

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

REMOTE JUNE 22, 2020 SPECIAL CITY COUNCIL AGENDA

The Portland City Council will hold a Remote Special City Council Meeting at 5:00 p.m. This meeting will take place remotely using Zoom. The Honorable Kate Snyder, Mayor, will preside.

ZOOM INFORMATION

The Portland City Council will hold a remote special meeting on Monday, June 22, 2020 at 5:00 PM. This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403-A, that authorizes cities and towns to conduct meetings online.

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day.

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

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83936114426>

Or iPhone one-tap :

US: +13126266799,,83936114426# or +19292056099,,83936114426#

Or Telephone:

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

US: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782

Webinar ID: 839 3611 4426

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

COMMUNICATION:

Communication re: Legislative Committee Recommendation

UNFINISHED BUSINESS:

Order 190A-19/20 Approving the Consolidation of Voting Districts in the City of Portland to Three Polling Places for the July 14, 2020 State Primary and Municipal Referendum - Sponsored by Katherine L. Jones, City Clerk

The City Clerk is offering an amendment that has been included in the back-up materials and would provide for six (6) consolidated polling places for the July 14, 2020 election.

This order as originally proposed approves the consolidation of voting districts for the July 14, 2020 State Primary Election and Municipal Referendum Questions, into three polling places for the City of Portland.

On the peninsula of Portland, the consolidated polling place would be Cumberland County Civic Center, at 1 Civic Center Square. The following Voting Districts would be consolidated on July 14, 2020 for voting at the Civic Center: 1-1, 1-2, 2-1, 2-2, 3-2.

Off the peninsula of the City of Portland, the consolidated polling place would be First Baptist Church, at 360 Canco Road. The following Voting Districts would be consolidated on July 14, 2020 for voting at the First Baptist Church: 3-1, 4-1, 4-2, 5-1, 5-2.

Peaks Island voting for District 1-3 will remain on Peaks Island, and other island residents would vote as they have in the past.

In order to address City Council and other concerns brought up during public comment at the June 1, 2020 Remote City Council Workshop on the July 14, 2020 election, a staff amendment has been included in the back up material. This amendment proposes some changes to the initial consolidation proposal, and seeks to increase the total number of polling places to six. This would replace the originally proposed three polling places in the original Order.

More specifically, under the amendment, voting districts 1-1 and 1-2 would vote at the East End Community School, 195 North Street; and Voting Districts 2-1 and 2-2 would vote at Reiche School, 166 Bracket Street.

Off the peninsula, voting districts 3-1 and 3-2 would vote at the Italian Heritage Center, 40 Westland Avenue; voting districts 4-1 and 4-2 would vote at First Baptist Church, 360 Canco Road; and voting districts 5-1 and 5-2, would vote at the Grace Baptist Church, 476 Summit Street. Peaks Island would vote at the Kennedy and Carter Family Community Center located at 129 Island Avenue, Peaks Island, as they have in the past.

This item must be read on two separate days. It was given a first reading on June 1, 2020 and postponed to this meeting. Public comment has been given. Five affirmative votes are required for passage.

Order 191-19/20 Moving the Polling Place at the Portland Exposition Building to the Troubh Ice Arena for the July 14, 2020 Primary and Referendum - Sponsored by Katherine L. Jones, City Clerk

In the event that the City Council does not approve the consolidation of the City polling places as set forth in the order above, this order would be necessary. The Portland Exposition Building is not available for the July 14, 2020 election.

This order was postponed to this meeting to coincide with consideration of Order 190A-19/20, consolidating voting districts will be considered. If Order 190A-19/20 is approved, this item may be postponed indefinitely. If not, five affirmative votes are required for passage after public comment.

PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Communication

To: Mayor Kate Snyder and Members of the Portland City Council

cc: Jon Jennings, City Manager and Katherine Jones, City Clerk

From: Danielle P. West-Chuhta, Corporation Counsel

Date: June 22, 2020

Re: Legislative Committee Recommendation

Today the Legislative Committee discussed several citizen petitions and issues that have been identified regarding the ability to safely gather signatures as a result of COVID-19 pandemic. (See attached Legal Memo which describes the issues in more detail). In order to address the petitioners' concerns, and give them the ability to gather signatures at the July 14, 2020 election, the Committee recommended that the Mayor call a special meeting of the City Council (as allowed by the City Charter, Article II, section 9) for August 31, 2020. The addition of this meeting date will allow the petitioners some more time to gather signatures, but will still comply with the requirements of Chapter 9 of the Portland City Code including, but not limited to, the eighty (80) day signature gathering period specified in the Code.

MEMORANDUM

TO: Chair Ali and Members of the City of Portland Legislative Committee
FROM: Danielle P. West-Chuhta, Corporation Counsel
DATE: June 17, 2020
RE: Collection of Voter Signatures on Nomination, Initiative or Referenda Petitions

At the last Legislative Committee meeting, you asked me to research whether or not the Maine Constitution, Portland City Charter, and/or Portland City Code permit electronic voter signatures on nomination, initiative, or referenda petitions. You have also asked me to evaluate whether or not there are any potential solutions that would help decrease barriers to collecting voter signatures during the COVID-19 health crisis.

BACKGROUND

Four primary sources of law are implicated in this issue: (1) the Maine Constitution; (2) State statutes, (3) the Portland City Charter, and (4) the Portland City Code.

