



City of Portland Charter Commission Agenda

Location, Date, etc.

1. Call to Order

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.

b. You are invited to a Zoom webinar.

When: Nov 30, 2021 06:00 PM Eastern Time (US and Canada)

Topic: Charter Commission Elections Committee

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/88422917619?pwd=bjNIRFF6bzc2S083SGkyb0lIOGhCQT09>

Passcode: 061422

Or One tap mobile :

US: +13017158592,,88422917619#,,,,*061422# or

+13126266799,,88422917619#,,,,*061422#

Or Telephone:

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

US: +1 301 715 8592 or +1 312 626 6799 or +1 646 558 8656 or +1 253 215 8782 or +1 346 248 7799 or +1 720 707 2699

Webinar ID: 884 2291 7619

Passcode: 061422

International numbers available: <https://us06web.zoom.us/j/88422917619?pwd=bjNIRFF6bzc2S083SGkyb0lIOGhCQT09>

2. Approval of the prior meeting minutes

a. Approval of the draft minutes from the November 16, 2021 meeting.

3. WORKSHOP

a. a. James Katsiaficas, Esq., Overview of State and Local Election Laws and Universal Resident Voting

b. Jen Thompson, Esq., Interim Corporation Counsel for the City of Portland, Presentation and Q & A with Committee members

c. Marpheen Chann, Chair and At-Large Commissioner, Initial drafts and ideas for proportional ranked choice voting and districts, consolidating election provisions

4. Public Comment Period
5. Adjourn

Elections Committee: Nov. 16, 2021

Present: Buxton, Chann, Washburn

Meeting **called to order** 6:05 p.m.

Agenda amended to reflect that past meeting's minutes were from Oct. 19. (Washburn moved, Buxton seconded, motion passed unanimously.)

Minutes of Oct. 19 meeting approved unanimously. (Buxton moved, Washburn seconded.)

Nov. 2 meeting was canceled to encourage members of the public to vote on Election Day.

Workshop on **work plan and timetable** followed.

Recommendations should have two reads before a vote on whether or not to adopt.

Buxton: Can we get at least some recommendations in front of the full commission Dec. 22?

Washburn to draft language on universal resident voting.

Buxton suggests further discussion needed on clean elections.

Nov. 30, Atty Katsifiacas to provide overview of state and local election laws. Interim Corp Counsel Jen Thomas to add information from the municipal perspective. This is in addition to regularly scheduled meetings.

Buxton to draft language on Clean Elections, Chann on proportional representation.

Dec. 7 focus on Clean Elections

Dec. 21 final reading on Clean Elections and vote, probably not on all three issues as we want to make sure the public has a chance to weigh in and holidays are a thing that happens.

Buxton: are there other issues we should be considering?

Chann: Campaign finance, but might not be possible within state and federal constraints.

Buxton suggests we may be able to find some expertise in the city and ideas for what we can do locally. Washburn: Let's not take on a lot more until we resolve the issues we have.

Brief discussion of adjustments to ranked-choice vote counting.

Public comment period

George Rheault encourages the city to look at the charter to fill a vacancy on the City Council (caused when Spencer Thibodeau resigned Sept. 20), following examples in Bangor and Boston.

Discussion of how we handle candidates who drop out and serving elected officials who resign. We will follow up with Attorney Katsifiacas.

Chair Chann to allow Buxton and Washburn to review questions for Jim K.

Meeting adjourned 7:12 p.m.

MEMORANDUM

TO: Members of the Portland Charter Commission

FROM: James N. Katsiaficas, Emily A. Arvizu

DATE: November 12, 2021

RE: Universal Resident (or Noncitizen) Voting in Municipal Elections

This memorandum updates a July 29, 2009 memorandum from former Corporation Counsel Gary Wood to Members of the Portland Charter Commission regarding whether a municipal charter may be amended to allow noncitizens to vote in municipal elections (the “Wood Memo”). This memorandum provides background on the issue, a brief summary of discussions on the topic by the 2010 Charter Commission, and an overview of recent legislative efforts and opinions, followed by our opinion on the issue.

