, and common good of all people in our community. In so doing, we seek to build a representative, responsive, and effective government that encourages leadership and participation from all members of that community, with an emphasis on accountability, equity, and inclusion, and a system of public education that supports Portland's civic, intellectual, cultural, and economic life.

Land Acknowledgement

Portland is located in the unceded territory of the Aucocisco Band of the Wabanaki, which also includes the Abenaki, Maliseet, Mi'kmaq, Passamaquoddy, and Penobscot people. European colonizers displaced Wabanaki people by force and went on to displace and harm indigenous peoples throughout what is now Maine and the United States. We acknowledge that displacement and that harm with sorrow, even as we celebrate and honor the Wabanaki knowledge and culture that continue to thrive in the Tribal Nations that have and always will call this place, the Dawnland, their home.

BALLOT QUESTION # 2—Governance

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Governance and Other Governance Related Matters as Summarized Below?

1. Proposed Summary:

These modifications establish an executive mayor, allow the council to remove or censure the mayor, change from a city manager to a chief administrator, increase the number of city council seats from nine (9) to twelve (12), and make other changes relating to governance as follows:

- Creates an executive mayor and replaces the city manager with the position of chief administrator;
- Grants the executive mayor the following powers: nominate for appointment and remove the chief administrator; nominate for appointment all department head positions; exercise veto power over the city budget and city ordinances subject to council override; recommend for adoption by the city council rules that govern communications between city staff and elected officials; issue executive orders to implement council policy; and introduce legislation to the council;
- Increases the mayor's compensation from one-and-a-half (1.5) times to two (2) times the median household income and ties city council and school board member compensation to a minimum of ten percent (10%) of the mayor's compensation;
- Establishes the chief administrator as responsible for the administration of all departments and delivery of city services and grants the chief administrator the right to remove department heads in consultation with the executive mayor;
- Changes the composition and size of the city council by increasing the number of districts from five (5) to nine (9) and maintaining the existing three (3) at-large councilors;
- Grants the city council the power to censure or remove the mayor for cause, and to order a recall election of the mayor, by super-majority vote;
- Requires that the city council elect from among its members a chair and vice-chair, who shall organize the council into various committees;
- Provides that the city council chair shall preside over city council meetings and set the council agendas;
- Requires that the city council create a review committee that shall (i) conduct regular evaluations of the performance of the corporation counsel and city clerk and (ii) hold regular meetings with the chief administrator and department heads to understand the general working conditions and morale at city hall; the mayor shall lead the annual performance review of the chief administrator;
- Changes the composition of the school board by increasing the number of districts from five (5) to nine (9) and eliminating the at-large seats so that all members will represent a district;
- Directs the school board and city council to establish a joint committee on budget guidance, consisting of four (4) city councilors and four (4) school board members, appointed by the council chair and school board chair, respectively, to develop a proposed non-binding budget guidance document for the city council and school board;

- Directs the city council to develop and implement a participatory budget development process for the city budget that involves input from as many Portland residents as possible;
- Modifies the capital improvement program process to require the chief administrator to jointly prepare with the superintendent a five-year capital improvement plan; and
- Modifies the vacancy provisions for the city council and school board to require a special election if the vacancy occurs more than six (6) months prior to the next municipal election. If the vacancy occurs within six (6) months prior to the next regular election, the city council or school board, as applicable, shall appoint a qualified person.

2. Charter Language

Note: This contains only the provisions related to the Commission proposals in **Question #2** and only those sections which will be changed if this proposal is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend the Table of Contents as follows:

Art. I-A. Mayor, §§1--5

2. Amend ARTICLE I., GRANT OF POWERS TO THE CITY, by amending Section 2, Powers and duties, as follows:

Section 2. Powers and duties.

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the “school board”), and also except as otherwise provided by this charter, shall be and are vested in the mayor and in one body of ~~nine~~ twelve members, which shall constitute and be called the city council, all of whom shall be inhabitants of the city, and shall be sworn in the manner hereinafter prescribed.

The executive powers of the city shall be vested in the mayor and exercised through the chief administrator and the several departments and boards of the city, under the mayor’s general oversight.

The legislative powers of the city shall be vested in the city council. The mayor and the members of the city council shall be and constitute the municipal officers of the City of Portland for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers and mayors of cities under the laws of this state.

All other powers now or hereafter vested in the inhabitants of such city, and all powers granted by this charter, except as herein otherwise provided, shall be vested in the city council.
(Referendum 11/2/10)

3. Amend the current CHARTER by adding the following new ARTICLE I-A, MAYOR, as follows:

ARTICLE I-A. MAYOR

Section 1. Election, tenure of office.

The position of mayor shall be elected by majority vote as provided in section 3 of article II. The candidate(s) for mayor shall be nominated in the same manner as at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two consecutive terms. The election and position of mayor shall be a non-partisan, full-time position.

Notwithstanding the prior paragraph, for the municipal election in November of 2023, the election for mayor shall be for a one-time five-year term ending in 2028. Thereafter, the mayor shall be elected every four (4) years in line with the U.S. presidential election.

Section 2. Compensation of the mayor.

Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation, but no such order re-setting the mayor's compensation shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than two (2) times the median household income for Portland as most recently published by the U.S. Census Bureau, American Community Survey, or successor index thereto, at the time such compensation is set or adjusted, plus customary city benefits.

The mayor shall not hold any other office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected.

Section 3. Mayor's powers and duties.

The mayor shall be the chief executive officer of the city, responsible for providing leadership, and shall have the following powers and duties:

- (a) To articulate the city's vision and goals and build coalitions to further such vision and goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that purpose;
- (b) To attend, with the chief administrator, the annual workshop session of the city council to discuss and identify the city's goals and priorities. A summary of the session shall be made available to the public;
- (c) To represent the city with other municipalities, levels of government, community and

neighborhood groups, and other communities;

- (d) To ensure the implementation of city policies and keep the city council informed as to the progress on all city council directives, the general financial standing of the city, the current status of all negotiations, and recommendations for city council action;
- (e) To direct the chief administrator in the preparation of all city budgets and present the budget to the city council for approval;
- (f) To direct the chief administrator in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (j), and to present such program plan to the city council;
- (g) To facilitate among the chief administrator, city council, board of public education and the public to secure passage of the annual city and school budgets;
- (h) To exercise veto power over the annual city appropriation as provided in article VII, section 8;
- (i) To exercise veto power over city council actions regarding city ordinances or amendments thereto as provided in article II, section 11;
- (j) To be the public figurehead for the city. In this role the mayor shall serve as:
 - 1. the official representative of the city in Augusta, nationally and internationally;
and
 - 2. the official spokesperson for the city; and
- (k) To submit ordinances, orders, and resolves for city council consideration pursuant to the same rules and procedures that pertain to councilor-sponsored ordinances, orders, and resolves.

Notwithstanding the foregoing, the chief administrator shall manage the day-to-day operations of the city and administration of the city budgets presented by the mayor and approved by the city council, including, but not limited to, exercising control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.

All directives issued by the mayor pursuant to this charter implementing city council approved ordinances, orders, and resolves, and affecting the outcomes of any city services, policies, procedures, or programs lasting more than 30 days (or multiple directives of a similar nature occurring within a 30-day period), shall be submitted in writing to the chief administrator as an “Executive Order.” Such Executive Orders shall appear on the next council agenda as a communication prior to taking effect. The council may schedule a public hearing and may take action on such Executive Order or allow the Executive Order to remain.

Section 4. Vacancy of the mayor.

A vacancy in the office of mayor shall occur upon the happening of the following: (1) the death of the mayor; (2) the effective date of the resignation of the mayor; (3) the removal of mayor from the city; (4) the conviction of the mayor of a felony while in office; (5) the recall of the mayor pursuant to the provisions of section 5 of this article and article V; or (6) the removal of the mayor by the council pursuant to section 5 of this article.

The council shall declare a vacancy in the office of mayor to exist upon the qualification of the mayor for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

The mayor may in writing addressed to the council resign his or her office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and the mayor's office shall become vacant on such specified future date.

If a vacancy in the office of mayor occurs or is declared prior to the next regular municipal election, the vacancy shall be filled by corporation counsel until a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least eight (8) of its members, calls a special election on an earlier date; provided that if the vacancy occurs with six (6) months or fewer remaining in the then mayor's term, then there shall be no special election to fill the vacancy. Such election shall be called and held and nominations made as in other elections.

Section 5. Censure, removal or recall of the mayor.

The mayor may be censured or removed from office by the city council for cause. The city council also may order a recall election for the mayor to be conducted pursuant to article V.

At any meeting of the city council, it shall be in order for any member thereof to give written notice, approved by seven (7) or more members of the city council, of the intention to move at the next meeting thereof occurring within not less than fourteen (14) days, an order that the mayor be censured or removed from office.

Such notice shall specify as particularly as possible the acts complained of and shall, if approved, be entered by the city clerk in the minutes of the city council. The clerk shall within two (2) days serve a copy thereof upon the mayor at the mayor's residence and electronically, and shall provide an electronic copy to each of the members of the city council.

At any subsequent hearing or meeting of the city council in which the censure or removal of the mayor is the topic, the mayor shall have the right to be present, speak, be represented by counsel, and present a defense. Such proceedings shall be conducted in accordance with state and federal laws and constitutional requirements.

Any vote to censure, remove the mayor from office, or order a recall election shall require a vote of three-fourths (3/4) of the full city council.

4. Amend ARTICLE II., CITY COUNCIL, by amending Section 1, City to be divided into election districts, Section 2, Composition, election, tenure of office, Section 4, Compensation of councilors and mayor, Section 5, Mayor's powers and duties, Section 6, Absence or disability of mayor; acting mayor; Section 7, Vacancies, Section 8, Meetings of the council, Section 9, Special meetings, Section 10, Quorum, Section 11, Procedure, and adding new Section 12, Annual performance reports as follows:

Section 1. City to be divided into election districts.

For the purpose of all elections the city, including its islands, shall be divided into ~~five (5)~~ nine (9) districts to establish compact and contiguous districts of approximately equal population.

The city council for voting purposes may by ordinance divide the election districts into voting districts. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/2/11)

Section 2. Composition, election, tenure of office.

The city council shall be composed of ~~nine (9)~~ twelve (12) members, including the ~~mayor chair and vice-chair~~ who each shall be one of the ~~nine (9)~~ twelve (12) members of the city council, and shall hold office for a term of three (3) years and until their successors are elected and qualified, except as provided below for the term of ~~mayor and for one at large seat for the four new districts~~ in the election of ~~2013~~ 2023 only. ~~Four~~ Three (3) ~~(4)~~ members, ~~including the mayor,~~ shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the ~~five~~ nine (9) ~~(5)~~ districts heretofore provided for, from and by the registered voters of each district. ~~References in this charter to the city council, councilors, council, its members or membership, shall be deemed to include the mayor, unless otherwise specifically provided.~~

For the municipal election in November of ~~2013~~ 2023, ~~one of the two at large seats up for election shall have a one-time four year term ending in 2017. Thereafter, the council term shall return to be three (3) years for this seat. The city clerk shall designate which seat shall be for the four (4) year term prior to the availability of nomination papers for the 2013 election, and nomination papers shall be separately issued for each of the two at large seats. Each at large candidate may take out and file nomination papers for only one of the at large seats. The municipal ballot will list the 4 year and 3 year council seats as separate questions.~~ one of the new districts shall have a one-time, one year term ending in 2024, two of the new districts shall have a one-time, two year term ending in 2025, and one of the new districts shall be elected for the standard three year term. Thereafter, the council term for all seats shall return to be three (3) years for the respective seats. The city clerk shall designate which seats shall be for the one (1) year term, two (2) year term, and three (3) year term, and nomination papers shall be issued for each seat.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the ~~five~~ nine (9) ~~(5)~~ districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

~~Beginning with the regular municipal election in November, 2011, the at large position then up for election shall be designated as the mayor's position and shall continue as the mayor's position thereafter. The position of mayor only shall be elected by majority vote as provided in section 3 of this article. The candidate(s) for mayor shall be nominated in the same manner as other at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two consecutive terms. The election and position of mayor shall be a non-partisan, full-time position. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10; 11/6/12)~~

Section 4. Compensation of councilors ~~and mayor.~~

~~Except as otherwise provided in the paragraph below for the mayor's compensation, the~~ The city council shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, and specify when any compensation shall be payable, but no such order increasing their compensation, including that of the mayor, shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance. At minimum, each member of the city council shall be paid compensation at a level which is no less than ten percent (10%) of the salary paid to the mayor.

No member shall hold any other office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. City council chair

As described herein the city council shall be led by a chair and vice-chair who shall be elected annually by majority vote of the members of the city council. The chair shall preside over meetings of the city council and set the city council agendas in accordance with city council rules. The vice-chair shall preside over council meetings in the chair's absence. In the case of an absence of the chair and vice-chair, the city council shall choose a chair, pro tempore, by a majority of those members present and voting. In case of a vacancy in the office of chair of the city council by death, resignation or otherwise, the same shall be filled for the unexpired term by a majority vote of those members present.

Together, the chair and vice-chair shall have the authority to organize the council into various committees and recommend chairs for such committees. The committee members shall be responsible for appointing a chair for the committee.

~~Section 5. Mayor's powers and duties.~~

~~The mayor shall be the official head of the city, responsible for providing leadership, and shall have the following powers and duties:~~

- (a) ~~To articulate the city's vision and goals and build coalitions to further such vision and~~

- ~~goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that purpose;~~
- ~~(b) — To convene and lead an annual workshop session of the city council to discuss and identify the city's goals and priorities in order to provide guidance for the city manager and to inform the public. The city manager shall attend this workshop session, and a summary of the session shall be made available to the public;~~
 - ~~(c) — To represent the city with other municipalities, levels of government, community and neighborhood groups, and the business community;~~
 - ~~(d) — To preside as chair of the city council, and vote upon all matters in the same manner as other members of the city council, except as provided in article VII, section 8. The mayor shall direct the city manager in the preparation of council meeting agendas;~~
 - ~~(e) — To facilitate the implementation of city policies through the office of the city manager;~~
 - ~~(f) — To consult with and provide guidance to the city manager in the preparation of all city budgets and to provide comments on such budgets at the time they are presented by the city manager to the city council for approval;~~
 - ~~(g) — To consult with and provide guidance to the city manager in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (i), and to provide comments on such program plan at the time it is presented by the city manager to the city council;~~
 - ~~(h) — To facilitate among the city manager, city council, board of public education and the public to secure passage by the city council of the annual city and school budgets;~~
 - ~~(i) — To exercise veto power over the annual city appropriation as provided in article VII, section 8;~~
 - ~~(j) — To establish performance guidelines in conjunction with the other members of the city council for regular evaluations, no less than annually, by the city council of the performance of the city manager, corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities;~~
 - ~~(k) — To chair any subcommittee with at least two (2) other city councilors to recommend the appointment or removal of the city manager, corporation counsel or the city clerk, but the full city council shall have the final decision in regard to such appointment or removal by a vote of at least five (5) members of the council; and~~
 - ~~(l) — To appoint the members and chairs of the city council committees and various ad~~

~~hoc committees and communicate such appointments to the city council, which may override such appointments by a vote of at least six (6) council members.~~

~~Notwithstanding the foregoing, the city manager shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council. (Referendum 11/2/10)~~

~~Section 6. Absence or disability of mayor; acting mayor.~~

~~In the temporary absence or disability of the mayor, the mayor may select an acting mayor from among the other council members and such person shall perform the duties of the mayor during such temporary absence or disability for a maximum of sixty consecutive (60) days or return of the mayor, whichever comes first. If through physical or mental incapacity the mayor is unable to select an acting mayor, or if the mayor's absence or disability exceeds sixty (60) consecutive days, the council shall select an acting mayor from among its membership until such time as the mayor is able to resume his or her duties or a vacancy is declared pursuant to section 7 below and a new mayor elected. (Referendum 6/13/78; 11/7/00; 11/2/10)~~

~~Section 7~~ Section 6. Vacancies.

A vacancy in the membership of the city council shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or (6) the recall of a member pursuant to the provisions of article V. The council shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the city council, or at least sixty (60) percent of the regular meetings of the city council held in any one calendar year unless such member shall be excused (by vote of at least ~~four (4)~~ six (6) other members) for health reasons or other good cause.

The council shall declare a vacancy in its membership to exist upon the qualification of any member for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

A member may in writing addressed to the council resign his or her office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and such member's office shall become vacant on such specified future date.

If a vacancy in the membership of the city council occurs or is declared more than six (6) months prior to the next regular municipal election, the ~~vacancy~~ unexpired term shall be filled at a special election, citywide or for a district, to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least ~~six (6)~~ eight (8) of its members, calls a special election on an earlier date. Such election shall be called and held and nominations made as in other elections. If a vacancy occurs within six (6) months prior to the next regular election, the city council shall appoint a qualified person from the same district or at-large, as appropriate.

to serve until the next regular municipal election. The council shall establish rules and procedures for appointments to fill such vacancies. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

~~Section 8~~ Section 7. Meetings of the council.

The city council shall meet at the usual place for holding meetings on the first Monday in December following the regular municipal election, or as soon thereafter as possible, and at such meeting the mayor and councilors-elect shall be sworn to the faithful discharge of their duties by a justice of the peace, or by the city clerk. The city council shall at such meeting establish by resolution or rule a regular place and time for holding its meetings, and shall meet regularly at least twice each month. (Referenda 6/13/78; 11/4/86; 11/7/00; 11/2/10)

~~Section 9~~ Section 8. Special meetings.

Special meetings may be called by the mayor, and in case of his or her absence, disability, or refusal, may be called by ~~five~~ seven (7) ~~(5)~~ or more members of the city council. At least twenty- four (24) hours notice of the time and place of holding such special meeting shall be given to all members of the city council. (Referendum 11/2/10)

~~Section 10~~ Section 9. Quorum.

~~Five~~ Seven (7) ~~(5)~~ members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty- four (24) hours' notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referendum 11/2/10)

~~Section 11~~ Section 10. Procedure.

The city council shall keep a record of its proceedings and shall determine its own rules of procedure and make lawful regulations for enforcing the same. The meetings of the city council shall be open to the public in accordance with state law. The city council shall act only by ordinance, order, or resolve. All ordinances, orders, and resolves, except orders or resolves making appropriations of money, shall be confined to one subject which shall be clearly expressed in the title. An appropriation order or resolve shall be confined to the subject of appropriations only.

No ordinance and no appropriation order or resolve shall be passed until it has been read on two separate days, except when the requirement of a second reading on a separate day has been dispensed with by the vote of at least ~~seven (7)~~ nine (9) members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance, order, and resolve shall require on final passage the affirmative vote of at least ~~five~~ seven (7) ~~(5)~~ members of the city council. No ordinance shall take effect until thirty (30) days after its passage

and no order or resolve shall take effect until ten (10) days after its passage, except as herein otherwise provided for emergency ordinances, orders and resolves.

The city council may, by vote of at least ~~seven (7)~~ nine (9) of its members, pass emergency ordinances, orders, or resolves to take effect at the time indicated therein, but such emergency ordinances, orders, or resolves shall contain a section in which the emergency is set forth and defined, provided, however, that the declaration of such emergency by the city council shall be conclusive. (Referendum 11/2/10)

Section 11. Mayoral veto of city council action on city ordinances.

Within five (5) business days of the meeting at which the city council adopts any new or amended city ordinance, the mayor may veto such adoption by written communication to the city council. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be overridden by a vote of at least two-thirds (2/3) of the members of the city council.

If a veto is overridden, the ordinance will take effect as legally adopted.

Section 12. Annual performance reports.

The city council shall request an annual report regarding the performance of (1) constituent services, (2) permitting, and (3) any other city functions the city council requests. Such reports shall be presented to the city council at a regularly scheduled public meeting and the public shall have the opportunity to provide feedback specific to the reports.

5. Amend ARTICLE III., BOARD OF PUBLIC EDUCATION, by amending Section 1, Composition, election, tenure of office, compensation, Section 5, School budget, by amending the first three paragraphs of the current charter and adding a new first paragraph, and Section 6, Vacancies, as follows:

Section 1. Composition, election, tenure of office, compensation.

The board of public education shall be composed of nine (9) members who shall hold office, except as hereinafter provided, for a term of three (3) years and until their successors are elected and qualified. ~~Four (4) shall be elected at large from and by the registered voters of the entire city, and one~~ One (1) shall be elected from each of the five (5) nine (9) districts heretofore provided for in section 1 of article II, from and by the registered voters of each such district.

To transition from the mix of district and at-large seats to all district seats, members who were elected to at-large seats shall serve until their current terms expire; for the municipal election in November of 2023, the at-large seat of the member whose term is then expiring shall

become one of the new district seats; for the municipal election in November 2024, the at-large seat of the member whose term is then expiring shall become the second of the new district seats; and for the municipal election in 2025, the remaining two at-large seats of the members whose terms are then expiring shall become the third and fourth of the new district seats.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the ~~five (5)~~ nine (9) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

The city council shall by order establish the amount each member of the school board shall be entitled to receive as compensation for all services rendered, which compensation shall be the same as that received by members of the city council, ~~other than the mayor~~. The city council shall provide additional compensation to the chair of the school board appropriate to reflect his or her additional responsibilities as chair. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. School budget.

Prior to the submission of a school budget, the school board and city council shall establish a Joint Committee on Budget Guidance, consisting of four (4) city councilors and four (4) school board members, appointed by the chair of the council and school board chair, respectively. The purpose of the joint committee is to develop guidance for the city and school district on budget priorities and constraints, covering a two-year period and updated annually. The joint committee shall obtain public comment on the guidance prior to submitting the guidance as a proposed non-binding joint resolution to the city council and school board.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

~~During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.~~

The budget submitted by the superintendent ~~to be reviewed jointly by the school board and the city council~~ shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for ~~joint~~ review by the school board, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed

expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Section 6. Vacancies.

A vacancy in the membership of the board of public education shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or (6) the recall of a member pursuant to the provision of Article V. The school board shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the school board or at least sixty (60) percent of the regular meetings of the school board held in any one calendar year unless such member shall be excused (by a vote of at least four (4) of the members) for health reasons or other good cause. A member may in writing addressed to the school board resign his or her office effective at a future date specified in the written resignation. Once submitted to the school board, such resignation may not be withdrawn and such member's office shall become vacant on the specified future date.

If a vacancy in the membership of the school board occurs or is declared more than six (6) months prior to the next regular municipal election, the ~~vacancy~~ unexpired term shall be filled at a special election, citywide or for a district, to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least ~~six~~ eight of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections. If a vacancy occurs within six (6) months prior to the next regular election, the school board shall appoint a qualified person from the same district or at-large, as appropriate, to serve until the next regular municipal election. The school board shall establish rules and procedures for appointments to fill such vacancies. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

6. Amend ARTICLE IV., ELECTIONS, by amending Section 2, Regular municipal election, and Section 4, Nominations, as follows:

Section 2. Regular municipal election.

On the first Tuesday after the first Monday in November of each year, the regular municipal election shall be held and the registered voters of the city or district, as the case may be, shall ballot for a mayor and for such councilors and for such members of the school board as may be necessary to fill the offices of those whose terms would then normally expire and fill any existing vacancy in an unexpired term of office. (Referenda 12/1/75; 11/2/76; 6/13/78; 11/4/86; 11/7/00; 11/6/01; 11/2/10)

Section 4. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for mayor or an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy-five (75) nor more than one hundred fifty (150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

7. Amend ARTICLE V., RECALL, by amending Section 1, Applicability, Section 2, Petition for recall, Section 4, Calling of recall election, Section 5, Form of ballot, and Section 7, Election may be ordered, as follows:

Section 1. Applicability.

The mayor or any ~~Any~~ member of either the city council or the school board may be recalled and removed from office by the registered voters of the City of Portland, as hereinafter provided, except that this provision shall not apply to the mayor or a member of either body who has ~~one (1) year~~ six (6) months or less to serve in his or her term, i.e., any petition to recall a member must be certified by the clerk no later than November 30 of the year prior to that member's next scheduled November re-election date. (Referenda 11/4/86; 11/2/10)

Section 2. Petition for recall.

In the case of either the mayor, or an at large member of the city council or of the school board, any five hundred (500) registered voters of the city may affirm and file with the city clerk an affidavit containing the name of the mayor or of the member of the city council or of the school board whose removal is sought, together with a statement of the reasons why such removal is desired. In the case of a district member of the city council or of the school board, any two hundred and fifty (250) registered voters of the member's district may affirm and file with the city clerk an affidavit containing the name of the district member whose removal is sought, together with a statement of the reasons why such removal is desired. Members of the city council and of the school board shall not be included on the same affidavit and only one member's name shall be on an affidavit.

Within seven (7) calendar days of receipt of such an affidavit, the city clerk shall prepare a sufficient number of petitions which shall contain the signature of the city clerk, his or her official seal, the date, and the name of the person whose removal is sought. In addition, the statement of reasons for removal referred to above shall either be printed on such petitions or attached thereto. Such petitions shall be on paper of uniform size with as many individual sheets as reasonably necessary.

The city clerk shall file the completed petitions in his or her office. During the thirty (30) days following their filing, the city clerk shall arrange to have petitions, noting that removal is being sought as well as the reasons therefor, available for signature both at city hall and also at

public places as indicated below. Notice of the location of the public places where petitions may be signed shall be given by publication at least forty-eight (48) hours in advance and such notice shall contain the specific location of such public place or places, the dates it or they will be open, and the times during which petitions may be signed. In the case of either a district councilor or a district school board member, the city clerk shall select one (1) site outside of city hall, but within the district of the member whose removal is sought, and such location shall be open for four (4) days between the hours of noon and 8:00 p.m. In the case of the mayor or at large councilors or members of the school board, the city clerk shall select four (4) sites outside of city hall and such locations shall be open for four days each between the hours of noon and 8:00 p.m.

The city clerk shall designate election clerks to supervise each such site. Election clerks shall be residents of Portland and at least eighteen (18) years of age. They shall be sworn to the faithful performance of their duties by the city clerk. Each qualified voter who signs a petition shall include his or her place of residence, providing either the street and number or a description sufficient to identify the place.

To mandate a vote in the case of the mayor or an at large councilor or an at large member of the school board, the recall petition must be signed by at least three thousand (3,000) registered voters of the city, or in the case of a district councilor or district member of the school board, by at least fifteen hundred (1,500) registered voters of that member's district. (Referenda 12/1/75, 11/4/86; 11/2/10)

Section 4. Calling of recall election.

If the clerk's certificate should show that the petitions are sufficient, he or she shall submit them, together with the clerk's certification, to the city council at its next regular meeting following certification, and shall also notify the person or persons whose removal is sought. The city council shall, within ten (10) days of receipt of the clerk's certificate, or on its own in the case of a council vote to hold a recall election for the mayor under article I-A, section 5, order an election to be held not less than forty-five (45) nor more than ninety (90) days thereafter; except that, if a regular municipal election should occur within ninety (90) days after receipt of the certificate, the city council may, in its discretion, schedule the recall election for the same date as the regular municipal election. The recall election shall be called and held as other elections under this charter, except for the specific limitations imposed by this article.

All registered voters in the city may vote on the recall of the mayor or an at large member of the council or school board; only the registered voters of the applicable district may vote on the recall of a district member of the council or school board. (Referenda 11/4/86; 11/2/10)

Section 5. Form of ballot.

Unless the mayor or the member or members whose removal is sought shall have resigned within ten (10) days after the receipt by the city council of the clerk's certificate or of the council's vote to hold a recall election for the mayor, the form of the question to be submitted to the voters shall, as nearly as possible, be: "Shall (name of official and his or her title) be

recalled?" (Referendum 11/4/86)

Section 7. Election may be ordered.

If the mayor or a member of either the city council or school board who is recalled should either request a recount or dispute the election as permitted by law, then that member shall remain in office until the recount or dispute has been finally determined; and the provisions of article I-A, section 4, article II, section 7 6, and article III, section 6, relating to vacancies in the office of the mayor, city council or school board, shall be stayed. (Referendum 11/4/86; 11/2/10)

8. Amend ARTICLE VI., ADMINISTRATIVE OFFICERS, as follows:

Section 1. Appointments.

- (a) The following officers shall be appointed by a vote of at least seven (7) members of the city council: city clerk and corporation counsel. By a vote of at least seven (7) members of the city council, the city council also may appoint constables at large.
- (b) Based on the procedure provided in this article VI, section 1(f), the chief administrator shall be nominated for appointment by the mayor and confirmed by a vote of at least seven (7) members of the city council.
- (c) Based on the procedure provided in this article VI, section 1(f), department heads shall be nominated for appointment by the mayor and confirmed by a vote of at least seven (7) members of the city council.
- (d) All attorneys employed in the corporation counsel's office shall be ~~appointed~~ nominated for appointment by the corporation counsel, subject to confirmation by a vote of at least seven (7) members of the city council. The corporation counsel shall have the right to remove any attorney employed in the corporation counsel's office.
- (e) All other employees shall be appointed and may be removed by the ~~city manager~~ chief administrator upon recommendation of the heads of their departments. (Referendum 11/4/86; 11/2/10)
- (f) The mayor shall declare the intent of the city to appoint any vacant chief administrator or department head position. The city staff shall post the declared positions pursuant to city procedure and provide the mayor with a list of qualified candidates that applied for such appointment. All persons nominated for appointment by the mayor shall be nominated solely on the basis of character and qualification to perform the duties of the office or position to be filled by the appointment.

Section 2. Organizational powers.

The city council shall have power to provide by ordinance for the organization, conduct, and operation of the departments, agencies, offices, and boards of the city, for the creation of

additional departments, agencies, offices, and boards and for the division of any such departments, agencies, offices, and boards; and for the alteration, abolition, assignment, or reassignment of all such departments, divisions, agencies, offices and boards; provided, however, there shall be a director of finance to perform the functions specified in article VII of this Charter. The city council shall, by ordinance, designate those department heads responsible for performing duties required by state law. (Referendum 11/4/86)

Section 3. Civil service rules.

The city council shall provide by ordinance for a system of civil service rules for the appointment, promotion, demotion, lay-off, reinstatement, suspension, and removal of the members of the police department and of the fire department, other than the chiefs of such departments, and for a civil service commission to administer the same.

Section 4. Compensation and tenure of offices.

The city council shall fix by order the salaries of the appointees of the city council. Salaries of the appointees of the ~~city manager~~ chief administrator shall be fixed by the ~~city manager~~ chief administrator, subject to the approval of the city council. All appointive officers shall hold office ~~during the pleasure of the appointing power~~ until removed pursuant to this charter.

Section 5. Appointment; qualifications; powers and duties of the ~~city manager~~ Chief Administrator.

The ~~city manager~~ chief administrator shall be nominated for appointment by the mayor and chosen confirmed by the city council solely on the basis of character and executive administrative qualifications, and may or may not be a resident of the City of Portland or of the State of Maine at the time of appointment. Such person shall give bond for the faithful discharge of his or her duties to the City of Portland and in such sum as the city council shall determine and direct, and with surety or sureties to be approved by the city council. The premium on such bond shall be paid by the city. Such person shall be responsible for the administration of all departments and for the delivery of city services ~~the administrative head of the city~~ and shall be responsible to the mayor ~~city council~~ for the administration of all departments. The mayor shall recommend for adoption by the city council rules that govern communications between city staff and elected officials. ~~Neither the mayor nor members of the city council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment. Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards and commissions, council committees, neighborhood and other groups and organizations, on city work.~~

The ~~city manager's~~ chief administrator's powers and duties shall be as follows:

- (a) To see that the laws and ordinances are enforced, but shall delegate to the chief of the police department the active duties connected therewith regarding criminal conduct.
- (b) To exercise control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.
- (c) To hold annual reviews of department heads.
- (d) To implement the policy decisions of the mayor and city council.
- (e) To coordinate city programs and operations and recommend improvements in such programs and operations to the ~~council~~ mayor.
- (f) To prepare city budgets, ~~at the direction of the mayor. in consultation with and incorporating policy guidance of the mayor, and to present such budgets to the council.~~ Upon presentation of the budget by the mayor to the council, the chief administrator may provide a memo to the council on behalf of city staff, which memo may include, but shall not be required, such advice, guidance, information or requests that the chief administrator believes is relevant on behalf of all non-union staff and departments.
- (g) To make appointments as provided in this charter.
- (h) To attend meetings of the city council, ~~except when his or her removal is being considered,~~ and recommend for adoption such measures as he or she may deem expedient.
- (i) To keep the city council fully advised as to the business and financial condition and future needs of the city and to furnish the city council with all available facts, figures, and data connected therewith when requested.
- (j) To jointly prepare with the superintendent a five (5) year rolling capital improvement plan utilizing the participatory budgeting process established by the city council pursuant to article VII, section 5, at the direction of the mayor, for annual presentation by the mayor to a joint meeting of the city council and school board, which plan includes the following:
 - 1. A one (1) year plan of specific projects and their cost;
 - 2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; ~~and~~
 - 3. A discussion of the basis for the plan and the factors which went into its development or amendments; and
 - 4. A listing and discussion of capital improvements pending or in process of construction or acquisition.

- (k) To prepare and submit to the city council such reports as are requested or he or she deems advisable; ~~and~~
- (l) To perform such other duties as may be prescribed by this charter or required by ordinance of the city council. (Referenda 11/4/86; 11/2/10)

Section 6. Removal of chief administrator.

The mayor shall have the right to remove the chief administrator from office. Prior to any removal from office, the mayor shall inform the city council, during executive session, of such intention and the reasons for the removal. Following the executive session, the city council may allow the removal to proceed without taking any further action or may, within two business days, schedule a hearing to be held within 30 days to discuss the removal of the chief administrator.

If the council schedules a hearing in which the removal of the chief administrator is the topic, the chief administrator shall have the right to be present, speak, be represented by counsel and present a defense, and such hearing shall be conducted in accordance with state and federal laws and constitutional requirements.

Following the hearing, the city council may override the mayor's decision to remove the chief administrator from office by a vote of at least seven (7) members of the city council.

Section 7. Vacancy in office of ~~city manager~~ chief administrator.

During any vacancy in the office of ~~city manager~~ chief administrator, and during any absence or disability of the ~~city manager~~ chief administrator of more than sixty (60) days, the city council shall designate a properly qualified person to perform the duties of ~~city manager~~ chief administrator and fix such person's compensation. During a temporary absence of sixty (60) days or less, the ~~city manager~~ chief administrator may designate a qualified person to perform the duties of manager during such absence. While so acting, such person shall have the same powers and duties as those given to and imposed on the ~~city manager~~ chief administrator. Before entering his or her duties, he or she shall give bond to the City of Portland in a sum and with surety or sureties to be approved by the city council. The premium on such bond is to be paid by the city. (Referendum 11/2/10)

Section 8. Duties of administrative officers.

Duties of administrative officers shall be prescribed by the appointive power, but such duties shall not be inconsistent with this charter or any ordinance enacted by the city council as provided herein. (Referendum 11/4/86; 11/2/10)

Section 9. Continuity in office.

Any and all officers, department heads, and employees of the City of Portland on the effective date of this charter shall continue in such capacity until a successor is appointed and qualified as provided herein, unless sooner removed by the appointive power designated herein pursuant to the procedures provided for in this charter. (Referendum 11/4/86; 11/2/10)

Section 10. Removal of officers.

Officers appointed under section 1(a) of this article may be removed from office by a vote of at least seven (7) members of the full council.

Section 11. Removal of department heads.

In consultation with the mayor, the chief administrator shall have the right to remove any department head. The chief administrator shall provide notice and written explanation to the review committee within one week of such removal.

Section 12. Review committee.

The review committee shall consist of members of the city council. The review committee shall establish performance guidelines for regular evaluations, no less than annually, by the city council of the performance of the corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities.

The mayor shall lead the annual review of the chief administrator in conjunction with the review committee based upon the established performance guidelines.

To the extent consistent with state law, the city's personnel policies, and labor agreements, the review committee shall hold regular meetings, no less than annually, with the chief administrator and department heads. The purpose of these meetings shall be to understand the general working conditions and morale at city hall.

9. Amend ARTICLE VII., BUSINESS AND FINANCIAL PROVISIONS, by amending Section 1, Accounts and records, Section 5, Annual budget, Section 6 Budget content, Section 7, Appropriation resolve, and Section 8 Mayoral veto of general city purposes appropriations in the appropriation resolve, as follows:

Section 1. Accounts and records.

Accounts shall be kept by the director of finance, showing the financial transactions of all departments of the city, and the school department. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the city. The director of finance shall furnish to the ~~city manager~~ chief administrator and mayor each month a report containing in detail the revenues, expenses and expenditures of the city on all accounts, and for each appropriation item the expenditures made and the obligations incurred during the preceding calendar month and the

total unencumbered balance. All the accounts of the city and the school department shall be audited annually by a qualified certified public accountant to be chosen by the city council. (Referendum 12/1/75; 11/2/10)

Section 5. Annual budget.

The city council shall develop and implement a participatory budgeting system wherein a portion of the city budget is allocated based on a process that involves the input from as many residents of Portland as possible. To achieve such participatory system, the city council may establish a subcommittee, task force, or any other structure that is necessary and proper for the design, implementation, and management of a participatory budgeting system.

~~Not~~ After the participatory budgeting process, but in no event later than two (2) months before the end of the fiscal year, the city manager mayor shall submit to the city council a proposed city budget prepared by the city manager chief administrator and mayor for the ensuing fiscal year. ~~The mayor shall submit comments on the proposed city budget, along with any proposed modifications, concurrently with the manager's submission.~~

The city council shall fix a time and place for holding a public hearing upon the proposed city budget prepared by the ~~manager~~ chief administrator and mayor, and shall give not less than ten (10) days prior public notice of such hearing, which hearing shall be at least ten (10) days before the final passage of the appropriation resolve. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 6. Budget content.

The proposed city budget prepared by the ~~manager~~ chief administrator and mayor shall provide a complete financial plan of city general and enterprise funds and activities for the ensuing fiscal year. In organizing the budget, the ~~city manager~~ chief administrator and mayor shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating proposed tax levies, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year.

The total of proposed expenditures shall not exceed the total of proposed income. (Referenda 6/13/78; 11/2/10)

Section 7. Appropriation resolve.

The city council shall adopt the annual appropriation resolve for the next fiscal year on or before the last day of the twelfth month of the fiscal year currently ending. Such resolve shall appropriate those amounts deemed necessary for general city purposes and additionally one gross amount for school purposes as required by section 5 of article III. The total amount appropriated shall not exceed the estimated revenue of the city.

If it fails to adopt such resolve by this date, the city council may make appropriation for current departmental expenses, chargeable to the appropriation for the year, when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force. These continuing appropriations shall not be subject to the mayor's veto in section 8 below.

The city council may by resolution appropriate to any purpose or object for which there shall have been no appropriation for the current year, or for which the appropriation for the current year has proved insufficient, any accruing revenue of the city not appropriated as hereinbefore provided and any unencumbered appropriation balance, or portion thereof, remaining after the purpose of the appropriation shall have been satisfied or abandoned. Such supplemental appropriations ~~shall not be~~ are subject to the mayor's veto in section 8 below. (Referenda 6/13/78; 11/2/10)

Section 8. Mayoral veto of general city purposes appropriations in the appropriation resolve.

Within five (5) business days of the meeting at which the city council adopts the annual appropriation resolve or any supplemental appropriation resolution referenced in section 7 of article VIII above, the mayor may veto the appropriation for general city purposes or the supplemental appropriation in such resolve by written communication to the ~~other members of the city council~~. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

Any such veto of the appropriation for general city purposes shall not affect city payment of debt service obligations on previously authorized bonds, nor shall it affect the school budget appropriation.

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be overridden by a vote of at least ~~six (6)~~ two-thirds (2/3) of the members of the city council. ~~The mayor shall not vote on such override item.~~

If a veto is overridden, the general city purposes appropriation will take effect on the first day of the fiscal year, or on the day immediately following the override vote, if such vote is after the first day of the fiscal year.

If a veto is not overridden, then at the same meeting the override vote is taken, the general city purposes appropriation which was vetoed shall become an item for further consideration by the city council, without the need for a motion for reconsideration, and the city appropriation may be modified, amended, or otherwise acted upon to secure passage at that meeting or a subsequent meeting without the need for two readings prior to passage.

In the event the city council does not override the veto or does not secure passage of the annual appropriation for general city purposes prior to the start of the fiscal year, or has not

otherwise acted to provide continuing appropriations under the second paragraph of section 7 above, then the appropriations for general city purposes in effect for the prior fiscal year shall go into effect as of the first day of the fiscal year, with expenditures chargeable to the appropriation for the year, until the appropriation for general city purposes is approved. (Referendum 11/2/10)

10. Amend ARTICLE VIII., MISCELLANEOUS PROVISIONS, by amending Section 1 as follows:

Section 1. No personal interest.

Neither the mayor nor any ~~No~~ member of the city council or school board or board or commission thereof and no officer or employee of the city or school department shall:

- (a) Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland or the school board, except his or her employment contract, or in the sale to or by the city or school department of any land, materials, supplies or services when such officer, employee or member exercises on behalf of the city or school department any function or responsibility with respect to such contract or sale. All contracts or sales made in violation hereof are void, and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such transaction.
- (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties.
- (c) Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Referenda 11/4/86; 11/2/10)

BALLOT QUESTION #3—Clean Elections

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Clean Elections as Summarized Below?

1. Proposed Summary:

These modifications establish a City of Portland Clean Election Fund to provide public campaign funds to qualified candidates for elected municipal offices, beginning in FY 2023-2024. Candidate participation shall be voluntary. The city council shall provide an independent allocation from the city's budget each year to sustain the Clean Election Fund and the city council shall by ordinance direct that the Clean Election Fund must:

- Limit the amount of funds a participating candidate may raise;
- Be limited to candidates who meet certain requirements, such as demonstrated public support and participation in a city-sponsored forum or voter education event; and
- Require that all unused funds be returned to the Clean Election Fund.

In addition to establishing the Clean Election Fund, these modifications:

- Prohibit corporate contributions to any candidate for municipal office;
- Prohibit ballot question contributions or expenditures from any entity that is substantially under foreign influence; and
- Require that all contributions to campaigns be reported to the city clerk and that the city clerk create a searchable online database of information contained in filed registrations and campaign finance reports.

2. Charter Language

Note: This contains only the provisions related to the Commission proposals in **Question # 3** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

Amend ARTICLE IV., ELECTIONS, to add Section 12, Public financing of municipal elections, and Section 13, Campaign finance rules, as follow:

Section 12. Public financing of municipal elections.

The city council shall establish and fully fund a City of Portland Clean Election Fund (hereinafter, the “Clean Election Fund” or the “Fund”) to provide public campaign funds to qualified candidates for elected municipal offices. The Clean Election Fund must be available to candidates in municipal elections beginning in FY 2023-2024. Candidate participation in the Clean Election Fund shall be voluntary.

Beginning in FY 2023-2024 to allow for implementation for the November 2023 election, the city council shall provide an independent allocation from the city's budget each year to ensure the Clean Election Fund is sustained at a level that facilitates competitive campaigns for participating candidates who meet qualifying criteria. The Clean Election Fund shall be administered by the city clerk and the city council shall appropriate sufficient funds to ensure

there are adequate resources, including paid staff, to effectively administer the Fund.

The city council shall maintain an ordinance directing the operation of the Clean Election Fund. The ordinance shall direct that the Clean Election Fund must:

- (a) Limit the amount of private funds a participating candidate may raise;
- (b) Be limited to candidates who
 - i. demonstrate public support;
 - ii. enter into a binding agreement stating that the candidate will not accept private contributions other than those which are permitted by the Clean Election Fund; and
 - iii. agree to participate in at least one (1) city-sponsored forum or voter education event.
- (c) Require that all unused funds from a participating candidate's campaign be returned to the Clean Election Fund within one hundred (100) days after the date of the election.

The city council may adopt additional regulations and ordinances not inconsistent with this section.

Section 13. Campaign finance rules.

- (a) **Corporate Contributions.** A business entity may not make contributions to any candidate for municipal office. The term "business entity" refers to a firm, partnership, corporation, incorporated association, or other organization, whether organization as a for-profit or a nonprofit entity. A separate segregated fund committee may not make contributions to any candidate for municipal office using funds that derive, in whole or in part, from a business entity. Where a business entity establishes a separate segregated fund committee, that business entity may provide the separate segregated fund committee with the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the business entity.
- (b) **Foreign Contributions.** The city council shall by ordinance enact a prohibition on ballot question contributions or expenditures from any entity that is substantially under foreign influence, including any entity owned by a foreign government and any entity with substantial foreign ownership. The city council shall promulgate rules to specify compliance requirements and otherwise to enforce this ordinance.
- (c) **Additional Rules by Ordinance.** The city council may adopt additional regulations and ordinances governing campaign spending, not inconsistent with this section.
- (d) **Campaign Contributions Reporting.** All contributions to campaigns for candidates or ballot questions must be reported to the city clerk, in conformance with any applicable State law. The clerk must establish a searchable, online, and publicly-accessible database of all information included in all registrations and campaign finance reports filed with the clerk.

BALLOT QUESTION # 4—Proportional Ranked Choice Voting

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Proportional Ranked Choice Voting as Summarized Below?

1. Proposed Summary:

This Charter modification authorizes the city to use a proportional ranked choice voting method for elections in which more than one person is to be elected to a single office (i.e. a multiple seat election) and directs the city council to enact an ordinance to establish the proportional ranked choice voting method.

2. Charter Language

Note: This contains only the provisions related to the Commission proposal in **Question # 4** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend ARTICLE II. City Council, Section 3. Ranked choice voting; instant runoff to add Section 3(f) as follows:

- (f) For elections conducted by ranked choice voting where more than one person is to be elected to a single office (i.e., a multiple seat election), the winners shall be determined by a proportional method of ranked choice voting. Such method shall provide for candidates to be elected on the basis of thresholds determined by the number of seats to be filled plus one, ballots to be counted in rounds, votes to be transferred from defeated candidates, and for votes, in fractions or in whole, in excess of the threshold to be transferred from elected candidates. The city council shall by ordinance establish such a proportional ranked choice voting system.

BALLOT QUESTION # 5—School Board Budget Autonomy

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to School Board Budget Autonomy as Summarized Below?

1. Proposed Summary:

This Charter modification changes the current school budget adoption process by transferring school budget adoption authority from the city council to the school board. The city council has discretion to conduct a public hearing on the proposed school budget and to provide a non-binding recommendation to the school board for its consideration, which the school board may or may not adopt, in whole or in part. The adopted school budget continues to be voted upon at the State-required budget validation referendum election, but if that is discontinued by the voters, the adopted school budget would be voted upon at a municipal school budget referendum.

2. Charter Language

Note: This contains only the provisions related to the Commission proposal in **Question # 5** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

Amend ARTICLE III. BOARD OF PUBLIC EDUCATION, Section 5, School Budget, in the next to last and last paragraphs of the current charter, as follows:

Not later than the last Monday in April of each fiscal year, the school board shall ~~submit to the city council~~ prepare a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~

The school board shall hold a-A budget hearing on such budget estimates shall be held at least seven (7) days prior to final action by the city council determining the total amount of the school budget. Within a reasonable period of time, the city council may, at its discretion and after holding a public hearing, provide a nonbinding resolution with its recommendations to the school board for consideration. The school board may or may not adopt, in whole or in part, the recommendations of the city council. The city council shall thereafter submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the school budget validation referendum or, if discontinued, at the budget

referendum, as appropriate, or (ii) not be less than the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council or the voters.
(Referendum 6/13/78; 11/2/10)

BALLOT QUESTION # 6—Peaks Island Council

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Peaks Island Council as Summarized Below?

1. Proposed Summary:

This Charter modification requires the city council to maintain the ordinance it has enacted establishing the Peaks Island Council as an elected advisory body to the city council and setting forth its powers, duties, membership requirements, and other provisions.

2. Charter Language

Note: This contains only the provisions related to the Commission proposal in **Question # 6** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend ARTICLE VIII. Miscellaneous Provisions, to add Section 1-B., as follows:

Section 1-B. Peaks Island Council.

The city council shall maintain an ordinance establishing the “Peaks Island Council,” including powers, duties, membership requirements and other necessary provisions deemed appropriate by the city council. The Peaks Island Council shall act as an elected advisory body to the city council.

BALLOT QUESTION # 7—Civilian Police Review Board

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Civilian Police Review Board as Summarized Below?

1. Proposed Summary:

This Charter modification replaces the current Police Citizens Review Subcommittee, established by current city ordinance, with a civilian police review board consisting of nine or more members, with powers, duties, funding and staffing as provided in the proposed Charter language and subject to city council's enactment of procedural ordinance provisions.

The civilian police review board shall:

- Be appointed by the city council;
- Receive complaints directly from civilians for referral to Portland Police Department Police Command and/or Internal Affairs for investigation;
- Review the Department's Command and Internal Affairs investigation reports for due process issues, including issues of fairness, thoroughness and objectivity, and may issue its own reports on those investigation reports; and
- Be funded, as needed by the city council, to provide for part-time or full-time staff, including a community liaison and a police liaison.

Appeals of the civilian police review board reports may be taken to the city council.

2. Charter Language for Question

Note: This contains only the provisions related to the Commission proposal in **Question # 7** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend the Table of Contents as follows;

Art. IX. Civilian Police Review Board, §§ 1 – 3

2. Amend the current CHARTER by adding the following new ARTICLE IX. CIVILIAN POLICE REVIEW BOARD, as follows:

Article IX: CIVILIAN POLICE REVIEW BOARD

Section 1. Purposes, composition, term, appointment, first board, qualifications, vacancies, removal, compensation.

- (a) Purposes.** For the purposes of increasing public trust and confidence in the Portland Police Department, there shall be a civilian police review board.

- (b) Composition, term, appointment, first board.** The civilian police review board shall be composed of nine (9) or more members who shall hold office, except as hereinafter provided, for a term of three (3) years unless appointed to fill a vacancy, and until their successors are appointed and qualified, but in no case longer than 120 days after expiration of their term. A minimum of four (4) voting members shall be appointed by the city council, one (1) voting member shall be appointed by the mayor and three (3) non-voting members shall be appointed by the city council. A majority of the total number of voting members appointed shall constitute a quorum of the board and the board shall act by a majority of voting members present and voting.

For the first board appointed following its creation, the city council and mayor shall first select from the current members of the police citizen review subcommittee, currently established by City ordinance, which subcommittee shall be supplanted by the board, in making appointments to the board. On the first board, two voting members shall serve for a one (1) year term, two voting members shall serve for a two (2) year term, and the voting member appointed by the mayor shall serve for a three (3) year term; and one non-voting member shall serve for a one (1) year term, one non-voting member shall serve for a two (2) year term, and one non-voting member shall serve for a three (3) year term. Thereafter, all members shall serve for a term of three (3) years. No person shall be appointed to, nor serve, more than three (3) consecutive full terms or nine (9) consecutive years, whichever is greater, on the board. Following appointment of the first board, the city council shall exercise its power of appointment only after the city clerk has published a notice announcing the availability of board positions, describing the responsibilities thereof and soliciting applications by qualified persons, in a newspaper of general circulation at least 15 days before the city council acts to appoint to the board.

- (c) Qualifications.** All candidates for the civilian police review board must be at least 18 years of age and must be residents of the City for a period of at least three (3) months prior to the date on or before which the board member is to be seated.
- (d) Vacancies and Removal.** The City Council shall provide by ordinance procedures for vacancies and removal of members.
- (e) Training.** Prior to assuming their duties hereunder, civilian police review board members shall attend training provided by city staff as to the board’s duties and responsibilities, applicable state and local law, ordinances and rules and regulations, accepted police practices and the police department’s internal affairs investigation process.
- (f) Confidentiality.** Each member of the civilian police review board is obligated to maintain the confidentiality of all information and documents either provided to or reviewed by them, in accordance with state law. Failure to maintain such confidentiality will constitute “cause” for removal from the board under (d) above. All reports prepared by the board and all requests received by the board for disclosure of any information or documents in the custody of the board or its members shall be referred to the corporation counsel for review prior to release.

- (g) **Transition.** The city council shall promptly consider and enact an ordinance to implement this Article, which ordinance upon its effective date also shall repeal the existing Police Citizen Review Committee ordinance provisions in Chapter 2, Art. IV, Div. 4 of the Code of Ordinances, City of Portland, Maine.

Section 2. Powers and duties.

- (a) **Complaints.** The civilian police review board shall receive all complaints brought by civilians regarding the Portland police department and shall refer such complaints to the Portland police internal affairs department. Members of the police department may bring complaints to the board, to internal affairs, or to command; the board shall refer any such complaints it receives to internal affairs. Portland police department command shall review internal affairs draft findings on complaints and shall submit its report on the conclusions of any investigation on complaints to the board for consideration no more than fourteen (14) days after the findings become final and after any final disciplinary action has been taken and all appeals exhausted or settled or the case has been closed with no disciplinary action. Neither police officers nor their representatives may file complaints regarding disciplinary actions or personnel matters under this subsection.
- (b) **Review, reports.** The board shall review all final investigation reports submitted by internal affairs and/or command staff under Section 2. (a) above for due process issues, including but not limited to, issues of fairness, thoroughness, objectivity, and timeliness. Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the board issued to address complaints filed under Section 2. (a) above shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable. Reports of the board shall be made available to the public to the extent consistent with the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 *et seq.*
- (c) **Appeals.** The city council shall by ordinance adopt an appeal process consistent with federal, state, and local law for persons aggrieved by a report issued by the civilian police review board on complaints filed with the board under Section 2. (a) above to appeal that board report to the city council or such other body as the city council may designate or create for a hearing, in executive session where required, and for the issuance of an advisory opinion which shall not be legally binding on the city, the police department, police officers, or individuals, and which hearing and advisory opinion shall not include or address any disciplinary proceedings. Neither police officers nor their representatives may file appeals regarding disciplinary actions or personnel matters under this subsection.
- (d) **Policy.** The civilian police review board shall be able to make policy recommendations to the mayor, the city council, and the chief of police.
- (e) **Annual report, communications, additional duties.** The civilian police review board shall hold a public hearing at least annually to receive comments upon the community complaint process and to engage City residents as to the board's purposes and goals, and

shall prepare and present to the mayor, city council, and chief of police an annual report, including but not be limited to, policy and funding recommendations, and the number of complaints submitted to the board and the number of complaints resolved during the previous year. Any recommendations made by the board regarding the police department shall be based on policy evaluations, may be assigned by the city council and mayor to staff for research, and may be enacted or implemented. The board also may, in its discretion, address the city council on an as-needed basis. The city council and mayor may add to the board’s duties by ordinance at any time.

- (f) **Board Officers & Procedural Rules.** The civilian police board shall annually elect one of its members to serve as chair, and shall annually elect one of its members to serve as vice-chair, to serve in the absence of the chair. The City Council shall by ordinance establish rules of procedure and board member roles. The board may recommend such rules to the City Council.

Section 3. Funding, staff, resources.

- (a) **Funding, staff.** The civilian police review board shall be funded as needed by the city council through the annual budget. Such funding shall include professional staff, including but not limited to a “Community Liaison” and a “Police Liaison” familiar with Portland police department standard operating procedures. The city council shall decide whether the community liaison and police liaison positions are part-time or full-time and/or whether the duties of these positions may be assigned to existing employees. The community liaison shall serve at the direction of the board and shall ensure the public is aware of the methods for filing complaints, and shall assist the board with carrying out its duties, powers and functions, conducting outreach and with other duties as the board may assign. The board may request additional funding from the city council at any time. The police liaison may be the same person/position as the “technical advisor” described in Section 3(b) below.
- (b) **Resources.** The city shall make available to the board the services of a technical advisor, as needed by the board. The technical advisor may be used for the purposes of training; briefing the board on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the board on aspects of the internal investigation process. The technical advisor shall be retained by the city manager after consultation with the chief of police, representatives of the police unions and the chair of the board. Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor. The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the board to conduct its duties hereunder. In no case shall the board have access to police officers’ personnel records except to the extent that they are part of an internal affairs investigation report or are considered a public document under the Maine Freedom of Access Act.

- (c) **Coordination.** The board shall work in conjunction with the City’s communications department, internal affairs, and any other city departments or offices to effectuate all powers and duties granted to it in this charter and any additional duties assigned to it by the city council or mayor.

BALLOT QUESTION # 8—Ethics Commission and Code of Ethics

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Universal Resident Voting as Summarized Below?

1. Proposed Summary:

This modification requires the City Council to form an independent Ethics Commission and to adopt a Code of Ethics recommended by the Ethics Commission.

- The Ethics Commission shall have discretionary power to render advisory opinions on matters of city business and violations of public trust.
- The modification also allows the Ethics Commission to recommend the hiring of an Accountability Officer to provide education to the public and officials; to serve as an independent ombudsperson in resolution of disputes in an advisory capacity; and to provide training to city officials on ethical matters.

2. Charter Language for Question

Note: This contains only the provisions related to the Commission proposal in **Question # 8** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

Amend ARTICLE VIII., MISCELLANEOUS PROVISIONS, by adding a new Section 1-A., Ethics Commission and Code of Ethics, as follows

Section 1-A. Ethics Commission and Code of Ethics

Ethics Commission and Code of Ethics Ordinance. The city council shall enact and maintain an ordinance that establishes an ethics commission and, with input from the ethics commission, shall enact a code of ethics ordinance to be administered by the ethics commission. Upon the effective date of the code of ethics ordinance, the existing code of ethics resolution adopted by the city council shall be repealed. The ethics commission shall provide impartial oversight and render decisions and advisory opinions to ensure that standards of ethical conduct are observed by elected and appointed City officials and City employees.

(a) Ethics Commission Ordinance.

The city council shall enact an ordinance directing it to create an ethics commission, appointed by the city council and consisting of seven (7) members who are residents of the City, serving for three (3) year terms, to undertake the following duties:

1. Prepare and recommend a code of ethics ordinance to the city council for enactment as provided in subsection (b) below;
2. Review the ethics commission and code of ethics ordinances not less than once every three (3) years and make recommendations for any amendments to the city council;

3. Hear complaints and render written decisions with findings of fact regarding alleged violations of the City’s code of ethics ordinance, provided that complaints regarding City employees’ ongoing or prior alleged violations or misconduct shall be referred to the City for appropriate action under its personnel policies;
4. Hear and render advisory opinions regarding questions of prospective application of the City’s code of ethics ordinance;
5. Hear and render advisory opinions regarding questions of compliance with the City charter;
6. Hear and render advisory opinions regarding adherence to council and board rules and procedures;
7. On receipt of requests from a majority of the city council or of any board or committee, procure a second legal opinion from outside legal counsel; and
8. Design and oversee program evaluations.

Elected City officials, candidates for any City elected office, and their immediate family members are not eligible to be appointed as members of the ethics commission.

The ethics commission shall meet as needed, but no less than annually.

The ethics commission ordinance shall establish the process for filing, hearing and deciding complaints and for soliciting advisory opinions. Complaints may be filed by any official, employee, or resident of the city, by the accountability officer, or may be initiated by the ethics commission, in accordance with that process. Requests for advisory opinions may be filed by any official or employee of the city, in accordance with that process. Receipt of a complaint or request shall be acknowledged by the ethics commission. If the ethics commission finds any complaint filed with it to have been based upon allegations it determines to be frivolous, scurrilous, libelous, unsubstantiated, unfounded, of nuisance, or with malice, it may so determine and may dismiss the complaint without deciding the merits of the complaint.

The ethics commission ordinance and complaint process shall protect the identity and rights of complainants, whistleblowers, and persons complained against in accordance with and as required by all State and federal laws, regulations, codes, municipal ordinances, and policies, including but not limited to the Maine Freedom of Access Act, the Maine Whistleblowers’ Act, and the City of Portland’s personnel policies. The ethics commission shall refer any complaint alleging corruption, fraud, or abuse of a criminal nature to the appropriate law enforcement agency.

The ethics commission shall be an independent body, free from interference from any City elected and appointed officials and employees. The ethics commission may request funding from the city council for independent investigations, legal services, staffing, or other demands pertinent to its mission.

(b) Code of Ethics.

The city council shall, with the recommendation of the ethics commission, enact and maintain a code of ethics ordinance defining the code of ethical conduct for elected and appointed

City officials and City employees. At a minimum, such code of ethics ordinance shall include and address:

1. Standards of Conduct;
2. Conflicts of Interest;
3. Confidential Information; and
4. Disclosure Forms for City elected and appointed officials to complete and file with the city clerk and update as appropriate.

(c) Appointment of Accountability Officer.

The ethics commission may recommend that the city council appoint an accountability officer and fund that position. The accountability officer shall: serve as an ombudsperson to members of the public; provide City information to the public and officials to educate them about government accountability, integrity, and transparency; provide training for public officials on ethical matters; and undertake such other duties as may be requested by the ethics commission and authorized by the city council. The accountability officer may provide administrative support for the civilian police review board. The accountability officer also shall receive complaints from the public about alleged government waste, favoritism, mismanagement, and violations of the public trust; the accountability officer will refer matters that are within the scope of the ethics commission's duties to the ethics commission, and vice versa.

(d) Violations of the Code of Ethics.

Violations of the code of ethics ordinance shall be addressed as set out in that ordinance, provided, however, that any city councilor or mayor found by the ethics commission to be in violation of or to have violated the ethics code may be reprimanded or censured by the city council.

IV. MINORITY REPORTS

1. Minority Report on Governance Proposal for Strong Executive Mayor

TO:	Portland Charter Commission, Portland City Council
FROM:	Commissioners Marpheen Chann, Peter Eglinton, Shay Stewart-Bouley, and Dory-Anna Richards Waxman
DATE:	Wednesday, June 29, 2022
SUBJECT :	Minority Report on Governance Proposal for Strong Executive Mayor

I. Introduction

We are members of the Portland Charter Commission (“Commission”) who represent the minority opposing the Charter Commission Governance Proposal (“Proposal”) to shift Portland from a Council-Manager system to a Council-Executive Mayor system. We believe the proposal goes too far, too fast, for the City of Portland, whose home rule powers over municipal affairs do not exist in a vacuum and are derived from and delegated to the city by the state of Maine. In order to provide the public with the basis for our objections to the Proposal, we are filing this minority report to be included in the Final Report to the Portland City Council.

II. Original Governance Committee Recommendations On The Right Track

While the final Proposal reflects a slight improvement over the proposal in the Commission’s Preliminary Report, we believe it still constitutes a significant departure from the Governance Committee recommendations introduced earlier in the year. The Governance Committee followed a thoughtful public process that included values mapping, interviews with former mayors, testimony from experts on municipal governance structure, former city managers, and current and former city councilors. This process was supplemented by a professionally facilitated discussion of weaknesses in our current system and identified possible solutions. After a months-long public process, the Governance Committee decided against recommending an executive mayor.

In fact, we believe that some of the Governance Committee recommendations would have garnered unanimous approval from the full Charter Commission but for a competing proposal developed outside of the public process. The original Governance Committee recommendations included: (1) Clarifying and strengthening the role of the Mayor with regard to budgetary powers; (2) Establishing a process for both the Mayor and the Council to develop and introduce policy proposals; (3) Establishing a process to allow for the Mayor and the City

Council to communicate with City Staff to research and develop policy solutions. In addition, we agree generally with a process allowing for the impeachment and removal of the Mayor.

III. Experts on Municipal Governance Warn Against “One-Size-Fits-All” Thinking

Proponents advocating for the concentration of power in one, executive mayor, make the case that a mayor, as an elected official, is more accountable and answerable to the voters of Portland, while the city manager is unelected and unaccountable to the voters of Portland. We believe this argument obscures the nuances of a municipal government operating under home rule in Maine, ignores the fact that the city manager is appointed by elected officials, and ignores expert testimony provided.

At a workshop in February 2022 on council-manager and strong mayor-council forms of local government, experts on municipal governing structures offered testimony contradicting arguments that, across the board, a strong mayor-council system is more transparent and more accountable to voters than a council-manager or council-mayor-manager hybrid system. We wholeheartedly agree.

We also object to the notion that the Charter Commission uncritically choose models of governance from cities in different regions of the United States with their own home rule jurisprudence and unique histories and patterns of development. We also object to comparisons with neighboring Westbrook. Westbrook has faced high-profile instances of mayoral overreach and has a budget, city staff, and population that is less than a third of Portland’s. In fact, we agree wholeheartedly with Westbrook City Administrator Jerre Bryant that what matters more when it comes to accountability and transparency in city government are the people elected and appointed, and not necessarily the structure and positions themselves.

IV. Governance Proposal Gives Mayor Unprecedented Powers to Issue Executive Orders

We also find issue with granting the mayor the power to issue executive orders, a power untested and unprecedented in Maine’s history of home rule. In our opinion, it would give Portland’s mayor power that exceeds even that of Westbrook’s mayor. In addition, executive orders risk creating confusion among city staff in cases where the Mayor’s executive orders are in contravention to ordinances and policy set by the democratically-elected City Council, Portland’s legislative body.

Concerns were also raised regarding the potential of a mayor to interfere and micromanage day-to-day operations. Giving the mayor the power to issue executive orders at the municipal level runs counter to those concerns. It also risks conflicting with technical standards, rules, and procedures that city staff are tasked with administering according to state and federal laws, regulations, and guidance.

We believe the power to set policy and ordinances should rest solely with the democratically elected City Council, of which the Mayor is currently a part, and that the

implementation and administration of those policies and ordinances are within the realm of a competent and highly qualified public administrator and city staff.

V. Governance Proposal Disempowers Portland's Representative Body

An accountable and transparent governing structure requires a careful balancing of powers. The current Governance Proposal aims to weaken the power of the City Manager and establish an executive Mayor. In our opinion, it goes much further and weakens our democratically elected legislative body, the City Council. The checks provided, namely in the provisions outlining the removal of the mayor and a council override of the mayor's firing of the Chief Operating Officer, are more stylistic than substantive in nature. Ultimately, we believe the checks provided would only be utilized in extreme cases, and even in those cases would only serve to create more confusion, less clarity, and disempowers the City Council.

We believe checks and balances are important at the municipal level and work only when they are provided throughout the democratic process, and not just in the eleventh hour when it is often too late.

VI. Conclusion

As such, we oppose the Governance Proposal given the lack of demonstrated need for an executive mayor and believe that more targeted fixes would have garnered near-unanimous support of the full Commission. We are concerned about the risks of polarization between an executive mayor and Council, and the possibility of undue political influence over the day-to-day operations of the city.

2. Minority Report on Proportional Rank Choice Voting

While the tabulation of Rank Choice Voting (RCV) is complex and often necessitates the hiring of a specialist, the tabulation of Proportional Rank Choice Voting (pRCV) is far more complex and all but requires the hiring of an even more specialized expert. If it were conclusive that pRCV is the superior method of tabulation in all instances then the trouble and expense of pRCV would be worthwhile. But the melancholy truth is that there is not a perfect method of tabulating votes in an election with more than two candidates, much less when there is more than one open seat, because the weights of the preferences of each voter is difficult to determine by a ranked list.

Proponents of pRCV (e.g., the consultants at the Ranked Choice Voting Resource Center who assisted with the drafting of the amendment) cite that pRCV favors minority candidates. While this may indeed be a good thing, it might also favor extremist candidates whose views are far outside the plurality of the electorate. Add to this the fact that this system's byzantine complexity is nearly impossible to explain succinctly in casual conversation to the average voter. One fears this topic will soon again be a matter for revision of the city charter.

Portland currently uses the "instant run-off" method; but the range of options for RCV are myriad. Some are Tideman's 'Condorcet-Hare', Baldwin's and Nanson's methods, Kemeny-Young method, and Dodgson's method, among many others. Many of these are considered accurate; but arcane and computationally complex.

While experts disagree on what the best or better methods may be, one simple method is Approval Voting. Voters check off all those candidates who they favor in what is essentially an unranked list; the votes are tabulated accordingly and the top vote getter(s) gain the seat(s). Proponents like Approval Voting because it does not require a specialist to tabulate and tends to favor centrist/consensus candidates. It is a statistically sound method and easy for the voters to understand which, ultimately, is what one wants in an electoral democracy.

Zack Barowitz
District 3

3. Minority Report on School Board Budget Autonomy

TO:	Portland Charter Commission, Portland City Council
FROM:	Commissioners Peter Eglinton, Dory-Anna Richards Waxman, and Robert O'Brien
DATE:	Wednesday, June 29, 2022
SUBJECT :	Minority Report on School Board Budget Autonomy

We are members of the Portland Charter Commission (“Commission”) who represent the minority opposing the School Board Budget Autonomy Proposal (“Proposal”) to remove the City Council from the school district budget approval process. To explain the basis for our objections, we are filing this minority report to be included in the Final Report to the Portland City Council. We start with brief biographical summaries that demonstrate direct experience with the school district, city government, and budget process.

In addition to volunteering as a parent in Portland Public Schools (PPS), Commissioner Eglinton served on the Portland School Committee¹⁵ for 3.5 years, including as finance committee chair (1 year) and board chair (2 years); served for 3 years as the PPS Chief Operations Officer; and was appointed to and served as chair on two PPS groups dealing with comprehensive planning, school enrollment, and facilities issues. While on the School Committee, he dealt with significant budgetary issues that required close collaboration with the City and the need to strengthen the public’s confidence in the fiscal management of the school district.

Commissioner Waxman was a parent volunteer in PPS for 18 years, and served on the Portland School Committee for 3 years, including as communications committee chair and member of the budget committee and buildings operations committee. During her tenure, the School Committee dealt with failed high school and middle school renovations, which required the City Council and the School Committee to work together to find resources to help the schools function without severely impacting classrooms. These efforts included seeking a bond, with voter support, for unexpected construction overruns. Ms. Waxman also served on the City Council for 3 years, including 2 years on the finance committee. She’s been a small business owner for 35 years.

Commissioner O’Brien served on the Portland School Committee for 3 years from 2006-2009. He chaired the policy committee, and served on the finance and facilities committees

¹⁵ Now known as the Portland Board of Public Education.

during his tenure. He also served on the 2009-2010 Charter Commission. Mr. O’Brien is a graduate of the Portland Public Schools and currently has two children enrolled in the district.

These experiences inform our opposition to the Proposal. Although we sometimes wished the School Committee had autonomy over its budget, we realized then as we do now that having City Council input and oversight over the total budget amount – not line items – is important for weighing school needs and the burden on all City residents, most having no children in the school district. Currently, the Council requires two-thirds vote to reduce the requested school budget, which is a high bar not often exercised. What can often be frustrating even if the Council does not vote to reduce the budget is that their input on the school budget comes at the end of the process, not as guidance with public input before the budget is prepared. This frustration drove a separate Commission proposal (which we support) to form a Joint Budget Guidance Committee, with equal representation of school board members and councilors, to seek public input and identify budget priorities and challenges before the school and city budgets are developed.

Why is Council approval over the total school budget important? The school budget is a large fraction of the property tax rate, and the School Board’s role – as defined by the State – does not include representing the taxpayers. Indeed, on January 2, 2020, Assistant Attorney General Sarah Foster addressed this point in a memorandum to Maine Department of Education Commissioner A. Pender Makin on “current state law and the responsiveness of school boards to the public.”¹⁶ The Assistant Attorney General specifically stated that:

The Maine Constitution affords control over education to the Maine Legislature. School boards are creatures of statute, with their duties and responsibilities described therein. The nexus of the concern about school boards’ “responsibilities for, and responsiveness to, their respective communities” appears to be the statement, contained in a decision of Maine’s Law Court that

. . . the [school] committee acts as a public board. It in no sense represents the town. Its members are chosen by the voters of the town, but after election, they are public officers deriving their authority from the law and responsible to the state for the good faith and rectitude of their acts.

Shaw v. Small, 124 Me. 36, 41 (1924). [emphasis added]

Of course, given the requirement for the public to vote on the school budget and the desire for resident support for public education, School Board members understandably seek to be responsive to the school community as well as to the broader public. Even if some feel that this responsiveness supports budget autonomy, there are lingering legal questions about doing so. Although the School Board’s legal counsel, DrummondWoodsum, is willing to sign off on the proposal passed by the Charter Commission, the Commission’s legal counsel (attorney Jim Katsiaficas of Perkins Thompson) is not. He specifically concludes the following in a memorandum to the Portland Charter Commission Education Committee on December 14, 2021:

¹⁶ <https://legislature.maine.gov/doc/3849>, accessed on June 29, 2022.

1) the City Charter could be amended to transfer City Council budget approval authority to another legislative body such as a voter referendum [with public hearing, or a Citywide “town meeting”], 2) but transferring such City Council (“Council”) budget approval to the Board of Public Education (“School Board”) is of questionable validity because a) the Maine Legislature intended to occupy the field, b) the Legislative intent is to create a separation of powers between the School Board and City Council, and c) the legislative history of 20-A M.R.S. § 2307 suggests that “other municipal legislative body” is not intended to refer to an alternative to the municipal council where a municipal council exists...

Pursuing these legal issues in the courts could be costly, with uncertain benefits. Indeed, attorney Dan Amory has stated publicly that Portland would be susceptible to state “clawback” laws for taxes paid with a 25% interest should a judge invalidate the provision.

V. ISSUES CONSIDERED BUT NOT RECOMMENDED; OTHER CONSIDERATIONS

A. Charter Commission Issues Considered But Not Recommended

1. Councilor Pay Increase

This proposal, intended to establish greater equity for and access to public offices, would have raised the compensation of City Councilors to match a 20-hour work week at a reasonable rate of pay for a worker in the city. It failed in a close vote, although later action did add a lesser increase to the governance proposal. The position of city councilor remains unaffordable for many Portlanders whose energy and talents might make them effective contributors in the role.

2. Universal Resident Voting

This proposal would have allowed Portland residents of voting age to participate in municipal elections and referenda regardless of citizenship status. The Elections Committee undertook an extensive process in development of this proposal to allow voting by all Portland residents, whether or not U.S. citizens, in municipal elections. Non-citizens are unable to vote in State and federal elections. The Committee believes that extending the right to vote in municipal elections to all Portland residents is a matter of fundamental fairness, so that all who live in and contribute to the community may vote on how the community is governed.

Commissioner Washburn as well as the Committee's legal advisor consulted with Beth Stickney, Co-founder of the Immigrant Legal Advocacy Project and currently an immigration law and policy consultant, to create protections within the Charter language that would help (though not ensure) safeguards are in place to inform and educate non-citizens of their rights in municipal elections as well as of restrictions and consequences for voting in state/federal elections.

The Committee and the Commission are aware of concerns 1) whether the proposal is a lawful exercise of municipal home rule charter authority where State law establishes voter qualifications, and 2) whether there could be unintended consequences and impacts upon immigrants who register and vote in municipal elections, but a majority of the Commission believes this is an important measure to promote justice that should be brought to the voters to decide. It received considerable support but was not able to attract a legal certification. Portland's immigrant and asylum-seeker families are an important part of the city's future, and more work is needed to increase their voice in its government and education.

3. Mayor's Economic Development Duties

PURPOSE. To ensure the elected mayor has access to early conversations between city staff and prospective developers of large-scale projects where details are being agreed upon for a final proposal to the Planning Board and City Council.

RATIONALE. The elected mayor's role may represent the public's interest in the development before the parameters of the proposal are solidified. The mayor's involvement may touch upon increased asks of the developer for environmental/energy, preservation, public amenities, affordable housing, labor, taxation, subsidies, massing and scale, business types, design, or any number of aspects available for negotiation if a project needs accommodations from the city.

LEADERSHIP. Because the mayor has a seat at the table with the development team, the mayor may meet with neighbors and with councilors representing the district where the development will occur, and be able to convey those legitimate concerns early on to developers, likely leading to an improved and more palatable project that will meet less resistance as it approaches a vote on the council.

The mayor would also be expected to champion the project before the council to reduce the frequency and magnitude of last-minute challenges or demands on the project that might threaten its viability. This would require the mayor to gauge support, opposition, or reservations of councilors throughout the project evolution.

The mayor's inclusion in the economic development process would legitimize the mayor's role in serving as diplomat for the City of Portland with investors scouting the city, as mayors do in many other cities.

DESIRED OUTCOMES. With the mayor's early and increased participation in the crafting of development deals, the city will ideally experience fewer controversial and divisive votes on the city council approving developments, making investments in Portland less risky and more predictable; concerned citizens will have a vehicle to have their grievances assuaged; and residents will have a more advantageous proposal with increased public value reflected in the development.

4. Executive Committee

This proposal would have established a new institution: the Executive Committee. This committee would be made up of the mayor and two councilors elected by the council. The Executive Committee is intended to solve concerns around cronyism, patronage, and the spoils system. The committee would nominate key officials in city government: department heads, the city clerk, corporation counsel, and the Chief Operating Officer. Subordinate city staff would, in turn, be hired by these officials, such that no Portland mayor can unilaterally hire officials.