I. Background & Summary of Applicable State Statutes and Constitution

The Maine Constitution permits citizens to initiate legislation through a written petition directly. The Constitution defines "written petition" as one where the original signatures are attached, the circulator has made an oath attesting that all signatures "were made in the presence of the circulator," and that the circulator believes to the best of his or ability that the "signature is the signature of the person whose name it purports to be."

The Constitution additionally grants municipalities control over direct voter initiatives and people's vetoes concerning municipal issues. However, the State constitution does require that "the ordinance establishing and providing the method of exercising such direct initiative and people's veto shall not take effect until ratified by a vote of a majority of the electors of the city, voting thereon at a municipal election." The Constitution also provides that the Legislature may at any time provide a uniform method for the exercise of the initiative or referendum in municipal affairs."

In addition to the Maine Constitution, the Maine Legislature has codified elements of these constitutional requirements into state statutes for both state ballot questions and nomination requirements for candidates. Specific to ballot questions, a "circulator of a petition solicits signatures for the petition by presenting the petition to the voter, asking the voter to sign the petition and personally witnessing the voter affixing the voter's signature to the petition." 21-A M.R.S. § 903-A (2019).

II. Background & Summary of Relevant City of Portland Code and Charter Provisions

Under the Portland Charter and City Code, voter signatures are required for two primary purposes: (1) petitions gathering signatures for nomination petitions, and (2) petitions gathering signatures for initiative and referenda petitions. The requirements governing nomination petitions are outlined in the City Charter, while Chapter 9 of the Portland City Code governs initiative and referenda petition requirements.

A. Nomination Petitions

For a candidate to appear on the ballot, he or she must receive a set number of signatures, as outlined in the City Charter. A candidate for an at large city council seat or an at large school board seat must have between 300-500 signatures from registered voters. City Charter Art. IV § 4. A candidate for a district school board or city council seat must receive 75-150 signatures from registered voters. *Id.*

B. Initiatives & Referenda

Chapter 9 of the Portland City Code sets forth procedural steps for initiative and referenda petitions, as well as certain form and signature requirements.

a. Procedural Steps for Initiative and Referenda Petitions

For an initiative or referenda to appear on the ballot, the following steps must occur:

- (1) A petitioners' committee comprised of 10 registered voters files an affidavit with the city clerk. Ch. 9, § 9-36(c)(1-4).
- (2) After the affidavit is filed, the city clerk has seven days to prepare the petition forms. *Id.* § 9-36(c)(4).
- (3) Members of the committee and other registered city voters circulate the petition for signatures by registered voters. *Id.* The City Code requires at least 1,500 signatures from registered voters. *Id.* § 9-36(a).
- (4) The petition may be circulated for up to 80 calendar days from the date of issuance. The petition must be returned to the city clerk by the close of business on the 80th calendar day. *Id.* § 9-36(d).
- (5) The city clerk has 15 days in which to verify the petition.
- (6) After verifying that there are 1,500 valid signatures on the petition, the clerk forwards a report to the City Council, which sets a date for a public hearing. The Council must set a hearing within 30 days of receiving the report of a sufficient petition. *Id.* § 9-36(f).
- (7) At the next city council meeting following the public hearing, the City Council must set a date for a special election. The city council must set the election date for between 50-150 days after the city council meeting. *Id.* § 9-39.

b. Number of Required Signatures

In addition to the above-stated procedural steps, the City Code additionally sets forth certain requirements for the number of signatures that must be received. First, section 9-36 makes clear that a petition is only valid if at least 1,500 signatures from registered voters have been received. Ch. 9, § 9-36. A petition is only sufficient and will advance to the city council for a public hearing if the city clerk verifies that there are at least 1,500 valid signatures from registered voters. *Id.* § 9-36(f).

c. Required Petition Form

Finally, the City Code makes clear that the petition must adhere to specific form requirements. *See id.* § 9-37(a).

- (1) The petition must be on paper of uniform size and identify the signature, printed name, residence, and date of each signatory. *Id.*
- (2) "Each signature must be in ink or other indelible instrument." *Id.*
- (3) The person who circulated the petition must attest that the circulator personally circulated the form; the signatures on the form were signed in the circulator's presence; and that the circulator believes each signature was signed by the person the signatory purports to be and believes that each signature is genuine. *Id.*

CASE LAW

I. Maine Case Law

In addition to the above statutes, several cases have been decided by the Law Court and Superior Court that provide some helpful guidance.

A. Maine Case Law on the meaning of “presence” in the State Constitution and City Code

The Maine Constitution, State statutes, and Portland City Code reference the signing of petitions "in the presence" of the circulator. This phrasing raises the central question of whether "presence" can be interpreted into include electronic "presence" through, for example, Zoom. The Law Court has provided some guidance on how this term should be interpreted, although Maine courts have not squarely answered this question.

