

KATE SNYDER (MAYOR)
PIOUS ALI (A/L)
APRIL FOURNIER (A/L)
ROBERTO RODRÍGUEZ (A/L)



ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANDREW ZARRO (4)
MARK N. DION (5)

CITY COUNCIL WORKSHOP

Ethics Commission Ordinance | Civilian Police Review Board

June 21, 2023 at 4:00 PM in Council Chambers

REMOTE PARTICIPATION:

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.

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/84321836828?pwd=ejJVamNYcWI5M0pTd1ZoaGk5dWtYUT09>

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AGENDA ITEMS:

Discussion: Development of an Ethics Commission Ordinance (Attorney Jim Katsiaficas, Perkins Thompson)

Discussion: Development of a Civilian Police Review Board Ordinance (Rachel Millette, Associate Corporation Counsel)

EXECUTIVE SESSION:

Motion for the City Council to go into Executive Session pursuant to 1 M.R.S.A. section §405(6)(D) and (E) to discuss the development of the Civilian Police Review Board ordinance.

ADJOURNMENT:

Order 42-22/23

Passage: 9-0 on 8/8/2022

Effective 8/18/2022

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CITY OF PORTLAND
IN THE CITY COUNCIL

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**ORDER SETTING A PUBLIC HEARING ON THE CHARTER COMMISSION'S
BALLOT QUESTIONS AND SUMMARIES**

ORDERED, that the Portland City Council will hold a public hearing on the attached proposed ballot questions and summaries of modifications to the Portland City Charter on September 1, 2022 at 5:00 p.m. in the Council Chambers at Portland City Hall, said modifications to be placed upon the November 8, 2022, Regular Municipal Election ballot if submission to the voters is approved by the Council.

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.

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.

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.

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.

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.

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.

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.

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.

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

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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.



MEMORANDUM

To: Mayor Snyder and Members of the City Council

From: Rachel Millette, Associate Corporation Counsel

Date: June 16, 2023

Subject: Ordinance Creating Civilian Police Review Board

At a workshop scheduled for June 21, 2023, the City Council plans to discuss changes to the City Code in order to implement Ballot Question #7 - Civilian Police Review Board, which was approved by the voters during the November 2022 election and adds Article IX to the City Charter. Article IX creates a new Civilian Police Review Board (the "New Board"), which will replace the City's existing Police Citizen Review Subcommittee ("PCRS") and requires the Council to adopt an ordinance that will govern that board. The New Board, like the existing PCRS, is charged with reviewing internal affairs investigations on the issues of fairness, thoroughness, objectivity, and timeliness.

For purposes of the workshop, I have summarized below some outstanding questions which are not answered by Article IX of the City Charter. For ease of reference, I have attached a copy of Question #7, which includes the new Article IX of the City Charter, and the existing PCRS ordinance, which is included in Portland City Code sections 2-46 to 2-57 and 2-76 to 2-77. At the upcoming workshop, I will be asking the Council for guidance on outstanding issues left unresolved by Question #7 so that I can prepare a revised draft of the City Code for the Council's consideration at a future meeting.

Eligibility Criteria for Board Members

- Section 2-49 of the City Code currently provides that present or former city employees and City Council members are prohibited from serving on the subcommittee for ten (10) years after their service with the City. Some members of the existing PCRS as well as the Police unions have

raised concerns about the ability for School Board and school department employees to serve on the Board.

Appeal Process

- Article IX of the Charter will create a new appeal process which does not exist in the current City Code. Specifically, the Charter requires the City Council to adopt an ordinance which outlines an appeal process for “persons aggrieved by a report issued by the Civilian Police Review Board.” The Charter provides that the appeal shall be to the City Council itself or to another body which the Council designates or creates. I am seeking guidance on which body the Council would like to hear appeals of the New Board’s reports.

Following the Council’s workshop, I plan to provide a draft ordinance to the existing Police Citizens Review Subcommittee for their review and feedback. I also plan to provide a draft ordinance to the Police unions for their comments, though it is the City’s position that bargaining over the Police Civilian Review Board is not required.

If you have suggestions for other changes or any questions about the Charter, the ordinance changes, or the ordinance-development process, please feel free to contact me directly to discuss them either before or during the upcoming workshop.

BALLOT QUESTION # 7—Civilian Police Review Board

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1. Proposed Summary:

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- Be appointed by the city council;
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- 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.