Under the current system, the chief executive, the city council appoints the city manager, the city clerk, and the corporation counsel — but the city manager is the sole appointer of department heads, subject to council confirmation. Under the proposed system, that power would not reside in one office, but would be shared by the three members of the Executive Committee.

In addition to checking and balancing the mayor's power, the Executive Committee would also have the role of legitimizing the mayor's power of presiding over council meetings. Some commissioners raised the prospect of the mayor serving as "illegitimate council-chair,"

since the voters — and not the council — elect the mayor. The presence in the Executive Committee of leadership elected by the council is designed to solve this issue. Under this system, it will be three voices — one chosen by the people (the mayor) and two chosen by the council — that constitute the council's leadership.

B. Other Considerations

1. Staff for Mayor and Council.

Under the current charter the Council and/or the Mayor may have their own aides (i.e., advisors and administrators who answer solely to them and not to a city manager/_chief administrator) who may advise them on matters of policy. While elected officials can and should seek policy guidance from the civil service, it would nevertheless behoove our elected officials to retain their own staff to aid them in their decision making for several reasons:

- Political aides are devoted to making elected officials more effective.
- Protects city staff and civil servants from political interference and "deal-making."
- The role of the civil service is to give the best possible policy guidance regardless of the political implications. The elected officials should receive the staff recommendations but make their own decisions as to their political feasibility; political advisors serve an invaluable role in this regard. City staff should not be baking political considerations into their recommendations although they may be consulted to those ends.
- If elected officials cannot seek advice from their own trusted staff people then they will seek advice from outside of government often in the form of special interests and lobbyists.
- Political staffers can offer specialized expertise and fresh perspectives to complement the institutional knowledge of the civil service.

It should be noted that currently the city manager has staff to aid not just in administration but in policy, communications, constituent services, and specialty areas.

2. Ballot Questions & Citizen Initiatives

Because the process of citizens initiatives and citizens veto is long and complex and the election comes at an expense; government is a collaboration between members of the public and elected officials; and the right to bring ballot questions is fundamental to democracy; therefore, the Portland City Council shall consider ballot questions before their certification in the manner thus described.

After the petitioners submit the question to the City Clerk, the City Council shall set a hearing in which the petitioners and/or their representatives or designees shall present the question.

At this hearing the council shall:

1. Consider the question/initiative and language.
2. Check for congruence between the title and the content.

3. Discuss the timeline.
4. Consider adoption or whether to enter into a negotiation with the petitioners wherein the petitioner would agree to withdraw the question should the council adopt acceptable policy.

Secondly, if the council decides to put a competing measure on the ballot such that the choices are A. Citizen Measure, B. Competing Measure, or C. None of the above. The winner ought to be determined by the highest vote getter rather than the majority, as the latter is difficult to achieve in a 3-way race.

V. FULL CITY CHARTER WITH ALL RECOMMENDED DELETIONS AND ADDITIONS, ASSUMING ALL BALLOT QUESTIONS PASS.

PART I CHARTER*

***Editor's note**--Historical references are cited in parentheses at the end of each section. Such references cite only the various amendments adopted by referenda conducted pursuant to home rule powers granted by P.L. 1970, c. 563 (30 M.R.S.A. § 1911 et seq.). Prior to 1970 and home rule the charter and its various amendments were enacted by the Maine Legislature and such are not cited in said parentheses. A history of the charter and amendments is attached as Appendix A.

State law reference(s)--Home rule, 30 M.R.S.A. § 2101 et seq.

Preamble and Land Acknowledgement

Art. I. Grant of Powers to the City, §§ 1, 2

Art. I-A. Mayor, §§ 1--5

Art. II. City Council; Mayor, Ranked Choice Voting §§ 1--11

Art. III. Board of Public Education, §§ 1--6

Art. IV. Elections, §§ 1--11

Art. V. Recall, §§ 1--7

Art. VI. Administrative Officers, §§ 1--8

Art. VII. Business and Financial Provisions, §§ 1--16

Art. VIII. Miscellaneous Provisions, §§ 1-5

Art. IX. Civilian Police Review Board, §§ 1-3

PREAMBLE

~~We, the People of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the general health, safety and welfare of our community. In so doing, we build a government that meets the needs of the people it serves and whose character it reflects. Our government shall further cooperation, encourage leadership, solicit our input and support the active participation of our residents in their governance. Our government shall be effective and accountable and shall promote equal rights and representative democracy.~~

~~Our government shall provide public education that enables all residents to acquire the knowledge and skills necessary to participate fully in Portland's civic, intellectual, cultural and economic life, in order to enrich and strengthen our community and our common future.~~

~~{Referendum 11/2/10}~~

We, the people of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the health, safety, and common good of all people in our community. In so doing, we seek to build a representative, responsive, and effective government that encourages leadership and participation from all members of that community, with an emphasis on accountability, equity, and inclusion, and a system of public education that supports Portland's civic, intellectual, cultural, and economic life.

Land Acknowledgement

Portland is located in the unceded territory of the Aucocisco Band of the Wabanaki, which also includes the Abenaki, Maliseet, Mi'kmaq, Passamaquoddy, and Penobscot people. European colonizers displaced Wabanaki people by force and went on to displace and harm indigenous peoples throughout what is now Maine and the United States. We acknowledge that displacement and that harm with sorrow, even as we celebrate and honor the Wabanaki knowledge and culture that continue to thrive in the Tribal Nations that have and always will call this place, the Dawnland, their home.

ARTICLE I. GRANT OF POWERS TO THE CITY

Section 1. Corporate existence retained.

The inhabitants of the City of Portland shall continue to be a body politic and corporate by the name of the City of Portland, and shall have, exercise, and enjoy all the rights, immunities, powers, privileges, and franchises and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise, pertaining to or incumbent upon such city as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable by-laws, regulations, and ordinances for municipal purposes, not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof as such by-laws, regulations, or ordinances shall provide. Such penalties shall not limit nor diminish in any way the city's authority to seek and obtain higher or different penalties provided by state or other law. (Referenda 12/4/72; 11/2/10)

Section 2. Powers and duties.

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the "school board"), and also except as otherwise provided by this charter, shall be and are vested in the mayor and in one body of ~~nineteen~~ twelve members, which shall constitute and be called the city council, all of whom shall be inhabitants of the city, and shall be sworn in the manner hereinafter prescribed.

The executive powers of the city shall be vested in the mayor and exercised through the chief administrator and the several departments and boards of the city, under the mayor's general oversight.

The legislative powers of the city shall be vested in the city council. The mayor and the members of the city council shall be and constitute the municipal officers of the City of Portland for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers and mayors of cities under the laws of this state.

All other powers now or hereafter vested in the inhabitants of such city, and all powers granted by this charter, except as

herein otherwise provided, shall be vested in the city council.
(Referendum 11/2/10)

ARTICLE I-A. MAYOR

Section 1. Election, tenure of office.

The position of mayor shall be elected by majority vote as provided in section 3 of article II. The candidate(s) for mayor shall be nominated in the same manner as at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two consecutive terms. The election and position of mayor shall be a non-partisan, full-time position.

Notwithstanding the prior paragraph, for the municipal election in November of 2023, the election for mayor shall be for a one-time five-year term ending in 2028. Thereafter, the mayor shall be elected every four (4) years in line with the U.S. presidential election.

Section 2. Compensation of the mayor.

Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation, but no such order re-setting the mayor's compensation shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than two (2) times the median household income for Portland as most recently published by the U.S. Census Bureau, American Community Survey, or successor index thereto, at the time such compensation is set or adjusted, plus customary city benefits.

The mayor shall not hold any other office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected.

Section 3. Mayor's powers and duties.

The mayor shall be the chief executive officer of the city, responsible for providing leadership, and shall have the following powers and duties:

- (a) To articulate the city's vision and goals and build coalitions to further such vision and goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that

purpose;

- (b) To attend, with the chief administrator, the annual workshop session of the city council to discuss and identify the city's goals and priorities. A summary of the session shall be made available to the public;
- (c) To represent the city with other municipalities, levels of government, community and neighborhood groups, and other communities;
- (d) To ensure the implementation of city policies and keep the city council informed as to the progress on all city council directives, the general financial standing of the city, the current status of all negotiations, and recommendations for city council action;
- (e) To direct the chief administrator in the preparation of all city budgets and present the budget to the city council for approval;
- (f) To direct the chief administrator in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (j), and to present such program plan to the city council;
- (g) To facilitate among the chief administrator, city council, board of public education and the public to secure passage of the annual city and school budgets;
- (h) To exercise veto power over the annual city appropriation as provided in article VII, section 8;
- (i) To exercise veto power over city council actions regarding city ordinances or amendments thereto as provided in article II, section 11;
- (j) To be the public figurehead for the city. In this role the mayor shall serve as:
 - a. the official representative of the city in Augusta, nationally and internationally; and
 - b. the official spokesperson for the city; and
- (k) To submit ordinances, orders, and resolves for city council consideration pursuant to the same rules and procedures that pertain to councilor-sponsored ordinances,

orders, and resolves.

Notwithstanding the foregoing, the chief administrator shall manage the day-to-day operations of the city and administration of the city budgets presented by the mayor and approved by the city council, including, but not limited to, exercising control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.

All directives issued by the mayor pursuant to this charter implementing city council approved ordinances, orders, and resolves, and affecting the outcomes of any city services, policies, procedures, or programs lasting more than 30 days (or multiple directives of a similar nature occurring within a 30-day period), shall be submitted in writing to the chief administrator as an "Executive Order." Such Executive Orders shall appear on the next council agenda as a communication prior to taking effect. The council may schedule a public hearing and may take action on such Executive Order or allow the Executive Order to remain.

Section 4. Vacancy of the mayor.

A vacancy in the office of mayor shall occur upon the happening of the following: (1) the death of the mayor; (2) the effective date of the resignation of the mayor; (3) the removal of mayor from the city; (4) the conviction of the mayor of a felony while in office; (5) the recall of the mayor pursuant to the provisions of section 5 of this article and article V; or (6) the removal of the mayor by the council pursuant to section 5 of this article.

The council shall declare a vacancy in the office of mayor to exist upon the qualification of the mayor for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

The mayor may in writing addressed to the council resign his or her office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and the mayor's office shall become vacant on such specified future date.

If a vacancy in the office of mayor occurs or is declared prior to the next regular municipal election, the vacancy shall be filled by corporation counsel until a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy

occurs or is declared, unless the council, by a vote of at least eight (8) of its members, calls a special election on an earlier date; provided that if the vacancy occurs with six (6) months or fewer remaining in the then mayor's term, then there shall be no special election to fill the vacancy. Such election shall be called and held and nominations made as in other elections.

Section 5. Censure, removal or recall of the mayor.

The mayor may be censured or removed from office by the city council for cause. The city council also may order a recall election for the mayor to be conducted pursuant to article V.

At any meeting of the city council, it shall be in order for any member thereof to give written notice, approved by seven (7) or more members of the city council, of the intention to move at the next meeting thereof occurring within not less than fourteen (14) days, an order that the mayor be censured or removed from office.

Such notice shall specify as particularly as possible the acts complained of and shall, if approved, be entered by the city clerk in the minutes of the city council. The clerk shall within two (2) days serve a copy thereof upon the mayor at the mayor's residence and electronically, and shall provide an electronic copy to each of the members of the city council.

At any subsequent hearing or meeting of the city council in which the censure or removal of the mayor is the topic, the mayor shall have the right to be present, speak, be represented by counsel, and present a defense. Such proceedings shall be conducted in accordance with state and federal laws and constitutional requirements.

Any vote to censure, remove the mayor from office, or order a recall election shall require a vote of three-fourths (3/4) of the full city council.

ARTICLE II. CITY COUNCIL

Section 1. City to be divided into election districts.

For the purpose of all elections the city, including its islands, shall be divided into ~~five (5)~~ nine (9) districts to establish compact and contiguous districts of approximately equal population.

The city council for voting purposes may by ordinance divide the election districts into voting districts. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/2/11)

Section 2. Composition, election, tenure of office.

The city council shall be composed of ~~nine (9)~~ twelve (12) members, including the ~~mayor~~ chair and vice chair who each shall be one of the ~~nine (9)~~ twelve (12) members of the city council, and shall hold office for a term of three (3) years and until their successors are elected and qualified, except as provided below for the term of ~~mayor and for one at large seat~~ for the four new districts in the election of ~~2013~~ 2023 only. ~~Four (4)~~ Three (3) members, ~~including the mayor,~~ shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the ~~five (5)~~ nine (9) districts heretofore provided for, from and by the registered voters of each district. ~~References in this charter to the city council, councilors, council, its members or membership, shall be deemed to include the mayor, unless otherwise specifically provided.~~

For the municipal election in November of ~~2013~~ 2023, ~~one of the two at large seats up for election shall have a one-time four-year term ending in 2017. Thereafter, the council term shall return to be three (3) years for this seat. The city clerk shall designate which seat shall be for the four (4) year term prior to the availability of nomination papers for the 2013 election, and nomination papers shall be separately issued for reach of the two at large seats. Each at large candidate may take out and file nomination papers for only one of the at large seats. The municipal ballot will list the 4-year and 3-year council seats as separate questions.~~ one of the new districts shall have a one-time, one year term ending in 2024, two of the new districts shall have a one-time, two year term ending in 2025, and one of the new

districts shall be elected for the standard three year term. Thereafter, the council term for all seats shall return to be three (3) years for the respective seats. The city clerk shall designate which seats shall be for the one (1) year term, two (2) year term, and three (3) year term, and nomination papers shall be issued for each seat.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the ~~five~~ nine (9) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

~~Beginning with the regular municipal election in November, 2011, the at large position then up for election shall be designated as the mayor's position and shall continue as the mayor's position thereafter. The position of mayor only shall be elected by majority vote as provided in section 3 of this article. The candidate(s) for mayor shall be nominated in the same manner as other at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two consecutive terms. The election and position of mayor shall be a non-partisan, full-time position. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10; 11/6/12)~~

Section 3. Ranked choice voting; instant runoff tabulation.

For the positions of mayor, city councilor, and school board member, the city clerk shall implement a ranked choice voting protocol according to these guidelines:

- (a) The ballot shall give voters the option of ranking candidates in order of choice.
- (b) If a candidate receives a majority, i.e. at least one more than fifty percent (50%) of the first choice votes cast, that candidate is elected.
- (c) If no candidate receives a majority of first choice votes, an instant runoff re-tabulation shall be promptly conducted by the city clerk and completed within five (5) business days of the election. The instant runoff re-tabulation shall be conducted in successive rounds, with the majority determined for each successive round by the number of votes cast in that round. The candidate with the fewest votes after

each successive round in which no candidate receives a majority of the votes cast in that round shall be eliminated, and the votes in the successive rounds shall be re-tabulated among the remaining candidates until one candidate receives a majority of the votes cast in that round. In each successive round, each voter's ballot shall count as a single vote for whichever candidate the voter has ranked highest who has not been eliminated in a prior round, if any.

- (d) After the first round, a majority is determined as at least one (1) more than fifty percent (50%) of the votes cast for a remaining candidate in a particular round.
- (e) The city clerk may adopt additional regulations consistent with this subsection to implement these provisions. The ballot shall contain instructions on how to vote for each office.

(Referenda 11/2/2010; 3/3/2020)

- (f) For elections conducted by ranked choice voting where more than one person is to be elected to a single office (i.e., a multiple seat election), the winners shall be determined by a proportional method of ranked choice voting. Such method shall provide for candidates to be elected on the basis of thresholds determined by the number of seats to be filled plus one, ballots to be counted in rounds, votes to be transferred from defeated candidates, and for votes, in fractions or in whole, in excess of the threshold to be transferred from elected candidates. The city council shall by ordinance establish such a proportional ranked choice voting system.

Section 4. Compensation of councilors and mayor.

~~Except as otherwise provided in the paragraph below for the mayor's compensation, the~~ The city council shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, and specify when any compensation shall be payable, but no such order increasing their compensation, including that of the mayor, shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance. At minimum, each member of the city council shall be paid compensation at a level which is no less than ten percent (10%) of the salary paid to the mayor.

Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than one and one-half (1.5) times the median household income for Portland as most recently published by the U.S. Census Bureau, American Community Survey, or successor index thereto, at the time such compensation is set or adjusted, plus customary city benefits.

No member shall hold any other office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. City council chair

As described herein the city council shall be led by a chair and vice-chair who shall be elected annually by majority vote of the members of the city council. The chair shall preside over meetings of the city council and set the city council agendas in accordance with city council rules. The vice-chair shall preside over council meetings in the chair's absence. In the case of an absence of the chair and vice-chair, the city council shall choose a chair, pro tempore, by a majority of those members present and voting. In case of a vacancy in the office of chair of the city council by death, resignation or otherwise, the same shall be filled for the unexpired term by a majority vote of those members present.

Together, the chair and vice-chair shall have the authority to organize the council into various committees and recommend chairs for such committees. The committee members shall be responsible for appointing a chair for the committee.

~~Section 5. Mayor's powers and duties.~~

~~The mayor shall be the official head of the city, responsible for providing leadership, and shall have the following powers and duties:~~

- ~~(1) To articulate the city's vision and goals and build coalitions to further such vision and goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that purpose;~~

- ~~(m) To convene and lead an annual workshop session of the city council to discuss and identify the city's goals and priorities in order to provide guidance for the city manager and to inform the public. The city manager shall attend this workshop session, and a summary of the session shall be made available to the public;~~
- ~~(n) To represent the city with other municipalities, levels of government, community and neighborhood groups, and the business community;~~
- ~~(o) To preside as chair of the city council, and vote upon all matters in the same manner as other members of the city council, except as provided in article VII, section 8. The mayor shall direct the city manager in the preparation of council meeting agendas;~~
- ~~(p) To facilitate the implementation of city policies through the office of the city manager;~~
- ~~(q) To consult with and provide guidance to the city manager in the preparation of all city budgets and to provide comments on such budgets at the time they are presented by the city manager to the city council for approval;~~
- ~~(r) To consult with and provide guidance to the city manager in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (i), and to provide comments on such program plan at the time it is presented by the city manager to the city council;~~
- ~~(s) To facilitate among the city manager, city council, board of public education and the public to secure passage by the city council of the annual city and school budgets;~~

- ~~(t) To exercise veto power over the annual city appropriation as provided in article VII, section 8;~~
- ~~(u) To establish performance guidelines in conjunction with the other members of the city council for regular evaluations, no less than annually, by the city council of the performance of the city manager, corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities;~~
- ~~(v) To chair any subcommittee with at least two (2) other city councilors to recommend the appointment or removal of the city manager, corporation counsel or the city clerk, but the full city council shall have the final decision in regard to such appointment or removal by a vote of at least five (5) members of the council; and~~
- ~~(w) To appoint the members and chairs of the city council committees and various ad hoc committees and communicate such appointments to the city council, which may override such appointments by a vote of at least six (6) council members.~~

~~Notwithstanding the foregoing, the city manager shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council. (Referendum 11/2/10)~~

~~Section 6. Absence or disability of mayor; acting mayor.~~

~~In the temporary absence or disability of the mayor, the mayor may select an acting mayor from among the other council members and such person shall perform the duties of the mayor during such temporary absence or disability for a maximum of sixty consecutive (60) days or return of the mayor, whichever comes first. If through physical or mental incapacity the mayor is unable to select an acting mayor, or if the mayor's absence or disability exceeds sixty (60) consecutive days, the council shall select an acting mayor from among its membership until such time as the mayor is able to resume his or her duties or a vacancy is declared pursuant to section 7 below and a new mayor elected. (Referendum 6/13/78; 11/7/00; 11/2/10)~~

~~Section 7.~~ Section 6. Vacancies.

A vacancy in the membership of the city council shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or 6) the recall of a member pursuant to the provisions of article V. The council shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the city council, or at least sixty (60) percent of the regular meetings of the city council held in any one calendar year unless such member shall be excused (by vote of at least ~~four~~ four ~~(4)~~ six (6) other members) for health reasons or other good cause.

The council shall declare a vacancy in its membership to exist upon the qualification of any member for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

A member may in writing addressed to the council resign his or her office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and such member's office shall become vacant on such specified future date.

If a vacancy in the membership of the city council occurs or is declared more than six (6) months prior to the next regular municipal election, the vacancy unexpired term shall be filled at a special election, citywide or for a district, to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least ~~six (6)~~ eight (8) of its members, calls a special election on an earlier date. Such election shall be called and held and nominations made as in other elections. If a vacancy occurs within six (6) months prior to the next regular election, the city council shall appoint a qualified person from the same district or at-large, as appropriate, to serve until the next regular municipal election. The council shall establish rules and procedures for appointments to fill such vacancies. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

~~Section 8.~~ Section 7. Meetings of the council.

The city council shall meet at the usual place for holding meetings on the first Monday in December following the regular municipal election, or as soon thereafter as possible, and at such meeting the mayor and councilors-elect shall be sworn to the faithful discharge of their duties by a justice of the peace, or by the city clerk. The city council shall at such meeting establish by resolution or rule a regular place and time for holding its meetings, and shall meet regularly at least twice each month. (Referenda 6/13/78; 11/4/86; 11/7/00; 11/2/10)

~~Section 9~~ Section 8. Special meetings.

Special meetings may be called by the mayor, and in case of his or her absence, disability, or refusal, may be called by ~~five~~ seven (7) ~~(5)~~ or more members of the city council. At least twenty- four (24) hours notice of the time and place of holding such special meeting shall be given to all members of the city council. (Referendum 11/2/10)

~~Section 10~~ Section 9. Quorum.

~~Five~~ Seven (7) ~~(5)~~ members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours' notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referendum 11/2/10)

~~Section 11~~ Section 10. Procedure.

The city council shall keep a record of its proceedings and shall determine its own rules of procedure and make lawful regulations for enforcing the same. The meetings of the city council shall be open to the public in accordance with state law. The city council shall act only by ordinance, order, or resolve. All ordinances, orders, and resolves, except orders or resolves making appropriations of money, shall be confined to one subject which shall be clearly expressed in the title. An appropriation order or resolve shall be confined to the subject of appropriations only.

No ordinance and no appropriation order or resolve shall be passed until it has been read on two separate days, except when the requirement of a second reading on a separate day has been dispensed with by the vote of at least ~~seven (7)~~ nine (9) members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance,

order, and resolve shall require on final passage the affirmative vote of at least ~~five~~ seven (7) ~~(5)~~ members of the city council. No ordinance shall take effect until thirty (30) days after its passage and no order or resolve shall take effect until ten (10) days after its passage, except as herein otherwise provided for emergency ordinances, orders and resolves.

The city council may, by vote of at least ~~seven (7)~~ nine (9) of its members, pass emergency ordinances, orders, or resolves to take effect at the time indicated therein, but such emergency ordinances, orders, or resolves shall contain a section in which the emergency is set forth and defined, provided, however, that the declaration of such emergency by the city council shall be conclusive. (Referendum 11/2/10)

Section 11. Mayoral veto of city council action on city ordinances.

Within five (5) business days of the meeting at which the city council adopts any new or amended city ordinance, the mayor may veto such adoption by written communication to the city council. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be overridden by a vote of at least two-thirds (2/3) of the members of the city council.

If a veto is overridden, the ordinance will take effect as legally adopted.

Section 12. Annual performance reports.

The city council shall request an annual report regarding the performance of (1) constituent services, (2) permitting, and (3) any other city functions the city council requests. Such reports shall be presented to the city council at a regularly scheduled public meeting and the public shall have the opportunity to provide feedback specific to the reports.

ARTICLE III. BOARD OF PUBLIC EDUCATION

Section 1. Composition, election, tenure of office, compensation.

The board of public education shall be composed of nine (9) members who shall hold office, except as hereinafter provided, for a term of three (3) years and until their successors are elected and qualified. ~~Four (4) shall be elected at large from and by the registered voters of the entire city, and one~~ One (1) shall be elected from each of the ~~five (5)~~ nine (9) districts heretofore provided for in section 1 of article II, from and by the registered voters of each such district.

To transition from the mix of district and at-large seats to all district seats, members who were elected to at-large seats shall serve until their current terms expire; for the municipal election in November of 2023, the at-large seat of the member whose term is then expiring shall become one of the new district seats; for the municipal election in November 2024, the at-large seat of the member whose term is then expiring shall become the second of the new district seats; and for the municipal election in 2025, the remaining two at-large seats of the members whose terms are then expiring shall become the third and fourth of the new district seats.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the ~~five (5)~~ nine (9) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

The city council shall by order establish the amount each member of the school board shall be entitled to receive as compensation for all services rendered, which compensation shall be the same as that received by members of the city council, ~~other than the mayor~~. The city council shall provide additional compensation to the chair of the school board appropriate to reflect his or her additional responsibilities as chair.
(Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 2. Chair.

On the first Monday in December following the regular municipal election, or as soon thereafter as possible, the board of public education shall elect one of its members as chair for the ensuing year and until a successor is elected and qualified, and may fill for the unexpired term any vacancy as chair that may occur.

At a date and time to be mutually agreed upon by the chair of the school board and the mayor, the chair shall deliver an annual address on the "state of the public education system in Portland" to the city council and the public. (Referenda 11/2/76; 6/13/78; 11/7/00; 11/2/10)

Section 3. Organization.

The school board shall meet for organization on the first Monday in December following the regular municipal election, or as soon thereafter as possible. The members-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the city clerk, and a record made thereof. The members shall at such meeting, or as soon thereafter as possible, establish a regular place and time for holding meetings and shall meet regularly at such place and time. Five members of the school board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referenda 6/13/78; 11/7/00; 11/2/10)

Section 4. Powers and duties.

The board of public education shall have all the powers, and perform all the duties in regard to the care and management, including sound fiscal management, conduct, and control of the public schools of the city, which are now conferred and imposed upon school committees and school boards by the laws of this state, except as otherwise provided in this charter. (Referendum 11/2/10)

Section 5. School budget.

Prior to the submission of a school budget, the school board and city council shall establish a Joint Committee on Budget Guidance, consisting of four (4) city councilors and four (4) school board members, appointed by the chair of the council and school board chair, respectively. The purpose of the joint committee is to develop guidance for the city and school district on budget priorities and constraints, covering a two-year period and updated annually. The joint committee shall obtain public comment on the guidance prior to submitting the guidance as a proposed non-binding joint resolution to the city council and school board.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

~~During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.~~

The budget submitted by the superintendent ~~to be reviewed jointly by the school board and the city council~~ shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for ~~joint review by the school board~~, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall ~~submit to the city council~~ prepare a budget

of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above.~~7, and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~

The school board shall hold a budget hearing on such budget estimates shall be held at least seven (7) days prior to final action by the city council determining the total amount of the school budget. Within a reasonable period of time, the city council may, at its discretion and after holding a public hearing, provide a nonbinding resolution with its recommendations to the school board for consideration. The school board may or may not adopt, in whole or in part, the recommendations of the city council. The city council shall thereafter submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the school budget validation referendum or, if discontinued, at the budget referendum, as appropriate, or (ii) not be less than the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council or the voters. (Referendum 6/13/78; 11/2/10)

Section 6. Vacancies.

A vacancy in the membership of the board of public education shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or (6) the recall of a member pursuant to the provision of Article V. The school board shall declare a vacancy in its membership to exist

upon the failure of a member to attend any six (6) consecutive regular meetings of the school board or at least sixty (60) percent of the regular meetings of the school board held in any one calendar year unless such member shall be excused (by a vote of at least four (4) of the members) for health reasons or other good cause. A member may in writing addressed to the school board resign his or her office effective at a future date specified in the written resignation. Once submitted to the school board, such resignation may not be withdrawn and such member's office shall become vacant on the specified future date.

If a vacancy in the membership of the school board occurs or is declared more than six (6) months prior to the next regular municipal election, the ~~vacancy~~ unexpired term shall be filled at a special election, citywide or for a district, to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least ~~six~~ eight of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections. If a vacancy occurs within six (6) months prior to the next regular election, the school board shall appoint a qualified person from the same district or at-large, as appropriate, to serve until the next regular municipal election. The school board shall establish rules and procedures for appointments to fill such vacancies.
(Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

ARTICLE IV. ELECTIONS

Section 1. Continuity in office.

In the event redistricting of the city shall cause a then council member or school board member to reside in a district other than that from which such person was elected, the office of such member shall not thereby be considered vacated but such member shall continue in office until a successor is duly elected and qualified. Each district councilor and district school board member in office on the effective date of any such redistricting shall be deemed to represent the newly constituted district of the same numerical designation as that formerly represented and shall continue to serve in that capacity until expiration of his or her term. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 2. Regular municipal election.

On the first Tuesday after the first Monday in November of each year, the regular municipal election shall be held and the registered voters of the city or district, as the case may be, shall ballot for a mayor and for such councilors and for such members of the school board as may be necessary to fill the offices of those whose terms would then normally expire and fill any existing vacancy in an unexpired term of office. (Referenda 12/1/75; 11/2/76; 6/13/78; 11/4/86; 11/7/00; 11/6/01; 11/2/10)

Section 3. Wardens and ward clerks.

The wardens and ward clerks shall be nominated by the city clerk and appointed by order of the city council. They shall be and remain residents of the city and all other qualifications for appointment shall be as provided in Title 21-A of the Maine Revised Statutes. They shall hold their office for one year from the date of appointment, unless a shorter term is specified by the order of appointment, and until others have been chosen and qualified in their stead. The warden and the ward clerk shall be sworn to the faithful performance of their duties by a person qualified under the statutes of the state to administer oaths, and a certificate of such oath shall be entered by the clerk on the records of such ward. (Referenda 11/2/76; 6/13/78; 11/4/86, 11/4/08; 11/2/10)

Section 4. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for mayor or an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy-five (75) nor more than one hundred fifty (150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

Section 5. Form of nomination petition.

The signatures to nomination petitions need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers of each petition, and that each signature

appended thereto was made in his or her presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer giving the street and number of the street, or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

To the city clerk of the City of Portland

We, the undersigned voters of the City of Portland, hereby nominate, _____ whose residence is _____ for the office of _____ to be voted for at the election to be held in the City of Portland on the _____ day of _____, _____, and we individually certify that we are qualified to vote for a candidate for the above office.

Name _____ Street and Number _____, being duly sworn, deposes and says, that he (she) is the circulator of the foregoing nomination petition containing _____ signatures, and that the signatures appended thereto were made in his or her presence and are the signatures of the persons whose names they purport to be.

(Signed) _____.

Subscribed and sworn to before me this _____ day of _____, _____.

Attorney, State of Maine Bar #_____
Notary Public

If this petition is deemed insufficient by the city clerk, he or she shall forthwith notify by mail _____ at _____. (Referendum 11/2/10)

Section 6. Filing of nomination petitions, and acceptance of nomination.

The city clerk shall make nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to the election. The nomination petitions for any one (1) candidate must be assembled and united into one (1) petition and filed with the city clerk during normal business hours not earlier than eighty-five (85) nor later than seventy-one (71) days before the date of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing at the time of filing of such nomination petitions his or her consent accepting nomination, agreeing not to withdraw and, if elected, to qualify. Such nomination petitions and consent, once filed may not be withdrawn. Any challenge to a nomination petition must be submitted to the city clerk in writing, setting forth the specific reasons for the objection, no later than five (5) days, excluding Saturdays, Sundays, and legal holidays, from its date of filing, or it is barred. No person shall take out nomination papers for more than one position at the same election, nor be nominated, nor shall any person consent to being nominated, at the same election for any other elective office provided for by this charter, and no person shall simultaneously hold more than one (1) elective office provided for by this charter. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/6/01; 11/4/08; 11/2/10)

Section 7. Form of ballot.

All official ballots for use in all municipal elections shall be prepared by the city clerk and furnished by the city, consistent with the voting machines used and the form of any state ballot(s), and the use of ranked choice voting. Ballots for use in elections under this charter shall contain the names of the various candidates, with their residence, and the office for which they are candidates, and instructions on how to mark the ballot. The candidates for each office shall be grouped under the title of each office, plainly and distinctly marked. There shall

be as many blank spaces under the name of each office as there are vacancies to be filled. The procedure for counting write-in votes shall be governed by Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern. Notwithstanding the foregoing, in the event of an emergency such as the illness, death or disqualification of a nominee for municipal office prior to the general election, the time frame for accepting a declared write-in candidate may be shortened by the city clerk. Such ballots may also contain such measures as may be submitted to the voters of the city by the legislature or by the city council and shall be without party mark or designation.

In preparing all ballots for election under this charter, the city clerk shall arrange the names of all qualified candidates for each office in alphabetical order according to surnames.
(Referenda 11/2/2010; 3/3/2020)

Section 8. Specimen ballots.

The city clerk shall cause specimen or sample ballots to be prepared and to be posted in public places in each ward and voting precinct and advertised in the newspapers not later than ten (10) days prior to the municipal election. Such specimen ballots shall be printed on colored paper and marked "Specimen Ballot," and shall contain the names of the certified candidates with the residence of each, instructions to voters, and such measures as may be submitted to the voters by the legislature or by the city council. Such specimen ballots shall also be without party mark or designation. (Referendum 11/6/01; 11/2/10)

Section 9. Count of ballots.

Upon closing of the polls, ballots shall be counted in accordance with Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern, and the results thereof delivered to the city clerk by the wardens. (Referendum 11/2/10)

Section 10. Canvass of returns.

The city clerk shall examine the records of the several voting places and within forty-eight (48) hours after such election shall determine and declare the successful candidates as follows: The person or persons, not exceeding the number to be voted for at any one time for any office, having the majority of votes cast at such election, shall be determined and declared to be elected. If no candidate for mayor, city council, or school board has a majority of the votes cast as provided in article II, section 3, the city clerk shall conduct an instant runoff tabulation as provided in such section until the candidate with the majority of votes cast is determined. The city clerk shall provide written notice of the election results to all candidates. (Referenda 11/6/01; 11/2/10; 3/3/2020)

Section 11. State election laws applicable.

The laws of the state in Title 21-A of the Revised Statutes relating to the qualifications of electors, registration, the manner of voting, the duties of election officials, and all other particulars in respect to preparation for conducting and managing elections, so far as they may be applicable, shall govern all municipal elections in the City of Portland, except as provided below regarding 42-day pre-election reports and as otherwise provided herein.

In addition to the reports required for municipal candidates by Title 21-A of the Maine Revised Statutes, 42-day pre-election reports must be filed by municipal candidates no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Nothing in this charter shall prohibit the use of electronic or revised voting methods and procedures to the extent authorized by state and/or federal law. (Referenda 11/4/08; 11/6/2018)

Section 12. Public financing of municipal elections.

The city council shall establish and fully fund a City of Portland Clean Election Fund (hereinafter, the "Clean Election Fund" or the "Fund") to provide public campaign funds to qualified candidates for elected municipal offices. The Clean Election Fund must be available to candidates in municipal elections beginning in FY 2023-2024. Candidate participation in the Clean Election Fund shall be voluntary.

Beginning in FY 2023-2024 to allow for implementation for the

November 2023 election, the city council shall provide an independent allocation from the city's budget each year to ensure the Clean Election Fund is sustained at a level that facilitates competitive campaigns for participating candidates who meet qualifying criteria. The Clean Election Fund shall be administered by the city clerk and the city council shall appropriate sufficient funds to ensure there are adequate resources, including paid staff, to effectively administer the Fund.

The city council shall maintain an ordinance directing the operation of the Clean Election Fund. The ordinance shall direct that the Clean Election Fund must:

- (a) Limit the amount of private funds a participating candidate may raise;
- (b) Be limited to candidates who
 - i. demonstrate public support;
 - ii. enter into a binding agreement stating that the candidate will not accept private contributions other than those which are permitted by the Clean Election Fund; and
 - iii. agree to participate in at least one (1) city-sponsored forum or voter education event.
- (c) Require that all unused funds from a participating candidate's campaign be returned to the Clean Election Fund within one hundred (100) days after the date of the election.

The city council may adopt additional regulations and ordinances not inconsistent with this section.

Section 13. Campaign finance rules.

- (a) **Corporate Contributions.** A business entity may not make contributions to any candidate for municipal office. The term "business entity" refers to a firm, partnership, corporation, incorporated association, or other organization, whether organization as a for-profit or a nonprofit entity. A separate segregated fund committee may not make contributions to any candidate for municipal office using funds that derive, in whole or in part, from a business entity. Where a business entity establishes a separate segregated fund committee, that business entity may provide the separate segregated fund committee with the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the business entity.
- (b) **Foreign Contributions.** The city council shall by

ordinance enact a prohibition on ballot question contributions or expenditures from any entity that is substantially under foreign influence, including any entity owned by a foreign government and any entity with substantial foreign ownership. The city council shall promulgate rules to specify compliance requirements and otherwise to enforce this ordinance.

- (c) **Additional Rules by Ordinance.** The city council may adopt additional regulations and ordinances governing campaign spending, not inconsistent with this section.
- (d) **Campaign Contributions Reporting.** All contributions to campaigns for candidates or ballot questions must be reported to the city clerk, in conformance with any applicable State law. The clerk must establish a searchable, online, and publicly-accessible database of all information included in all registrations and campaign finance reports filed with the clerk.

ARTICLE V. RECALL

Section 1. Applicability.

The mayor or any~~Any~~ member of either the city council or the school board may be recalled and removed from office by the registered voters of the City of Portland, as hereinafter provided, except that this provision shall not apply to the mayor or a member of either body who has one (1) year~~six (6) months~~ or less to serve in his or her term, i.e., any petition to recall a member must be certified by the clerk no later than November 30 of the year prior to that member's next scheduled November re-election date. (Referenda 11/4/86; 11/2/10)

Section 2. Petition for recall.

In the case of either the mayor, or an at large member of the city council or of the school board, any five hundred (500) registered voters of the city may affirm and file with the city clerk an affidavit containing the name of the mayor or of the member of the city council or of the school board whose removal is sought, together with a statement of the reasons why such removal is desired. In the case of a district member of the city council or of the school board, any two hundred and fifty (250) registered voters of the member's district may affirm and file with the city clerk an affidavit containing the name of the district member whose removal is sought, together with a statement of the reasons why such removal is desired. Members of the city council and of the school board shall not be included on the same affidavit and only one member's name shall be on an affidavit.

Within seven (7) calendar days of receipt of such an affidavit, the city clerk shall prepare a sufficient number of petitions which shall contain the signature of the city clerk, his or her official seal, the date, and the name of the person whose removal is sought. In addition, the statement of reasons for removal referred to above shall either be printed on such petitions or attached thereto. Such petitions shall be on paper of uniform size with as many individual sheets as reasonably necessary.

The city clerk shall file the completed petitions in his or her office. During the thirty (30) days following their filing, the city clerk shall arrange to have petitions, noting that removal is being sought as well as the reasons therefor, available for signature both at city hall and also at public places as indicated below. Notice of the location of the public places where petitions may be signed shall be given by publication at least forty-eight (48) hours in advance and such notice shall contain the specific location of such public place or places, the dates it or they will be open, and the times during which petitions may be signed. In the case of either a district councilor or a district school board member, the city clerk shall select one (1) site outside of city hall, but within the district of the member whose removal is sought, and such location shall be open for four (4) days between the hours of noon and 8:00 p.m. In the case of the mayor or at large councilors or members of the school board, the city clerk shall select four (4) sites outside of city hall and such locations shall be open for four days each between the hours of noon and 8:00 p.m.

The city clerk shall designate election clerks to supervise each such site. Election clerks shall be residents of Portland and at least eighteen (18) years of age. They shall be sworn to the faithful performance of their duties by the city clerk. Each qualified voter who signs a petition shall include his or her place of residence, providing either the street and number or a description sufficient to identify the place.

To mandate a vote in the case of the mayor or an at large councilor or an at large member of the school board, the recall petition must be signed by at least three thousand (3,000) registered voters of the city, or in the case of a district councilor or district member of the school board, by at least fifteen hundred (1,500) registered voters of that member's district. (Referenda 12/1/75, 11/4/86; 11/2/10)

Section 3. Verification of recall petition.

At the expiration of the thirty (30) day period for signing petitions described in section 2, the city clerk shall declare the petition closed and, within ten (10) days thereafter, shall ascertain whether or not the petitions have been signed by the requisite number of registered voters. The city clerk shall attach his or her certificate, showing the results of such examination, to the petitions.

If the clerk's certificate should show that the petitions are insufficient, he or she shall advise both the city council and also the person or persons whose removal was sought of that fact. A finding of insufficiency shall not prejudice the filing of a new petition for the same purpose, except that such new petition shall not be filed within twelve (12) months from the date of the receipt of the clerk's certificate by the city council. (Referenda 11/4/86; 11/2/10)

Section 4. Calling of recall election.

If the clerk's certificate should show that the petitions are sufficient, he or she shall submit them, together with the clerk's certification, to the city council at its next regular meeting following certification, and shall also notify the person or persons whose removal is sought. The city council shall, within ten (10) days of receipt of the clerk's certificate, or on its own in the case of a council vote to hold a recall election for the mayor under article I-A, section 5, order an election to be held not less than forty-five (45) nor more than ninety (90) days thereafter; except that, if a regular municipal election should occur within ninety (90) days after receipt of the certificate, the city council may, in its discretion, schedule the recall election for the same date as the regular municipal election. The recall election shall be called and held as other elections under this charter, except for the specific limitations imposed by this article.

All registered voters in the city may vote on the recall of the mayor or an at large member of the council or school board; only the registered voters of the applicable district may vote on the recall of a district member of the council or school board.
(Referenda 11/4/86; 11/2/10)

Section 5. Form of ballot.

Unless the mayor or the member or members whose removal is sought shall have resigned within ten (10) days after the receipt

by the city council of the clerk's certificate or of the council's vote to hold a recall election for the mayor, the form of the question to be submitted to the voters shall, as nearly as possible, be: "Shall (name of official and his or her title) be recalled?" (Referendum 11/4/86)

Section 6. Count of ballots.

In case a majority of those voting for and against the recall of any official shall vote in favor of recalling such official, he or she shall be thereby removed, and, in that event, the candidate to succeed such person for the balance of the unexpired term shall be determined as provided for in the case of a vacancy in the office.

If a majority of those voting should decline to recall a particular official, then no proceedings, seeking the recall of that same official, shall be initiated under this article within twelve (12) months from the date of the election in which his or her recall was sought. (Referendum 11/4/86)

Section 7. Election may be ordered.

If the mayor or a member of either the city council or school board who is recalled should either request a recount or dispute the election as permitted by law, then that member shall remain in office until the recount or dispute has been finally determined; and the provisions of article I-A, section 4, article II, section 7 6, and article III, section 6, relating to vacancies in the office of the mayor, city council or school board, shall be stayed. (Referendum 11/4/86; 11/2/10)

ARTICLE VI. ADMINISTRATIVE OFFICERS

Section 1. Appointments.

- (a) The following officers shall be appointed by a vote of at least seven (7) members of the city council: city clerk and corporation counsel. By a vote of at least seven (7) members of the city council, the city council also may appoint constables at large.
- (b) Based on the procedure provided in this article VI, section 1(f), the chief administrator shall be nominated for appointment by the mayor and confirmed by a vote of at least seven (7) members of the city council.

- (c) Based on the procedure provided in this article VI, section 1(f), department heads shall be nominated for appointment by the mayor and confirmed by a vote of at least seven (7) members of the city council.
- (d) All attorneys employed in the corporation counsel's office shall be ~~appointed~~ nominated for appointment by the corporation counsel, subject to confirmation by a vote of at least seven (7) members of the city council. The corporation counsel shall have the right to remove any attorney employed in the corporation counsel's office.
- (e) All other employees shall be appointed and may be removed by the ~~city manager~~ chief administrator upon recommendation of the heads of their departments.
(Referendum 11/4/86; 11/2/10)
- (f) The mayor shall declare the intent of the city to appoint any vacant chief administrator or department head position. The city staff shall post the declared positions pursuant to city procedure and provide the mayor with a list of qualified candidates that applied for such appointment. All persons nominated for appointment by the mayor shall be nominated solely on the basis of character and qualification to perform the duties of the office or position to be filled by the appointment.

Section 2. Organizational powers.

The city council shall have power to provide by ordinance for the organization, conduct, and operation of the departments, agencies, offices, and boards of the city, for the creation of additional departments, agencies, offices, and boards and for the division of any such departments, agencies, offices, and boards; and for the alteration, abolition, assignment, or reassignment of all such departments, divisions, agencies, offices and boards; provided, however, there shall be a director of finance to perform the functions specified in article VII of this Charter. The city council shall, by ordinance, designate those department heads responsible for performing duties required by state law.
(Referendum 11/4/86)

Section 3. Civil service rules.

The city council shall provide by ordinance for a system of civil service rules for the appointment, promotion, demotion, lay-off, reinstatement, suspension, and removal of the members of the

police department and of the fire department, other than the chiefs of such departments, and for a civil service commission to administer the same.

Section 4. Compensation and tenure of offices.

The city council shall fix by order the salaries of the appointees of the city council. Salaries of the appointees of the ~~city manager~~ chief administrator shall be fixed by the ~~city manager~~ chief administrator, subject to the approval of the city council. All appointive officers shall hold office ~~during the pleasure of the appointing power~~ until removed pursuant to this charter.

Section 5. Appointment; qualifications; powers and duties of the ~~city manager~~ Chief Administrator.

The ~~city manager~~ chief administrator shall be nominated for appointment by the mayor and chosen confirmed by the city council solely on the basis of character and executive administrative qualifications, and may or may not be a resident of the City of Portland or of the State of Maine at the time of appointment. Such person shall give bond for the faithful discharge of his or her duties to the City of Portland and in such sum as the city council shall determine and direct, and with surety or sureties to be approved by the city council. The premium on such bond shall be paid by the city. Such person shall be responsible for the administration of all departments and for the delivery of city services ~~the administrative head of the city~~ and shall be responsible to the mayor ~~city council~~ for the administration of all departments. The mayor shall recommend for adoption by the city council rules that govern communications between city staff and elected officials. ~~Neither the mayor nor members of the city council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment. Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards and commissions, council committees, neighborhood and other groups and organizations, on city work.~~

The ~~city manager's~~ chief administrator's powers and duties shall be as follows:

- (a) To see that the laws and ordinances are enforced, but

- shall delegate to the chief of the police department the active duties connected therewith regarding criminal conduct.
- (b) To exercise control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.
 - (c) To hold annual reviews of department heads.
 - (d) To implement the policy decisions of the mayor and city council.
 - (e) To coordinate city programs and operations and recommend improvements in such programs and operations to the ~~council~~ mayor.
 - (f) To prepare city budgets, ~~at the direction of the mayor. in consultation with and incorporating policy guidance of the mayor, and to present such budgets to the council.~~ Upon presentation of the budget by the mayor to the council, the chief administrator may provide a memo to the council on behalf of city staff, which memo may include, but shall not be required, such advice, guidance, information or requests that the chief administrator believes is relevant on behalf of all non-union staff and departments.
 - (g) To make appointments as provided in this charter.
 - (h) To attend meetings of the city council, ~~except when his or her removal is being considered,~~ and recommend for adoption such measures as he or she may deem expedient.
 - (i) To keep the city council fully advised as to the business and financial condition and future needs of the city and to furnish the city council with all available facts, figures, and data connected therewith when requested.
 - (j) To jointly prepare with the superintendent a five (5) year rolling capital improvement plan utilizing the participatory budgeting process established by the city council pursuant to article VII, section 5, at the direction of the mayor, for annual presentation by the mayor to a joint meeting of the city council and school board, which plan includes the following:
 - 1. A one (1) year plan of specific projects and their

cost;

2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; ~~and~~

3. A discussion of the basis for the plan and the factors which went into its development or amendments; ~~and~~

4. A listing and discussion of capital improvements pending or in process of construction or acquisition.

(k) To prepare and submit to the city council such reports as are requested or he or she deems advisable; and

(l) To perform such other duties as may be prescribed by this charter or required by ordinance of the city council.
(Referenda 11/4/86; 11/2/10)

Section 6. Removal of chief administrator.

The mayor shall have the right to remove the chief administrator from office. Prior to any removal from office, the mayor shall inform the city council, during executive session, of such intention and the reasons for the removal. Following the executive session, the city council may allow the removal to proceed without taking any further action or may, within two business days, schedule a hearing to be held within 30 days to discuss the removal of the chief administrator.

If the council schedules a hearing in which the removal of the chief administrator is the topic, the chief administrator shall have the right to be present, speak, be represented by counsel and present a defense, and such hearing shall be conducted in accordance with state and federal laws and constitutional requirements.

Following the hearing, the city council may override the mayor's decision to remove the chief administrator from office by a vote of a vote of at least seven (7) members of the city council.

Section 6 Section 7. Vacancy in office of ~~city manager~~ chief administrator.

During any vacancy in the office of ~~city manager~~ chief administrator, and during any absence or disability of the ~~city~~

~~manager~~ chief administrator of more than sixty (60) days, the city council shall designate a properly qualified person to perform the duties of ~~city manager~~ chief administrator and fix such person's compensation. During a temporary absence of sixty (60) days or less, the ~~city manager~~ chief administrator may designate a qualified person to perform the duties of manager during such absence. While so acting, such person shall have the same powers and duties as those given to and imposed on the ~~city manager~~ chief administrator. Before entering his or her duties, he or she shall give bond to the City of Portland in a sum and with surety or sureties to be approved by the city council. The premium on such bond is to be paid by the city. (Referendum 11/2/10)

~~Section 7~~ **Section 8. Duties of administrative officers.**

Duties of administrative officers shall be prescribed by the appointive power, but such duties shall not be inconsistent with this charter or any ordinance enacted by the city council as provided herein. (Referendum 11/4/86; 11/2/10)

~~Section 8~~ **Section 9. Continuity in office.**

Any and all officers, department heads, and employees of the City of Portland on the effective date of this charter shall continue in such capacity until a successor is appointed and qualified as provided herein, unless sooner removed ~~by the appointive power designated herein pursuant to the procedures provided for in this charter.~~ (Referendum 11/4/86; 11/2/10)

Section 10. Removal of officers.

Officers appointed under section 1(a) of this article may be removed from office by a vote of at least seven (7) members of the full council.

Section 11. Removal of department heads.

In consultation with the mayor, the chief administrator shall have the right to remove any department head. The chief administrator shall provide notice and written explanation to the review committee within one week of such removal.

Section 12. Review committee.

The review committee shall consist of members of the city council. The review committee shall establish performance guidelines for regular evaluations, no less than annually, by the city council of the performance of the corporation counsel and city clerk, such

evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities.

The mayor shall lead the annual review of the chief administrator in conjunction with the review committee based upon the established performance guidelines.

To the extent consistent with state law, the city's personnel policies, and labor agreements, the review committee shall hold regular meetings, no less than annually, with the chief administrator and department heads. The purpose of these meetings shall be to understand the general working conditions and morale at city hall.

ARTICLE VII. BUSINESS AND FINANCIAL PROVISIONS

Section 1. Accounts and records.

Accounts shall be kept by the director of finance, showing the financial transactions of all departments of the city, and the school department. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the city. The director of finance shall furnish to the ~~city manager~~ chief administrator and mayor each month a report containing in detail the revenues, expenses and expenditures of the city on all accounts, and for each appropriation item the expenditures made and the obligations incurred during the preceding calendar month and the total unencumbered balance. All the accounts of the city and the school department shall be audited annually by a qualified certified public accountant to be chosen by the city council. (Referendum 12/1/75; 11/2/10)

Section 2. Collaboration between city and schools.

To the extent practicable and lawful, the city and the school department shall endeavor to share staff and resources and otherwise cooperate with one another in order to provide better city and school services in a cost effective manner. (Referendum 11/2/10)

Section 3. Reports.

The director of finance shall publish each month a set of financial statements reflecting the financial condition of the city and the school department, and such other financial information as may be required by the city council.

The director of finance shall produce a comprehensive financial report on an annual basis which conforms to "Generally Accepted Accounting Principles." (Referendum 11/2/10)

Section 4. Fiscal year.

The fiscal year of the city shall be July 1 through June 30, or such other fiscal year as the city council shall determine. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 5. Annual budget.

The city council shall develop and implement a participatory budgeting system wherein a portion of the city budget is allocated based on a process that involves the input from as many residents of Portland as possible. To achieve such participatory system, the city council may establish a subcommittee, task force, or any other structure that is necessary and proper for the design, implementation, and management of a participatory budgeting system.

~~Not~~ After the participatory budgeting process, but in no event later than two (2) months before the end of the fiscal year, the ~~city manager~~ mayor shall submit to the city council a proposed city budget prepared by the ~~city manager~~ chief administrator and mayor for the ensuing fiscal year. The mayor shall submit comments on the proposed city budget, along with any proposed modifications, concurrently with the manager's submission.

The city council shall fix a time and place for holding a public hearing upon the proposed city budget prepared by the ~~manager~~ chief administrator and mayor, and shall give not less than ten (10) days prior public notice of such hearing, which hearing shall be at least ten (10) days before the final passage of the appropriation resolve. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 6. Budget content.

The proposed city budget prepared by the ~~manager~~ chief administrator and mayor shall provide a complete financial plan of city general and enterprise funds and activities for the ensuing fiscal year. In organizing the budget, the ~~city manager~~ chief administrator and mayor shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating proposed tax levies, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year.

The total of proposed expenditures shall not exceed the total of proposed income. (Referenda 6/13/78; 11/2/10)

Section 7. Appropriation resolve.

The city council shall adopt the annual appropriation resolve

for the next fiscal year on or before the last day of the twelfth month of the fiscal year currently ending. Such resolve shall appropriate those amounts deemed necessary for general city purposes and additionally one gross amount for school purposes as required by section 5 of article III. The total amount appropriated shall not exceed the estimated revenue of the city.

If it fails to adopt such resolve by this date, the city council may make appropriation for current departmental expenses, chargeable to the appropriation for the year, when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force. These continuing appropriations shall not be subject to the mayor's veto in section 8 below.

The city council may by resolution appropriate to any purpose or object for which there shall have been no appropriation for the current year, or for which the appropriation for the current year has proved insufficient, any accruing revenue of the city not appropriated as hereinbefore provided and any unencumbered appropriation balance, or portion thereof, remaining after the purpose of the appropriation shall have been satisfied or abandoned. Such supplemental appropriations ~~shall not be~~ are subject to the mayor's veto in section 8 below. (Referenda 6/13/78; 11/2/10)

Section 8. Mayoral veto of general city purposes appropriations in the appropriation resolve.

Within five (5) business days of the meeting at which the city council adopts the annual appropriation resolve or any supplemental appropriation resolution referenced in section 7 of article VIII above, the mayor may veto the appropriation for general city purposes or the supplemental appropriation in such resolve by written communication to the ~~other members of the city council~~. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

Any such veto of the appropriation for general city purposes shall not affect city payment of debt service obligations on previously authorized bonds, nor shall it affect the school budget appropriation.

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be

overridden by a vote of at least ~~six (6)~~ two-thirds (2/3) of the members of the city council. ~~The mayor shall not vote on such override item.~~

If a veto is overridden, the general city purposes appropriation will take effect on the first day of the fiscal year, or on the day immediately following the override vote, if such vote is after the first day of the fiscal year.

If a veto is not overridden, then at the same meeting the override vote is taken, the general city purposes appropriation which was vetoed shall become an item for further consideration by the city council, without the need for a motion for reconsideration, and the city appropriation may be modified, amended, or otherwise acted upon to secure passage at that meeting or a subsequent meeting without the need for two readings prior to passage.

In the event the city council does not override the veto or does not secure passage of the annual appropriation for general city purposes prior to the start of the fiscal year, or has not otherwise acted to provide continuing appropriations under the second paragraph of section 7 above, then the appropriations for general city purposes in effect for the prior fiscal year shall go into effect as of the first day of the fiscal year, with expenditures chargeable to the appropriation for the year, until the appropriation for general city purposes is approved.
(Referendum 11/2/10)

Section 9. Unexpended appropriations.

All appropriations in the annual budget shall lapse at the close of the fiscal year unless specifically continued by order of the city council, and the unexpended appropriations shall be transferred to the appropriate fund balance account. (Referendum 11/2/10)

Section 10. Borrowing.

The borrowing of money by and for the city shall be limited as to form and purpose by section 11 and section 12 of this article. The credit of the city shall in no manner be loaned to any individual, association or corporation. (Referendum 11/2/10)

Section 11. Bond issues.

Money may be borrowed, within the limits fixed by the constitution and statutes of the state, now or hereafter applying

to Portland, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings, the proceeds to be used for the acquisition of land, the construction, reconstruction, major alteration, extraordinary repairs, and equipment of buildings and other permanent public improvements, the purchase of departmental equipment, for economic development to the extent determined by the City Council to serve a valid public purpose, to create reserves to settle workers' compensation obligations, to fund, refund, pay or to create reserves for the payment of the city's unfunded pension fund liabilities and for the payment of refunding bonds, notes and other evidences of indebtedness previously issued, or for any other purpose permitted by state law.

No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in two (2) public places in the City of Portland and publishing such notice at least twice in a newspaper of general circulation in Portland at least two (2) weeks before final action of the city council. In addition, the city council may, in its discretion, provide that such notice shall be published on the city's website and in such other additional media as the city council determines are appropriate to notify the general public of the public hearing.

Any order authorizing the issue of bonds must be approved by vote of at least seven (7) members of the city council. (Referenda 11/4/86; 11/5/91; 11/8/94; 11/2/99; 11/2/10)

Section 12. Temporary loans.

Money may be borrowed in anticipation of receipts from taxes during any fiscal year but the aggregate amount of such loans outstanding at any one (1) time shall not exceed eighty percent of the revenue received from taxes during the preceding fiscal year. All such loans shall be paid within the year out of the receipts from taxes for the fiscal year in which the loans are made. Money may be borrowed in anticipation of money to be received from the sale of bonds to be issued, in case such bond issue has been authorized; all such loans shall be subject to the provisions of the laws of the State of Maine in relation thereto. This section shall not limit in any way the power granted to towns and cities to borrow money as contained in the Revised Statutes of the State of Maine and acts amendatory thereof and additional thereto. (Referendum 11/4/86; 11/2/10)

Section 13. Payments.

The director of finance shall establish adequate financial controls to reasonably ensure that all payrolls, bills and other claims and demands against the city are in proper form, correctly computed, duly certified and legally due and payable.

The director of finance may require any claimant to make oath to the validity of his or her claim, may investigate any claim and for such purpose or purposes may examine witnesses under oath.
(Referendum 11/2/10)

Section 14. Bonds of officers.

The city council shall require a bond with sufficient surety or sureties, satisfactory to the city council, from all persons trusted with the collection, custody or disbursement of any of the public moneys; and may require such bond from such other officials as it may deem advisable; the premium charges for such bonds to be paid by the city. (Referendum 11/2/10)

Section 15. Collection and custody of city moneys.

All moneys received by any officer, employee or agent of the city belonging to the city, or for or in connection with the business of the city, shall forthwith be paid by the officer, employee or agent receiving the same into the city treasury, and shall then be deposited by the director of finance with a federally insured banking institution or institutions or insured credit union or unions. All interest from all deposits of money belonging to the city shall accrue to the benefit of the city. (Referendum 11/2/10)

Section 16. Voter referendum required for certain city council actions.

- (a) The city council shall submit the following to voter referendum:
 - (1) Orders or resolves authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment; or
 - (2) Orders or resolves directly or indirectly obligating the city to expend, over a term greater than one (1) municipal year, municipal tax funds in excess of an amount greater than seven and one-half one-hundredths of one (1)

percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment.

- (b) The provisions of this section shall not be applicable to any order or resolve authorizing (i) the refunding of any securities or other obligations of the city; (ii) the issuance of general obligation securities, or other direct or indirect obligations, of the city for streets, sidewalks, or storm or sanitary sewers; or (iii) any construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other declared emergency. For purposes of this section, the city council may by vote of at least seven (7) of its members adopt emergency orders or resolves authorizing construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other emergency and such orders or resolves shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the city council shall be conclusive.
- (c) Any order or resolve described in subsection (a) of this section shall be approved by separate action of the city council.
- (d) No order or resolve described in subparagraph (a) of this section, not excepted by subparagraph (b), shall become effective until approved by a majority of voters voting at a regular or special municipal election. In the event that the total number of votes cast for and against the question for the referred order or resolve should be less than ten (10) percent of the registered voters of the city, then such order or resolve shall be deemed to be approved and effective.
- (e) The form of the ballot question for the referred order or resolve shall be substantially as follows:

Shall the order or resolve entitled " _____
_____", be approved?
(Referendum 11/4/86; 11/2/10)

ARTICLE VIII. MISCELLANEOUS PROVISIONS

Section 1. No personal interest.

Neither the mayor nor any~~No~~ member of the city council or school board or board or commission thereof and no officer or employee of the city or school department shall:

- (a) Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland or the school board, except his or her employment contract, or in the sale to or by the city or school department of any land, materials, supplies or services when such officer, employee or member exercises on behalf of the city or school department any function or responsibility with respect to such contract or sale. All contracts or sales made in violation hereof are void, and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such transaction.
- (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties.
- (c) Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Referenda 11/4/86; 11/2/10)

Section 1-A. Ethics Commission and Code of Ethics

Ethics Commission and Code of Ethics Ordinance. The city council shall enact and maintain an ordinance that establishes an ethics commission and, with input from the ethics commission, shall enact a code of ethics ordinance to be administered by the ethics commission. Upon the effective date of the code of ethics ordinance, the existing code of ethics resolution adopted by the

city council shall be repealed. The ethics commission shall provide impartial oversight and render decisions and advisory opinions to ensure that standards of ethical conduct are observed by elected and appointed City officials and City employees.

(a) Ethics Commission Ordinance.

The city council shall enact an ordinance directing it to create an ethics commission, appointed by the city council and consisting of seven (7) members who are residents of the City, serving for three (3) year terms, to undertake the following duties:

1. Prepare and recommend a code of ethics ordinance to the city council for enactment as provided in subsection (b) below;
2. Review the ethics commission and code of ethics ordinances not less than once every three (3) years and make recommendations for any amendments to the city council;
3. Hear complaints and render written decisions with findings of fact regarding alleged violations of the City's code of ethics ordinance, provided that complaints regarding City employees' ongoing or prior alleged violations or misconduct shall be referred to the City for appropriate action under its personnel policies;
4. Hear and render advisory opinions regarding questions of prospective application of the City's code of ethics ordinance;
5. Hear and render advisory opinions regarding questions of compliance with the City charter;
6. Hear and render advisory opinions regarding adherence to council and board rules and procedures;
7. On receipt of requests from a majority of the city council or of any board or committee, procure a second legal opinion from outside legal counsel; and
8. Design and oversee program evaluations.

Elected City officials, candidates for any City elected office, and their immediate family members are not eligible to be appointed as members of the ethics commission.

The ethics commission shall meet as needed, but no less than annually.

The ethics commission ordinance shall establish the process for filing, hearing and deciding complaints and for soliciting

advisory opinions. Complaints may be filed by any official, employee, or resident of the city, by the accountability officer, or may be initiated by the ethics commission, in accordance with that process. Requests for advisory opinions may be filed by any official or employee of the city, in accordance with that process. Receipt of a complaint or request shall be acknowledged by the ethics commission. If the ethics commission finds any complaint filed with it to have been based upon allegations it determines to be frivolous, scurrilous, libelous, unsubstantiated, unfounded, of nuisance, or with malice, it may so determine and may dismiss the complaint without deciding the merits of the complaint.

The ethics commission ordinance and complaint process shall protect the identity and rights of complainants, whistleblowers, and persons complained against in accordance with and as required by all State and federal laws, regulations, codes, municipal ordinances, and policies, including but not limited to the Maine Freedom of Access Act, the Maine Whistleblowers' Act, and the City of Portland's personnel policies. The ethics commission shall refer any complaint alleging corruption, fraud, or abuse of a criminal nature to the appropriate law enforcement agency.

The ethics commission shall be an independent body, free from interference from any City elected and appointed officials and employees. The ethics commission may request funding from the city council for independent investigations, legal services, staffing, or other demands pertinent to its mission.

(b) Code of Ethics.

The city council shall, with the recommendation of the ethics commission, enact and maintain a code of ethics ordinance defining the code of ethical conduct for elected and appointed City officials and City employees. At a minimum, such code of ethics ordinance shall include and address:

1. Standards of Conduct;
2. Conflicts of Interest;
3. Confidential Information; and
4. Disclosure Forms for City elected and appointed officials to complete and file with the city clerk and update as appropriate.

(c) Appointment of Accountability Officer.

The ethics commission may recommend that the city council appoint an accountability officer and fund that position. The accountability officer shall: serve as an ombudsperson to members

of the public; provide City information to the public and officials to educate them about government accountability, integrity, and transparency; provide training for public officials on ethical matters; and undertake such other duties as may be requested by the ethics commission and authorized by the city council. The accountability officer may provide administrative support for the civilian police review board. The accountability officer also shall receive complaints from the public about alleged government waste, favoritism, mismanagement, and violations of the public trust; the accountability officer will refer matters that are within the scope of the ethics commission's duties to the ethics commission, and vice versa.

(d) Violations of the Code of Ethics.

Violations of the code of ethics ordinance shall be addressed as set out in that ordinance, provided, however, that any city councilor or mayor found by the ethics commission to be in violation of or to have violated the ethics code may be reprimanded or censured by the city council.

Section 1-B. Peaks Island Council.

The city council shall maintain an ordinance establishing the "Peaks Island Council," including powers, duties, membership requirements and other necessary provisions deemed appropriate by the city council. The Peaks Island Council shall act as an elected advisory body to the city council.

Section 2. Ordinances, rules and regulations continued.

All ordinances in force at the time that this charter takes effect, not inconsistent with this charter, shall continue in force until amended or repealed. All rules and regulations of the municipal officers or of any office of the City of Portland in force at the time that this charter takes effect, not inconsistent with the provisions hereof, shall continue in force until amended or repealed.

Section 3. Continuity of actions.

All rights, actions, proceedings, prosecutions and contracts of the city or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent therewith shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Section 4. Summons before city council and civil service commission.

The clerks of the supreme judicial and superior courts may issue summonses or subpoenas for witnesses to attend and to produce books, documents and papers at any meeting of the city council or of the civil service commission of the City of Portland at which a hearing is had in any matter regarding any alleged dereliction, which summonses shall be served as summonses are required to be served in matters before the supreme judicial or superior courts. Failure to obey a summons or subpoena shall be punished by the appropriate court in the same manner as contempt is punished under the general law. (Referendum 11/4/86)

Section 5. Effect of private and special laws.

Private and special laws which apply to the City of Portland in effect on November 4, 1986 shall continue in force until amended or repealed. (Referendum 11/4/86)

Article IX. CIVILIAN POLICE REVIEW BOARD

Section 1. Purposes, composition, term, appointment, first board, qualifications, vacancies, removal, compensation.

- (a) **Purposes.** For the purposes of increasing public trust and confidence in the Portland Police Department, there shall be a civilian police review board.
- (b) **Composition, term, appointment, first board.** The civilian police review board shall be composed of nine (9) or more members who shall hold office, except as hereinafter provided, for a term of three (3) years unless appointed to fill a vacancy, and until their successors are appointed and qualified, but in no case longer than 120 days after expiration of their term. A minimum of four (4) voting members shall be appointed by the city council, one (1) voting member shall be appointed by the mayor and three (3) non-voting members shall be appointed by the city council. A majority of the total number of voting members appointed shall constitute a quorum of the board and the board shall act by a majority of voting members present and voting.

For the first board appointed following its creation, the city council and mayor shall first select from the current members of the police citizen review subcommittee, currently established by City ordinance, which subcommittee

shall be supplanted by the board, in making appointments to the board. On the first board, two voting members shall serve for a one (1) year term, two voting members shall serve for a two (2) year term, and the voting member appointed by the mayor, shall serve for a three (3) year term; and one non-voting member shall serve for a one (1) year term, one non-voting member shall serve for a two (2) year term, and one non-voting member shall serve for a three (3) year term. Thereafter, all members shall serve for a term of three (3) years. No person shall be appointed to, nor serve, more than three (3) consecutive full terms or nine (9) consecutive years, whichever is greater, on the board. Following appointment of the first board, the city council shall exercise its power of appointment only after the city clerk has published a notice announcing the availability of board positions, describing the responsibilities thereof and soliciting applications by qualified persons, in a newspaper of general circulation at least 15 days before the city council acts to appoint to the board.

- (c) **Qualifications.** All candidates for the civilian police review board must be at least 18 years of age and must be residents of the City for a period of at least three (3) months prior to the date on or before which the board member is to be seated.
- (d) **Vacancies and Removal.** The City Council shall provide by ordinance procedures for vacancies and removal of members.
- (e) **Training.** Prior to assuming their duties hereunder, civilian police review board members shall attend training provided by city staff as to the board's duties and responsibilities, applicable state and local law, ordinances and rules and regulations, accepted police practices and the police department's internal affairs investigation process.
- (f) **Confidentiality.** Each member of the civilian police review board is obligated to maintain the confidentiality of all information and documents either provided to or reviewed by them, in accordance with state law. Failure to maintain such confidentiality will constitute "cause" for removal from the board under (d) above. All reports prepared by the board and all requests received by the board for disclosure of any information or documents in the custody of the board or its members shall be referred to the corporation counsel for review prior to release.

- (g) **Transition.** The city council shall promptly consider and enact an ordinance to implement this Article, which ordinance upon its effective date also shall repeal the existing Police Citizen Review Committee ordinance provisions in Chapter 2, Art. IV, Div. 4 of the Code of Ordinances, City of Portland, Maine.

Section 2. Powers and duties.

- (a) **Complaints.** The civilian police review board shall receive all complaints brought by civilians regarding the Portland police department and shall refer such complaints to the Portland police internal affairs department. Members of the police department may bring complaints to the board, to internal affairs, or to command; the board shall refer any such complaints it receives to internal affairs. Portland police department command shall review internal affairs draft findings on complaints and shall submit its report on the conclusions of any investigation on complaints to the board for consideration no more than fourteen (14) days after the findings become final and after any final disciplinary action has been taken and all appeals exhausted or settled or the case has been closed with no disciplinary action. Neither police officers nor their representatives may file complaints regarding disciplinary actions or personnel matters under this subsection.
- (b) **Review, reports.** The board shall review all final investigation reports submitted by internal affairs and/or command staff under Section 2. (a) above for due process issues, including but not limited to, issues of fairness, thoroughness, objectivity, and timeliness. Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the board issued to address complaints filed under Section 2. (a) above shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable. Reports of the board shall be made available to the public to the extent consistent with the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 et seq.
- (c) **Appeals.** The city council shall by ordinance adopt an appeal process consistent with federal, state, and local law for persons aggrieved by a report issued by the civilian police review board on complaints filed with the Board under Section 2. (a) above to appeal that Board report to the city council or such other body as the city council may designate or create for a hearing, in executive session where required,

and for the issuance of an advisory opinion which shall not be legally binding on the city, the police department, police officers, or individuals, and which hearing and advisory opinion shall not include or address any disciplinary proceedings. Neither police officers nor their representatives may file appeals regarding disciplinary actions or personnel matters under this subsection.

(d) **Policy.** The civilian police review board shall be able to make policy recommendations to the mayor, the city council, and the chief of police.

(e) **Annual report, communications, additional duties.** The civilian police review board shall hold a public hearing at least annually to receive comments upon the community complaint process and to engage City residents as to the board's purposes and goals, and shall prepare and present to the mayor, city council, and chief of police an annual report, including but not be limited to, policy and funding recommendations, and the number of complaints submitted to the board and the number of complaints resolved during the previous year. Any recommendations made by the board regarding the police department shall be based on policy evaluations, may be assigned by the city council and mayor to staff for research, and may be enacted or implemented. The board also may, in its discretion, address the city council on an as-needed basis. The city council and mayor may add to the board's duties by ordinance at any time.

(f) **Board Officers & Procedural Rules.** The civilian police board shall annually elect one of its members to serve as chair, and shall annually elect one of its members to serve as vice-chair, to serve in the absence of the chair. The City Council shall by ordinance establish rules of procedure and board member roles. The board may recommend such rules to the City Council.

Section 3. Funding, staff, resources.

(a) **Funding, staff.** The civilian police review board shall be funded as needed by the city council through the annual budget. Such funding shall include professional staff, including but not limited to a "Community Liaison" and a "Police Liaison" familiar with Portland police department standard operating procedures. The city council shall decide whether the community liaison and police liaison positions are part-time or full-time and/or whether the duties of these positions may be assigned to existing employees. The

community liaison shall serve at the direction of the board and shall ensure the public is aware of the methods for filing complaints, and shall assist the board with carrying out its duties, powers and functions, conducting outreach and with other duties as the board may assign. The board may request additional funding from the city council at any time. The police liaison may be the same person/position as the "technical advisor" described in Section 3(b) below.

(b) Resources. The city shall make available to the board the services of a technical advisor, as needed by the board. The technical advisor may be used for the purposes of training; briefing the board on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the board on aspects of the internal investigation process. The technical advisor shall be retained by the city manager after consultation with the chief of police, representatives of the police unions and the chair of the board. Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor. The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the board to conduct its duties hereunder. In no case shall the board have access to police officers' personnel records except to the extent that they are part of an internal affairs investigation report or are considered a public document under the Maine Freedom of Access Act.

(c) Coordination. The board shall work in conjunction with the City's communications department, internal affairs, and any other city departments or offices to effectuate all powers and duties granted to it in this charter and any additional duties assigned to it by the city council or mayor.

APPENDIX A

Charter Legislative History

1. Town of Portland incorporated by Act of Commonwealth of Massachusetts on July 4, 1786; Town of Portland Records, p. 1
2. City of Portland incorporated by adoption of charter on March 26, 1832; original charter can be found in Chapter 248, Special Laws of Maine 1832, p. 380; amendments as follows:
 - c. 325, S.L. 1833, p. 501
 - c. 500, S.L. 1834, p. 749
 - c. 402, S.L. 1838, p. 511
 - c. 541, S.L. 1839, p. 648

c. 33, P & SL 1842, p. 25
c. 200, P & SL 1845, p. 258
c. 266, P & SL 1845, p. 310
c. 233, P & SL 1849, p. 333
c. 330, P & SL 1850, p. 458
c. 167, P & SL 1853, p. 158
c. 35, P & SL 1857, p. 48
c. 103, P & SL 1857, p. 93
c. 109, P & SL 1857, p. 100
A total revision of the charter was accomplished in 1863; c. 275, P & SL 1863, p. 257; amendments as follows:
c. 348, P & SL 1870, p. 316
c. 647, P & SL 1871, p. 624
c. 21, P & SL 1875, p. 16
c. 8, P & SL 1881, p. 9
c. 86, P & SL 1881, p. 86
(c. 450, P & SL 1897, p. 707--Revision of charter rejected by voters in 1897)
c. 384, P & SL 1901, p. 569
c. 68, P & SL 1903, p. 116
(c. 287, P & SL 1905, p. 328--abolishing common council rejected by voters April 24, 1905)
c. 344, P & SL 1907, p. 638
c. 427, P & SL 1907, p. 758
(c. 148, P & SL 1921, p. 513--"Murray Bill" charter revision rejected by voters September 13, 1921)
(c. 149, P & SL 1921, p. 532--"Brewster Bill" charter revision rejected by voters September 13, 1921)
A total revision of the charter was accomplished in 1923 by adoption by voters of "Brewster Bill" on September 11, 1923; c. 109, P & SL 1923, p. 596; ("Nichols Bill" c.104, P & SL 1923, p. 557 was rejected same date); amendments as follows:
c. 56, P & SL 1929, p. 484
(c. 112, P & SL 1929, p. 604--Mayor--Alderman form rejected by voters on September 10, 1929)
c. 31, P & SL 1931, p. 353
c. 50, P & SL 1945, p. 629
c. 113, P & SL 1945, p. 736
c. 144, P & SL 1945, p. 71
c. 72, P & SL 1947, p. 722
c. 72, P & SL 1949, p. 765
c. 103, P & SL 1949, p. 803
c. 28, P & SL 1953, p. 528
c. 108, P & SL 1955, p. 756
c. 88, P & SL 1957, p. 707

c. 143, P & SL 1959, p. 873

A total revision of the charter was accomplished in 1961; c. 194, P & SL 1961, p 1125; amendments as follows:

c. 64, P & SL 1963, p. 966

c. 65, P & SL 1963, p. 967

c. 157, P & SL 1963, p. 1187

c. 177, P & SL 1963, § 1, p. 1291

(c. 6, P & SL 1965, p. 649 rejected by voters on December 6, 1965)

c. 7, p & SL 1965, p. 650

c. 81, P & SL 1965, p. 760

(c. 127, P & SL 1965, p. 849 rejected by voters on December 6, 1965)

c. 221, P & SL 1967, p. 136

c. 83, P & SL 1969, p. 1628

c. 136, P & SL 1969, p. 1792

c. 146, P & SL 1969, p. 1820

(c. 185, P & SL 1969, p. 1958 rejected by voters on November 3, 1970)

State constitutional law reference--Municipal home rule,
Const. of Maine, Art. VIII, Pt. 2.

