



City of Portland Ad Hoc Committee Agenda

Charter Commission Procedures Committee, October 26, 2021 at 6:00 PM

1. Call the Meeting to Order

a. a.

[Due to the existence of an "emergency or urgent issue", the Charter Commission Committees will conduct this meeting by remote methods/technology at the Zoom link provided below, in accordance with the requirements of 1 M.R.S. section 403 -B and the Charter Commission Remote Participation Policy.](#)

You are invited to a Zoom webinar.

When: Oct 26, 2021 06:00 PM Eastern Time (US and Canada)

Topic: Charter Commission Procedures Committee

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/83533739784?pwd=dUVySVdGZG9sdG9aZDNUUGF0alprdz09>

Passcode: 143189

Or One tap mobile :

US: +13017158592,,83533739784#,,, *143189# or

+13126266799,,83533739784#,,, *143189#

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2. Approval of the prior meeting minutes

- a. Approval of the draft minutes from the October 12, 2021 Charter Commission Procedures Committee meeting.

3. Discussion of communication between elected officials and municipal staff.

- a. Memorandum from Michael Kebede to the Charter Commission Procedures Committee

4. Do we need a Code of Ethics for elected officials?

5. New Business

6. Adjournment

Charter Commission Procedures Sub Committee Meeting Oct 12 2021

Meeting was called to order by Chair Washburn - Zoom recording began at 6:04 PM

Sub Committee members present

Zack Barowitz
Michael Kedebe
Patricia Washburn
Dory-Anna Richards Waxman

Approval of Minutes

Moved - Commissioner Waxman

Second- Michael Kedebe

Discussion and clarifying from Commissioner Barowitz that Record should reflect
“ Smaller northern N E states have lower compensation rates by and large”

-

All commissioners voted in favor of amended minutes and all were in favor - passed by roll call vote

- First order of Business was Chair Washburn giving a brief over view of the agenda and we were given brief bio summaries of our guest speakers.

Topic for Guest speakers was Citizen Referendums

Other Business

Overview and discussion of the Preamble and possible addition to the Preamble of a Land Acknowledgement. Further discussion and outreach to follow. No action taken .

Speakers

Eamon Dundon - Portland Chamber - Director of Advocacy

Kim Cook - Former Portland City Councilor - Small Shelter Advocate

Jack O'Brien - Professor of Statistics at Bowdoin College and Housing referendum advocate

- The three speakers shared their experiences and discussion followed covering a wide range of topics such as state statutes , City Chapter 9 , fiscal impacts , process of gathering signatures and public process, ballot language, history of referendums , staff and council roles and other observations.

- Q & A followed by Public Comment

Motion to adjourn Commissioner Waxman

Second Commissioner Washburn

All voted in the affirmative

Meeting ended approximately 7:40

MEMORANDUM

FROM: Michael Kebede
TO: Portland Charter Commission Procedures Committee, Commissioners Washburn, Waxman,
and Barowitz
DATE: October 25, 2021
RE: Communications between City Staff and Elected Officials

QUESTIONS PRESENTED

- I. How does the Portland City Charter structure communications between the city staff and the city's elected officials?
- II. How do other city charters structure communications between their city staff and their city's elected officials?

BACKGROUND

Officials who are appointed or elected to public office in any city depend on city staff to accomplish the duties of their office. Achieving campaign promises, discharging oversight duties, and expanding or improving public goods: all these depend on cooperation and coordination between city staff and elected officials. It is thus imperative to establish an efficient, effective, and workable system of city staff and city official communication. In recent years, certain restrictions placed on communications between Portland's elected officials and its city staff brought this issue to citywide attention.¹ Accordingly, charter commissioners decided to consider a new structure for governing this area of municipal government. This memo is intended to guide that consideration.

RESEARCH METHODOLOGY

To answer the questions presented, I took a research approach that combined analysis of the charters of a random selection of cities across the country, and interviews with the city clerks of some of those same cities. Some city clerks were remarkably forthcoming and helpful, especially those who have worked for more than one city (e.g., the clerk for Cambridge, Massachusetts, also worked as a city clerk for Springfield, Massachusetts). I chose selective depth over comprehensive breadth because such an approach struck me as more efficient and offered fuller insights about the operation of a charter's language in a city's day-to-day operation.

I. PORTLAND'S CHARTER: EXECUTIVE SUPREMACY

Portland's Charter gives the city's chief executive, the city manager, the power to direct or make requests of city staff, and denies that power to elected officials. The relevant provision is in Article VI, Section 5 of Portland's charter, which provides:

Neither the mayor nor members of the city council shall direct, request or interfere with the

¹ Douglas Rooks, *The mayor or the city manager: Who runs the city?*, Nov. 13, 2019, *Portland Phoenix*, available at <https://portlandphoenix.me/the-mayor-and-the-city-manager-who-runs-the-city/> (“[The City Manager] informed the mayor that any discussion with city staff would have to be cleared through him, making the manager the communications gateway, and sharply limiting the mayor’s ability to “articulate the city’s vision and goals.”)

appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment.