In *Knutson v. Dep't of Sec'y of State*, the Law Court upheld the Secretary of State's interpretation of "presence," as meaning that the "circulator must be personally involved and observe the signatures." *Knutson v. Dep't of Sec'y of State*, 2008 ME 14, ¶ 2, 954 A.2d 1054 (2008). In rejecting the petitioner's argument that "presence" means "proximity," the Law Court agreed with the Secretary's interpretation that "'presence' requires both proximity and awareness." The Court deferred to the Secretary of State's interpretation that "presence means" "under the direct observation of that circulator" based on the requirement that each circulator takes an oath. *Id.* ¶ 12. Because each circulator must attest that "each signature is the signature of

the person whose name it purports to be” being in the same general area as the signatory is not sufficient. *Id.* If the circulator is too far away, the circulator will not be able to verify that the signature of the person signing, which would inhibit the circulator’s ability to take the oath. *Id.*

In addition to upholding the Secretary of State's interpretation of "in the presence of," the Law Court also evaluated the validity of the petitioner's motion for a stay to allow the petitioner to seek review of the opinion by the United States Supreme Court. ¶ 1. The Law Court held that there was little success on the merits because the requirement of the circulator's "presence" does not "significantly inhibit communication with voters about proposed political change." *Id.* ¶ 6 (quoting *Buckley v. Am. Constitutional Law Found., Inc.* 525 U.S. 182, 192 (1999)).

In summary this case demonstrates that the Law Court not only defers to the Secretary of State’s interpretation of Maine election laws, but supports a more conservative definition of in the “presence.”

B. Maine Courts’ Approach to “Electronic” Submission and Certification of Petitions

Maine courts have not explicitly addressed electronic signatures, but have directly addressed electronic submissions and certifications of petitions. In *Hammer v. Sec’y of State* the Law Court upheld the Secretary of State’s interpretation that section 354 (addressing nomination petitions) “require[s] the presentation of original signatures, and therefore [] preclude[s] the submission of petition for municipal certification by electronic means.” *Hammer v. Sec’y of State*, 2010 ME 109, ¶ 2, 8 A.3d 700 (2010). In this particular case, the petitioner submitted scanned copies of signed petitions to town registrars for certification through an internet file-sharing program. *Id.* at *703. The Secretary of State rejected these signatures as “invalid” because they had not been properly delivered per the requirements of 21-A M.R.S. § 354(&)(B)-C). This statutes specifically require that voters “must personally sign the petition” and that “petitions must be delivered to the registrar or the clerk” and that the clerk “may not certify any names that do not satisfy [these requirements].” *Id.* at *704, 706.

The Court deferred to the Secretary of State’s interpretation of the relevant statutes and the determination that “all methods of delivery are not equivalent.” *Id.* at *706. Moreover, the Court determined that Section 354(7)(B) “contemplates the delivery of physical documents not electronic delivered” and that the requirement that petitions delivered to the clerk be “original” is not equivalent to scanned electronic submission. *Id.* at *707. Additionally, the Court looked to other provisions where the Legislature expressly contemplated the use of electronic copies as evidence that if the legislature had intended to allow other methods of delivery, it would have explicitly included this in the statute. *Id.* Moreover, not allowing copies prevents forged signatures or “material alterations to a petition.” *Id.* at *707 n.7.

Overall, this case demonstrates that the Law Court is not willing to allow electronic alternatives to petitions, unless the Legislature has expressly allowed this.

II. Federal Court Cases

Maine is not the only state grappling with the issue of how to ensure that voters are still able to collect signatures during a pandemic. Several federal courts have analyzed the constitutionality of existing petition requirements in the context of the pandemic.¹

On May 26, 2020, the Sixth Circuit granted Ohio's motion to stay the district court's injunction against the enforcement of the State's ink signature requirements, witness requirements, and submission deadlines. *Thompson v. Dewine*, 959 F.3d 804, ____ (2020) (*per curiam*). In this case, plaintiffs alleged that the enforcement of the Ohio Constitutional and statutory requirements for the initiative process violated the First Amendment. In evaluating the framework, the Court applied the *Anderson-Burdick* framework weighing "the burden imposed by the State's regulation against the precise interest put forward by the State as justifications for the burden imposed by its rule." *Id.* While the Sixth Circuit stated that courts regularly uphold regulations that set forth initiative requirements, the central question is whether those regulations restrict First Amendment rights in light of the COVID-19 pandemic. *Id.*

A. The severity of the Burden

The court looked first to the severity of the burden placed on electors to provide witnessed, ink signatures. *Id.* In this particular case, the court found that the burden was not unduly severe. *Id.* First, Ohio had exempted from the stay-at-home order both "petition and referendum circulators" and gatherings to express protected speech.

Additionally, the court also reasoned that circulators could use social media to contact electors and that the circulator could then bring the petition to the elector's home for a signature. *Id.*

Alternatively, the circulators could collect signatures in-person using specific safety measures. *Id.* The court ultimately stated that "just because procuring signatures is now harder . . . doesn't mean that the Plaintiffs are *excluded* from the ballot. . . . [the court] cannot hold private citizens' decisions to stay home for their own safety against the State." *Id.* (emphasis in original).

B. Legitimate State Interest

The Court also held that the State had a compelling interest. *Id.* First, witness and ink requirements prevent fraud and ensured authenticity. *Id.*; see also *Fair Maps Nevada v. Cegavske*, 3:20-cv-00271-MMD-WGC, 2020 WL 2798018, at *15 (D. Nev. May 29, 2020) (stating that "in-person requirements survive strict scrutiny because they are narrowly tailored to achieve their compelling government interest of preventing fraud." Second, the deadlines ensure the signatures are collected in a timely manner that allows the State to verify the signature. *Dewine*, 959 F.3d at __. But see *Fair Maps Nevada*, 2020 WL 2798018, at *15 (granting an injunction against enforcement of the petition deadline because the administrative convenience of having more time does not outweigh the burden on First Amendment rights). Ultimately, these

¹ The opinions discussed in this section were released in the last two weeks and therefore have not yet been formatted with page numbers.

compelling interests outweighed the intermediate burden placed on electors. *Dewine*, 959 F.3d at ____.