Referend12/4/72 Art. I,
a 1

Referend12/1/75 Art. II, 2
a

Art. IV, 2

Art. IV, 4

Art. V,
2

Art. VII 1

Referend11/2/76** Art. II, 1
a

Art. II, 4

Art. III 1,2,5

Art. IV, 2,3,4,
6

Art. V,
2

Referenda 6/13/78 Art. II, 1,2,3,5

Art. III, 1,2,3,4

Art. IV, 1,2,3,6

Art. VII,3,4,5,6

Referenda 11/4/86***Art. II, 1,2,4,5

Art. III, 1,5

Art. IV, 1,2,3,4,6,7,9

Art. V, 1,2,3,4,5,6,7

Art. VI, 1,2,5

Art. VII 7-10 (Rp1d)

Art. VI, 11-12 (Rnbd as Art. VI,
7-8)

Art. VII, 3,4,9,10,16

Art. VIII, 1,4,5

Art. VIII, 6 (Rp1d)

Referenda 11/3/87 Art. II, 2

Art. III, 1

Referenda 11/5/91 Art. VII, 9 Referenda 11/8/94 Art. VII, 9
Referenda 11/2/99 Art. II, 4
Art. III, 5
Art. VII, 9
Referenda 11/7/00 Art. II, 3,5
Art. III, 2,3
Art. IV, 2
Referenda 11/6/01 Art, IV, 2,6,8,10 Referenda 11/4/08 Art. IV,
3,4,5, 6,7,11
Referenda 11/2/10**** Charter Revisions recommended
by the Portland Charter Commission established on November 4,
2008, and passed by the voters on November 2,2010

****Editor's note--**The amendment establishing district councilor elections became effective January 1, 1976, except that for the purpose of nomination and election of district councilors such amendment shall apply as the presently occupied district seats become available thereafter by normal expiration of term or by vacancy and to every district election thereafter.

*****Editor's note--**A referendum passed Nov. 4, 1986 and effective July 1, 1987, repealed former sections 7 through 10 of article VI to eliminate references to obsolete offices (assistant assessors, director of public welfare) and renumbered former sections 11 and 12 as 7 and 8 respectively. Former sections 7 through 10 derived from the legislation enumerated in the first editor's note to this Charter.

*****Editor's note--**A referendum passed Nov. 4, 1986, effective July 1, 1987, amended section 4 of article VIII to clarify the summons-subpoena power and to provide that failure to obey either a summons or a subpoena will subject offenders to contempt. Former section 5 of this article was deleted as a result of the amendment to section 4 and a new section 5 added to preserve certain rights granted to the city by special acts of the legislature. Former section 6 was deleted to conform to 30 M.R.S.A. § 1915(4) which establishes the effective date of Charter revisions. See the editor's note to the Charter for derivations of deleted sections.

******Editor's note--**Portland voters approved a referendum passed on November 4, 2008 to establish a Portland Charter Commission to make recommendations to revise the Portland City Charter. Those recommendations were subsequently passed by the voters on November 2, 2010, and incorporated the provisions on the popularly elected mayor in Article 2, as well as making changes to the School and Elections articles and technical amendments throughout the

document.

VI. ATTORNEY LEGAL OPINIONS

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July 7, 2022

Michael Kebede, Chair
Portland Charter Commission
389 Congress Street
Portland, ME 04101

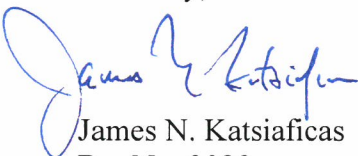
Re: 2021-2022 Portland Charter Commission
Request for Legal Opinion

Dear Chair Kebede and Commissioners:

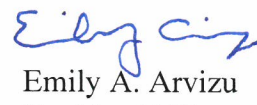
We have acted as legal advisor to the Portland Charter Commission with regard to its Charter revision process during 2021 and 2022. Pursuant to 30-A M.R.S. § 2103(5)(D)(4), we hereby provide our written legal opinion concerning City of Portland Charter modifications/Ballot Questions #1, #2, #4, #6, #7 and #8. These each are set forth in the Commission's Final Report. We are attorneys admitted to the bar of the State of Maine. We have examined the Final Report containing the proposed Charter modifications created by the Commission, as well as the law and such records of the Commission and other papers as we deem necessary to render this opinion.

Based upon our representation of the Commission and the foregoing, we are of the opinion that the proposed Charter modifications/Ballot Questions #1 (Preamble and Land Acknowledgement), #2 (Governance), #4 (Proportional Ranked Choice Voting), #6 (Peaks Island Council), #7 (Police Oversight) and #8 (Ethics Commission) do not contain any provision prohibited by the United States Constitution, the Constitution of the State of Maine or the general laws as they presently exist.

Sincerely,


James N. Katsiaficas
Bar No. 3029


Brandon J. Mazer
Bar No. 4865


Emily A. Arvizu
Bar No. 6585

MEMORANDUM

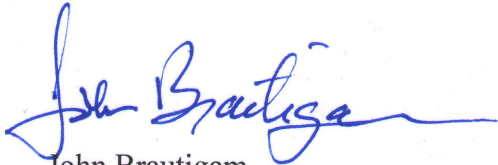
To: Michael Kebede, Esq.
Chair, City of Portland 2021-22 Charter Commission

From: John Brautigam, Esq.

Date: July 7, 2022

Re: Opinion of Attorney re: Legality of Proposed Charter Modifications

Pursuant to 30-A M.R.S.A. § 2103(5)(D)(4), it is my opinion that the Charter language in BALLOT QUESTION #3 (attached) does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.



John Brautigam
Maine Bar #8223

BALLOT QUESTION #3—Clean Elections

1. Proposed Summary

QUESTION #3

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Clean Elections as Summarized Below?

Summary: These modifications establish a City of Portland Clean Election Fund to provide public campaign funds to qualified candidates for elected municipal offices, beginning in FY 2023-2024. Candidate participation shall be voluntary. The city council shall provide an independent allocation from the city’s budget each year to sustain the Clean Election Fund and the city council shall by ordinance direct that the Clean Election Fund must:

- Limit the amount of funds a participating candidate may raise;
- Be limited to candidates who meet certain requirements, such as demonstrated public support and participation in a city-sponsored forum or voter education event; and
- Require that all unused funds be returned to the Clean Election Fund.

In addition to establishing the Clean Election Fund, these modifications:

- Prohibit corporate contributions to any candidate for municipal office;
- Prohibit ballot question contributions or expenditures from any entity that is substantially under foreign influence; and
- Require that all contributions to campaigns be reported to the city clerk and that the city clerk create a searchable online database of information contained in filed registrations and campaign finance reports.

2. Charter Language

Note: This contains only the provisions related to the Commission proposals in **Question # 3** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

Amend ARTICLE IV., ELECTIONS, to add Section 12, Public financing of municipal elections, and Section 13, Campaign finance rules, as follow:

Section 12. Public financing of municipal elections.

The city council shall establish and fully fund a City of Portland Clean Election Fund (hereinafter, the “Clean Election Fund” or the “Fund”) to provide public campaign funds to qualified candidates for elected municipal offices. The Clean Election Fund must be available to candidates in municipal elections beginning in FY 2023-2024. Candidate participation in the Clean Election Fund shall be voluntary.

Beginning in FY 2023-2024 to allow for implementation for the November 2023 election, the

city council shall provide an independent allocation from the city's budget each year to ensure the Clean Election Fund is sustained at a level that facilitates competitive campaigns for participating candidates who meet qualifying criteria. The Clean Election Fund shall be administered by the city clerk and the city council shall appropriate sufficient funds to ensure there are adequate resources, including paid staff, to effectively administer the Fund.

The city council shall maintain an ordinance directing the operation of the Clean Election Fund. The ordinance shall direct that the Clean Election Fund must:

- (a) Limit the amount of private funds a participating candidate may raise;
- (b) Be limited to candidates who
 - i. demonstrate public support;
 - ii. enter into a binding agreement stating that the candidate will not accept private contributions other than those which are permitted by the Clean Election Fund; and
 - iii. agree to participate in at least one (1) city-sponsored forum or voter education event.
- (c) Require that all unused funds from a participating candidate's campaign be returned to the Clean Election Fund within one hundred (100) days after the date of the election.

The city council may adopt additional regulations and ordinances not inconsistent with this section.

Section 13. Campaign finance rules.

- (a) **Corporate Contributions.** A business entity may not make contributions to any candidate for municipal office. The term "business entity" refers to a firm, partnership, corporation, incorporated association, or other organization, whether organization as a for-profit or a nonprofit entity. A separate segregated fund committee may not make contributions to any candidate for municipal office using funds that derive, in whole or in part, from a business entity. Where a business entity establishes a separate segregated fund committee, that business entity may provide the separate segregated fund committee with the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the business entity.
- (b) **Foreign Contributions.** The city council shall by ordinance enact a prohibition on ballot question contributions or expenditures from any entity that is substantially under foreign influence, including any entity owned by a foreign government and any entity with substantial foreign ownership. The city council shall promulgate rules to specify compliance requirements and otherwise to enforce this ordinance.
- (c) **Additional Rules by Ordinance.** The city council may adopt additional regulations and ordinances governing campaign spending, not inconsistent with this section.

- (d) **Campaign Contributions Reporting.** All contributions to campaigns for candidates or ballot questions must be reported to the city clerk, in conformance with any applicable State law. The clerk must establish a searchable, online, and publicly-accessible database of all information included in all registrations and campaign finance reports filed with the clerk.

June 29, 2022

Delivery via email to mkebede@portlandmaine.gov and jkatsiaficas@perkinsthompson.com

City of Portland Charter Commission
c/o Perkins Thompson
P.O. Box 426
Portland, ME 04112
Attn: James N. Katsiaficas, Esq.

RE: Opinion on Proposed School Budget Charter Revision

Dear Charter Commission:

We serve as counsel to Portland Public Schools. At the request of Portland Public Schools, we provide this opinion to the Charter Commission with respect to the proposed City of Portland Charter revision to the school budget adoption procedures, which is attached hereto as Exhibit A (the “School Budget Charter Revision”).

It is our understanding that the Charter Commission intends to use this opinion to satisfy the statutory requirement that its final report to the City Council “include . . . [a] written opinion by an attorney admitted to the bar of [Maine] that the proposed charter or charter revision does not contain any provision prohibited by the United State Constitution, the Constitution of Maine or the general laws.” 30-A M.R.S.A. § 2103(5)(D).

This letter is in three parts. In Part A, we summarize the School Budget Charter Revision and address some preliminary matters; in Part B, we explain our legal analysis; and in Part C we provide our legal opinion.

A. PRELIMINARY MATTERS

1. What is the School Budget Charter Revision?

The School Budget Charter Revision directs the School Board to submit its proposed budget to a public hearing and to the City Council. After receiving public comment and City Council recommendations, if any, the School Board then determines the school budget. The City Council then submits the School Board’s total budget directly to the City of Portland voters for final approval at a budget validation referendum (BVR) or, if the City voters elect to eliminate the BVR, at a municipal school budget referendum. The School Budget Charter Revision would thus change the City Council’s role to an advisory one in the school budget process. The School Board, rather than the City Council, would determine the total proposed school budget that is submitted to the City voters. The City voters would continue to hold final authority to approve the total school budget at a referendum.

2. Who is our client?

In all matters with respect to the Charter Commission, we have been clear that our client is Portland Public Schools. That includes this opinion letter.

3. May the Charter Commission rely upon our opinion?

Although the Charter Commission is not our client, we recognize that the Charter Commission intends to include our opinion in its final report to the City Council. On the question of whether a charter commission may rely upon the opinion only of its own attorney, and may not rely on the opinion of another party's attorney, we note that the only statutory limitation is that the attorney be a member of the Maine Bar. We further note that the home rule chapter in Title 30-A, where the provision for charter revisions and the requirement for a legal opinion are housed, "shall be liberally construed to accomplish its purposes." 30-A M.R.S.A. § 2109. We also note that the Maine Law Court appears to have largely addressed this question in *Nasberg*, a case that involved the parallel situation of a petitioned charter amendment.¹ See *Nasberg v. Augusta*, 662 A.2d 227 (Me. 1995). In *Nasberg*, the Augusta city attorney wrote an opinion to the mayor and city council that a proposed charter amendment violated the Maine Constitution. The city council advised the charter amendment proponents that in order to get the amendment on the ballot, "they would have to obtain a written opinion by an attorney stating that the proposed charter amendment did not violate any law or constitutional provision." *Id.* at 228. The proponents then sought an injunction ordering the city to place the amendment on the ballot. The Court noted, however, that the proponents did so "[w]ithout securing an attorney's letter." *Id.* The Superior Court granted the city's motion to dismiss, and the Maine Law Court affirmed. Accordingly, in circumstances where the city attorney did not provide "an attorney's letter," the failure to secure a written opinion from another member of the bar to accompany the charter report was the basis of the dismissal. The Court thus effectively said that the written opinion could be provided by an attorney other than the city attorney. For these reasons, we believe the Charter Commission may rely upon this opinion letter for purposes of its final report to the City Council.

4. Is there a conflict of interest?

As previously stated, we are counsel only to the Portland Public Schools, but we acknowledge responsibility to be objective in this opinion letter. In this type of circumstance, a lawyer may have a conflict of interest if there is a significant risk that the representation of the client (Portland Public Schools) would be materially limited by the lawyer's responsibilities to a third party (the Charter Commission); however, even with the existence of such a conflict of interest, in appropriate circumstances, the lawyer may represent the client with the client's informed consent, confirmed in writing. Under the circumstances here, we do not believe there is a significant risk that our duties to Portland Public Schools would be materially limited by our responsibilities to provide an objective opinion letter to the Charter Commission. In any case, we have explained the matter to Superintendent Xavier Botana and School Board Chair Emily Figdor, who requested this letter on behalf of the School Board, and we have obtained informed, written consent to prepare and submit this letter to the Charter Commission.

¹ The *Nasberg* case involved a charter amendment by petition under section 2104 rather than a charter commission revision under section 2103, but the two sections use identical language to require a "written opinion by an attorney admitted to the bar of this State." Compare 30-A M.R.S.A. § 2103(5)(D)(4) (attorney opinion for charter commission revisions) with § 2104(5)(B) (attorney opinion for petitioned charter amendments).

5. *How is this opinion letter different from our Memoranda to Portland Public Schools?*

We have provided various memoranda to Portland Public Schools on proposals to change the budget approval process by charter revision (collectively, “DW Memoranda”). The following DW Memoranda have been circulated previously and the subject of public discussion, and for convenience, they are attached to this letter:

- Memorandum 1: “Portland Charter—School Governance, Policy, and Management Matters,” dated August 11, 2021 (providing a general overview of school governance and charter authority, including the responsibility of the city council or “other municipal legislative body” to determine the total school budget);
- Memorandum 2: “Portland Charter—School Governance, Policy, and Management: The School Budget Approval Process and Bonding Authority,” dated November 5, 2021 (addressing whether the “other municipal legislative body” could be the voters);
- Memorandum 3: “Proposals for Charter Provisions Regarding School Budget Approval Procedures and School Bonding Authority,” dated January 24, 2022 (addressing whether the “other municipal legislative body” could be the school board); and
- Memorandum 4: “Charter Revisions Regarding School Budget Approval Procedures—Review of Charter Commission Education Committee Proposal,” dated April 4, 2022 (providing additional legal analysis regarding the role of the school board as the “other municipal legislative body”).

The DW Memoranda address various subjects, while our opinion in this letter is limited to the School Budget Charter Revision. We express no opinion except as expressly set forth in Part C of this letter.

6. *Is our opinion letter a so-called “clean” opinion or a reasoned opinion?*

This is a reasoned opinion different in function from a third party legal opinion in a commercial transaction. As a reasoned opinion, it reflects our judgment on the current state of the law and our opinion that a court faced with this issue would likely rule that the School Budget Charter Revision is not prohibited by Maine law. This is not a guarantee. As we have noted in our DW Memoranda, there are arguments favoring other legal views on this matter and, consequently, the matter is not without legal risk. We refer you, for example, to the arguments advanced by Attorneys Jim Katsiaficas and Emily Arvizu in their memoranda to the Charter Commission dated December 14, 2021 and April 13, 2022. Portions of our analysis in Part B of this letter address these arguments.

B. ANALYSIS

This Part B provides a summary of our analysis and reasoning for our legal opinion in Part C.

1. *Municipal charter power is broad and entitled to a presumption of validity.*

The Legislature intended municipal home rule authority—including the power to enact and revise a municipal charter—to be a broad grant of local authority. The municipal statute provides that the home rule power, “being necessary for the welfare of the municipalities and their inhabitants, shall be

liberally construed to accomplish its purposes.” 30-A M.R.S.A. § 2109. Thus, charters are entitled to a presumption of validity by Maine courts under home rule principles articulated in the *York* decision and many other cases. See *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993) (holding that there is no express or implied denial of a municipality’s home rule power to enact a charter provision divesting school committee of authority to determine school budget presented to voters and placing that authority in a separate budget committee). Accordingly, the burden rests on the person attacking a charter provision to prove that it exceeds municipal home rule authority, and not on the municipality to prove that it does not.

2. No provision of the School Budget Charter Revision is expressly prohibited by the U.S. Constitution, the Maine Constitution, or the general laws of Maine.

The general grant of charter power is circumscribed (i) when state law expressly prohibits local regulation or (ii) when state law is silent with respect to local regulation and a court determines that the Legislature intended to prohibit local regulation because such local action would frustrate the purpose of a state law. Together, these limitations are known as the doctrine of preemption.

The first category (express preemption) is obvious because the prohibitions to locally regulate a subject area or the division of regulatory powers are expressly written into state law. With respect to the School Budget Charter Revision, we could find no provision in the United States Constitution, the Maine Constitution, or the general laws that expressly prohibit the School Budget Charter Revision.

To the contrary, the express language of the relevant law states that the school budget meeting “must be a meeting of the municipal council or other legislative body established by the charter with authority to approve the budget.” 20-A M.R.S.A. § 2307(1) (emphasis added). This provision expressly defers to charters to establish a legislative body with authority to approve the school budget. We see no express denial here of Portland’s charter authority to allow the School Board to be the “other municipal legislative body” for purposes of the school budget meeting.

3. No provision of the School Budget Charter Revision appears to be prohibited by necessary implication by the U.S. Constitution, the Maine Constitution, or the general laws of Maine.

With respect to the second category (implicit preemption), the analysis is more complex, but over a dozen Maine court cases are on point. These can be summed up as follows: First, and as previously stated, the general rule is that a charter is presumed valid. Second, it is not enough for a court to find that there is a conflict or an inconsistency between a state law and a charter provision. In order for municipal legislation to fail, a court must find that the Legislature has enacted a comprehensive and exclusive scheme for regulating the same subject matter (i.e., that it has intended to “exclusively occupy the field”) and that the local regulation is so inconsistent with state law that it would frustrate the purpose or actual operation of state law.²

² See *Portland Pipe Line Corp. v. City of S. Portland*, 2020 ME 125, 240 A.3d 364; *Dubois Livestock, Inc. v. Town of Arundel*, 2014 ME 122, 103 A.3d 556; *State of Maine v. Brown*, 2014 ME 79, 95 A.3d 82; *Smith v. Town of Pittston*, 2003 ME 46, 820 A.2d 1200; *Sawyer Env'tl. Recovery Facilities v. Town of Hampden*, 2000 ME 179, 760 A.2d 257; *Perkins v. Town of Ogunquit*, 1998 ME 42, 709 A.2d 106; *International Paper Co. v. Town of Jay*, 665 A.2d 998 (Me. 1995); *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993); *Central Maine Power v. Town of Lebanon*, 5711 A.2d 1189 (Me. 1990); *Midcoast Disposal, Inc. v. Town of Union*, 537 A.2d 1149 (Me. 1988);

In the DW Memoranda, much of our preemption analysis focuses on Section 2307 of Title 20-A, which provides that “[n]otwithstanding any other law, municipal school budgets . . . must follow the same school budget requirements as regional school units.” These requirements are described in detail in our November 5, 2021 DW Memorandum but, in short, the school board prepares and approves a budget, which is then submitted to the budget meeting. Alone, that sentence of section 2307 arguably requires a budget meeting of voters, as that is the requirement for regional school units. In the case of charter municipalities, however,³ the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S.A. § 2307(1) (emphasis added).

Based on our review of Section 2307 and its context within the municipal and school statutes, the legislative history of Section 2307, and applicable case law, it does not appear that the School Budget Charter Revision is prohibited by necessary implication by Maine’s general laws for the following reasons:

- First, subsection 1 of section 2307 plainly does not prescribe what body can serve as the municipal legislative body for purposes of determining the total school budget. Rather, Section 2307 appears to prescribe a *role* of a municipal legislative body (i.e., to approve the school budget), but not its *identity*—this is left for a charter municipality to specify through its charter powers. Likewise, nowhere else does the school statute, nor does the municipal statute, circumscribe the identity of a municipal legislative body. In fact, the state law definition of “municipal legislative body” plainly provides that such a body can be a town meeting, a city council, or something else—namely, “[t]hat part of a municipal government that exercises legislative powers under a law or charter.” 30-A M.R.S.A. § 2001. Indeed, several municipalities in Maine have at one time or another established municipal legislative bodies that were something other than the familiar “town meeting” or “council” forms of a legislative body.
- Second, in the vast majority of school systems across the state, the statutory scheme provides no decision-making role at all for municipal officers in the school budget approval process. Although not official numbers, we estimate 86 school districts (RSUs, MSADs, and CSDs) in Maine, whose members include towns as well as about 25 charter municipalities. We count ten school districts composed of single municipalities (including Old Orchard Beach and Orono, both themselves charter municipalities). These operate under completely separate governance for school and municipal functions. According to our count, there are 136 town meeting towns operating as single municipality school systems. In all these cases, elected school boards are able to submit their proposed budgets directly to their voters for approval and no municipal officials are involved in the process. We have found only 24 charter municipalities that are municipal school units like Portland. It can be fairly said that the School Budget Charter Revision will align the City’s school budget approval process more closely to the statutory process the Legislature enacted for use all over Maine.

Tisei v. Town of Ogunquit, 491 A.2d 564 (Me. 1985); *Ullis v. Town of Boothbay Harbor*, 452 A.2d 153 (Me. 1983); *Schwanda v. Bonney*, 418 A.2d 163 (Me. 1980); *Begin v. Town of Sabattus*, 409 A.2d 1269 (Me. 1979).

³ Notably, subsection 1 of section 2307 defers to home rule authority of charter municipalities to establish an “other legislative body . . . with authority to approve the budget,” but not to home rule authority of town meeting towns to do something similar by ordinance. This distinction between types of municipalities suggests that no implicit purpose would be frustrated by the School Budget Charter Revision.

- Third, case law seems to support the School Budget Charter Revision. In the *York* decision—the single case where the Maine Law Court has considered whether a municipality may use its charter powers to change the school budget approval process—the Court upheld the charter amendment against legal attack.⁴ Notably, the Court called the school budget submitted to voter referendum “advisory” and so it is. Every year, in a few school units, Maine voters reject the school board’s proposed budget at the BVR. The school board must then prepare a revised budget and resubmit the budget to the voters. Likewise, under the School Budget Charter Revision, the voters are ultimately responsible for adopting the “advisory” school budget (either through the BVR, or if the BVR is eliminated by the voters, at a municipal school budget referendum).
- Fourth, we do not read Section 2307 or the school statute as a whole as mandating by implication a role for a school board that is separate and distinct from the role of a municipal legislative body. Section 2(2) of Title 20-A provides that the state policy for education is that “[i]t is the intent of the Legislature that the control and management of the public schools be vested in the legislative and governing bodies of local school administrative units as long as those units are in compliance with state statutes.” Nowhere, however, does Title 20-A define or delimit “legislative bodies.” Further, school boards are defined to mean “the governing body with statutory powers and duties.” 20-A M.R.S.A. §§ 1(28), (29) (emphasis added). It appears to us that Title 20-A reserves to school boards considerable statutory authority to exercise not only governing powers but also statutory powers that are legislative in nature. These include the statutory power to “adopt policies that govern the school administrative units,” 20-A M.R.S.A. § 1001(1-A); the power to enter into multiple year contracts of different kinds, *see e.g.*, 20-A M.R.S.A. § 15915 (service contracts and financing contracts for certain building systems up to 20 years in term); and even the authority for some types of school boards to issue bonds. *See* 20-A M.R.S.A. §§ 1311(7), 1490(7) (MSAD and RSU boards, bonding authority under 1% of valuation); 20-A M.R.S.A. §§ 1654(2)(B), 1702 (CSDs board bonding authority). We discern no implied separation of governing and legislative powers into separate bodies in Title 20-A generally, but rather a situation where the governing body has “statutory powers and duties,” many of which would be generally understood to be legislative in nature.
- Fifth, we note that Section 2307(1) and (2) are *exceptions* to the mandate that municipal school units must follow the same school budget procedures as regional school units: Section 2307(1) clarifies that, notwithstanding the statutory mandate, charter municipalities are not restricted to the town meeting for the first part of the school budget approval, but may use their own legislative body—namely, the “municipal council or other municipal legislative body established by the charter.” Section 2307(2) clarifies that municipal charters may circumscribe the role of a municipal council or other municipal legislative body to determining the total amount of the school budget. Thus, Section 2307 gives charter municipalities substantially more discretionary authority than other school administrative units to specify the details of the school budget approval process. Applying the liberal construction governing implied limits on home rule authority, it is appropriate

⁴ Specifically, the Court upheld a town charter provision that created an elected municipal budget committee, separate from the school committee and the select board, vested with the power to amend the individual articles of the school budget and the total budget before it was submitted to voters for ultimate approval at referendum. *See Town of York*, 626 A.2d at 937, 942 & n. 4. The Court determined that the charter provision establishing this budget approval process was valid because there was no direct conflict between it and any statute and because it did not interfere with the purpose of the school statute or the municipal statute. *Id.* at 946. As we noted in the August 11, 2021 DW Memorandum, since the *York* decision, the school budget approval process was modified to require a budget meeting followed by a budget validation referendum.

to ascribe broad intent to the legislative exception in section 2307(1), and so we do not believe the School Budget Charter Revision to be prohibited.

C. OPINION

Subject to and based upon the foregoing, including without limitation our legal analysis and reasoning in Part B of this letter and the DW Memoranda, and the qualifications and limitations expressed therein, in our opinion the School Budget Charter Revision does not contain any provision prohibited by the United States Constitution, the Maine Constitution, or the general laws. For purposes of this opinion, “prohibited” means in violation of the law, expressly or by necessary implication, extant as of the date of this letter. *Cf. Nasberg*, 662 A.2d at 229 (stating that “[t]he intent of the requirement for an attorney’s letter is to prevent clearly unconstitutional provisions from being placed on municipal ballots,” but declining to address the constitutionality of the written opinion requirement). We provide this letter for the purpose stated above and for no other purpose.

Very truly yours,



Agnieszka A. Dixon



E. William Stockmeyer

cc: Xavier Botana, Superintendent of Schools (via email)
Emily Figdor, School Board Chair (via email)

EXHIBIT A

Amend ARTICLE III., BOARD OF PUBLIC EDUCATION, Section 5, School Budget, as follows:

Prior to the submission of a school budget, the school board and city council shall establish a Joint Committee on Budget Guidance, consisting of four city councilors and four school board members, appointed by the Mayor and school board chair, respectively. The purpose of the joint committee is to develop guidance for the city and school district on budget priorities and constraints, covering a two-year period and updated annually. The joint committee shall obtain public comment on the guidance prior to submitting the guidance as a proposed non-binding joint resolution to the city council and school board for their approval.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

~~During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated representatives.~~

The budget submitted by the superintendent ~~to be reviewed jointly by the school board and the city council~~ shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for ~~joint~~ review by the school board, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall ~~submit to the city council~~ prepare a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~

The school board shall hold a budget hearing on such budget estimates ~~shall be held at least seven (7) days prior to final action by the city council determining the total amount of the school budget. Within a reasonable period of time, the city council may, at its discretion and after holding a public hearing, provide a nonbinding resolution with its recommendations to the school board for consideration. The school board may or may not adopt, in whole or in part, the recommendations of the city council.~~ The city council shall thereafter submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally

raised funds and the amounts for each cost center summary budget category proposed by the school board.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the budget validation referendum or, if discontinued, at the school budget referendum or (ii) not be less than the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council or the voters. (Referendum 6/13/78; 11/2/10)

MEMORANDUM

TO: Xavier Botana, Superintendent Portland Public Schools FROM: Melissa Hewey, Agnieszka Dixon, and Elek Miller Drummond Woodsum DATE: August 11, 2021 RE: Portland Charter—School Governance, Policy, and Management Matters

As the newly elected City of Portland Charter Commission (the “Commission”) begins its work to evaluate and recommend modifications to the City of Portland Charter (the “Portland Charter”), you have asked us to provide an overview of the law governing the powers and duties of the Commission to address matters of school governance, policy, and management.

In Part I of this memorandum, we provide a legal overview of the Constitutional and statutory limits on the authority to amend the Portland Charter with respect to matters of school governance, policy, and management. In Part II, we identify and discuss the existing provisions in the Portland Charter which concern the school board, and we compare those provisions with the charter language of other populous Maine charter cities.

Finally, in Part III, we conclude that, while the Commission has broad authority to recommend modifications to the provisions of the Portland Charter for consideration by the voters, that authority is constrained with respect to matters of education. We therefore recommend that the school board continue to evaluate the Commission’s work through the lens of the legal framework presented next, and to seek legal review of any proposals affecting school governance, policy, or management.

I. AUTHORITY OF THE COMMISSION WITH RESPECT TO EDUCATIONAL MATTERS— A LEGAL OVERVIEW

At the outset, it should be understood that the scope of the Commission’s authority is constrained by the Maine Constitution and state law, which extensively regulates public education in the state and thereby limits the scope of any charter commission’s authority over matters of education.

A. The Legislature has plenary control over public education.

In Maine, the Legislature has plenary authority over public education. *School Committee of the Town of Winslow v. Inhabitants of the Town of Winslow*, 404 A.2d 988, 991-992 (Me. 1979). Exercising this authority, the Legislature has created a system of local school administrative units to provide free public education to Maine children. A “school administrative unit” is defined by statute as “the state-approved unit of school administration and includes a municipal school unit.” 20-A M.R.S. § 1(26). A “municipal school unit” is defined as a state-approved unit of school administration composed of a single municipality. 20-A M.R.S. § 1(19). Public education in Portland is provided by the Portland municipal school unit, which is a creature of the Legislature and not a subdivision or department of city government.

The Maine Supreme Judicial Court, acting as the Law Court, has made it clear that municipal school boards “are agents of the state and are legally distinguished from municipalities.” *Pickering v. Town of Sedgwick*,

628 A.2d 149, 150 (Me. 1993). The separate roles of the municipal school unit and the municipal government are well-defined and do not overlap.

The school board is the governing body of a municipal school unit. *See* 20-A M.R.S. § 1(28). State law provides that “the control and management of the public schools shall be vested in the legislative and governing bodies of local school administrative units, as long as those units are in compliance with appropriate state statutes.” *See* 20-A M.R.S. § 2(2). Thus, the school board has sole authority to oversee the affairs of a municipal school unit, including adoption of policies, management of the schools (including custody, care, and repair of school buildings), selection of the superintendent (who is the chief administrative officer of the municipal school unit), employment of administrators, and employment of teachers. *See* 20-A M.R.S. §§ 1001, 1051, 13201, and 13302. As discussed in greater detail in Part I.C, below, a city council has no statutory duties or authority with respect to public education, with the exception of approving the total amount of the school budget to be submitted to the voters in a budget validation referendum provided that a municipal charter confers that authority upon the council. *See* 20-A M.R.S. § 2307(2). The authority to allocate funds within the total budget and expend those funds is reserved to the school board. *Id.*

The school board is not subordinate to the city council but derives its duties and authority directly from the Legislature. “Its members,” the Law Court has observed, “are chosen by the voters of the town, but after election they are public officers deriving their authority for the law and responsible to the State for the good faith and rectitude of their acts.” *Shaw v. Small*, 124 Me. 36, 41 (1924).

B. The Commission’s authority over public education is circumscribed by the Maine Constitution and state law.

While the Legislature has plenary authority over public education and has delegated local control over education to school administrative units and their elected school boards, the home rule provisions of the Maine Constitution and state law authorize the voters of a municipality, by charter, to impose local regulation of public education only if Legislature has not expressly prohibited local regulation or where the Legislature “has intended to occupy the field and the legislation would frustrate the purpose of a state law.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993).¹

The Law Court reaffirmed this home rule limitation last year, stating that the Maine Constitution grants municipalities the power to amend their charters “on all matters, not prohibited by Constitution or general law, which are local and municipal in character” and further stating that the Constitution “commits the general power to promote education to the Legislature” *MSAD 6 Bd. of Dir’s v. Town of Frye Island*, 2020 ME 45, ¶¶ 17, 19, 229 A.3d. 514, 520-21 (internal quotations omitted). In the *Frye Island* case, the Court held that a town could not attempt to withdraw from its school administrative unit by amending its charter because such a charter provision implicated public school funding—“an issue falling squarely within the Legislature’s purview”—and was therefore not a valid exercise of the municipality’s home rule authority. *Id.* ¶¶ 19, 22 & n.7.

¹ In the *York* case, the Law Court upheld a charter provision that created a municipal budget committee, separate from the school board and the select board, with the power to approve the school budget before it was submitted to voters for approval. “The Legislature,” the Court wrote, “is free to delegate to municipalities all of its authority over education so long as the delegation is not unconstitutional.” *Town of York*, at 940. Since the charter provision did not conflict with the Constitution or state law regulating school budget approval, the Court said that the creation of the budget committee with authority over the school budget was within the authority of the charter commission. Subsequent to the *York* decision, the Legislature enacted a detailed statutory process for school budget approval assigning specific roles to the school board and the municipal legislative body, which presumably overruled the *York* decision to the extent that the *York* charter provision conflicts with that detailed process. That process is summarized in the next section.

C. A charter may modify the school budget approval process, but not the power of the school board to direct expenditures of education funds or the responsibility of the municipal legislative body to determine the total school budget.

Maine law now provides that municipal school budgets “must follow the same school budget requirements as regional school units.” 20-A M.R.S. § 2307. We are all now familiar with the school budget procedures that have been followed for over a decade, including school board formulation and approval of a budget organized by specific cost centers and warrant articles prescribed by law. The approved school board budget is then submitted to the “budget meeting.” In charter municipalities such as Portland, the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S. § 2307(1). The final step in budget approval is the budget validation referendum decided by the voters (although the voters may eliminate that step by referendum).

State law specifically provides:

In charter municipalities where the municipal charter confers upon a municipal council or other municipal legislative body the authority to determine the total amount of the school budget and confers upon the school committee or school board the authority to direct the expenditure of those funds for school purposes, the municipal council or other municipal legislative body shall determine the total amount of the school budget to be submitted to a budget validation referendum and the school committee or school board shall determine the allocation of the approved school budget among the cost centers of the cost center summary budget format.

20-A M.R.S. § 2307(2). In short, in a charter municipality like Portland, the municipal council or other municipal legislative body acts only on the total amount of the school budget, and the school board determines the budget allocation among cost centers. This delegation of authority over the school budget between the school board, on the one hand, and the municipal council or other municipal legislative body, on the other hand, is a subject matter where the Legislature appears to have “occupied the field”—and, in our view, a charter provision that alters it would likely be invalid.

Although, in our view, a charter provision may not modify the school board’s power to direct the expenditure of funds for school purposes, other charter provisions concerning the budget approval process may likely be modified or altogether eliminated. In that regard, it has been asked whether the Portland Charter may be revised to eliminate the city council’s responsibility to determine the total school budget. As noted above, state law provides that the budget meeting to approve a municipal school budget must be a meeting of either “the municipal council or other municipal legislative body.” 20-A M.R.S. § 2307(1) (emphasis added). Accordingly, we believe the Portland Charter may lawfully assign the final authority to approve the school budget to a municipal legislative body other than the city council.

We note that we know of no precedent within a city charter² regarding the form that such an alternative legislative body may take, however. In Maine, legislative bodies typically consist of (i) a town meeting

² We do know of at least one town charter which provides a municipal legislative body that is not a town council. The Town of York, which has a rather unique “Town Manager—Town Meeting by Secret Ballot Vote” form of local government, provides in its charter that its municipal legislative body is the town meeting consisting of the voters. See York Charter, Art. II, § 1 (*available at www.yorkmaine.org/DocumentCenter/View/691/Home-Rule-Charter-PDF*). There, an elected budget committee prepares the town budget and the school committee prepares the school budget, but final authority for approving a composite town and school budget, in line-item format, rests with the voters at a secret ballot budget referendum after public hearing. See *id.*, Art. II, §§ 4, 5, 10, 12. If the voters vote down a given line-item, the charter calls on the Town’s Board of Selectmen—that is, its governing body—to appropriate an amount equal to the budgeted appropriation for that line-item during the previous fiscal year. See *id.*, Art. II, § 14.C.

composed of all voters of a town, (ii) the school budget meeting composed of all voters of the member municipalities of a school administrative unit, or (iii) a representative council established by charter. Any proposal to establish a municipal legislative body, separate and distinct from a representative council, to approve the school budget would need to be thoroughly vetted against the statutory role of the school board, the continuing requirement for a budget validation referendum, and the statutory meaning of the phrase “municipal legislative body” in 20-A M.R.S.A. § 2307, among other legal considerations.

II. OTHER PROVISIONS IN THE PORTLAND CHARTER CONCERNING THE SCHOOL BOARD—A DISCUSSION AND A COMPARISON

The Portland Charter includes other provisions affecting the duties and powers of the school board, which we discuss next. For your reference, we have prepared, in [Appendix A](#), a table that identifies the key Portland Charter provisions affecting school boards and compares them with the charter provisions of other populous charter cities in Maine—namely, Auburn, Bangor, Biddeford, Lewiston, and Sanford. In [Appendix B](#), we have attached a copy of the Portland Charter showing the provisions affecting the school board highlighted in yellow.

A. In general, control over public schools is expressly delegated to the school board.

The Portland Charter, like all of the charters that we reviewed, contains a general provision excepting from the city council’s authority all duties and powers concerning the management, care, and control of the city’s public schools, and vesting that power and duty in the school board:

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, *except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the “school board”)*,¹ and also except as otherwise provided by this charter, shall be and are vested in one body of nine members, which shall constitute and be called the city council, all of whom shall be inhabitants of the city, and shall be sworn in the manner hereinafter prescribed.

Portland Charter, Art. I, § 2 (emphasis added); *see also* Biddeford Charter, Art. I, § 2 (same), Lewiston Charter, § 1.02(a) (same). Importantly, the Portland Charter does not purport to address educational policy or operation of the schools, and this approach is consistent with the Legislature’s scheme which assigns local responsibility for public education to the elected school board. Indeed, the Portland Charter explicitly acknowledges the broad responsibilities of the school board with regard to public education:

The board of public education shall have all the powers, and perform all the duties in regard to the care and management, including sound fiscal management, conduct, and control of the public schools of the city, which are now conferred and imposed upon school committees and school boards by the laws of this state, except as otherwise provided in this charter.

Portland Charter, Art. III, § 4; *see also* Bangor Charter, Art. III, § 1 (same), Biddeford Charter, § 3(a) (same), Lewiston Charter, § 5.03(a). As discussed in Part I, any departure from the principle that a school board controls the public schools would likely run afoul of the Constitutional and statutory scheme regarding governance of municipal school units and the limits on home rule authority.

B. The school board controls the preparation and expenditure of the school budget, while the city council approves and appropriates the total school budget.

The Portland Charter provides that the school board must submit to the city council an annual school budget, and any information relating to the budget, to the council. *See* Portland Charter, Art. III, § 5. The city council approves the total budget after holding a hearing and makes one gross appropriation for the

support of the public schools. *Id.* This separation of powers between the school board and city council rests in state law, as discussed, and is a common feature of other city charters. *See, e.g.,* Bangor Charter, Art. III, § 1; Lewiston Charter, §§ 5.03, 6.07(f); Biddeford Charter, Art V, § 4. Unique to the Portland Charter is a provision that the city council may not reduce the school board’s proposed budget except by vote of at least six of its nine members. *See* Portland Charter, Art. III, § 5.

C. The Portland Charter contains specific school budget reporting, consultation, and audit requirements, as well as provisions concerning borrowing and bonding, procurement, and capital improvements.

In addition to this general delegation of responsibility over the school budget, city charters sometimes include school budget reporting, consultation, and audit requirements which may affect how and when a school budget is prepared. For example, the last Portland charter revision in 2010 added specific provisions to the Portland Charter requiring the school board and the city council, or their designated subcommittees (the finance committees), to share information about, review, and consult on the school budget within certain timeframes. *See* Portland Charter, Art. III, § 5. The Portland Charter also requires detailed monthly reporting to the city’s finance director. *See id.*; *see also* Art. VII, §§ 1, 3. The Portland Charter also delegates responsibility to the mayor to “facilitate among the city manager, city council, [school board] and the public to secure passage by the city council of the annual city and school budgets” Portland Charter, Art. II, § 5(h).

Most of the city charters that we reviewed likewise contain some school budget-related consultation, reporting, and audit requirements—although the scope and detail of such requirements vary to a great degree, and some charters are largely silent on these details. *See, e.g.,* Bangor Charter. When charters do speak on these issues, they may:

- Include instructions on the transfer of funds among departments or functions. *See, e.g.,* Sanford Charter, § 613. (Note that we question whether the funds transfer limitation in the Biddeford Charter, Art. IX, § 3, is valid, as it appears to conflict with the school board’s cost center transfer authority under 20-A M.R.S. § 1485(2).)
- Impose deadlines for submitting the school budget to the council or budget committees and prohibitions on the expenditure of funds that exceed appropriation resolves. *See, e.g.,* Lewiston Charter, § 5.03.
- Contain contingency procedures for budget shortfalls. *See, e.g.,* Sanford Charter, § 619.3.
- Include detailed procedures for selecting auditors and conducting annual audits. *See, e.g.,* Auburn Charter, § 8.11.

These types of school budget consultation, reporting, and auditing provisions usually do not conflict with the ultimate authority of the school board to direct expenditures or that of the council to approve only the total school budget. Provided they also do not conflict with other provisions of state law, they likely fall within a charter’s home rule authority to modify or eliminate.

In addition, like most other charters, the Portland Charter houses other finance-related provisions—including requirements for the procurement of goods and services, borrowing and bonding, and capital improvement planning—that may affect school management decisions. For example, the Portland Charter encourages the city and school department to share staff and resources and cooperate to provide better services in a cost-effective manner. *See* Portland Charter, Art. VII, § 2.

The Portland Charter also imposes limits and procedures on the sale of bonds or notes pledged on the credit of the city. *Id.* Art. VII, § 11. The Charter is silent with respect to the issuance of bonds specifically for school construction or renovation projects; however, state law provides that in a municipal school unit

“where the responsibility for final adoption of the school budget is vested in the municipal council by municipal charter, a locally funded project may be approved without a referendum vote if the charter does not require a referendum.” 20-A M.R.S. § 15905-A. Care must be taken to adhere to legal requirements when modifying any bond issuance provisions in a charter, as they could affect the city’s ability to issue bonds. Review by bond counsel of any such modifications is strongly recommended.

Notably absent from the Portland Charter is the role of the school board in the capital improvement program (CIP) planning process. Other charters provide a clear roles for the superintendent and school board in preparing and authorizing CIPs, usually jointly with the city manager and council, which can thereby qualify school capital project for capital reserve funding. *See, e.g.*, Bangor Charter, §§ 8.9, 8.10; Sanford Charter, § 610.

D. The Portland Charter contains specific provisions affecting school board governance, including provisions concerning school board elections and conflicts of interest

The Portland Charter contains governance provisions affecting school boards, including the composition of the school board, election and recall procedures, how vacancies are filled, and compensation provisions. While most charters include such provisions, the specifics vary greatly. For example, the Portland Charter is the only charter we reviewed where school boards are elected using ranked choice voting. *See* Portland Charter, Art. II, § 3. In addition, unlike most charters, the Portland Charter contains detailed provisions concerning conflicts of interest and incompatibility of office. In contrast, most other charters are silent on these topics, presumably because there is already a rich framework of state law and case law on these two topics. Please refer to the table in [Appendix A](#) for a side-by-side comparison of how each of these provisions appear in the Portland Charter and in the other city charters that we reviewed.

III. CONCLUSION

This memorandum is intended to provide a general overview of the legal landscape affecting charter revision and public education. We encourage the school board to monitor the Portland Charter revision process and to provide input to the Commission on any school-related issues or proposals. The school board may also wish to make proposals to the Commission to change existing charter language, particularly with regard to the school budget process, consistent with the legal principles and recommendations discussed in this memorandum. We are available to assist the school board in evaluating or preparing any such proposals.

Enclosures:

Appendix A: A Comparison of Select Charter Provisions of the Most Populous Maine Charter Cities
Appendix B: Portland Charter, with School-Related Provisions Highlighted

APPENDIX A
A COMPARISON OF SELECT CHARTER PROVISIONS OF THE MOST POPULOUS MAINE CHARTER CITIES

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
General—Delegation of Authority over Schools	The council is vested with administering all fiscal, prudential, and municipal affairs of the city, “except the general management, care, conduct, and control of the schools.” (Art. I, § 2) The school board is vested with “the care and management, including sound fiscal management, conduct, and control of the public schools” as conferred on school boards by state law. (Art. III, § 4)	The council is vested with all powers granted by charter and state law, except the care and management of the public schools, which is vested in the school committee. (§§ 2.1, 4.1)	The council is vested with all powers granted by charter and state law, except the care and management of the public schools, which is vested in the school committee. (Art. II, § 1) The school committee is vested with “the care and management of the public schools” as conferred on school boards by state law. (Art. III, § 1)	The mayor and council are vested with administering all fiscal, prudential and municipal affairs of the city, except the general management, care, conduct, and control of schools, which is vested in the school committee. (Art. I, § 2) The school committee is vested with “the care and management of the City’s public schools” pursuant to state law. (Art. V, § 3(a))	The mayor and council are vested with administering all fiscal, prudential and municipal affairs of the city, except the general management, care, conduct, and control of schools, which is vested in the school committee. (§ 1.02(a)) The school committee is vested with the “care and management of the city’s public schools” pursuant to state law. (§ 5.03(a))	The school committee is vested with all the “care and management of the public schools” of the city as conferred on municipal school committees by state law. (§ 505.1). The Department of Education is governed and administered the school committee and superintendent, in accordance with state law. (§ 501)
School Budget—Approval, Appropriation, Expenditure	The school board must submit an annual school budget to the council, including any information relating to the budget that the council requires. The council approves the school budget after holding a hearing, and makes one gross appropriation for the support of the public schools. The appropriation may not be less than the school board budget, except by a vote of at least six councilors. (Art. III, § 5) The council adopts an annual appropriation resolve, which contains one gross amount for school purposes. The total appropriation must not exceed the city’s estimated revenues. (Art. VII, § 7) The mayor may veto the annual city appropriation but any such veto of the appropriation may not affect the school budget appropriation. (Art. II, §§ 2, 5(i); Art. VII, § 8) The school board has authority to expend the appropriation but may not exceed it except with the council’s consent. (Art. III, § 5)	Refer to § 8.9 for budget creation process, which is collaborative between city and school department. Authority rests with council to finally approve the budget. (§§ 2.6; 8.7; 8.9) The school committee must expend funds within the limits of the council’s appropriation resolves, together with any other revenues the school committee may receive. (§ 4.1)	The school committee must submit an annual estimated school budget to the council. On the basis of the estimated school budget, the council makes one gross appropriation for the support of the public schools. (Art. III, § 1) Expenditures are under the direction and control of the school committee. The council’s appropriation may not be exceeded except by consent of the council and certification of availability of unanticipated funds. (Art. III, § 1, 10)	The school committee must submit the school budget to a budget committee, which submits it to the council after review. The council decision is final, subject to budget validation referendum. (Art. V, § 4) The council adopts an annual appropriation resolve, which contains amounts necessary for general city purposes and for a contingency fund. (Art. XI, § 3) The school committee may not transfer funds from one function to another without a two-thirds vote of both the school committee and council. (Art. V § 4)	The school committee must submit the school budget to the council at least three months prior to the end of the fiscal year. (§ 5.03(a)) The council adopts the city budget, including the school budget, by resolution. If the council fails to do so at least 20 days prior to the end of the fiscal year, the school committee’s final budget is deemed to be automatically adopted. Adoption of the city budget by the council constitutes appropriations of the amounts specified as expenditures from the funds specified. (§ 6.07(f))	The school committee must submit to the budget committee a line-item balanced school budget containing a complete and detailed financial plan for all school funds and activities. The budget committee must hold public hearings to review the expenditures of each municipal agency or department proposed by the city manager, and of each school agency or department proposed by the superintendent. The council authorizes the school budget, which is then presented to the budget validation referendum. The budget committee’s budget may be changed only by a majority vote of the council. (§§ 505.2, 604, 607) Adoption of the municipal and school budgets by the council constitutes appropriations. The council may authorize the transfer of any unencumbered appropriations between the municipal budget articles, and the school committee may authorize the transfer of any unencumbered appropriations between the school budget articles. (§ 613) If it appears probable to the city manager or superintendent that revenues are insufficient to cover appropriations, the council may take action to prevent or minimize any deficit, including by reducing appropriations to the extent not inconsistent with 20-A M.R.S.A. §§ 15004 and 15613(8). (§ 619.3)

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
School Budget—Consultation, Reporting, and Auditing Requirements	The mayor is responsible for facilitating among the city manager, council, school board, and the public to secure passage by the city council of the annual city and school budgets. (Art. II, § 5(h)) The superintendent must submit a balanced budget estimate, which provides a “complete financial plan of all school funds and activities,” to the school board no later than 3½ months before the end of the fiscal year. During the 30 days following submission, the school board and council, or their designated subcommittees, must meet jointly at least twice to review the budget estimate. (Art. III, § 5) Accounts must be kept by the finance director of finance, showing the transactions of all departments of the city and the school department. The finance director must publish a monthly financial statement and furnish a monthly detailed report to the city manager of revenues, expenses, and expenditures on all accounts and, for each appropriation item, the expenditures made and the obligations incurred during the preceding calendar month and the total unencumbered balance. All city and school accounts are audited annually by an auditor selected by the council. (Art. VII, §§ 1,3)	An audit committee, composed of two councilors and two school committee members, select and direct the work of an independent auditor, and report back to a joint meeting of the council and school committee. The council selects the accountant upon recommendation of the committee. The committee also reviews the procurement policy and report to the council and school committee as to the strengths and weaknesses of the policy. (§ 8.11)	The city audits must be audited annually by a CPA chosen by the council. (Art VIII, § 2)	The council must provide an annual independent audit of all City accounts and may provide more frequent audits. (Art. III § 9)	The city administrator establishes a system of bookkeeping, auditing, purchasing and records pertaining to all financial transactions of the school committee, and may establish rules governing such procedure consistent with local and state law. (§ 5.04)	The school committee must present an "audit action plan" with remedies as appropriate to the council for review and approval. (§ 505.3)
Procurement	To the extent practicable and lawful, the city and the school department shall endeavor to share staff and resources and otherwise cooperate with one another in order to provide better city and school services in a cost effective manner (Art. VII, § 2)	The council must adopt a procurement policy for the city’s purchase of materials and services for all city departments, including the Department of Education. A procurement policy committee composed of two councilors, two school committee members, and a mutually selected fifth member develop the procurement policy, and report back to the council and school board. (§ 8.16)	The city’s purchasing agent purchase all supplies for the city, but educational supplies for the city schools are excepted and may be purchased by the purchasing agent upon requisition by the school committee (Art. VIII, § 5)		The city administrator establishes a system of bookkeeping, auditing, purchasing and records pertaining to all financial transactions of the school committee, and may establish rules governing such procedure consistent with local and state law. (§ 5.04)	The city manager will act as purchasing agent for all departments, except the school department. Whenever possible, the city manager must work with the superintendent to negotiate contracts for supplies, materials and equipment commonly purchased by both the city and school. (§ 402.13)
Capital Improvement Program (CIP)	The mayor must consult with and provide guidance to the city manager in the preparation of an annual CIP. (Art. II, § 5(g)) The city manager must prepare a 5-year rolling CIP for annual presentation to the council. (Art. IV, § 5(i))	The city manager and superintendent must jointly prepare and submit to a joint meeting of the council and school committee a multi-year CIP before submission of the budget, and must publish a general summary of the CIP. The CIP must be revised and extended each year with regard to capital improvements pending or in process of construction or acquisition. (§§ 8.9, 8.10) The council must adopt the CIP by resolution, with or without amendment, after a public hearing (§ 8.10(B))	The charter contains no specific CIP provision.	The charter contains no specific CIP provision.	The administrator prepares and submits to the council a 5-year CIP, including the CIP proposed for the school department. The planning board review the proposed CIP each year, and following public hearing, forward its recommendations to the council. After notice and hearing, the council by resolution adopts the CIP with or without amendment. Adoption does not constitute the appropriation of funds. (§§ 6.05, 6.06)	The city manager and the superintendent annually prepare and submit to the budget committee a 5-year CIP. The budget committee reviews the CIP and makes recommendations to the council for approval. The city creates annual reserves for the CIP by raising and appropriating at least 4% of the budget each year. Projects funded by the CIP include road maintenance, vehicular replacements, roofing projects, major building renovations, major equipment purchase, airport projects, new buildings and the like. (§ 610).

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
Borrowing and Bonding	Money may be borrowed, within the limits fixed by the Constitution and state law, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings. The council issues an order providing for the issue of bonds after notice and hearing. A council order authorizing the issuance of bonds must be approved by at least 7 councilors. With some exceptions, the issuance of general obligation bonds greater than 0.05% of the city’s last state valuation or any obligation to expend tax funds over multiple years greater than 0.075% of the city’s last state valuation for a single capital improvement or piece of equipment and the issuance of must be submitted to voter referendum. (Art. VII, §§ 11, 16)	The city may issue bonds pledging the credit of the city in the manner prescribed by state law. The council votes to issue the bonds after notice and hearing. (§ 8.13)	Money may be borrowed by order of the council, within the limits fixed by the Constitution and state law, by the issue and sale of bonds or notes pledged on the credit of the city, or on other enumerated revenues. (Art. VII, § 13) With some exceptions, the issuance of general obligation bonds greater than 0.05% of the city’s last state valuation or any obligation to expend tax funds over multiple years greater than 0.075% of the city’s last state valuation for a single capital improvement or piece of equipment and the issuance of must be submitted to voter referendum. (Art. VIII, § 19)	Money may be borrowed, within the limits fixed by the Constitution state law, by the issue and sale of bonds or notes pledged on the credit of the city. (Art. XI, § 6)	Money may be borrowed temporarily in anticipation of taxes or of the issuance of bonds, in accordance with the provisions of 30-A M.R.S.A. § 5771 (§ 6.13)	The budget committee must review all bond requests presented by the council and school committee, and shall make recommendations for bonding to the city manager and superintendent when appropriate during the budget review process. (§ 604.4). Capital projects of the municipal and school departments to be financed through the issuance of bonds for \$250,000 or less may be approved by the council. (§ 705.1) See amended § 705 for more information on bonding, including for bonds over \$250,000.
School Board Composition and Election Procedures	The school board is composed of nine members, four at large and one from each of the five districts who hold office for a term of three years and until their successors are elected and qualified. All candidates must be residents of the city for a period of at least three months prior to the date on or before which nomination papers are to be filed. The candidate from each of the 5 districts must be a resident of such district. (Art. III, § 1) For the positions of mayor, city councilor, and school board member, the city uses a ranked choice voting protocol. (Art. II, § 3; Art. IV, § 10) Nominations are by petition, with minimum signature requirements. (Art. IV, § 4) For vacancy provisions, refer to Art. II, § 7; Art. III, § 6. Recall procedures are set forth in Art. V, § 2.	The school committee is composed of the mayor, or a city councilor selected by the mayor and 7 other members. Five members are elected, one from each ward by and from its registered voters. Two members are elected at-large. Members hold office for a term of two years. (§ 4.2). For vacancy provisions, refer to § 4. Recall procedures are set forth in § 9.1(C).	The school committee is composed of seven members elected at large who hold office for a term of 3 years with a term limit of 3 consecutive terms. (Art. III, § 2) The members of the school committee annually by majority vote designate one of its members to serve as Chair.(Art. III, Sec.3)	The school committee is composed of seven members at large who hold office for a term of 2 years, but no more than two members from any one ward, who shall hold office for a term of two years. The mayor is the ex officio chair with no veto power, who may not make a motion and may only vote to break a tie. (Art. V, §§ 1,2) For vacancy provisions, refer to Art. V, § 5. Recall procedures are set forth in Art. IX, § 2.	The school committee is composed of nine members, one elected from each ward, one at-large, and one council member nominated by the mayor and appointed by the council from any ward. Members hold office for a term of 2 years. (§ 5.01(a)) For vacancy provisions, refer to § 5.01. The charter contains no specific recall procedures.	The school committee is composed of five members, who are elected at-large and who hold office for a term of 3 years. Nominations are by petition, with minimum signature requirements. (§§ 501, 1103) For vacancy provisions, refer to § 503. Recall procedures are set forth in § 1201.
School Board Compensation	The council establishes the amount each member of the school board is entitled to receive as compensation, which must be the same as that received by members of the city council, other than the mayor. The council must provide additional compensation to the chair of the school board. (Art. III, § 1)	Compensation is set by the council through ordinance, upon recommendation from school committee. (§ 4.2)	The charter contains no specific school board compensation provision.	School committee members receive compensation at the rate of \$10 for every regularly scheduled meeting attended, not to exceed \$500 per year. (Art. V, § 1)	Compensation is set by the council through ordinance. (Sec. 5.01(b)).	Compensation is fixed each year by the school committee. (§ 507)

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
School Board Conflicts of Interest	No member of the council or school board or board or commission thereof and no officer or employee of the city or school department shall: (a) Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland or the school board, except his or her employment contract, or in the sale to or by the city or school department of any land, materials, supplies or services when such officer, employee or member exercises on behalf of the city or school department any function or responsibility with respect to such contract or sale. All contracts or sales made in violation hereof are void, and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such transaction. (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties. (c)Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Art. VIII, § 1)	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	No school committee member shall hold any other compensated city office or city employment, except as on-call emergency personnel, during their term of office. No school committee member shall hold any paid office or position of employment with the school department. If a member of the school committee ceases to possess any of these qualifications or is convicted of a crime punishable by imprisonment for more than six months, the office shall immediately become vacant. (§ 502)
Incompatibility of Office	No member shall hold any office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected. (Art. II, § 4)	Except where authorized by law, no member shall hold any other elected public office during the term for which the member was elected. No member shall hold any other city office or employment during the term for which the member was elected. No former member shall hold any compensated appointive city office or city employment until at least one year after expiration of the member's elective term.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision. See above section for more information on prohibited positions.

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
Web Link	https://www.portlandmaine.gov/DocumentCenter/View/1102/City-Charter---Revised-332020?bidId	https://www.auburnmaine.gov/CMSContent/City_Clerk/charter.pdf (<i>See also</i> https://www.auburnmaine.gov/pages/government/city-charter-ordinances).	https://ecode360.com/14036615	City of Biddeford, ME City Charter (ecode360.com)	https://www.lewistonmaine.gov/DocumentCenter/View/181/City-Charter?bidId= (<i>See also</i> https://www.lewistonmaine.gov/151/City-Charter).	https://www.sanfordmaine.org/index.asp?SEC=B7910104-37A4-4F19-8A4E-58A42A843356&DE=FE82D1BD-194C-4DA6-856D-13123C3BD050&Type=B_BASIC (<i>See also</i> https://www.sanfordmaine.org/vertical/sites/%7B9A3D3C8D-76EE-4CC5-B86E-C19FDBF5E473%7D/uploads/Final_Report_Corrected_Website.pdf

APPENDIX B
PORTLAND CHARTER, WITH SCHOOL-RELATED PROVISIONS HIGHLIGHTED

PART I CHARTER*

***Editor's note**--Historical references are cited in parentheses at the end of each section. Such references cite only the various amendments adopted by referenda conducted pursuant to home rule powers granted by P.L. 1970, c. 563 (30 M.R.S.A. § 1911 et seq.). Prior to 1970 and home rule the charter and its various amendments were enacted by the Maine Legislature and such are not cited in said parentheses. A history of the charter and amendments is attached as Appendix A.

State law reference(s)--Home rule, 30 M.R.S.A. § 2101 et seq.

Preamble

- Art. I. Grant of Powers to the City, §§ 1, 2**
- Art. II. City Council; Mayor, Ranked Choice Voting §§ 1--11**
- Art. III. Board of Public Education, §§ 1--6**
- Art. IV. Elections, §§ 1--11**
- Art. V. Recall, §§ 1--7**
- Art. VI. Administrative Officers, §§ 1--8**
- Art. VII. Business and Financial Provisions, §§ 1--16**
- Art. VIII. Miscellaneous Provisions, §§ 1--5**

PREAMBLE

We, the People of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the general health, safety and welfare of our community. In so doing, we build a government that meets the needs of the people it serves and whose character it reflects. Our government shall further cooperation, encourage leadership, solicit our input and support the active participation of our residents in their governance. Our government shall be effective and accountable and shall promote equal rights and representative democracy.

Our government shall provide public education that enables all residents to acquire the knowledge and skills necessary to participate fully in Portland's civic, intellectual, cultural and economic life, in order to enrich and strengthen our community and our common future.

(Referendum 11/2/10)

ARTICLE I. GRANT OF POWERS TO THE CITY

Section 1. Corporate existence retained.

The inhabitants of the City of Portland shall continue to be a body politic and corporate by the name of the City of Portland, and shall have, exercise, and enjoy all the rights, immunities, powers, privileges, and franchises and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise, pertaining to or incumbent upon such city as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable by-laws, regulations, and ordinances for municipal purposes, not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof as such by-laws, regulations, or ordinances shall provide. Such penalties shall not limit nor diminish in any way the city's authority to seek and obtain higher or different penalties provided by state or other law. (Referenda 12/4/72; 11/2/10)

Section 2. Powers and duties.

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the "school board"), and also except as otherwise provided by this charter, shall be and are vested in one body of nine members, which shall constitute and be called the city council, all of whom shall be inhabitants of the city, and shall be sworn in the manner hereinafter prescribed.

The members of the city council shall be and constitute the municipal officers of the City of Portland for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers and mayors of cities under the laws of this state.

All other powers now or hereafter vested in the inhabitants of such city, and all powers granted by this charter, except as herein otherwise provided, shall be vested in the city council.

(Referendum 11/2/10)

ARTICLE II. CITY COUNCIL

Section 1. City to be divided into election districts.

For the purpose of all elections the city, including its islands, shall be divided into five (5) districts to establish compact and contiguous districts of approximately equal population.

The city council for voting purposes may by ordinance divide the election districts into voting districts. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/2/11)

Section 2. Composition, election, tenure of office.

The city council shall be composed of nine (9) members, including the mayor who shall be one of the nine (9) members of the city council, and shall hold office for a term of three (3) years and until their successors are elected and qualified, except as provided below for the term of mayor and for one at large seat in the election of 2013 only. Four (4) members, including the mayor, shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the five (5) districts heretofore provided for, from and by the registered voters of each district. References in this charter to the city council, councilors, council, its members or membership, shall be deemed to include the mayor, unless otherwise specifically provided.

For the municipal election in November of 2013, one of the two at large seats up for election shall have a one-time four year term ending in 2017. Thereafter, the council term shall return to be three (3) years for this seat. The city clerk shall designate which seat shall be for the four (4) year term prior to the availability of nomination papers for the 2013 election, and nomination papers shall be separately issued for each of the two at large seats. Each at large candidate may take out and file nomination papers for only one of the at large seats. The municipal ballot will list the 4-year and 3-year council seats as separate questions.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the five (5) districts must be a resident of such district

for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

Beginning with the regular municipal election in November, 2011, the at large position then up for election shall be designated as the mayor's position and shall continue as the mayor's position thereafter. The position of mayor only shall be elected by majority vote as provided in section 3 of this article. The candidate(s) for mayor shall be nominated in the same manner as other at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two (2) consecutive terms. The election and position of mayor shall be a non-partisan, full-time position. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10; 11/6/12)

Section 3. Ranked choice voting; instant runoff tabulation.

For the positions of mayor, city councilor, and school board member, the city clerk shall implement a ranked choice voting protocol according to these guidelines:

- (a) The ballot shall give voters the option of ranking candidates in order of choice.
- (b) If a candidate receives a majority, i.e. at least one more than fifty percent (50%) of the first choice votes cast, that candidate is elected.
- (c) If no candidate receives a majority of first choice votes, an instant runoff re-tabulation shall be promptly conducted by the city clerk and completed within five (5) business days of the election. The instant runoff re-tabulation shall be conducted in successive rounds, with the majority determined for each successive round by the number of votes cast in that round. The candidate with the fewest votes after each successive round in which no candidate receives a majority of the votes cast in that round shall be eliminated, and the votes in the successive rounds shall be re-tabulated among the remaining candidates until one candidate receives a majority of the votes cast in that round. In each successive round, each voter's ballot shall count as a single vote for whichever candidate the voter has ranked highest who has not been eliminated in a prior round, if any.

- (d) After the first round, a majority is determined as at least one (1) more than fifty percent (50%) of the votes cast for a remaining candidate in a particular round.
- (e) The city clerk may adopt additional regulations consistent with this subsection to implement these provisions. The ballot shall contain instructions on how to vote for each office.

(Referenda 11/2/2010; 3/3/2020)

Section 4. Compensation of councilors and mayor.

Except as otherwise provided in the paragraph below for the mayor's compensation, the city council shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, and specify when any compensation shall be payable, but no such order increasing their compensation, including that of the mayor, shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance.

Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than one and one-half (1.5) times the median household income for Portland as most recently published by the U.S. Census Bureau, American Community Survey, or successor index thereto, at the time such compensation is set or adjusted, plus customary city benefits.

No member shall hold any office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected.

(Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. Mayor's powers and duties.

The mayor shall be the official head of the city, responsible for providing leadership, and shall have the following powers and duties:

- (a) To articulate the city's vision and goals and build coalitions to further such vision and goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that purpose;
- (b) To convene and lead an annual workshop session of the city council to discuss and identify the city's goals and priorities in order to provide guidance for the city manager and to inform the public. The city manager shall attend this workshop session, and a summary of the session shall be made available to the public;
- (c) To represent the city with other municipalities, levels of government, community and neighborhood groups, and the business community;
- (d) To preside as chair of the city council, and vote upon all matters in the same manner as other members of the city council, except as provided in article VII, section 8. The mayor shall direct the city manager in the preparation of council meeting agendas;
- (e) To facilitate the implementation of city policies through the office of the city manager;
- (f) To consult with and provide guidance to the city manager in the preparation of all city budgets and to provide comments on such budgets at the time they are presented by the city manager to the city council for approval;
- (g) To consult with and provide guidance to the city manager in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (i), and to provide comments on such program plan at the time it is presented by the city manager to the city council;
- (h) To facilitate among the city manager, city council, board of public education and the public to secure passage by the city council of the annual city and school budgets;

- (i) To exercise veto power over the annual city appropriation as provided in article VII, section 8;
- (j) To establish performance guidelines in conjunction with the other members of the city council for regular evaluations, no less than annually, by the city council of the performance of the city manager, corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities;
- (k) To chair any subcommittee with at least two (2) other city councilors to recommend the appointment or removal of the city manager, corporation counsel or the city clerk, but the full city council shall have the final decision in regard to such appointment or removal by a vote of at least five (5) members of the council; and
- (l) To appoint the members and chairs of the city council committees and various ad hoc committees and communicate such appointments to the city council, which may override such appointments by a vote of at least six (6) council members.

Notwithstanding the foregoing, the city manager shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council.

(Referendum 11/2/10)

Section 6. Absence or disability of mayor; acting mayor.

In the temporary absence or disability of the mayor, the mayor may select an acting mayor from among the other council members and such person shall perform the duties of the mayor during such temporary absence or disability for a maximum of sixty consecutive (60) days or return of the mayor, whichever comes first. If through physical or mental incapacity the mayor is unable to select an acting mayor, or if the mayor's absence or disability exceeds sixty (60) consecutive days, the council shall select an acting mayor from among its membership until such time as the mayor is able to resume his or her duties or a vacancy is declared pursuant to section 7 below and a new mayor elected. (Referendum 6/13/78; 11/7/00; 11/2/10)

Section 7. Vacancies.

A vacancy in the membership of the city council shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or 6) the recall of a member pursuant to the provisions of article V. The council shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the city council, or at least sixty (60) percent of the regular meetings of the city council held in any one calendar year unless such member shall be excused (by vote of at least four (4) other members) for health reasons or other good cause.

The council shall declare a vacancy in its membership to exist upon the qualification of any member for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

A member may in writing addressed to the council resign his or her office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and such member's office shall become vacant on such specified future date.

If a vacancy in the membership of the city council occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

Section 8. Meetings of the council.

The city council shall meet at the usual place for holding meetings on the first Monday in December following the regular municipal election, or as soon thereafter as possible, and at such meeting the mayor and councilors-elect shall be sworn to

the faithful discharge of their duties by a justice of the peace, or by the city clerk. The city council shall at such meeting establish by resolution or rule a regular place and time for holding its meetings, and shall meet regularly at least twice each month. (Referenda 6/13/78; 11/4/86; 11/7/00; 11/2/10)

Section 9. Special meetings.

Special meetings may be called by the mayor, and in case of his or her absence, disability, or refusal, may be called by five (5) or more members of the city council. At least twenty-four (24) hours notice of the time and place of holding such special meeting shall be given to all members of the city council. (Referendum 11/2/10)

Section 10. Quorum.

Five (5) members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referendum 11/2/10)

Section 11. Procedure.

The city council shall keep a record of its proceedings and shall determine its own rules of procedure and make lawful regulations for enforcing the same. The meetings of the city council shall be open to the public in accordance with state law. The city council shall act only by ordinance, order, or resolve. All ordinances, orders, and resolves, except orders or resolves making appropriations of money, shall be confined to one subject which shall be clearly expressed in the title. An appropriation order or resolve shall be confined to the subject of appropriations only.

No ordinance and no appropriation order or resolve shall be passed until it has been read on two separate days, except when the requirement of a second reading on a separate day has been dispensed with by the vote of at least seven (7) members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance, order, and

resolve shall require on final passage the affirmative vote of at least five (5) members of the city council. No ordinance shall take effect until thirty (30) days after its passage and no order or resolve shall take effect until ten (10) days after its passage, except as herein otherwise provided for emergency ordinances, orders and resolves.

The city council may, by vote of at least seven (7) of its members, pass emergency ordinances, orders, or resolves to take effect at the time indicated therein, but such emergency ordinances, orders, or resolves shall contain a section in which the emergency is set forth and defined, provided, however, that the declaration of such emergency by the city council shall be conclusive. (Referendum 11/2/10)

ARTICLE III. BOARD OF PUBLIC EDUCATION

Section 1. Composition, election, tenure of office, compensation.

The board of public education shall be composed of nine (9) members who shall hold office, except as hereinafter provided, for a term of three (3) years and until their successors are elected and qualified. Four (4) shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the five (5) districts heretofore provided for in section 1 of article II, from and by the registered voters of each such district.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the five (5) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

The city council shall by order establish the amount each member of the school board shall be entitled to receive as compensation for all services rendered, which compensation shall be the same as that received by members of the city council, other than the mayor. The city council shall provide additional compensation to the chair of the school board appropriate to reflect his or her additional responsibilities as chair.

(Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 2. Chair.

On the first Monday in December following the regular municipal election, or as soon thereafter as possible, the board of public education shall elect one of its members as chair for the ensuing year and until a successor is elected and qualified, and may fill for the unexpired term any vacancy as chair that may occur.

At a date and time to be mutually agreed upon by the chair of the school board and the mayor, the chair shall deliver an annual address on the "state of the public education system in Portland" to the city council and the public. (Referenda 11/2/76; 6/13/78; 11/7/00; 11/2/10)

Section 3. Organization.

The school board shall meet for organization on the first Monday in December following the regular municipal election, or as soon thereafter as possible. The members-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the city clerk, and a record made thereof. The members shall at such meeting, or as soon thereafter as possible, establish a regular place and time for holding meetings and shall meet regularly at such place and time. Five (5) members of the school board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referenda 6/13/78; 11/7/00; 11/2/10)

Section 4. Powers and duties.

The board of public education shall have all the powers, and perform all the duties in regard to the care and management, including sound fiscal management, conduct, and control of the public schools of the city, which are now conferred and imposed upon school committees and school boards by the laws of this state, except as otherwise provided in this charter. (Referendum 11/2/10)

Section 5. School budget.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.

The budget submitted by the superintendent to be reviewed jointly by the school board and the city council shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for joint review, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall submit to the city council a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, and shall thereafter provide the city council with such information relating to such budget as the city council shall require.

A budget hearing on such budget estimates shall be held prior to final action by the city council. The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city

purposes, appropriate one gross amount for the support of the public schools, which amount shall not be less than the sum required to be appropriated for such purposes by the general laws of the state. Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council. Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council. (Referendum 6/13/78; 11/2/10)

Section 6. Vacancies.

A vacancy in the membership of the board of public education shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or (6) the recall of a member pursuant to the provision of Article V. The school board shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the school board or at least sixty (60) percent of the regular meetings of the school board held in any one calendar year unless such member shall be excused (by a vote of at least four (4) of the members) for health reasons or other good cause. A member may in writing addressed to the school board resign his or her office effective at a future date specified in the written resignation. Once submitted to the school board, such resignation may not be withdrawn and such member's office shall become vacant on the specified future date.

If a vacancy in the membership of the school board occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

ARTICLE IV. ELECTIONS

Section 1. Continuity in office.

In the event redistricting of the city shall cause a then council member or school board member to reside in a district other than that from which such person was elected, the office of such member shall not thereby be considered vacated but such member shall continue in office until a successor is duly elected and qualified. Each district councilor and district school board member in office on the effective date of any such redistricting shall be deemed to represent the newly constituted district of the same numerical designation as that formerly represented and shall continue to serve in that capacity until expiration of his or her term. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 2. Regular municipal election.

On the first Tuesday after the first Monday in November of each year, the regular municipal election shall be held and the registered voters of the city or district, as the case may be, shall ballot for such councilors and for such members of the school board as may be necessary to fill the offices of those whose terms would then normally expire and fill any existing vacancy in an unexpired term of office. (Referenda 12/1/75; 11/2/76; 6/13/78; 11/4/86; 11/7/00; 11/6/01; 11/2/10)

Section 3. Wardens and ward clerks.

The wardens and ward clerks shall be nominated by the city clerk and appointed by order of the city council. They shall be and remain residents of the city and all other qualifications for appointment shall be as provided in Title 21-A of the Maine Revised Statutes. They shall hold their office for one year from the date of appointment, unless a shorter term is specified by the order of appointment, and until others have been chosen and qualified in their stead. The warden and the ward clerk shall be sworn to the faithful performance of their duties by a person qualified under the statutes of the state to administer oaths, and a certificate of such oath shall be entered by the clerk on the records of such ward. (Referenda 11/2/76; 6/13/78; 11/4/86, 11/4/08; 11/2/10)

Section 4. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy-five (75) nor more than one hundred fifty (150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

Section 5. Form of nomination petition.

The signatures to nomination petitions need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers of each petition, and that each signature appended thereto was made in his or her presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer giving the street and number of the street, or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

To the city clerk of the City of Portland

We, the undersigned voters of the City of Portland, hereby

nominate, _____ whose residence is _____ for the office of _____ to be voted for at the election to be held in the City of Portland on the _____ day of _____, _____, and we individually certify that we are qualified to vote for a candidate for the above office.

Name _____ Street and Number _____, being duly sworn, deposes and says, that he (she) is the circulator of the foregoing nomination petition containing _____ signatures, and that the signatures appended thereto were made in his or her presence and are the signatures of the persons whose names they purport to be.

(Signed) _____ .

Subscribed and sworn to before me this _____ day of _____,

Attorney, State of Maine Bar # _____
Notary Public

If this petition is deemed insufficient by the city clerk, he or she shall forthwith notify by mail _____ at _____.
(Referendum 11/2/10)

Section 6. Filing of nomination petitions, and acceptance of nomination.