Chapter 2 ADMINISTRATION*

***Charter reference(s)**--Powers and duties, art. I, § 2.

Cross reference(s)--Ordinances promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds in the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city saved from repeal, § 1-4(1); ordinances making any appropriations saved from repeal, § 1-4(4); ordinances prescribing the number, classification or compensation of any city officers or employees saved from repeal, § 1-4(10); ordinances providing for retirement benefits saved from repeal, § 1-4(11); uniform procedure for collecting assessments, § 1-16; elections, Ch. 9; general assistance, Ch. 13; planning board, § 14-16 et seq.; administration and enforcement of zoning, § 14-461 et seq.; jurisdiction of board of appeals for zoning, § 14-471 et seq.; board of appeals, § 14-541 et seq.; historic preservation, § 14-600 et seq.; licenses and permits, Ch. 15; police, Ch. 20; special police, § 20-16 et seq.; administration and enforcement of traffic regulations, § 28-11 et seq.; traffic division, § 28 et seq.; traffic engineer, § 28-21 et seq.; parking division, § 28-41 et seq.

Art. I. In General, §§ 2-1 -- 2-15

Art. II. Officers, §§ 2-16--2-30

Div. 1. Generally, §§ 2-16--2-20

Div. 2. Prohibition on Immigration Status Checks §§ 2-21--2-30

Art. III. Boards, Commissions, Committees, etc., §§ 2-31--2-40

Art. III-A. Portland Land Bank Commission; Fund, §§ 2-41--2-45

Art. IV. Civil Service, §§ 2-46--2-90

Div. 1. Generally, §§ 2-46

Div. 2. Civil Service Commission, §§ 2-47--2-57

Div. 3. Employment Subcommittee, §§ 2-58--2-75

Div. 4. Police Citizen Review Subcommittee, §§ 2-76--2-90

Art. V. Employee Benefits, §§ 2-91--2-200

Div. 1. Generally, §§ 2-91--2-100

Div. 2. Retirement, §§ 2-101--2-200

Art. VI. Funds Due to City, §§ 2-201--2-300

Div. 1. Generally, §§ 2-201--2-220

Div. 2. Provisional Payments, §§ 2-221--2-229

Div. 3. Interest, §§ 2-230--2-300

Art. VII. Procurement and Contracting Procedures, §§ 2-301--2-400

Div. 1. Generally, § 2-301

Div. 2. Competitive Process for Contracts, §§ 2-302--2-312

Div. 3. Sale or Disposal of Real or Personal Property §§ 2-313--2-400

Art. VIII. Civil Emergency Preparedness, §§ 2-401--2-415

Art. X. Exemption from Vehicle Excise Tax for Certain Military Personnel, §§ 2-436--2-437

ARTICLE IV. CIVIL SERVICE*

***Charter reference(s)**--Mandate for civil service, Art. VI, § 3.

***Cross reference(s)**--Commissions generally, § 2-31 et seq.

***Cross reference(s)**--32 M.R.S.A. § 7166 (Limitation on use of polygraph in employment)

***Editor's Note**--The Civil Service Ordinance was substantially reorganized and revised by Council Order No. 89-02/03, 11-4-02.

DIVISION 1. GENERALLY

Sec. 2-46. Definitions.

The following words and phrases, when used in this article, shall having the meanings respectively ascribed to them unless the context otherwise indicates:

Cause. In the case of a member, "cause" shall mean just cause and shall include any act or omission which constitutes legal cause and

includes, but is not limited to: violation of any departmental rule or rules; incompetent or inefficient performance of duty; or inattention to or dereliction of duties; insubordination; discourteous treatment of the public or a fellow employee; violation of any provision of this article or the rules adopted thereunder, whether such violation may result in a forfeiture of office hereunder, or not; job suitability or physical unfitness to perform the normal duties of the position which the member holds; the use of intoxicating liquors, narcotics, or any other drug, liquid, or preparation on duty, or to such an extent that such use interferes with the efficiency or job suitability or physical fitness of the member, or prevents the member from properly performing the normal functions and duties of his or her position; misconduct; the commission of any disqualifying criminal offense; failure to report to the appropriate superior; errors, incompetence, misconduct, inefficiency, neglect of duty, or any other form of misconduct or negligence of which the member has knowledge; and any other acts or omissions which would tend to directly discredit or injure the public service or would jeopardize the effective functioning of the department. In the case of a civil service commissioner or alternate, "cause" shall include any act or omission which constitutes legal cause, and includes but is not limited to: incompetent or inefficient performance of duty; unexcused absences from commission meetings; violation of any provision of this article or the rules adopted thereunder, whether such violation may result in a forfeiture of office hereunder, or not; the commission or conviction for any disqualifying criminal offense, or any action by the Civil Service Commissioner or alternate intended to affect or influence, or which could reasonably be expected to affect or influence any decision of the City Manager, the Chief of either department, or the City Council with respect to the department, or of any member of the department with respect to the performance of his or her duty.