ANALYSIS OF STATUTES, CITY CODE, AND CASE LAW

I. Plain Language

Based on a plain language reading of Chapter 9 of the Portland City Code, there is nothing to indicate that the City Council has the flexibility to alter the required number of signatures or the form of the petition. Section 9-36(f) clarifies that meeting the minimum of 1,500 signatures is a requirement for the petition to be deemed valid by the city clerk. This determination of validity is, in turn, a requirement for the Council to receive the report from the City Clerk. Similarly, there is nothing in Chapter 9 to indicate that the Council has the flexibility to change or alter the form of the petition. As such, Chapter 9 would indicate that if the Council hopes to alter the minimum number of required signatures, change the form of the petition, or allow electronic signatures, they must follow the proper channels for amending the Code and Charter with approval from voters.

This interpretation is also supported by the Maine Constitution, which expressly states that cities can only establish direct initiative petition procedures if voted on by electors in a municipal election. This provision would indicate that any changes to the municipal initiative or referendum petition process similarly must be approved by the voters.

III. Guidance from Case Law

Based solely on the Maine case law prior to the COVID-19 pandemic, precedent would seemingly support the plain language interpretation. While the Law Court has provided some guidance on what “in the presence of” means, the Law Court’s interpretation is still ambiguous. Awareness and “direct observation” could theoretically be achieved through electronic observation such as through Zoom.² However, the requirement of “proximity” suggests that the circulator and voter must share the same physical space. This narrower interpretation would preclude the use of any electronic methods of signing a petition.

Additionally, the Law Court’s skepticism of using electronic means to submit copies of petitions indicates that the Court would similarly differentiate between a physical ink signature and an electronic signature. The Court upheld the Secretary of State’s statement that “all methods of deliver are not equivalent,” which could seemingly be extend to a statement that “all methods of signatures are not equivalent.” Additionally, the Court viewed concerns over fraudulent and forged signatures to be a legitimate concern.

Finally, while the case law emerging on this issue from the federal courts is extremely new, several themes are emerging: (1) courts, which would normally uphold state initiative requirements, are more likely to hold that these requirements are overly burdensome during a

² A Signature through Zoom would be similar to the temporary modification of in-person notarization requirements. See Executive Order 37 FY 19/20. However, even in this case, the Executive Order “authorizes remote, not electronic, notarization.”

pandemic; (2) an express exemption of petitions from stay-at-home orders supports a finding that the requirements are not burdensome; (3) where there is no express exemptions from the stay-at-home order, there needs to be an adequate period of time for collecting signatures between when the order is rescinded and when the petitions are due; (4) timing requirements are more likely to be unconstitutional restrictions of First Amendment rights because administrative convenience is not a compelling interest; (5) in-person requirements are likely to be upheld because states have a legitimate interest in preventing fraud and in-person requirements are a tailored means of achieving this goal; (6) courts are concerned that altering or changing state initiative requirements is an impermissible extension of the courts into the legislative arena; and (7) states need more time to set up a safe and secure electronic petition platform.

While there was no express exemption for signature collection or First Amendment gatherings in Maine's stay-at-home order, the state began phase 1 of its reopening plan on May 1. As such, individuals collecting signatures will have over two (2) months between the end of the stay-at-home order and the new date of the election. According to the logic applied by the federal courts, this is likely enough time for circulators to collect signatures and would be upheld even though signature collection was not expressly exempted from the Governor's Executive Order.

POTENTIAL SOLUTIONS

You have also asked me to evaluate whether there are any potential solutions to the issues that have arisen regarding collecting of signatures.³ Assuming, as discussed above, that the City Council cannot alter the petition requirements without submitting the changes to voters for approval, there are two primary avenues available for remedying this issue: (1) an executive order; or (2) legislative action. However, both options are likely limited by the fact that the central requirements for referenda and initiative petitions are written into the Maine Constitution. This limits the ability of the Governor to issue an Executive Order or for the Legislature to pass legislation allowing for alternations to the initiative process. As a result, any change would likely require an amendment to the Maine Constitution.

While the Governor has relaxed other requirements, such as in-person government meetings, this requirement is not established in the Maine Constitution. It is solely based on a statutory provision. Therefore, the Governor had the authority to issue an Executive Order temporarily changing the requirements. In this particular case, even though there are statutes governing these petitions, the statutes themselves are grounded in the Constitution, which, for good reason, requires a process to change/amend.

Theoretically, the Legislature could regain control over the initiative and referenda process under the Constitution. However, this would not necessarily solve the problem at issue since any legislative solution would still be limited by the State Constitution.

³ Please note that based on what I can find online, the Maine Democratic Party is currently using virtual petitions for the nomination of State Delegates and State Alternates. They are using a specific online system for the submission of these signatures. However, this seems to be an individual choice that the party has made. I could not find any rules or requirements that would limit the party's ability to do this.

CONCLUSION

Ultimately, there is likely no easy or quick solution that would allow voters to sign petitions electronically. Not only does the Maine Constitution, statutes and Portland City Charter and Code make this difficult, but courts are likely to uphold in-person requirements as legitimate means of preventing fraud. Additionally, courts are seemingly wary to become heavily involved in petition requirements that should be left to the legislature.