The city clerk shall make nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to the election. The nomination petitions for any one (1) candidate must be assembled and united into one (1) petition and filed with the city clerk during normal business hours not earlier than eighty-five (85) nor later than seventy-one (71) days before the date of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing at the time of filing of such nomination petitions his or her consent accepting nomination, agreeing not to withdraw and, if elected, to qualify. Such nomination petitions and consent, once filed may not be withdrawn. Any challenge to a nomination petition must be submitted to the city clerk in writing, setting forth the specific reasons for the objection, no later than five (5) days, excluding Saturdays, Sundays, and legal holidays, from its date of filing, or it is barred. No person shall take out nomination papers for more than one position at the same election, nor be nominated, nor shall any person consent to being nominated, at the same election for any other elective office provided for by this charter, and no person shall simultaneously hold more than one (1) elective office provided for by this charter. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/6/01; 11/4/08; 11/2/10)

Section 7. Form of ballot.

All official ballots for use in all municipal elections shall be prepared by the city clerk and furnished by the city, consistent with the voting machines used and the form of any state ballot(s), and the use of ranked choice voting. Ballots for use in elections under this charter shall contain the names of the various candidates, with their residence, and the office

for which they are candidates, and instructions on how to mark the ballot. The candidates for each office shall be grouped under the title of each office, plainly and distinctly marked. There shall be as many blank spaces under the name of each office as there are vacancies to be filled. The procedure for counting write-in votes shall be governed by Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern. Notwithstanding the foregoing, in the event of an emergency such as the illness, death or disqualification of a nominee for municipal office prior to the general election, the time frame for accepting a declared write-in candidate may be shortened by the city clerk. Such ballots may also contain such measures as may be submitted to the voters of the city by the legislature or by the city council and shall be without party mark or designation.

In preparing all ballots for election under this charter, the city clerk shall arrange the names of all qualified candidates for each office in alphabetical order according to surnames. (Referenda 11/2/2010; 3/3/2020)

Section 8. Specimen ballots.

The city clerk shall cause specimen or sample ballots to be prepared and to be posted in public places in each ward and voting precinct and advertised in the newspapers not later than ten (10) days prior to the municipal election. Such specimen ballots shall be printed on colored paper and marked "Specimen Ballot," and shall contain the names of the certified candidates with the residence of each, instructions to voters, and such measures as may be submitted to the voters by the legislature or by the city council. Such specimen ballots shall also be without party mark or designation. (Referendum 11/6/01; 11/2/10)

Section 9. Count of ballots.

Upon closing of the polls, ballots shall be counted in accordance with Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern, and the results thereof delivered to the city clerk by the wardens. (Referendum 11/2/10)

Section 10. Canvass of returns.

The city clerk shall examine the records of the several voting places and within forty-eight (48) hours after such election shall determine and declare the successful candidates as follows: The person or persons, not exceeding the number to be voted for at any one time for any office, having the majority of votes cast at such election, shall be determined and declared to be elected. If no candidate for mayor, city council, or school board has a majority of the votes cast as provided in article II, section 3, the city clerk shall conduct an instant runoff tabulation as provided in such section until the candidate with the majority of votes cast is determined. The city clerk shall provide written notice of the election results to all candidates. (Referenda 11/6/01; 11/2/10; 3/3/2020)

Section 11. State election laws applicable.

The laws of the state in Title 21-A of the Revised Statutes relating to the qualifications of electors, registration, the manner of voting, the duties of election officials, and all other particulars in respect to preparation for conducting and managing elections, so far as they may be applicable, shall govern all municipal elections in the City of Portland, except as provided below regarding 42-day pre-election reports and as otherwise provided herein.

In addition to the reports required for municipal candidates by Title 21-A of the Maine Revised Statutes, 42-day pre-election reports must be filed by municipal candidates no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Nothing in this charter shall prohibit the use of electronic or revised voting methods and procedures to the extent authorized by state and/or federal law. (Referenda 11/4/08; 11/6/2018)

ARTICLE V. RECALL

Section 1. Applicability.

Any member of either the city council or the school board may be recalled and removed from office by the registered voters of the City of Portland, as hereinafter provided, except that this provision shall not apply to a member of either body who has one (1) year or less to serve in his or her term, i.e., any petition to recall a member must be certified by the clerk no later than November 30 of the year prior to that member's next scheduled November re-election date. (Referenda 11/4/86; 11/2/10)

Section 2. Petition for recall.

In the case of either an at large member of the city council or of the school board, any five hundred (500) registered voters of the city may affirm and file with the city clerk an affidavit containing the name of the member of the city council or of the school board whose removal is sought, together with a statement of the reasons why such removal is desired. In the case of a district member of the city council or of the school board, any two hundred and fifty (250) registered voters of the member's district may affirm and file with the city clerk an affidavit containing the name of the district member whose removal is sought, together with a statement of the reasons why such removal is desired. Members of the city council and of the school board shall not be included on the same affidavit and only one member's name shall be on an affidavit.

Within seven (7) calendar days of receipt of such an affidavit, the city clerk shall prepare a sufficient number of petitions which shall contain the signature of the city clerk, his or her official seal, the date, and the name of the person whose removal is sought. In addition, the statement of reasons for removal referred to above shall either be printed on such petitions or attached thereto. Such petitions shall be on paper of uniform size with as many individual sheets as reasonably necessary.

The city clerk shall file the completed petitions in his or her office. During the thirty (30) days following their filing, the city clerk shall arrange to have petitions, noting that removal is being sought as well as the reasons therefor, available for signature both at city hall and also at public places as indicated below. Notice of the location of the public places where petitions may be signed shall be given by publication at least forty-eight (48) hours in advance and such notice shall contain the specific location of such public place or places, the dates it or they will be open, and the times

during which petitions may be signed. In the case of either a district councilor or a district school board member, the city clerk shall select one (1) site outside of city hall, but within the district of the member whose removal is sought, and such location shall be open for four (4) days between the hours of noon and 8:00 p.m. In the case of at large councilors or members of the school board, the city clerk shall select four (4) sites outside of city hall and such locations shall be open for four (4) days each between the hours of noon and 8:00 p.m.

The city clerk shall designate election clerks to supervise each such site. Election clerks shall be residents of Portland and at least eighteen (18) years of age. They shall be sworn to the faithful performance of their duties by the city clerk. Each qualified voter who signs a petition shall include his or her place of residence, providing either the street and number or a description sufficient to identify the place.

To mandate a vote in the case of an at large councilor or an at large member of the school board, the recall petition must be signed by at least three thousand (3,000) registered voters of the city, or in the case of a district councilor or district member of the school board, by at least fifteen hundred (1,500) registered voters of that member's district. (Referenda 12/1/75, 11/4/86; 11/2/10)

Section 3. Verification of recall petition.

At the expiration of the thirty (30) day period for signing petitions described in section 2, the city clerk shall declare the petition closed and, within ten (10) days thereafter, shall ascertain whether or not the petitions have been signed by the requisite number of registered voters. The city clerk shall attach his or her certificate, showing the results of such examination, to the petitions.

If the clerk's certificate should show that the petitions are insufficient, he or she shall advise both the city council and also the person or persons whose removal was sought of that fact. A finding of insufficiency shall not prejudice the filing of a new petition for the same purpose, except that such new petition shall not be filed within twelve (12) months from the date of the receipt of the clerk's certificate by the city council. (Referenda 11/4/86; 11/2/10)

Section 4. Calling of recall election.

If the clerk's certificate should show that the petitions are sufficient, he or she shall submit them, together with the clerk's certification, to the city council at its next regular meeting following certification, and shall also notify the person or persons whose removal is sought. The city council shall, within ten (10) days of receipt of the clerk's certificate, order an election to be held not less than forty-five (45) nor more than ninety (90) days thereafter; except that, if a regular municipal election should occur within ninety (90) days after receipt of the certificate, the city council may, in its discretion, schedule the recall election for the same date as the regular municipal election. The recall election shall be called and held as other elections under this charter, except for the specific limitations imposed by this article.

All registered voters in the city may vote on the recall of an at large member of the council or school board; only the registered voters of the applicable district may vote on the recall of a district member of the council or school board.

(Referenda 11/4/86; 11/2/10)

Section 5. Form of ballot.

Unless the member or members whose removal is sought shall have resigned within ten (10) days after the receipt by the city council of the clerk's certificate, the form of the question to be submitted to the voters shall, as nearly as possible, be: "Shall (name of official and his or her title) be recalled?"

(Referendum 11/4/86)

Section 6. Count of ballots.

In case a majority of those voting for and against the recall of any official shall vote in favor of recalling such official, he or she shall be thereby removed, and, in that event, the candidate to succeed such person for the balance of the unexpired term shall be determined as provided for in the case of a vacancy in the office.

If a majority of those voting should decline to recall a particular official, then no proceedings, seeking the recall of that same official, shall be initiated under this article within

twelve (12) months from the date of the election in which his or her recall was sought. (Referendum 11/4/86)

Section 7. Election may be ordered.

If a member of either the city council or school board who is recalled should either request a recount or dispute the election as permitted by law, then that member shall remain in office until the recount or dispute has been finally determined; and the provisions of article II, section 7 and article III, section 6, relating to vacancies in the city council or school board, shall be stayed. (Referendum 11/4/86; 11/2/10)

ARTICLE VI. ADMINISTRATIVE OFFICERS

Section 1. Appointments.

(a) The following officers shall be appointed by vote of at least five (5) members of the city council: city manager, city clerk, and corporation counsel, and they may appoint constables at large.

(b) All department heads shall be appointed by the city manager, subject to confirmation by the city council.

(c) All attorneys employed in the corporation counsel's office shall be appointed by the corporation counsel, subject to confirmation by the city council.

(d) All other employees shall be appointed by the city manager upon recommendation of the heads of their departments.
(Referendum 11/4/86; 11/2/10)

Section 2. Organizational powers.

The city council shall have power to provide by ordinance for the organization, conduct, and operation of the departments, agencies, offices, and boards of the city, for the creation of additional departments, agencies, offices, and boards and for the division of any such departments, agencies, offices, and boards; and for the alteration, abolition, assignment, or reassignment of all such departments, divisions, agencies, offices and boards; provided, however, there shall be a director of finance to perform the functions specified in article VII of this Charter. The city council shall, by ordinance, designate

those department heads responsible for performing duties required by state law. (Referendum 11/4/86)

Section 3. Civil service rules.

The city council shall provide by ordinance for a system of civil service rules for the appointment, promotion, demotion, lay-off, reinstatement, suspension, and removal of the members of the police department and of the fire department, other than the chiefs of such departments, and for a civil service commission to administer the same.

Section 4. Compensation and tenure of offices.

The city council shall fix by order the salaries of the appointees of the city council. Salaries of the appointees of the city manager shall be fixed by the city manager, subject to the approval of the city council. All appointive officers shall hold office during the pleasure of the appointing power.

Section 5. Appointment; qualifications; powers and duties of the city manager.

The city manager shall be chosen by the city council solely on the basis of character and executive administrative qualifications, and may or may not be a resident of the City of Portland or of the State of Maine at the time of appointment. Such person shall give bond for the faithful discharge of his or her duties to the City of Portland and in such sum as the city council shall determine and direct, and with surety or sureties to be approved by the city council. The premium on such bond shall be paid by the city. Such person shall be the administrative head of the city and shall be responsible to the city council for the administration of all departments. Neither the mayor nor members of the city council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment. Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards

and commissions, council committees, neighborhood and other groups and organizations, on city work.

The city manager's powers and duties shall be as follows:

- (a) To see that the laws and ordinances are enforced, but shall delegate to the chief of the police department the active duties connected therewith regarding criminal conduct.
- (b) To exercise control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.
- (c) To implement the policy decisions of the city council.
- (d) To coordinate city programs and operations and recommend improvements in such programs and operations to the council.
- (e) To prepare city budgets, in consultation with and incorporating policy guidance of the mayor, and to present such budgets to the council.
- (f) To make appointments as provided in this charter.
- (g) To attend meetings of the city council, except when his or her removal is being considered, and recommend for adoption such measures as he or she may deem expedient.
- (h) To keep the city council fully advised as to the business and financial condition and future needs of the city and to furnish the city council with all available facts, figures, and data connected therewith when requested.
- (i) To prepare a five (5) year rolling capital improvement plan for annual presentation to the city council, which plan includes the following:
 - 1. A one (1) year plan of specific projects and their cost;

2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; and
 3. A discussion of the basis for the plan and the factors which went into its development or amendments.
- (j) To prepare and submit to the city council such reports as are requested or he or she deems advisable; and
- (k) To perform such other duties as may be prescribed by this charter or required by ordinance of the city council. (Referenda 11/4/86; 11/2/10)

Section 6. Vacancy in office of city manager.

During any vacancy in the office of city manager, and during any absence or disability of the city manager of more than sixty (60) days, the city council shall designate a properly qualified person to perform the duties of manager and fix such person's compensation. During a temporary absence of sixty (60) days or less, the city manager may designate a qualified person to perform the duties of manager during such absence. While so acting, such person shall have the same powers and duties as those given to and imposed on the city manager. Before entering his or her duties, he or she shall give bond to the City of Portland in a sum and with surety or sureties to be approved by the city council. The premium on such bond is to be paid by the city. (Referendum 11/2/10)

Section 7. Duties of administrative officers.

Duties of administrative officers shall be prescribed by the appointive power, but such duties shall not be inconsistent with this charter or any ordinance enacted by the city council as provided herein. (Referendum 11/4/86; 11/2/10)

Section 8. Continuity in office.

Any and all officers, department heads, and employees of the City of Portland on the effective date of this charter shall continue in such capacity until a successor is appointed and qualified as provided herein, unless sooner removed by the appointive power designated herein. (Referendum 11/4/86; 11/2/10)

ARTICLE VII. BUSINESS AND FINANCIAL PROVISIONS

Section 1. Accounts and records.

Accounts shall be kept by the director of finance, showing the financial transactions of all departments of the city, and the school department. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the city. The director of finance shall furnish to the city manager each month a report containing in detail the revenues, expenses and expenditures of the city on all accounts, and for each appropriation item the expenditures made and the obligations incurred during the preceding calendar month and the total unencumbered balance. All the accounts of the city and the school department shall be audited annually by a qualified certified public accountant to be chosen by the city council.
(Referendum 12/1/75; 11/2/10)

Section 2. Collaboration between city and schools.

To the extent practicable and lawful, the city and the school department shall endeavor to share staff and resources and otherwise cooperate with one another in order to provide better city and school services in a cost effective manner.
(Referendum 11/2/10)

Section 3. Reports.

The director of finance shall publish each month a set of financial statements reflecting the financial condition of the city and the school department, and such other financial information as may be required by the city council.

The director of finance shall produce a comprehensive financial report on an annual basis which conforms to "Generally Accepted Accounting Principles." (Referendum 11/2/10)

Section 4. Fiscal year.

The fiscal year of the city shall be July 1 through June 30, or such other fiscal year as the city council shall determine.
(Referenda 6/13/78; 11/4/86; 11/2/10))

Section 5. Annual budget.

Not later than two (2) months before the end of the fiscal year, the city manager shall submit to the city council a proposed city budget prepared by the city manager for the ensuing fiscal year. The mayor shall submit comments on the proposed city budget, along with any proposed modifications, concurrently with the manager's submission.

The city council shall fix a time and place for holding a public hearing upon the proposed city budget prepared by the manager, and shall give not less than ten (10) days prior public notice of such hearing, which hearing shall be at least ten (10) days before the final passage of the appropriation resolve.
(Referenda 6/13/78; 11/4/86; 11/2/10)

Section 6. Budget content.

The proposed city budget prepared by the manager shall provide a complete financial plan of city general and enterprise funds and activities for the ensuing fiscal year. In organizing the budget, the city manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating proposed tax levies, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year.

The total of proposed expenditures shall not exceed the total of proposed income. (Referenda 6/13/78; 11/2/10)

Section 7. Appropriation resolve.

The city council shall adopt the annual appropriation resolve for the next fiscal year on or before the last day of the twelfth month of the fiscal year currently ending. Such resolve shall appropriate those amounts deemed necessary for general city purposes and additionally one gross amount for school purposes as required by section 5 of article III. The total amount appropriated shall not exceed the estimated revenue of the city.

If it fails to adopt such resolve by this date, the city council may make appropriation for current departmental expenses, chargeable to the appropriation for the year, when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force. These continuing appropriations shall not be subject to the mayor's veto in section 8 below.

The city council may by resolution appropriate to any purpose or object for which there shall have been no appropriation for the current year, or for which the appropriation for the current year has proved insufficient, any accruing revenue of the city not appropriated as hereinbefore provided and any unencumbered appropriation balance, or portion thereof, remaining after the purpose of the appropriation shall have been satisfied or abandoned. Such appropriations shall not be subject to the mayor's veto in section 8 below. (Referenda 6/13/78; 11/2/10)

Section 8. Mayoral veto of general city purposes appropriations in the appropriation resolve.

Within five (5) business days of the meeting at which the city council adopts the annual appropriation resolve, the mayor may veto the appropriation for general city purposes in such resolve by written communication to the other members of the city council. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

Any such veto of the appropriation for general city purposes shall not affect city payment of debt service obligations on previously authorized bonds, nor shall it affect the school budget appropriation.

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be overridden by a vote of at least six (6) members of the city council. The mayor shall not vote on such override item.

If a veto is overridden, the general city purposes appropriation will take effect on the first day of the fiscal

year, or on the day immediately following the override vote, if such vote is after the first day of the fiscal year.

If a veto is not overridden, then at the same meeting the override vote is taken, the general city purposes appropriation which was vetoed shall become an item for further consideration by the city council, without the need for a motion for reconsideration, and the city appropriation may be modified, amended, or otherwise acted upon to secure passage at that meeting or a subsequent meeting without the need for two readings prior to passage.

In the event the city council does not override the veto or does not secure passage of the annual appropriation for general city purposes prior to the start of the fiscal year, or has not otherwise acted to provide continuing appropriations under the second paragraph of section 7 above, then the appropriations for general city purposes in effect for the prior fiscal year shall go into effect as of the first day of the fiscal year, with expenditures chargeable to the appropriation for the year, until the appropriation for general city purposes is approved.

(Referendum 11/2/10)

Section 9. Unexpended appropriations.

All appropriations in the annual budget shall lapse at the close of the fiscal year unless specifically continued by order of the city council, and the unexpended appropriations shall be transferred to the appropriate fund balance account. (Referendum 11/2/10)

Section 10. Borrowing.

The borrowing of money by and for the city shall be limited as to form and purpose by section 11 and section 12 of this article. The credit of the city shall in no manner be loaned to any individual, association or corporation. (Referendum 11/2/10)

Section 11. Bond issues.

Money may be borrowed, within the limits fixed by the constitution and statutes of the state, now or hereafter applying to Portland, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings, the proceeds to be used for the acquisition of land, the

construction, reconstruction, major alteration, extraordinary repairs, and equipment of buildings and other permanent public improvements, the purchase of departmental equipment, for economic development to the extent determined by the City Council to serve a valid public purpose, to create reserves to settle workers' compensation obligations, to fund, refund, pay or to create reserves for the payment of the city's unfunded pension fund liabilities and for the payment of refunding bonds, notes and other evidences of indebtedness previously issued, or for any other purpose permitted by state law.

No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in two (2) public places in the City of Portland and publishing such notice at least twice in a newspaper of general circulation in Portland at least two (2) weeks before final action of the city council. In addition, the city council may, in its discretion, provide that such notice shall be published on the city's website and in such other additional media as the city council determines are appropriate to notify the general public of the public hearing.

Any order authorizing the issue of bonds must be approved by vote of at least seven (7) members of the city council.
(Referenda 11/4/86; 11/5/91; 11/8/94; 11/2/99; 11/2/10)

Section 12. Temporary loans.

Money may be borrowed in anticipation of receipts from taxes during any fiscal year but the aggregate amount of such loans outstanding at any one (1) time shall not exceed eighty (80) percent of the revenue received from taxes during the preceding fiscal year. All such loans shall be paid within the year out of the receipts from taxes for the fiscal year in which the loans are made. Money may be borrowed in anticipation of money to be received from the sale of bonds to be issued, in case such bond issue has been authorized; all such loans shall be subject to the provisions of the laws of the State of Maine in relation thereto. This section shall not limit in any way the power granted to towns and cities to borrow money as contained in the Revised Statutes of the State of Maine and acts amendatory thereof and additional thereto. (Referendum 11/4/86; 11/2/10)

Section 13. Payments.

The director of finance shall establish adequate financial controls to reasonably ensure that all payrolls, bills and other claims and demands against the city are in proper form, correctly computed, duly certified and legally due and payable.

The director of finance may require any claimant to make oath to the validity of his or her claim, may investigate any claim and for such purpose or purposes may examine witnesses under oath.
(Referendum 11/2/10)

Section 14. Bonds of officers.

The city council shall require a bond with sufficient surety or sureties, satisfactory to the city council, from all persons trusted with the collection, custody or disbursement of any of the public moneys; and may require such bond from such other officials as it may deem advisable; the premium charges for such bonds to be paid by the city. (Referendum 11/2/10)

Section 15. Collection and custody of city moneys.

All moneys received by any officer, employee or agent of the city belonging to the city, or for or in connection with the business of the city, shall forthwith be paid by the officer, employee or agent receiving the same into the city treasury, and shall then be deposited by the director of finance with a federally insured banking institution or institutions or insured credit union or unions. All interest from all deposits of money belonging to the city shall accrue to the benefit of the city.
(Referendum 11/2/10)

Section 16. Voter referendum required for certain city council actions.

(a) The city council shall submit the following to voter referendum:

- (1) Orders or resolves authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment;
or
- (2) Orders or resolves directly or indirectly obligating the city to expend, over a term greater than one (1)

municipal year, municipal tax funds in excess of an amount greater than seven and one-half one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment.

(b) The provisions of this section shall not be applicable to any order or resolve authorizing (i) the refunding of any securities or other obligations of the city; (ii) the issuance of general obligation securities, or other direct or indirect obligations, of the city for streets, sidewalks, or storm or sanitary sewers; or (iii) any construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other declared emergency. For purposes of this section, the city council may by vote of at least seven (7) of its members adopt emergency orders or resolves authorizing construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other emergency and such orders or resolves shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the city council shall be conclusive.

(c) Any order or resolve described in subsection (a) of this section shall be approved by separate action of the city council.

(d) No order or resolve described in subparagraph (a) of this section, not excepted by subparagraph (b), shall become effective until approved by a majority of voters voting at a regular or special municipal election. In the event that the total number of votes cast for and against the question for the referred order or resolve should be less than ten (10) percent of the registered voters of the city, then such order or resolve shall be deemed to be approved and effective.

(e) The form of the ballot question for the referred order or resolve shall be substantially as follows:

Shall the order or resolve entitled " _____
_____ " , be approved?
(Referendum 11/4/86; 11/2/10)

ARTICLE VIII. MISCELLANEOUS PROVISIONS

Section 1. No personal interest.

No member of the city council or school board or board or commission thereof and no officer or employee of the city or school department shall:

- (a) Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland or the school board, except his or her employment contract, or in the sale to or by the city or school department of any land, materials, supplies or services when such officer, employee or member exercises on behalf of the city or school department any function or responsibility with respect to such contract or sale. All contracts or sales made in violation hereof are void, and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such transaction.
- (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties.
- (c) Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Referenda 11/4/86; 11/2/10)

Section 2. Ordinances, rules and regulations continued.

All ordinances in force at the time that this charter takes effect, not inconsistent with this charter, shall continue in

force until amended or repealed. All rules and regulations of the municipal officers or of any office of the City of Portland in force at the time that this charter takes effect, not inconsistent with the provisions hereof, shall continue in force until amended or repealed.

Section 3. Continuity of actions.

All rights, actions, proceedings, prosecutions and contracts of the city or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent therewith shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Section 4. Summons before city council and civil service commission.

The clerks of the supreme judicial and superior courts may issue summonses or subpoenas for witnesses to attend and to produce books, documents and papers at any meeting of the city council or of the civil service commission of the City of Portland at which a hearing is had in any matter regarding any alleged dereliction, which summonses shall be served as summonses are required to be served in matters before the supreme judicial or superior courts. Failure to obey a summons or subpoena shall be punished by the appropriate court in the same manner as contempt is punished under the general law.

(Referendum 11/4/86)

Section 5. Effect of private and special laws.

Private and special laws which apply to the City of Portland in effect on November 4, 1986 shall continue in force until amended or repealed. (Referendum 11/4/86)

APPENDIX A

Charter Legislative History

1. Town of Portland incorporated by Act of Commonwealth of Massachusetts on July 4, 1786; Town of Portland Records, p. 1

2. City of Portland incorporated by adoption of charter on March 26, 1832; original charter can be found in Chapter 248, Special Laws of Maine 1832, p. 380; amendments as follows:

- c. 325, S.L. 1833, p. 501
- c. 500, S.L. 1834, p. 749
- c. 402, S.L. 1838, p. 511
- c. 541, S.L. 1839, p. 648

- c. 33, P & SL 1842, p. 25
 - c. 200, P & SL 1845, p. 258
 - c. 266, P & SL 1845, p. 310
 - c. 233, P & SL 1849, p. 333
 - c. 330, P & SL 1850, p. 458
 - c. 167, P & SL 1853, p. 158
 - c. 35, P & SL 1857, p. 48
3. A total revision of the charter was accomplished in 1863; c. 275, P & SL 1863, p. 257; amendments as follows:
- c. 348, P & SL 1870, p. 316
 - c. 647, P & SL 1871, p. 624
 - c. 21, P & SL 1875, p. 16
 - c. 8, P & SL 1881, p. 9
 - c. 86, P & SL 1881, p. 86
 - (c. 450, P & SL 1897, p. 707--Revision of charter rejected by voters in 1897)
 - c. 384, P & SL 1901, p. 569
 - c. 68, P & SL 1903, p. 116
 - (c. 287, P & SL 1905, p. 328--abolishing common council rejected by voters April 24, 1905)
 - c. 344, P & SL 1907, p. 638
 - c. 427, P & SL 1907, p. 758
 - (c. 148, P & SL 1921, p. 513--"Murray Bill" charter revision rejected by voters September 13, 1921)
 - (c. 149, P & SL 1921, p. 532--"Brewster Bill" charter revision rejected by voters September 13, 1921)
0. A total revision of the charter was accomplished in 1923 by adoption by voters of "Brewster Bill" on September 11, 1923; c. 109, P & SL 1923, p. 596; ("Nichols Bill" c.104, P & SL 1923, p. 557 was rejected same date); amendments as follows:
- c. 56, P & SL 1929, p. 484
 - (c. 112, P & SL 1929, p. 604--Mayor--Alderman form rejected by voters on September 10, 1929)
 - c. 31, P & SL 1931, p. 353
 - c. 50, P & SL 1945, p. 629
 - c. 113, P & SL 1945, p. 736
 - c. 144, P & SL 1945, p. 71
 - c. 72, P & SL 1947, p. 722
 - c. 72, P & SL 1949, p. 765
 - c. 103, P & SL 1949, p. 803
 - c. 28, P & SL 1953, p. 528
 - c. 108, P & SL 1955, p. 756
 - c. 88, P & SL 1957, p. 707
 - c. 143, P & SL 1959, p. 873
4. A total revision of the charter was accomplished in 1961; c. 194, P & SL 1961, p 1125; amendments as follows:
- c. 64, P & SL 1963, p. 966
 - c. 65, P & SL 1963, p. 967
 - c. 157, P & SL 1963, p. 1187
 - c. 177, P & SL 1963, § 1, p. 1291
 - (c. 6, P & SL 1965, p. 649 rejected by voters on December 6, 1965)
 - c. 7, p & SL 1965, p. 650
 - c. 81, P & SL 1965, p. 760

(c. 127, P & SL 1965, p. 849 rejected by voters on December 6, 1965)
c. 221, P & SL 1967, p. 136
c. 83, P & SL 1969, p. 1628
c. 136, P & SL 1969, p. 1792
c. 146, P & SL 1969, p. 1820
(c. 185, P & SL 1969, p. 1958 rejected by voters on November 3, 1970)

State constitutional law reference--Municipal home rule, Const. of
Maine, Art. VIII, Pt. 2.

Referenda 12/4/72	Art. I, 1
Referenda 12/1/75	Art. II, 2
	Art. IV, 2
	Art. IV, 4
	Art. V, 2
	Art. VII, 1
Referenda 11/2/76**	Art. II, 1
	Art. II, 4
	Art. III, 1,2,5
	Art. IV, 2,3,4,6
	Art. V, 2
Referenda 6/13/78	Art. II, 1,2,3,5
	Art. III, 1,2,3,4
	Art. IV, 1,2,3,6
	Art. VII,3,4,5,6
Referenda 11/4/86***	Art. II, 1,2,4,5
	Art. III, 1,5
	Art. IV, 1,2,3,4,6,7,9
	Art. V, 1,2,3,4,5,6,7
	Art. VI, 1,2,5
	Art. VII 7-10 (Rpld)
	Art. VI, 11-12 (Rnbd as Art. VI,
	7-8)
	Art. VII, 3,4,9,10,16
	Art. VIII, 1,4,5
	Art. VIII, 6 (Rpld)
Referenda 11/3/87	Art. II, 2
	Art. III, 1
Referenda 11/5/91	Art. VII, 9
Referenda 11/8/94	Art. VII, 9
Referenda 11/2/99	Art. II, 4
	Art. III, 5
	Art. VII, 9
Referenda 11/7/00	Art. II, 3,5
	Art. III, 2,3
	Art. IV, 2
Referenda 11/6/01	Art, IV, 2,6,8,10
Referenda 11/4/08	Art. IV, 3,4,5, 6,7,11
Referenda 11/2/10****	Charter Revisions recommended by the Portland Charter Commission established on November 4, 2008, and passed by the voters on November 2,2010

****Editor's note**--The amendment establishing district councilor elections became effective January 1, 1976, except that for the purpose of nomination and election of district councilors such amendment shall apply as the

presently occupied district seats become available thereafter by normal expiration of term or by vacancy and to every district election thereafter.

*****Editor's note--**A referendum passed Nov. 4, 1986 and effective July 1, 1987, repealed former sections 7 through 10 of article VI to eliminate references to obsolete offices (assistant assessors, director of public welfare) and renumbered former sections 11 and 12 as 7 and 8 respectively. Former sections 7 through 10 derived from the legislation enumerated in the first editor's note to this Charter.

*****Editor's note--**A referendum passed Nov. 4, 1986, effective July 1, 1987, amended section 4 of article VIII to clarify the summons-subpoena power and to provide that failure to obey either a summons or a subpoena will subject offenders to contempt. Former section 5 of this article was deleted as a result of the amendment to section 4 and a new section 5 added to preserve certain rights granted to the city by special acts of the legislature. Former section 6 was deleted to conform to 30 M.R.S.A. § 1915(4) which establishes the effective date of Charter revisions. See the editor's note to the Charter for derivations of deleted sections.

******Editor's note--**Portland voters approved a referendum passed on November 4, 2008 to establish a Portland Charter Commission to make recommendations to revise the Portland City Charter. Those recommendations were subsequently passed by the voters on November 2, 2010, and incorporated the provisions on the popularly elected mayor in Article 2, as well as making changes to the School and Elections articles and technical amendments throughout the document.

MEMORANDUM

TO:	Xavier Botana, Superintendent Portland Public Schools
FROM:	Agnieszka A. Dixon Drummond Woodsum
DATE:	November 5, 2021
RE:	Portland Charter—School Governance, Policy, and Management: The School Budget Approval Process and Bonding Authority

This memorandum follows our August 11, 2021 memorandum, in which we provided an overview of the law on behalf of Portland Public Schools governing the powers and duties of the City of Portland Charter Commission (the “Commission”) to address matters of school governance, policy, and management.

You have asked us whether the Portland Charter could be revised to task the School Board with approving the total amount of the school budget. As explained in Part I, below, the matter is not free from doubt. Nonetheless, we believe there is a strong legal basis to recommend that the Charter Commission propose a Charter revision to require the City Council to submit the total school budget to the voters, acting as the legislative body at a city-wide referendum. This would in effect limit the role of the City Council to calling and overseeing the school budget referendum.

You have also asked us whether the Charter could be revised to authorize the School Board to issue its own general obligation bonds to finance school construction and renovation projects. In Part II, below, we explain why this is not advisable, and we suggest a Charter revision whereby the City Council would continue to issue bonds for such projects but would direct the City Council to present any School Board recommended bond questions to the voters for ultimate approval.

I. THE SCHOOL BUDGET APPROVAL PROCESS

In the August 11 memo, we discussed the concept of home rule authority and the limits on that authority imposed by the Maine Constitution and state law. In short, under home rule, a municipality may, by charter, impose local regulation of public education unless state law has expressly prohibited local regulation or unless the Legislature “has intended to occupy the field and the legislation would frustrate the purpose of a state law.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993) (discussed below). With respect to the school budget approval process, and based upon the *York* decision, we stated that a charter could likely be revised to modify the school budget approval process as long as the power of the school board to direct expenditures and the responsibility of a municipal legislative body to determine the total school budget is not altered.

As you are well aware, municipal school budgets “must follow the same school budget requirements as regional school units.” 20-A M.R.S. § 2307. Accordingly, the school board prepares and approves a budget, which is organized by specific cost centers, and warrant articles prescribed by law. The school board budget is then submitted to the budget meeting. In charter municipalities, the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S. § 2307(1). The final step in budget approval is presentation of the total budget for ultimate approval by the voters in a budget validation referendum—although the voters are required

under state law to determine, every three years by referendum, whether or not to eliminate this step of the process. *See* 20-A M.R.S. § 1486(1).

State law contemplates that the school budget is approved by either “the municipal council *or other municipal legislative body*.” 20-A M.R.S. § 2307(1), (2) (emphasis added). It therefore appears that assignment of the authority to determine the total school budget to a municipal legislative body *other than* a city council is contemplated by the school statute. Accordingly, it may be argued that a charter provision that assigns this school budget function to a different body while leaving the decision for final budget authority with the voters would be within the municipality’s statutory home rule authority as articulated in the *York* decision.

In Maine, final approval of a school budget is typically the responsibility of (i) a town meeting composed of voters of a town, (ii) a school budget meeting composed of voters of the member municipalities of a school administrative unit, or (iii) a representative body, such as a council, established by charter. To our knowledge, most (if not all) city charters assign the responsibility for determining the total amount of the school budget to a city council. Of course, as a legal matter, just because something has not been done does not mean that it cannot be done. In evaluating the question posed, we could find no state law that would directly conflict with or be undermined by a charter provision that confers on the voters of a city the authority to act as the legislative body to approve a school board’s proposed total school budget. We therefore suggest that the Charter could be revised to direct the City Council to present the total school budget prepared and initially approved by the School Board to the voters for ultimate approval at a city-wide referendum.¹

Case law seems to support this school budget approval approach. In *York*, the Law Court upheld a town charter provision that created an elected municipal budget committee, separate from the school committee and the select board, vested with the power to amend the individual articles of the school budget and the total budget before it was submitted to voters for ultimate approval at referendum. *See Town of York*, 626 A.2d at 937, 942 & n. 4. The Court determined that the charter provision establishing this budget approval process was valid because there was no direct conflict between it and any statute and because it did not interfere with the purpose of the school statute or the municipal statute. *Id.* at 946. Moreover, the Court emphasized that, under the town’s charter framework, the “budget figures that are submitted to the voters are advisory” and that responsibility for the adoption of a final school budget is vested in the voters—vis-à-vis a budget referendum—and not the school committee. *See id.* at 941. Similarly here, a Charter revision directing the School Board to prepare the school budget and submit it to the City Council for the sole purpose of passing it on to the voters for ultimate approval would vest final approval of the total budget in a traditionally recognized municipal legislative body—the city’s voters.²

This approach also appears consistent with the plain language of the school statute. State law specifically provides:

1. Budget Meeting. In charter municipalities the budget meeting required by section 1485, subsection 3³ must be *a meeting of the municipal council or other municipal legislative body* established by the charter with authority to approve the budget.

¹ Specifically, under this approach, we envision a process by which the Charter would direct the City Council to call a budget validation referendum or, in the event the voters eliminate this step pursuant to 20-A M.R.S. § 1486, a municipal school budget referendum.

² As we noted in the August 11 memo and as we discuss next, since the *York* decision, the school budget approval process was modified to require a budget meeting followed by a budget validation referendum.

³ Section 1485, subsection 3 of Title 20-A provides:

2. Municipal charter. In charter municipalities where the municipal charter confers upon a municipal council or other municipal legislative body the authority to determine the total amount of the school budget and confers upon the school committee or school board the authority to direct the expenditure of those funds for school purposes, *the municipal council or other municipal legislative body shall determine the total amount of the school budget* to be submitted to a budget validation referendum and the school committee or school board shall determine the allocation of the approved school budget among the cost centers of the cost center summary budget format.

20-A M.R.S. § 2307 (emphasis added) (hereafter, “Section 2307”). In short, Section 2307 calls on a city council *or the municipal legislative body* to approve the total amount of the school budget at a meeting of the council or body. *See id.* In light of the presumptions in favor of home rule and the statutory authority of the voters to eliminate the budget validation referendum pursuant to 20-A M.R.S. § 1486(1), it can be fairly said that Section 2307 mandates a two-step school budget approval process: (1) preparation and initial approval of the school budget by a school board, followed by (2) ultimate approval of the initial budget by a municipal council *or* a municipal legislative body. It therefore does not appear to us to contradict or frustrate the purpose of Section 2307 for a municipal charter to direct the School Board to prepare and approve the school budget, and to then present the total proposed budget to a separate municipal legislative body, consisting of the voters at a City-wide referendum, for ultimate approval.

Likewise, the municipal statute appears to contemplate that there may be a municipal legislative body that is something other than a city council.⁴ It defines “municipal legislative body” as follows:

Municipal legislative body. “Municipal legislative body” means:

- A. The town meeting in a town;
- B. The city council in a city; *or*
- C. *That part of a municipal government that exercises legislative powers under a law or charter.*

30-A M.R.S. § 2001(9) (emphasis added). The third prong to this definition supports the proposition that a municipal legislative body can be something other than the town meeting or the city council so long as a law or charter establishes such a body and confers upon it the authority to exercise legislative powers. Certainly, it is conceivable that this third prong encompasses a referendum meeting of municipal voters, even though it is not enumerated in the above definition. Because the definition of “municipal legislative body” is housed in the municipal statute—and not in the school statute—it may well be that a court might not find it dispositive when interpreting the text of Section 2307. But, to the extent this definition may inform the analysis, in our view, a charter-enabled voter referendum would likely meet the state law definition of “municipal legislative body.”

In sum, although the matter is not free from doubt, it is our view that the Charter may be revised to direct the School Board to prepare and initially approve the school budget and to transmit it to the City Council, and to direct the City Council to submit the initially approved budget to the voters, serving as the legislative

Budget approval. A regional school unit’s cost center summary budget must be approved at a regional school unit budget meeting and by a budget validation referendum as provided in section 1486.

⁴ This concept is consistent with general principles of municipal law, which recognize that a municipal government has the power to create its form of local government pursuant to its home rule powers. *See* 2 McQuillin Mun. Corp. § 4:96 (3d ed.) (in general, the form of municipal government is subject to legislative control, but the power to adopt, alter, or revise a form of local government ordinarily may be delegated to a municipal corporation or its electors); *see also* 2A McQuillin Mun. Corp. § 9:2 (3d ed.) (stating that the effect of the adoption of a municipal charter “is to invest the governing authorities of the municipality—either a majority of the voters, or such officers as are prescribed—with the power of local government over inhabitants in that district”).

body, either via a budget validation referendum or, if it is discontinued by the voters pursuant to state law, a municipal school budget referendum for final approval.

In our role as legal counsel to Portland Public Schools, we have intentionally limited our analysis on this matter to the relevant legal considerations. We defer to others to deliberate on the policy implications and merits of pursuing such a change to the Charter. In weighing whether or not to pursue a revision to the Charter that would modify the established school budget approval structure, we encourage the School Board and the Commission to weigh the litigation risks, consider the policy implications, and evaluate alternative approaches that might address the underlying policy issues without raising the specter of lengthy and costly litigation.

II. BONDING AUTHORITY

The authority of a municipality to issue general obligation bonds is expressly set forth in the municipal statute. *See* 30-A M.R.S. § 5772. Likewise, the school statute grants certain types of school administrative units such authority. *See, e.g.*, 20-A M.R.S. § 1490 (authorizing regional school units to issue bonds or notes for school construction purposes); § 1311 (same for school administrative districts). Neither the municipal nor the school statute makes provision for the school committee of a municipal school unit to issue bonds in the name of the municipality. There is a strong legal argument that there is a comprehensive statutory scheme governing the issuance of municipal bonds and that a charter provision authorizing a municipal school committee to issue bonds would be deemed to be inconsistent with that scheme. Accordingly, a charter revision such as this likely would mean that a clean bond opinion could not be given and the bonds could not be issued.

Given that a statutory framework already exists for the issuance of municipal bonds, a simpler approach might be for the Charter to be revised to clarify that the role of the City Council with respect to the issuance of school construction or renovation bonds. Specifically, the Charter could be revised to (1) grant the School Board the authority to request the placement of a school construction or renovation bond question before the City voters at the next scheduled municipal election or at a special referendum, and (2) direct the City Council to call and oversee that referendum, thereby placing the question before the voters. In light of the presumptions in favor of home rule and given that the responsibility to approve school bonds under this approach would rest with the City voters, in our view, this approach would not likely run afoul of any home rule limitations.

We trust this memorandum is responsive to your inquiry. We are always available to answer any further questions you may have.

MEMORANDUM

TO: Portland Public Schools School Board
and Xavier Botana, Superintendent of Schools

FROM: Agnieszka A. Dixon and E. William Stockmeyer
Drummond Woodsum

DATE: January 24, 2022

RE: Proposals for Charter Provisions Regarding School Budget Approval Procedures and
School Bonding Authority

At your request, we write in response to a memorandum prepared by Attorneys Jim Katsiaficas and Emily Arvizu to the Portland Charter Commission Education Committee, dated December 14, 2021 (which we refer to here as the “Perkins Thompson Memo”). In that memo, Attorneys Katsiaficas and Arvizu questioned (1) the scope of the City’s charter authority to assign the role of determining the total school budget to a municipal legislative body other than the City Council including, specifically, the School Board, and (2) the proper roles of the City Council and School Board in issuing school construction and renovation bonds. We respond to both of these issues in turn.

I. AUTHORITY TO REPLACE THE CITY COUNCIL WITH ANOTHER MUNICIPAL LEGISLATIVE BODY TO DETERMINE THE TOTAL SCHOOL BUDGET

As you know, in our memo dated August 11, 2021, we provided an overview of the law governing the powers and duties of the Charter Commission to address matters of school governance, policy, and management (the “August 2021 Memo”). You then asked us whether the Portland charter could be revised to task the School Board with determining the total amount of the school budget, and we responded that there appears to exist a strong legal basis to do so (the “November 2021 Memo”). Specifically, we stated in our November 2021 Memo that a charter provision that assigns the responsibility to determine the total school budget to a municipal legislative body other than the City Council while leaving the decision for final budget authority with the voters would likely be within the City’s charter authority.

In reviewing the Perkins Thompson Memo, it appears to agree with us on this point. Where our opinions seem to diverge is on the scope of the City’s home rule authority to identify *who* can serve as the municipal legislative body for this limited purpose.

In considering this question, we think it noteworthy that the Maine Law Court has not only held that the school statute did not implicitly preempt municipal charters from designating an entity responsible for preparing the school budget, but emphasized that the budget figures prepared by such an entity are “advisory” and that, perhaps, what mattered most was that “[r]esponsibility for the adoption of a final school budget . . . is vested in the voters, not the School Committee.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 940 (Me. 1993). Indeed, the Law Court unequivocally rejected the contention that interposing a budget committee between the school committee and the town meeting frustrated the legislative scheme set out in the school statute on grounds that it undercut state policy dividing school authority between the school board and the municipal legislative body. *Id.*

We think the *York* decision could lend credence to a variety of ways that the Portland charter could be revised to remove the City Council’s current role from the school budget approval process while respecting the plain language of Section 2307. We next discuss two of the various possible alternatives, and we respond to the objections to these two alternatives raised in the Perkins Thompson Memo.

- **Alternative #1: The voters determine the total school budget.**

The Perkins Thompson Memo states (correctly, we believe) that “the use of the phrase ‘or other [municipal] legislative body’ could be considered to allow Portland to amend its charter to transfer budget adoption authority from the City Council to a City-wide voter referendum.” (Perkins Thompson Memo at p. 4.) One alternative approach to the status quo, then, would be to have the charter direct the City Council to call a City-wide municipal school budget referendum for the purpose of determining the total school budget, followed by the statutory budget validation referendum (BVR). While the Perkins Thompson Memo objects to this approach, it does not appear to be on legal grounds but rather on the policy ground that holding two referendums (the first to set the total budget, and the second to ratify that budget) is a waste of effort. Yet there may well be sound policy reason for such a two-vote process.¹ Moreover, the Legislature established a two-vote process for nearly all school administrative units as a matter of state policy, and it also established a process by which voters can vote to discontinue the BVR should they find it to be an unnecessary duplication. In other words, the Portland voters could vote to eliminate the statutory BVR in short order, leaving a single referendum vote by charter to determine the total school budget.

- **Alternative #2: The School Board determines the total school budget, and the voters ultimately approve the budget.**

As we discussed in our November 2021 Memo, we can also envision a school budget approval process that removes the City Council from the budget process but does not require two referendums. Such a process stems from my suggestion during the Education Committee’s panel discussion that there appears to be no statutory prohibition on the School Board serving as the “municipal legislative body” for purposes of Section 2307. The Perkins Thompson memo objects to this alternative process primarily on grounds that Section 2307 was amended to “clearly delineate and balance the roles and power of the school board and the existing municipal legislative body having school budget approval authority.” (Perkins Thompson Memo at p. 4.)

This objection, however, contradicts the plain reading of Section 2307 and requires the inference that the phrase “or other municipal legislative body” confines charter municipalities to a single form of legislative body—the town meeting. Yet while it is true that in charter municipalities the council and the town meeting are the two traditional forms for the municipal legislative body, nothing about the language of Section 2307 indicates that other forms are excluded. Indeed, Sanford (as the Perkins Thompson Memo noted) and, arguably, York (as we’ve noted) have at one time or another established an “other municipal legislative body” that in each case was something quite different than a town meeting. Additionally, as we discuss in our November 2021 Memo, the definition of “municipal legislative body” in the municipal statute does not support such an inference. Finally, although a statute otherwise clear on its face might require a narrower interpretation in the face of a constitutional objection, the constitutional separation of powers doctrine does not generally apply to municipal bodies or school budget approval procedures. It strikes us that reading such an intent into the language or legislative history of Section 2307 goes too far when the constitutional ground does not exist. Rather, Section 2307 addresses the role of the

¹ For example, the initial referendum to determine the total budget could be an opportunity for the School Board to inform voters on the details of the budget through the presentation of the eleven cost centers and to get an early indicator of the voters’ proclivity; and the BVR would then serve to ratify the approved budget—which is, in fact, the role the BVR serves in school budget approval procedures for regional school units and school administrative districts throughout the state.

municipal legislative body, not its identity, and just as importantly, does so by affording greater deference to charters, not less.²

For these reasons, we think Section 2307 leaves room for the Portland charter to assign the School Board the advisory role of determining the total budget before it is finally adopted by the voters. We also think that such an approach would be consistent with the holding in *York*. And, while there are arguments favoring different legal views on this matter and a charter revision that assigns the role of determining the total school budget to a school board is not without legal risk, such a charter revision would be entitled to a presumption of validity by Maine courts under home rule principles the Court articulated in *York* and many other cases.

- **The school statute and case law leave ample room to explore alternatives to the current school budget approval process.**

Should the Charter Commission entertain the idea of removing the City Council from its current role in the school budget approval process, both the school statute and case law leave ample room to explore these or other alternatives. To that end (because more often than not it is helpful to read proposals rather than legal memos), we have enclosed examples of the two charter revisions discussed above. We also would be happy to discuss other possible school budget approval processes that we believe fall within the legal limits of municipal home rule authority and address the parity issues raised by the existing charter process.

II. BONDING AUTHORITY

There is clear agreement between us and Attorneys Katsiaficas and Arvizu that there is insufficient legal basis to reassign the authority to issue school construction and renovation bonds from the City Council to the School Board. Our suggestion in the November 2021 Memo, however, does not concern who issues such bonds; rather, we propose that, whenever such a bond exceeds a charter-established threshold so that it must be submitted to a referendum, the voters should have an opportunity to vote on the bonding amount and purpose proposed by the School Board, rather than the proposal of the City Council.

Accordingly, we suggest a charter revision that would have the City Council continue to issue such bonds and to call and oversee the referendum, but require the City Council to place the *School Board's* proposed question before the voters. To further clarify our intent, we have attached a suggested charter revision for your review and consideration.

We trust this memo is responsive to your request. We are available should you have further questions.

² Notably, Section 2307(1) and (2) are exceptions to the mandate that municipal schools must follow the same school budget procedures as regional school units: First, Section 2307(1) clarifies that, notwithstanding the statutory mandate, charter municipalities are not restricted to the town meeting for the first part of the school budget approval, but may use their own legislative body—namely, the “municipal council or other municipal legislative body established by the charter.” Second, Section 2307(2) clarifies that municipal charters may circumscribe the role of a municipal council or other municipal legislative body to determining the total amount of the school budget. Section 2307 indeed “delineates and balances” roles, but only by giving charter municipalities substantially more room than other school administrative units to apply the details of the two-step school budget approval process.

SUGGESTED CHARTER REVISIONS TO ARTICLE III, SECTION 5. SCHOOL BUDGET

EXAMPLE 1: The voters determine the total school budget at a school budget referendum.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.

The budget submitted by the superintendent to be reviewed jointly by the school board and the city council shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for joint review, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall submit to the city council a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~ The city council shall call a school budget referendum for the purpose of determining the total amount of the school budget. The budget

presented to the school budget referendum shall be the amount proposed by the school board. The warrant calling the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board. The school budget approved at the school budget referendum shall thereafter be submitted to a budget validation referendum until such time that the voters discontinue use of the budget validation referendum process.

A budget hearing on such budget estimates shall be held by the school board at least seven (7) days prior to ~~final action by the city council~~the school budget referendum.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the school budget referendum and ratified at the budget validation referendum, as necessary, ~~not be less than~~or (ii) the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council.

EXAMPLE 2: The School Board determines the total school budget, followed by a budget validation referendum or, if eliminated, by a school budget referendum.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.

The budget submitted by the superintendent to be reviewed jointly by the school board and the city council shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for joint review, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall ~~submit to the city council~~prepare a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~

The school board shall hold a~~A~~ budget hearing on such budget estimates ~~shall be held at least seven (7) days prior to determining the total amount of the school budget final action by the city council.~~ The city council shall thereafter

submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the school budget referendum and ratified at the budget validation referendum, as necessary, or (ii) ~~not be less than~~ the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council.

SUGGESTED CHARTER REVISIONS TO ARTICLE VII, SECTION 11. BOND ISSUES

Section 11. Bond issues.

Money may be borrowed, within the limits fixed by the constitution and statutes of the state, now or hereafter applying to Portland, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings, the proceeds to be used for the acquisition of land, the construction, reconstruction, major alteration, extraordinary repairs, and equipment of buildings and other permanent public improvements, the purchase of departmental equipment, for economic development to the extent determined by the City Council to serve a valid public purpose, to create reserves to settle workers' compensation obligations, to fund, refund, pay or to create reserves for the payment of the city's unfunded pension fund liabilities and for the payment of refunding bonds, notes and other evidences of indebtedness previously issued, or for any other purpose permitted by state law.

No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in two (2) public places in the City of Portland and publishing such notice at least twice in a newspaper of general circulation in Portland at least two (2) weeks before final action of the city council. In addition, the city council may, in its discretion, provide that such notice shall be published on the city's website and in such other additional media as the city council determines are appropriate to notify the general public of the public hearing.

Any order authorizing the issue of bonds must be approved by vote of at least seven (7) members of the city council, except as set forth in Section 11.A.

Section 11.A. Bond issues for school bonds.

The city council shall submit school project bonds to voter referendum in accordance with this section. When the school board has voted to propose that the city issue bonds for school construction, renovation, or other capital purposes in an amount that requires the city council to submit an order or resolve to voter referendum by Section 16 this Charter, the school board shall submit to the city council (i) a description of the project concept and concept budget; (ii) the major components of the project

concept budget, including as applicable sums for real estate acquisition, design and other services, construction and site development, equipment, infrastructure, and project contingencies; and (iii) the proposed sources and amounts of funding for the project budget, including project debt. The city council shall order the issuance of bonds for the school project as proposed by the school board, subject to voter ratification of its bond order as provided in Section 16, in an amount sufficient to fund the debt portion of the project concept budget after deduction of issuance and other costs. The city council shall submit its order authorizing the issuance of debt for the project to voter referendum at the next regular city election occurring at least 120 days after the school board has submitted the project concept to the city council or at an earlier election. The city council shall use a separate referendum question to submit its bond order for each school project as proposed, except that if the school board has consolidated school projects into a single concept that it has approved, then the city council shall use a single referendum question to submit its bond order for that consolidated school project as proposed.

MEMORANDUM

TO: Portland Public Schools School Board and Xavier Botana, Superintendent of Schools
FROM: Agnieszka A. Dixon and E. William Stockmeyer
Drummond Woodsum
DATE: April 4, 2022
RE: Charter Revisions Regarding School Budget Approval Procedures
—Review of Charter Commission Education Committee Proposal

At your request, we have reviewed the proposal of the Portland Charter Commission Education Committee to revise the school budget approval process, which was presented to the Charter Commission for a first reading last Wednesday, March 23, 2022 (the “Proposal”).

If accepted by the Charter Commission and adopted by the City voters, the Proposal would make two material changes to the school budget approval process:

1. Joint Budget Guidance Committee: The Proposal would establish a joint budget guidance committee composed of an equal number of City Council and School Board members to develop, prior to the preparation of the city and school budgets, non-binding guidance to the City Council and the School Board on budget priorities and constraints.
2. School Board Determines Total School Budget, Followed By Voter Approval: The Proposal would remove the City Council’s role from the school budget approval process and direct the School Board to determine the total budget, which would then be submitted to the voters for approval at a budget validation referendum (BVR) or, if the BVR is eliminated, at a municipal school budget referendum. This portion of the Proposal essentially incorporates the second of two alternatives that we identified and discussed in our memo dated January 24, 2022.

The establishment of an advisory joint budget guidance committee does not appear to us to run afoul of any limits on municipal home rule authority. Likewise, as we discussed in our January 24 memo, we think state law leaves room for the Portland charter to assign the School Board the role of determining the total school budget while leaving the decision for final budget authority with the voters, as set forth in the Proposal,¹ for the following reasons:

¹ Should the Charter Commission adopt the Proposal, we recommend a slight adjustment to the first and last sentence of the last paragraph of Article III, Section 5 of the charter to (1) clarify the process for appropriating funds for the school budget, and (2) provide some flexibility in how appropriated budget amounts may be exceeded (we make this latter recommendation because the process to secure voter consent can be lengthy whereas the need to do so may arise in emergency situations or otherwise when time is of the essence), so that the charter amendment would read:

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public school which amount shall equal the greater of (i) the amount adopted by the voters at the budget validation referendum or, if discontinued, at the school budget referendum, or (ii) not be less than the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council or the voters.

- The school statute, and specifically the plain language of Section 2307 of Title 20-A, does not prescribe who can serve as the municipal legislative body for purposes of determining the total school budget.
- The school statute does not confine charter municipalities to the two “classic” forms of the municipal legislative body—*i.e.*, the town meeting or the council. Indeed, several municipalities in Maine have at one time or another established municipal legislative bodies that were something other than these classic forms.
- The state law definition of “municipal legislative body” in Section 2001 of Title 30-A (the statute governing municipalities) plainly provides that a municipal legislative body can be a town meeting, a city council, or something else—namely, “[t]hat part of a municipal government that exercises legislative powers under a law or charter.”
- Section 2307 specifies the *role* of the municipal legislative body, not its *identity*, and does so by affording greater deference to charter communities, not less. Indeed, Section 2307 is an exception to the general state law mandate that municipal school units must follow the same school budget procedures as regional school units.
- Finally, while there are arguments favoring different legal views on this matter and, consequently, the Proposal is not without legal risk, charters are entitled to a presumption of validity by Maine courts under home rule principles articulated in the *York* decision and many other cases. Accordingly, the burden rests on the person attacking a charter provision to prove that it exceeds municipal home rule authority, and not on the municipality to prove that it does not.

We trust this memo is responsive to your request. We are available should you have any additional questions.

City of Portland | Office of Corporation Counsel

Jen Thompson, *Acting Corporation Counsel*

To: Mayor and Members of the Portland City Council

From: Jen Thompson, Acting Corporation Counsel

Date: September 1, 2022

Re: Charter Modification Summaries



Pursuant to the authority granted to it under state law, the Charter Commission has proposed that its proposed revisions to the City's Charter be submitted to the voters in separate questions as charter modifications under Title 30-A, Section 2105(1)(A).

30-A M.R.S. § 2103(7) provides:

Charter modification summaries. When a proposed charter revision is submitted to the voters in separate questions as charter modifications under section 2105, subsection 1, paragraph A, and the municipal officers, with the advice of an attorney, determine that it is not practical to print the proposed charter modification on the ballot and that a summary would not misrepresent the subject matter of the proposed modification, a summary of the modification may be substituted for the text of the proposed modification in the same manner as a summary is substituted for a proposed amendment under section 2104, subsection 6.

It is up to the Council to determine "that it is not practical to print the proposed charter modification on the ballot" and whether any particular summary would or would not misrepresent the subject matter of a proposed modification.

You have been provided with copies of the Charter Commission's final report and recommendations which contain changes that, if printed in full on the ballot, would require the ballot to be at least 18 pages (double-sided).

I have reviewed the proposed summaries prepared by the Charter Commission and in my opinion they meet the legal requirement outlined in 30-A M.R.S. § 2105(c) which provides:

C. Any summary must fairly describe the content of the proposed amendment and may not contain information designed to promote or oppose the amendment.

Having reviewed the summaries, it is also my opinion that they do not misrepresent the subject matter of the proposed modification.

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: August 12, 2022

SUBJECT: Order 44-22/23 Appropriating an Additional \$255,800 in HOME Investment Partnership Program Funds to Community Housing of Maine: RE 83 Middle Street - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair

SPONSOR: Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 8/8/2022

Final Action 9/1/2022

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: No

PRESENTATION: Mary Davis, Acting Director, Housing and Economic Development Department

I. SUMMARY

Community Housing is requesting \$255,800 in additional city subsidy for Phoenix Flats located at 83 Middle Street to close a funding gap to construct 45 units of affordable rental housing.

II. AGENDA DESCRIPTION

At the July 19, 2022 Housing & Economic Development Committee meeting, the Committee voted (4-0) to forward this item to the City Council and recommend passage.

Community Housing of Maine (CHOM) is requesting an additional subsidy from the City of Portland for their project currently under construction at 83 Middle Street. In September 2019, the City Council approved \$330,000 in affordable housing development funding for this project (Order 34-19/20) (\$193,266 HOME and \$136,734 Jill C. Duson Housing Trust Fund) and an Affordable Housing Tax Increment Financing Credit Enhancement Agreement (Orders 15 & 16-20/21). Due to the rising costs of construction and unexpected environmental remediation costs, the developer is seeking an additional subsidy of \$255,800 to fill the gap created by these unforeseen costs.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Community Housing is proposing to construct 45 units of affordable housing at 83 Middle Street. A portion of the project is leased from the City of Portland (Order 43-19/20). The project, formerly known as Middle Street Apartments, now known as Phoenix Flats, has been under construction since October 2021. The project, when complete, will create forty-five (45) new units of rental housing, consisting of 27 efficiency units and 18 one-bedroom units. Twenty-seven units are affordable to households at or below 50% of the area median income (2022 limit for a single person household is \$39,100) and 18 units will be affordable to households at or below 60% of the area median income (2022 limit for a single person household \$46,920).

Due to the rising costs of construction and unexpected environmental remediation costs, the developer is seeking an additional subsidy of \$255,800 to fill the gap created by these unforeseen costs.

This item must be read on two separate days. This is its first reading.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Increased access to rental housing that is safe, affordable, and accessible.

V. FINANCIAL IMPACT

The recommendation is for \$255,800 in HOME funding.

VI. STAFF ANALYSIS AND BACKGROUND

Staff supports the request and is asking that the City Council vote to allocate additional funding to the project.

VII. RECOMMENDATION

Staff supports the request and is asking that the City Council vote to allocate additional funding to the project.

VIII. LIST ATTACHMENTS

1. Appropriating Home funds for 83 Middle Street Community Housing of Maine 8.8.2022
2. 83 Middle Street additional funding request

Prepared by:

Mary Davis, Division Director

Date: 08/12/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROPRIATING AN ADDITIONAL \$255,800
IN HOME INVESTMENT PARTNERSHIP
PROGRAM FUNDS TO COMMUNITY HOUSING OF MAINE
RE: 83 MIDDLE STREET**

ORDERED, that the additional amount of \$255,800 in Home Investment Partnerships Program funds is hereby appropriated to Community Housing of Maine for development costs for the project at 83 Middle Street; and

BE IT FURTHER ORDERED, the City Manager or his or her designee is authorized to execute any and all documents necessary to apply for, accept and appropriate the grant, and otherwise carry out the intent of this order.



TO: Councilor Ali, Chair
Members of the Housing and Economic Development Committee

FROM: Mary P. Davis, Interim Director
Housing and Economic Development Department

DATE: July 15, 2022

SUBJECT: Additional Funding Request for 83 Middle Street Project

Community Housing of Maine (CHOM) is requesting additional subsidy from the City of Portland for their project currently under construction at 83 Middle Street. In September of 2019, the City Council approved \$330,000 in affordable housing development funding for this project (Order 34-19/20) (\$193,266 HOME and \$136,734 Jill C. Duson HTF) and an Affordable Housing TIF Credit Enhancement Agreement (Orders 15 & 16-20/21). Due to the rising costs of construction and unexpected environmental remediation costs the developer is seeking an additional subsidy of \$255,800 to fill the gap created by these unforeseen costs.

Background:

The 83 Middle Street project, formerly known as Middle Street Apartments, now known as Phoenix Flats, has been under construction since October 2021. A portion of the project site is leased from the City of Portland (Order 43 – 19/20). The project, when complete, will create forty-five (45) new units of rental housing, consisting of 27 efficiency units and 18 one-bedroom units. Twenty-seven units are affordable to households at or below 50% of the area median income (2022 limit for a single person household is \$39,100) and 18 units will be affordable to households at or below 60% of the area median income (2022 limit for a single person household \$46,920).

Staff Recommendation:

HCD staff is requesting the Housing and Economic Development Committee approve and recommend to the City Council support of \$255,800 in additional HOME funding for the Phoenix Flats project.

Attachments:

Developer Request



Board Members

Aaron Shapiro

Retired Community Development
Director, Cumberland County
Board President

Chip Newell

Principal, The NewHeight Group
Board Treasurer

Gunnar Hubbard

Principal, Thornton Tomasetti
Board Secretary

David Birkhahn

Vice President, TD Bank

Elizabeth Boepple

Partner, Murray, Plumb, & Murray

Kalie Hess

Associate Director
Partnership for Children's Oral Health

Jan McCormick

Retired Affordable Housing
Investment Executive

Luc Nya

Mental Health Program Coordinator
OCFS/Corrections Liaison, Maine DHHS

Thomas Ptacek

Veteran's Healthcare Outreach
Community Organizer, Preble Street

Jennifer Putnam

Executive Director, Waban

Jennifer Rottmann

Deputy Director/CFO, The Genesis Fund

John Ryan

President, Wright-Ryan Construction

Bill Shanahan

Co-President, Evernorth

Kimberly Twitchell

Maine Regional President, NBT Bank

Staff Contacts**Cullen Ryan**

Executive Director

Kyra Walker

Chief Operating Officer

Elizabeth Baranick

Asset Manager

Sarah Gaba

Occupancy Manager

Mara O'Shea

Compliance Manager

Meredith Smith

Supportive Housing Manager

Dylan O'Neil

Asset Manager

Jim Gwilym

Chief Financial Officer

Chris Harmon

Controller

Jenny Jimino

Bookkeeper

Vickey Rand

Advocacy & Communications Manager

Brenda Sylvester

Development Officer

Bree LaCasse

Development Officer

Brian Kilgallen

Development Officer

Robyn Wardell

Development Associate

Dear Mary,

May 9th, 2022

Thank you for taking the time to review our request for additional support for Phoenix Flats, formerly known as Middle Street Apartments. Phoenix Flats has been under construction since October of 2021. Since that time, we have seen a consistent rise in the cost of construction. Significant increases in both labor and materials costs have begun to jeopardize our ability to deliver the final product as it was originally designed. Because of this challenging construction climate, we are asking for \$255,800 in additional support to ensure the project's successful completion.

Throughout construction, cost increases have steadily chipped away at our contingency. For example, the CMP connection fee, which had been budgeted to be \$30,000 based on prior experience, was actually \$128,000. Since the outset of construction, the price of solar panels has increased by \$21,000, roofing materials by \$35,554.02, siding materials by \$21,032.96, and the list goes on. Perhaps the best example of price escalation can be seen in the first change order of the project. In December, we needed to change the finish condition of some interior lighting. We removed two lights from the interior hallways but added one light in the trash room, resulting in a net reduction in the number of light fixtures needed. However, the change meant that we lost our contracted price with the supplier. When the final price came back, the cost had gone up by \$13,964.42. These are just some examples of the price escalations we are seeing. When taken separately, each of these increases can be managed. However, when combined, these costs are overwhelming, and there are still at least six months of construction remaining.

In addition to the rising construction costs, we have had to handle unexpected environmental costs. While digging the foundations, we discovered environmental contaminants that were not found in our pre-development testing. The 500 tons of "dirty dirt" have had to be tested, hauled off site, stored, and then finally brought to an appropriate landfill. With testing, transportation, and disposal fees the increased environmental costs currently amount to \$66,250.

I would be happy to discuss these challenges and answer any questions you may have. Thank you for your previous support for this project and your consideration of this funding request.

Thank you,

Brian Kilgallen

Public Comment - Order 44-22/23: Status of CDBG Funding for 83 Middle Street

Inbox Public Comment inbox



George Rheault <george.... 9:42 AM (1 hour ago)

to Public, Dena, Kate, Pious, April, Roberto, Anna, Victoria, Andreu

In the Council packet there is no mention of the \$200,000 that the City Council awarded to CHoM for the 83 Middle Street project as part of the FY2021 funding cycle for the Community Development Block Grant program. This is in addition to all the other city subsidies that CHoM has received on this project.

Did CHoM end up not using these funds? If not, why would they be omitted from the council discussion?

See link below to the relevant council resolution for details.

[CDBG Annual Action Plan FY2020 Resolve 12-19/20 \(civicplus.com\)](#)

MEMORANDUM
City Council Agenda Item

FROM: Paul Bradbury, Jetport Director

DATE: August 12, 2022

SUBJECT: Order 45-22/23 Accepting and Appropriating a Federal Aviation Administration Airport Infrastructure Grants for Federal Fiscal Year 2022 as provided under the Bipartisan Infrastructure Law - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Danielle P. West, Interim City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 8/8/2022

Final Action 9/1/2022

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: No

PRESENTATION: Paul Bradbury will introduce this item as needed, and answer any Council questions.

I. SUMMARY

The Portland International Jetport is requesting approval and appropriation of Federal Aviation Administration federal fiscal year 2022 Airport Infrastructure Grants totaling \$4.82 million and matching funds of \$536,000 split equally between the Jetport and the State of Maine for a total of \$5.36 million.

II. AGENDA DESCRIPTION

This item accepts and appropriates grant funding of approximately \$4.8 million dollars administered from the Federal Aviation Administration (FAA) Airport Infrastructure Grant (AIG) program as provided under the Bipartisan Infrastructure Law for federal fiscal year 2022. The AIG program grants will cover 90 percent of project costs; the remaining 10 percent will be split equally between the State of Maine and local Jetport funds. The Jetport will use these funds for the following projects:

- in-pavement runway lighting and pipeline protection reimbursement;
- south general aviation apron extension;
- central air handler replacement;
- passenger boarding bridge replacement; and
- installation of electric ground service equipment/vehicle charging stations.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The FAA requires approval of Airport Infrastructure Grants (AIG) by the airport sponsor's governing body, which for the Portland International Jetport is the Portland City Council. Additionally, it requires the governing body to name the official representative for those grants, which for the Portland International Jetport is the Airport Director. The projects being proposed for federal FY 2022 are included and scheduled within the 20-

year capital program developed as part of the Jetport's Sustainable Airport Master Plan that was accepted by the City Council in November 2016.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The approval of FAA federal fiscal year 2022 Airport Infrastructure Grants will allow the Portland International Jetport to: reimburse itself for centerline runway lighting and pipeline protection costs associated with the rehabilitation of its east-west runway (11/29), extend the south general aviation apron, replace two passenger boarding bridges (23+ years old), replace the central air handler installed in 1980, and begin the initial phase of ground service equipment electrification via apron charging stations. These projects will provide needed infrastructure replacement and improvements. The ground service equipment charging station project supports the City Council's climate action greenhouse gas reduction goals.

V. FINANCIAL IMPACT

If approved, the Portland International Jetport will be eligible to receive its entitlement allocation of \$4.825 million in federal fiscal year 2022 Airport Infrastructure Grant (AIG) program funds provided under the Bipartisan Infrastructure Law. The AIG program will fund 90% of project costs. The remaining 10% not covered by the federal AIG grants will be covered equally by the Jetport and the State of Maine in the amount of \$268,000 each. Approval of this AIG grant has no impact on the City of Portland's general fund or the tax rate.

VI. STAFF ANALYSIS AND BACKGROUND

Approval of these AIG grants will provide for needed infrastructure investment in the Portland International Jetport, consistent with the Jetport's Sustainable Airport Master Plan.

VII. RECOMMENDATION

Portland International Jetport staff recommends the approval and appropriation of the federal fiscal year 2022 AIG program grants totaling \$4.825 million.

VIII. LIST ATTACHMENTS

1. Order FAA AIG Grants and Authorizing Dir. of Jetport Bipartisan Infrastructure Law 8.8.2022

Prepared by:

Paul Bradbury, Jetport Director

Date: 08/12/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING AND APPROPRIATING
A FEDERAL AVIATION ADMINISTRATION AIRPORT INFRASTRUCTURE
GRANTS FOR FEDERAL FISCAL YEAR 2022 AS PROVIDED UNDER THE
BIPARTISAN INFRASTRUCTURE LAW GRANT**

ORDERED, that grant funding of approximately \$4.8 million dollars of fiscal year 2022 Bipartisan Infrastructure Law (BIL) funds administered by the Federal Aviation Administration (FAA) under the Airport Infrastructure Grants (AIG) program is hereby approved for the Portland International Jetport (Jetport) for the following projects, as well as 10 percent funding split equally between the Jetport and the State of Maine:

- in-pavement runway lighting reimbursement;
- apron paving;
- passenger boarding bridge replacement; and
- electric ground service equipment/vehicle charging stations; and

BE IT FURTHER ORDERED, that the funds for said projects are hereby appropriated from federal and state grant funding, and the local share of the projects shall be appropriated from the Jetport's unrestricted fund balance and from state funding; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Director of the Jetport to be the official representative for these AIG program grants, as required by the FAA, and to execute grant documents and any other related documents necessary or convenient to carry out the intent of said documents.

MEMORANDUM
City Council Agenda Item

FROM: Tom Nickerson, Senior Executive Assistant

DATE: August 12, 2022

SUBJECT: Order 46-22/23 Accepting and Appropriating a \$279,000 Grant from Land For Maine's Future Program for North Deering Conservation and Recreation Land Project - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Danielle West - Interim City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 8/8/2022

Final Action 8/8/2022

Can action be taken at a later date: No Time sensitive

Does this item involve a new contract with the City: No

PRESENTATION: Ethan Hipple

I. SUMMARY

Accept and appropriate \$279,000.00 in grant funding towards the North Deering Conservation and Recreation Land project (North Deering Park). This grant funding will be combined with previously approved federal grant funding, Land Bank Funds, and private funds, to help complete the project.

II. AGENDA DESCRIPTION

This item accepts and appropriates a \$279,000.00 in Land for Maine's Future grant for land acquisition for the North Deering Conservation and Recreation Land project to create North Deering Park. These funds will be combined with previously approved federal grants as well as Land Bank and private funds to help complete the project.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Trust For Public Land works with communities across the country to identify areas that are in need of parks or trails through their "10 Minutes to a Park" Campaign. The Department of Parks, Recreation and Facilities is an active participant in that program, and Mayor Snyder has expressed support for the program, along with scores of other mayors of United States cities. Currently 89% of Portland residents live within a 10 minute

walk of a park or trail. Large sections of the North Deering neighborhood are currently listed as priority areas for park development because many of the residents live further than a 10 minute walk to a park or trail. This project would create a new park and walking trails in that neighborhood, and increase Portland's proportion of residents who are within a 10-minute walk to a park, thereby addressing the fact that many lower income residents lack walking access to parks and trails.

This grant will cover land acquisition costs to create a 24 acre park consisting of an existing multi-use ballfield, a pond, expansive wetlands, and an informal trail network. Both parcels of land are currently privately owned. The sellers have indicated they are primarily interested in selling the properties to be used as publicly accessible open space. Initial information shows that much of the open space property (1819

Washington Ave) is wetland and not suitable for significant housing. The Planning Department has provided additional analysis of that property. The Haverty property is currently used as a privately owned athletic field, primarily for youth baseball programs. Portland lacks adequate athletic field space and fields are often fully booked and over-utilized. The 2011 Athletic Fields Task Force Report led by City Councilor John Coyne recommended acquisition or development of additional fields to meet the great demand for youth and adult programming.

The Council voted on August 23, 2021 to approve a federal grant application for this project through the Outdoor Recreation Legacy Program (ORLP) which is intended to fund open space projects in proximity to low-income urban areas in need of open space. That \$400,000 grant has been approved at the State level and is undergoing Federal review. This Land for Maine's Future grant will serve as one source of match for the ORLP Federal grant.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Intended result is to accept and appropriate the funds to acquire a 24 acre parcel which includes the existing athletic field, parking area, pond, woods, and trails.

V. FINANCIAL IMPACT

No impact for acquisition is foreseen as these funds are gifts, pre-approved grants, or raised by private organizations. Future improvements and maintenance of the park would have an operating budget impact. When these parcels are taken out of private ownership and acquired by the City, annual property taxes will no longer be owed. Annual property taxes for the parcels:

- Parcel 371 A047001: \$4,315
- Parcel 371 A048001: \$566
- Parcel 371 A004001: \$1,660
- Parcel 371 A020001: \$149

VI. STAFF ANALYSIS AND BACKGROUND

City Staff recommend that the City Council vote to accept and appropriate the funds from the Land for Maine's Future Fund.

VII. RECOMMENDATION

City Staff recommend that the City Council vote to accept and appropriate the funds from the Land for Maine's Future Fund.

VIII. LIST ATTACHMENTS

1. 20220701131236070
2. Washington Memo

Prepared by:

Tom Nickerson, Senior Executive Assistant

Date: 08/12/2022



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND FOR MAINE'S FUTURE PROGRAM
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333

AMANDA E. BEAL
COMMISSIONER

Ethan Hipple
Portland Parks and Recreation
212 Canco Road, Ste A
Portland, ME 04103

June 2, 2022

Dear Ethan,

I am very pleased to tell you that at its May 26, 2022 meeting, the Land for Maine's Future Board approved a preliminary allocation of \$279,000 for the North Deering Conservation and Recreation Land project.

With the acceptance of public funds comes a great responsibility to ensure that every LMF funded property delivers exemplary public benefits. Before LMF funds can be released, you will need to complete the following due diligence items with guidance from your LMF project manager. This can be a lengthy process and it is important that you communicate this with your seller in order to avoid unrealistic expectations.