Charge means a written statement to the member describing the act or omission constituting cause for action taken or proposed to be taken.

Civil service commission means collectively the two independent subcommittees constituting the commission, i.e. the employment subcommittee and the police citizen review subcommittee.

Demotion means any reduction in rank within the department but shall not include any economic layoff.

Director of human resources shall mean the person designated by the City Manager to act as Director of Personnel for the City and his or her designees (also referred to herein as the "Director").

Member means any firefighter, fire officer, police officer, or superior officer appointed hereunder to any rank within the fire or police departments, except the chiefs thereof.

Promotion means any advancement in rank within the department,

other than the rank of chief.

Rank means the position classification of any member to which he or she has been appointed hereunder within the fire department or police department but shall not include any contractual or other pay differentials between functions or grades within each rank.

Relative means grandfather, grandmother, father, mother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, half-brother, or half-sister, whether by half-blood or full blood, and whether by consanguinity or affinity.

(Code 1968, § 201.1; Ord. No. 89-80, 7-7-80; Ord. No. 433-82, § 1, 3-15-82; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 4, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

DIVISION 2. CIVIL SERVICE COMMISSION*

Sec. 2-47. Created.

There is hereby created a civil service commission, also referred to in this article as the commission. The commission shall consist of two separate and independent subcommittees as follows: the civil service employment subcommittee and the civil service police citizen review subcommittee. Commissioners shall be appointed to, and serve on, one of the two subcommittees only.

(Code 1968, § 201.3; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01)

Sec. 2-48. Composition.

(a) The Civil Service Employment Subcommittee of the Civil Service Commission shall consist of three (3) commissioners and one (1) alternate who shall serve in the absence of any commissioner.

(b) The police citizen review subcommittee shall consist of seven (7) commissioners who shall serve in the absence of any commissioner.

(Code 1968, § 201.3; Ord. No. 89-80 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-49. Qualifications.

(a) *Qualifications of commissioners.* Every civil service commissioner and alternate shall be a resident of the City of Portland. In addition, the following persons shall not be eligible for appointment to, or service on the Commission:

- (1) Any present or former employee of the city, who was employed by the city within the previous ten (10) years;
 - (2) Any present or former member of the City Council, who has held that position in the previous ten (10) years; or
 - (3) Any civil service commissioner who has completed three (3) consecutive full terms of three (3) years as provided in Chapter 2, Article III.
- (b) Additional subcommittee eligibility requirements:
- (1) *Employment subcommittee.* The following persons shall not be eligible to serve on the employment subcommittee:
 - any relative of a present member of the police or fire departments.
 - (2) *Police Citizen Review Subcommittee.* In order to ensure an objective and unbiased audit of the police department's internal affairs investigation process, any applicant for service on the citizen review subcommittee shall be disqualified from serving on said subcommittee if:
 - a. any member of the applicant's immediate family is or has been a Portland police officer in the previous ten (10) years;
 - b. the applicant or any member of his or her immediate family has been arrested by any member of the Portland police department within the previous ten (10) years, or has had the final disposition of any criminal proceedings resulting from such an arrest within the previous ten (10) years, whichever is longer;
 - c. his or her immediate family has filed a complaint with the internal affairs unit of the Portland police department within the previous ten (10) years;
 - d. the applicant or any member of his or her immediate family has brought suit against the City of Portland, the Chief of Police, the police department or any individual police officer for a cause of action arising out of an officer's performance of his or her duties; within the last ten (10) years, or has had such a suit finally disposed of within the previous ten years, whichever is longer; and
 - e. "Immediate family" as used herein shall mean and include spouse, domestic partner, children, grandchildren, parents, grandparents, and siblings.

(c) Failure to disclose any grounds for disqualification or falsification of any information in the application process shall disqualify the person from service on the commission and shall constitute "cause" within the meaning of section 2-46.

(d) Any civil service commissioner or alternate who becomes ineligible to serve during his or her term shall resign, and failure to do so shall be "cause" within the meaning of section 2-46. A commissioner or alternate on the employment subcommittee who is a relative of any candidate for appointment under this article shall inform the secretary in writing of such relationship and shall not attend any meeting of the subcommittee dealing with such candidacy, nor participate in nor attempt to influence any action by the commission with respect to the position for which such relative has applied.

(e) Reasonable efforts shall be made to ensure that the appointments to the civil service commission are diverse and representative of the community.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 370-91, § 1, 6-5-91; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 118-08/09, 12-1-08; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-50. Appointment.