With the above said, after speaking with the City Clerk, if the City Council was willing to have a special meeting on August 31, 2020, the petitioners would be able to collect signatures at the polling places on July 14, 2020. The petitions would then need (in order to meet the Clerk's various statutory and Secretary of State deadline's for ordering of ballots and absentee voting) to be turned into the Clerk's office on or before Friday, July 17, 2020 by 4:30 PM. This would allow the setting of a public hearing and a first reading of the items/orders at the August 17th Council Meeting, and the actual hearing, final Council action/vote to occur on August 31, 2020.

Thank you for your time. If you have any questions, the City Clerk and I will be present at the next Legislative Committee meeting.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 17, 2020

SUBJECT: **Order 190A-19/20 Approving the Consolidation of Voting Districts in the City of Portland to Three Polling Places for the July 14, 2020 State Primary and Municipal Referendum - Sponsored by Katherine L. Jones, City Clerk**

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

The City Clerk is offering an amendment that has been included in the back-up materials and would provide for six (6) consolidated polling places for the July 14, 2020 election.

This order as originally proposed approves the consolidation of voting districts for the July 14, 2020 State Primary Election and Municipal Referendum Questions, into three polling places for the City of Portland.

On the peninsula of Portland, the consolidated polling place would be Cumberland County Civic Center, at 1 Civic Center Square. The following Voting Districts would be consolidated on July 14, 2020 for voting at the Civic Center: 1-1, 1-2, 2-1, 2-2, 3-2.

Off the peninsula of the City of Portland, the consolidated polling place would be First Baptist Church, at 360 Canco Road. The following Voting Districts would be consolidated on July 14, 2020 for voting at the First Baptist Church:
3-1, 4-1, 4-2, 5-1, 5-2.

Peaks Island voting for District 1-3 will remain on Peaks Island, and other island residents would vote as they have in the past.

In order to address City Council and other concerns brought up during public comment at the June 1, 2020 Remote City Council Workshop on the July 14, 2020 election, a staff amendment has been included in the back up material. This amendment proposes some changes to the initial consolidation proposal, and seeks to increase the total number of polling places to six. This would replace the originally proposed three polling places in the original Order.

More specifically, under the amendment, voting districts 1-1 and 1-2 would vote at the East End Community

School, 195 North Street; and Voting Districts 2-1 and 2-2 would vote at Reiche School, 166 Bracket Street.

Off the peninsula, voting districts 3-1 and 3-2 would vote at the Italian Heritage Center, 40 Westland Avenue; voting districts 4-1 and 4-2 would vote at First Baptist Church, 360 Canco Road; and voting districts 5-1 and 5-2, would vote at the Grace Baptist Church, 476 Summit Street. Peaks Island would vote at the Kennedy and Carter Family Community Center located at 129 Island Avenue, Peaks Island, as they have in the past.

This item must be read on two separate days. It was given a first reading on June 1, 2020 and postponed to this meeting. Public comment has been given. Five affirmative votes are required for passage.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please see the attached cost comparison.

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Consolidation of Polling Places for July 14, 2020 Election 6.1.2020
2. Cost comparison
3. City Council Memo
4. Governor Janet Mills Executive Order No. 56 issued 6.3.2020
5. Amendment to Order 190A Consolidation July 14, 2020 Election 6.15.2020

Prepared by:

Date: 6/17/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE CONSOLIDATION OF THE VOTING DISTRICTS
IN THE CITY OF PORTLAND TO THREE POLLING PLACES
FOR THE JULY 14, 2020 PRESIDENTIAL PRIMARY AND STATE AND
MUNICIPAL REFERENDUM**

ORDERED, that the consolidation of voting districts for the July 14, 2020 State Primary Election and Municipal Referendum Questions into three polling places is hereby approved; and

BE IT FURTHER ORDERED, that on the peninsula of Portland, the consolidated polling place shall be Cumberland County Civic Center, at 1 Civic Center Square, for Voting Districts 1-1, 1-2, 2-1, 2-2, 3-2; and

BE IT FURTHER ORDERED, that off the peninsula of the City of Portland, the consolidated polling place shall be First Baptist Church, at 360 Canco Road, for Voting Districts 3-1, 4-1, 4-2, 5-1, 5-2; and

BE IT FURTHER ORDERED, that Peaks Island will maintain its polling place on the Island, and other island residents will vote as they have in the past.

March 3, 2020 Election Costs for Presidential Primary/Special Ref. &		
Description	Cost	
Staffing/Payroll		
Election Workers	\$27,080.05	
City Staff OT	\$6,607.09	
City Staff Extra Hrs. for part-time(code 29)	\$2,166.38	
Mileage-MAC,Jody,Roger,Tom	\$142.03	
Transportation Abs. Voting GDI & Cliff	\$0.00	
Woodfords Club Rental 3-1	\$500.00	
St.Puis Rental 4-1	\$100.00	
Italian Heritage Rental 3-2(eff. 7/14)	\$1,200.00	
Grace Baptist Rental 5-2	\$100.00	
Ferry- PI Workers, Training	\$36.65	
Consult Fees -Mayoral RCV	\$0.00	
	TOTAL:	\$37,932.20