- Submission of an appraisal to USPAP and LMF standards for review by the LMF Appraisal Oversight Committee (AOC) and acceptance by the LMF Board – check LMF website for list of AOC meeting dates and consult with your project manager;
- Submission of an executed Purchase and Sales Contract signed at or below accepted appraised value;
- Acceptance of an Environmental Site Assessment-Phase I - must be dated within 1 year of LMF closing;
- Evidence of good title - title insurance commitment & policy;
- Completion of property boundary survey suitable for recording, or submission of an existing property boundary survey for LMF review and acceptance. Accepted surveys must include GIS-compatible shape files;
- Documentation of matching funds pledged by applicant in their LMF application. If a stewardship endowment has been included as match, this documentation must include a letter from the applicant's governing body that this commitment has been fulfilled;
- Corporate Authority and Board Authorization to accept LMF funds – a template can be provided;
- Execution of a Project Agreement between your organization and the State of Maine. This agreement will be drafted specific to the details of your project to include proposed management activities. Project Agreements should be referenced in the deed to the LMF funded property.



LAND FOR MAINE'S FUTURE PROGRAM
22 STATE HOUSE STATION
AUGUSTA, ME 04333



PHONE: (207) 287-3200
FAX: (207) 287-7548
WWW.MAINE.GOV/DACF/LMF/

- Agreement on signage acknowledging LMF support. We can supply you with a silk-screened metal sign with the language the Board has approved. On nonfarm projects, this sign is to be located at suitable public access points. Please review your signage plan and timeline with your LMF project manager.

As you undertake these details, your LMF project manager and primary point of contact will be LMF Senior Planner, Jason Bulay, (207-287-7532 or jason.bulay@maine.gov). Your contact at the sponsoring state agency is Liz Petruska at the Maine Bureau of Parks and Lands (207-557-0352 or Liz.Petruska@maine.gov).

This letter is being sent only to the lead Applicant as indicated in your application and to the sponsoring agency. We ask that you take responsibility for ensuring that this information is shared as necessary with project partners and supporters. We will be notifying the local officials and legislators who represent the communities affected by your project.

In order for LMF staff and attorneys to balance their workload, we ask that you keep your LMF project manager informed as you progress through the project completion process. This will assist everyone in maintaining priorities given the volume of work to be done on each project. We will make every effort to respond in a timely manner, however, please understand that we are working with a full workload and will be prioritizing our efforts.

Please let me know if you have any questions. If you would like to meet to discuss the project or review the requirements, I am happy to do so.

Congratulations on the allocation of Land for Maine Future Conservation and Recreation Funds for this exceptional project!

Sincerely,



Sarah Demers, Director
LMF Program

Cc: Liz Petruska, Bureau of Parks and Lands



CITY OF PORTLAND
Planning & Urban Development
Christine Grimando, AICP, Director

To: Mayor Snyder and Members of the City Council

From: Christine Grimando, Director of Planning & Urban Development

Date: August 18, 2021

RE: North Deering Park/Washington Ave. Land Use Options

In support of the Parks, Recreation and Facilities Department's efforts to secure an Outdoor Recreation Legacy Partnership (ORLP) grant for the purchase of land in the vicinity of 1819 Washington Ave., below is a summary of permitted residential uses, environmental considerations for the property under the City's land use code, as well as consideration of the grant application's alignment with Portland's Comprehensive Plan. Though the grant application would be for a land area of 16 acres, the below focuses on the parcel off of Washington Avenue that is currently undeveloped.

The parcel is in the R-3 zone, which is a fairly low density residential zone and limited in its permitted uses. It has a minimum lot size of 6,500 sf. Single family residential housing is permitted, and multi-family (3+ dwelling units) is conditionally permitted only for repurposing of existing



Figure 1., Washington Ave. parcel highlighted

structure not already in residential use, and not applicable here. Planned Unit Residential Developments (PRUDs) are also allowed, and consist of clustering of housing on 3+ acre lots provided various PRUD standards are met.

The parcel is approximately 8 acres, and the frontage on Washington Avenue is approximately 90 feet. With a minimum street frontage in the R-3 zone of 50 feet, this frontage requirement would allow for only one lot in this location. In addition, though it is a sizable piece of land, a good portion of the rear of the property contains wetlands and a stream. PRUDs have a standard for net developable area which removes wetlands, watercourses, and steep slopes from being calculated toward usable lot area, reducing the total area that could be used toward a hypothetical PRUD. Site plan and subdivision standards also discourage avoidable wetland impacts, and Maine DEP has standards that would apply to development of the rear of the lot, as well.

The City's Comprehensive Plan does not include this section of outer Washington Ave. in its priority corridors (this does not make it inappropriate for new development, only that it was not

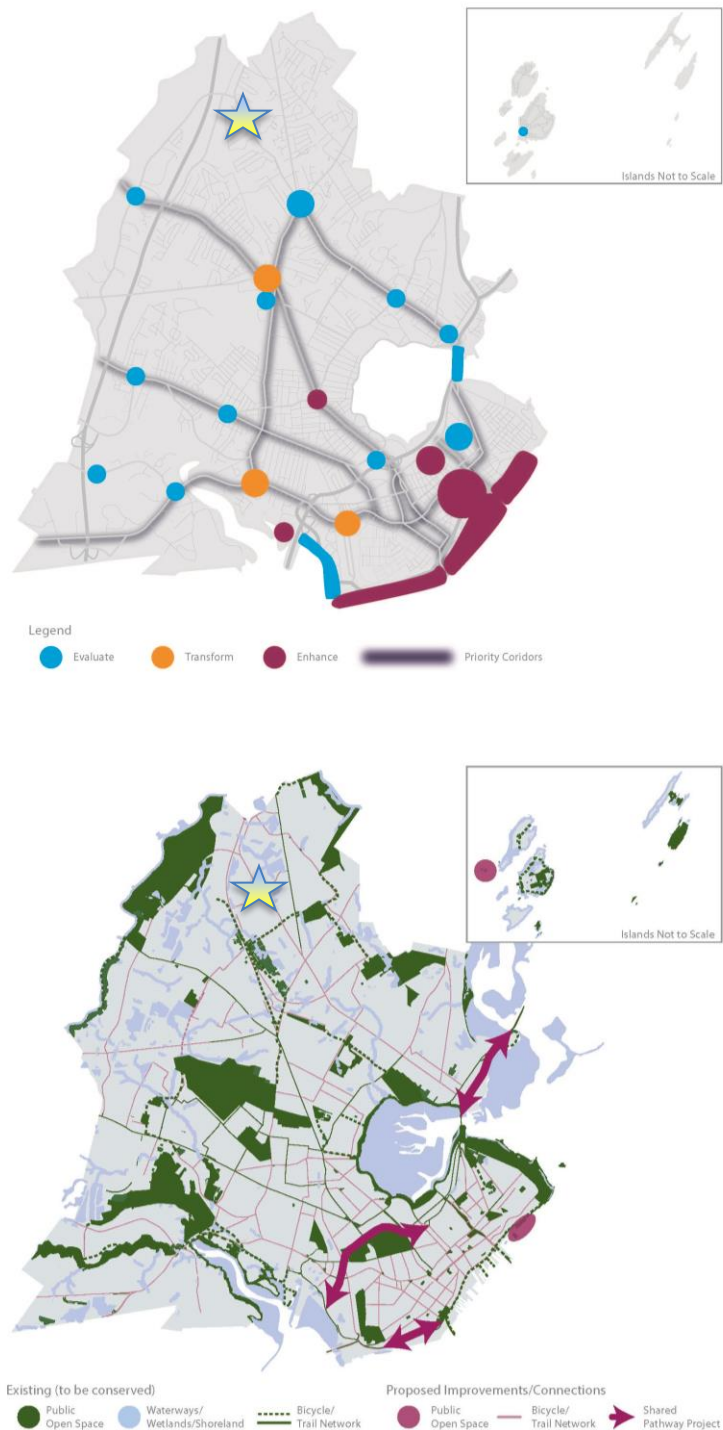


Figure 2, Priority Nodes & Corridors (above), Open Space Connections (below) from Portland Plan 2030. Star indicates approximate parcel location

identified as a top priority relative to other pressing planning needs over the coming decade), though it does indicate that all of Washington Ave. is critical for expansion of our bike and trail network.

In sum, if this piece of land were being offered for sale or considered for other uses aside from conservation and recreation, there appears to be some possibility for limited residential use along the Washington Avenue frontage, but that use would make it difficult to also include access to the greater share of the rear of the parcel on Washington Avenue for recreational or other activities. Though a wetland survey isn't available to provide the exact amount and precise boundaries, the known presence of wetlands over a portion of the site would reduce development potential in many cases; the preservation of the sensitive habitat over a portion of the lot makes it particularly well-suited to conservation and low impact recreational use. Finally, this is an area identified as critical for strengthened bike and trail connections in the City's network in the City's Comprehensive Plan and acquisition of this land will help further those goals.

MEMORANDUM
City Council Agenda Item

FROM: Tom Nickerson, Senior Executive Assistant

DATE: August 12, 2022

SUBJECT: Order 47-22/23 Accepting and Appropriating a \$161,000 Donation from the Portland Parks Conservancy for the Riverton Trolley Park Project - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Danielle West - Interim City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 8/8/2022

Final Action 8/8/2022

Can action be taken at a later date: No Time-sensitive

Does this item involve a new contract with the City: No

PRESENTATION: Ethan Hipple

I. SUMMARY

Accept and appropriate \$161,000.00 provided by the Portland Parks Conservancy, toward the Riverton Trolley Park Rehabilitation Project.

II. AGENDA DESCRIPTION

This item accepts and appropriates \$161,000 in private funding towards the Riverton Trolley Park rehabilitation project. These privately-raised funds will be combined with approved federal grant funds and approved Capital Improvement Program funds to complete the project.

This item must be read on two separate days. It received its first reading on August 8, 2022. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The City has a memorandum of understanding with the non-profit Portland Parks Conservancy (PPC), in which the PPC can raise funds for priority City park projects and programs. The Riverton Trolley Park Rehabilitation project aims to improve the park with improved access, walking trail improvements, picnic pavilion, interpretive signage, and bike trail installation. The planned improvements have been developed through a series of public input sessions and community surveys.

The PPC is raising and donating \$161,000.00 of the matching funds for the project. The total project budget is \$536,100. \$250,000 of funding has been secured through an approved federal Land and Water Conservation

Fund award, and an additional \$125,000 of City CIP funding is also approved, as detailed in the Project Budget worksheet, revised and dated April 15, 2022.

Riverton Trolley Park is the city's most under-utilized public park, but is located in one of Portland's fastest growing and most racially diverse neighborhoods, home to many new Mainers. The neighborhood's history as a home to industry has gradually begun to change as more housing is built in the area.

The City of Portland would like to increase visitation at the park to better serve the needs of the local community. Guided by input from the public, our improvement plan envisions a park that serves children, adults, and seniors and meets the needs of local immigrant communities, all while keeping the majority of the park in its natural state. Thus, our new amenities are clustered near the existing parking area and Little League

Field along Riverside Street. Our scope of work includes:

Wayfinding and signage: Riverton Trolley Park will welcome visitors with signage that announces the park and indicates its entrance and parking area. Interpretive signage will explore the history of this site as fishing grounds to the Wabanaki, one of the country's first corn canning factories, and as a Victorian amusement park. Other signs will highlight environmental issues including water quality in the Presumpscot River. These signs will be available in multiple languages.

Accessibility: The parking area will be reconfigured to provide ADA access, with a paved sidewalk to the trailheads, picnic area, and ballfield.

New amenities: Portland's first mountain bike flow trail-style pump track will be built next to the ballfield, taking advantage of the natural topography to create flow. Portland's first sheltered picnic pavilion will be constructed between the ballfield and the bike track, alongside a picnic meadow.

Improvements: The park's trails and bridges will be improved and repaired as needed. The existing meadow will remain open with the addition of plantings for pollinators. A historic staircase, dating to the trolley park era, will be stabilized.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Intended result is to accept and appropriate the funds so that the park improvement project can move forward.

V. FINANCIAL IMPACT

No impact is foreseen as these funds are gifts, pre-approved grants, or already budgeted by CIP spending.

VI. STAFF ANALYSIS AND BACKGROUND

City Staff recommend that the City Council vote to accept and appropriate the funds from the Portland Parks Conservancy, for the Trolley Park Rehabilitation Project.

VII. RECOMMENDATION

City Staff recommend that the City Council vote to accept and appropriate the funds from the Portland Parks Conservancy, for the Trolley Park Rehabilitation Project.

VIII. LIST ATTACHMENTS

1. Plan Overview
2. Portland_2021LWCF_budget REVISED
3. Riverton Trolley Park project summary

Prepared by:

Tom Nickerson, Senior Executive Assistant

Date: 08/12/2022

PLAN KEY

-  Entrance or directional sign
-  Interpretive sign
-  Scenic View
-  Parking area
-  Historic feature
-  Footbridge
-  Footbridge (out of service)
-  Steps / Stairway
-  Existing trail
-  Project focus area / element (LWCF)
-  Trail head / Kiosk
-  Trail Improvements (LWCF)

Upgrade park and trail kiosks and signage (throughout)

Repair historic stairs to former bandstand

Establish a pollinator meadow & add beehives

Improve baseball field; Replace backstop and fencing; improve access

Bicycle recreation flow trail

Incorporate a picnic lawn with pavilion

Recreate a portion of the natural amphitheater

Improve Northern Trailhead with kiosk, signage, seating, & landscaping

Improve parking area layout & entrance; New entrance sign



RIVERTON TROLLEY PARK – PROPOSED LWCF IMPROVEMENTS

**Riverton Trolley Park Improvement Project
Grant Budget Worksheet**

Item Description	Total Item Cost	Portion Funded with Applicant Cash	Portion Funded with Applicant In-Kind	Portion to be Funded by Grant
Design / Engineering Services				
Survey, Design, and Permitting	\$ 35,000.00	\$ -	\$ -	\$ 35,000.00
	\$ -	\$ -	\$ -	\$ -
Purchase of Services				
Trailheads	\$ 81,000.00	\$ 40,000.00	\$ -	\$ 41,000.00
Signage	\$ 65,000.00	\$ 32,500.00	\$ -	\$ 32,500.00
	\$ -	\$ -	\$ -	\$ -
Construction Contracts				
Entrance and Ballfield	\$ 144,305.00	\$ 72,000.00	\$ -	\$ 72,305.00
Bicycle Track/Trail	\$ 158,860.00	\$ 100,000.00	\$ -	\$ 58,860.00
Straits Rehabilitation	\$ 29,000.00	\$ 11,600.00	\$ -	\$ 17,400.00
Amphitheater and Wildflower Meadow	\$ 59,000.00	\$ 30,000.00	\$ -	\$ 29,000.00
Equipment Rental				
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
Supplies/Materials				
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
Labor				
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
Administration				
PRF: Project management and Admininstration	\$ 14,316.00		\$ 7,158.00	\$ 7,158.00
PRF: Financial management	\$ 3,299.00		\$ 3,298.00	\$ 1.00
PPC: Community engagement, planning	\$ 6,800.00		\$ 1,710.00	\$ 5,090.00
Acquisition				
N/A	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
Purchase Property Rights				
N/A	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
Project Total		Recipient Cash	Recipient Match	Grant Portion
	\$ 596,580.00	\$ 286,100.00	\$ 12,166.00	\$ 298,314.00
sum of project total column				
green cells must match				
		Project Total	\$ 596,580.00	sum of breakout column totals
\$ 298,266.00	=	50.00%	Combined Match (must be at least 23%)	
\$ 298,314.00	=B2	50.00%	Grant Request (can't exceed 80%)	

MATCH FUNDING STATUS WORKSHEET

Source	Who is providing the Match?	Amount	Status (select dropdown)
Municipal Tax Appropriations:		\$ -	
Cash from Applicant's Funds:	City of Portland Capital Improvement Plan funding	\$ 125,000.00	Committed
Cash Donations from Others:	Portland Parks Conservancy	\$ 161,100.00	Committed
Non-Cash Donations (goods / materials):		\$ -	
Donated Labor:	In-kind: City of Portland, Portland Parks Conservancy	\$ 12,166.00	Committed
Other:		\$ -	

Committed
Pending
Not Contacted

Riverton Trolley Park is the city's most under-utilized public park, but is located in one of Portland's fastest growing and most racially diverse neighborhoods, home to many new Mainers. The neighborhood's history as a home to industry has gradually begun to change as more housing is built in the area.

The City of Portland would like to increase visitation at the park to better serve the needs of the local community. Guided by input from the public, our improvement plan envisions a park that serves children, adults, and seniors and meets the needs of local immigrant communities, all while keeping the majority of the park in its natural state. Thus, our new amenities are clustered near the existing parking area and Little League Field along Riverside Street. Our scope of work includes:

Wayfinding and signage: Riverton Trolley Park will welcome visitors with signage that announces the park and indicates its entrance and parking area. Interpretive signage will explore the history of this site as fishing grounds to the Wabanaki, one of the country's first corn canning factories, and as a Victorian amusement park. Other signs will highlight environmental issues including water quality in the Presumpscot River. These signs will be available in multiple languages.

Accessibility: The parking area will be reconfigured to provide ADA access, with a paved sidewalk to the trailheads, picnic area, and ballfield.

New amenities: Portland's first mountain bike flow trail-style pump track will be built next to the ballfield, taking advantage of the natural topography to create flow. Portland's first sheltered picnic pavilion will be constructed between the ballfield and the bike track, alongside a picnic meadow.

Improvements: The park's trails and bridges will be improved and repaired as needed. The existing meadow will remain open with the addition of plantings for pollinators. A historic staircase, dating to the trolley park era, will be stabilized.

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER ADOPTING AMENDMENT TO PORTLAND CITY CODE CHAPTER 18
RE: AN ACT TO RESTRICT CRUISE SHIPS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That Chapter 18, Sections 18-100 through 18-105, are hereby amended to read as follows, on the following pages; and

BE IT FURTHER ORDAINED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, so that it may go into effect immediately and subject to amendment by the City Council.

ARTICLE VI. CRUISE SHIP PERMITTING

Sec. 18-100. Purpose.

The large numbers of persons disembarking from cruise ships has, at times, resulted in excessive congestion, traffic, and pollution in waterfront areas, jeopardizing the City's ability to protect public health and safety and to deliver municipal services to City residents and visitors, including the provision of public safety services, emergency medical services, in-patient and out-patient services at local hospitals, public transit, transportation of students to and from City schools, pandemic control measures, and public sanitation services. This section is, therefore enacted for the purpose of reasonably regulating the disembarking of passengers and crew from cruise ships visiting the City of Portland; preserving good order and peace in the City; providing for the public health, safety and welfare; maintaining the cleanliness of City streets, sidewalks, public spaces, and environment; and regulating the use of public facilities in the furtherance of private commercial activities.

Sec. 18-101. Definitions.

Cruise ship means a watercraft carrying passengers for hire which is capable of providing overnight accommodations for 50 or more passengers.

Sec. 18-102. Permit required.

No cruise ship shall be allowed to disembark passengers or crew on, over, or across any property located within the City, including but not limited to the International Marine Terminal, the Ocean Gateway Facility and any other waterfront facilities or public landings owned and/or managed by the city, except under an executed, written contract with the city specifically permitting such disembarkation. No such permit may allow more than 1,000 persons, in the aggregate, to disembark from cruise ships within the City on a single calendar day. Such permit agreements may require the payment of reasonable fees based upon the number of persons disembarking, as determined by the city council. Nothing in this section shall be construed to restrict the necessary offloading of persons from cruise ships in the event of an emergency.

Sec. 18-103. Rules and Regulations.

The city manager, in consultation with the Mayor and subject to the approval of the city council, shall have the authority to promulgate any rules or regulations deemed necessary for the implementation of this Article, including but not limited to rules or regulation providing for the management and allocation of permits, reservations, and disembarkation slots, or for the reporting of violations, not inconsistent with the provisions of this code, the charter, or with the laws or regulations of the state or the United States of America. Such rules or regulations shall be kept on file in the city manager's office and in the harbor master's office.

Sec. 18-104. Effective date and applicability.

This Article shall take effect January 1, 2025, but none of the provisions of this Article shall be made applicable to any cruise ship bookings or reservations for travel after such date that were completed on or before June 1, 2022.

Sec. 18-105. Enforcement and violations.

Any violation of this article, or any rule or regulation made pursuant hereto, shall be punishable by a fine as provided in section 1-15; provided that each disembarking person exceeding the permitted daily limit in Section 18-102 is a separate violation, subject to a minimum \$100 penalty per excess unauthorized person.

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 18
RE: CRUISE SHIP PERMITTING**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That the Portland City Code Chapter 18, Section 18-104 is
hereby amended to read as follows:*

...

Sec. 18-104. Effective date and applicability.

This Article shall take effect January 1, 2025-2026., ~~but a~~ None
of the provisions of this Article shall be made applicable to any
cruise ship bookings or reservations for travel made before such date.
~~after such date that were completed on or before June 1, 2022.~~

. . .

MEMORANDUM
City Council Agenda Item

FROM: Tom Nickerson, Senior Executive Assistant
DATE: August 1, 2022
SUBJECT: Order 54-22/23 Accepting and Appropriating an \$11,472.50 Donation for the Western Promenade Gazebo - Sponsored by Danielle P. West, Interim City Manager
SPONSOR: Danielle West - Interim City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 8/8/2022

Final Action 8/8/2022

Can action be taken at a later date: No Time-sensitive

Does this item involve a new contract with the City: No

PRESENTATION: Ethan Hipple

I. SUMMARY

Accept and appropriate a \$11,472.50 donation from the Friends of Western Promenade for design services relating to the reconstruction of the historic Western Prom Gazebo. This donation represents 50% of the design services, with the other 50% being covered by existing City funds.

II. AGENDA DESCRIPTION

This item accepts and appropriates a \$11,472.50 donation from the Friends of Western Promenade for design services relating to the reconstruction of the historic Western Prom Gazebo. This donation represents 50% of the design services, with the other 50% being covered by existing City funds.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

The Western Prom Master Plan, adopted by the City Council in September 2021, calls for rebuilding the historic 1891 Western Prom Gazebo that was removed in the late 1990's. The Parks, Recreation and Facilities Department has entered into a partnership with the Friends of Western Prom (a 501c3 organization) and the City's office of Historic Preservation to design and rebuild the Gazebo. The Friends of Western Prom have agreed to fund 50% of the design fees, with the City matching those fees with existing funds. Once design is complete, the Friends of Western Prom will undertake a capital campaign to fund the construction of the gazebo. The future gazebo will be a gathering place for special events, picnics, and musical performances, similar to the Ft Allen bandstand.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Intended result is to accept and appropriate the funds to move forward with the design of the Western Prom Gazebo.

V. FINANCIAL IMPACT

The City plans to pay for half of the design fees with existing funds held by the Parks, Recreation and Facilities Department.

VI. STAFF ANALYSIS AND BACKGROUND

City Staff recommend that the City Council vote to accept and appropriate the funds from the Friends of Western Promenade.

VII. RECOMMENDATION

City Staff recommend that the City Council vote to accept and appropriate the funds from the Friends of Western Promenade.

VIII. LIST ATTACHMENTS

1. Accepting and Appropriating \$11,472.50 in Donations for the Western Prom Gazebo 9.1.2022

Prepared by:

Tom Nickerson, Senior Executive Assistant

Date: 08/01/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER ACCEPTING AND APPROPRIATING AN \$11,472.50 DONATION
FOR THE WESTERN PROMENADE GAZEBO**

ORDERED, that a donation of \$11,472.50 from the Friends of the Western Promenade is hereby accepted and appropriated for the design services for the Western Promenade Gazebo.

MEMORANDUM
City Council Agenda Item

FROM: Danielle West Chuhta, Interim City Manager

DATE: August 12, 2022

SUBJECT: Order 55-22/23 Approving a Memorandum of Understanding between Portland and the Friends of Fort Gorges - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/1/2022

Final Action 9/1/2022

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: NO

PRESENTATION: Ethan Hipple, Director of Parks, Recreation and Facilities Department

I. SUMMARY

Approval of Memorandum of Understanding between City of Portland and Friends of Fort Gorges (501c3). Because the MOU allows for a termination without cause period of greater than 90 days, it needs Council approval.

II. AGENDA DESCRIPTION

This order approves a Memorandum of Understanding between the City of Portland and Friends of Fort Gorges, which is a nonprofit 501c3 corporation. Under the MOU, the City and the Friends of Fort Gorges would enter into a five-year agreement with the Friends of Fort Gorges to set fundraising goals and special event parameters.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

From time to time, the Department of Parks, Recreation and Facilities (PRF) enters into Memorandums of Understanding with various partner groups who are helping to accomplish City goals within our Park system. The attached Memorandum of Understanding has been negotiated by PRF staff and Friends of Fort Gorges representatives, and then reviewed by Corporation Counsel. The MOU outlines basic responsibilities of each of the involved parties, fundraising targets, and special event parameters. The special event parameters have been reviewed and approved by multiple Departments, including PRF, Fire, Police, and Permitting and Inspections.

The Friends of Fort Gorges have requested language in the MOU that gives a 9-month advance notice period for termination without cause. They have requested this because of the financial commitment and advance planning required for hosting special events in this unique environment. Any MOU that contains a termination (without cause) period of greater than 90 days must be approved by City Council.

The City would still retain the right to terminate for cause upon 30 days notice.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Enter into a 5 year agreement with the Friends of Fort Gorges to set fundraising goals and special event parameters.

V. FINANCIAL IMPACT

The Friends of Fort Gorges are intending to raise \$250,000 towards the Fort Gorges Preservation Plan, to be matched by City funds and/or grants.

VI. STAFF ANALYSIS AND BACKGROUND

City Staff recommend that the City Council approve this MOU.

VII. RECOMMENDATION

Enter into a 5 year agreement with the Friends of Fort Gorges to set fundraising goals and special event parameters.

VIII. LIST ATTACHMENTS

1. FOFG MOU clean 082222 (1)

Prepared by:

Danielle West Chuhta, Interim City Manager

Date: 08/12/2022

MEMORANDUM OF UNDERSTANDING

BETWEEN

CITY OF PORTLAND

AND

FRIENDS OF FORT GORGES

WHEREAS, the City of Portland is a municipality under the laws of the State of Maine with principal location at 389 Congress Street, Portland, Maine, 04101 ("the City"); and

WHEREAS, the Friends of Fort Gorges is a non-profit corporation organized and existing under the laws of the State of Maine with a principal place of business in Portland ("Friends"); and

WHEREAS, Fort Gorges (the "Fort") is an important public space in Portland; and

WHEREAS, the City wishes to collaborate with the Friends to increase activity and vitality in the Fort; and

WHEREAS, the City wishes to collaborate with the Friends to use event proceeds to reduce hazards and create a Preservation Plan to ensure the Fort remains a vital public space for generations to come; and

WHEREAS, the City supports the efforts of the Friends to act as non-profit place-makers for Fort Gorges, and

WHEREAS, the parties desire to document the terms and conditions of their collaboration with respect to the use of the Fort in this memorandum of understanding ("MOU").

NOW THEREFORE, in consideration of the foregoing and the additional promises set forth herein, the City and the Friends hereby agree as follows:

1. The term of this MOU will commence as of the date set forth below and will terminate five years thereafter, unless sooner terminated as set forth below.
2. During the term of this MOU, the Friends shall have non-exclusive use of the Fort in common with others.
3. The Friends may offer programming in the Fort including, but not limited to, concerts, plays, and dances. Such programs are subject to the City's prior approval, which approval shall not be unreasonably withheld. The Friends will coordinate their programming schedule with the Department of Parks, Recreation and Facilities Public Assembly Facilities Division.

4. During the term of this MOU, the Friends may apply for an annual entertainment license for \$100, which will permit their programming for the duration of that year, subject to the terms and conditions of that license and this MOU.
5. Limited amplified sound may be permitted subject to any applicable entertainment license.
6. All participants in events sponsored or organized by the Friends shall be required to sign a Waiver and Release in a form substantially similar to Exhibit A, attached hereto, prior to entering onto the island.
7. Events are to be limited to the 4-hour window surrounding high tide (2 hours before, 2 hours after). This will ensure boat access for ferry, water taxis, EMS, etc. The Friends can schedule setup and tear down outside of this window. All events must end by sunset.
8. The Friends shall provide a written Emergency Action Plan for each event or series of events that defines at a minimum: individual person in charge of event; contingency plans for egress, adverse weather, fire, security issues, and emergency responder access.
9. When Friends provide transport to persons to the Fort for an event, Friends shall also transport, or ensure that all such persons are transported, from the fort at the conclusion of the event.
10. Permits required as follows based on the number of people at any event, tour, or other gathering at the Fort. For purposes of this MOU, the term “people” includes all individuals present for an event, tour, or other gathering at the Fort, including, without limitation, guests, attendees, performers, contractors, and Friends’ members, staff, employees, agents, or anyone else present at Fort at the Friends’ invitation.
 - For events or small group tours under 25 people, no permit required.
 - For events and tours between 25 and 75 people, a permit shall be required from the Department of Parks, Recreation and Facilities, Public Assembly Facilities Division.
 - For Special Events between (defined to mean events with between 76 and 299 people), a permit shall be required.
 - Events are limited to no more than 299 people.
11. Prior to hosting any Special Event pursuant to this MOU, a boardwalk or other smooth, accessible walking surface (minimum 6 feet wide) acceptable to the City and complying with all applicable rules and regulations must be installed from pier to sally port gate. At least 14 days prior to the first event of the season, City Building and Inspections staff shall inspect and approve the installed boardwalk. The Friends shall provide funding for this improvement.
12. Prior to hosting any Special Events pursuant to this MOU, the Friends shall, at their expense, arrange to cover and secure any open holes or pits constituting fall hazards that may be located

near the area where event participants will board or disembark from vessels chartered by the Friends for transport to and from the Island.

13. Prior to hosting any Special Events pursuant to this MOU, Friends shall submit plans, stamped by a licensed engineer, and acceptable to the City for safely securing loose bricks in the Sally Port ceiling. The Friends shall provide funding for this improvement.
14. Event organizers shall charter the Bay Mist ferry (or similar vessel, approved by Portland Fire and Police Departments) for all Special Events. If the Bay Mist is not used, the similar vessel shall have adequate bathroom facilities for up to 299 people. Bay Mist Ferry or similar vessel must remain tied up at Ft. Gorges for duration of event.
15. For all Special Events, the Friends shall arrange, pay (at the applicable hourly rate identified by the City), and provide transportation for at least 1 employee of the City's Department of Parks, Recreation, and Facilities, 2 Portland Police officers, and 2 Portland Fire Department Emergency Medical Technicians to be present during the event. The number of such employees, officers, and technicians shall be determined by, and at the discretion of, the Director of the Department of Parks, Recreation and Facilities, the Chief of Police, and the Chief of the Fire Department, or their designees.
16. During any event, the Friends shall lock all gates to areas with fall hazards and ensure that the sally port gate is locked open prior to the start of the event.
17. Restrooms
 - If Bay Mist ferry is utilized for events, ferry must remain tied up at Ft. Gorges for duration of event. Bathrooms on board the ferry must be made available for use by members the public.
 - If Bay Mist Ferry is not utilized for transportation, an appropriate number of portable toilets as determined by City of Portland Public Assembly Facilities staff shall be provided and maintained by the Friends for each event. Portable toilets shall be removed from the Fort within 24 hours after each event.
18. Serving and/or sale of food or alcohol (including BYOB) for any events shall be coordinated with Business Licensing Division and Public Assembly Facilities staff, and shall comply with all applicable city, state and federal regulations. Any applicable license fees shall be paid by the Friends. Liquor liability insurance may be required for events involving alcohol.
19. No electrical power is available or permitted at the Fort. Generators may be used for performances, special events and construction or repairs if approved by the City in advance. Open flames are prohibited.

20. Set up, tear down and cleanup of events to be provided by the Friends. Failure to adequately cleanup following events may result in termination of this Agreement and /or the imposition of a minimum fee of \$100 per violation for each day that a violation of this paragraph continues.
21. No more than one (1) Special Event may be held per week, and no more than four (4) Special Events may be held per month. This restriction may be waived by Department of Parks, Recreation and Facilities, Public Assembly Facilities Division when, in its sole discretion, it determines that circumstances warrant, including, but not necessarily limited to, when a particular performance requires back-to-back performances to be viable.
22. The Friends may pursue additional funds to support programming and amenities in the Fort including, but not limited to, capital improvement funds, grants, in-kind services, and donations. Upon the review and written approval (including, as needed, site plan or other approval required under the Portland City Code) of the City, and subject to any additional terms upon which the parties may agree, the Friends may use such additional funds for improvements to or events in the Fort.
23. During the term of this MOU, the Friends agree to a fundraising target of \$250,000 towards implementation of the Fort Gorges Preservation Plan. Such funds shall be donated to the City to be used as matching funds for Capital Improvement funds or grants.
24. Subject to the requirements of the City Code and Permitting Department, the Friends may place one storage container in the Fort to be used for storage and programming purposes. Container specifications (such as size, color, location in Fort) are subject to the approval of the Department of Parks, Recreation and Facilities. The City shall be provided with a duplicate key for any storage area or container.
25. Subject to the requirements of the Portland City Code, the Friends may place a temporary sign in or directly outside the Fort in order to provide the public with information about upcoming events, and activities.
26. Prior to the execution of this MOU, the Friends will procure and maintain occurrence- based Commercial General Liability Insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage, naming the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law. With respect to the Liability Insurance, the Friends name the City as additional insured for coverage for claims for which the City does not have government immunity, including, without limitation, those areas where government immunity has been expressly waived as set forth in 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. Prior to the execution of this MOU, the Friends will provide the City and thereafter maintain a certificate of insurance evidencing such coverage, which certificate shall guarantee thirty days' notice to the City of termination of insurance from the insurance provider

or agent. The Friends shall also provide a copy of any endorsement naming the City as additional insured. Deductibles and/or self-insured retentions are not to exceed \$10,000 without prior written approval of the City's Office of Corporation Counsel. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. To the fullest extent permitted by law, the Friends shall defend; indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from any activities conducted under this MOU, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use therefrom.

27. Out of concern for the public, City employees and Friends employees, Friends shall be exclusively responsible for ensuring that all activities or events performed hereunder shall be in conformance with pertinent OSHA, local, state and federal government laws, rules and regulations.
28. The City designates the Director of Department of Parks, Recreation and Facilities or his/her designee, and the Friends designate their Executive Director as the primary contacts for issues related to this Memorandum of Understanding.
29. Either party may terminate this MOU without cause upon giving nine months written notice to the other party, provided that if the City sends notice of termination such notice must be given no earlier than September 1 and no later than December 1 in any calendar year.. Either party may terminate this MOU for cause upon the giving of thirty (30) days advance notice to the other party, which notice shall specify that the party being terminated shall have such 30 day period to cure the claimed cause for termination. "Cause" shall be defined as a material breach of either party's obligations hereunder. If the Friends fail to maintain the insurance required by this MOU, the City may terminate this MOU immediately.

Any notice hereunder shall be sent to the following addresses:

For the City: Director of the Department of Parks, Recreation and Facilities
212 Canco Road Suite A
Portland, ME 04103

With a Copy to: City Manager, City of Portland
389 Congress Street
Portland, ME 04101

For the Friends: Friends of Fort Gorges
Attn. Executive Director
P.O. Box 511
Portland, ME 04112

30. This MOU represents the entire agreement between the Friends and the City and supersedes and replaces all terms and conditions of any prior agreements, arrangement, negotiations and/or representations. This MOU may not be amended except by mutual written consent of both parties.
31. This MOU may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

Seen and agreed to this _____ day of _____, 2022.

FRIEND OF FORT GORGES

Witness By: _____
— Roger Berle, President

CITY OF PORTLAND

Witness By: _____
Danielle P. West, Interim City Manager

Fort Gorges MOU comments for 9/1 city council meeting

External

Public Comment inbox



Ian Ste...

Tue, Aug 30, 9:19 AM (23 hours ago)

to publiccomment@portlandmaine.gov, Sarah, Evan

To Whom It May Concern:

Please find attached comments regarding order 55-22/23 on the 9/1 city council meeting agenda.

Sincerely,

Ian

C. Ian Stevenson, PhD

Director of Advocacy

Greater Portland Landmarks

93 High Street, Portland, ME 04101

207.774.5561 | istevenson@portlandlandmarks.org

portlandlandmarks.org

Find us on [Facebook](#) and [Instagram](#)



June 1, 2022

Mayor Snyder and Members of the City Council:

Founded in 1964, Greater Portland Landmarks is a non-profit advocacy organization that works toward the preservation and revitalization of greater Portland's built environment. Our goal is to save greater Portland's historic places through preservation and adaptive reuse while promoting creative new architecture that enhances historic neighborhoods. We appreciate the opportunity to comment on projects that impact the historic character of the city.

We are writing to encourage you to approve the proposed Memorandum of Understanding (MOU) between the City of Portland and the Friends of Fort Gorges. Fort Gorges is among the most iconic historic resources of the city, yet is currently relatively inaccessible by the public. The MOU, if signed, would allow the Friends to act upon its commitment for five years to enhance access, public programming, and stabilization and restoration of this important component of Portland's built environment and driver of economic activity. Reinvigorating this property will benefit the whole city and contribute to its unique sense of place. The Friends group is perfectly poised to perform this stewardship given its track record and the guidelines established within the MOU. The Friends will be assuming most of the risk, making it a substantial net positive for the city. At the same time, the MOU's five-year timeframe allows for a revisiting of the terms as the Fort's reinvigoration gets underway, for adjustments in due course, should the city find it necessary. Therefore, we find the proposed MOU perfectly appropriate and an ideal way to facilitate increasing public access to this important resource and urge you to approve it.

Sincerely,



C. Ian Stevenson, PhD
Director of Advocacy

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 27, 2022

SUBJECT: Order 56-22/23 Accepting Three Sidewalk Easements along Riverside Street -
Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Danielle P. West, Interim City Manager

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/1/2022

Final Action

Can action be taken at a later date: No No. These easements need to be approved by the Council before sidewalk construction can begin, however the associated construction contract has a completion date of November 30, 2022. Given the compressed timeframe for construction, approval is needed on 9/1/2022 in order to authorize work to begin.

Does this item involve a new contract with the City: The easements have been reviewed and approved by Corporation Counsel.

PRESENTATION: N/A

I. SUMMARY

The order accepts four sidewalk easements needed as part of the improvements at the new Homeless Services Center on Riverside Street.

II. AGENDA DESCRIPTION

By this order, the City Council would accept three permanent sidewalk easements on Riverside Street to accommodate a new sidewalk proposed from the Forest Avenue intersection to the new Homeless Services Center at 654 Riverside Street. The Department of Public Works has designed a sidewalk that is both compliant with the Americans with Disabilities Act standards as well as conscientious of existing conditions on Riverside Street. The proposed designed sidewalk avoids going over the Public Right of Way line wherever possible, although some permanent easements are needed. Three entities providing the easements are:

- 172 Pleasant Street, LLC dba A2Z Grow, LLC
- Northern Utilities doing business as Unitil
- Intentionally Left Blank, LLC dba Restaurant Supply

Five affirmative votes are required for passage after public comment. Due to the proposed construction schedule for this project, staff is recommending that this item be passed as an emergency so that it can take effect immediately. Seven affirmative votes are required for passage as an emergency after public comment.

III. BACKGROUND

There is not currently a continuous sidewalk on Riverside that connects the Forest Avenue intersection with 654 Riverside Street that is compliant with the Americans with Disabilities Act standards. In some sections there is no sidewalk and in others, the existing sidewalk is extremely narrow. The goal of this sidewalk design was to create a safe passageway for the expected increase in pedestrian traffic along Riverside Street.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Work for this project may begin once all Property Easements are received and filed for the affected properties, including: 752 Riverside Street (172 Pleasant Street LLC), 742 Riverside Street (Northern Utilities Inc.), and 736 Riverside Street (Intentionally Left Blank LLC). The intended result of this agenda item is to approve all four Property Easements.

V. FINANCIAL IMPACT

There is a financial impact expected for this project. City funds are to be used to construct this sidewalk on the northwest side of Riverside Street from the intersection of Forest Avenue to 654 Riverside Street. There is currently \$450,000.00 for the sidewalk project in Capital Improvement Project funds with the additional \$13,435.00 needed to come from ARPA funds.

VI. STAFF ANALYSIS AND BACKGROUND

The proposed sidewalk along Riverside Street would accommodate the expected increase in pedestrian traffic from Forest Avenue. The proposed width is crucial to accommodate all pedestrians, facilitate year round maintenance and to comply with ADA requirements.

VII. RECOMMENDATION

The Department of Public Works recommends approving the construction of a sidewalk on Riverside Street to be constructed in tandem with the new Riverside Street Shelter.

VIII. LIST ATTACHMENTS

1. Accepting Three Riverside Street Easements 9.1.2022
2. Exhibit A Permanent Swlk Easement Description
3. Exhibit B Permanent Swlk Easement Graphic
4. Riverside Sidewalk Easement 172 Pleasant St LLC
5. Riverside Sidewalk Easement Intentionally Left Blank
6. Riverside Sidewalk Easement Northern Utilities

Prepared by:

Date: 07/27/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER ACCEPTING FOUR SIDEWALK EASEMENTS
ALONG RIVERSIDE STREET**

ORDERED, that three easements to allow construction of sidewalks and other improvements along Riverside Street in connection with the construction of the Homeless Services Center at 654 Riverside Street are hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, the three sidewalk easements approved and accepted hereunder are from the following abutting property owners:

- 172 Pleasant Street, LLC dba A2Z Grow, LLC;
- Northern Utilities doing business as Unital; and
- Intentionally Left Blank, LLC dba Restaurant Supply; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or designee to record said documents in the Cumberland County Registry of Deeds.

Exhibit A

Public Sidewalk and Pedestrian Easement:

A public sidewalk and pedestrian easement through lands situated on the northwesterly side of Riverside Street in the City of Portland, Cumberland County, State of Maine, said easement described as follows and as shown on Exhibit B attached hereto:

BEGINNING on the northwesterly sideline of Riverside Street at the first angle point in said Riverside Street southwesterly of Forest Avenue, said angle point described in a deed from Howard S. Brenner, et al. to the City of Portland, dated December 2, 1988 and recorded in Deed Book 9548, Page 333;

THENCE, S29°48'11"W two hundred eighteen and twenty-one hundredths feet (218.21') along the northwesterly sideline of said Riverside Street to a point, said Riverside Street described in the following deeds and shown on the following plans,

-Certificate of Taking by the City Portland, dated August 16, 1971 and recorded in Deed Book 3191, Page 123 and as shown on the City of Portland Property Acquisition Plan, undated, recorded in the City of Portland Engineering Archives Vault as Plan 741/5.

-Notice of Layout and Taking by the State of Maine Department of Transportation, dated April 14, 1999 and recorded in Deed Book 14925, Page 41 and as shown on Department of Transportation Right of Way Map, State Highway Plan No. 18, Dated December, 1998 and recorded in Plan Book 202, Pages 175 to 184 and Plan Book 202, Page 221;

THENCE, S35°16'18"W twenty-three and fifty-six hundredths feet (23.56') along the northwesterly sideline of said Riverside Street to a point;

THENCE, southwesterly along the northwesterly sideline of said Riverside Street and along a non-tangent curve to the left with a radius of four thousand nine hundred forty-nine and seventy-four hundredths feet (4949.74') for a length of two hundred sixty-four and forty-three hundredths (264.43') to a point, said curve has chord bearing of S29°07'45"W and a chord length of two hundred sixty-four and forty hundredths feet (264.40');

THENCE, S62°53'52"E one and seventy-four hundredths feet (1.74') along the northwesterly sideline of said Riverside Street to a point;

THENCE, southwesterly along the northwesterly sideline of said Riverside Street and along a non-tangent curve to the left with a radius of two thousand nine hundred and four hundredths feet (2900.04') for a length of one hundred thirteen and seventy hundredths feet (113.70'), said curve has a chord bearing of S26°15'04"W and a chord length of one hundred thirteen and seventy hundredths feet (113.70') to a point;

THENCE, S25°07'41"W three hundred seventy-three and seven hundredths feet more or less (373.07'±) along the northwesterly sideline of said Riverside Street to the most easterly corner of land now or formerly of Payem Yazdanpanah as described in a deed dated February 24, 2021 and recorded in Deed Book 37861, Page 247;

THENCE, N47°46'03"W one and seventy-one hundredths feet (1.71') along the northeasterly line of land now or formerly of said Yazdanpanah to a point;

THENCE, N24°50'12"E one hundred sixty-one and sixty-six hundredths feet (161.66') through land now or formerly of Waste Management of Maine, Inc. (Formerly Known as SCA Services of Maine, Inc.) as described in the following two deeds,

- Deed dated January 7, 1982 and recorded in Deed Book 4912, Page 73 and
- Deed dated February 4, 1993 and recorded in Deed Book 10545, Page 154 to a point;

THENCE, N24°27'08"E forty-seven and sixty-two hundredths feet (47.62') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N23°52'00"E two hundred eight and seventy-two hundredths feet (208.72') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N25°37'47"E one hundred thirty-five and eighty-two hundredths feet (135.82') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N33°28'52"E thirty-nine and eighty-nine hundredths feet (39.89') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N30°25'04"E one hundred twenty-two and twenty-nine hundredths feet (122.29') continuing through land now or formerly of said Waste Management of Maine, Inc. and through land now or formerly of Intentionally Left Blank, LLC as described in a deed dated August 13, 2008 and recorded in Deed Book 26286, Page 191 to a point;

THENCE, N29°51'39"E one hundred seventy-four and sixty-four hundredths feet (174.64') through land now or formerly of said Intentionally Left Blank, LLC, and through land now or formerly of Northern Utilities, Inc. as described in a deed dated August 9, 1971 and recorded in Deed Book 3184, Page 875 and through land now or formerly of 172 Pleasant Street, LLC as described in a deed dated January 28, 2022 and recorded in Deed Book 39135, Page 303 to a point;

THENCE, N29°33'01"E one hundred three and fifty-six hundredths feet (103.56') through land now or formerly of said 172 Pleasant Street, LLC to a point;

THENCE, N18°16'18"E ten and one hundredths feet (10.01') through land now or formerly of said 172 Pleasant Street, LLC to a point in the northwesterly sideline of said Riverside Street;

THENCE, S13°01'04"E fourteen and sixty-one hundredths feet (14.61') along the northwesterly sideline of said Riverside Street to an angle point in Riverside Street and **THE POINT OF BEGINNING.**

Meaning and intending to describe a public sidewalk and pedestrian easement, a portion of which travels through land now or formerly of Intentionally Left Blank, LLC as described in a Deed dated August 13, 2008 and recorded in Deed Book 26286, Page 191 (CCRD).

Bearings are based on Maine State Plane Coordinate System (2 zone projection), West Zone, NAD 83 (HARN)

Easement Line Table

Line #	Length	Direction
L1	14.61	S13° 01' 04"E
L2	218.21	S29° 48' 11"W
L3	23.56	S35° 16' 18"W
L4	1.74	S62° 53' 52"E
L5	373.07	S25° 07' 41"W
L6	1.71	N47° 46' 03"W
L7	161.66	N24° 50' 12"E
L8	47.62	N24° 27' 08"E
L9	208.72	N23° 52' 00"E
L10	135.82	N25° 37' 47"E
L11	39.89	N33° 28' 52"E
L12	122.29	N30° 25' 04"E
L13	174.64	N29° 51' 39"E
L14	103.56	N29° 33' 01"E
L15	10.01	N18° 16' 18"E

N/F PAYEM
YAZDANPANAH
CBL 323-A-6
DEED 37861/247
660 RIVERSIDE ST.

N/F
WASTE MANAGEMENT
OF MAINE, LLC
CBL 324-B-1 & 12
DEED 10545/154
2000 FOREST AVE.

N/F
INTENTIONALLY LEFT
BLANK, LLC
CBL 324-B-2
DEED 26286/191
736 RIVERSIDE ST.

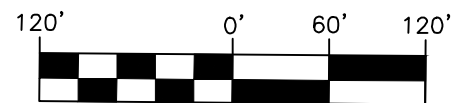
N/F
NORTHERN
UTILITIES, INC
CBL 324-B-11
DEED 3184/875

N/F
172 PLEASANT ST., LLC
CBL 324-B-10
DEED 39135/303
725 RIVERSIDE ST.

FOREST AVE.
POB

TO WARREN AVE.

GRAPHIC SCALE



(IN FEET)
1 inch = 120' ft.

Easement Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	264.43	4949.74	3.06	S29° 07' 45"W	264.40
C2	113.70	2900.04	2.25	S26° 15' 04"W	113.70



CITY OF PORTLAND
PUBLIC WORKS
ENGINEERING DIVISION

PROPOSED PEDESTRIAN SIDEWALK EASEMENT
FOR RIVERSIDE STREET SHELTER

CIVIL 3D PROJECT: RIVERSIDE_SHELTER_SWLK_2022_DB
DRAWING: RIVERSIDESW_DESIGN.DWG.dwg

SCALE:
1" = 120'

DATE:
06/28/2022

EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that 172 Pleasant Street, LLC, a Maine Limited Liability Company with a place of business in Portland, Maine and mailing address 172 Pleasant Street, Brunswick, Maine 04011 (the "Grantor"), FOR CONSIDERATION PAID, hereby GRANTS to the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "Grantee" or the "City"), an easement for the purpose described below, over portions of Grantor's Land on the northwesterly side of Riverside Street in Portland, Maine, more particularly described in Exhibit A attached hereto and as depicted in the drawing attached hereto as Exhibit B and made a part hereof (the "Easement Area").

The purpose of the easement granted herein is to grant public pedestrian access in, on, under, and over the Easement Area which shall function as an ADA compliant sidewalk for pedestrian, bicycle and similar non-motorized pedestrian uses subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Grantor shall comply with all applicable laws, rules, regulations, and ordinances governing the removal of snow and ice within the Easement Area. Grantee shall have the right but not the obligation to repair or maintain the Easement areas when Grantee, in its sole discretion, deems such repairs or maintenance necessary to ensure public use and enjoyment or to ensure public safety.

The Easement areas shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and Grantor shall not use or permit any use, condition or state of disrepair that would be contrary to or otherwise inhibit such uses.

TO HAVE AND TO HOLD the aforegranted and bargained easement, with all privileges and appurtenances thereof, to the Grantee, its successors and assigns, to its and their use and behoof, forever.

IN WITNESS WHEREOF, 172 Pleasant Street, LLC, the Grantor has caused this instrument to be executed by Jason Richards, its Member thereunto duly authorized, this ____ day of _____, 2022.

WITNESS: 172 Pleasant Street, LLC, Grantor

By: Jason Richards
Its Member

STATE OF MAINE CUMBERLAND, ss. _____, 2022

Personally appeared the above named Jason Richards, member of 172 Pleasant Street, LLC, as aforesaid and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said 172 Pleasant Street, LLC

Before me,

Attorney-at-Law/Notary Public

Printed Name:_____

Commission expires:_____

SEEN AND AGREED TO:

CITY OF PORTLAND

By:_____

Brendan O'Connell, Finance Director

Exhibit A

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THENCE, S25°07'41"W three hundred seventy-three and seven hundredths feet more or less (373.07'±) along the northwesterly sideline of said Riverside Street to the most easterly corner of land now or formerly of Payem Yazdanpanah as described in a deed dated February 24, 2021 and recorded in Deed Book 37861, Page 247;

THENCE, N47°46'03"W one and seventy-one hundredths feet (1.71') along the northeasterly line of land now or formerly of said Yazdanpanah to a point;

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THENCE, N30°25'04"E one hundred twenty-two and twenty-nine hundredths feet (122.29') continuing through land now or formerly of said Waste Management of Maine, Inc. and through land now or formerly of Intentionally Left Blank, LLC as described in a deed dated August 13, 2008 and recorded in Deed Book 26286, Page 191 to a point;

THENCE, N29°51'39"E one hundred seventy-four and sixty-four hundredths feet (174.64') through land now or formerly of said Intentionally Left Blank, LLC, and through land now or formerly of Northern Utilities, Inc. as described in a deed dated August 9, 1971 and recorded in Deed Book 3184, Page 875 and through land now or formerly of 172 Pleasant Street, LLC as described in a deed dated January 28, 2022 and recorded in Deed Book 39135, Page 303 to a point;

THENCE, N29°33'01"E one hundred three and fifty-six hundredths feet (103.56') through land now or formerly of said 172 Pleasant Street, LLC to a point;

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THENCE, S13°01'04"E fourteen and sixty-one hundredths feet (14.61') along the northwesterly sideline of said Riverside Street to an angle point in Riverside Street and **THE POINT OF BEGINNING.**

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Bearings are based on Maine State Plane Coordinate System (2 zone projection), West Zone, NAD 83 (HARN)

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L9	208.72	N23° 52' 00"E
L10	135.82	N25° 37' 47"E
L11	39.89	N33° 28' 52"E
L12	122.29	N30° 25' 04"E
L13	174.64	N29° 51' 39"E
L14	103.56	N29° 33' 01"E
L15	10.01	N18° 16' 18"E

N/F PAYEM
YAZDANPANAH
CBL 323-A-6
DEED 37861/247
660 RIVERSIDE ST.

N/F WASTE MANAGEMENT
OF MAINE, LLC
CBL 324-B-1 & 12
DEED 10545/154
2000 FOREST AVE.

N/F INTENTIONALLY LEFT
BLANK, LLC
CBL 324-B-2
DEED 26286/191
736 RIVERSIDE ST.

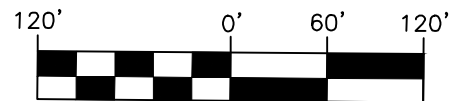
N/F NORTHERN
UTILITIES, INC
CBL 324-B-11
DEED 3184/875

N/F 172 PLEASANT ST., LLC
CBL 324-B-10
DEED 39135/303
725 RIVERSIDE ST.

FOREST AVE.
POB

RIVERSIDE STREET

GRAPHIC SCALE



(IN FEET)
1 inch = 120' ft.

Easement Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	264.43	4949.74	3.06	S29° 07' 45"W	264.40
C2	113.70	2900.04	2.25	S26° 15' 04"W	113.70



CITY OF PORTLAND
PUBLIC WORKS
ENGINEERING DIVISION

PROPOSED PEDESTRIAN SIDEWALK EASEMENT
FOR RIVERSIDE STREET SHELTER

CIVIL 3D PROJECT: RIVERSIDE_SHELTER_SWLK_2022_DB
DRAWING: RIVERSIDESW_DESIGN.DWG.dwg

SCALE:

1" = 120'

DATE:

06/28/2022

EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Intentionally Left Blank, LLC, a Maine Limited Liability Company with a place of business in Portland, Maine and mailing address 927 Route 1 Bypass, Portsmouth, NH 03801 (the "Grantor"), FOR CONSIDERATION PAID, hereby GRANTS to the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "Grantee" or the "City"), an easement for the purpose described below, over portions of Grantor's Land on the northwesterly side of Riverside Street in Portland, Maine, more particularly described in Exhibit A attached hereto and as depicted in the drawing attached hereto as Exhibit B and made a part hereof (the "Easement Area").

The purpose of the easement granted herein is to grant public pedestrian access in, on, under, and over the Easement Area which shall function as an ADA compliant sidewalk for pedestrian, bicycle and similar non-motorized pedestrian uses subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Grantor shall comply with all applicable laws, rules, regulations, and ordinances governing the removal of snow and ice within the Easement Area. Grantee shall have the right but not the obligation to repair or maintain the Easement areas when Grantee, in its sole discretion, deems such repairs or maintenance necessary to ensure public use and enjoyment or to ensure public safety.

The Easement areas shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and Grantor shall not use or permit any use, condition or state of disrepair that would be contrary to or otherwise inhibit such uses.

TO HAVE AND TO HOLD the aforegranted and bargained easement, with all privileges and appurtenances thereof, to the Grantee, its successors and assigns, to its and their use and behoof, forever.

IN WITNESS WHEREOF, Intentionally Left Blank, LLC, the Grantor has caused this instrument to be executed by Saul H. Bornstein and Carolyn E. Roy Bornstein, its Members thereunto duly authorized, this ____ day of _____, 2022.

WITNESS: Intentionally Left Blank, LLC, Grantor

By: Saul H. Bornstein
Its Member

By: Carolyn E. Roy Bornstein
Its Member

STATE OF MAINE CUMBERLAND, ss. _____, 2022

Personally appeared the above named Saul H. Bornstein and Carolyn E. Roy Bornstein, both members of Intentionally Left Blank, LLC, as aforesaid and acknowledged the foregoing instrument to be their free act and deed in their said capacity and the free act and deed of said Intentionally Left Blank, LLC

Before me,

Attorney-at-Law/Notary Public
Printed Name: _____
Commission expires: _____

SEEN AND AGREED TO:

CITY OF PORTLAND

By: _____
Brendan O'Connell, Finance Director

Exhibit A

Public Sidewalk and Pedestrian Easement:

A public sidewalk and pedestrian easement through lands situated on the northwesterly side of Riverside Street in the City of Portland, Cumberland County, State of Maine, said easement described as follows and as shown on Exhibit B attached hereto:

BEGINNING on the northwesterly sideline of Riverside Street at the first angle point in said Riverside Street southwesterly of Forest Avenue, said angle point described in a deed from Howard S. Brenner, et al. to the City of Portland, dated December 2, 1988 and recorded in Deed Book 9548, Page 333;

THENCE, S29°48'11"W two hundred eighteen and twenty-one hundredths feet (218.21') along the northwesterly sideline of said Riverside Street to a point, said Riverside Street described in the following deeds and shown on the following plans,

-Certificate of Taking by the City Portland, dated August 16, 1971 and recorded in Deed Book 3191, Page 123 and as shown on the City of Portland Property Acquisition Plan, undated, recorded in the City of Portland Engineering Archives Vault as Plan 741/5.

-Notice of Layout and Taking by the State of Maine Department of Transportation, dated April 14, 1999 and recorded in Deed Book 14925, Page 41 and as shown on Department of Transportation Right of Way Map, State Highway Plan No. 18, Dated December, 1998 and recorded in Plan Book 202, Pages 175 to 184 and Plan Book 202, Page 221;

THENCE, S35°16'18"W twenty-three and fifty-six hundredths feet (23.56') along the northwesterly sideline of said Riverside Street to a point;

THENCE, southwesterly along the northwesterly sideline of said Riverside Street and along a non-tangent curve to the left with a radius of four thousand nine hundred forty-nine and seventy-four hundredths feet (4949.74') for a length of two hundred sixty-four and forty-three hundredths (264.43') to a point, said curve has chord bearing of S29°07'45"W and a chord length of two hundred sixty-four and forty hundredths feet (264.40');

THENCE, S62°53'52"E one and seventy-four hundredths feet (1.74') along the northwesterly sideline of said Riverside Street to a point;

THENCE, southwesterly along the northwesterly sideline of said Riverside Street and along a non-tangent curve to the left with a radius of two thousand nine hundred and four hundredths feet (2900.04') for a length of one hundred thirteen and seventy hundredths feet (113.70'), said curve has a chord bearing of S26°15'04"W and a chord length of one hundred thirteen and seventy hundredths feet (113.70') to a point;

THENCE, S25°07'41"W three hundred seventy-three and seven hundredths feet more or less (373.07'±) along the northwesterly sideline of said Riverside Street to the most easterly corner of land now or formerly of Payem Yazdanpanah as described in a deed dated February 24, 2021 and recorded in Deed Book 37861, Page 247;

THENCE, N47°46'03"W one and seventy-one hundredths feet (1.71') along the northeasterly line of land now or formerly of said Yazdanpanah to a point;

THENCE, N24°50'12"E one hundred sixty-one and sixty-six hundredths feet (161.66') through land now or formerly of Waste Management of Maine, Inc. (Formerly Known as SCA Services of Maine, Inc.) as described in the following two deeds,

- Deed dated January 7, 1982 and recorded in Deed Book 4912, Page 73 and
- Deed dated February 4, 1993 and recorded in Deed Book 10545, Page 154 to a point;

THENCE, N24°27'08"E forty-seven and sixty-two hundredths feet (47.62') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N23°52'00"E two hundred eight and seventy-two hundredths feet (208.72') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N25°37'47"E one hundred thirty-five and eighty-two hundredths feet (135.82') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N33°28'52"E thirty-nine and eighty-nine hundredths feet (39.89') continuing through land now or formerly of said Waste Management of Maine, Inc. to a point;

THENCE, N30°25'04"E one hundred twenty-two and twenty-nine hundredths feet (122.29') continuing through land now or formerly of said Waste Management of Maine, Inc. and through land now or formerly of Intentionally Left Blank, LLC as described in a deed dated August 13, 2008 and recorded in Deed Book 26286, Page 191 to a point;

THENCE, N29°51'39"E one hundred seventy-four and sixty-four hundredths feet (174.64') through land now or formerly of said Intentionally Left Blank, LLC, and through land now or formerly of Northern Utilities, Inc. as described in a deed dated August 9, 1971 and recorded in Deed Book 3184, Page 875 and through land now or formerly of 172 Pleasant Street, LLC as described in a deed dated January 28, 2022 and recorded in Deed Book 39135, Page 303 to a point;

THENCE, N29°33'01"E one hundred three and fifty-six hundredths feet (103.56') through land now or formerly of said 172 Pleasant Street, LLC to a point;

THENCE, N18°16'18"E ten and one hundredths feet (10.01') through land now or formerly of said 172 Pleasant Street, LLC to a point in the northwesterly sideline of said Riverside Street;

THENCE, S13°01'04"E fourteen and sixty-one hundredths feet (14.61') along the northwesterly sideline of said Riverside Street to an angle point in Riverside Street and **THE POINT OF BEGINNING.**

Meaning and intending to describe a public sidewalk and pedestrian easement, a portion of which travels through land now or formerly of Intentionally Left Blank, LLC as described in a Deed dated August 13, 2008 and recorded in Deed Book 26286, Page 191 (CCRD).

Bearings are based on Maine State Plane Coordinate System (2 zone projection), West Zone, NAD 83 (HARN)

Easement Line Table

Line #	Length	Direction
L1	14.61	S13° 01' 04"E
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L5	373.07	S25° 07' 41"W
L6	1.71	N47° 46' 03"W
L7	161.66	N24° 50' 12"E
L8	47.62	N24° 27' 08"E
L9	208.72	N23° 52' 00"E
L10	135.82	N25° 37' 47"E
L11	39.89	N33° 28' 52"E
L12	122.29	N30° 25' 04"E
L13	174.64	N29° 51' 39"E
L14	103.56	N29° 33' 01"E
L15	10.01	N18° 16' 18"E

N/F PAYEM
YAZDANPANAH
CBL 323-A-6
DEED 37861/247
660 RIVERSIDE ST.

N/F WASTE MANAGEMENT
OF MAINE, LLC
CBL 324-B-1 & 12
DEED 10545/154
2000 FOREST AVE.

N/F INTENTIONALLY LEFT
BLANK, LLC
CBL 324-B-2
DEED 26286/191
736 RIVERSIDE ST.

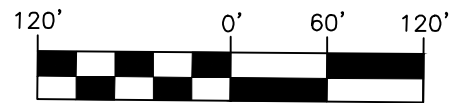
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RIVERSIDE STREET

GRAPHIC SCALE



(IN FEET)
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Easement Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	264.43	4949.74	3.06	S29° 07' 45"W	264.40
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CITY OF PORTLAND
PUBLIC WORKS
ENGINEERING DIVISION

PROPOSED PEDESTRIAN SIDEWALK EASEMENT
FOR RIVERSIDE STREET SHELTER

CIVIL 3D PROJECT: RIVERSIDE_SHELTER_SWLK_2022_DB
DRAWING: RIVERSIDESW_DESIGN.DWG.dwg

SCALE:

1" = 120'

DATE:

06/28/2022

EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Northern Utilities, Inc. d/b/a Unitil, a New Hampshire Corporation with a place of business in Portland, Maine and mailing address of 6 Liberty Lane West, Hampton, New Hampshire 03842 (the "Grantor"), FOR CONSIDERATION PAID, hereby GRANTS to the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "Grantee" or the "City"), an easement for the purpose described below, over portions of Grantor's Land on the northwesterly side of Riverside Street in Portland, Maine, more particularly described in Exhibit A attached hereto and as depicted in the drawing attached hereto as Exhibit B and made a part hereof (the "Easement Area").

The purpose of the easement granted herein is to grant public pedestrian access in, on, under, and over the Easement Area which shall function as an ADA compliant sidewalk for pedestrian, bicycle and similar non-motorized pedestrian uses subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Grantor shall comply with all applicable laws, rules, regulations, and ordinances governing the removal of snow and ice within the Easement Area. Grantee shall have the right but not the obligation to repair or maintain the Easement areas when Grantee, in its sole discretion, deems such repairs or maintenance necessary to ensure public use and enjoyment or to ensure public safety.

The Easement areas shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and Grantor shall not use or permit any use, condition or state of disrepair that would be contrary to or otherwise inhibit such uses.

TO HAVE AND TO HOLD the aforegranted and bargained easement, with all privileges and appurtenances thereof, to the Grantee, its successors and assigns, to its and their use and behoof, forever.

IN WITNESS WHEREOF, Northern Utilities, Inc. d/b/a Unitil, the Grantor has caused this instrument to be executed by William E. Leatham III, its Member thereunto duly authorized, this ____ day of _____, 2022.

WITNESS: Northern Utilities, Inc. d/b/a Unitil, Grantor

By: William E. Leatham III
Its Manager, Gas Distribution Operations

STATE OF MAINE CUMBERLAND, ss. _____, 2022

Personally appeared the above named William E. Leatham III, Manager Gas Distribution Operations of Northern Utilities, Inc. d/b/a Unitil, as aforesaid and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Northern Utilities, Inc. d/b/a Unitil

Before me,

Attorney-at-Law/Notary Public
Printed Name: _____
Commission expires: _____

SEEN AND AGREED TO:

CITY OF PORTLAND

By: _____
Brendan O'Connell, Finance Director

Exhibit A

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N/F PAYEM
YAZDANPANAH
CBL 323-A-6
DEED 37861/247
660 RIVERSIDE ST.

N/F WASTE MANAGEMENT
OF MAINE, LLC
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N/F INTENTIONALLY LEFT
BLANK, LLC
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DEED 26286/191
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CBL 324-B-11
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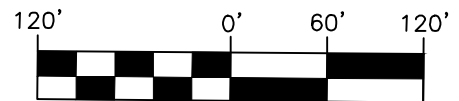
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GRAPHIC SCALE



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CITY OF PORTLAND
PUBLIC WORKS
ENGINEERING DIVISION

PROPOSED PEDESTRIAN SIDEWALK EASEMENT
FOR RIVERSIDE STREET SHELTER

CIVIL 3D PROJECT: RIVERSIDE_SHELTER_SWLK_2022_DB
DRAWING: RIVERSIDESW_DESIGN.DWG.dwg

SCALE:
1" = 120'

DATE:
06/28/2022

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 12, 2022

SUBJECT: Order 57-22/23 Granting an Easement to Portland Water District at the Barron Center Re: Replacement of 12-Inch Water Main - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Danielle P. West, Interim City Manager

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action 9/1/2022

Can action be taken at a later date: No This work is intended to be complete before winter.

Does this item involve a new contract with the City: The easement was reviewed and approved by Corporation Counsel.

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

This item approves an easement to Portland Water District to upgrade water mains on the Barron Center property.

II. AGENDA DESCRIPTION

This easement would assist in the accomplishment of the third phase of Portland Water District infrastructure improvements in the outer Brighton Avenue, Barron Center area. The water mains on the Barron Center property are currently owned by the City of Portland. They were installed in 1931, and are in need of replacement. Portland Water District (PWD) has proposed replacing them with larger conduits and taking ownership as well as responsibility for future maintenance.

Staff is requesting that this item be passed as an emergency to allow construction to start immediately. Seven affirmative votes are required for passage as an emergency after public comment.

III. BACKGROUND

In 2020, new 12-inch water mains were installed in Brighton Avenue and down Holm Avenue in the first phase of improvements. In the second phase in 2021, the water service line under Interstate 95 was replaced; this feeds the back of the Barron Center Campus. The third phase would transfer ownership of the watermain to PWD, which would be responsible for maintenance, as well as replace aging pipes and increase the volume of water available on the Barron Center property and at its fire hydrants.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Improved water volume at the Barron Center property and the transfer of responsibility for water infrastructure maintenance to Portland Water District.

V. FINANCIAL IMPACT

No impact, except to remove future risk of the need for water main repair and replacement.

VI. STAFF ANALYSIS AND BACKGROUND

Public Works Department surveying staff, Barron Center staff, and Corporation Counsel have reviewed the proposal and the easement and approved both.

VII. RECOMMENDATION

Approval.

VIII. LIST ATTACHMENTS

1. Order Granting Barron Center Easement to Portland Water District 9.1.2022

Prepared by:

Date: 08/12/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER GRANTING A BARRON CENTER EASEMENT
TO PORTLAND WATER DISTRICT**

ORDERED, that the attached easement on city property at the Barron Center campus from the City of Portland to Portland Water District is hereby granted in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

MEMORANDUM
City Council Agenda Item

FROM: Tom Caiazzo

DATE: August 12, 2022

SUBJECT: Order 58-22/23 Approving the Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor and Trades - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: Danielle P. West, Interim City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/1/2022

Final Action 9/19/2022

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: The union agreement has been reviewed.

PRESENTATION: Tom Caiazzo, Deputy Human Resources Director, and Keith Hansen, Senior HR Analyst, will be available to answer any questions.

I. SUMMARY

II. AGENDA DESCRIPTION

This order approves the negotiated collective bargaining agreement between the City and the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00, Labor and Trades, for the period of July 1, 2022 to June 30, 2025. This proposal is presented after receiving guidance from the City Council in executive session and having reached a tentative agreement with Labor and Trades, which was voted on and approved by the members.

The tentative agreement provides for a 3% general wage increase for FY23; a 3% general wage increase for FY24; and a 2.5% general wage increase for FY25. The proposal also increases night and weekend shift differentials, upgrades to several positions in the pay plan and the addition of a 20+ year step to ensure that employees in those positions are paid competitively and in line with their peers who are performing comparable work. Finally, the proposal adds Juneteenth as a paid holiday, implements earned paid leave, removes gender-specific language and makes other minor adjustments in the agreement between the parties. The total estimated cost of the negotiated changes to L&T's 3-year contract is \$1,954,728.

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

Labor and Trades represents a wide range of employees across nearly all of the departments in the City. It includes Parks Maintainers, Arborists and Horticulturalists in the Department of Parks, Recreation and Facilities and nearly all Maintenance Worker and Mechanic positions in the Departments of Public Works. Labor and Trades also represents Trades Workers and HVAC Technicians in Public Buildings and the Jetport, and many other skilled and semi-skilled positions across the City. When fully staffed, Labor and Trades would represent approximately 165 City employees.

The previous contract with Labor and Trades expired on June 30, 2022.

The proposed contract provides for the creation of several market rate pay plans to try to keep wages competitive with others in similar industries. It also upgrades several positions that were not competitive in the market and were under classified in the existing pay plan. All of the changes are intended to make the City a competitive employer in these areas.

This proposed agreement is presented after receiving guidance from the City Council in executive session and is in line with that guidance received. The tentative agreement was approved by Labor and Trades members on June 13, 2022.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

To approve a competitive successor collective bargaining agreement, allowing the City to recruit and retain excellent employees.

V. FINANCIAL IMPACT

Fiscal Impact Note is included in the backup materials.

VI. STAFF ANALYSIS AND BACKGROUND

Staff has conducted a survey of other industry wages and terms of work; negotiated diligently with Labor and Trades; consulted the City Council for guidance; and worked with the administration to arrive at a tentative agreement that is fair and competitive.

VII. RECOMMENDATION

To adopt the proposed agreement as presented.

VIII. LIST ATTACHMENTS

1. AFSCME Local 481-00 Labor & Trades Contract 9.1.2022
2. LABOR & TRADES 2022 - 2025 DRAFT with Changes
3. Labor and Trades Fiscal Impact Note

Prepared by:

Tom Caiazzo

Date: 08/12/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING THE
COLLECTIVE BARGAINING AGREEMENT WITH
THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES (AFSCME) LOCAL 481-00 LABOR & TRADES**

ORDERED, that the attached Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME) Local 481-00 Labor & Trades for July 1, 2022 through June 30, 2025, is hereby approved.

AGREEMENT BETWEEN
CITY OF PORTLAND
AND
AFSCME LOCAL 481-00
LABOR AND TRADES

July 1, 2019²² – June 30, 2021²⁵

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Appendix D	Job Families
Appendix E-1 and E-2	Transitional Work Policy and Agreement
Appendix F	Workfare Memorandum
Appendix G	Barron Center Side Agreement
Appendix H	Winter Departmental Procedures (Public Services, Public Buildings)
Appendix J	Jetport Procedures
Appendix K.....	Career Ladder – Welder
Appendix L-1 and L-2	Career Ladder – Health and Human Services
Appendix M	Career Ladder – Public Buildings
Appendix N	Career Ladders – Parks and Athletic Facilities
Appendix O	Health Plan Reserve Account

AGREEMENT

This Agreement made and entered into this ~~21st day of January 2015~~ **___ day of September 2022**, by and between the CITY OF PORTLAND, hereinafter referred to as "City" and Local 481, American Federation of State, County, and Municipal Employees, AFL-CIO, Council 93, hereinafter referred to as the "Union".

1. PREAMBLE

- 1.1 Pursuant to the provisions of the Municipal Public Employees Labor Relations Law (Chapter 9-A), Title 26, Maine Revised Statutes Annotated), the parties have entered into this Agreement with the goal of establishing mutual rights, preserving proper employee morale, and promoting effective municipal operations.

2. RECOGNITION

- 2.1 The City hereby recognizes that the Union is the sole and exclusive representative of a Unit consisting of all permanent employees (as defined in Appendix A) working in the job classifications in the attached classification and pay plans (except those excluded by Chapter 9-A, Title 26, M.R.S.A. and excluding all temporary, seasonal, on-call, or probationary employees as defined below and in Appendix A) in the following Departments and Divisions:

Parks, Recreation and Facilities Management (Public Assembly Facilities Division and Public Buildings Division)
Health and Human Services (Barron Center and Social Services Division)
Parking Division
Public Works
Aviation and Transportation

- 2.2 The Union shall bargain for such permanent employees in the above unit with respect to wages, hours of work, working conditions, and all other terms and conditions of employment.
- 2.3 All new employees in permanently budgeted positions shall serve a probationary period of six (6) months, and shall have no seniority, grievance, or other rights during this period, except as otherwise specifically provided in this Agreement. During the six (6) month probationary period, the appointing authority may remove the probationer at any time if their work or conduct are found below satisfactory standards. Notwithstanding the foregoing, probationary employees do receive holidays and earn vacation and sick leave during the probationary period, and can use vacation or sick leave during the probationary period, unless specifically prohibited by a section of the Agreement. Probationary employees shall not be assigned to perform higher pay for higher classification work provided in Article 22.

- 2.4 Upon completion of the six (6) month probationary period, the probationary period shall be considered part of the employee's seniority time. In addition, any employee who becomes a permanent employee, and who has previously served in the same classification as a temporary, seasonal, or project employee, shall have such temporary, seasonal, or project time credited against their probationary period.
- 2.5 Permanent part-time employees shall be covered by all of the provisions of this contract, and shall be entitled to benefits as outlined in Appendix A, which is attached hereto and incorporated herein.
- 2.6 The City shall provide the Union with a monthly listing of the names and addresses of new employees and the names of separated employees. The City shall also notify the Union of new job classifications when created with an opinion from the Human Resources Department as to the appropriate bargaining unit for such new classifications.
- 2.7 The City and the Union agree to meet at reasonable times to discuss additions to and deletions from the recognition clause for possible changes in the recognition clause, and such changes will be by mutual agreement.

3. NO DISCRIMINATION BY PARTIES

- 3.1 Employees covered by the Agreement shall have all the rights afforded under Section 963 of Chapter 9-A, Title 26, M.R.S.A.
- 3.2 No employee shall be favored or discriminated against by either the City or the Union because of his or her membership or non-membership in the Union.
- 3.3 The parties agree that they shall not unlawfully discriminate against any employee because of race, color, sex (including pregnancy), sexual orientation, gender identity or expression, physical or mental disability, religion, age, ancestry, national origin, veteran's status, genetic information, previous assertion of a claim or right under the Maine Workers' Compensation Act, previous actions taken or protected under the Maine Whistleblowers Protection Act, or any other protected group status as defined by applicable law.

4. DUES

- 4.1 The City shall deduct regular weekly dues, PEOPLE, and premiums for income protection insurance for employees participating in the AFSCME Income Protection plan, as outlined in Article 18, INSURANCE, upon receipt of a signed authorization form from members and a certified statement from AFSCME Council 93 as to the amount for dues and fees. The signed authorization for deduction of dues shall be in the form attached hereto and marked Exhibit A.
- 4.2 For employees hired into a permanent position shall either (1) join the Union, or (2) sign

a non-member waiver form supplied by the union. Employees shall have 10 days after completion of their probationary period within which to join the Union or sign a non-member waiver form supplied by the union.