Civil service commissioners and the alternates shall be appointed by the City Council. Such power of appointment shall be exercised only after the City Clerk has published a notice announcing such position or positions, describing the responsibilities thereof, and soliciting applications by qualified persons in a newspaper of general circulation within the city not less than fifteen (15) calendar days in advance of action by such council. Applications may be solicited whether or not there is a vacancy, and such applicants may be considered for any vacancy which occurs within one hundred eighty (180) days of the closing date for such applications. Such applicants may also be considered for appointment as a commissioner pro tem pursuant to section 2-55 below. Nothing herein shall limit the city's authority to solicit applications whenever the City Manager deems that it is necessary.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 138-92, § 3, 10-19-92; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97)

Sec. 2-51. Terms.

(a) *Term.* Each civil service commissioner or alternate shall be appointed to a three-year term, unless appointed to fill a vacancy. Police citizen review subcommittee commissioners first appointed hereunder shall be appointed for one-, two- and three-year terms so that only two (2) are initially selected each year other than by reason of resignation, removal or death. A commissioner or alternate shall serve until his or her successor is appointed and qualified, but in no case longer than one hundred twenty (120) days from the expiration of his or her term.

(b) *Limitation on service.* The term limitations of Chapter 2, Article Iii shall apply to service on each of the subcommittees of the civil service commission.

(c) *Applicability.* The limitation on terms provided by this amendment shall apply to any person serving on the civil service commission as of the effective date of this amendment (7/5/1991) and to any person appointed after said effective date.

(Code 1968, § 201.3; Ord. No. 89-80, 7-7-80; Ord. No. 275-83, 11-7-83; Ord. No. 299-86, 1-22-86; Ord. No. 370-91, § 2, 6-5-91; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 118-08/09, 12-1-08)

Sec. 2-52. Compensation.

Civil service commissioners shall serve without compensation, except that reasonable expenses incurred by any commissioner or alternate incidental to his or her duties under this article may be reimbursed.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97)

Sec. 2-53. Removal.

Any civil service commissioner or alternate may be removed from office by the City Council for cause, after notice and the opportunity to be heard.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01)

Sec. 2-54. Officers.

Each subcommittee of the civil service commission shall annually elect one (1) of its members as the chair. Each subcommittee may, at its option, also elect one (1) of its members as the vice chair, to serve in the absence of the chair. The Director of Human Resources or his or her designee shall serve as secretary to the employment subcommittee and shall furnish any necessary administrative assistance.

The corporation counsel or his or her designee shall serve as secretary to the police citizen review subcommittee and shall furnish any necessary administrative assistance to that subcommittee.

(Code 1968, § 201.3; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-55. Commissioners pro tem.

In the case of temporary absence from the city, temporary disability of the civil service commission members and alternate, or other circumstances, so that a quorum of a subcommittee cannot be constituted without such action, the City Council may appoint such commissioners pro tem as may be necessary to constitute a quorum.

Commissioners pro tem shall be subject to the eligibility requirements of this division. A commissioner pro tem shall possess the powers and discharge the duties of a regular commissioner during the absence or disability for which he or she has been appointed; provided, however, that a commissioner pro tem shall have no authority with respect to rule-making by the commission and shall not participate in any action or decision where a quorum is otherwise present.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97)

Sec. 2-56. Meetings.

(a) *Calling of meetings.* Meetings or hearings of either subcommittee of the Civil Service Commission may be called at any time by its Chair, or in the absence from the city or disability of the Chair, by any member of the Subcommittee. The Chair of a Subcommittee shall call a meeting upon request from any Subcommittee Commissioner.

(b) *Quorum.* A quorum of the Employment Subcommittee of the Civil Service Commission shall be two (2). The Subcommittee Alternate may attend any hearing or meeting, but shall participate as a Commissioner only during the absence or disability of any Commissioner or whenever a vacancy on the Subcommittee exists.

A quorum of the Police Citizen Review Subcommittee shall be four (4). Notwithstanding the foregoing, the quorum shall be reduced to three (3) during any period when there is a vacancy on the Subcommittee, including a vacancy in the position of alternate.

(Code 1968, § 201.5; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 247-03/04, 6-21-04)

Sec. 2-57. Prohibited practices.

(a) *Forfeiture of office.* A determination by a court of competent jurisdiction of a practice, or facts necessarily constituting a practice prohibited by this section by any civil service commissioner, alternate, member of a department, or any other person shall result in the forfeiture of any office held by such person and shall be a permanent disqualification for any office existing under or governed by this article.