*Includes Absentee Voting at Nursing Homes, and election training
 ** Meal Stipend

Eff. Jan. 2020 Warden, Ward Clerks, Dep. Reg., Elec. Workers \$1/hr raise
 \$14./hr

Add'l fees to be incurred if using all 11 polling locations
 (multiply times 9)
 Cost of PPE, Plexiglass Barriers, Hand Sanitizers

Does not include cost for programming, printing ballots,
 advertising

July 14, 2020 Estimated cost of two Polling location		
Description	Cost	
Staffing/Payroll		
Election Workers	\$11,760.00	
City Staff OT	\$4,955.00	
City Staff Extra Hrs. for part-time(code 29)	\$0.00	
Mileage-MAC,Jody,Roger,Tom	\$0.00	
Transportation Abs. Voting GDI & Cliff	\$0.00	
Woodfords Club Rental 3-1	\$0.00	
St.Puis Rental 4-1	\$0.00	
Italian Heritage Rental 3-2	\$0.00	
Grace Baptist Rental 5-2	\$0.00	
Ferry- PI Workers, Training	\$0.00	
Consult Fees -Mayoral RCV	\$0.00	
	TOTAL:	\$16,715.00

per polling location

Elec. Workers	12ee* 8 hrs* \$12/hr	\$1,152.00
Ballot Clerks	12ee* 8 hrs* \$12/hr	\$1,152.00
4 Floaters	4ee* 8 hrs* \$12/hr	\$384.00
8 Machine Clerks	4ee* 8 hrs* \$12/hr	\$768.00
6 Greeters	6ee* 8 hrs* \$12/hr	\$576.00
1 Warden	1ee* 18 hrs* \$14/hr	\$252.00
1 Ward Clerk	1ee* 18 hrs* \$14/hr	\$252.00
12 Dep. Registrars	12ee* 8 hrs* \$14/hr	\$1,344.00
		\$5,880.00



Office of the City Clerk
Katherine L Jones, CMC

MEMORANDUM

TO: Mayor Snyder and Members of the Portland City Council
FROM: Katherine L. Jones, City Clerk
DATE: May 27, 2020
RE: Consolidation of Polling Places

Governor Mills is going to be issuing an amendment to her Executive Order regarding Elections. Part of the Executive Order is waiving the 90-day requirement to consolidate polling places.

In order for election to run smoothly and efficiently I need to have all polling places secured, and with the proper staff; this consists of Wardens, Ward Clerks and 8 election clerks, (most election clerks don't want to work all day 6:00 AM to 8:00 PM) so we offer shifts, morning and afternoon, which now brings me to 16 people per polling place X 11 = 176 election clerks, Deputy Registrars are essential to registering voters on election day, we currently use 4 per polling place X 11 = 44 .

The CDC guidelines for July-August maintains prohibition on gatherings of more than 50 people and At-Risk people should stay home when possible. Most of my election clerks are in the high-risk category. In order for this election to run successfully we need 242 election staff.

Currently I have one polling place that we need to move. The Exposition building is currently being used by the City to quarantine our most venerable residents. The Expo will need to move to the Troubh Ice Arena for this election. If the Council so wished to consolidate, this Order to move the polling place from the Expo to the Troubh Ice Arena would have to be postponed indefinitely. It has been approved by the Secretary of State's Office and was filed within the 60 days.

Currently one third of the Wardens (Wardens are the appointed individuals that run the election at the polling places), are not willing to work this election. The majority of the election clerks are in the high-risk category and are not willing to take a risk and work this election.

If we were able to consolidate polling places for this election only, I would be able to use two facilities one on peninsular and one off peninsular and keep the Island Voting on Peaks Island

The City Manager has been advised that we could use the Civic Center for one polling place. Voting at this facility would allow for Districts 1-1, 1-2, 2-1, 2-2 and 3-2 to vote. Entering the Civic Center on Center Street (the door that they bring the production in). If inclement weather we can have proper distancing and snake lines around the seating areas, and allow for voters with disabilities to enter and stay within the guidelines at the incoming table.

1. We can have four lines entering the facility. Keeping within the six-foot distancing, within the four lines, we can mark on the ground accordingly.
2. Check in Tables: Election Clerks would be behind plexiglass barriers and would be divided up using 6 clerks checking in the voters by using only 4 letters of the alphabet each (XYZ being 1).
3. Ballot clerks also behind plexiglass barriers putting the voter's proper ballots on the table for the voters to pick up.
4. Voters who enter the building upon checking in will be given a pen for them to use and take with them.
5. Staff will be able to wipe down booths after each use. Voters would then take their ballots to the ballot boxes and then exit the building.
6. Ample room for Poll Watchers and accommodating petitioners. This wouldn't be allowable at our other locations due to size of the facilities and the six-foot distancing.
7. Off peninsular voting can be facilitated at the First Baptist Church, Canco Road. This facility has ample parking and is on the bus route. We would be able to have Districts 3-1, 4-1, 4-2, 5-1, and 5-2 at this facility. First Baptist Church has a very large gymnasium, allowing voters to enter the facility at one door and exiting by using another door. We would be able to use the same set up for checking in and receiving ballots.