4.2.1 Upon receipt of a written authorization card from the employee, the City shall deduct full Union dues

4.2.2 Employees who wish to become non-members shall notify the City and the Union in writing thirty (30) days prior to the expiration of this agreement.

4.2.3 P.E.O.P.L.E. Deduction: The City agrees to deduct from wages of any employee who is a member of the Union a PEOPLE deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the City and the Union. The City agrees to remit any deductions made pursuant to this provision promptly to the Union together with an itemized statement showing the name of each employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance.

4.3 Amount of Dues

In the event of a change in the amount of dues or fees during the term of this Agreement, AFSCME Council 93 shall so inform the Director of Human Resources of the City in writing. After receipt of same, dues or fees as therein noted shall be deemed to have been authorized to be withheld on behalf of the employees who had previously signed authorization forms as noted.

4.4 Dues Transmittal

The City shall forward all such dues and fees so collected to Council No. 93, Boston Massachusetts Business Office at 8 Beacon Street. All dues and fees collected shall be submitted to AFSCME Council 93 utilizing electronic deposit with all member rosters emailed to duesrosters@afscme93.org, on or before the 15th of the month following the month in which they were collected from the employees. Any premiums collected shall be forwarded to the Maine Benefit Trust. The Benefit Trust will notify the City of the amounts of premiums to be deducted.

4.5 Indemnification

The Union shall defend, indemnify, and hold the City harmless against any and all claims or suits which may arise out of or result from the dues or fee deductions taken, or not taken, pursuant to this Article, and the transmission thereof to the Union, said indemnification to include all costs and attorney's fees resulting from any such claims or suits.

5. TIME OFF WHILE PERFORMING UNION DUTIES

- 5.1 The Local Union President and/or Chief Steward, or other authorized Union representative, shall be allowed time off, with pay, for meeting with City officials concerning Union business provided, in the judgment of the City, said time off does not interfere with work flow requirements.
- 5.2 The Chief Steward, or other authorized Union representative, shall be allowed time off, with pay, during regular shift hours for investigating grievances, up to a maximum of one (1) hour per grievance, but not to exceed a total of three (3) hours per week, except with the permission of the Department Head or designee. The Chief Steward, or other authorized representative, shall not leave **his/her** **their** regularly assigned work in order to investigate a grievance without first obtaining approval of **his/her** **their** supervisor or other management representative holding a position of Section Head or Division Head. Such approval shall be granted with a twenty-four (24) hour notice to the supervisor or other management representative as defined above. A notice shorter than 24 hours shall not be arbitrarily denied.
- 5.2.1 If an employee is facing disciplinary action, the Chief Steward or other Union Steward will be permitted to attend the disciplinary hearing or the hearing will be postponed until the Chief Steward or other Union Steward is available.
- 5.3 The City agrees to meet once per month with a Union Committee to discuss matters pertaining to non-grievable items not covered in this Agreement provided the Union Committee submits a written agenda of the items for discussion at least three (3) working days prior to the meeting date. Such meetings shall be held at mutually convenient times. Whenever such meetings are held during normal working hours, the Union Committee shall be composed of not less than three (3) and not more than five (5) representatives.
- 5.4 During the term of this Agreement, up to two (2) weeks shall be allowed off the job, without pay, for no more than two (2) Union representatives at one time, to attend any regional, state, or national meetings of the American Federation of State, County, and Municipal Employees. No time off shall be granted under this paragraph unless the Department Head or designee gives permission and determines there is sufficient staffing available for departmental operations. This provision does not limit the Union to select the same two (2) representatives for the several meetings, but the aggregate time allowed for leave shall not exceed twenty (20) work days during each calendar year.

6. BULLETIN BOARDS

- 6.1 The City shall permit the reasonable use of bulletin boards by the Union for the posting of notices relating to Union business provided that any such notice shall not be in violation of local, state, or federal law.

7. ACCESS TO PREMISES

- 7.1 With the permission of the appropriate Division Head, such permission not to be arbitrarily withheld, representatives of the American Federation of State, County, and Municipal Employees, Council No. 93, and Local 481, may enter City premises for the investigation of pending disputes under the contract. A list of authorized Union representatives who may enter City premises shall be furnished by the Union within forty-five (45) days of the effective date of this Agreement to the appropriate Department Head, Division Head, and Director of Human Resources.

8. MANAGEMENT RIGHTS

- 8.1 The City retains all right and authority to manage and direct its employees, except as otherwise specifically provided in this Agreement.

9. DEPARTMENT RULES

- 9.1 The Union acknowledges the right of the City to make such rules and regulations governing the conduct of its employees as are not specifically inconsistent with the provisions of this Agreement.
- 9.2 The Unit President, the field representative for the Union, and the Chief Steward shall be supplied with a copy of the new or amended rule at least eight (8) working days prior to the posting of the new or amended work rule on the bulletin boards.
- 9.3 When work rules are changed or amended or new rules are established, they shall be posted on all bulletin boards for a period of ten (10) consecutive work days before becoming effective.
- 9.4 All Department rules and regulations shall be posted in conspicuous locations throughout the Department in order for employees to familiarize themselves with these rules. The City agrees to provide employees with an annual review of work rules when requested by the Union.
- 9.5 Employees will comply with all existing rules which are not in conflict with the terms of this Agreement. Any complaint involving discrimination in the application of new or existing rules may be processed through the grievance procedure.

10. STRIKES, SLOWDOWNS, AND LOCKOUTS PROHIBITED

- 10.1 The Union agrees that during the term of this Agreement, neither it nor its officers or members will engage in, encourage, sanction, support, or suggest any (1) strikes, (2) slowdowns, (3) mass absenteeism, (4) mass resignations, or (5) picketing which would

involve suspension of or interference with normal work of the Department or other City Departments, or (6) any other similar action which would involve suspension of or interference with the normal work of the department or other City Departments.

- 10.2 In the event that Union members participate in such activities in violation of this provision, the Union shall notify those members so engaged to cease and desist from such activities and shall instruct the members to return to their normal duties. Any employee participating in these prohibited activities may be discharged by the City. The City agrees not to engage in any lockout of employees during the term of this Agreement.

11. GRIEVANCE PROCEDURE

- 11.1 Should the Union, or an employee in the Unit, feel aggrieved concerning the interpretation or application by the City of any provision in this Agreement, the Union may seek adjustment of the grievance as follows:

11.1.1 The Union, through the Chief Steward, or other authorized Union representative, shall take up the grievance with the employee's Division Head or designee. The Division Head or designee shall issue a decision within ten (10) working days from the date the Union filed the grievance with the Division Head or designee.

11.1.2 If the grievance is not resolved at Step 11.1.1, within five (5) working days after receipt of the decision of the Division Head, the Union shall submit the details of such grievance in writing to the Department Head. Within five (5) working days thereafter, the Department Head or designee shall meet with a representative of the Union for the purpose of adjusting or resolving such grievance. Within ten (10) working days after said meeting, the Department Head or designee shall render a written decision.

11.1.3 If the grievance is not resolved at Step-11.1.2, within ten (10) working days after receipt of the written decision of the Department Head or designee, the Union representative may appeal to the Director of Human Resources by filing a written notice of appeal together with copies of the written grievance and the 11.1.2 decision. The Director of Human Resources or designee shall meet with the Union within fifteen (15) working days following receipt of the Union's written appeal to hear the grievance and shall provide a written decision within ten (10) working days of the date of the hearing.

11.1.4 If the grievance is not resolved at Step 11.1.3, within fifteen (15) working days after receipt of the written decision of the Director of Human Resources or designee, the Union representative may appeal to the City Manager by filing a written notice of appeal together with copies of the written grievance and responses at Steps 11.1.2 and 11.1.3. The City Manager or designee shall meet with the Union within twenty (20) working days following receipt of the Union's written appeal to hear the grievance and shall provide a written decision within

fifteen (15) working days of the date of the hearing.

- 11.1.5 In the event that the decision of the City Manager rendered pursuant to 11.1.4 above is not acceptable to the Union, within fifteen (15) working days after receipt of the decision at Step 11.1.4 it may request in writing that the matter be submitted to arbitration. The City and the Union shall mutually agree upon an arbitrator when possible. In the event they are unable to agree upon an arbitrator within seven (7) days of the request for arbitration, the arbitrator shall be selected through the Labor Relations Connection (LRC) in accordance with the rules of said Association then in full force and effect. The Union must submit a written arbitration request to the Labor Relations Connection (LRC) within sixty (60) days of the date of the City Manager's decision; if they fail to do so, they have forfeited their right to pursue the grievance to arbitration. Thereafter, arbitration shall be had in accordance with the rules of the Labor Relations Connection (LRC). Said Arbitrator shall have no authority to add to, subtract from or modify the provisions of this Agreement. The arbitrator's decision shall be final and binding upon the parties hereto. The expenses of the arbitrator shall be borne equally by the parties.
- 11.1.6 The time limits for processing of grievances may be extended by written consent of the parties. Steps 11.1.1, 11.1.2, or 11.1.3 in the grievance procedure may be waived by written mutual consent of the parties. Absent such written extension, the Union may not appeal the grievance to the next step of the grievance procedure if they exceed the contractual time period for appealing the grievance; if the City exceeds the contractual time period for responding to a grievance without a written extension, the grievance will proceed to the next step of the grievance procedure providing the Union submits a timely written appeal to the next step.
- 11.1.7 At Steps 11.1.2, 11.1.3, 11.1.4 of the grievance procedure, the Department Head, Director of Human Resources, or City Manager may act through his/her their Deputy, Assistant, or other duly authorized representative.
- 11.1.8 All grievances shall be commenced not later than thirty (30) days after the occurrence of the event giving rise to the grievance, or within thirty (30) days after the time such event became known to the employee or employees concerned, whichever shall be later.
- 11.1.9 Nothing in this Article shall diminish the right of any employee covered hereunder to present his/her their own grievance as set forth in Title 26, Maine Revised Statutes Annotated up to and including the Manager's level. Any grievance processed by the Union shall go to a Grievance Committee of the Union before processing at Step 3 of the grievance procedure.

12. SAVINGS CLAUSE

- 12.1 If any Article or section of this Agreement, or any riders thereto should be held invalid by operations of law or by any tribunal of competent jurisdiction, or if compliance with the enforcement of any article or section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement or any riders thereto shall not be affected thereby.
- 12.2 Within thirty (30) days after the expiration of the time for appeal from a final decree of a court of competent jurisdiction and no appeal having been filed, the City and the Union agree to meet to negotiate in regard to the specific Article, section, or rider held invalid by the court. This exception to Article 41, Embodiment, shall not be construed as limiting or otherwise modifying such Article 41, except as herein stated. The parties shall be required to negotiate only as to the specific Article, section, or rider declared invalid, and shall not be required to negotiate while any appeals of a decision are pending, but may do so upon mutual agreement.

13. WAGES AND SALARIES

- 13.1 Effective July ~~73, 2019~~**2022**, employees will receive a **3.0%** across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B-~~2(2)~~. ~~Also, a 12+ year step will be added to the pay plan retroactive to July 7, 2019~~ **After the 3.0% COLA is implemented, a twenty plus year step will be added to the pay plan.**
- 13.2 Effective July ~~52, 2020~~**2023**, employees will receive a ~~2.75~~**3.0%** across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B-~~2(3)~~. ~~Also, a 15+ year step will be added to the pay plan effective July 5, 2020.~~
- 13.3 Effective July 7, 2024, employees will receive a 2.5% across the board increase in accordance with the seniority step pay plan attached hereto as Appendix B-2.**
- 13.~~34~~ Wages of permanent part-time employees shall be based upon the seniority step pay plans (Appendix B-~~(2)(3) and (4))~~) but such employees' base weekly wages shall be pro-rated on the basis of a forty (40) hour work week.
- 13.~~45~~ Retroactive pay increases will be paid to active employees and retirees as of the date of signing of this Agreement, for the period beginning on ~~July 7, 2019~~ **July 3, 2022** through ~~July 1, 2020, employees will receive (the "period of retroactivity")~~. **the date of signing (the "period of retroactivity")**. Retroactive pay will be determined by multiplying the difference between the employee's base wage during that same time period as determined by Appendix B-~~(2) and if necessary B(3) and B(4)~~ times the number of weeks at the new base wage and including all overtime. In the case of a promotion during the period of retroactivity, the employee's pay will be based upon the employee's time in each position.
- 13.6 Effective upon Council approval of this Agreement, all non-probationary**

bargaining unit employees will receive a one-time payment in the amount of three hundred dollars (\$300.00).

- 13.57 Employees who successfully complete the required certification tests and other criteria as outlined in departmental career ladders will be promoted in accordance with the appropriate career ladder following review and approval by the Department Head and Human Resources Director that all certification criteria have been satisfied. The promotion will be effective on the beginning of the full pay period following completion of all required criteria as certified by Human Resources. Employees are responsible for renewing all licenses used to justify the promotion and must satisfactorily complete all re-certifications (internal and external) in accordance with department policy. Failure to do so will result in a demotion to the appropriate pay grade, and the corresponding reduction in pay, providing the City has made available periodic opportunities for the employee to operate equipment on which they must re-certify.
- 13.68 The City has implemented a paperless pay stub system. All current and newly hired employees will have mandatory direct deposit for all monies owed by the City. A reloadable debit card will be supplied to employees who do not want their paycheck deposited directly to a financial institution at no cost to the employees.

14. OVERTIME

- 14.1 This section is intended to provide a basis for calculation of any payment of overtime. The total hourly rate shall include all stipends and differentials paid hereunder, unless excluded under the Fair Labor Standards Act.
- 14.2 Except as provided in 14.2.1 below, eight (8) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay. Ten (10) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay for employees on a four (4), ten (10) hour day work schedule.
- 14.2.1 Public Works employees who work the weekend shift during the winter period shall be scheduled to work three 13 hour shifts and shall receive forty (40) hours of pay. This Friday through Sunday schedule is their regular work week. Their hourly rate of pay will be adjusted for the winter period in accordance with the Fair Labor Standards Act (regular weekly salary divided by 39 hours worked).
- 14.3 Except as provided in 14.3.2 below and Appendix A for part-time employees, a monetary rate of one and one-half (1-1/2) times the base hourly rate shall be paid for all work performed by employees covered by this Agreement during the work week in excess of forty (40) hours per week or eight (8) hours per day, but not for both; provided, however, that payment shall be modified under the circumstances described in Section 14.3.1 below.

- 14.3.1 Notwithstanding 14.3 above, if an employee uses sick time at the start of or during his regular shift, after working 16 consecutive hours or more previously the same pay period, then the overtime shall be paid at a straight time rate for the number of hours equivalent to the number of sick hours used.
- 14.3.2 Employees who work the weekend shift during the winter period will not be eligible for overtime after eight (8) hours per day on a regularly scheduled work day; instead, they will be eligible for overtime on a regular work day if they work in excess of their regularly scheduled thirteen (13) hour shift. These employees will be paid at time and one-half their adjusted hourly rate for all additional hours worked during Monday through Thursday, providing they do not call out sick during their regularly scheduled weekend hours.
- 14.4 With the concurrence of the Department Head and the employee, compensatory time off at a time and one-half rate may be provided in lieu of the mandatory overtime payment. In no case shall an employee accrue more than one hundred (100) hours of such compensatory time.
- 14.4.1 Employees may earn up to a maximum of one hundred (100) hours of compensatory time during the calendar year beginning with the first full week in January. This comp time will become a comp bank whereas an employee can either use the time off similar to vacation time or ~~he/she~~ **they** can cash it out at any time during the year. If an employee still has a comp balance on the books at the end of December each year, the comp bank will be cashed out during the first pay date, in January on a yearly basis to zero out any balances.
- 14.5 For the purposes of this section, "Hours Worked" shall mean only one of the following:
- 14.5.1 Hours actually worked.
 - 14.5.2 Hours compensated for by holiday base pay.
 - 14.5.3 Hours compensated for by bereavement leave.
 - 14.5.4 Hours compensated for by vacation pay.
 - 14.5.5 Hours compensated for by compensatory time off.
 - 14.5.6 Hours compensated for by Jury/Witness pay only during periods of mandatory overtime.
 - 14.5.7 Hours compensated for by Earned Paid Leave (EPL).**
- 14.6 For the purposes of this section, "Hours Worked" shall not include:
- 14.6.1 Hours compensated for by holiday premium pay.
 - 14.6.2 Hours compensated for by call-back pay.
 - 14.6.3 Hours compensated for by jury/witness pay, except as provided in 14.5.6 above.
 - 14.6.4 Hours compensated for by reserve service leave.
 - 14.6.5 Hours compensated for by sick leave pay.
 - 14.6.6 Hours compensated for by personal leave pay.

14.7 Department Heads or his/her **their** designee will discuss distribution of overtime with the Union upon request.

14.8 The following paragraphs apply to non-mandatory overtime.

14.8.1 When overtime work is necessary, the City will make every reasonable effort to distribute overtime that is scheduled at least 24 hours in advance equally among the regular, full-time employees. The City shall keep a list of employees who are on call for overtime that becomes available during the work week and weekends. Except as provided in 14.8.1.1 below, overtime will be offered first to employees in the Section, next to employees in the Division, and next to employees in the Department; provided that the employees are capable of performing the work. Except as provided in 14.8.1.1 below, the overtime list will be rotated so that an equal distribution of overtime will be afforded all employees; however the City will not make such reasonable effort in cases where employees refuse overtime work. Except as provided in 14.8.1.1 below, non-bargaining unit employees will not be offered scheduled overtime opportunities until after all available qualified bargaining unit employees in the Department are offered the overtime.

14.8.1.1 The Public Works Department will maintain an overtime log book in the Communications Center. Each Wednesday morning by 12:00 noon, full-time employees in the Department interested in volunteering for overtime starting the following Saturday may sign up. These volunteers must agree to work the total number of hours required for that assignment. Assignments may be scheduled throughout the week at any time so employees must make sure to sign the overtime log book by the Wednesday noon deadline. Should they decide to sign the book after the deadline to sign the book and the overtime was already filled, this will not be considered a missed opportunity. Employees will be required to enter their own names into the overtime book. The removal of the names may only be done by a Section Head, Manager, or Director. In the absence of a Section Head, Manager, or Director, a Supervisor may be sought to approve the removal of the name(s). Failure to respond to a work assignment will be deemed as an unexcused absence and will be subject to disciplinary action.

14.8.2 When non-scheduled overtime occurs, such as when a particular project extends beyond the end of the normal shift, the bargaining unit employee working on that project during the day will be offered the overtime first and will not be required to sign the overtime book. When feasible, the supervisor will offer the overtime next to other Section employees; however, if the supervisor determines such a canvass is not feasible, the overtime will be offered to non-bargaining unit employees also assigned to that project during the day. Non-bargaining unit employees not assigned to work where the overtime occurs during the normal shift will not be offered the overtime prior to other available qualified bargaining unit employees in the Division.

14.8.3 When the City makes unintentional errors when calling employees to offer scheduled overtime opportunities, the following remedy for such missed opportunity shall apply to the employee who should have been called. Such employee will be granted an opportunity to work overtime equal to the number of hours s/he would have worked had s/he been properly scheduled. Such work shall be meaningful and beneficial to the City. Such overtime opportunity will be scheduled at a time that is mutually agreeable to the City and to the employee and shall not result in another otherwise deserving departmental employee to lose an overtime opportunity in order to satisfy the earlier error.

14.8.4 BARRON CENTER OVERTIME PROCEDURES

14.8.4.1 Non-Winter Period

Emergency/unforeseen events – first call will be to the person on standby for the week. If additional overtime is necessary, management will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis.

14.8.4.2 Winter Period

Winter period is defined as November through April. Overtime is not considered voluntary during the winter period. Maintenance employees in the laundry division will also be utilized when necessary.

For known weather events – a schedule for additional hours/shifts will be posted prior to the event.

For unforeseen weather events and emergencies – the person on standby will be called first. If more than one person is needed, management will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis.

14.8.5 JETPORT OVERTIME PROCEDURES

14.8.5.1 The Jetport will maintain a weekly volunteer overtime list. If there are no volunteers, employees will be mandated beginning with the least senior employee on a rotating basis. **In the event there are no volunteers, management may elect to leave a shift unfilled if conditions permit.**

14.9 When personnel are required to perform preparation for, participation in and clean-up related to Memorial Day and July 4th activities and cruise ship visits, overtime will be scheduled in accordance with normal departmental procedures **as outlined in 14.8.1. If after following normal department procedures there are not enough**

volunteers, the City will solicit qualified volunteers on a unit-wide basis at least three (3) weeks prior to the scheduled overtime. If there are still not enough volunteers, employees will be mandated beginning with the least senior employee starting in the Section, then Division, and then Department.

- 14.10 The City will make available information on overtime distribution and accumulations as follows: Actual Hours Worked, Missed Overtime Opportunities, and Total Hours Combined. If the Union believes that the city is not making every reasonable effort to distribute overtime equally and make accurate postings, then, upon request, the City will meet with officers of the Union to discuss Union suggestions for the improvement of the City's procedure.

14.10.1 Public Works will make available information on overtime distribution and accumulations based on Actual Hours Worked only. The Public Works overtime list will be zeroed out for the first full week in July each year as opposed to twice a year.

- 14.11 Overtime shall not be voluntary during the winter period or during periods of imminent danger to the health, safety, and property of Portland citizens (hereinafter referred to collectively as involuntary overtime). Definition of the winter period varies by Department. Unless specified otherwise in Appendix H or Appendix J the period is November through April. Imminent danger determinations are made by the City Manager or designee. Overtime required to complete scheduled sanitation and recycling removal is considered to be involuntary overtime for the full calendar year. When, in cases of emergency, personnel and/or equipment are called in from other Departments, the personnel from other Departments shall be released from their duties when the workload lessens, unless they are acting as relief workers for regular, full-time workers.

14.11.1 Winter Operations Staffing

Employees' shifts and job responsibilities shall remain as current except as provided below. The City will limit each employee's winter operation obligation to sixteen (16) consecutive hours, with an eight (8) consecutive hours off-duty period, in the Public Works Department; exceptions to this schedule may be made if extenuating circumstances exist. Staffing and operational issues require that Aviation and Transportation employees continue to work throughout the snow event.

- 14.11.1.1 Aviation and Transportation employees may take breaks as necessary and as approved by their supervisor. They will follow the break guidelines as outlined in Appendix J in order to balance the safety and operational needs at the Jetport.
- 14.11.1.2 Three (3) Public Buildings employees will be available to assist Public Works with snow plowing, sand/salt and snow removal operations throughout the storm.

- 14.11.1.3 Workers' Compensation claimants may be assigned transitional work, including shift work, which meets the needs of the City and the injured employee.
- 14.11.1.4 Employees shall be available at all of the following times:
 - A. When directed to be available.
 - B. Employees will be notified of predicted weather events through informational postings at the work site. Each employee is responsible for checking these postings daily.
- 14.11.1.5 Employees shall be available during the winter months as follows:
 - A. Employees must "be available" during the winter period and will need to provide a telephone number where they can be reached while fulfilling their responsibility to the City to be available.
- 14.11.1.6 Employees who are not available as defined above will be subject to progressive discipline.
- 14.11.2 The City reserves the right to make all decisions regarding the City's response to the emergency. The parties agree that employees from other bargaining units and from other departments may be utilized as necessary to supplement unit members regularly assigned to snow removal or other emergency operations providing that unit members in other departments who volunteer to participate in winter operations outside of their regularly scheduled shift are called first.
- 14.11.3 Hardship

The City recognizes that certain individual situations may cause hardship in regards to involuntary overtime and/or shift assignments. Requests for hardship exemptions for overtime, shifts or other extraordinary circumstances will be considered through the following process. All employees with current or predictable hardship situations must request a hardship exemption. The request must be submitted in writing to a departmental representative as designated by the Department Director by September 1st. Hardships being requested for medical reasons for either a shift exemption or an overtime exemption will be handled by the Department Director in consultation with appropriate staff resources. The City shall not unreasonably deny such requests.

14.12 Call-Back Pay

- 14.12.1 Employees called back to work **and report to the work site** shall receive a minimum of three (3) hours pay at the overtime rate for the work for which they are called back, or may receive one and one half (1-1/2) times their base hourly rate under the above provisions, whichever is greater, but not both.
- 14.12.2 Employees who report to **the work site** within thirty (30) minutes of the time they are first called shall be paid from the time of said call; otherwise, they shall be paid from the time they report to **the work site**.
- 14.12.3 If an employee is called into **the work site** within one hour of the normal starting time for their shift, such time shall be paid at the one and one-half (1 ½) overtime rate for the actual time worked. If such call-in is an hour or longer prior to the start of the normal work shift, the "call-back" provisions in 14.12.1 and 14.12.2 shall apply.
- 14.12.4 An employee is not eligible for any additional "call-back" pay under this provision if they are called back to **the work site** within one (1) hour of the time they arrived for a previous "call-back." If an additional "call-back" occurs beyond one (1) hour from arrival time of a previous "call-back" the employee will receive additional "call-back" pay. If additional "call-backs" occur within one (1) hour and the employee is at work beyond two (2) hours the "call-back" pay provision shall apply.
- 14.12.5 Employees that respond remotely or over the phone to calls and do not report to the worksite shall receive pay at the applicable overtime rate for all hours worked after performing one (1) hour of remote or phone work. If the employee must respond to the work site, the above call-back provisions shall apply.**
- 14.12.6 Employees that are called back to work will report to the work site and/or respond remotely as soon as possible. Failure to report to the work site and/or respond remotely within two (2) hours from the time they are first called shall forfeit that day's stand-by pay outlined in 14.13.**

14.13 Stand-by Pay

- 14.13.1 If a Division elects to designate a person to be on-call, they will solicit volunteers and designations will be made from qualified volunteers providing sufficient volunteers are available. If a sufficient number of qualified volunteers are not available within the Division or the Department, the City will designate a qualified Division employee to be on stand-by. Such designation shall be made on the basis of inverse order of seniority on a rotating basis. ~~The payment for the stand by designation shall be \$18.00 per day on weekdays and \$27.00 on weekend days and holidays.~~ **The payment for the**

stand-by designation shall be one and one half (1 ½) hours per day on weekdays, weekend days and holidays.

~~14.13.2 Employees designated to be on stand-by may respond to issues over the phone. If the employee must respond to the work site, the call-back provision in 14.12 shall apply.~~

14.13.32 Water Resources Stand-By

14.13.32.1 There will be a primary and a secondary person to respond during off-duty hours to address sewer problems or emergencies. The City, call service or S.C.A.D.A. system will contact the primary responder to assess the situation. The primary responder will determine if the secondary responder needs to be called.

The primary responder who responds remotely to Water Resources calls shall receive ~~for an initial call, one half hours (1/2) pay at the applicable overtime rate~~ **pay at the applicable overtime rate for all hours worked after performing one (1) hour of remote work.** ~~For all additional calls within the twenty four hour period, pay will be for actual hours worked at the applicable overtime rate.~~ If the employee must respond to the work site, the call-back provision in 14.12 shall apply.

14.13.32.2 The primary responder responsibility will rotate between the City's Water Resources ~~Maintenance Worker III's~~ **Senior Technician's** assigned to sewers. The secondary responder responsibility will rotate among the unit members of the Water Resources Wastewater Section of Public Works. Pump station on-call responsibility will rotate between the other ~~Maintenance Worker III's~~ **Senior Technician's** in the Water Resources division. **Effective January 2023, the primary responder and the pump station on-call responsibilities will be combined. There will be one (1) pager rotation that will rotate between the six (6) ~~Water Resources Maintenance Worker III's~~ Water Resources Senior Technician's.**

If the necessary employee training that is needed to combine the primary responder and the pump station on-call responsibilities is not completed 30 days prior to implementation, the effective date will be delayed until July 1, 2023.

~~14.13.32.3 The primary responder only will receive stand-by pay of one hour of straight time pay on week days and one hour of overtime pay on week-end days and holidays.~~

14.13.43 Streets and Islands Beeper Program

14.13.43.1 The Public Works 30-week **Streets** beeper program for mainland personnel will be **year-round for the duration** ~~continued for the non-winter period during each year~~ of this contract. **A volunteer list will be posted twice annually (mid-December and mid-June) and then weekly assignments will be made in order of seniority by the Principal Admin Officer and will be posted at least one week prior to the start of the program for January and July. This beeper will not be utilized for pre-scheduled overtime during the winter period or if more than one person is needed at the time of the initial page.**

14.13.43.2 The Public Works Islands beeper program will be continued year-round for the duration of this contract.

14.13.3.3 Effective July 1, 2022, the "Dead Animal Pager" Memorandum of Agreement dated January 13, 2011, will be terminated and the pick-up of dead animals will be assigned to the Public Works year-round beeper program. Employees responding to dead animal pick-up calls during their regular work shift shall respond as soon as possible if such response does not interfere with normal work-flow requirements. Employees called back to work and report to the work site in response to dead animal pick-up calls shall receive call-back pay in accordance with the provisions in 14.12.

14.13.54 Traffic Section Stand-By

14.13.54.1 The Union will provide the City with a primary person to respond during off-duty hours to address Traffic problems and/or emergencies.

14.13.54.2 The primary responder responsibility will rotate between the City's (2) Systems and Lighting Technicians and the Traffic Signal Repair Worker, creating a three (3) person (minimum) rotation. The Pager Swap Form shall be filled out at least 24 hours ahead of any personnel changes to the rotation. Other Traffic Division employees may be required to be on call when needed.

14.13.54.3 The primary responder who responds remotely to traffic calls shall receive ~~for an initial call, one half hours (1/2) pay at the applicable overtime rate~~ **pay at the applicable overtime rate for all hours worked after performing one (1) hour of remote work.** ~~For~~

all additional calls within the twenty four hour period, pay will be for actual hours worked at the applicable overtime rate. If the employee must respond to the work site, the call-back provision in 14.12 shall apply.

15. MEAL ALLOWANCE (RESERVED)

15.1 An employee shall receive an additional ten (\$10.00) dollars as a meal allowance whenever said employee shall have worked a period comprising twelve (12) consecutive hours (including meal and rest breaks and incentive time) except as provided in 15.1.1 below. Incentive time for the purpose of this article is defined in Article 14.11 and 20.4.

15.1.1 Public Works and Fleet Services employees who work the weekend shift during the designated winter period will receive a lump sum meal allowance payment in the amount of one hundred sixty (\$160.00) at the start of each winter period in December to cover the entire designated winter period.

15.1.2 Public Works employees during the designated winter period will receive a lump sum meal allowance payment in the amount of one hundred sixty (\$160.00) dollars at the start of each winter period in December to cover the entire winter designated winter period. Employees assigned on a regular basis to help Public Works from Parks, Rec & Facilities during the designated winter period will also receive one hundred sixty (\$160.00) dollars at the start of the winter period in December to cover the entire designated winter period.

***This article is eliminated effective July 5, 2020.**

16. HOLIDAYS

16.1 The following holidays shall be paid holidays for all employees covered by this Agreement:

- | | |
|-------------------------------|---|
| 1. New Year's Day | 9. Columbus Day Indigenous Peoples' Day |
| 2. Martin Luther King Jr. Day | 10. Veterans Day |
| 3. President's Day | 11. Thanksgiving Day |
| 4. Patriot's Day | 12. Day following Thanksgiving Day |
| 5. Memorial Day | 13. Christmas Eve (1/2 day except as noted below) |
| 6. Juneteenth | 14. Christmas Day |
| 7. Independence Day | |
| 8. Labor Day | |

16.1.1 Compensation of permanent full-time employees, who work a 5-day Monday through Friday schedule, for the holidays listed above is described in paragraph 16.2.

16.2. Compensation of permanent full-time employees who work a 7-day

coverage schedule is described in paragraph 16.3. Holiday payment for permanent full-time employees who work a modified schedule is defined in the Memorandum of Agreements that outline the terms and conditions of that schedule. Compensation for permanent part-time employees for the holidays listed above is described in paragraphs 16.4 and Appendix A.

16.2 Permanent employees working a Monday through Friday Work Schedule

16.2.1 Payment for full-day holidays under this Article shall be made on the observed, not the actual, holiday. If any of the above full-day holidays falls on a Sunday, the following Monday shall be the observed holiday. If it falls on a Saturday, the preceding Friday shall be the observed holiday. Employees will receive base holiday pay equal to the hours they would normally work that day of the week. Employees who work on the holidays will receive additional compensation as outlined in 16.5.

16.2.2 Permanent full-time employees receive a half-day holiday on Christmas Eve in those years that December 24th falls on a Monday, Tuesday, Wednesday or Thursday. The second half of the employee's shift is the holiday period. The employee will receive base holiday pay for the second half of the shift; if the employee works the second half of their scheduled shift, s/he will also receive holiday premium pay as outlined in 16.5. If December 24th is not a regular work day for the employee, the employee will not receive any holiday base pay for Christmas Eve but will be paid in accordance with 16.5 if s/he is called into work after Noon on December 24th providing December 24th falls on a Monday, Tuesday, Wednesday or Thursday that year.

16.2.3 For permanent full-time employees, full-day holidays that fall on an employee's regularly scheduled day off, s/he may elect to receive one of the following: equivalent hours of base holiday pay equal to the number of hours the employee normally works during the week in which the holiday occurs, or a day off with pay in the same work week which the holiday occurs, immediately prior to or following the holiday.

16.2.4 If an observed full-day holiday occurs during the work week in which an employee is actually on schedule vacation, the employee will not be charged a vacation day for the day of the observed holiday. This provision also applies in those years that Christmas Eve falls on a Monday, Tuesday, Wednesday or Thursday.

16.3 Permanent Employees Working a Seven-Day Coverage Schedule

16.3.1 Seven-day coverage employees means employees who work a five (5) day schedule that is other than a Monday through Friday schedule. This designation may apply on either a seasonal or year-round basis.

16.3.2 Payment for New Year's Day, July 4th and Christmas Day shall be on the actual,

not the observed, holiday for seven-day coverage employees. Payment for all other holidays shall be on the observed holiday. Payment for full-day holidays (actual or observed) shall be base holiday pay equal to the number of hours the employee normally works that day of the week.

16.3.3 For full-time employees, the employee has the options described in 16.3.2 above if one or more of the actual full-day holidays listed above in 16.3.2 falls on an employee's scheduled day off. The provisions of 16.2.3 are also applicable if the employee is not regularly scheduled to work on the observed date of one or more of the holidays not specifically listed above.

16.3.4 Seven-day coverage employees receive a half-day holiday on Christmas Eve in those years that December 24th falls on a day that the employee is regularly scheduled to work. The employee will receive holiday base pay for the second half of their shift and will receive holiday premium pay as described in 16.5 if required to work during the second half of their shift.

16.4 Permanent-Part-Time Employees

16.4.1 Part-time benefit eligible employees receive base holiday pay only if the holiday falls on a day the employee is regularly scheduled to work. The amount of holiday pay will be based on the number of hours the employee would normally be scheduled to work on that day of the week.

16.4.2 Part-time employees who work on a holiday receive holiday premium pay as outlined in 16.5 below, for the actual hours worked on the holiday.

16.4.3 Part-time employees do not receive any additional pay, comp time, or additional time off when a holiday falls on the employee's scheduled day off.

16.5 Holiday Premium Pay

16.5.1 Except as provided in 16.5.3, employees who work on an observed holiday during the twenty-four (24) hour span of the observed holiday, or in the case of Christmas Eve during the second half of the hours normally worked during their shift, shall be entitled to their base pay, plus one and one-half (1-1/2) times their base hourly rate for all hours worked during the normal scheduled work shift of the employee. The twenty-four (24) hour span for any overlapping shift, starts at the beginning of the shift.

16.5.2 Any hours worked in excess of the number of hours the employee is normally expected to work during the above-described holiday period shall be compensated at a rate of two (2) times the employee's base hourly rate.

16.5.3 Employees who work on Thanksgiving Day or Christmas Day, during the twenty-four (24) hour span of the ~~observed~~ **actual** holiday, shall be entitled to

their base pay plus one of the following for all hours worked that day:

16.5.3.1 double time their base hourly rate; or

16.5.3.2 compensatory leave earned at the double time rate.

16.5.4 Solid Waste Division employees and volunteers performing sanitation and recycling duties who work on the actual or observed holidays of Memorial Day, Independence Day and Labor Day shall be entitled to their base pay plus one of the following for all hours worked that day:

16.5.4.1 double time their base hourly rate; or

16.5.4.2 compensatory leave earned at the double time rate.

16.5.4.5 Solid Waste Division employees regularly assigned to perform sanitation and recycling duties will work on the actual or observed holidays that fall during their regular schedule except for the actual Christmas Day holidays and the actual New Year's Day holidays. Employees will be expected to pick up sanitation and recycling on the Saturday prior to or following for both of these holidays if the holiday falls on a weekday. If Christmas and New Year's fall on the weekend then employees will be expected to pick up sanitation and recycling on the observed holiday. Employees will receive overtime compensation for actual hours work on the Saturday prior to or following for both Christmas and New Year's holidays. Thanksgiving pick up will be collected on the Saturday following Thanksgiving and the Friday after will be picked up that day. The Thanksgiving Holiday period will be paid as follows:

Thursday – (no work) eight hours holiday premium pay

Friday – eight hours holiday premium pay plus time and one half for all hours worked up to eight hours and double time for all hours worked over eight hours.

Saturday - eight hours holiday premium pay plus time and one half for all hours worked up to eight hours and double time for all hours worked over eight hours.

16.5.4.5.1 Sanitation and Recycling collection will be picked up on the actual or observed holiday and will be staffed using unit volunteers from throughout the Department during both non-winter and winter months. Employees will receive overtime pay for only the actual hours worked on the Saturday, as well as holiday base pay if the observed holiday is worked. Solid Waste unit employees shall be given priority over other Department unit employees for such overtime. The practice of starting Holiday pick-up at 0700 instead of the normal start time will cease.

16.5.4~~5~~.2 Notwithstanding the above, a minimum of seven (7) Solid Waste unit employees shall be required during holiday collection and Saturday collection before or after a holiday. The remaining six (6) employees necessary to fully staff this operation may come from employees who volunteer for this purpose by signing the overtime volunteer book in the Department's Communications Center.

16.5.4~~5~~.3 If the Solid Waste Section fails to acquire the seven (7) volunteers from within its ranks or the six (6) Departmental volunteers necessary to satisfy the staffing requirements outlined in 16.5.4.2 above, the remaining positions shall be filled on a mandatory basis via reverse seniority from the remaining Solid Waste employees who did not volunteer.

16.6 Public Works employees working the weekend shift during the winter period shall be paid as follows:

16.6.1 If the holiday falls on an employee's regularly scheduled work day but the employee is not scheduled to work that day, the employee will receive thirteen (13) hours of base holiday pay at their straight time hourly rate.

16.6.2 If the holiday falls on an employee's regularly scheduled work day and the employee is scheduled to work that day, the employee will receive base holiday pay plus actual hours worked at time and one-half times their straight time hourly rate during the 24-hour span of the holiday. In the event the employee works more than their regular scheduled hours, they will receive double time instead of time and one-half for any hours worked in excess of thirteen.

16.6.3 If the holiday falls on an employee's regularly scheduled day off and they do not work the holiday, the employee will receive eight (8) hours of straight time pay.

17. VACATIONS AND EARNED PAID LEAVE

17.1 Subject to the limitation on accumulation and earning of vacation leave set forth in Subsection 17.4 vacation leave shall be earned from the date upon which the employee is first covered by this Agreement. Other non-bargaining unit employment with the City will be credited provided it is consecutive City service.

17.2 Except as provided in Appendix G, vacation leave shall be earned by permanent full-time employees at the rate of ~~1.54~~ **.77** hours per week in the first through the second year of service; ~~2.31~~ **1.54** hours per week in the third through sixth year of service; ~~3.08~~ **2.31** hours per week in the seventh through nineteenth year of service; and ~~3.85~~ **3.08** hours per full payroll week in the twentieth and each succeeding year of service. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with

annual accrual amounts of ~~80~~ **40** hours, ~~120~~ **80** hours, ~~160~~ **120** hours, and ~~200~~ **160** hours. This year-end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of these annual amounts.

17.3 Vacation leave earnings shall be credited and posted on a weekly basis. For purposes of this Article, years of service is defined as permanent consecutive City service.

17.4 Employees may accumulate earned vacation time on the following basis:

17.4.1 All employees hired prior to January 1, 1979 may accumulate up to a maximum of 240 hours of vacation leave.

17.4.2 All employees hired on or after January 1, 1979 may accumulate up to a maximum of 160 hours of vacation leave.

17.4.2.1 Any employee with 20 years of service or more may accumulate up to 200 hours; however the maximum payout for vacation leave will remain at 160 hours.

17.4.3 In the event that an employee has accumulated the maximum amount of leave, including time converted from sick to vacation leave pursuant to Article 24.3, Conversion of Sick Leave, such employee shall not earn any additional vacation leave. The employee will begin earning vacation leave again in the month in which the earned leave drops below the maximum, but such earnings shall not be retroactive.

17.5 Vacations shall be scheduled by the Department Head or designee, throughout the calendar year as long as such scheduling does not interfere with normal work-flow requirements as determined by said Department Head. Subject to the foregoing, seniority of employees within division will be the basis for scheduling vacations.

17.6 Employees may use accumulated vacation days on a single day or hourly basis, provided that the request has been made prior to noon of the preceding workday and has been approved by the Department Head or designee.

17.7 Employees shall be compensated for all accumulated vacation leave at the time of separation subject to the limitation on the maximum accumulation **as outlined in article 17.4.1, 17.4.2 and 17.4.2.1.**

17.8 Vacation Call-In Pay

17.8.1 An employee who is actually on scheduled vacation and is called in to work once the vacation has started shall be paid a rate of two and one-half (2 1/2) times his base hourly rate for all hours worked during his normal work shift of eight (8), ten (10) or twelve (12) hours. Any hours worked in excess of the employee's normal

work shift during vacation call-back time shall be compensated at the rate of three (3) times the employee's base hourly rate. In addition, the employee called in from vacation time shall have his lost time from vacation rescheduled according to the manner set forth in this section, provided that the rescheduling does not interfere with another employee's scheduled vacation, who is in the same job classification.

17.9 Earned Paid Leave

17.9.1 Upon execution of this Agreement and pursuant to 26 M.R.S. Sec. 637, employees will accrue one (1) hour of Earned Paid Leave (EPL) for every forty (40) hours worked and shall be subject to the City's personnel policies regarding EPL. EPL shall be credited and posted on a weekly basis.

17.9.2 Employees may accumulate up to a maximum of forty (40) hours of EPL in a calendar year. Unused EPL hours will roll over from one calendar year to the next, but employees will not be awarded more than 40 hours in a calendar year, including hours that are rolled over.

17.9.3 EPL may be used for 1) an emergency, illness, or sudden necessity; or 2) any reason other than emergency, illness, or sudden necessity, including vacation or personal time. Where EPL is taken for an emergency, illness, or sudden necessity, the employee must make a good faith effort to provide as much notice as is feasible under the circumstances, and in accordance with the Department's regular procedures. Where EPL is taken for any reason other than emergency, illness, or sudden necessity, an employee must request to take EPL in accordance with the Department's regular procedures as outlined in article 17.5.

17.9.4 Employees hired prior to January 1, 1979 shall be compensated for all accumulated vacation leave and EPL at the time of separation with a combined maximum payout of 240 hours. Employees hired on or after January 1, 1979 shall be compensated for all accumulated vacation leave and EPL at the time of separation with a combined maximum payout of 160 hours. Any accrued EPL over these amounts is forfeited at the time of termination of employment.

17.9.5 If at any time Maine's EPL law is rescinded, employees shall not earn any additional EPL and vacation leave accrual rates will be restored as follows: 1.54 hours per week in the first through the second year of service; 2.31 hours per week in the third through sixth year of service; 3.08 hours per week in the seventh through nineteenth year of service; and 3.85 hours in the twentieth and each succeeding year of service.

18. INSURANCE

18.1 Life Insurance

18.1.1 The present practice with respect to City and employee participation in the cost of the Maine Public Employees Retirement System group life insurance premiums shall be continued. Dependent and supplemental life insurance is also available at the employee's expense for those who participate in the group life insurance plan. The City reserves the right to obtain benefits equal to or better than the basic Maine Public Employees Retirement System Group Life Insurance Plan from an alternative source and to offer said alternative plan on the same terms as above during the life of this Agreement.

18.1.2 The City agrees to continue life insurance deductions on a pre-tax basis as provided by the Internal Revenue Service.

18.2 Medical Insurance

18.2.1 The City provides a self-insured health insurance benefits program with claims administration by a third-party administrator.

18.2.1.1 The City's health plan shall include a four hundred dollar (\$400) deductible for the single plan and eight hundred dollar (\$800) deductible for the family plan per year.

18.2.1.2 The City agreed to establish a reserve account of one hundred fifty thousand dollars (\$150,000) to be used as outlined by the Health Insurance Advisory Committee.

18.2.2 For employees who are hired into a permanent position prior to March 1, 1985, the City will pay the full cost of the medical insurance premium for an individual or family subscription as appropriate per employee as outlined in section 18.2.5 below.

18.2.3 For employees who are hired into a permanent position on or after March 1, 1985, ~~the City will pay the full cost of the medical insurance premium for an individual subscription per employee and for one half (1/2) of the cost of the family subscription for an employee who is eligible for and who elects to have said family medical insurance coverage. The City will pay fifty three percent (53%) of the difference between the cost of the individual subscription for an employee who is eligible for and who elects to have said family medical insurance.~~ the City will pay 85% of the medical insurance premium for an individual subscription per employee. Annually, the employee will have the opportunity to earn up to a 15% premium credit by meeting the five (5) requirements of the City's wellness program.; 3% for each requirement as recommended by the Health Advisory Committee. **The City will pay fifty-three percent (53%) of the difference**

between the cost of the individual subscription for an employee who is eligible for and who elects to have said family medical insurance.

- 18.2.4 The City's contribution for the individual or family premium as determined under subsections 2 or 3 above will be prorated for permanent part-time employees as provided in Appendix A.
- 18.2.5 The City will pay, or share in the payment of in the case of permanent part-time employees, or employees eligible for insurance under subsection 3 above, only the subscription level to which an employee is entitled by virtue of the number of people ~~he/she~~ **they** may insure. However, employees who are members of the same family and eligible for more than one family subscription will be entitled to full or part payment, as appropriate, from the City for no more than one family subscription, with other family members entitled only to individual subscriptions. Said subscription shall be on the same terms and conditions as specified in subsections 18.2.1 - 18.2.4 above.
- 18.2.6 The City will provide the Union with thirty (30) days prior notice of any change in insurance provider, and the Union shall have ten (10) days thereafter within which to comment on such change.
- 18.2.7 The City shall begin payment on health insurance premiums on the first full month of employment. Upon separation, any balance due for that month's employee's premium will be deducted from the employee's final paycheck or balance billed if the final paycheck is insufficient to cover the amount due.
- 18.2.8 The City agrees to continue dependent care health benefit deductions on a pre-tax basis as provided by the Internal Revenue Service. The City further agrees to continue pre-tax health care flexible spending accounts effective January 1, 2002.
- 18.2.9 Re-opener: Notwithstanding any provision of this Agreement, either party may reopen this health insurance article and the salary article on or after July 1, 2001. The salary article shall only be reopened if the health insurance article is renegotiated and upon request of either party. Any subsequent negotiations shall be conducted in accordance with the most recent executed ground rules.
- 18.2.10 A member of the bargaining unit may be appointed by the bargaining unit to serve on a Health Insurance Advisory Committee, comprised of one (1) member from each participating bargaining unit in the City and an equal number of City representatives. The parties agree to participate in quarterly Labor/Management Advisory meetings to review claims experience data, track the effectiveness of the-plan design changes and any other health benefit issues of concern to either party.
- 18.2.11 Except as provided in 18.2.12.1 below, the City agrees to continue health care benefit deductions on a pre-tax basis as provided by the Internal Revenue Service.

18.2.12 For the purposes of this article "family" is defined as spouse or domestic partner, and dependents. To enroll a domestic partner on the City's health insurance plan, the employee must satisfy the City's eligibility requirements for claiming an individual as a domestic partner. **The tax treatment of the domestic partner portion of coverage shall be governed by state and federal law.**

~~18.2.12.1 The portion of the employee's health insurance contribution for domestic partner coverage as outlined in 18.2.3 above will be taken on a post-tax basis.~~

~~18.2.12.2 The City's contribution to the premium cost for domestic partner coverage and coverage of dependents of the domestic partner will be reported as imputed income at year end, in accordance with Internal Revenue Service regulations, and will be calculated into the employee's gross earnings as taxable wages.~~

18.3 Income Protection and Dental Insurance Deductions

18.3.1 The City agrees to deduct premiums for the Union's income protection plan for employees participating in said plan and so long as the Union makes said plan available. The deduction for the Union plan will be made pursuant to Article 4, Dues. Following contract execution employees will have the option to participate in the MMEHT Income Protection Plan.

18.3.2 Employees may participate in any dental insurance plan which may be made available to employees at their own cost and through payroll deductions. Employees may enroll a spouse and dependent children on the plan. Employees may enroll a domestic partner on the plan providing the employee satisfied the City's eligibility requirements for claiming an individual as a domestic partner. In no case shall the City be required to make a dental insurance plan available to employees.

19. **PENSIONS**

19.1 The City is a participating local district under the Maine Public Employees Retirement System (MainePERS). Permanent/project employees who work a normal week of 21 hours or more per week are required to join the retirement system program in accordance with the MainePERS Rules, or join the City's alternative **ICMA-RC 401(a)** plan as provided below. The employee's decision to join either plan **is may be** irrevocable for all periods of employment with the same employer as per MainePERS laws and rules.

19.1.1 The City shall continue to participate in the **MainePERS Regular Benefit Plan, as described in 5 M.R.S. Sec. 18451-A ("AC Plan")**. **Maine Public Employees Retirement System (MainePERS) Regular Plan, Rule 94-411, Chapter 803, Sec. 7,**

(Regular Benefit Plan AC). The City further agrees to continue to participate in the cost of pension payments under the options presently in effect. The MainePERS Board of Trustees may establish by rule the rate at which members (employees) who participate in the **AC Plan Consolidated Plan, and the City as an employer,** contribute to that plan.

- 19.1.2 The City currently offers an **ICMA** 401(a) defined contribution qualified pension plan to new hires and current employees as an alternative to participation in the ~~Maine Public Employees Retirement System (MainePERS) defined benefit plan.~~ Each participant has a plan account **into** which employee and employer contributions are made. Plan benefits are based on the total amount of money in the participant's account at retirement or eligible event. ~~Maine Revised Statutes Title 5, Section 18252-B sets forth:~~ The employee **contribution rate shall be 7.05%** and **the** employer contribution rates shall be **7.5%**.
- 19.2 The City agrees to continue to participate in a qualified deferred compensation plan for permanent part-time employees who work 20 hours or less per week. The deferred compensation plan provides for immediate vesting and optional withdrawal of the account balance upon the employee's termination.
- 19.3 The Union agrees not to grieve, arbitrate nor litigate on behalf of any employee(s) any claim or claims, directly or indirectly, arising out of the City's practice in regard to employee voluntary buy-back, solely at employee expense, of retirement service for the first six months of employment for employees hired prior to July 1, 1984.
- 19.4 The City agrees to continue pension deductions on a pre-tax basis as provided by the Internal Revenue Service. State Income Tax deductions will be calculated in accordance with State Tax Law.

20. REGULAR HOURS OF WORK

- 20.1 The regular work week shall consist of five (5) consecutive days. The regular hours of work, or shift, shall be eight (8) consecutive hours, excluding interruptions for lunch or meal periods. Upon mutual agreement between the City and the Union the regular work week may be modified in whole or in part to meet the service needs of the citizens of Portland and to provide flexibility to the employees. Ten (10) hours worked shall constitute a day's work and forty (40) hours worked shall constitute a week's work at base hourly rates of pay for employees on a four (4), ten (10) hour day work schedule. Thirteen (13) hours worked shall constitute a day's work and thirty-nine (39) hours worked shall constitute a week's work at base hourly rates of pay for employees on a three (3), thirteen (13) hour day work schedule. A proposed modification which affects one or more but not all divisions will be voted on by the affected sections within the affected division, provided the modification relates to hours of work and related articles only.

20.1.1 There will be one weekend schedule, in addition to the three (3) five-day weekday

shift schedules, at Public Works during the winter period. The weekend schedule will consist of a three (3) day, **thirteen (13)** hour shift on Friday, Saturday, and Sunday.

- 20.2 Each employee shall be scheduled to work a shift with regular starting and ending times. Upon the determination by the City of its staffing needs, assignments to work weeks and shifts shall be made from the classification or classifications needed. Except as provided in 20.2.1, **and** 20.2.2 **and 20.2.3** below, such shift assignments shall be made first on the basis of volunteers by seniority and then on the basis of inverse seniority, defined as time in the classification. Work schedules showing employee shifts, work days, and hours shall be posted on all department bulletin boards at all times. Work schedules shall not be changed, except for emergencies or for good cause, including, but not limited to achieving operating economies, adjusting to technological changes, affecting a change in work program, or reflecting a change in work site. Except in the event of an emergency, the City agrees to provide employees a minimum of two (2) weeks' notice of work schedule changes by posting such changes on departmental bulletin boards.

20.2.1 A designated representative from the Department of Public Works will distribute a Labor and Trades Winter Shift Assignment Selection Sheet at the beginning of September to all employees subject to winter shift assignments. Employee's preferences for winter shift assignments will be selected with this Selection Sheet and submitted to the designated representative prior to September 15. The designated representative from the Department of Public Works will put the shift list together based on seniority. Public Works positions that are exempt from winter shift assignments will be listed in Appendix H. The City will finalize the winter shift schedule on or before October 1.

20.2.2 Assignment of Public Works employees eligible to bid on the first, second, third week day shifts and the weekend day shift shall be on the basis of overall bargaining unit seniority.

- 20.3 Except as provided in 20.3.1 or 20.3.2 below, unpaid lunch or meal periods of thirty (30)-minutes shall be in the middle of the work shift. Morning and afternoon coffee or rest breaks of fifteen (15) minutes maximum duration shall be granted by the supervisor, but no such break need be granted during periods of emergency operation affecting the health, safety, and property of Portland's citizens. The supervisor of crews working in areas where coffee is not readily available shall have complete discretion as to the number of employees who can leave the job site, and how coffee or refreshments are obtained. Employees in the unit shall have a ten (10) minute cleanup period immediately prior to their lunch period and immediately prior to the end of their shift, except during periods of emergency operation affecting the health, safety and property of Portland's citizens. Modifications shall be allowed upon mutual agreement between the City and the Union.

20.3.1 Employees working in Public Works will receive a paid lunch during the winter period.

20.3.2 For all other departments, with the approval of the Department Director, or Designee, employees working in certain divisions and sections may have the option of a thirty (30)-minute paid meal break in the field. The meal break shall occur as close to mid-shift as possible, at the discretion of the Supervisor. A twenty (20)-minute mid-morning break may also be taken in the field. One person may be designated to obtain food and beverages for the crew. The break will not start until the "runner" returns with food and work will resume at the end of the specified mid-morning break (20 minutes) or meal break (30 minutes.) If a store or restaurant is located adjacent to a work site employees may purchase food during the 30-minute meal break, but the total meal period will not exceed 30-minutes. The two, 10-minute wash up periods are eliminated before lunch and at the end of the work shift. The end of the work shift shall be thirty (30) minutes earlier. Punch out time is five (5) minutes prior to the end of the shift. Crews may break down work sites ten to twenty minutes prior to punch out time in order to allow adequate travel time back to a central location. The location of the job site and distance from the central home base will determine the time in which work sites are broken down. Managers and Supervisors shall have discretion to determine when it is feasible for breaks and meals to be taken on-site due to severe or inclement weather conditions. Modifications shall be allowed upon mutual agreement of the City and the Union.

20.4 Solid Waste

20.4.1 Employees may be required to stay after the required work within Sanitation and Recycling is completed to assist with snow plowing and winter operations, holiday trees collection, spring and fall leaf collection, and emergency situations. When required to stay and work on the above-mentioned operations, Sanitation and Recycling section employees are eligible for overtime pay after the completion of their normal work shift of eight (8) hours.

The parties agree that for the Spring and Fall leaf collection duties, the City will solicit volunteers first from within the Solid Waste/Recycling section and then Citywide with the exception that at least one employee per truck will be from the Solid Waste/Recycling section to drive the routes. This provision will be for the Fall 2019 and Spring 2020 leaf collections unless the parties agree to extend this for future years.

20.4.1.1 Employees within the Solid Waste section may be assigned to either the Sanitation crew or the Recycling crew. Within this section employees will have a primary assignment to either the Sanitation or Recycling crew but management may use people in either program as needed. For example, management may utilize staff normally assigned from one crew to supplement the other crew to cover full or partial day absences or to temporarily readjust staffing in the event of equipment failures or other unanticipated events as well as the management of daily workload issues. Temporary changes in assignments shall not be made in an

arbitrary or capricious manner.

- 20.4.1.2 Island Maintenance Workers assigned to Sanitation and Recycling will be covered by this provision (Incentive Work Schedule) only on the days they are assigned to a packer or recycling truck for their full shift (Monday's or Tuesday if Monday is a holiday). On days they are not assigned to a packer or recycling truck, they will be required to work a full eight (8) hour shift performing other duties within the Division as assigned by the Islands Supervisor or Foreman.
- 20.4.2 Any hours not actually worked up to eight hours under the incentive plan shall be compensated at the individual's regular rate of pay and shall count as hours worked under Article 14, Overtime, and Article 15, Meal Allowance, in accordance with the collective bargaining agreement.
- 20.4.3 Employees regularly assigned to perform Sanitation and Recycling duties will not be subjected to winter shift schedule changes; they will, however, be subject to mandatory overtime. When required to assist with the plowing of snow during their regularly scheduled shift, which shall occur in those emergency situations when the Director determines that plowing takes priority over Sanitation and/or Recycling duties, and when trash/recycling pickup is cancelled. These employees may be required to work Saturday to pick up trash/recycling that may have been cancelled during this emergency situation. The City agrees to utilize volunteers from the overtime desired list first in these situations.
- 20.5 The Traffic Section personnel will need to make schedule changes for striping of crosswalks and long lines for the months of May through September every year (possibly longer or shorter based on weather). Traffic personnel consisting of Maintenance Workers and the Traffic Sign Computer Operator will modify their regular work week in conjunction with the striping program. The specific dates of work schedule changes will be based on the contractor's striping schedule and daily weather conditions. Other Labor & Trades Traffic section personnel will participate as needed. The normal work hours for employees participating in this program are anticipated to be 9:00 p.m. to 5:00 a.m. Their exact schedule (both in terms of hours and length of shift) may vary from week to week due to weather conditions, contractor's schedules and other factors. Overtime will be paid after eight (8) hours per day. Employees may use accrued benefit time (vacation, personal, or comp time) to make up any shifts cancelled due to weather conditions, as an alternative to making the shifts up later in the week. Employees who work a majority (more than 20 hours) of any of these weeks on **second or** third shift are eligible for night shift differential for the full week. The Union agrees to waive the two-week notification period for other employees who may be asked to participate in this striping program. Notification will be on Friday of the week prior.

21. NIGHT SHIFT, IN-CHARGE **AND WEEKEND DIFFERENTIAL**

21.1 Night Shift Differential

- 21.1.1 Except as provided in 21.1.2 below, employees who work a night shift on a regular basis with fifty percent (50%) of the regular hours being worked after 6:00 p.m. shall receive a shift differential allowance of ~~forty-five~~ **fifty-five** cents (~~\$.45~~ **\$.55**) per hour for the entire night shift. Employees who work a night shift on a regular basis with fifty percent (50%) of regular hours being worked after 11:00 p.m. shall receive a shift differential allowance of ~~sixty-five~~ **seventy-five** cents (~~\$.65~~ **\$.75**) per hour for the entire night shift.
- 21.1.2 Employees in the Public Works Department or Parks, Recreation and Facilities department who work the weekend shift schedule during the winter will receive ~~\$.50~~ **\$.60** cents per hour **for the forty (40) hours** associated with the weekend day schedule and second shift schedule and ~~\$1.00~~ **\$1.10** per hour **for the forty (40) hours** associated with the third shift schedule.

21.2 In-Charge Differential/Stipends

- 21.2.1 The Director of Health and Human Services or designee may designate a member of the maintenance staff of the Barron Center to provide supervision to the maintenance crew. Such employee will receive additional pay of \$1.00 per hour for performing these duties.
- 21.2.2 The Director of Health and Human Services or designee may designate a member of the maintenance staff of the Social Services Division to provide supervision to the Social Services facilities staff and to assist the Social Services Facilities Manager with determining future building and plant needs. Such employee will receive additional pay of \$1.00 per hour for performing these duties.
- 21.2.3 Employees who maintain a current State of Maine Municipal Right-of-Way Pesticide License, Category 6 A/D, shall be paid a \$1.00 per hour stipend for the actual hours worked performing an authorized pesticide spraying operation.
- 21.2.4 The Airport Manager or designee may designate a third-shift Airport Maintenance Worker to be in-charge of third-shift maintenance personnel as described in Appendix J. Such employee will receive additional pay of \$1.25 per hour for performing these duties.
- 21.2.5 ~~Mechanic~~ **Auto Technician** and Autobody Repair personnel in Fleet Services who possess up-to-date ASE and/or EVT certifications will be compensated with a ~~\$.25~~ **\$.50** per hour stipend for each certification up to a maximum of eight (8) total certifications.

21.2.5.1 The Parts Specialist will be compensated with a \$.50 per hour stipend for up-to-date, parts-related ASE and/or EVT

certifications, up to a maximum of two (2) total certifications.

21.2.6 Welding personnel in Fleet Services are eligible for a \$1.00 per hour stipend after obtaining an American Welding Society Unlimited Thickness Plate certification or \$1.00 per hour after obtaining a Pipe Certification from the State of Maine Board of Boilers and Pressure Vessels. Maximum welding stipend allowed is \$2.00 per hour.

21.2.6.1 A designated Island employee may qualify, with provided proof of certification, for the welding stipend for all hours worked.

21.2.7 Employees will receive stipends listed above in 21.2.5, 21.2.6 and 21.2.6.1 after they provide written proof to the Fleet Services Manager or Principal Administrative Officer that they have obtained the required certification(s). Stipends shall be effective at the start of the next payroll period following submission of the proof of the certification(s) to the City.

21.2.8 The Public Works Director or designee may designate a **Mechanic III Auto Technician II** at Fleet Services to be the Lead Heavy Equipment Technician. Such employee will receive additional pay of \$1.00 per hour to perform the duties as required by the Fleet Manager.

21.2.9 The Public Works Director or designee may designate a **Mechanic III Auto Technician II** at Fleet Services to be the Lead Police vehicle **mechanic technician**. Such employee will receive additional pay of \$1.00 per hour to perform the duties as required by the Fleet Manager.

21.2.10 The Public Works Director or designee may designate Maintenance Workers with a Class A license in the Streets and Sidewalks and Water Resources Divisions to do work required under a Class A license. Designated employees will receive additional pay of \$1.00 per hour for all hours worked. The total number of employees in each Division needed to perform Class A work will be determined by the Public Works Director or designee.

21.3 Weekend Differential

21.3.1 Except as provided in 21.1.2 above, employees who are scheduled to work a weekend shift on a regular basis shall receive a weekend differential allowance of sixty cents (\$.60) per hour for all hours worked.

22. HIGHER PAY FOR HIGHER CLASSIFICATION OF WORK

- 22.1 The City shall maintain and make available to the Union detailed descriptions of the duties of each employee classification. Such descriptions may be amended from time to time by the City. An employee may be temporarily assigned to work in any position in a higher classification, if the need arises during a workday. On the following workday, such assignment shall be given to any available qualified employee having such higher classification.
- 22.2 Any employee who is temporarily assigned to work of a higher classification for which a higher rate of pay is applicable shall, if he performs such work for a minimum of one full hour, be paid at the "6 month to 1 year" pay step in the higher classification or the first step in the higher classification which guarantees a minimum of a three-percent increase in pay, whichever is greater. This provision applies to higher class assignments in Local 481-00 and Local 481-07.
- 22.3 Employees who are assigned work in a higher classification for eight (8) consecutive workdays or more shall be entitled on the ninth workday of such assignment to compensation at the appropriate seniority step of the higher classification pay grade. Vacation leave or holidays shall be paid at this higher rate beginning on the ninth day of the employee's assignment to the higher classification of work.
- 22.4 Should an employee be temporarily assigned to work of any lower classification, they shall not suffer any reduction in his negotiated rate of pay while so working.
- 22.5 Maintenance Workers (pay grade 14) who are assigned to dig graves using a backhoe in the Cemeteries will be paid as Maintenance Worker I (pay grade 16) in accordance with 22.2 or 22.3.

23. TOOL ALLOWANCE

- 23.1 The City and the Union agree that employees who are required to furnish tools in the classifications listed below shall be entitled to a three hundred-fifty dollar (\$350.00) tool allowance per fiscal year for tools purchased during that fiscal year. The tool allowance shall be paid to the employee only upon presentation to the City of proof of purchase of a tool and the cost thereof. The employee will receive reimbursement within a thirty (30) day period. Employees will have their tool allowance frozen upon resignation. Employees who terminate mid-year will have their tool allowance pro-rated for that year and any overpayment will be deducted from their separation pay.

Classification List

Trades Worker I, II and III

- 23.2 **Effective July 1, 2022**, The City and Union agree that employees who are required to furnish tools in the classifications listed below shall be entitled to a **seven** **eight** hundred dollar (~~\$700~~**800**) tool allowance for tools purchased during that fiscal year. The tool

allowance shall be paid to the employee only upon presentation to the City of proof of purchase of a tool and the cost thereof. The employee will receive reimbursement within a thirty (30) day period. Employees will have their tool allowance frozen upon resignation. Employees who terminate mid-year will have their tool allowance for the year pro-rated and any overpayment will be deducted from their separation pay.

Classification List

Autobody Repair Worker

~~Mechanic I~~

~~Mechanic~~ **Auto Technician I**

~~Mechanic~~ **Auto Technician II**

~~1st Class~~ **Welder Machinist I**

~~2nd Class~~ **Welder Machinist II**

~~3rd Class Welder~~

- 23.3 Airport Maintenance Workers and Assistant Airport Facilities Technicians will be issued an initial tool pouch upon hire by the Department that will contain the tools necessary to their job. The list of tools that are currently being provided are listed in Appendix J (Jetport). They will be expected to use these tools for work purposes only and to take proper care of them. In the event a tool is damaged during performance of City work, the Department will replace the tool. The employee will be personally responsible for replacement of City issued tools that are used for non-City purposes. All tools will be returned to the City at termination of employment.
- 23.4 The tools purchased in accordance with this article are tools that are used on a regular basis by the employee for their City job. Such purchases are to be pre-approved by the employee's Division Head or designee.

24. SICK LEAVE

- 24.1 For full-time employees who work the standard 5-day schedule sick leave shall accrue at the rate of 1.85 hours per week beginning with the first payroll week of service with unlimited accumulation. Full-time permanent employees who work a 3-day or 4-day schedule shall accrue sick leave at the rate of 2.31 hours per week beginning with the first payroll week of service with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 96 hours for employees working a 5-day schedule and 120 hours for employees working a 3-day or 4-day schedule. The year-end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of the annual amount.
- 24.2 Sick leave may be used only in the following cases:

24.2.1 Personal illness or physical incapacity, including pregnancy or related disabilities

(including, but not limited to, miscarriage, abortion, childbirth, child-rearing, and recovery there from) which is defined as a condition of such a degree as to render the employee unable to perform the duties of his or her assigned position, or of any other work the employee is capable of doing and to which ~~he or she~~ **they is are** assigned, provided the employee accepts such other assignments. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

24.2.2 Attendance upon members of the family within the household of the employee, including domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

24.2.3 Employees who wish to use sick leave to care for a domestic partner in accordance with 24.2.2 above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

24.3 Conversion of Sick Leave to Vacation

24.3.1 Any permanent employee working the standard work week who uses the equivalent of two or fewer sick days within any consecutive twelve (12) month period may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of vacation leave.

24.3.2 Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of pay at their regular rate.

24.3.3 Employees may make one of the above elections only once for any consecutive twelve month period, and only once during any twelve month period.

24.4 Conversion of Sick Leave to Personal Leave

24.4.1 Any permanent employee working the standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days of previously earned sick leave to an equivalent amount of personal leave. Employees with at least twelve months of service on July 1st of each fiscal year who wish to make such a conversion will notify the City of their decision during the month of July. Employees who reach their one (1) year anniversary during the fiscal year may make their election during their anniversary month for that year only. Neither conversion of sick leave to personal leave or subsequent use of personal leave under this section shall be considered to be use of sick leave for purposes of determining an employee's eligibility for converting sick leave to vacation.

24.4.2 Sick leave will be converted to personal leave at the time the conversion is elected and the personal leave balance will change as personal leave time is used. In no event shall the employee's personal leave balance exceed two (2) days in any fiscal year. At the end of the fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave, providing the total balance of personal leave for the upcoming fiscal year does not exceed two (2) days.

24.4.3 Personal leave is intended to be used for personal needs and is not to be used to circumvent departmental procedures for processing vacation requests. When using personal leave time, the employee is not required to give the reason for the use of such time. However, the employee will give the Department Head or designee as much advance notice of the use of personal leave as the circumstances permit and will comply with the minimum notice requirements listed below. Personal leave requests will not be approved on a retroactive basis.

24.4.3.1 During periods of mandatory overtime, a twenty-four hour notice is required for the use of personal leave. The employee is responsible for contacting the Department Director or designee to request the time off; Dispatch does not have the authority to approve such requests. Failure to provide this notice or failure to contact one of the individuals listed above may result in a denial of the use of personal leave. In the event of a denial, the employee must report to work as scheduled and will be disciplined for failure to do so. The City reserves the right to deny personal leave requests made in compliance with the 24-hour notice request in the event that the employee will be required for emergency operations.

24.4.3.2 In the case of emergencies, personal leave must be requested and approved prior to the start of the employee's shift and will not be approved on a retroactive basis. The City will make every effort to accommodate these requests, even during periods of mandatory overtime; however, requests may be denied during periods of mandatory overtime if the employee is needed for emergency operations.

24.4.4 Personal leave does not count as "hours worked" for the purpose of calculating overtime and personal leave balances are not payable at separation from employment. However, any employee shall have the option at separation to convert unused personal leave to sick leave.

25. ON-THE-JOB-INJURIES

25.1 Employees who have been injured while performing an official duty shall be paid for the

time lost on the date of injury. Such pay will not extend beyond the normally scheduled work shift, exclusive of overtime. Such time lost will not be charged to sick leave. After a period of twelve (12) consecutive months on Workers' Compensation, an employee shall not earn holidays, vacation days, or sick leave. An employee may elect to use any accumulated days to make up the difference between their Workers' Compensation and their regular weekly salary.

25.2 Transitional Work

25.2.1 It is the goal of the City of Portland to assist an employee who sustains a work-related injury to return to the position they held at the time of their injury. To that end, the City has defined specific work assignments or "Transitional Work" that will be made available to those injured workers who, in the judgment of the City, will probably be able to return to "Regular Work" within three years of the date of injury. This decision will be based in part on information provided by health care professionals.

25.2.1.1 "Transitional Work is defined as a temporary job assignment created for the purpose of this provision or a regular job assignment that has been modified to eliminate or significantly limit one or more of its essential functions temporarily for the purpose of this provision.

25.2.1.2 "Regular Work" is defined as the position the employee held at the time of injury or, in the event that position is not available, another suitable position.

See Appendix E-2 for a sample Transitional Work agreement.

25.2.2 Eligibility

Participation in the Transitional Work Program will be limited to a period of three (3) years after the date of initial injury. In order to be eligible for assignment to Transitional Work, an employee (1) must have sustained an injury arising out of and in the course of employment with the City of Portland; (2) must have the approval of a treating physician; and (3) must sign a Transitional Work Agreement. The City will provide Transitional Work within the injured employee's department providing such work is available.

25.2.3 Duration of Assignment

An employee who meets the eligibility requirements in this policy will be assigned to the next available Transitional Work assignment and will be permitted to work up to ninety (90) days in that assignment. If at the end of the ninety (90) day period, the employee has not been released to Regular Work, the employee will no longer be eligible for Transitional Work unless further medical evidence is presented that permits the City to believe that, with reasonable further periods of

Transitional Work, the employee will probably be able to return to Regular Work. If such evidence is provided, the City may offer additional periods of Transitional Work for up to three years from the initial date of injury.

If, during the course of the Transitional Work, it becomes evident to the City that the injured worker probably will not be able to return to Regular Work within three (3) years of the date of injury, the Transitional Work may be terminated. Such employees retain any rights they may have under M.R.S.A. Sec. 217 with regard to employment rehabilitation.

25.2.4 Re-Employment within Three Years of Date of Injury

25.2.4.1 If an employee becomes capable of performing the essential functions of the position held on the date of injury, with or without reasonable accommodation, within three years of the date of injury, the employee may return to work in that capacity. Upon return to work, the employee shall receive pay and benefits at the level **he/she they** would have received if the injury had not occurred.

25.2.4.2 If the employee cannot return to the position held on the date of injury within three years of the date of injury, the City will evaluate the employee's ability to perform other permanent assignments at an equal or lower pay grade within the bargaining unit.

25.2.4.3 Upon a determination of capability to work, the employee will provide the City with **his/her their** current medical restrictions and the positions **he/she they** wishes to be considered for if unable to return to "Regular Work". If the employee is able to return to work for the City, but not in the position held at the time of injury, pay and benefits shall be determined by the City under the appropriate bargaining agreement and with the concurrence of the bargaining unit representative. If the employee should return to a non-union position, the City's Non-Union Personnel Policy will determine pay and benefits.

25.2.4.4 The acceptance or refusal of appointment to a position other than the position held on the date of injury shall not terminate the employee's right to seek re-employment in the position held on the date of injury.

25.2.4.5 This section assumes that the employee remains in active status and has not been terminated in accordance with 25.4.2. In the event that an employee terminated in accordance with 25.4.2 becomes capable, within the 3-year period from date of injury, of performing **his/her their** previously held position, s/he will be returned to that position if it is vacant and will receive the contractual rate of pay for that position. If the previously held position is not available or another position in that classification is not available, s/he will be placed in a vacant bargaining

unit position as soon as a position the employee is qualified to perform becomes available. The employee will receive the rate of pay they were receiving when they were terminated for the remainder of the three (3) year period or the contractual rate of pay for that position, whichever is greater, until a position in the previously held classification becomes available.

25.3 Except as provided in 25.3.2 below, effective January 1, 2004, employees out on Workers' Compensation must pay their pension contribution based on the wage portion of the Workers' Compensation benefits that the employee receives. All pension payments will be made pursuant to the rules of the Maine Public Employees Retirement System. If payment is not made within thirty (30) days of when the employee receives the Workers' Compensation benefit, the employee will be responsible for accrued interest until all contributions are paid.

25.3.1 Employees out on Workers' Compensation prior to January 1, 2004 may pay their pension contribution on an optional basis under the rules of the Maine Public Employees Retirement System. If such employee contribution is paid while the employee is out on Workers' Compensation or by the end of the calendar year during which the employee lost time, the employee is required to pay their contribution amount. If the employee pays their share after this date, they will be responsible for their contribution plus interest in accordance with Maine Public Employees Retirement System laws. The City will pay its share, including interest, in accordance with Maine Public Employees Retirement System laws.

25.3.2 The City has provided notice to the Maine Public Employees Retirement System of employees out on Workers' Compensation between January 1, 2004 and October 28, 2005, and has paid the interest accrued from January 1, 2004 through the date of the letter(s) sent to each employee by the Maine Public Employees Retirement System regarding payment of pension contributions on their Workers' Compensation benefits. If payment is not made within thirty (30) days of when the employee receives the MainePERS letter, the employee will be responsible for accrued interest until such contributions are paid.

25.3.3 Retirement service credit will be provided only for time for which pension contributions have been made.

25.4 Termination of Employment

25.4.1 In those cases where an employee is unable to perform regular Work and health care professionals determine, at any point during the three (3) year period following date of injury, that the employee will be unable to return to regular Work during the three (3) year period, the employee may be terminated from employment on or after eighteen (18) months following date of injury. This termination is non-disciplinary and the employee will receive a 90-day notification.

25.4.1.1 In the event the City exercises its right to terminate as described above prior to three (3) years from date of injury, and providing the employee becomes capable of returning to Regular Work prior to the three (3) year date, s/he will be returned to work at the contractual rate of pay for the position or the same rate of pay as s/he was receiving at the time of termination, whichever is greater.