Under the system that this provision establishes, elected officials may make promises to constituents about how the city will function, and about how they will execute their vision. But realizing those promises depends on the cooperation of the city manager. The city manager has the exclusive power to direct city staff of every department, and to make requests of them. Indeed, the next sentence in the same section of the charter underscores this interpretation:

Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards and commissions, council committees, neighborhood and other groups and organizations, on city work.

Portland Charter, Art. VI, Sec. 5. On its face, this section empowers the city manager to *allow* communications between city staff and elected officials. But this section arguably also empowers the city manager to *prohibit* or monitor communications between city staff and elected officials. Such a power is relatively expansive, even compared with other council-manager systems.

II. THREE MODELS: EXECUTIVE SUPREMACY, LIMITED EXECUTIVE POWER, AND LEGISLATIVE SUPREMACY

The following section of this memo describes three models for how charters structure communications between city staff and non-executive elected officials. In my review of a random selection of charters across the country, these three models stood out as the dominant configurations. The first model is *executive supremacy*. Under this model, a charter gives its city's chief executive relatively broad powers to restrict communications between city staff and elected officials. Some charters spell out those powers in some detail, and others leave those details vague and to be spelled out in the city code or policy manual. But they all give the executive the exclusive, or almost exclusive, power to govern communications between city staff and elected officials. The second model is *limited executive power*, where the executive branch proposes rules to the legislative branch, which the latter enacts after deliberation. The third dominant model is *legislative supremacy*, where charters grant a city's legislative branch the exclusive power to write the rules that govern communications between city staff and elected officials.

A. EXECUTIVE SUPREMACY

The National Civic League's *Model City Charter*, published in 2010, favors the policy enshrined in Portland's charter – albeit in a more limited manner. The League's *Model City Charter* provides:

Except for the purpose of inquiries, and investigations under § 2.09, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.²

² See National Civic League Website, *Model City Charter* at 12-13, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjV3e6r_cLzAhXoRd8KHVw

This provision prohibits elected officials from communicating with city staff “except for the purpose of inquiries.” However, unlike Portland's charter, it arguably gives elected and appointed officials the power to communicate with city staff without the city manager's express permission or oversight. Numerous other charters give their city's chief executive similarly broad powers of supervision and control over city staff, a power that often arguably includes the power to prohibit non-informational communications between staff and elected officials.

For example, the charter for Palo Alto, a council-manager city, gives the city manager the power of “general supervision and control over” city staff.³ Although Palo Alto's city council appoints its city manager, its chief executive, the city manager can manage the city in a way that makes it difficult or impossible for elected officials to communicate with staff. Similarly, the charter for Hartford, Connecticut, a Strong Mayor city, gives the mayor the power to “exercise ultimate operational control over the departments and agencies of the city.”⁴ In a final example, Austin's charter states that the city's administrative departments “shall be under the control and direction of the” chief executive.⁵ Here again, executive supremacy is described in broad language that does not directly and specifically address the executive's power to prohibit certain communications between staff and elected officials.

B. LIMITED EXECUTIVE POWER

In contrast, some charters give the city's chief executive the power to recommend to the legislative branch the rules of communication between elected officials and city staff. For example, the charter for Burlington, Vermont, states:

The Mayor shall use his or her best efforts to see that the laws and City ordinances are enforced and that the duties of all subordinate officers are faithfully performed. The Mayor shall take care that the funds of the City are properly expended, and shall recommend to the consideration of the City Council whatever measures the Mayor may deem necessary for the prudent and efficient management of the affairs of the City.⁶

Here, the mayor proposes rules that the city council approves. Such a system creates some balance between executive and legislative branches of the government, but the outcome is not predetermined. The language here, like the language in almost all other city charters I examined, is relatively broad and abstract. In an interview with Burlington's city clerk, I learned that councilors make most requests for information to department heads or to the mayor's (chief executive's) office. However, every other week or so, councilors pass resolutions making more formal requests for information. In a recent example, the council requested that the city attorney's office draft an ordinance to give Burlington's police commission authority to manage complaints about police misconduct.

Another example comes from Youngstown, Ohio's charter:

[RDxkQFnoECAQQAQ&url=https%3A%2F%2Fwww.nationalcivicleague.org%2Fwp-content%2Fuploads%2F2017%2F10%2FModel-City-Charter.pdf&usg=AOvVaw0e3oN4UGDt-_g_qKrSGpuJ](https://www.nationalcivicleague.org/content/uploads/2017/2010/Model-City-Charter.pdf&usg=AOvVaw0e3oN4UGDt-_g_qKrSGpuJ)

³ Palo Alto, CA, City Charter, Art. IV, Sec. 6(c), *available at*

https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-59239.

⁴ Hartford, CN, Charter, Ch. V, Sec. 2(c), *available at*

https://library.municode.com/ct/hartford/codes/code_of_ordinances?nodeId=PTICHHACO_CHVTHMA_S1THEXPOA_UMA.