8. If the Council is willing to consolidate for the July 14, 2020 election, I can use the Wardens and Ward Clerks that want to work and the election clerks that want to work which will give me coverage for the two polling places. I can also use City Staff to assist where needed.
9. Savings: Please see attached cost comparison. March Presidential Primary Election and projected July 14, 2020 consolidation costs.
10. I am required to have a public hearing on the consolidation. Title 21-A section 631, the municipal officers must hold a public hearing a least 90 days before an election. The Governor's Executive Order will suspend the 90-day consolidation order and allow for public comment up to 15 days prior to the election. We will be in compliance by having our public comment on June 15th.
11. To have a successful election I have to have adequate staffing, Wardens must be present to oversee the entire election all day. Having a third of my election workers absent is very concerning as I take pride in running elections successfully.



Office of
The Governor

No. 56 FY 19/20
DATE June 3, 2020

AN ORDER TO FURTHER FACILITATE THE STATE PRIMARY AND LOCAL ELECTIONS WITHIN PUBLIC HEALTH RESTRICTIONS DUE TO COVID-19

WHEREAS, I proclaimed a state of emergency on March 15, 2020 and a renewed state of emergency on April 14, 2020 and on May 13, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the serious health and safety risks of the highly contagious COVID-19; and

WHEREAS, An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency, enacted on an emergency basis and effective upon the Governor's signature on March 18, 2020, authorizes the Governor to take any reasonable administrative actions necessary with respect to the elections originally scheduled for June 9, 2020 to facilitate voting by all residents registered to vote in this State in a manner that preserves and protects public health in response to COVID-19; and

WHEREAS, in Executive Order 39 FY 19/20 ("Executive Order 39") I postponed Maine's primary election to July 14, 2020 due to the risk that voters, poll workers and election officials would be exposed to COVID-19, which is highly contagious and presents a serious risk to life and health; and

WHEREAS, the provisions of Executive Order 39 continue to be in effect but require supplementation in order to address local government and school entities, as well as certain additional general election procedures, preserving the fundamental right of the citizenry to debate and vote on budgets and public policy matters, while limiting large public gatherings in order to protect public health and safety; and

WHEREAS, the governor's emergency powers expressly include the authorities to adjust time frames and deadlines imposed by law, 37-B M.R.S. §742(1)(C)(13)(a), and to suspend the enforcement of a statute prescribing the procedures for conduct of state business pursuant to 37-B M.R.S. §742(1)(C)(1) and §834;

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 37-B M.R.S. Ch. 13, and P.L. 2019, c. 617, including but not limited to the provisions cited above, do hereby Order as follows:

I. ORDERS

A. As the statewide election (both primary and referendum elections) will be held on July 14, 2020 instead of in June 2020 in accordance with Executive Order 39 FY 20/21, the language in PL 2019, c. 673, sections A-9 and B-10 that provides, “This Part must be submitted to the legal voters of the State at a statewide election held in June 2020,” is modified by substituting “July 2020” for “June 2020” to permit the people of the State of Maine to vote on the ratification of bonds.

B. A town meeting, budget hearing or public hearing on county estimates may be conducted within the current 50 person gathering limitation in a manner so as to preserve the right to debate and the right to vote, but also protecting the public health by preserving social distancing and restricting shared microphones, restrooms, seating and observing any other guidance prescribed by the Maine Center for Disease Control (“MECDC”).

Alternatively, if such a meeting or hearing cannot be held within MECDC guidance, municipal officers or local officials authorized to call open town meetings, open budget meetings or budget hearings may conduct referenda and/or secret ballot elections, including a secret ballot referendum, on July 14 or such other date in calendar year 2020 as the officials may determine, provided that they follow guidance developed by the Secretary of State in consultation with the MECDC. This guidance shall address physical distancing, sanitation and other requirements deemed necessary to provide appropriate protection to voters, clerks, poll workers, and others who may be present in and outside the polling place.

C. Title 30-A M.R.S. § 2528(1) is suspended to allow the municipal officers of a municipality that has not voted to accept secret ballot voting to nevertheless do so during the state of emergency. Elected officials in those municipalities may remain in office until an election is called pursuant to 30-A MRS § 2525.

D. The deadline in 21-A M.R.S. §121-A requiring that voter registration applications submitted by mail or by a third person must be received by the close of business on the 21st day before election day is suspended and modified to allow such applications to be received by mail or by third person through close of business on July 7, 2020.

E. The requirement in 21-A M.R.S. § 631-A(2) that a public hearing be held at least 90 days prior to an election in order to consolidate polling places is suspended and modified to require such a hearing to be held at least 15 days prior to the election and to be held within MECDC guidelines for gatherings of up to 50 people, or to

be held remotely pursuant to 1 M.R.S. § 403-A, or by an opportunity for comment by email or mail. The requirement in 21-A M.R.S. § 631-A(3) that application must be made to the Secretary of State for approval to change polling places 60 days prior to an election absent an emergency is suspended and modified to authorize submission of such an application up to 10 days prior to the election, preserving the opportunity for a later application due to an emergency situation. The voting place report required to be filed by the clerk under 21-A M.R.S. § 626-A may also be filed with the Secretary of State up to 10 days prior to the election.