25.4.2 If unable to return to Regular Work by the date specified in the ninety (90) day notification listed in 25.4.1 above and, providing the updated medical report indicates a work capacity, the employee will provide the City with ~~his/her~~ **their** current medical restrictions and the positions ~~he/she~~ **they** wishes to be considered for as an alternative to termination. The provisions of 25.2.4 will apply if the employee is capable of performing another permanent budgeted position within the City that is available within the ninety (90) day period.

26. UNUSED SICK LEAVE UPON SEPARATION

- 26.1 During the term of this Agreement, when an employee is laid-off, the employee shall receive an amount equal to ~~his/her~~ **their** salary at the time of lay-off for one-half (1/2) the number of days of ~~his/her~~ **their** accumulated unused sick leave up to a maximum of ninety (90) days of pay.
- 26.2 During the term of this Agreement, when an employee retires from continuous permanent active service with the City and is immediately eligible for retirement benefits, ~~he/she~~ **they** shall be entitled to receive an amount equal to ~~his/her~~ **their** salary at the time of retirement for one-half (1/2) of accumulated sick leave up to a maximum of ninety (90) days of pay, provided the employee has a minimum of sixty (60) days of sick leave accumulated. Retiring employees with less than sixty (60) days shall not receive any payment.
- 26.3 In the event of death before retirement of an employee covered by this Agreement, unused sick leave shall be paid to the employee's designated beneficiary or estate, in the salary equivalent to one-half (1/2) of ~~his/her~~ **their** then accumulated unused sick leave, said payment not to exceed payment for ninety (90) days.
- 26.4 In the event of death in the line of duty of an employee, the City shall pay one hundred percent (100%) of ~~his/her~~ **their** total accumulated unused sick leave balance to the employee's designated beneficiary or estate.
- 26.5 For resigning employees of good standing with less than ten (10) years of continuous permanent service with the City, payment shall be one-fifth (1/5) of accumulation with a maximum payment of twenty four (24) days; for resigning employees of good standing with ten (10) years or more of continuous permanent service with the City, payment shall be one-half (1/2) of accumulation with a maximum payment of forty-five (45) days. A good standing resignation is considered to be two (2) weeks' notice of resignation.

27. LEAVES OF ABSENCE

27.1 Short-Term Leave of Absence

A regular employee may be granted a leave of absence without pay by a Department Head when approved by the Director of Human Resources, for a period deemed necessary by the employee for the purpose of the leave, but not in excess of sixty (60) days. The employee requesting such leave must make written request at least two weeks in advance of the date leave is requested to begin, unless the reason for such a leave is of such an emergency nature as to preclude this requirement.

27.2 Special Leaves (Long-Term)

The City Manager, upon the recommendation of the Department Head and the Director of Human Resources, may authorize special leaves of absence with or without pay for any period or periods not to exceed one calendar year for the following purposes: attendance at college, university or business school for the purpose of training in subjects relating to the work of the employee and which will benefit the employee and the City service; urgent personal business requiring the employee's attention for an extended period, such as settling an estate, liquidating a business; or for purposes other than the above that are deemed beneficial to the City service. The employee requesting such special leave must make written request at least two weeks in advance of the date leave is requested to begin, unless the reason for such a leave is of such an emergency nature as to preclude this requirement.

27.3 Family Medical Leave

27.3.1 Consistent with the applicable state or federal Family Medical Leave law, employees may be eligible for unpaid, job protected leave of up to twelve (12) weeks. Requests for leave pursuant to this provision shall be made to the appropriate department Human Resources representative and will be administered in accordance with applicable law, as may be amended from time to time. An employee who has been employed for twelve (12) consecutive months and who has worked 1250 hours in the last twelve months may be entitled to up to twelve (12) consecutive weeks of Family Medical Leave in any twelve month period. The twelve month period during which this entitlement may occur is measured backward from the date the employee's first FMLA leave begins.

27.3.2 Whenever possible, the employee must give at least thirty (30) days notice to their department Human Resources representative of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving such notice. The leave may be consecutive, intermittent, or on a reduced hourly schedule if the City and employee agree, or if medically necessary. Upon request, the employee shall provide medical certification, in the

form of a completed City of Portland Health Care Provider Certificate Form, of the need for the leave. FMLA leave is governed by the requirements of the state and/or federal FMLA laws, as they apply. If the requirements, benefits, definitions and/or scope of FMLA changes during the term of this Agreement, such changes are automatically incorporated by this Agreement.

27.3.3 Employees who request to use Family Medical Leave for the purpose of caring for a domestic partner, or child or parent of domestic partner, must satisfy the City's eligibility requirements for claiming an individual as a registered domestic partner.

27.3.4 Substitution Provision – Paid

The City may require the use of accrued paid benefit leave, including sick leave, vacation leave, personal leave and compensatory time to the extent that it is allowed under State and/or Federal Family Medical Leave laws while the employee is on an unpaid Family Medical Leave or extended medical/disability leave of absence.

27.4 Disability Leave

27.4.1 When disabled, an eligible employee may be placed on an unpaid leave of absence not to exceed three months if (1) either the employee or his/her **their** attending physician requests same, or (2) the employee's attendance or performance becomes unsatisfactory because of the disability. Should the Department Head determine that an employee's attendance or performance is unsatisfactory because of a disability, the employee may be required to take a leave of absence. In making such a determination, the Department Head shall place major emphasis upon the recommendation of the employee's physician, as the recommendation concerns the employee's health and physical capabilities. In the event the employee does not have a physician, the Department Head may direct the employee to go to a physician selected by the City. In order that such physician shall have the necessary facts upon which to base his/her **their** recommendation, the Department Head and the Director of Human Resources shall furnish the physician with a statement concerning the requirements of the job and the conditions under which it is performed. In any instance in which the Department Head requires the employee to go on leave of absence, if the affected employee files a grievance, the burden of proof shall then be upon the City as to the correctness of such determination. In the event such determination is found to be unjustified, the employee involved shall be reimbursed for all lost time and/or restored all lost sick leave credits. The initial twelve (12) week period of disability leave will be processed as Family Medical Leave if the disability is covered by the Family Medical Leave Act.

27.4.2 Except for emergencies, the employee shall submit written notification to the Department Head at least two weeks prior to his/her **their** anticipated departure stating the probable duration of the leave. The Department Head may require the employee to provide a statement from his/her **their** physician setting forth (1) the

anticipated duration of the disability, and (2) whether the employee may continue to perform ~~his/her~~ **their** work assignments.

- 27.4.3 Upon written request of the employee submitted to the Department Head at least two weeks prior to the expiration of the granted leave, and at the discretion of the City Manager, after recommendation of the Department Head and the Director of Human Resources, a disability leave of absence without pay may be extended or renewed for an additional period of time but not to exceed a total of twelve months duration.
- 27.4.4 Disabilities caused or contributed to by pregnancy are, for all job-related purposes, temporary disabilities.
- 27.4.5 Accumulated sick leave benefits shall be applied to any portion of the requested or required leave so eligible at the option of the employee, but cannot be used to extend a disability leave beyond the twelve-month period.
- 27.5 The employee is expected to return to work upon the expiration of the granted leave or to have arranged an extension of the leave prior to its expiration. Failure on the part of the employee to return to work on the expiration of the granted leave may be deemed a resignation from service.
- 27.6 Employee's requests for leaves of absence under this Article shall not be denied in an arbitrary or capricious manner, but remain discretionary with the City except in the case of Family Medical Leave under 27.3.2.
- 27.7 Any leave of absence taken in accordance with this Article (Article 24) shall not be deemed a break in service for seniority purposes. The City shall continue to provide the employee with health insurance coverage for the duration of any authorized leave. Employees shall not accrue sick or vacation leave or receive payment for holidays for the duration of any authorized leave that exceeds twelve (12) weeks in duration.

28. OTHER LEAVE

28.1 Bereavement Leave

An employee shall be excused from work for up to five (5) work days because of death of a spouse or domestic partner, a child **(including the death of a spouse's or domestic partner's child)** or a parent and three (3) work days because of death in ~~his/her~~ **their** immediate family, as defined ~~below~~ **in 28.1.2**, and shall be paid ~~his/her~~ **their** regular rate of pay for the scheduled working hours missed. Not more than eight (8) hours per day (10 hours for employees working a four/ten schedule or 12 hours for employees working a 3-day winter weekend schedule) shall be paid under this Article. It is intended that this time off be used for the purpose of handling necessary arrangements and attendance at the funeral. ~~Immediate family is defined to mean brothers, sisters,~~

half brothers, half sisters, daughter in law, son in law, mother in law, father in law, grandparents, grandchildren, step children, children of a domestic partner, step parents, sister in law and brother in law. Immediate family also includes members of domestic partner's family similarly related providing the employee meets the City's eligibility requirements for claiming an individual as a domestic partner. An employee may use three (3) more calendar days of bereavement leave chargeable to sick leave immediately annexed to the initial leave if in the sole opinion of the Department Head the additional time is needed for travel or because of other extenuating circumstances. Said extension shall not be arbitrarily withheld. Bereavement leave charged to sick leave shall not count as sick leave usage for the purposes of Article 24.3, Sick Leave Conversion to Vacation.

28.1.2 Immediate family is defined to mean brothers, sisters, half-brothers, half-sisters, daughter-in-law, son-in-law, mother-in-law, father-in-law, grandparents, grandchildren, step-parents, sister-in-law and brother-in-law and includes members of domestic partner's family similarly related provided the employee meets the City's eligibility requirements for claiming an individual as a domestic partner.

28.2 Funeral Leave

In addition to the foregoing, one (1) day (8 hours for employees working a 5-day schedule, 10 hours for employees working a four/ten schedule or 12 hours for employees working a 3-day winter weekend schedule) may be used for attendance at the funeral of the following relatives: aunt, uncle, niece, nephew, or other relative living in the same household or a domestic partner's relative that is similarly related providing the employee meets the City's eligibility requirements for claiming an individual as a domestic partner. **and includes members of domestic partner's family similarly related provided the employee meets the City's eligibility requirements for claiming an individual as a domestic partner.**

28.3 Personal Leave

Personal leave, without pay, may be granted to employees covered by this Agreement by the appropriate Department Head or his authorized representative, if such Department Head or authorized representative deems there is good and sufficient reason for granting said personal leave. A minimum twenty-four (24) hour notice is required to be given by the employee, excluding Mondays and days following a holiday in emergency situations. However, on such Mondays and days following a holiday, the employee shall give notice in the most practical manner within fifteen (15) minutes after the start of the normal work day so that the appropriate Department Head can make adjustments in the day's work schedule.

28.4 Military Leave

Military leave and rights to re-employment after such leave shall be available to employees under the terms and conditions of applicable federal and/or state law as may be amended

from time to time. Any person restored to service under such law shall be restored with accrued seniority.

28.5 Reserve Service Leave

Reserve service leave and rights to re-employment after such leave shall be available to employees who are members of the organized military reserves or National Guard, under the terms and conditions of applicable federal and/or state law as may be amended from time to time. For any period of Reserve Service Leave of up to three (3) weeks in any calendar year, the City will pay the difference between the employee's total service pay for said field duty and the employee's regular compensation, the sum of both payments to equal the regular weeks' pay of the employee had ~~he/she~~ **they** been in the City service during this period. The employee using Reserve Service Leave shall furnish ~~his/her~~ **their** Department Head with an official statement of reserve service pay received.

28.6 Any disputes as to rights under applicable federal and/or state law in regard to military leave and reserve service leave are not arbitrable but may be determined by a court of competent jurisdiction.

28.7 Jury/Witness Pay

28.7.1 The City shall pay to an employee called for jury duty the difference between ~~his/her~~ **their** regular pay and ~~his/her~~ **their** juror's pay. The employee shall notify the City as soon as possible of ~~his/her~~ **their** intention to serve as juror. The employee will continue to be paid regular weekly wages during the term on the jury and upon receipt of juror's pay will present an official statement of juror's pay. If such juror's pay is less than the employee's regular wages for the period served as a juror, the employee shall submit to the City the entire portion of that juror's pay. However, if such juror's pay is greater than the employee's regular wages for the period served as a juror, the employee shall submit to the City that portion of the juror's pay which equal the wages paid to ~~him/her~~ **them** for the period served as a juror.

28.7.2 The City shall pay to an employee subpoenaed to appear as a witness in a case, other than a case in which the employee is a plaintiff, the difference between ~~his/her~~ **their** regular pay and ~~his/her~~ **their** witness pay. Such witness pay shall be handled in the same manner as jury pay above.

28.8 Jury/Witness Duty

In the event an employee is called to jury duty or is subpoenaed as a witness in a case (wherein the employee is not a plaintiff or a defendant in the case), ~~he/she~~ **they** shall be granted leave to fulfill that obligation. The employee will be excused from the shift that encompasses the majority of hours on the same calendar day as the jury/witness duty.

All jury/witness duty requests must be pre-discussed with the Department Head or

designee. The Department Head or designee and the employee will predetermine based on the specific situation whether the employee will be available to work for a full or partial shift.

An employee who is excused by the Court earlier than originally anticipated is required to contact their immediate supervisor promptly. The supervisor will determine if there is work to be done and whether or not the employee will be required to report for City duty on that day.

Employees who work part time will be granted leave with pay for the hours or days that the employee is excused for jury duty and for which the employee was scheduled to work.

Employees on jury/witness duty leave when a City holiday occurs will receive their normal holiday pay. Actual jury duty service on a holiday will not result in any additional compensation or time off since jury duty service is not considered to be City employment.

29. PERSONNEL EVALUATIONS

- 29.1 The City and the Union agree that all evaluating during the life of this Agreement will be made according to the system outlined in Appendix C.
- 29.2 The AFSCME Performance Appraisal Committee shall continue to meet on an as needed basis during the term of this agreement to monitor the effectiveness of the appraisal process and to recommend changes as appropriate.

30. CLOTHING

- 30.1 All employees in the Unit shall wear the clothing provided by the City during work hours, and maintain a clean and neat appearance. Employees shall report to work with the City-provided personal protective equipment (PPE) necessary for their job. The Department Director, or designee, may require employees to turn in clothing and PPE provided by the City upon separation.
- 30.2 The City will make available outerwear appropriate for the work being performed on an "as needed" basis, as determined by the Department Director, or designee.
- 30.3 The City agrees to provide **Mechanics Auto Technicians** with 6 sets of shirts and pants, including six (6) summer shirts per week through a lease agreement and 1 pair of insulated winter coveralls and 1 pair of regular coveralls per fiscal year. **Mechanics Auto Technicians** who choose not to participate in a lease agreement will receive the clothing described in 30.7, below.
- 30.4 Individual Division Heads shall determine appropriate footwear for employees in their divisions. The City agrees to reimburse all employees covered by this Agreement up to a

maximum of \$200.00 towards the purchase of safety-toe footwear (as specified by the American National Standards Institute – Z41.1 – 1967), protective toe caps, laces and boot liners per fiscal year. Remaining footwear balances at the end of the fiscal year will not be forwarded or “rolled over” to the next fiscal year. Employees who receive reimbursement for boots within 30 days of separation with the City, will have the reimbursement deducted from their separation pay.

The Department will contribute an additional \$75 per fiscal year towards the purchase of safety footwear for Forestry and Horticulture employees. **The \$200.00 boot provision and the extra \$75 will sunset July 5, 2020.**

- 30.5 The City will reimburse employees up to a maximum of \$150 during the remaining term of this Agreement toward the purchase price of safety prescription eyeglasses (as specified by the American National Standards Institute – Z87.1.)
- 30.6 The City shall furnish employees with the personal protective equipment (PPE) necessary to perform their job. Replacements shall be on an “as needed” basis as determined by the Department Director or designee. Employees are expected to properly care for personal protective equipment issued to them.
- 30.7 The City agrees to provide employees who work predominantly a 5-day schedule with 5 summer shirts, and a combination of 5 winter shirts or sweatshirts. Employees working a 5-day schedule will be reimbursed up to a maximum of \$150 per fiscal year toward the purchase of pants. Employees who work predominantly a 4-day or 3-day schedule will receive 4 summer shirts, and a combination of 4 winter shirts or sweatshirts. Employees who work a 4-day or 3-day schedule will also be reimbursed up to a maximum of \$150 toward the purchase of pants per fiscal year. Employees can purchase any number of pair of pants for the amount of money listed above but there will be no replacements and employees will be expected to be in proper clothing provided by the City. The City will provide employees with 1 winter jacket and replacement will be made on an “as needed” basis. The City is not required to provide clothing if an employee is out of work during the season of issuing. The employee will be issued clothing for the season they return to work as defined in Appendix H or J.

Effective July 5, 2020, the \$150 pants allowance will be eliminated.

31. JOB TRAINING

- 31.1 The City shall continue its policy of providing employee training through participation in the financing of credit and non-credit training courses related to the duties and responsibilities of the employees as City resources allow.
- 31.2 General job training will be provided periodically on an individual and group basis, both on the job and off when, in the opinion of the City, such training is necessary.

- 31.3 Employees having attained the Maintenance Worker III classification at Public Works via the old career ladder, or through the terms of this Agreement, shall not be required to re-certify on various pieces of equipment, or other Departmental functions, in order to maintain their Maintenance Worker III classification and pay grade. Maintenance Worker III employees will be required to plow one-person during winter operations. Any Maintenance Worker II employee promoted to a Maintenance Worker III, under the terms of this Agreement, who chooses not to plow one-person during winter operations shall remain a Maintenance Worker II.
- 31.3.1 Maintenance Worker I employees, so classified at pay grade 14 prior to this Agreement, may be promoted to a Maintenance Worker I classification at pay grade 16 by completing the old Maintenance Worker II career ladder.
- 31.4 If the City requires specific training for existing employees in a given classification, the City will pay for the course work and will provide straight time pay for all hours spent in training beyond the normal work day, straight time until total hours worked that week equal forty (40) and time and one-half for hours over forty (40) in accordance with the Fair Labor Standards Act.
- 31.5 Probationary employees, including those employees fulfilling a promotional probationary period, shall be expected to fulfill the licensing requirements of their classification during the probationary period without any financial contribution from the City. The employee is expected to meet the licensing requirements during the applicable probationary period unless unable to do so as a result of circumstances beyond the employee's control, such as the timing of examinations by a third party.
- 31.6 When the employee is required by the City to travel overnight, the City agrees to reserve the overnight accommodations and pre-pay the lodging expenses. Employees will be reimbursed for meal expenses in accordance with Administrative Regulation 1 after submitting receipts. Employees using a personal vehicle while traveling on City business will be reimbursed in accordance with the current IRS mileage rate.
- 31.7 Any employee who is designated by the Department Director or designee to teach equipment operation to other employees shall receive a \$1.50 per hour training differential for the time spent in an authorized training session, providing the training is conducted during the employee's regular work hours. Employees who provide training outside of their regular work hours will receive time and one-half their regular base hourly rate and the \$1.50 per hour training differential.

32. WITHDRAWAL OF RESIGNATION

- 32.1 An employee may resign in good standing by giving written notice to ~~his/her~~ **their** Department Head at least fourteen (14) calendar days in advance of the effective date of his resignation. An employee may, with the approval of the Department Head, withdraw his resignation during the fourteen (14) day notice period. Such approval shall not be

arbitrarily denied.

33. FILLING OF JOB VACANCIES

- 33.1 Except as provided in 33.1.1 and 33.1.2 below job openings shall be posted on departmental bulletin boards for a minimum of seven (7) working days. At the time of posting, the Unit Presidents will be sent selection criteria for posted openings in their Unit. The posted notice shall describe the job and any pertinent job specifications. Suitable transfers will be allowed. A transfer shall be considered suitable if it is in the same classification or is a position of equal pay grade in the unit and, in both instances, the employee must be qualified as determined by the City. If there are qualified applicants and unless there are unusual or emergency circumstances, the vacancy shall be filled within thirty (30) working days from the date of application closing, which date shall appear on the posted notice. This time limit may be extended by the City, when in its sole discretion it is necessary to do so, but to a date not to exceed forty (40) calendar days from the application closing date.
- 33.1.1 The City is not required to post job openings prior to offering that opening to a bargaining unit employee in order to fulfill its requirement to make reasonable accommodation in accordance with federal or state law.
- 33.1.2 In accordance with past practice, the City is not required to post job openings if an additional vacancy in the same classification and same Division becomes available prior to the close of the selection process on the initial vacancy. The City will post the additional vacancy for a seven (7) working day period to determine if any additional applicants are interested in the position when the additional vacancy is in a different division or department.
- 33.2 Employees in any City Department may apply for unit vacancies which are posted. Among applicants the City considers to be qualified, the vacancy shall be filled in the following preferential order: first by the unit applicant employed by the Department in which the vacancy occurs, secondly, by the bargaining unit applicant and, thirdly, all other applicants including non-employee applicants.
- 33.3 Upon execution of this Agreement, the City retains the right to fill Maintenance Worker I vacancies, at pay grade 16 (formerly MW II position), with individuals as a Maintenance Worker, at pay grade 14 (formerly MW I position), if the selected applicant, in the sole discretion of the City, does not meet an acceptable portion of the Maintenance Worker I job requirements. If the selected employee is able to meet all the requirements of the Maintenance Worker I classification over time, the City shall have the right to promote the employee to Maintenance Worker I at pay grade 16 without posting.
- 33.4 Upon execution of this Agreement, the City also retains the right to fill Maintenance Worker III vacancies, at pay grade 18, with individuals as either a Maintenance Worker I, at pay grade 16, or a Maintenance Worker II, at pay grade 17, if the selected applicant, in the

sole discretion of the City, does not meet an acceptable portion of the requirements of the Maintenance Worker III job requirements. If the selected employee is able to meet all the requirements over time, the City shall have the right to promote the employee to Maintenance Worker II, at pay grade 17, or Maintenance Worker III, at pay grade 18, without posting.

- 33.5 Employees who, pursuant to Article 31, JOB TRAINING, have completed training courses satisfactorily as determined by the City shall be given a preference for promotion over other applicants, provided that the training relates directly to the duties and/or skills required for the promotional position, and the employee is otherwise qualified for the position.
- 33.6 Should a successful applicant become convinced within the first twenty-five (25) working days that s/he cannot cope with the new job, or should the City become convinced, within thirty (30) working days of the employee's appointment that the employee cannot fulfill the requirements of the job, then the reason therefore shall be put in writing, the employee's Unit President notified, and the employee shall be returned to the former job. If an employee moves to a lower level position, the employee must meet all licensing requirements for the new position within thirty (30) working days of the appointment.
- 33.7 An employee appointed to a unit position shall be paid from the date of appointment at the permanent rate for the position at that employee's seniority step. Seniority shall be continuous permanent City service.
- 33.8 If an individual unit applicant for a position has cause for disputing the choice of the City, he may appeal the City's action using the established grievance procedure.
- 33.9 Notwithstanding the above, and regardless of whether or not the applicants are City employees, the City may hire any qualified Island resident applicant to fill an Island position over applicants who are not Island residents.
- 33.10 Temporary Assignments
 - 33.10.1 Whenever the City determines that temporary assignments are required, the most junior person in classification, based on continuous service time in classification, from the available daily work pool of employees in the Division shall be assigned the substitute work.
 - 33.10.2 The City shall have the sole authority to determine whether workers who are normally assigned to a permanent crew shall be placed in the daily worker pool.
 - 33.10.3 Workers assigned outside of their normal classification shall be exempt for this selection procedure based on seniority within classification, unless otherwise determined by the City.

33.10.4 Unless otherwise agreed by the City and the Union, this procedure shall be consistently applied. The most junior worker shall be the substitute assigned.

33.10.5 This provision is not intended to impact the winter work schedule.

33.11 Temporary Filling of Foreman and Supervisor Vacancies

33.11.1 The City will maintain a list of employees who are interested in filling in as Foreman or Supervisor when a temporary vacancy exists. This list will include date of request and area(s) of preference.

33.11.2 When the City determines a Foreman or Supervisor position needs to be filled on a temporary basis, the City will select someone from this list taking into consideration the following factors: job requirements, the employee's qualifications, and how often the employee has been offered a temporary Foreman vacancy during the preceding twelve month period.

33.11.3 Qualified employees will be offered such positions within their Section (if no Section exists, then within Division) on a rotating basis.

33.12 New Hires

The City, at its sole discretion, may hire new employees with prior experience up to the four (4) year step on the appropriate salary grade for similar work with similar scope and responsibility provided they meet all of the City's requirements for the position as outlined in the job description and selection criteria. Prior experience will be determined by crediting one (1) year for every one (1) year of previous experience the City deems to be relevant in scope and responsibility. The Union shall be notified by the City of any new hire placed at the four (4) year step. Effective July 3, 2022, current employees being paid less than the four (4) year step will receive similar, non-retroactive credit up to the four (4) year step for previous experience for similar work prior to being hired by the City. Prior experience will be determined by crediting one (1) year for every one (1) year of previous experience the City deems to be relevant in scope and responsibility. New hires and current employees will be required to provide documentation of their prior relevant experience before receiving advanced pay placement and subsequent step movement will be based on this initial service credit plus permanent continuous service with the City in the same classification. This advanced placement is for pay purposes only and does not affect any other benefits, including seniority.

34. **DISCIPLINARY PROCEDURE**

34.1 No employee shall be discharged, demoted, or suspended except for just cause (including

but not limited to violations of any rules as provided above) and notice of the reasons for such disciplinary action shall be stated in writing and given to the employee affected and/or the Chief Steward, but in every case to the President, within five (5) days after the effective date of the action. Under the normal circumstances, disciplinary action shall be taken by the City within thirty (30) days of when the Department Head or his appropriate designee learns of the event giving rise to the disciplinary action. Said 30-day time frame shall not apply to disciplinary actions for abuse of sick leave. The 30-day time frame is delayed in the case of vehicle accidents providing the employee's Department has an Accident Review Committee (which may be a subcommittee of the departmental Safety Committee). The 30-day time frame begins when Department managers meet to discuss the accident following receipt of the Accident Review Committee report.

34.2 Any disciplinary action imposed upon an employee may be processed as a grievance through the regular grievance procedure and the Union shall have the right to take up matters of suspension, demotion or discharge at Step 11.1.3 of the procedure.

34.3 Pursuant to N.L.R.B. v. Weingarten, the City recognizes the right of an employee to have a Union representative present at a disciplinary hearing or meeting.

34.4 Written reprimands shall be removed from the personnel file after a period of two years provided that there has not been a recurrence of that offense during that two year period.

34.5 Disciplinary Suspensions

34.5.1 Employees with suspensions of two (2) days or less in their files may have those suspensions removed after a period of five (5) years or more.

34.5.2 Employees may request to have suspensions of three (3) days or more removed after a period of five (5) years. The Director of Human Resources will review such requests on a case by case basis. Factors that will be considered are the employee's prior disciplinary record, their overall personnel record, and their conduct since the discipline was taken.

35. PERSONNEL REDUCTIONS AND SENIORITY

35.1 Reductions in personnel by the City result solely from the elimination of positions by department and by classification.

35.2 For purposes of personnel reductions and bumping within the unit, seniority is defined as continuous permanent City service, and seniority rosters will be compiled on that basis.

35.2.1 In the event of a tie in seniority dates, the employee who has worked in the classification the longest will be deemed the more senior. In the event that the appointment date to present classification is the same, the employee who first applied for the position will be deemed the more senior. If the application dates

are the same, the tie-breaking decision will be made by a toss of the coin.

- 35.2.2 Union officers shall have preferred seniority over all other employees for purposes of the exercise of bumping rights. Between such officers, seniority shall be in the following order:

Unit Chair
Chief Steward
Unit Vice-Chair
Unit Recording Secretary
Unit Treasurer
Shop Steward

In the event that more than one person holds a particular office listed above, bumping shall be determined by seniority based on time in that Union Offices, as determined by the Union.

- 35.3 In the event of a personnel reduction, positions eliminated will be identified by department, then by classification, by division, and by shift assignment, and the employee with the least seniority in the position eliminated, as defined above, will be the employee placed on lay-off.

~~35.3.1 In the event of a personnel reduction, pursuant with the execution of this Agreement, Maintenance Worker II employees in the Solid Waste Division, at pay grade 17, will be considered equal to Maintenance Worker III employees, at pay grade 18. Their seniority will be blended with Maintenance Worker III employees in determining seniority for the purposes of exercise of bumping rights. This provision applies to active Maintenance Worker II employees in the Solid Waste Division, at pay grade 17, at time of execution of this Agreement. This provision shall not apply to employees hired after April 23, 2009.~~

- 35.4 In the event of a personnel reduction resulting in lay-off, employees placed on lay-off may elect to bump into other unit positions in the following order:

- 35.4.1 The employee will first be offered any suitable vacant position in the department which is reducing its personnel. If there are no such vacancies, the employee will be offered any suitable vacant position in the bargaining unit. A vacant position shall be deemed to be "suitable" if it is in the same classification or is a position of an equal pay grade in the unit which the employee is qualified to perform, as determined by the City. The employee shall take a suitable vacant position rather than bumping other employees, unless the employee can show:

- 35.4.1.1 that taking said vacancy would result in economic hardship for the employee such as a significant increase in travel time to work or inability to use the employee's normal mode of transportation; or

- 35.4.1.2 that taking said vacancy would result in personal hardship, such as a change in shift or conflict in the employee's working relationships.
- 35.4.2 If there are no vacant positions to which the employee can transfer, the employee shall bump the least senior employee in the same classification in the Department. If there are no least senior employees in the same classification in the Department, the employee can bump the least senior employee so classified in the bargaining unit.
- 35.4.3 If there are no least senior employees in the same classification in the bargaining unit, the employee may bump the least senior employee in the next lower level of the job family, as determined by Appendix D, or the employee can bump the least senior employee in a position once held.
- 35.4.4 If there are no available positions under subsections 35.4.1-35.4.3 above, the employee may bump the least senior employee in positions which the City determines the employee is qualified to perform. Whenever an employee bumps into a new classification, the employee must have any licenses required in that classification.
- 35.4.5 The City's determination as to qualifications of an employee to perform a job shall be final so long as it is not arbitrary and capricious.
- 35.5 Employees may opt to accept lay-off at any point in the bumping process rather than exercising their bumping rights.
- 35.6 No employee may bump into a promotional position. An employee who bumps into a position under subsections 35.4.1-35.4.4 above shall be paid at the rate provided in this Agreement for that classification except as provided in 35.3.1. The appointment date of employees who bump will not change as a result of the bumping.
- 35.7 Employees who are laid off will receive separation pay as provided in Article 26.
- 35.8 Seniority rosters will be posted in work locations and sent to the Unit Chair in January of each year. Separate seniority rosters shall be maintained for permanent full-time and part-time employees.
- 35.9 Recall
- 35.9.1 Employees who are laid off or who bumped into positions under Section 35.4.1-35.4.4 above shall have an 18-month recall right to the classification from which the employee was laid off, and in the reverse order of lay off.
- 35.9.2 Employees laid-off and on the recall list may be offered temporary, seasonal, on call, or project work but performance of said work will not affect or extend the recall period. Refusal of said work shall not affect the person's recall period.

35.9.3 The City may rely on its records for the last address of the laid off employees, and may remove from the list a person who does not respond or accept recall to work within ten (10) working days after certified mailing of notification. A copy of such recall notification shall be mailed to the Chair of the Unit for his information. If an employee retires, resigns, or is terminated from permanent City service for cause, the employee shall be removed from the recall list and lose all rights to recall.

36. SAFETY

36.1 Safety Committees shall function to review safety procedures and make advisory recommendations to Department Heads regarding new safety procedures or modifications to current safety procedures that may be needed. The Department Head or designee shall respond to all written recommendations from the Safety Committee within thirty (30) days. The departmental Safety Committees shall be composed of at least as many labor representatives as management representatives. The Union will appoint labor representatives and alternates to serve on departmental Safety Committees unless there is agreement between the City and the Union which modifies Committee representation. The Risk Manager or designee shall provide technical assistance to the Committee. The Risk Manager or designee shall hold the tie-breaking vote regarding advisory recommendations to the Department Heads.

36.2 Safety Standards

All employees shall follow safety standards while on duty for the City. This shall include, but not be limited to: the wearing and use of safety equipment, i.e. personal protective equipment, head protection, eye and face protection, foot protection, hearing protection, or any other equipment provided or furnished in any way by the City. The employees shall observe all safety rules and regulations established and posted by the City. Failure on the part of the employee to abide by such safety standards will result in disciplinary action.

36.3 Driver's Daily Checklist and Use of City Equipment

The employees agree to perform daily Vehicle Condition Reports and other maintenance checks on their vehicles as established within their particular Department. Employees agree to help maintain the condition and life of City equipment through proper and safe operation.

36.4 Departmental Accident Review Committees shall function to recommend accident prevention methods, determine preventability of employee vehicle accidents, and make recommendations for improvements to fleet safety policy. These departmental committees shall be composed of at least as many labor representatives as management representatives and will include a safety professional to chair the committee.

37. LICENSE REQUIREMENTS

- 37.1 It shall continue to be the City's policy to require employees who operate City vehicles to have and maintain a valid Maine Motor Vehicle Operator's license as required by the employee's classification. The City will periodically verify such a license. Consequences for loss of license(s) are defined as follows:
- 37.1.1 Loss of a Maine Motor Vehicle Operator's license for a period of up to six (6) months will result in an automatic demotion for the duration of the license suspension. "Demotion" for the purposes of this policy shall be equivalent to a 10% reduction in pay.
- 37.1.2 Loss of a Maine Motor Vehicle Operator's license, or a required CDL license, if not covered under the City's Drug and Alcohol Policy, for a period of more than six (6) months will result in immediate termination of employment. Any medical condition shall be reviewed on a case by case basis.
- 37.2 The City will do license verifications. Upon request, a copy of this report will be sent to the employee.
- 37.3 Employees who are required to possess a CDL license by the City will be subject to the City's Drug and Alcohol Policy.

38. JOB SPECIFICATIONS

- 38.1 Within thirty (30) days after execution of the Agreement, the City agrees to supply the Unit Chair and bargaining agent with copies of unit job specifications, including those modified during the negotiations which preceded this Agreement. Thereafter, the City agrees to submit all modified specifications to the Unit President and the bargaining agent for Union review and recommendations. Said recommendations must be submitted to the City within ten (10) working days after receipt of the job specifications.

39. LEGAL AID AND PROTECTION

- 39.1 The City will, with the consent of the employee, assume the defense of and indemnify any employee against a claim which arises out of an act or omission occurring within the course or scope of ~~his/her~~ **their** employment and for which the City is liable under the Maine Tort Claims Act, 14 M.R.S.A. 8101 et seq. up to the statutory limit of \$400,000. The City, at its discretion, may provide such defense and/or indemnification through a self-insurance program or through insurance coverage limited to Four Hundred Thousand Dollars (\$400,000), including costs other than defense costs, for any and all claims arising out of a single occurrence, to be purchased by the City.

- 39.2 The City will, with the consent of the employee, assume the defense of and indemnify any employee up to the statutory limit of \$400,000 of the Maine Tort Claims Act against any claim which arises out of an act or omission occurring within the course or scope of his employment and for which the City is not liable, provided that such defense or indemnification is not contrary to public policy, and the City determines that the employee acted in good faith and did not willfully or knowingly violate any ordinance, rule, or regulation of the City.
- 39.3 In all cases in which the City has assumed the defense of an employee, the City, acting through its Corporation Counsel, has the right to arrange, at the City's expense, for an attorney selected by the Corporation Counsel, to defend the employee. In the event the City determines outside counsel is needed for a particular case, Corporation Counsel will consider counsel requests submitted by an employee but reserve the right to either approve or decline that request. Further, in all cases in which the City has assumed the defense of an employee, the Corporation Counsel may, in its discretion, authorize and accept settlement of the case. Corporation Counsel reserves the right, in **his/her their** discretion, to consult with the City Council prior to settlement in a particular case.
- 39.4 The above legal aid and protection is also extended, on the same terms and conditions, to former employees for claims against them for acts or omissions during their employment with the City in positions covered by this Agreement.
- 39.5 It is a condition of the City's obligation to defend and/or indemnify an employee hereunder that the employee shall fully cooperate with the City in any claim by or against the City regardless of whether the employee works for the City at the time that the claim is filed. "Full cooperation" hereunder shall include, without limitation, providing information to the City and its attorneys, including attorneys designated or hired by the City, appearing and/or participating as a witness in the case when requested to do so by the City, including, without limitation, participating in all pre-trial and trial proceedings. "City" as used under this section shall include officers, employees and agents of the City, including without limitation, attorneys designated or hired by the City. Except in those circumstances where such full cooperation is in conflict with the advice of the employee's legal counsel or is in violation of the employee's constitutional rights, failure to fully cooperate with the City on any case may result in disciplinary action against the employee and denial of the indemnification obligation hereunder unless otherwise required by the Maine Tort Claims Act.
- 39.6 Paragraph 39.5 above may not be construed to imply that an employee who is not a defendant has no duty to fully cooperate with the City and its representatives, when the City and its representatives, in their sole discretion, determine that the employee has information relevant to the claim or the defense of the claim against the City or another employee of the City. In such a situation, except in those circumstances where such full cooperation is in conflict with the advice of the employee's legal counsel or is in violation of the employee's constitutional rights, the non-defendant has a duty to fully cooperate with the City as a condition of employment.

39.7 The City agrees to release the employee from ~~his/her~~ **their** shift for appearances at any necessary proceedings on the date of such proceedings and at the request of the City's designated defense attorney. Should the proceedings conclude prior to the end of the employee's shift, the employee may be required to report for duty for the remainder of ~~his/her~~ **their** shift.

39.7.1 Employees who are required by the City to appear on behalf of the City at a court hearing outside of their regularly scheduled hours will be compensated with three (3) hours of straight time pay or time and one-half pay for actual time spent in pre-trial and trial proceedings, whichever is greater. Employees who work second or third shift and who spent the majority of the day in court may take straight time pay for the hours spent in court and credit these hours against their shift requirement for that day, with pre-approval from the Department Head or designee.

39.7.2 Employees will receive straight time pay for the hours spent in pre-trial and trial proceedings that occur during their regularly scheduled work hours. In the event that the time spent in pre-trial or trial proceedings begins during regularly scheduled hours and extends beyond the end of their regular work day, the employee may be eligible for overtime pay in accordance with Article 14.3 for the additional hours but will not be eligible for the three (3) hour minimum for off-duty hours.

40. PRINTING OF AGREEMENT

40.1 The City agrees to supply the Union with copies of the Agreement in legible print, within forty-five (45) days after the signing of the Agreement.

41. EMBODIMENT OF AGREEMENT

41.1 The Parties acknowledge that during the negotiations which preceded this Agreement each had unlimited rights and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter specifically referred to or covered in this Agreement.

42. UNIT WORK

42.1 The City reserves the right to make all decisions in regard to contracting for the delivery of City services, including the contracting of work normally done by employees in the unit

and even if such contracting results in the layoff of permanent City employees. Except for emergencies, the City agrees to give the Union sixty (60) days' notice of a decision to subcontract unit work when subcontracting would result in the layoff of permanent City employees. Upon written request of the Union, the City shall negotiate the impact of the subcontracting which results in the laying off of permanent City employees. The impact bargaining shall not serve as a bar to the implementation of the said subcontracting.

- 42.2 The City will meet with the Union to discuss the availability of positions within City government for which the laid-off employee is determined to be qualified and the availability of any training programs which may be applicable to the employee. In reviewing these placement possibilities, every effort will be made to seek matches of worker's skills and qualifications with available, comparable positions.

43. TERM OF AGREEMENT

- 43.1 This Agreement shall be effective July 1, ~~2019~~**2022** (unless otherwise specified within) and shall remain in full force and effect until June 30, ~~2021~~**2025**. The Union shall notify the City in writing prior to June 30, ~~2019~~**2022** that it desires to modify this Agreement. If said notice is given, this Agreement shall remain in full force and be effective during the period of negotiations.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement by their
Representatives duly authorized on the date and year stated below.

DATED: _____

FOR THE CITY:

Jon Jennings, City Manager

Thomas Caiazzo, Chief Negotiator

FOR THE UNION:

Steve Lyons
Field Services Director
AFSCME Council 93

James Mackie
President – AFSCME Local 481-00

Scott Ouillette, Labor & Trades

Unit Chair Local 481-00

Mike Vance
Chief Steward - AFSCME Local 481-00

Walter Gray, Local 481-00
Negotiating Committee

Paul Hallstrom, Local 481-00
Negotiating Committee

APPENDIX A

DEFINITIONS OF EMPLOYMENT

- I. **Permanent Employees** are employees who are appointed to a permanently budgeted position on either a full-time or part-time basis and have completed any required probationary period for such position.
- A. **Full-time employees** are regularly scheduled to work the regular work week on a continuing basis. Such employees receive full benefits as outlined in the AFSCME Local 481-00 Agreement between the City and the Union.
- B. **Part-time employees** are regularly scheduled to work less than the regular work week on a continuing basis. Those part-time employees regularly scheduled to work 20 hours a week or more shall be entitled to the following benefits on a pro-rated basis only:
- 1) Sick leave accrual: weekly pro-ration based on either standard hours or actual hours worked (excluding hours compensated with premium pay or in excess of 40 hours), whichever is greater;
 - 2) Vacation accrual: weekly pro-ration based on either standard hours or actual hours worked (excluding hours compensated with premium pay or in excess of 40 hours), whichever is greater;
 - 3) City participation in the cost of medical insurance based on the employee's standard hours; ~~and~~
 - 4) Holidays, except that such employees shall be compensated for a holiday only if it falls on an employee's regularly scheduled work day. Base holiday pay shall equal the number of hours the employee is regularly scheduled to work on that day of the week. Holiday premium pay is outlined in Article 16.5.

Part-time employees who are regularly scheduled to work less than 20 hours a week shall not be entitled to any sick leave, vacation leave, or holidays, and the City shall not participate in any of the cost of medical coverage.

Part-time employees are entitled to overtime pay under Article 12, Overtime, only after they have worked in excess of forty (40) hours per week or in excess of both their regularly scheduled work day and eight (8) hours that day.

APPENDIX A (cont'd)

- II. **Non permanent employees** are on-call, temporary, or seasonal employees as follows, and are excluded from the provisions of this Agreement:
- A. **On-call employees** are persons who are not regularly scheduled to work, but who are available to work on an intermittent, as-needed basis. Such persons shall be paid only for those hours actually worked. A permanent City employee may work in an on-call position, such as cashier at the parking garage, on a regularly scheduled basis as a second City job, but such an employee shall be entitled only to regular pay for such hours worked and shall not be entitled to any other benefits for such on- call employment.
 - B. **Seasonal employees** are persons in positions in an industry designated by the State or by the parties as a seasonal industry, e.g. summer recreation, golf, parks and cemetery programs, Portland's Downtown District, Ferry Terminal, Construction Company and Hadlock Field. The employee will expect to be terminated at the end of the season. Such employees will be paid only for those hours actually worked. Seasonal employees are intended to supplement regular employees.
 - C. **Temporary employees** are persons who are regularly scheduled to work a standard work week or less, for a definite, limited period of time, usually not to exceed six (6) months, or who are appointed to replace an employee on leave of absence or at long-term training. Temporary employees shall not work more than six (6) consecutive months, unless they are replacing a permanent employee on leave. In such cases, employees shall have an estimated termination date from the date of initial employment, but in no case shall such term exceed more than one (1) year except with the concurrence of the Union.
 - D. **Project employees** are persons appointed to work on a special project of limited duration or to a position of longer duration not to exceed two (2) years that is funded by non-City funds; or to fill in for a permanent employee on an approved leave of absence. Project employees may work a standard work week or less and are eligible for full or pro-rated benefits as appropriate under this Agreement on the same basis as permanent full and part-time employees after completion of a probationary period. Notwithstanding the foregoing, Article 24, PERSONNEL REDUCTIONS AND SENIORITY, will not apply to project employees and they will be terminated upon completion of the special project or elimination of the non-City funding source with no bumping or recall rights. All other provisions of this Agreement shall cover project employees on the same basis as permanent employees, except that project employees are excluded by the Maine State Retirement System's regulations from participating in its term life insurance program.

APPENDIX B-1
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

Base Rate Designations

Grade 8

Grade 10

Custodial Worker (reclassified to Grade 11)

Laborer

Grade 11

Custodial Worker

Floating Custodial Worker

Grade 13

Grade 14

Building Maintenance/Custodial Worker
Maintenance Worker

Grade 15

3rd Class Welder Assistant (F) (moved to new market pay plan)

Trades Worker I

Grade 16

Arborist I (moved to new market pay plan)

Journeyman Electrician

Maintenance Worker I

Maintenance Worker I **(Islands) (I)**

Maintenance Worker I (Solid Waste) (G)

Mechanic I (F) (moved to new market pay plan)

Water Resources Technician I

Grade 17

HVAC Technician I (moved to new market pay plan)

Maintenance Worker II

Maintenance Worker II **(Islands) (I)**

Maintenance Worker II (Solid Waste) (H)

Parts Specialist (F)

Trades Worker II

Water Resources Technician II

Grade 18

Arborist II (moved to new market pay plan)

APPENDIX B-1 (cont'd)
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

Facilities Electrician

Facilities Plumber

Horticulturist

Maintenance Worker III

Maintenance Worker III **(Islands) (I)**

Maintenance Worker III (Solid Waste) (H)

~~Mechanic II (F)~~ **(moved to new market pay plan)**

Park Maintainer

~~Parking Meter Technician-III~~

Parks Facilities Assistant

~~PDD Steward~~ **(reclassified to Grade 19)**

Sewer Facilities Technician

Water Resources Technician III

~~2nd Class Welder Machinist (F)~~ **(moved to new market pay plan)**

~~Traffic Computer Sign Operator~~ **(moved to new market pay plan)**

Grade 19

~~Arborist III~~ **(moved to new market pay plan)**

Athletic Facilities Steward

Assistant Dispatcher

~~Autobody Repair Worker (F)~~ **(moved to new market pay plan)**

~~HVAC Technician II~~ **(moved to new market pay plan)**

Master Electrician (B)

~~Mechanic III (F)~~ **(moved to new market pay plan)**

PDD Steward

Playground Technician **(M)**

~~Trades Worker III~~ **(moved to new market pay plan)**

~~Traffic Signal Repair Worker (A) (J)~~ **(moved to new market pay plan)**

~~1st Class Welder Machinist (F)~~ **(moved to new market pay plan)**

Grade 19M

~~Facilities Master Electrician (B) (L)~~ **(moved to new market pay plan)**

~~Facilities Master Plumber (D) (L)~~ **(moved to new market pay plan)**

~~HVAC Technician III (E)~~ **(moved to new market pay plan)**

Recreation ~~Facilities Technician~~ **(moved to new market pay plan)**

~~Systems and Lighting Technician (A) (C) (K)~~ **(moved to new market pay plan)**

~~Water Resources Maintenance Worker III~~ **(moved to new market pay plan)**

Market Rate Designations

16M-ARI

Arborist I

APPENDIX B-1 (cont'd)
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

18M-ARII

Arborist II

19M-ARIII

Arborist III

20M-TW

Trades Worker III

21M-WLI

Welder Machinist I – 2nd Class (F)

22M-WLII

Welder Machinist II – 1st Class (F)

23M-MCI

Auto Technician I (F)

24M-MCII

Auto Technician II (F)

25M-TC

Traffic Computer Sign Operator

26M-PT

Playground Technician

27M-AU

Autobody Repair Worker (F)

28M-TS

Traffic Signal Repair Worker (A) (J)

29M-PF

Recreation Facilities Technician

APPENDIX B-1 (cont'd)
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

30M-WR

Water Resources Senior Technician

31M-WF

Public Buildings & Waterfront Facilities Technician

32M-HVI

HVAC Technician I

33M-HVII

HVAC Technician II (E)

34M-SL

Systems & Lighting Technician (A) (C) (K)

35M-ME

Facilities Master Electrician (B) (L)

36M-MP

Facilities Master Plumber (D) (L)

Airport Market Rate Designations

Grade 15A

Airport Maintenance Worker I (6 month max)

Grade 16A

Airport Maintenance Worker **II I**
Airport Facilities Technician Assistant I

Grade 18A

Airport Facilities Technician Assistant II

Grade 19A

Airport Maintenance Worker **III II**

APPENDIX B-1 (cont'd)
AFSCME/LABOR AND TRADES CLASSIFICATION PLAN

Grade 19MA

~~Airport Airfield Electrician~~ (moved to new market pay plan)
Airport Facilities Technician

Grade 20MA

Airport Airfield Electrician

- (A) Employees in this classification who possess a valid State of Maine Masters Electrician License will receive a 3% stipend in addition to their base weekly pay.
- (B) Employees in this classification who possess IMSA Level II for Fire Alarms or Street Lighting will receive a 3% stipend in addition to their base weekly pay.
- (C) Employees in this classification who possess IMSA Level III traffic signal will receive a 3% stipend in addition to their base weekly pay.
- (D) Employees in this classification who possess a Natural Gas & Propane license will receive a 3% stipend in addition to their base weekly pay.
- (E) Employees in this classification who possess all three of the required will receive a 3% stipend in addition to their base weekly pay.
- (F) Employees in this classification will receive a \$1.00 per hour **Fleet** market rate stipend.
- (G) Employees in this classification will receive a ~~\$0.50~~ **\$1.00** per hour **Solid Waste** market rate stipend.
- (H) Employees in this classification will receive a ~~\$1.00~~ **\$2.00** per hour **Solid Waste** market rate stipend.
- (I) Employees in this classification will receive a \$1.00 per hour Islands market rate stipend.**
- (J) Employees in this classification will receive a \$3.00 per hour market rate stipend.**
- (K) Employees in this classification will receive a \$5.00 per hour market rate stipend.**
- (L) Employees in this classification will receive a 6% per hour market rate stipend.**
- (M) Employees in this classification will receive a \$1.50 per hour market rate stipend.**

Effective 7/7/2019							
Pay Grade	2	3	4	5	6	7	8
	6 mos - 1Yr	1 - 2 Yrs	2 - 4 Yrs	4 - 6 Yrs	6 - 8 Yrs	8 - 12 Yrs	12+ Yrs
6	\$ 578.00	\$ 589.20	\$ 603.20	\$ 619.20	\$ 635.20	\$ 650.80	\$ 670.40
	\$ 14.45	\$ 14.73	\$ 15.08	\$ 15.48	\$ 15.88	\$ 16.27	\$ 16.76
7	\$ 638.40	\$ 652.80	\$ 666.80	\$ 684.00	\$ 702.00	\$ 720.00	\$ 741.60
	\$ 15.96	\$ 16.32	\$ 16.67	\$ 17.10	\$ 17.55	\$ 18.00	\$ 18.54
8	\$ 650.80	\$ 663.60	\$ 680.00	\$ 697.20	\$ 714.00	\$ 732.00	\$ 754.00
	\$ 16.27	\$ 16.59	\$ 17.00	\$ 17.43	\$ 17.85	\$ 18.30	\$ 18.85
10	\$ 674.40	\$ 686.80	\$ 705.20	\$ 722.80	\$ 739.20	\$ 757.60	\$ 780.40
	\$ 16.86	\$ 17.17	\$ 17.63	\$ 18.07	\$ 18.48	\$ 18.94	\$ 19.51
11	\$ 688.00	\$ 702.00	\$ 720.00	\$ 737.20	\$ 755.60	\$ 775.20	\$ 798.40
	\$ 17.20	\$ 17.55	\$ 18.00	\$ 18.43	\$ 18.89	\$ 19.38	\$ 19.96
13	\$ 704.00	\$ 716.80	\$ 736.00	\$ 754.00	\$ 772.80	\$ 792.40	\$ 816.00
	\$ 17.60	\$ 17.92	\$ 18.40	\$ 18.85	\$ 19.32	\$ 19.81	\$ 20.40
14	\$ 721.60	\$ 734.80	\$ 753.20	\$ 771.60	\$ 792.00	\$ 810.00	\$ 834.40
	\$ 18.04	\$ 18.37	\$ 18.83	\$ 19.29	\$ 19.80	\$ 20.25	\$ 20.86
15	\$ 737.20	\$ 752.80	\$ 771.20	\$ 790.80	\$ 809.20	\$ 830.00	\$ 854.80
	\$ 18.43	\$ 18.82	\$ 19.28	\$ 19.77	\$ 20.23	\$ 20.75	\$ 21.37
16	\$ 752.00	\$ 768.40	\$ 785.20	\$ 806.00	\$ 826.00	\$ 845.20	\$ 870.40
	\$ 18.80	\$ 19.21	\$ 19.63	\$ 20.15	\$ 20.65	\$ 21.13	\$ 21.76
17	\$ 770.00	\$ 784.40	\$ 803.60	\$ 824.40	\$ 843.60	\$ 866.40	\$ 892.40
	\$ 19.25	\$ 19.61	\$ 20.09	\$ 20.61	\$ 21.09	\$ 21.66	\$ 22.31
18	\$ 792.40	\$ 806.80	\$ 827.20	\$ 848.80	\$ 869.20	\$ 891.20	\$ 918.00
	\$ 19.81	\$ 20.17	\$ 20.68	\$ 21.22	\$ 21.73	\$ 22.28	\$ 22.95
19	\$ 830.80	\$ 848.80	\$ 869.60	\$ 890.80	\$ 914.40	\$ 936.40	\$ 964.40
	\$ 20.77	\$ 21.22	\$ 21.74	\$ 22.27	\$ 22.86	\$ 23.41	\$ 24.11
19M	\$ 936.00	\$ 964.40	\$ 994.40	\$ 1,023.20	\$ 1,053.20	\$ 1,085.20	\$ 1,117.60
	\$ 23.40	\$ 24.11	\$ 24.86	\$ 25.58	\$ 26.33	\$ 27.13	\$ 27.94
Add new 12+ year step (3% higher than previous step)							

Effective 7/5/2020								
Pay Grade	2	3	4	5	6	7	8	9
	6 mos - 1Yr	1 - 2 Yrs	2 - 4 Yrs	4 - 6 Yrs	6 - 8 Yrs	8 - 12 Yrs	12 - 15 Yrs	15+ Yrs
6	\$ 614.00	\$ 625.60	\$ 639.60	\$ 656.40	\$ 672.80	\$ 688.80	\$ 708.80	\$ 750.00
	\$ 15.35	\$ 15.64	\$ 15.99	\$ 16.41	\$ 16.82	\$ 17.22	\$ 17.72	\$ 18.75
7	\$ 676.00	\$ 690.80	\$ 705.20	\$ 722.80	\$ 741.20	\$ 760.00	\$ 782.00	\$ 825.60
	\$ 16.90	\$ 17.27	\$ 17.63	\$ 18.07	\$ 18.53	\$ 19.00	\$ 19.55	\$ 20.64
8	\$ 688.80	\$ 702.00	\$ 718.80	\$ 736.40	\$ 753.60	\$ 772.00	\$ 794.80	\$ 838.80
	\$ 17.22	\$ 17.55	\$ 17.97	\$ 18.41	\$ 18.84	\$ 19.30	\$ 19.87	\$ 20.97
10	\$ 712.80	\$ 725.60	\$ 744.40	\$ 762.80	\$ 779.60	\$ 798.40	\$ 822.00	\$ 866.80
	\$ 17.82	\$ 18.14	\$ 18.61	\$ 19.07	\$ 19.49	\$ 19.96	\$ 20.55	\$ 21.67
11	\$ 726.80	\$ 741.20	\$ 760.00	\$ 777.60	\$ 796.40	\$ 816.40	\$ 840.40	\$ 885.60
	\$ 18.17	\$ 18.53	\$ 19.00	\$ 19.44	\$ 19.91	\$ 20.41	\$ 21.01	\$ 22.14
13	\$ 743.20	\$ 756.40	\$ 776.40	\$ 794.80	\$ 814.00	\$ 834.00	\$ 858.40	\$ 904.00
	\$ 18.58	\$ 18.91	\$ 19.41	\$ 19.87	\$ 20.35	\$ 20.85	\$ 21.46	\$ 22.60
14	\$ 761.60	\$ 775.20	\$ 794.00	\$ 812.80	\$ 833.60	\$ 852.40	\$ 877.20	\$ 923.60
	\$ 19.04	\$ 19.38	\$ 19.85	\$ 20.32	\$ 20.84	\$ 21.31	\$ 21.93	\$ 23.09
15	\$ 777.60	\$ 793.60	\$ 812.40	\$ 832.40	\$ 851.60	\$ 872.80	\$ 898.40	\$ 945.20
	\$ 19.44	\$ 19.84	\$ 20.31	\$ 20.81	\$ 21.29	\$ 21.82	\$ 22.46	\$ 23.63
16	\$ 792.80	\$ 809.60	\$ 826.80	\$ 848.00	\$ 868.80	\$ 888.40	\$ 914.40	\$ 962.00
	\$ 19.82	\$ 20.24	\$ 20.67	\$ 21.20	\$ 21.72	\$ 22.21	\$ 22.86	\$ 24.05
17	\$ 811.20	\$ 826.00	\$ 845.60	\$ 867.20	\$ 886.80	\$ 910.40	\$ 936.80	\$ 984.80
	\$ 20.28	\$ 20.65	\$ 21.14	\$ 21.68	\$ 22.17	\$ 22.76	\$ 23.42	\$ 24.62
18	\$ 834.00	\$ 848.80	\$ 870.00	\$ 892.00	\$ 913.20	\$ 935.60	\$ 963.20	\$1,012.00
	\$ 20.85	\$ 21.22	\$ 21.75	\$ 22.30	\$ 22.83	\$ 23.39	\$ 24.08	\$ 25.30
19	\$ 873.60	\$ 892.00	\$ 913.60	\$ 935.20	\$ 959.60	\$ 982.00	\$1,010.80	\$1,061.20
	\$ 21.84	\$ 22.30	\$ 22.84	\$ 23.38	\$ 23.99	\$ 24.55	\$ 25.27	\$ 26.53
19M	\$ 981.60	\$1,010.80	\$1,041.60	\$1,071.20	\$1,102.00	\$1,135.20	\$1,168.40	\$1,223.60
	\$ 24.54	\$ 25.27	\$ 26.04	\$ 26.78	\$ 27.55	\$ 28.38	\$ 29.21	\$ 30.59

Add new 15+ year step (3% higher than previous step. Also add in \$.50 per hour that covers pants, meal allowance, boots and winter stipend.

AIRPORT PAY SCALE									
AFSCME Labor & Trades									
Effective July 2019									
2.50%									
PAY GRADE		Recruit	2	3	4	5	6	7	8
			6 mos- 1yr	1-2 yrs	2-4 yrs	4-6 yrs	6-8 yrs	8 - 12 yrs	12+ yrs
15A		\$18.21							
16A		\$20.24	\$21.08	\$21.56	\$22.03	\$22.61	\$23.15	\$23.70	\$24.41
18A		\$21.01	\$21.88	\$22.28	\$22.84	\$23.44	\$24.02	\$24.61	\$25.35
19A		\$22.11	\$23.04	\$23.52	\$24.11	\$24.69	\$25.34	\$25.95	\$26.73
19MA		\$24.88	\$25.91	\$26.71	\$27.54	\$28.33	\$29.19	\$30.07	\$30.97

AIRPORT PAY SCALE										
AFSCME Labor & Trades										
Effective July 2020										
2.75%										
PAY GRADE		Recruit	2	3	4	5	6	7	8	9
			6 mos- 1yr	1-2 yrs	2-4 yrs	4-6 yrs	6-8 yrs	8 - 12 yrs	12 -15 yrs	15+ yrs
15A		\$18.71								
16A		\$20.80	\$21.66	\$22.15	\$22.64	\$23.23	\$23.79	\$24.35	\$25.08	\$25.83
18A		\$21.59	\$22.48	\$22.89	\$23.47	\$24.08	\$24.68	\$25.29	\$26.05	\$26.83
19A		\$22.72	\$23.67	\$24.17	\$24.77	\$25.37	\$26.04	\$26.66	\$27.47	\$28.29
19MA		\$25.56	\$26.62	\$27.44	\$28.30	\$29.11	\$29.99	\$30.90	\$31.82	\$32.77

- Effective October 2, 2017 the new Airport market rate pay plans went into effect. All stipends and additional add pays went away as they are now built into the pay plan.

APPENDIX C-1

UNION INTENT STATEMENT

It is the intent of the collective bargaining units of APSOME Locals 481 and 1373 to incorporate into the collective bargaining agreements a fair and objective performance appraisal process which will be used to evaluate our members on a yearly basis.

Our goal is to create a performance review tool which is effective in reviewing an employee's job performance in many fair and objective categories while minimizing subjective or critical assessments of their abilities.

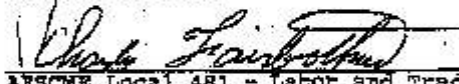
The annual performance evaluation should be a positive and constructive experience which recognizes performance that fulfills or exceeds job requirements and also develops a plan to correct or modify performance that needs improvement.

Locals 481 and 1373 urge you to participate in the performance appraisal process in a jointly cooperative manner that enhances job satisfaction and promotes customer service.



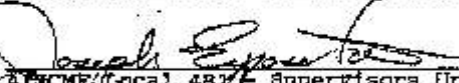
CESA Local 1373

1-17-96
Date



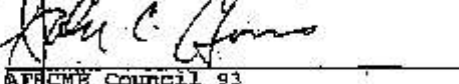
APSCME Local 481 - Labor and Trades Unit

1-17-96
Date



APSCME Local 481 - Supervisors Unit

1-17-1996
Date



APSCME Council 93

1-17-96
Date

APPENDIX C-2

PERFORMANCE APPRAISAL PROCESS

1. At the time of hire, each employee receives the following information and documents:
 - City mission statement
 - Division and department mission statement
 - Job description
 - Department/division work rules, policies and procedures
 - List of department/division performance expectations not covered by the above documents
 - Performance appraisal form and intent statement

These materials are discussed with the employee and the employee signs off that s/he has received the documents and understands the information. The employee receives a copy of the sign off sheet and a copy is forwarded to Human Resources for the employee's personnel file.

2. Each employee receives a three (3) and six (6) month appraisal during their first six months of employment. Within the first six (6) months the manager must decide if they are recommending that this employee be retained on a permanent basis. At the six (6) month appraisal, goals and objectives are jointly developed for the next six (6) month period in preparation for the annual appraisal.

3. Each employee receives an annual appraisal twelve (12) months from date of hire and subsequent annual appraisals on the anniversary date. When employees change classifications, their performance appraisal anniversary date changes to reflect time in their current position. All appraisals should be completed within thirty (30) days of the anniversary date. They should be done as close to the anniversary date as possible.

- A. The employee is given the option of submitting a self-appraisal to their supervisor prior to the supervisor rating the employee's performance. The supervisor and employee may decide to exchange forms at the appraisal discussion instead of the employee submitting their form first.

The supervisor will then complete the appraisal form and provide the employee with a copy. In the categories that the supervisor rates the employee's performance at either the high or low end of the scale, s/he must support the rating with examples in the comment section for that category. Supervisors are encouraged to provide examples in all categories; employees are encouraged to do the same on the self-appraisal.

In order to make the appraisal as complete and objective as possible, the supervisor may solicit input from others prior to completing the appraisal, including input from the manager who will review the complete appraisal and other persons who have supervised the employee during the rating period. If input is solicited from persons other than the rater and reviewer, they should be noted on the appraisal form and also the period of time they provided supervision to the employee.

- B. The performance appraisal discussion will be held in a location where there will be no interruptions and at a time that is convenient for both parties. It is recommended that an hour be allotted for each performance appraisal discussion. The full hour may not be needed for every performance appraisal, depending on the amount of discussion needed to fully cover all

-2-

performance categories. It is preferable to allot more time than is necessary and end early than to run out of time and need to either rush or reschedule the discussion.

- C. The appraisal is a summary of the previous year's performance and should reflect the full twelve months. It should include both what the employee has done well and the areas that are in need of improvement. The comment lines below each category are to be used to further explain the rating or to provide examples that support the rating. The information provided in the appraisal should not be new to the employee; feedback should be given throughout the year and documented by the supervisor in a personnel file for future reference.
 - D. Personal goals and objectives are then jointly developed for the next rating period. The employee's personal goals and objectives should reflect the employee's role or contribution towards achievement of the group goals. Their goals should build on areas of strength and address issues of personal growth that will enhance their ability to make significant contributions to the work team, the division and the department. There should be a thorough discussion about what support the employee needs in order to accomplish these goals and objectives.
 - E. The employee may add comments to the appraisal form if they disagree with the appraisal or portions thereof.
4. The completed appraisal form is submitted to the Reviewer for his/her **their** signature and comments and then to the appropriate Division or Department Head or designee for signature and review. The appraisal is returned to the employee for their final sign-off and then it is forwarded to Human Resources. The employee will be offered a copy of the appraisal.
- At the employee's request, the self-appraisal completed by the employee will be attached to the appraisal completed by the rater (which is the official appraisal) when it is submitted to Human Resources for placement in the employee's personnel file.
- 5. It is recommended that the employee and supervisor meet mid-year for a progress check on their jointly developed goals and objectives. A mid-year check is required if, in the supervisor's opinion, the employee's performance is deficient in any of the categories. This discussion will be documented. The supervisor and employee may also need to meet if the employee's goals need to be revised. Changes in work team goals, unanticipated needs that arise, or noticeable changes in the employee's performance may make this appropriate. At any time, the employee may request to meet with their supervisor to discuss their goals and objectives. Employees are encouraged to monitor their own performance and to initiate discussions with their supervisor during the rating period if they have questions or concerns about their progress.
 - 6. When a supervisor leaves City employment, they will provide the employee with a written assessment of the employee's performance using the performance appraisal form. This appraisal will be placed in the employee's personnel file along with any comments the employee wishes to make. Each Department is responsible for ensuring that this occurs prior to the supervisor's departure.

APPENDIX C-3
AFSCME Units Annual Performance Appraisal
Six Month – Annual

The City and Union jointly encourage all employees to self-evaluate. A copy of this form will be provided to the employee for their self evaluation.

Name:

Distribution:

Job Title:

Appointment Date:

Rating Period:

Union Affiliation:

Rater:

Please check the statement(s) in each category that best describe(s) employee performance during the rating period.

1. Job Knowledge: Knowledge of procedures and processes required to do the job.

Supervisor Employee

- a. Has mastered all duties and/or skills and is creative in his/her **their** approach to doing the job.
- b. Is competent in dealing with difficult or complex issues, and understands all phases of their job.
- c. Demonstrates adequate knowledge of routine aspects of job.
- d. Barely satisfactory knowledge of routine aspects of job.
- e. Lack of knowledge affects productivity.

Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

2. Quantity of Work: Attention to work process, workload, timeliness and deadlines.

Supervisor Employee

- a. Industrious, does more than is required without compromising time management or quality.
- b. Always completes acceptable amount of work.
- c. Usually completes an acceptable amount of work.
- d. Not completing acceptable amount of work.

Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

3. Quality of Work: Applies job knowledge to achieving division mission.

Supervisor Employee

- a. Applies creative assessment and problem solving to their work process.
- b. Has a grasp of work process which produces effective results that meet quality and accuracy standards.....
- c. Has a basic understanding of the work process, applies it sporadically.
- d. Lacks a basic understanding of work process.

Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

APPENDIX C-3 (cont'd)

Performance Review – Page 2

4. Judgement and Decision Making: Ability to make sound decisions and appropriate recommendations.

Supervisor Employee

- a. Applies logic to data collection/decisions, recommendations reflect above average insight and foresight.....
 - b. Usually makes sound decisions (decisions which are relevant, based on guidelines and other resources).....
 - c. Sometimes does not evaluate all relevant data before arriving at a decision.
 - d. Makes poor decisions, avoids making decisions.
- Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

5. Effort/Initiative: Extent that the employee sees what needs to be done and does it without being told or reminded.
Commitment to get the work done and furthering the Division mission.

Supervisor Employee

- a. Is consistently self-directed while honoring policy limits; behavior exemplifies Division mission.
 - b. Takes initiative to work on tasks, puts forth adequate effort to achieve job requirements, behavior is consistent with Division mission.
 - c. Needs occasional prompting, puts forth minimal effort, behavior occasionally supports Division mission.....
 - d. Needs frequent prompting; puts forth no effort, behavior may contradict Division mission.
- Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

6. Planning and Organizing: Orderliness, efficiency and planning ahead.

Supervisor Employee

- a. Able to anticipate events and organize work effectively in unusual or emergency situations.
 - b. Highly efficient and organized; plans ahead; strong overall sense of work priorities.
 - c. Efficient, plans work and utilizes time properly, realizes work priorities.
 - d. Occasional tendency to put work off, work backs up.
 - e. Little inclination for devising better means of managing time, poor organizer.
- Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

7. Internal Communication: The degree to which the employee engages in and takes responsibility for two-way communication with co-workers, supervisors, and subordinates.

Supervisor Employee

- a. Consistently demonstrates the ability to listen effectively, clarifying statements of others as necessary and articulates thoughts clearly and appropriately.
 - b. Demonstrates ability to listen and process information effectively and accurately.
 - c. Has difficulty listening, does not always transfer accurate information effectively, and does not always articulate thoughts clearly and appropriately.
 - d. Does not listen or articulate thoughts clearly and appropriately; may perpetuate misinformation.
- Comments: _____

Category Rating: _____ Exceeds Requirements _____ Fulfills Requirements _____ Needs Improvement

APPENDIX C-3 (cont'd)

Performance Review – Page 3

8. Personal and Job Growth: The degree to which the employee seeks to expand professionally.

Supervisor Employee

- a. Actively pursues opportunities for growth and development.
- b. Seeks out feedback and makes extra effort to improve, regularly accepts and takes advantage of opportunities for growth and development.
- c. Accepts performance feedback; makes effort to change and sustains that effort; attends mandatory training as required.....
- d. Has difficulty accepting performance feedback and expresses little interest in training opportunities; requires prompting to sign up for required training.
- e. Ignores performance feedback; consistently refuses offers for skills training or professional development; does not sign up for required training.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

9. Customer Service: The degree to which the employee views customers as partners and facilitates access to services, without regard to individual differences.

Supervisor Employee

- a. May identify customer service trends and applies creative thinking to improve all aspects of customer service while providing high quality service to all customers.
- b. Solicits feedback from all customers and communicates this information to appropriate staff.
- c. Exhibits commitment to fulfilling our obligation to serve all customers.
- d. Exhibits limited commitment to the need to incorporate customer service concepts into routine.
- e. Exhibits no commitment to the need to incorporate customer service concepts into practice.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

10. Contribution to Team Effort: The degree to which an employee contributes to a positive work environment through respectfulness, creativity, cooperation and teamwork.

Supervisor Employee

- a. Demonstrates positive team leadership ability; seeks opportunities to work with all persons.
- b. Consistently makes positive contributions to team effort; reaches out to all team members and includes them in work efforts and team activities.
- c. Makes an overall positive contribution to team effort; makes effort to include all team members in work efforts and team activities.
- d. Makes minimal contributions to team effort; may exclude some team members from work efforts or team activities.....
- e. Undermines team effort; excludes some team members from work efforts or team activities.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

11. Safety: The degree to which the employee contributes to work place safety.

Supervisor Employee

- a. Actively contributes to departmental safety efforts.
- b. Identifies unsafe working conditions and notifies appropriate personnel.
- c. Uses good judgment and follows safety guidelines.
- d. Occasionally neglects safety guidelines.
- e. Engages in unsafe behaviors; disregards safety guidelines.

Comments: _____

APPENDIX C-3 (cont'd)

Performance Review – Page 4

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

12. Use of City Resources: The degree to which the employee maintains City equipment and materials.

Supervisor Employee

- a. Exhibits a superior use and care of City resources.
- b. Exhibits strong commitment to maintenance and conservation of City resources.
- c. Pays adequate attention to maintenance and conservation of City equipment and resources.
- d. Makes minimal effort towards maintenance of City equipment and resources.
- e. Does not pay attention to maintenance of City equipment and resources.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

13. Attendance: The degree to which the employee is at work and on time.

Supervisor Employee

- a. Absences or tardiness are rare.
- b. Absences and tardiness are within acceptable range as defined by Department policy; or the City average if there is no Department policy. Absences may exceed City average if there was an isolated extended period of sickness.
- c. Absences or tardiness exceed acceptable standard; a chronic pattern of absenteeism may exist.
- d. Is often absent or late; chronic pattern of absenteeism exists.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

Fill out the next section (14) only on employees with supervisory responsibilities.

14. Supervisory Responsibilities: The degree to which the employee has developed effective leadership abilities and provides effective leadership to their team without regard to individual differences.

Supervisor Employee

- a. Supervisor has developed a high performing team and most decisions are made by the team; supervisor encourages creativity and initiative among all team members.
- b. Supervisor has delegated some decision-making to team and regularly provides team development opportunities; demonstrates effective leadership and conflict resolution skills.
- c. Supervisor is an effective team leader to all team members; seeks to motivate all employees to apply themselves to their work; demonstrates basic conflict resolution skills.
- d. Supervisor does not provide work team with leadership necessary to be an effective team; employee motivation and conflict resolution skills are below average.

Comments: _____

Category Rating: ____ Exceeds Requirements ____ Fulfills Requirements ____ Needs Improvement

Overall Summary of Performance and Accomplishments in the last rating period:

APPENDIX C-3 (cont'd)

Performance Review – Page 5

Goals and Areas of Job Growth for the next rating period.

List goals as discussed between supervisor and employee. Describe how they will be achieved.

Employee Comments

Did you choose to self-evaluate? **Yes** **No**

How can your supervisor/employer **support** you in your growth?

What type of training or work opportunity is needed for successful completion of your goals?

After reviewing this evaluation I choose to take the following action:

_____ I am in agreement with this performance appraisal; no action is needed.

_____ I am not in full agreement of my evaluation, discussions with my rater have failed to satisfy me but I elect to take no action.

_____ I choose to meet with my Department personnel to attempt to resolve my concerns. I am not waiving my rights to file a grievance in accordance with my Union contract if this meeting does not meet my needs. My Union Steward is allowed to attend if I so choose.

_____ I disagree with my evaluation and wish to have a meeting with the Director of Human Resources, but am not waiving my rights to file a grievance.

_____ I disagree with my evaluation and intend to follow the grievance procedures as outlined in the Union contract.

Rater and Reviewer Authorization

Rater Signature

Date

Reviewer Comments: _____

Reviewer Signature

Date

Signature of Department Head/Division Head
(if other than reviewer)_____

Date

Employee Confirmation

Comments:

Final signature: I have reviewed this evaluation, Rater and Reviewer comments, and my signature signifies that I am aware of its contents.

Employee Signature

Date

APPENDIX C-4

PERFORMANCE IMPROVEMENT PROGRAM

Improvement is necessary in the following areas, and will be reviewed in six weeks with the employee:

<u>Performance Factors</u>	<u>Improvement Needed</u>
1. Job Knowledge	
2. Quantity of Work	
3. Quality of Work	
4. Judgment and Decision Making	
5. Effort/Initiative	
6. Planning and Organization	
7. Internal Communication	
8. Personal and Job Growth	

APPENDIX C-4 (cont'd)

9. Customer Service _____

10. Contribution to Team Effort _____

11. Safety _____

12. Use of City Resources _____

13. Attendance _____

14. Supervisory Skills
(if applicable) _____

Employee Comments:

Rater Comments:

Employee Signature

Date

Rater Signature

Date

Reviewer Signature

Date

Dept/Division Head Signature

Date

APPENDIX D
LABOR AND TRADES
JOB FAMILIES

1. Mechanical Services

Mechanic III

Autobody Repair Worker

Mechanic Auto Technician II

Mechanic Auto Technician I

Parts Specialist

2. Maintenance Operations

Parks Recreation Facilities Technician

Athletic Facilities Steward

Maintenance Worker III/Parks Facilities Assistant/PDD Steward/**WR Technician III**

Maintenance Worker II/ **WR Technician II/WR Technician I**

Maintenance Worker I

Maintenance Worker

Laborer

Horticulturist

Park Maintainer

Playground Technician

3. Support Staff

Building Maintenance/Custodial Worker

Floating Custodial Worker

Custodial Worker

4. Welding Services

1st-Class Welder Machinist II

2nd-Class Welder Machinist I

3rd-Class Welder Assistant

5. Electrical Services

Airport Airfield Electrician/Facilities Master Electrician/

Systems and Lighting Technician/Airport Facilities Technician (Electrical)

Master Electrician

Airport Facilities Technician Assistant II (Electrical)/Facilities Electrician

Journeyman Electrician/Airport Facilities Technician Assistant (Electrical)

6. Airport Facilities

Airport Facilities Technician (HVAC)

Airport Facilities Technician Assistant II (HVAC)

Airport Facilities Technician Assistant I (HVAC)

Appendix D (cont'd)

7. Airport Operations

~~Airport Maintenance Worker III~~

Airport Maintenance Worker II

Airport maintenance Worker I

Airport Airfield Electrician

8. Forestry Operations

Arborist III

Arborist II

Arborist I

9. Facilities Management

Facilities Master Plumber

~~HVAC III~~

HVAC **Technician** II

HVAC **Technician** I

Trades Worker III

Trades Worker II

Facilities Plumber

Trades Worker I

Public Buildings & Waterfront Facilities Technician

10. Positions Not Grouped

Assistant Dispatcher

Traffic Signal Repair Worker

Traffic Sign Computer Operator

Water Resources Senior Technician

APPENDIX E-1

City of Portland Transitional Work Policy

It is the policy of the City of Portland to provide suitable return-to-work/transitional work opportunities for employees who have a work capacity, following a work-related injury or illness. These transitional work assignments are designed to enable the employee to return to work in a productive capacity, focusing on his or her abilities to work within the restrictions or limitations prescribed by the medical practitioner.