⁵ Austin, TX, Charter, Art. V, § 3, *available at*

https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=CH_ARTVADOR_S1THMA.

⁶ 24 App. V.S.A. ch. 3, § 116, *available at* <https://legislature.vermont.gov/statutes/section/24appendix/003/00116>.

The Mayor shall be the chief executive officer of the City. . . . The Mayor shall appoint and may remove the heads of all departments, except as otherwise provided in this Charter.⁷

There is no more detail in Youngstown's charter about communications between city staff and elected officials. The more precise details about such communications are spelled out in the city code, and even there, not in much detail.⁸ Each city department has some level of autonomy about how to govern communications between the city's staff and non-executive elected officials. Such a system offers the virtues of flexibility and decentralization. By the same token, different norms of communication across different departments could prove confusing and cumbersome for elected officials.

C. LEGISLATIVE SUPREMACY

In still another model, some charters give the legislative branch the power to determine the rules of communication between city staff and elected officials. For example, Portland, Oregon's charter provides that “Bureaus and their functions shall be fixed by the Council by ordinance.”⁹ Although the chief executive (mayor) in Portland's system has the power to decide the “distribution of the bureaus and work among departments,”¹⁰ the chief executive's power is limited to *supervising* city staff,¹¹ and investigating any alleged wrongdoing by city staff. As with most other charter provisions I examined, Portland, Oregon's charter leaves much room for interpretation. But the charter's overall tilt is toward giving the council the power to write the rules that govern communications between city staff and elected officials. I was unable to reach Portland, Oregon's clerk to verify how things are done in practice.

III. BALANCING FORMAL AND INFORMAL REQUESTS

Every system combines informal with formal communication between a city's staff and its elected officials. The ideal system, according to the city clerks I interviewed, allows both. Councilors need to answer small questions before they answer big ones. But they also need to answer certain questions in the public eye, with stronger tools of accountability. For such requests, formal channels are more appropriate.

Conversations with the clerks of Council-Manager and with Strong Mayor cities both revealed that the vast bulk of communications between city staff and elected officials in both types of cities are informal. Without an explicit prohibition on informal communications between city staff and elected officials, officials are free to make inquiries of city staff. Staff, in turn, are free to deny those inquiries, or to require officials to go through more formal channels. These channels are typically not spelled out in charters. Instead, city councils adopt rules that govern informal communications and make them part of the city's code or a city's policy manual. Or cities develop unwritten norms that govern informal

⁷ Youngstown, OH Charter, Section 4, (Amended November 6, 2012), *available at* https://codelibrary.amlegal.com/codes/youngstown/latest/youngstown_oh/0-0-0-4261.

⁸ “The Director or Chief of each Department shall have the supervision and control of the Department, the disposition and performance of its business, and the custody and preservation of the books, records, papers and property of the Department.” Youngstown, OH, Codified Ordinance, Sec. 21. (Amended November 4, 2014.), *available at* https://codelibrary.amlegal.com/codes/youngstown/latest/youngstown_oh/0-0-0-4336#chtr_21.

⁹ Portland, OR, Charter, Art. 3, Sec. 2-301, *available at* <https://www.portland.gov/charter/2/3>. An examination of Portland, Oregon's website suggests that term “bureau” seems to include the city's various departments.

¹⁰ *Id.*

¹¹ Portland, OR, Charter, Art. 4, Sec. 2-401 (“The Mayor shall exercise a careful supervision over the general affairs of the City.”), *available at* <https://www.portland.gov/charter/2/4>.

communications, typically depending on the city executive's managerial style.

A charter commission *can* propose to limit or prohibit even informal communications between city staff and elected officials. But my research turned up no examples of city charters that do. Conversations with elected officials in Portland and city clerks elsewhere suggest that banning informal communications would make city government highly inefficient and cumbersome; informal communication is often a necessary step in an elected official's journey of learning about an issue, and about how the city government functions. Some cities' executives do strictly limit the extent of informal communications between city staff and elected officials, often leading to the latter's frustration, and to a faster rate of formal communications.

Formal communications are where a city government's deliberative branch votes on a specific directive to propose to city staff. For example, if a city council wanted to know how fast city staff answer all property-tax related inquiries from residents, a councilor might decide to submit the issue to a formal vote of the council. The council would, in turn, forward the directive to the relevant department, or to the city's chief executive. The relevant department would then prepare a report on the issue and present and/or submit that report to the legislative branch. The only recommendations I received from a city clerk for how we should change our system is to require that the council vote on formal requests, and that city staff be required to provide a timeline for complying with the request.

CONCLUSION

This memo has described three dominant models for deciding the rules that govern communications between city staff and city officials: executive supremacy, legislative supremacy, and executive balance. Executive supremacy seems to be more common, although time limitations prevented a thorough enough survey to say so with confidence. Limited executive power seems, to me, most likely to foster cooperation between legislative and executive branches in a manner that leads to a smooth and workable culture of communication between city staff and elected officials. Finally, this memo has described formal and informal communications, suggesting that a good city charter fosters a balance between the two.