- F. The requirement in 21-A M.R.S. § 753-B(5) that the municipal clerks facilitate absentee balloting through personal visits to certain licensed facilities is suspended, such balloting to be conducted in accordance with guidance from the Secretary of State in consultation with municipal clerks, the Department of Health and Human Services and Maine Center for Disease Control, so as to maximize voter participation, while reducing personal contact and protecting the health and safety of voters and municipal staff.
- G. The requirement of 60 days' notice to be given by a municipality of its intent to process absentee ballots prior to election day pursuant to 21-A M.R.S. § 760-B(2) is suspended and modified to require 21 days' notice.
- H. The provisions in 30-A M.R.S. § 2528(4) and (5) that municipal officers file with the clerk the order establishing the wording of any referendum question by the 60th day before the election is suspended and modified to provide for such filing by the 30th day before the election.
- I. For school budget year 2020/2021 only, voter approval of the school budget may be by referendum vote, notwithstanding any statute to the contrary.
- J. Any statute requiring a public hearing or public meeting in advance of a town meeting, school budget meeting, municipal referendum vote or a referendum on a school budget shall be suspended, provided that an opportunity for public comment is afforded by:
 - 1. A hearing conducted within MECDC guidelines for gatherings of up to 50 people;
 - 2. A hearing conducted in accordance with the remote participation requirements of 1 M.R.S. § 403-A;
 - 3. Provision of the statutorily required information at a time and in such a manner as is sufficient to reach voters, together with an opportunity for written comment; or
 - 4. Any combination of the above reasonably intended to maximize both public participation and public health and safety.

- K. A municipal clerk may provide a secure drop box for the return of absentee ballots until 8:00 p.m. on election day in accordance with guidance provided by the Secretary of State.
- L. Solely to the extent that 30-A M.R.S. § 5721-A(7)(A) requires a written ballot to exceed or increase the property tax levy limit at an open town meeting held in compliance with relevant gathering limits, it is suspended in favor of either a show of hands vote or a voice vote during the state of emergency.
- M. The Secretary of State is authorized to issue appropriate guidance, to perform those tasks identified in this Order and as provided in 21-A M.R.S. § 663 (first sentence), and those necessary to facilitate municipal elections and school budget voting during this state of emergency to carry out the intent of this Order.

II. EFFECTIVE DATE

This Order shall take effect on June 3, 2020.


Janet T. Mills
Governor

AMENDMENT TO ORDER 190A
PREPARED BY CORPORATION COUNSEL
RE: INCREASING THE NUMBER OF POLLING PLACES TO SIX

ORDERED, that the consolidation of voting districts for the July 14, 2020 State Primary Election and Municipal Referendum Questions into ~~three-six (6)~~ polling places as a result of the COVID-19 pandemic is hereby approved in accordance with 21-A M.R.S. section 631-A, Executive Order No. 56, and Portland City Code, Chapter 2 (section 2-407 and 2-408) and Chapter 9 (section 9-17); and

BE IT FURTHER ORDERED, that ~~on the peninsula of Portland, there shall be two~~ (2) consolidated polling places on the peninsula of Portland; and

BE IT FURTHER ORDERED, that the consolidated polling place on the peninsula for Voting Districts 1-1 and 1-2 shall be the East End Community School, 195 North Street; and

BE IT FURTHER ORDERED, that the consolidated polling place on the peninsula for Voting Districts 2-1 and 2-2 shall be ~~Cumberland County Civic Center, at 1 Civic Center Square, Reiche School, 166 Bracket Street for Voting Districts 1-1, 1-2, 2-1, 2-2, 3-2;~~ and

BE IT FURTHER ORDERED, that off the peninsula of the City of Portland, ~~the~~ there shall be three (3) consolidated polling places; and

BE IT FURTHER ORDERED, that the consolidated polling place off the peninsula for Voting Districts 3-1 and 3-2 shall be the Italian Heritage Center, 40 Westland Avenue; and

BE IT FURTHER ORDERED, that the consolidated polling place off the peninsula, for Voting Districts 4-1 and 4-2 shall be First Baptist Church, at 360 Canco Road, ~~for Voting Districts 3-1, 4-1, 4-2, 5-1, 5-2;~~ and

BE IT FURTHER ORDERED, that the consolidated polling place off the peninsula, for Voting Districts 5-1 and 5-2, shall be the Grace Baptist Church, 476 Summit Street; and

BE IT FURTHER ORDERED, that Peaks Island will maintain its polling place for District and Precinct 1-3 on the Island ~~located at the Kennedy and Carter Family Community Center, 129 Island Avenue, Peaks Island,~~ and other island residents will vote in the locations they as they have in the past.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 17, 2020

SUBJECT: Order 191-19/20 Moving the Polling Place at the Portland Exposition Building to the Troubh Ice Arena for the July 14, 2020 Primary and Referendum - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

In the event that the City Council does not approve the consolidation of the City polling places as set forth in the order above, this order would be necessary. The Portland Exposition Building is not available for the July 14, 2020 election.

This order was postponed to this meeting to coincide with consideration of Order 190A-19/20, consolidating voting districts will be considered. If Order 190A-19/20 is approved, this item may be postponed indefinitely. If not, five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Change of Polling Place 6.1.2020

Prepared by:

Date: 6/17/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER MOVING THE POLLING PLACE AT THE PORTLAND EXPOSITION
BUILDING TO THE TROUBH ICE ARENA FOR
THE JULY 14, 2020 PRIMARY AND REFERENDUM**

ORDERED, that the polling place at the Portland Exposition Building, 239 Park Avenue, is hereby changed to the Troubh Ice Arena, 225 Park Avenue, for the July 14, 2020 Primary and Referendum only.