(b) *Nondiscrimination.* No discrimination shall be exercised, promised, or threatened by any person, in connection with any action taken or to be taken under this article, in favor or against any applicant or member of a department because of his or her religious beliefs, ancestry, national origin or veteran's status; race, sex, sexual orientation, or color; because of age or physical or mental disability, except where such requirements constitute a bona fide occupational qualification or failure to meet the requirements poses a safety hazard or cannot be reasonably accommodated; because the applicant or member of the department, or member of his or her family,

has or has declined to contribute to any political fund or to render political service; or because of any lawful union activity or membership. No person shall seek or attempt to use, nor shall the civil service commission give consideration to, any political endorsement, or any other factor prohibited by the preceding sentence. To the extent consistent with law and with this article, it is the policy of the city to encourage diversity in its work force and to use affirmative action in its recruitment of applicants for positions hereunder.

(c) *Falsification*. No person shall make any false statement, certificate, mark, rating or report with respect to any test, certification or appointment made under any provisions of this article, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules and the regulations adopted hereunder, or to cheat, or attempt to cheat, or abet cheating on any examination.

(d) *Bribery*. No person shall directly or indirectly give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in a position, or in an examination for a position, in the departments.

(Code 1968, § 201.7; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 239-91, § 1, 2-20-91; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

DIVISION 4. POLICE CITIZEN REVIEW SUBCOMMITTEE

Sec. 2-76. Functions and duties.

(a) *Duties.* The duties of the police citizen review subcommittee are as follows:

- (1) To determine whether police investigations into citizens' complaints by members of the public against police officers are thorough, objective, fair and timely by auditing the police department's internal affairs' unit investigative methods and procedures;
- (2) To report in writing to the City Manager periodically, but no less than annually beginning in January 2003, as follows:
 - a. on the subcommittee's determination as to the thoroughness, objectivity, fairness and timeliness of the police internal affairs' investigation of citizen complaints against police officers; and
 - b. any recommendations and/or proposals for improvements or modifications in the police internal affairs investigative process, policies or training, and for enhancing public confidence in the methods and process of investigation of citizen complaints against police officers.
- (3) To hold a public hearing at least annually to receive comments upon the police citizen complaint process.
- (4) Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the subcommittee shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable.
- (5) Reports of the subcommittee 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.
- (6) To make suitable procedural rules, from time to time, for the conduct of its duties. Proposed rules shall be submitted to the City Council and shall become effective only when approved by the City Council. All such rules shall be recorded in the office of the City Clerk.

(b) *Complaints to be reviewed:* The subcommittee shall review all completed internal affairs investigations of citizen complaints.

(c) *Timing of review.* All subcommittee reviews of citizen complaints shall take place only after final disciplinary action has been taken and all appeals exhausted or the case has been finally

closed with no disciplinary action taken.

(d) *Notification of review.* The subcommittee shall notify the citizen complainant, in writing, of the subcommittee's review and any findings made by the subcommittee regarding the thoroughness, objectivity, fairness and timeliness of the internal affairs investigation.

(e) *Scope of authority.* The subcommittee shall conduct its duties solely to determine the thoroughness, objectivity, fairness and timeliness of the police department's internal affairs' methods and procedures in regard to citizen complaints against police officers, and the subcommittee shall have no power or authority to subpoena or call witnesses nor to impose or modify any disciplinary action, or lack of action, against any police officer. The subcommittee shall make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer.

(f) *Training.* Prior to assuming their duties hereunder, subcommittee commissioners shall attend training by city staff as to the subcommittee's duties and responsibilities, applicable state and local law and regulations, issues relevant to the conduct of the citizen review function, accepted police practices and the department's internal affairs investigation process. Such training shall be provided by the city at no cost to the subcommittee members.

(g) *Resources.* To facilitate the effectiveness and objectivity of the police citizen review subcommittee, the city shall make available to the subcommittee the services of a technical advisor, as needed by the subcommittee. The technical advisor may be used for the purposes of training; briefing the subcommittee on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the subcommittee on aspects of the internal investigation process. The advisor shall be retained by the City Manager after consultation with the Chief of Police, representatives of the police unions and the subcommittee chairperson. 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 subcommittee to conduct its duties hereunder. In no case shall the subcommittee 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 state Freedom of Access law.

(Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-77. Confidentiality.

Each member of the civil service commission 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 be cause for removal from the commission. All reports and requests for disclosure of any information shall be referred to the corporation counsel for review prior to release.

(Substitute Ord. No. 83-01/02, § 3, 11-5-01)

Sec. 2-78 thru 2-90. Reserved.