Transitional Work assignments and job restrictions are coordinated by the employee's supervisor, departmental Workers' Compensation Liaison and the Workers' Compensation and Safety Manager. Assignments are temporary in accordance with labor contracts and Workers' Compensation Law.

Each assignment requires active participation of all parties to ensure that the employee's abilities are properly matched with job requirements, thereby avoiding any further injury. Every effort is made to find work similar to the employee's pre-injury assignment but may on occasion require working in another department. The return-to-work program's ultimate priority is to have the employee return to their regular assignment in a safe and timely manner.

Any employee working a transitional work assignment or with restrictions must communicate frequently with their supervisor, Workers' Compensation liaison, and the Workers' Compensation and Safety Manager regarding worsening or improvement of their condition or changes in the prescribed restrictions.

Excerpted from July 12, 2004 revision of City's Risk Manual, Section III – Work Related Injuries and Reporting

APPENDIX E-2

TRANSITIONAL WORK AGREEMENT

The Employee and Employer hereby enter into this agreement for a period of Transitional Work as follows:

- 1) The date upon which the Employee sustained an injury is _____, 20____.
- 2) Pursuant to the City of Portland's Transitional Work Program, the Employee will return to work in a Transitional Work assignment on _____, 20____.
- 3) Attached is a copy of the Transitional Work Program of the City of Portland which the Employee has read and understood.
- 4) The parties agree that the term of this Transitional Work Assignment shall be 90 days from the return to work date above to _____, 20____.

Dated this ____ day of _____, 20____.

Employee

City of Portland

APPENDIX F

MEMORANDUM OF AGREEMENT

The purpose of this agreement is to confirm the understanding of the parties concerning the use of workfare clients.

1. Workfare clients will be used for projects or seasonal work. However, to preserve as many unit positions as possible and to allow the City maximum flexibility, workfare clients may be given assignments listed on Attachment A. Individual exceptions may be made by the Union signatories. Social Services will coordinate assignment of workfare clients with departmental needs in accordance with this intent. Should a question arise concerning the assignment of workfare clients, the City will meet with the Union promptly to discuss and resolve the question.
2. Whenever Workfare clients are assigned to work with regular City employees, such assignments will be of a laboring or entry-level clerical nature and will not include the use of equipment that is not normally used by such entry-level employees.
3. Workfare clients will be allowed to operate hand mowers, string trimmers and similar equipment, but will not be allowed to operate other motorized equipment.
4. Workfare clients will be allowed to work in the place of temporary and seasonal employees provided that the above-outlined qualifications apply.
5. Direct supervision of workfare clients will be provided by regular City employees. Any Labor and Trades employee supervising workfare clients will be compensated at his/her **their** regular rate, or, if supervising four or more at grade 18.
6. Workfare clients will be provided with a workfare orientation by Social Services with reinforcement provided by City staff. Appropriate job site training will be provided by City staff.
7. Social Services will provide workfare clients with necessary work clothing such as work boots, gloves.
8. City employees and workfare clients will treat each other with respect.
9. Social Services will monitor workfare assignments, client performance, training needs, and supervision through job site visits as needed.
10. The parties agree to meet when requested to do so.

APPENDIX F (cont'd)

This agreement shall continue until terminated by either party. The terminating party shall give at least 30 days’ notice of its intent to terminate. Changes may be made by mutual agreement of both parties at any time.

For the City of Portland

Date

For AFSCME Council 93

Date

For Labor and Trades Unit

Date

APPENDIX F (cont'd)

ATTACHMENT A

City Workfare Locations and Example Assignments

Parks and Open Spaces Division:

Parks, Cemeteries and Open Spaces - Litter patrol, raking, weeding, trimming, mowing, seeding, planting flowers

Golf Course – Litter patrol, raking, mowing

Health and Human Services Department:

Barron Center – Grounds work and custodial related projects, including building maintenance.

Social Services - Oxford Street Shelter and Family Shelter - custodial and building maintenance, light clerical tasks such as filing, photocopying, etc.

Recreation and Facilities Management Department

Public Buildings Division - custodial and building maintenance

Public Services Department

Streets and Utilities Division - patching, hand sweeping, reclamation site inventory and sorting, litter patrol

Central Services Division - cleaning equipment, custodial services

Engineering Division:

Traffic Section - painting, sign pole straightening

Engineering Section - filing, data entry

Police Department - litter patrol, cruiser cleaning, custodial services, building maintenance

Aviation and Transportation Department

Maine State Pier, Fish Pier, International Ferry Terminal, Jetport - litter patrol, sweeping, hand painting, weeding, separating fish net

APPENDIX G

BARRON CENTER SIDE AGREEMENT

The City of Portland and AFSCME Local 481-00 in an attempt to institute a sick leave usage incentive program have mutually agreed to the following program at the Barron Center:

1. Notwithstanding Article 24 - SICK LEAVE and Article 17 VACATION, effective January 1, 1987 and continuing, the AFSCME Labor and Trades bargaining unit members located at the Barron Center shall be participating in the City's sick leave incentive plan.
2. Sick leave shall accrue at the rate of .92 hours per week with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 48 hours. The year-end adjustment for employees who have not been employed for a full calendar year will be based on a pro-ration of the annual amount.
3. Vacations shall accrue according to the following schedule:

0 - 3 years - 2 weeks - 1.54 hours per week
3+ - 5 years - 3 weeks - 2.31 hours per week
5+- 9 years - 4 weeks - 3.08 hours per week
9 + years - 5 weeks - 3.85 hours per week

The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with annual accrual amounts of 80 hours, 120 hours, 160 hours and 200 hours. The year-end adjustment for employees who have not been employed for the full calendar year will be based on a pro-ration of these annual amounts.

4. The provisions of the collective bargaining agreement pertaining to unused sick leave upon retirement shall be prorated consistent with the terms of this side letter.
5. The provision for conversion of sick leave to vacation in Article 24.3 is modified as follows: a Barron Center employee is eligible for conversion if (s)he uses the equivalent of one or fewer sick days within a twelve (12) consecutive month period.

For the City of Portland

Date

For AFSCME Council 93

Date

For Labor & Trades Unit

Date

APPENDIX H WINTER PERIOD DEPARTMENTAL PROCEDURES

General procedures that apply to all departments are outlined in Article 14.11. Additional procedures that are specific to individual departments are outlined below.

Public Works

1. The winter period shall begin the first full week in November and end on the Saturday of the last full week in April. Winter shift assignments will begin on the Sunday following Thanksgiving.
2. Employees will work either a Monday through Friday eight (8) hour schedule, or a weekend schedule of three thirteen (13) hour days. The Department will determine the number of employees on each shift no later than September 1 each year.
3. Employees shall remain available and able to be reached by telephone during periods of imminent weather. These employees shall submit only one telephone number to the Communications Center which shall be the number used for this purpose.
4. The Department maintains an overtime log book in the Communications Center. Employees interested in volunteering for overtime that may occur during the upcoming week may sign up on any day of the week. If additional employees are needed for a shift or operation, the volunteers will be called in the order they appear on the winter overtime list. If there are not enough volunteers to meet the department's need, employees who did not volunteer will be called in from the overtime list.
 - A. Any volunteer who does not accept the overtime, or is not available, will be referred to management for review.
 - B. If there are not enough volunteers to meet the department's need and the employees who did not volunteer are called in, these employees will be considered to have been "forced in" because all overtime during the winter period continues to be mandatory.
 - C. Because the voluntary component of these procedures impacts the City's ability to equalize overtime, the Union agrees that equalization of overtime grievances will not be filed providing that the procedures outlined above are followed.
5. Solid Waste personnel will not be expected to assist with the plowing effort on a scheduled work day during their shift unless trash and recycling pickup is cancelled. If Solid Waste personnel are required to work overtime during the winter period, they will be guaranteed eight (8) hours off between shifts unless volunteering to stay on until trash/recycling is finished.

6. ~~The following stipends are in effect for the winter period:~~

APPENDIX H (cont'd)

~~A. All OPP current/future qualified employees will receive sixty cents (\$.60) for all hours worked during the winter operations period as defined in Article 14.11.1 and Appendix H. 1. Eliminated effective July 5, 2020.~~

6. ~~These e~~ Employees will not be required to operate ~~a one person unit~~ **winter related equipment** for more than sixteen (16) consecutive hours unless on a volunteer basis up to twenty (20) hours.

~~B. All other employees from other departments who are OPP qualified and who assist Public Works during winter ops will receive \$2.00 per hour base pay during a plowing storm or a sand/salt operation. These employees will not be required to operate a one person plow unit for more than sixteen (16) consecutive hours.~~

7. When employees request a winter vacation, they will designate whether or not they will be available during the Sunday through Saturday period of the vacation. Employees who indicate they will be available will not receive vacation call-in pay if they respond to calls during their normal working hours, including weekend periods, and they are not eligible for vacation call-in pay outside of these hours. They will be given option of taking vacation pay, in addition to overtime, or they may reschedule vacation time and not receive vacation pay. Employees who indicate they are not available are eligible for vacation call-in pay if they are called during the 24-hour period (midnight to midnight) of the vacation day. Normally, employees will not be called while on scheduled vacation; however, if an employee is called while on scheduled vacation, they will notify the Dispatcher that they are on scheduled vacation.
8. Three (3) employees for first shift and one (1) employee per shift for second, third and weekend day shifts will be allowed to be on vacation during the winter period. Vacation requests that are being requested for the first full week in November thru the last full week in April must be submitted in writing to the Winter Manager, or designee, during the month of September and will be processed after the winter shift schedule is finalized. Employees will be informed by October 15 if their vacation request has been approved or denied. The winter period vacations will be scheduled in accordance with a "pick" procedure. On the first "pick" employees who submitted a vacation request in September for the upcoming winter period will be granted time by seniority for one period of consecutive days off (up to a two week maximum). After all employees have had their first "pick" a second pick will be done in order of seniority for open slots on the schedule. This procedure will continue until the winter vacation schedule has been filled or all employee requests have been processed, whichever occurs first. Employees who do not submit a vacation request prior to October 1st may schedule vacation time on a first come-first served basis after the schedule as described above is finalized. The Winter Manager, or designee, may at any time grant more vacations than described above that allow additional vacations on an "available" basis, meaning the employee can be off on vacation but may be called in if there is a winter event. Employees who are allowed to be off on vacation on an "available" basis will not receive vacation callback pay.

APPENDIX H (cont'd)

9. Public Works Director or designee evaluates hardships based on an annual basis, not a seasonal basis. The hardship period begins on the last Sunday in November and continues through the last Saturday in November of the following year. Hardship requests that develop during the year (following the submission date of September 1) may be submitted at the time they become known to the employee.
10. The following employees shall be exempted from winter shifts:
 - Traffic Computer Sign Operator
 - Solid Waste
 - Portland Downtown District
 - Systems and Lighting Technicians
 - Water Resources
 - Islands
 - Fleet services (shifts applicable to Fleet functions only)
 - Assistant Dispatcher
 - Traffic Signal Repair Worker
11. During a winter plowing event, unless otherwise specified herein, employees will be assigned to street sanding/salting, plowing and all other Departmental snow removal operations. The on-call primary responder for the Water Resources Division and the Traffic Division shall be exempt from winter operations for the period they are on-call unless they voluntarily sign the overtime book or a state of emergency is declared by the City Manager or ~~his/her~~ **their** designee.
12. During the winter period, overtime that is unrelated to winter may be necessary if the work cannot be done during regular hours. If this is the case, the overtime will be scheduled by section first and then by the overtime log book. The employee signing the overtime log book must be qualified to do the work. Employees looking to work the overtime by section will still be required to sign the overtime log book.
13. If needed, up to three (3) employees per storm from the Public Buildings Division will be provided during the winter period. If needed, employees from Cemeteries, Forestry, Horticulture and Athletic Facilities Division will be utilized to assist the Department of Public Works with plowing and other winter operational functions.
 - A. Other department personnel who assist Public Works with plowing may participate in Public Works voluntary sign-up procedure described in #4 of the Public Works section of Appendix H. Other department personnel will only be offered overtime after all Public Works volunteers on the list have been contacted. There will be no effort to equalize distribution of overtime to other department volunteers.

APPENDIX J

JETPORT PROCEDURES

I. Winter Work Rules

The ability of the Aviation and Transportation Department to carry out vital City operations during the winter depends on the faithful observance of these RULES by employees involved in winter operations.

- A. Overtime is not voluntary between November 15 and April 15. No employee shall fail or refuse to report for overtime work when directed to report for overtime work at any time during the period of November 15 through April 15. (Or during periods of imminent danger to the health, safety, and property of Portland citizens.)
- B. Employees shall be available to be called for overtime work during the period of November 15 through April 15 at all of the following times:
 - 1. When directed to be available.
 - 2. When weather forecasts predict snow, icing, high winds and/or tides, heavy rains, possible refreezing, etc. Each employee is responsible for checking forecasts posted near their time clock.
 - 3. During Winter Precipitation at the Jetport all employees will be kept as informed as possible as to the likelihood of call-in to minimize disruptions of their off-time. However some situations occur unforeseen.
- C. The employee must keep telephone lines reasonably open and available for calls. Employees shall provide the department with their home telephone number. They may provide another telephone number for winter calls. If they provide a second telephone number they will inform the Department management which is the primary number and which is the secondary number.
- D. The employee must be able to be reached in a manner acceptable to the Department. The employee will be responsible for notifying the Department of how it can contact the employee.
- E. City-furnished telephone pagers offer the employee the ability to move about normally during the winter months with the condition of reasonable availability. Use of these pagers is recommended when furnished. Maintenance employees who elect not to accept a City-furnished pager and who choose to use a cell phone as their primary number for the winter period may request and receive a dollar amount equivalent to what the City would have spent for the pager.

APPENDIX J (cont'd)

- F. An employee may request to be excused from the requirements of being available for overtime work as stated in Rule 2. A request to be excused will be permitted only if received no later than noon the day before, except in special cases. These requests will not be granted automatically but will depend upon the needs of the Department.
- G. Snow removal vehicle assignments will be made storm by storm by the Director of Operations or Designee. Maintenance Workers may be asked to operate a variety of pieces of equipment, depending on the needs of the Department at any particular time.
- H. The department will address absences on a case-by-case basis and may take whatever action it deems necessary.
- I. Any employee who is unable to report for snow plowing because of illness should contact the Department immediately and make this known to the individual in charge. The Department reserves the right to require medical certificates.
- J. Guidelines for Taking Breaks
 - 1. Drivers should take a ten-minute stretch break at least every two hours.
 - 2. Drivers should take regular meal breaks at convenient times.
 - 3. After approximately 12 hours of work, drivers should take a thirty (30) minute break for a meal or rest stop.
 - 4. A work limit of 16 continuous hours should be followed unless the driver and Supervisor agree that unusual conditions require the hours to be extended. The final decision as to driving longer than 16 hours will be made by the Airport Operations Manager or **his/her** **their** designee.
 - 5. Drivers should take a break from plowing duties whenever they feel they are too tired to drive safely on the airfield.
 - 6. A fine balance must be maintained between keeping our properties safe and employee off-time/breaks. At times, a somewhat extended "PUSH" followed by a longer rest break may need to be employed - safety being the controlling factor.
- L. The following procedure will be used at the Jetport for scheduling winter operations:

APPENDIX J (cont'd)

1. Employees will submit vacation requests for the upcoming winter period on the first three (3) business days following September 15. All requests submitted during this time period will be reviewed on the following business day and will be treated as if they were received on the same date. Only one person may be on vacation at a time and seniority will determine who receives the vacation if more than one person has requested the same time off except that employees requesting a full week off will receive priority over more senior employees requesting a single day off.
2. The winter vacation schedule will be posted on a board and will be kept up-to-date by Department management. It is the responsibility of the employee going on vacation to check the board to find out if s/he will be on call on their regular days off following the vacation period.
3. Vacation requests received after the time frame outlined in paragraph 1 will be posted by the Airport Operations Manager. They will be approved for open slots on the schedule (for days that no one is on scheduled vacation).
4. Once a vacation request has been approved in accordance with these guidelines, it will not be canceled due to shortage of staff (vacant positions), sick leave usage within the department or because a more senior person wants the same time off. If necessary, the Department reserves the right to utilize contract personnel during these periods.
5. If the vacation starts immediately after an employee's regular days off, the employee will not be on call on those regular days off. The employee may also request not to be on call on their regular days off following the vacation period. If another employee is not on scheduled vacation the following week, the employee will not be on call on their days off following the vacation period; if another employee is on vacation the following week, the employee will go back on call for their regular days off following their vacation period.
6. A similar procedure will be utilized for the non-winter period with requests being submitted by February 15 for the April 15 – November 15 time period. The number of employees who will be allowed off at the same time will be determined by the Airport Operations Manager based on staffing needs.

APPENDIX J (cont'd)

II. List of Approved Tools

Listed below are the tools that will be provided to employees hired by the Jetport (new hires or transfers) on or after July 1, 1996. ~~The list may also be used by employees eligible for a tool allowance as a guideline for determining what tools to request approval to purchase with their tool allowance.~~

A. Hand Tools

- 1 Leather tool apron
- 1 Canvas tool tote
- 1 Pair safety glasses
- 1 Pair hearing protectors
- 1 SAE metric socket wrench set (= Craftsman #33623 or equivalent)
- 1 3/8" to 7/8" open end box ratchet wrench set
- 1 6" adjustable wrench
- 1 8" adjustable wrench
- 1 10" adjustable wrench
- 1 utility knife
- 1 torpedo level
- 1 24' carpenter level
- 1 line level
- 1 "wiggy" electrical tester
- 1 wall outlet tester
- 1 hot stick tester
- 1 4-in-one screwdriver
- 1 nail hammer
- 1 ball peen hammer
- 1 6" tapping knife
- 1 10" tapping knife
- 1 electrical crimper/stripper
- 1 drywall saw
- 1 5-in-one paint tool
- 1 14" mud trowel
- 1 quick square
- 1 6" combo square
- 1 8" linesman's plier
- 1 6" pliers
- 1 8" needle nose pliers
- 1 8" diagonal cutting pliers
- 1 multi-sized notched trowel
- 1 cement finishing trowel
- 1 12" channel lock pliers

APPENDIX J (cont'd)

1	razor scraper
1	2" putty knife
1	chalk line
1	6" vise grips
1	10" vise grips
1	needle nose vise grips
1	nut driver set (5/32" to 9/16")
1	30' tape measure
1	file set
1	pipe cutter #10 Rigid
1	pipe cutter #20 Rigid
1	straight pair of aviation snips
1	wire stripper
1	fuse puller (large)
1	pipe wrench 8"
1	10" pipe wrench
1	punch set (nail and drift)
1	set wood chisels
1	set cold chisels
1	"T" allen wrench set
1	pocket allen wrench
1	speed wrench 1/2" drive
1	hacksaw
1	mini hack saw
1	mini mag light case
1	3/8" drive ratchet extension set
1	1/2" drive ratchet extension set
1	drill index
1	drill holster
1	dead blow hammer
1	screwdriver set
1	wire brush
1	wrecking bar
1	wonder bar
1	caulking gun
1	grease gun
1	pair 6 "C" clamps
1	rivet tool
1	7 pc. 3/8" drive allen wrench set
1	17 pc. metric combination wrench set
1	8 pc. ratchet wrench set
1	12 pc. 1/2" drive impact socket set

B. Battery/Power Tools

- 1 3/8" drill - power
- 1 cordless drill/driver - battery
- circular saw – power
- sabre saw – power

C. Other

- 1 paint brush assortment
- 1 wood bit set
- 1 lockout/tagout equipment
- 1 roller tray
- 1 9" paint roller
- 1 4" paint roller

APPENDIX K

Welding Career Ladder - MEMORANDUM OF UNDERSTANDING

The City of Portland and AFSCME Local 481 have reached the following mutual understanding concerning the implementation of the career ladder program for Welders under the Labor and Trades Collective Bargaining Agreement:

1. The 3rd Class Welder Assistant position is an entry level position and the successful applicant must meet the hiring requirements of the City. The pay grade is 15 under the classification plan (Appendix B-1).
2. The 2nd Class Welder Machinist position is for new employees and/or any 3rd Class Welder Assistant who meets the following criteria:
 - A. Has received a "Unlimited Thickness Plate" certification as issued by the American Welding Society, and
 - B. Demonstrates the ability to read blueprints and perform shop mathematical calculations; and
 - C. Possesses some knowledge of machinist and sheet metal trades, and
 - D. Has at least three (3) years of experience in welding work of a journeyman level.
 - E. Possesses a Class B License

Placement at pay grade 18 shall occur when the employee has provided written proof of receipt of the certification and license listed in A and E, has successfully completed an in-house proficiency exam comprised of B and C, and documents the experience requirement listed in D. This new pay rate shall occur on the next scheduled pay period or shall be retroactive to the first pay period after written documentation is provided to the City by the employee and authorized by the Fleet Manager.

3. The 1st Class Welder Machinist position is for new employees and/or any 2nd Class Welder Machinist who meets the following criteria:
 - A. Has received a "Pipe Certification" as issued by the Maine Board of Boilers and Pressure Vessels and
 - B. Possesses a State of Maine Class B driver's license, and
 - C. Demonstrates proficiency in shop fabrication, field fabrication and rigging abilities, and
 - D. Demonstrates thorough knowledge of machinist and sheet metal trades, and
 - E. Demonstrates high level of skill in the use of shop tools and equipment, and
 - F. Has at least five (5) years' experience in welding and machinist work above the journeyman level.

The pay grade for this position is 19. Placement at pay grade 19 shall occur when the

APPENDIX K (cont'd)

employee has provided written proof of receipt of the certification listed in A, the license required in B, has successfully completed an in-house proficiency exam comprised of C, D, and E, and documents the experience requirement listed in E. This new pay rate shall occur on the next scheduled pay period or shall be retroactive to the first pay period after written documentation is provided to the City by the employee and is authorized by the Fleet Manager.

4. Employees are responsible for annual re-certifications and re-licensures. Failure to maintain certifications and licensures shall result in loss of classification and pay status until such time as recertification or re-licensure is obtained. It shall be the employee's responsibility to inform the Fleet Manager of any change in status in certification or licensure. Failure to inform shall be grounds for discipline in accordance with the provisions of the Agreement.

AGREED TO BY:

City of Portland

Date

AFSCME Labor & Trades

Date

AFSCME Council 93

Date

APPENDIX L-1

MAINTENANCE WORKER I CAREER LADDER – (Pay Grade 16)

BARRON CENTER

Absolute:

Must have fulfilled the requirements of a Maintenance Worker and has been permanently classified as a Maintenance Worker for six (6) months.

Must pass a safety course approved by the City's Safety Officer

Primary (all Apply):

Box Truck Operator (Internal)

Front End-Loader Certification (internal)

Working knowledge of Nursing Home State and Federal Regulations (Internal Test >70%)

Ability to operate 4X4 pick-up with plow (internal)

Demonstrated ability to prioritize work tasks, work independently and make sound decisions (Internal)

Secondary: (Select Three)

Metal Stud Framing Certification (Internal/External)

Plumbers License or Apprentice/Journeyman level of training

Electrician's License or Apprentice/Helper level of training

Finish Carpentry (internal/external)

Drywall Repair Certification (Internal/External)

Plumbing Repair Certification (Internal)

Computer Proficiency in Microsoft Office Suite (Internal/External)

Building Fire Alarm Working Knowledge (Internal via Supervised Alarm Drills)

December 2008

APPENDIX L-1

MAINTENANCE WORKER III CAREER LADDER – (Pay Grade 18)

BARRON CENTER

Absolute:

- Fulfills the requirements of Maintenance Worker I and has been permanently classified as a Maintenance Worker I for a minimum nine (9) months
- Possesses physical strength and ability to perform the essential functions of the job
- Must pass 30-hour OSHA 1910 class approved by the City's Safety Officer

Primary (3 Required):

- Boiler Operator or 4th class stationary engineer (external)
- American Welding Society certification (external)
- Certified HVAC technician (internal or external)
- Successfully complete OSHA competent person course approved by City Safety Coordinator (internal or external)
- Finish and/or framing carpentry certification (internal or external)
- Finish painter certification (internal)

Optional (None required but 2 electives may replace maximum of 1 primary):

- Riggers certification (external)
- Certified Facilities Management course (external)
- Ability to read construction plans (internal)
- Tape/plaster/sheet rock certification (internal)
- Any relevant requirement approved by the employee's Department Head
- Vinyl, carpet and tile installation certification (internal)
- Suspended ceiling installation certification (internal)
- Plumbers license or Apprentice/Journeyman level of training (external)
- Locksmith certification (external)
- Microsoft software certification (internal or external)

December 2008

APPENDIX L-2

MAINTENANCE WORKER CAREER LADDER

SOCIAL SERVICES DIVISION

The Custodial Worker is the entry level classification in the Division of Social Services. Employees hired within this classification must meet the qualifications on the following page(s).

The Custodial Worker is the first step on the Maintenance Worker Career Ladder. Employees who wish to move up the ladder into the Maintenance Worker, I & II classifications must meet the qualifications for each "step", as described in this appendix.

The management personnel with the Division of Social Services encourages you to pursue advancement through the Career Ladder. If you have any questions regarding the workings and specific requirements of the program, please speak to your Division Head or Union Representative.

November 2019

APPENDIX L-2 (cont'd)

MAINTENANCE WORKER CAREER LADDER – (Pay Grade 14)

SOCIAL SERVICES DIVISION

Absolute:

- Fulfills the requirements of Custodial Worker and has been permanently classified as Custodial Worker for a minimum of one (1) year
- Demonstrates the ability to work effectively with low-income clients including the homeless who have barriers to self-sufficiency.
- Demonstrates the ability to communicate with a diverse consumer group.
- Possesses physical strength and ability to perform the essential functions of the job and ability to withstand exposure to varied climatic conditions while performing job duties.
- Pass safety course approved by City's Safety Officer (internal or external)

Primary:

- Working knowledge of Division's safety rules and regulations (internal)
- Demonstrated ability to prioritize work tasks, work independently and make sound decisions (internal)
- Demonstrated ability to operate a variety of automotive and lawn maintenance equipment, including rototiller, skill saw, miter saw, air guns and 4X4 pick-up with a plow attachment (internal)
- Demonstrated ability to repair and maintain small motor equipment (internal)
- Basic carpentry certification (internal)

November 2019

APPENDIX L-2 (cont'd)

MAINTENANCE WORKER I CAREER LADDER – (Pay Grade 16)

SOCIAL SERVICES DIVISION

Absolute:

- Fulfills the requirements of Maintenance Worker and has been permanently classified as Maintenance Worker for six (6) months
Must pass a safety course approved by the City's Safety Officer
Possesses physical strength and ability to perform the essential functions of the job (in accordance with Appendix L)

Primary:

Demonstrates the proper operating techniques for the following Division equipment:

4X4 pickup truck with 7' plow attachment
Walk behind snow blower
Walk behind rotary motors
Walk behind rototiller
Leaf blower
String trimmer
Air-activated air-gun
Bobcat Skid Turn
Table Saw
Miscellaneous power tools
Carpentry certification (internal or external)

Secondary: (Select three)

- Ability to read construction plans and blueprints (internal or external)
- Building alarm/security system certification (internal or external)
- Personal safety/defense training certification (internal or external)
- Successfully complete ergonomics course approved by the City's Safety Coordinator (internal or external)
- Demonstrated knowledge of Hotel/Motel Fire Code regulations (internal or external)
- Drywall repair certification

November 2019

APPENDIX L-2 (cont'd)

Maintenance Worker II Career Ladder (Pay Grade 17)

Social Services Division

Absolute:

- Fulfills the requirements of Maintenance Worker I and has been permanently classified as a Maintenance Worker I for a minimum of six (6) months.
- Possesses physical strength and ability to perform the essential functions of the job (in accordance with Appendix L)
- Must pass OSHA course approved by the City's Safety Officer

Primary:

- Successfully complete supervisory course (internal or external)
- Demonstrated ability to interpret blueprint plans for building renovations (internal)
- Advanced building alarm/security system certification (internal or external)
- Demonstrated ability to train low income clients in basic maintenance tasks and basic employment skills (internal)

Secondary: (Select three)

- Plumbers course (internal or external)
- First Aid or CPR certification (internal or external)
- Successfully complete home wiring course or other electrical course approved by the Public Buildings Manager (internal or external)
- Successfully complete effective communication course approved by the Division Director
- Vinyl, carpet and tile installation certification (internal)
- Painting certification (internal)

November 2019

APPENDIX M
TRADES WORKER II (pay grade 17)
PUBLIC BUILDINGS

Absolute:

- Fulfills the requirements of Trades Worker I and has been permanently classified as a Trades Worker I for a minimum of 6 months.
- Must pass the 30-hour 1910 OSHA class approved by the City's Safety Coordinator

Primary: (3 Required)

- Knowledge and practices of roof repair on rubber membrane roofs, asphalt roofs, and metal roofs.
- Knowledge and practices of paint and wall finishes to include but not limited to paint types, caulking types, and the uses of proper products for each application.
- Knowledge and practices of hazard awareness to include lead paint, asbestos, mold, and other environmental and health hazards.
- Knowledge and ability to read and understand blueprints to be able to perform the work required

External: (none required but 2 electives may replace maximum of 1 primary)

- Knowledge of variety and grade of fasteners, and the proper use and application.
- Knowledge and ability to do construction layout for both new construction and renovations at a competent level.
- Knowledge and ability to install and repair VCT, carpet, hardwood and other flooring types at a competent level.
- Knowledge and ability to install and repair masonry products such as concrete pads, block walls, and brick work.

December 2008

APPENDIX M
TRADES WORKER III (pay grade 19)
PUBLIC BUILDINGS

Absolute:

- Fulfills the requirements of Trades Worker II and has been permanently classified as a Trades Worker II for a minimum nine (9) months
- Possesses physical strength and ability to perform the essential functions of the job
- Must pass 30-hour 1910 OSHA class approved by the City's Safety Coordinator

Primary (3 Required):

- Boiler Operator or 4th class stationary engineer (external)
- American Welding Society certification (external)
- Certified HVAC technician (internal or external)
- Successfully complete OSHA competent person course approved by Safety Officer
- Finish and/or framing carpentry certification (internal or external)
- Finish painter certification (internal)

External: (None required but 2 electives may replace maximum of 1 primary):

- Riggers certification (external)
- Certified Facilities Management course (external)
- Ability to read construction plans (internal)
- Tape/plaster/sheet rock certification (internal)
- Any relevant requirement approved by the employee's Department Head
- Vinyl, carpet and tile installation certification (internal)
- Suspended ceiling installation certification (internal)
- Plumbers license or Apprentice/Helper level of training (external)
- Locksmith certification (external)
- AutoCad Certification (internal or external)

December 2008

APPENDIX N

ARBORIST I FORESTRY DIVISION

The Arborist I is the entry level position for the Arborist classification in the Portland Public Services Department. Employees hired within this classification must meet the qualifications outlined in the Arborist I attachment. The Arborist I is also the first step on the Arborist Career Ladder.

Employees who wish to advance into the Arborist II and III classifications must satisfy the requirements at each level of the career ladder before they may move to the next level of the career ladder.

Management of the Public Services Department encourages you to pursue advancement through the Career Ladder. If you have any questions regarding the workings and specific requirements of the program, please speak to the Parks and Open Space Manager, City Arborist or your Union representative.

APPENDIX N (cont'd)

ARBORIST I FORESTRY DIVISION

Absolute Requirements:

- Must possess valid Maine Class C Operator license at time of hire and must obtain valid Maine Class B motor vehicle operator's license within probationary period.
- Must possess Maine Arborist license at time of hire or obtain within one year of date of hire.
- Must possess and maintain a good driving record (pre-employment screening required).
- Possess basic knowledge of the hazards and applicable safety standards associated with arboriculture.
- Possess basic knowledge of arboriculture and landscape skills, tree identification, tree physiology, and insect and diseases of shade trees.
- High school diploma or equivalent.
- Possess physical strength and agility necessary to perform the essential functions of the position and the ability to withstand exposure to varied weather conditions while performing job duties.

Primary Requirements:

- Ability to understand and follow oral and written directions.
- Ability to establish and maintain effective working relationships with other employees, supervisors and the public.
- Ability to operate a variety of forestry equipment, including equipment used in Winter Operations.
- Possess willingness, ability and aptitude to climb and work in trees using a rope and saddle.
- Possess willingness to qualify for the position through department field test consisting of:
 - Climbing tree to 25' using rope and saddle.
 - Complete vehicle/equipment circle test.
 - Operate bucket truck.
 - Demonstrate proper technique in operating chainsaw and brush chipper.
 - Demonstrate proper tree pruning techniques
 - Identify specific species of trees.

Training and Experience Desired:

- Previous work experience or training in arboriculture.
- Documented electrical safety training or experience.
- Holds current Maine Arborist License or ISA Certification.
- Possess valid Maine Class B driver's license.

APPENDIX N (cont'd)

ARBORIST II FORESTRY DIVISION

Absolute Requirements:

- Fulfilled the requirements of an Arborist I.
- Valid Maine Class B Motor Vehicle Operator's License
- Possess physical strength and agility to perform the essential functions of the position
- Satisfactorily complete 10-hour OSHA course relevant to Forestry that is approved by the City's Safety Coordinator
- Possess aptitude to qualify for the position by completing field test consisting of:
- Properly set up tree and climb up to 55' using proper ANSI approved techniques, using a 'throw-ball' and 'foot-lock' or 'hip-thrust' techniques.
 - Properly set up aerial lift truck to reach desired targets within a tree up to 65' in height. (Internal)
 - Complete circle check and demonstrate operating techniques on Brush Chipper, Stump Grinder and Log Loader. (Internal)
- Complete leaf and twig identification test for native and exotic trees. (Internal)
- Pass basic EHAP, (Electrical Hazard Awareness Program) test (Internal).

Primary Requirements:

- Maine Arborist License (External)
- Maine Pesticide Applicator's License with either category 3A or 6D (municipal or ornamental). (External)
- Certified to operate and perform basic maintenance of Forestry equipment: Chain saw (including chain sharpening), brush chipper, stump grinder, log loader, aerial lift. (Internal)
- Possess CPR and First Aid certification. (Internal or external)
- Knowledge and understanding of ANSI and OSHA requirements and standards pertaining to arboriculture, including: ANSI Z.133, A300, and OSHA 1910.331/269.
- Obtained 'skilled' level in the use of ropes, pulleys and lowering devices.
- Certified in the planting, fertilization and watering of trees and shrubs. (Internal)
- Certified to operate the following winter operations equipment: sidewalk plow equipment, 4X4 with plow (trained to plow roads and parking lots), one-ton pickup truck, walk behind snow blower and skid steer. Certification includes demonstration of proper and safe operating techniques, performance of a thorough circle check and demonstration of the ability to perform routine maintenance on the equipment. (Internal)
- Ability to supervise a small crew of workers as required. (Internal)
- Ability to work productively with other team members within division and department.

APPENDIX N (cont'd)

ARBORIST III FORESTRY DIVISION

Absolute Requirements:

- Fulfilled requirements of the Arborist position.
 - Has been an Arborist II for at least 90 working days.
 - Completed Traffic Control Safety Training, Certified MDOT Traffic controller.
 - Possess the physical strength and agility to perform the essential functions of this position.
 - Satisfactorily complete 30-hour 1910 OSHA course.
 - Possesses aptitude to qualify for position by completing 'Master Level' field test or actual 'on-the-job' demonstration consisting of:
 - Climbing demonstration test – consisting of tying knots, climbing with throw ball, rope & saddle and to various targets within a tree, and aerial rescue.
 - Rigging demonstration – rigging tree for removal using various lowering devices, blocks, lines, knots and pulleys.
 - Equipment demonstration – proficient operation and knowledge of safety, maintenance and mechanical systems of the following Forestry equipment:
 - Chainsaw, including troubleshooting, chain sharpening, bar adjustment, operation, safety requirements and standards.
 - Brush Chipper, troubleshooting, knife changing, maintenance, operation, safety requirements and standards.
 - Stump Grinder; review hydraulics, safety features and requirements, maintenance, operation.
 - Log Loader, setup, safety requirements, hydraulics, operation: loading and unloading, boom lift capacities, maintenance, safety requirements and standards.
 - Aerial lift truck, setup for large tree pruning, reaching specific targets within the tree, safety requirements: manufacturers, OSHA and ANSI standards, maintenance of hydraulics, booms and all systems.
- (Note – Internal demonstration and written tests with time restraints.)

Primary Requirements

- Certified Line Clearance Arborist, meeting OSHA 1910.269 requirements, such as National Arborists Association's (NAA) Electrical Hazard Awareness Program (EHAP) or approved equal including climbing and bucket truck aerial rescues within the time requirements. (External)
- Maine Pesticide Applicator's License with categories 3A and 6D, Outdoor Ornamentals and Municipal Right of Way. (External)
- Maine Arborist License. (External)
- Maine Class B Motor Vehicle Operator's License. (External)

APPENDIX N (cont'd)

ARBORIST III

Primary Requirements (cont'd)

- Certified on Arboricultural safety standards for Tree Care Operations, Pruning, Line Clearance Tree Trimming, Nursery Stock, and Forestry Equipment. (Internal)
- International Society of Arboriculture (ISA) Arborist Certification, or attend arboricultural training of 30 hours within a three (3) year period. (External)
- Certified to operate the following winter operations equipment: dump truck with plow and sander, and front end loader. Certification includes demonstration of proper and safe operating techniques, performance of a thorough circle check and demonstration of the ability to perform routine maintenance on the equipment. (Internal)
- Ability to supervise small crews and maintain accurate documentation records.
- Ability to work productively with other team members within division and department, and develop good working relationships with contacts outside of the Department.

APPENDIX O

HEALTH INSURANCE RESERVE ACCOUNT

Health plan as proposed by the Health Insurance Advisory Committee referred to in Article 15.2.1.

- Implementation of the new Health Insurance plan (Revised 11/14/2014) would be no sooner than January 1, 2016.
- The wellness programs will be established prior to new Health Insurance Plan being implemented.
- The first year of implementation the proposed Health Insurance plan the deductible will be \$200 for single per year and \$400 for a family per year.
- The second year of implementation of the proposed Health Insurance plan the deductible will increase to \$400 for single per year and \$800 for a family per year.
- Established a reserve account as outline below:

Health Insurance (City of Portland Employee Medical Plan) Reserve Account

Upon implementation of the proposed value-based insurance design that includes wellness components, the City of Portland ("City") agrees to designate \$150,000 from fund balance to establish a reserve account. Thereafter, following the conclusion and audit completion of each fiscal year, the City will determine if the employee medical plan budget was over-funded or under-funded based on the overall medical budget that was set by the City for that fiscal year. If the medical budget is over-funded, then 15% (represents employee contributions) of that amount will be added to the reserve account. Likewise, if the medical budget is under-funded, then 15% of that amount will be deducted from the reserve account.

The purpose of the reserve account is to provide weekly premium relief to those active employees who contribute to the cost of health insurance for themselves and/or family members. When the reserve account has enough monies above the \$150,000 threshold to cover at least one week of employee contributions, then monies will be returned to active employees in the form of a non-payment obligation from each current contributing employee based on their weekly plan rate. The City will arrange for the non-payment obligation to occur in the second quarter of the following fiscal year.

To illustrate how this would work, below are two (2) examples with the assumed \$150,000 designated as funds for the reserve account.

Example 1:

Health Insurance Budget for fiscal year 2015	\$15,500,000
Health Insurance actual cost for fiscal year 2015	\$15,000,000

- Over-funding results in 15% of \$500,000 (difference between budget and actual) = \$75,000. \$75,000 added to \$150,000 so reserve account is \$225,000.

APPENDIX O (cont'd)

- Currently, weekly employee contributions total approximately \$52,000.
- This example would produce premium relief in the form of a non-payment obligation of one (1) week for each current contributing employees based on their weekly plan rate in the second quarter of fiscal year 2016. The reserve account balance would then be \$173,000.

Example 2:

Health Insurance Budget for fiscal year 2015	\$15,500,000
Health Insurance actual cost for fiscal year 2015	\$16,000,000

- Under-funding results in 15% of \$500,000 (difference between actual and budget) = (\$75,000).
- \$75,000 would be deducted from the \$150,000 reserve account, leaving a balance of 75,000.

Human Resources and Finance will be responsible for recordkeeping of the reserve account.

Human Resources will continue to provide Labor/Management Health Insurance Advisory Committee with the quarterly reporting packet that includes timely information regarding actual health insurance expenditures compared to the budgeted amounts.

* Examples are for illustration purposes only.

Formula for New Program Costing on Tax Rate

1) FY22 Valuation:	14,629,000,000	\$14,629,000
2) FY22 Tax Rate (Total City & School): $\text{Levy} / (\text{Valuation}/1000)$		\$12.99
(a) FY22 Tax Rate (City):		\$6.22
(b) FY22 Tax Rate (School):		\$6.77
3) FY22 Value of \$0.01 of Tax Rate (Total City & School):		\$146,290

FISCAL IMPACT NOTE New Program Cost Data:	Year 1		Year 2		Year 3	
	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate
Example:						
ADD: NEW ITEM ANNUAL EXPENDITURES		\$669,105		\$644,227		\$641,396
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$669,105	\$669,105	\$644,227	\$644,227	\$641,396	\$641,396
New Program Impact to the Tax Rate	\$0.0457	\$0.0457	\$0.0440	\$0.0440	\$0.0438	\$0.0438
New Program % Impact on Tax Rate	0.7353%	0.3521%	0.7080%	0.3390%	0.7049%	0.3375%
Tax Rate Including New Program	\$6.27	\$13.04	\$6.26	\$13.03	\$6.26	\$13.03

Note 1: FY23 Tax Rate is not yet available as FY23 Tax Commitment has not yet occurred.

Note 2: The majority of the Year 1 cost items including the COLA were included when building the FY23 budget so the Year 1 cost to the operating budget will be significantly lower than the \$669,105 noted above and will be funded via vacancy savings.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 23, 2022

SUBJECT: Order 59-22/23 Traffic Schedule Amendment Re: Thames Street - Sponsored by Danielle P. West, Interim City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: Reviewed.

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This traffic schedule amendment will introduce new parking restrictions on a portion of Thames Street (from the Ocean Gateway driveway to Freedom Way) proposed for acceptance on September 19, 2022.

The parking regulations include metered, 2-hour parking on the north side of the street, and unmetered, time-restricted parking (one-hour) on the south side. The unmetered time-restricted parking is intended to facilitate an extension of Residential Parking Zone 11, which is used by island residents.

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Thames Street Parking Change - Traffic Schedule Amendment 9.1.2022

Prepared by:

Date: 08/23/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**AMENDMENT TO TRAFFIC SCHEDULE
RE: THAMES STREET**

ORDERED, that the City of Portland's Traffic Schedule be and hereby is established as follows:

By Establishing under Thames Street Extension, from the Ocean Gateway driveway to Freedom Way:

North Side:

- **Schedule XXI** - Meter Zone Number 3: 2 Hour Parking

South Side:

- **Schedule XVII** – 1 Hour Parking
- **Schedule XXVIII** – Residential Parking Permit Area

MEMORANDUM
City Council Agenda Item

FROM: Troy Moon, Sustainability Coordinator

DATE: August 2, 2022

SUBJECT: Order 60-22/23 Amendment to Portland City Code Chapter 34 re: Landcare Ordinance - Sponsored by the Sustainability & Transportation Committee, Councilor Andrew Zarro, Chair

SPONSOR: Sustainability and Transportation Committee, Andrew Zarro, Chair. (Committee voted in favor, 3-0 on July 13, 2022)

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/1/2022

Final Action 9/19/2022

Can action be taken at a later date: Yes

Does this item involve a new contract with the City: No

PRESENTATION: Sustainability Director Troy Moon will be in attendance to provide background and answer questions from the City Council.

I. SUMMARY

The amendment changes the title of Chapter 34 of the City Code to Landcare and restricts the use of fertilizers on public and private property in order to improve soil health and prevent run- off of excess nutrients into local waterways.

II. AGENDA DESCRIPTION

On July 13, 2022, the Sustainability & Transportation Committee voted (3-0) to recommend amending Chapter 34 to regulate the use of fertilizers. The amendment would largely prohibit the use of synthetic fertilizers and require property owners to follow best management practices when using organic fertilizers. These measures would improve water quality in local waters by reducing the amount of excess nutrients running off both public and private property. Excess nutrients fuel algal blooms in local water bodies, damaging marine life and increasing acidification of local waters.

The amendment would also change the name of Chapter 34 from Pesticide Ordinance to Landcare Ordinance to reflect the chapter's emphasis on sound land management practices. The name of the Pesticide Management Advisory Committee would similarly be renamed the Landcare Management Advisory Committee.

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

The City first contemplated regulation of fertilizers in 2016 when the City Council empaneled the Pesticide and Fertilizer Task Force with the assignment to recommend policy changes to prevent harm to the environment and public health from both of these products. The Task Force realized that addressing both pesticides and fertilizers was more than they would be able to accomplish in the time they had available and chose to focus their efforts on pesticides. When making that decision, they recommended that a subsequent group take up fertilizers.

During the past year, the Pesticide Management Advisory Committee (PMAC) studied the use of fertilizers and

examined the fertilizer ordinance recently adopted in South Portland. In March, the PMAC presented recommendations for the regulation of fertilizers to the Sustainability and Transportation Committee as part of their annual report. Following the presentation, the Sustainability and Transportation Committee asked Staff to develop ordinance language based on the PMAC recommendations with the goals of:

- Protecting water quality: Improperly applied fertilizer – particularly fast release, synthetic fertilizer – is frequently transported by stormwater from the property where it is applied. When it enters local waterways, including Casco Bay, it contributes excessive nutrients into the water which results in algae blooms. It also contributes to acidification of our coastal waters. Both of these seriously impact marine life and threaten the marine ecosystem.
- Preventing soil degradation: Fast-acting synthetic fertilizers strip soil of nutrients by causing the microbes in the soil to consume organic matter faster than plants can replenish them. This leads to soil degradation, which requires further inputs of fertilizers to grow plants.
- Reducing carbon emissions: Production of synthetic fertilizers uses large amounts of natural gas, a fossil fuel. This is incompatible with efforts to mitigate the worst impacts of climate change. Further, reliance on synthetic fertilizers impedes the ability of soils to sequester carbon, thereby contributing to global warming.

In summary, the proposed amendment:

- Prohibits application of fertilizers within 75' of a water body or wetland or other environmentally sensitive area
- Prohibits application of fertilizers on frozen ground, impervious, or saturated surfaces
- Prohibits application of fertilizers when a heavy rain event is forecast or is occurring
- Prohibits fertilizer applications when plants are not taking up nutrients, such as during summer dormancy or when the ground is partially or wholly frozen
- Prohibits applications of phosphorus except when a soil test conducted within the last three years indicates a need for phosphorus, or phosphorus is being used for new development/re-establishment.
- Prohibits the application of fertilizers using prills/pellets on impervious surfaces

The ordinance applies to all types of landscape and turf, including lawns, athletic fields, parks, gardens, and any other land use that relies on healthy soils. The only exceptions are for two properties that are also exempt from the provisions of the pesticide ordinance. These are Hadlock Field and Riverside Golf Course. The golf course, however, must maintain its status as an Audubon Certified Sanctuary in order to maintain its exempt status. The ordinance also exempts the use of fertilizers used for deep root fertilization of trees. This is because urban trees often exist in degraded, compacted, or otherwise poor soils that are difficult to improve.

Application of fertilizers directly to the roots is often required to maintain their health, thereby preserving the many benefits they provide, including carbon sequestration, storm water absorption, habitat for wildlife, and mitigating the urban heat island effect.

The ordinance recognizes that athletic fields and high performance turf require more fertilizer treatment than other types of landscapes because of their intense use. It provides standards to ensure that fertilizer applications on such turf use only the amount of fertilizer the soil can readily incorporate, so as to minimize harmful nutrient runoff. The ordinance also provides for a waiver process for application of fertilizers on high performance turf under extenuating circumstances, such as when it is important to grow turf grass quickly to ensure safety and playability, particularly early in the growing season.

Finally, the draft ordinance renames Chapter 34 as “Landcare” to reflect that it governs pesticides, fertilizers, and promotes organic landcare practices. It also renames the PMAC as the Landcare Management Advisory Committee (LMAC) and adds responsibility for overseeing the use of fertilizers as well as pesticides.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The ordinance aligns with the City's longstanding efforts to prevent stormwater pollution and supports our efforts to protect the water quality in our urban impaired streams and in Casco Bay.

V. FINANCIAL IMPACT

No significant costs to City operations.

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Staff recommends adoption of the amendment.

VIII. LIST ATTACHMENTS

1. Ch. 34 Landcare Ordinance 9.1.2022

Prepared by:

Troy Moon, Sustainability Coordinator

Date: 08/02/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 34 (PESTICIDES)
RE: LANDCARE ORDINANCE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

- 1. That Chapter 34, Sections 34-1 to 34-13 of the Portland City Code is hereby amended to read as follows:*

Chapter 34

**~~PESTICIDE-USE~~
LANDCARE**

Sec. 34-1. Title.

This chapter shall be known as the City of Portland ~~Pesticide-Use~~Landcare Ordinance (hereinafter, the "Ordinance").

Sec. 34-2. Purpose.

The purpose of this ordinance is to safeguard the health, safety and welfare of the residents of the City and to conserve and protect the City's waterways and natural resources by curtailing the use of pesticides and fertilizers for turf, landscape and outdoor pest management.

Sec. 34-3. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the following meaning:

Aggrieved party means an individual or entity that applies for but is denied a waiver from provisions of this ordinance as described in Section 34-6.

Broadcast application means the spreading of pesticides over an entire area.

Commercial Agriculture means the production of crops for sale, including crops intended for widespread distribution to wholesalers or retail outlets and any non-food crops.

Compost means soil amendment made from decomposing organic matter used to improve soil structure and nutrient holding capacity. For the purposes of this ordinance, compost is not considered a fertilizer.

Emergency means a serious, unexpected, and often dangerous situation requiring immediate action.

Environmentally sensitive areas means areas that are particularly vulnerable to fertilizer nutrient loss and/or where direct transmission of fertilizer nutrients to surface water or ground water is likely. This includes coastal and freshwater wetlands, beaches and sand dunes, streams and tributary streams

EPA means the United States Environmental Protection Agency.

Fertilizer means a substance containing one or more plant nutrients and used for its plant nutrient content. State law requires that all fertilizer products be registered with its department of agriculture prior to distribution.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.

Golf course means an area of land laid out for playing the game of golf with a series of 9, 18 or more holes. Mini-golf and disc golf courses are not considered golf courses.

Heavy rain event means a rain event producing 0.5 inch or more of precipitation in a one hour period.

High Use Athletic Facilities means the following playing fields located in the following parks as listed in Chapter 18, section 18-11: Fox Field, Quinn Field and Deering Oaks Baseball Field at Deering Oaks Park; Back Cove Park; and Payson A Field

in Payson Park. It shall also include Presumpscot Field at Deering High School.

Hydro-seeding means the process of seeding by pumping seed in a mixture of water through a nozzle that sprays the mixture onto a seedbed. The water mixture may also contain add-ins such as fertilizer and certain mulches.

Landcare means a land management approach intended to prevent soil degradation and responsibly manage land resources, and cultivate environmental health.

Landcare Management Advisory Committee (LMAC) means the Landcare Management Advisory Committee as described in this Chapter.

New development means any alteration of land for the purposes of construction or reconstruction redevelopment that results in soil disturbance and/or compaction, vegetation removal, and/or regrading.

Organic fertilizer means a fertilizer derived from either plant or animal products that contain nutrients for plant growth. It is acceptable for the materials in these fertilizers to have been subjected to biological degradation processes under normal conditions of aging, rainfall, suncuring, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. In order to qualify as organic fertilizer, the materials in these fertilizers may not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis, or pelleting in order to qualify as organic fertilizer. Organic fertilizers are broken down by, and feed, the microbial life in the soil.

Organic landcare means a landcare management technique that integrates cultural, biological, and mechanical practices to build soil health, including practices such as mowing at higher levels, aeration, top dressing with compost, over-seeding, and watering deeply but infrequently, and without the use of toxic pesticides and synthetic fertilizers.

Organic material means the organic matter component of soil, consisting of plant and animal detritus at various stages of decomposition, cells and tissues of soil microbes, and substances that soil microbes synthesize.

Over-seeding means the application of additional turfgrass seeding to existing turf.

Penetrometer means an instrument used to give a quantitative measurement of the consistency or hardness of a substance by measuring the depth or rate of penetration of a rod or cone-shaped into it.

Performance turf means grounds devoted to athletic fields and golf courses.

Prills means a small aggregate or globule of a material, most often a dry sphere or pellet. Fertilizers and some detergent powders are commonly manufactured as prills.

Repellant means a substance that deters insects or other pests from approaching or settling.

Invasive Species means a plant or insect that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive species include those plants listed under the Maine Department of Agriculture, Conservation and Forestry's Natural Areas Program as currently invasive, potentially or probably invasive, and highly likely but not currently invasive, as well as those insects listed by the Maine Forest Service as threats to Maine's forests and trees.

Natural, organic or "non-synthetic" means a substance that is derived from mineral, plant, or animal matter and does not undergo a "synthetic" process as defined in the Organic Foods Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to time.

Organic pest management means the act of managing or controlling pests through the use of mechanical, cultural, or, biological processes, or through the use of natural, organic, or non-synthetic substances.

Person means any individual natural person, partnership, joint venture, society, association, company, club, trustee, trust or corporation; or any officer, agent, employee, or personal representative of any thereof, in any capacity acting either for her or himself or for any other person under either personal appointment or pursuant to law.

Pest shall have the same meaning as the term set forth in 40 C.F.R. § 152.5, as the same may be amended from time to time.

Pest Management means the act of managing or controlling pests through the use of chemical, mechanical, cultural, biological, or genetic measures.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the EPA. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

Pests of significant public health importance means the pests listed by the EPA, in conjunction with the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, as pests of significant public health importance.

Preemptive application means the application of pesticides as a measure against something possible, anticipated or feared, i.e., as a preventive or deterrent measure.

Public utility means any transmission and distribution utility, telephone utility, water utility, gas utility, or natural gas pipeline utility that is subject to the jurisdiction of the Maine Public Utilities Commission.

Re-establishment means a procedure involving complete turf removal and seeding or laying sod to establish new turf.

Restricted Entry Interval, also known as the re-entry interval or re-entry time, means the minimum amount of time that must pass after a pesticide is applied to an area before people or pets can safely go into that area. The labels on pesticides provide information about an individual pesticide's REI.

Slope means the ratio of elevation change to horizontal distance, expressed as a percentage. Slope is computed by dividing the vertical distance by the horizontal distance, and multiplying the ratio by 100. For purposes of this Chapter, a slope shall include only those areas with a horizontal distance of at least 50 feet.

Soil means the outer, weathered layer of the Earth's crust which can potentially support plant life and made up of inorganic particles, organic matter, organisms, water and air.

Soil amendment means a soil amendment is material added to soil to improve its physical properties, including, but not limited to, the substances listed on the National List of Allowed and Prohibited Substances, 7 C.F.R § 205.601, as the same may be amended from time to time. For the purposes of this ordinance, a soil amendment is not considered fertilizer.

Soil microbes means living organisms in soil (such as bacteria and fungi), which feed on organic matter and decompose rapidly.

Soil test means a test designed to analyze soil acidity, organic matter, and essential nutrients available for plant growth. A "standard soil test" indicates soil pH, levels of essential nutrients such as potassium, phosphorus, calcium, magnesium, and sulfur, level of organic matter, whether there is lead contamination, and it will provide recommendations for corrective amendments to address deficiencies. A "comprehensive soil test" includes all the elements of a standard soil test, plus an analysis of soil microbial mass.

Starter fertilizer means a fertilizer formulated for a one-time application at planting or near that time to encourage root growth and to enhance the initial establishment of turf. This is typically a water-soluble product that contains high levels of phosphorus to allow for robust root growth.

Steep topography means slope lengths exceeding 50 feet (horizontal distance) on slopes greater than 15%.

Summer dormancy means the period during mid-summer most commonly observed in un-irrigated lawns when turf growth ceases. Dormancy is characterized by brittle texture and a loss of green color.

Synthetic means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources, except that such term shall not apply to substances created by naturally occurring biological processes.

Synthetic fertilizer means any fertilizer manufactured from one or more synthetic materials and may or may not contain

animal parts, animal byproducts, manures or renderings. Synthetic fertilizer bypasses the microbial life in the soil and is taken up by the plant directly.

Total nitrogen means the sum of all fertilizer nitrogen species, including water soluble nitrogen forms, slow release nitrogen forms, and water insoluble nitrogen forms. The percentage of total nitrogen appears as the leftmost number of the grade on fertilizer labels.

Turf means a community of herbaceous plants that can be mowed, including grass and sod; a surface layer of the earth with grass growing on it, usually mowed, including lawns, grass covered medians, athletic fields, golf courses, outdoor event spaces, and the like.

Waiver Committee means the Waiver Committee as described in this Chapter.

Water body means any great pond, river, stream or tidal area as those terms are defined in Chapter 14 of the Portland Code of Ordinances.

Wetland means a coastal or shoreland freshwater wetland as those terms are defined in the City's Zoning Ordinance, Chapter 14 of the Code of Ordinances.

Sec. 34-4. Applicability

The following provisions shall apply to all outdoor pest management activities and use of fertilizer conducted within the boundaries of the City of Portland (hereinafter, the "City"), on both public and private land, excluding the exemptions provided in this Chapter.

Sec. 34-5 Permitted, prohibited, and exempt pesticidesapplications

(a) Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all outdoor pest management activities in the City.

~~(a)~~ 1. Permitted Pest Management Activities and/or Materials, except as provided in (b) (3) below:

i. ~~1.~~ Organic Pest Management, except as provided in (b)2 below;

- ii. ~~2.~~ Use or application of Synthetic substances specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List"); and/or
- iii. ~~3.~~ Use or application of Pesticides determined to be "minimum risk pesticides" pursuant to the FIFRA and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time.

~~(b)~~2. Prohibited Pest Management Activities and/or Materials:

- i. ~~1.~~ Use or application of Synthetic substances other than those described in (a)(2) above;
- ii. ~~2.~~ Use or application of Non-synthetic substances specifically listed as "prohibited" on the National List; and/or
- iii. ~~3.~~ The use or application of pesticides (whether natural, organic, "non-synthetic," synthetic or otherwise) within seventy five feet of a water body or wetland.

~~(c)~~3. Exempt Pest Management Activities and/or Materials. The following are exempt from the provisions of this ordinance (and therefore are allowed):

- i. ~~1.~~ Use or application of Pest Management Activities and/or Materials in connection with Commercial agriculture;
- ii. ~~2.~~ Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
- iii. ~~3.~~ Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;
- iv. ~~4.~~ Insect repellents when used in the manner specified by the manufacturer;
- v. ~~5.~~ Rat and rodent control supplies when used in the manner specified by the manufacturer;

vi. ~~6.~~Swimming pool supplies when used in the manner specified by the manufacturer; and/or

vii. ~~7.~~General use paints, stains, and wood preservatives, and sealants when used in the manner recommended by the manufacturer.

~~(d)~~4. Exempt Applications. The following applications are exempt from the provisions of this ordinance (and therefore are allowed):

i. ~~1.~~Specific health and safety applications.

Prohibited pesticides may be used to control plants that are poisonous to the touch, such as poison ivy, pests of significant health importance such as ticks and mosquitoes, and animals or insects that may cause damage to a structure, such as carpenter ants or termites;

ii. ~~2.~~Golf course applications. Prohibited pesticides may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;

iii. ~~3.~~Hadlock Field applications;

iv. ~~4.~~Treatments for Heritage Elms;

v. ~~5.~~Applications on fields at High Use Athletic facilities (until January, 2023, unless this date is extended by the City Council);

vi. ~~6.~~Prohibited pesticides may be used to control the Emerald Ash Borer, Asian Longhorned Beetle, Hemlock Woolly Adelgid, Browntail Moth and other insects identified as invasive by the Maine Forest Service;

vii. ~~7.~~Right-of-way applications. Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City; and/or

viii. ~~8.~~Invasive plant applications on city property. Applications to control plants categorized as *currently considered invasive in Maine* by the Maine Department of Agriculture, Conservation, and Forestry.

5. Disclosures. For any exempt applications by the City, disclosure shall be made in the annual report described in Section 34-9 of this ordinance.

~~(e)~~6. Exempt Uses. The following uses are exempt from the provisions of this ordinance (and therefore are allowed):

- i. ~~1.~~ Any use of pesticides mandated by state or federal law or required by an order or decision from a court or state or federal board or agency.

(b) Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all fertilizer applications in the City.

1. Prohibited Fertilizer Applications. The following prohibitions apply for all fertilizer applications on all turf types:

- i. Applications within 75 feet of a water body or wetland or other environmentally sensitive area are prohibited.
- ii. Applications on frozen ground or saturated surfaces are prohibited.
- iii. Applications when a heavy rain event is occurring is prohibited.
- iv. Applications during summer dormancy or when the ground is partially or wholly frozen are prohibited.
- v. Applications on impervious surfaces are prohibited; if spills occur on impervious surfaces, they must be swept up immediately.
- vi. Applications with phosphorus are prohibited except where a soil test conducted within the last three years indicates a need for phosphorus, or phosphorous is being used for new development/re-establishment, as specified in subsection (B) below.
- vii. Applications of synthetic fertilizer are prohibited except where a waiver has been granted pursuant to Sec. 34-7 below.
- viii. Application of compost or fertilizers derived from wastewater treatment sludge or from organic residuals remaining after industrial processes (such as paper making) is prohibited within the boundaries of the City of Portland.

ix. Applications of organic fertilizer not in compliance with subsection (2) below are prohibited.

2. Permitted Fertilizer Applications. The following applications of organic fertilizer are allowed within the limits for the specific application as set forth below:

- i. Except as specified in subsections (ii), (iii), and (iv) below, applications of organic fertilizer, including residential lawns, are allowed only when a comprehensive soil test conducted within the same calendar year indicates a need for nitrogen. Applications of organic fertilizer may not contain nutrients in excess of the amount recommended by the completed soil test. Only phosphorus-free, organic fertilizer is allowed for these applications, unless the soil test indicates a need for phosphorus.
- ii. Applications of organic fertilizer on performance turf are allowed as necessary provided that total nitrogen does not exceed 4 lbs per 1,000 square feet per year.
- iii. Applications of organic starter fertilizer for new development may contain phosphorus without a soil test. The fertilizer must be incorporated into top soil 2-3 inches deep. Two fertilizer applications are permitted for one calendar year from the date of first application only. For each application, total nitrogen and phosphorus may not exceed 1 lb. per 1,000 square feet
- iv. Applications of organic fertilizer for re-establishment of turf may contain phosphorus without a soil test. Unless the application is through hydro-seeding or overseeding, the organic fertilizer must be incorporated into the soil 2-3 inches deep. Fertilizer applications may not exceed 1 lb. of nitrogen and phosphorus per 1,000 square feet per application. Total nitrogen and phosphorus may not exceed 2 lbs. per 1,000 square feet per calendar year from the date of last application.

3. Exempt Fertilizer Applications. Notwithstanding any other provision in this Chapter, the following applications of fertilizer are exempt from the provisions of this ordinance (and therefore allowed without restriction):

- i. Golf course applications. Fertilizers may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
- ii. Hadlock Field applications.
- iii. Liquid deep root feeding of trees.

Sec. 34-6. ~~Pest~~Landcare Management Advisory Committee.

(a) The ~~Pest~~Landcare Management Advisory Committee ("~~PMAC~~LMAC") is hereby established. The ~~PMAC~~LMAC shall consist of seven (7) members as follows:

- ~~1. One (1) member of city staff, designated by the City Manager, who shall be accredited by the Northeast Organic Farming Association in Organic Land Care or shall receive such accreditation within a reasonable time frame;~~
- 1. The City's Sustainability Director or a City employee appointed by the City Manager;;
- 2. One (1) practicing agronomist appointed by the City Council;
- 3. Two (2) Maine Board of Pesticides Control-licensed landscape professionals, at least one (1) of whom has experience in organic land care management and is accredited by the Northeast Organic Farming Association in Organic Land Care, each appointed by the City Council; and
- 4. Three resident or taxpayer representatives appointed by the City Council at least one of whom has experience in organic land care management.

(b) The terms of office of the six (6) ~~PMAC~~LMAC members appointed by the City Council shall be three-year terms, except that the initial appointments after the establishment of the ~~PMAC~~LMAC shall be such that the terms of office of no more than two (2) members shall expire in any single year. The term of office for the City employee ~~PMAC~~LMAC member shall be for as

long as the employee holds said employment position.

(c) The ~~PMAC~~LMAC shall advise the City Council and the City's Sustainability Coordinator with respect to the following:

1. Advising the Sustainability and Transportation Committee and the City's Sustainability Coordinator of any problems encountered or amendments that may be required to achieve the full and successful implementation of this ordinance;
2. Reviewing and acting upon waiver applications when applicable;
3. Developing and implementing outreach and education as specified in Sec. 34-11 of this ordinance (in coordination with the Sustainability Coordinator);
4. Seeking the participation, advice and counsel of experts in the fields of organic turf and landscape management, maintenance of trees and shrubs, and organic pest protocol;
5. Encouraging broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, in the activities of the ~~PMAC~~LMAC;
6. Reviewing annual data and issuing a summary report annually by March 31 to the Sustainability and Transportation Committee, or whatever committee is assigned an oversight role by the City Council, which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this chapter; the number of waivers granted in the past year; and comprehensive data taken from the written documents provided by Applicators and/or Licensed Applicators about the use of pesticides and fertilizers within the City of Portland including, but not limited to:
 - ~~a.~~ i. The amount of pesticides and fertilizers used on privately or publicly owned land in the City of Portland;
 - ~~b.~~ ii. The reasoning for such use of pesticides and fertilizers; and

~~e.~~ iii. The specific pesticides and fertilizers that were used.

7. Any additional responsibilities as may be assigned and deemed necessary by the City Council.

(d) ~~PMAC~~LMAC Officers, meetings and records.

1. The members shall annually elect a chair and a secretary from their membership;

2. All meetings of the ~~PMAC~~LMAC shall be noticed and open to the public in accordance with the City's notice policies and Maine's Freedom of Access Act;

3. A quorum shall consist of four members;

4. The ~~PMAC~~LMAC shall meet at least five (5) times annually;

5. Minutes shall be kept of all meetings and posted on the City web page; and

6. An annual report of the ~~PMAC's~~LMAC's activities shall be submitted to the Sustainability and Transportation Committee by March 31 of each year.

(e) LMAC may adopt procedural rules for the conduct of its business not inconsistent with this article. Such rules shall be filed with the City Clerk. All such rules shall be subject to veto, in whole or in part, by the Council within 45 days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

~~(e)~~ (f) Waiver Subcommittee:

1. A subcommittee of the ~~PMAC~~LMAC shall be established annually and consist of the designated City staff member and one (1) other member of the ~~PMAC~~LMAC designated by the Chair;

2. This subcommittee shall be authorized to review and decide waiver applications as described in section 34-7; and

3. The ~~PMAC~~LMAC shall schedule meetings of the Waiver Subcommittee frequently enough to be responsive to waiver requests. All meeting dates shall be posted in advance on the City calendar.

Sec. 34-7. Waivers.

(a) In situations that are an emergency, threaten the public health, safety or welfare, or for the control of invasive species that pose a threat to the environment, persons shall apply to the ~~PMAC~~LMAC Waiver Committee for a waiver from the provisions of this ordinance prior to the use/application of a prohibited fertilizer or pesticide or prior to the conduct of a prohibited application.

(b) In addition, Persons may apply to the Waiver Committee for a waiver in order to use a synthetic fertilizer on performance turf or for new development, prior to the actual use of the synthetic fertilizer, if one or more the following conditions exists:

1. The soil temperature is less than 55 degrees Fahrenheit and reasonable grounds exist to justify fertilizer use at that location and at that time;
2. The turf is experiencing high stress due to high use and must be ready for high performance play when the sports season(s) begin; or
3. A suitable organic product that meets the nutrient needs of the soil as specified in a soil test is unavailable.

~~(b)~~ (c) The waiver application shall be filed with the ~~PMAC~~LMAC Waiver Committee, on a form prescribed by the Committee and shall include the following information: the reason for requesting the use/application of a prohibited pesticide; the proposed location(s) of the proposed application(s); details on the timing(s) of use, substance(s) and amounts to be applied; date(s) of application; management plan that excludes broadcast and preemptive applications; and a pest identification and threshold report. In order to approve a waiver application, the ~~PMAC~~LMAC Waiver Committee must find that all of the following criteria are met:

1. A situation exists that: is an emergency; threatens the public health, safety and/or welfare; involves an invasive species; ~~that poses a threat to the environment;~~ or requires a non-permitted pest

management activity and/or material to protect buildings or structures from damage;

2. The applicant has carefully evaluated all alternative methods and materials including, but not limited to, non-pesticide management tactics, minimum risk pesticides, non-synthetic pesticides, and is choosing to use the minimum amount of the least toxic, most effective pesticide necessary;
3. The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and
4. To the maximum extent possible the grant of the waiver will not be detrimental to the public's health, safety or welfare.

~~(e)~~(d) The Waiver Committee shall conduct a hearing on all complete waiver applications received within ten (10) business days of receipt of the complete application and shall seek to issue a written decision on the application within three (3) business days of reviewing an application.

~~(d)~~(e) In approving any waiver application, the Waiver Committee may also prescribe conditions and safeguards as are appropriate to further the purposes of this ordinance. The waiver decision of the Waiver Committee shall be in writing, with copies provided to the applicant, the ~~PMAC~~LMAC, and the Sustainability Coordinator, and the City Clerk.

~~(e)~~(f) An Aggrieved Party may appeal a written decision of the ~~PMAC~~LMAC Waiver Committee to the City Manager or ~~his or her~~—designee within five (5) business days of the issuance of the committee's decision. The appeal shall be in writing and shall state the basis for the appeal. The City Manager or ~~his or her~~—designee (who shall not be a member of the ~~PMAC~~LMAC) shall act upon the appeal within five (5) business days of receipt of the appeal. The decision of the City Manager or designee shall be in writing, with copies provided to the aggrieved party, the ~~PMAC~~LMAC Waiver Committee, and the Sustainability Coordinator. The decision of the City Manager or ~~his or her~~—designee shall be final.

Sec. 34-8. Reporting by State of Maine Licensed Applicators.

In addition to complying with the Maine Board of Pesticides Control rules regarding record keeping and reporting requirements as outlined in 01-026 C.M.R. Ch. 50, as amended from time to time, all State of Maine licensed applicators are required to submit to the ~~PMAC~~LMAC an annual summary report on or before February 1st of each calendar year relating to the preceding calendar year. This report shall contain the following information for applications performed in the City in the prior calendar year: target site, pesticide brand name, EPA registration number, total undiluted formulation (in pounds or gallons), and total area treated as listed and as amended on the Commercial Applicator Annual Summary Report required by the Maine Board of Pesticides Control.

Sec. 34-9. Management plan and annual reporting for publicly owned parks and open spaces.

The City shall maintain a management plan for public open spaces that shall be posted on the City website. The City Manager or ~~his or her~~ designee shall provide an annual report to the ~~PMAC~~LMAC describing efforts to reduce the use of synthetic pesticides, a description of synthetic pesticides used during the previous year, the reason for their use, and the cost of such pesticide usage.

34-10. Public Notification.

Any person shall comply with the following posting requirements.

(a) For all prohibited pesticide uses or applications:

1. A warning sign shall be posted on the privately or publicly owned land. These signs must be posted before application activities commence on the land and be left in place for at least forty-eight (48) hours after actual application or until expiration of the restricted entry interval indicated by the pesticide label, whichever is longer;

~~(b)~~2. All signs shall be at least five (5) inches high and four (4) inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of

rigid, weather resistant material substantial enough to be easily read for the duration of the placement;

~~(e)~~ 3. All signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green). They shall have lettering that is conspicuous and clearly legible;

~~(d)~~ 4. The sign must include the following:

- i. ~~1.~~ The word "CAUTION" in 72-point type;
- ii. ~~2.~~ The words "PESTICIDE APPLICATION" in 30-point type or larger;
- iii. ~~3.~~ The Maine Board of Pesticides Control designated symbol;
- iv. ~~4.~~ Any reentry precautions from the pesticide labeling;
- v. ~~5.~~ The name and telephone number of the entity making the pesticide application;
- vi. ~~6.~~ The date and time of the application;
- vii. ~~7.~~ A date and/or time to remove the sign;
- viii. ~~8.~~ the chemical and trade name of the pesticide; and
- ix. ~~9.~~ the length of time to remain off the treated area as indicated by the pesticide label; and

~~(f)~~ 5. For licensed applicators, the requirements above are in addition to any requirements that may also apply to State of Maine licensed applicators subject to the Maine Board of Pesticides Control rules, as may be amended from time to time, regarding public notification.

(b) All retailers selling pesticides or fertilizers subject to the provisions of this chapter shall post a sign at the point of sale that contains the following verbiage:

1. Application of synthetic pesticides and fertilizers within the City of Portland must comply with Chapter 34 of the City Code.

Sec. 34-11. Outreach and Education.

(a) The Sustainability Coordinator or ~~his or her~~ designee shall publish notice of this ordinance in a newspaper of general circulation in the City upon adoption and shall attempt to

provide information about it to identified retailers and lawn, garden, and tree-care providers serving the City of Portland, as well as to churches, schools, and other institutions in Portland.

(b) The ~~PMAC~~LMAC shall prepare and publish materials designed to educate the community about the role of pesticides and fertilizers in the local environment and the benefits of organic fertilizers and pest management. This outreach may include: a community-based social marketing campaign targeting City households and businesses; promotion of professional education and training for State of Maine licensed applicators; distribution of information and news about City practices through Portland internet and web-based resources; public service announcements; news releases and news events; tax bill inserts; posters and brochures made available at City events and applicable locations that serve the public; workshops, trainings, and demonstration projects; targeted outreach to schools; and/or any additional methods deemed appropriate by the ~~PMAC~~LMAC.

(c) The ~~PMAC~~LMAC shall also develop a program to work directly with retailers that sell pesticides and fertilizers in the City of Portland to:

1. Provide educational training for all retail store employees who recommend and sell pesticides or fertilizers for use in the home and garden, highlighting the following:
 - i. federal, state, and local pesticide and fertilizer regulations;
 - ii. principles of organic landcare, including pest management and use of fertilizers;
 - iii. pesticide and fertilizer toxicity and health and environmental concerns;
 - iv. proper pesticide display and storage; and
 - v. the role of personal protective equipment, pesticide poisoning symptoms, and emergency procedures in case of spills; and
2. Implement a toolkit consisting of educational materials and signage (i.e., posters, signs, stickers) that can be customized, printed, and placed in stores

to help consumers understand this ordinance and alternatives to prohibited pesticides and fertilizers.

Sec. 34-12. Violations.

Any person violating any of the provisions of this ordinance or failing, neglecting or refusing to obey any order or notice of the City Manager or ~~his or her~~ designee issued hereunder shall be subject to enforcement action as provided in §34-13.

Sec. 34-13. Enforcement and Remedies.

(a) This ordinance may be enforced by the City Manager or ~~his or her~~ designee;

(b) The City Manager or ~~his or her~~ designee shall have the authority to enact rules and regulations in order to implement the provisions of this ordinance; ~~and~~

(e)(c) The Permitting Department is authorized to institute, or cause to be instituted by the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article; and

(d) Any violation of this chapter shall constitute a civil violation subject to the penalties contained in Portland City Code, Chapter 1, § 1-15.