2010 Charter Commission Discussions

At the public’s request, the previous Portland Charter Commission, which convened in 2009 and issued its Final Report in 2010, took up the issue of whether to amend the Charter to allow for noncitizen voting in municipal elections. According to the Final Report, the motion to recommend an amendment to the Charter that would have allowed legal residents of Portland to vote in municipal elections failed by the margin of 7 to 5.¹ A Minority Report, drafted by the five commissioners who voted in favor of noncitizen voting, is contained in that Final Report.

The Final Report did not include the majority’s reasoning for voting against posing the issue to voters, but a brief review of some archived documents from the 2010 Commission indicates there may have been concern over the legality of such an amendment. As previously noted, Corporation Counsel Wood submitted a memorandum to the 2010 Commission in July 2009 explaining the legal issues described below. He ultimately recommended that the Commission take up the issue on the merits, and pose it to the voters if a majority of the Commission wanted to. If the voters approved the stand-alone question, a court could issue a declaratory judgment deciding the legality of the measure. However, when the 2010 Commission later approached Corporation Counsel Wood again in 2010, requesting that he provide “a risk assessment on whether I think that issue would survive legal challenge if it were put to the voters and the voters approved,” he concluded that “the chances are 60/40 against that right surviving legal challenge. In other words, I think the stronger legal arguments favor a court decision that would declare the right illegal in light of existing state law.” Similarly, William W. Livengood, then Director of the Legal Services

¹ Portland Charter Commission, Final Report (July 16, 2010),
<https://www.portlandmaine.gov/DocumentCenter/View/14761/Charter-Commission-Final-Report>.
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PORTLAND, ME 04112-0426
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www.perkinsthompson.com

Department of the Maine Municipal Association, provided a memorandum to the 2010 Commission also concluding that “in my opinion the authority of a municipality to adopt a home rule charter provision permitting non-citizens to vote in municipal elections is, at best, questionable.”² The unknown legality of a noncitizen voting provision seems to have been a sticking point for the 2010 Commission, which opted not to pose the question to voters.

The Legal Issues

Maine’s Constitution, in Article II, Section 1, requires persons to be U.S. Citizens in order to vote for State governor, senator or representative, but does not place the same, or any, requirement on municipal elections. The principal legal issue here, then, is whether a municipality, under its home rule authority under the Maine Constitution, has the ability to amend its charter to allow for noncitizen legal City residents to vote in its municipal elections. The issue arises out of the interplay between State and local election law. Article VIII, Part Second, Section 1 of the Maine Constitution affords inhabitants of a municipality “the power to alter and amend their charters on all matters, *not prohibited by Constitution or general law*, which are local and municipal in character.”³ Title 30-A of the Maine Revised Statutes governs municipalities and provides in § 2501 that “[e]xcept as otherwise provided by this Title *or by charter*, the method of voting and conduct of a municipal election are governed by Title 21-A.”⁴ As the Wood Memo noted, § 2501 “explicitly provides” that Charter authority “supersedes state law on the issues of the method of voting and conduct of a municipal election but doesn’t extend that authority to the qualifications for voting in par. [subsection] 2.” This is because §2501 (2), the subsection to which Corporation Counsel Wood referred, establishes qualifications for voting; it reads: “[t]he qualifications for voting in a municipal election conducted under this Title are governed **solely** by Title 21-A, section 111.”⁵ (emphasis added) Title 21-A M.R.S. §111 then provides that “A person who meets the following requirements may vote in any election in a municipality . . . [t]he person must be a citizen of the United States.”⁶ The express authority of a municipality to override the qualifications for voting set by the Maine Legislature by adoption or amendment of a charter is notably missing from this subsection.

Corporation Counsel Wood suggested that some ambiguity exists in Section 2501 because it includes the phrase “municipal election *conducted under this Title*”. He wrote that “[t]he inclusion of those words suggest that there are elections held at the local level that are not conducted under Title 30-A”, leaving such elections beyond the purview of Section 111’s citizenship requirement and subject only to the municipality’s home rule charter.

There also is the additional concern of whether such a charter provision is prohibited by the Maine Constitution, but it generally is regarded that the bar to such a charter provision is statutory, and not constitutional. In May 2009, then-Attorney General Janet Mills submitted written testimony that a bill before the Maine Legislature authorizing any municipality to enact an

² Memorandum from William W. Livengood, Director, Legal Services Dept. of the Maine Municipal Ass’n, to the Portland Charter Comm. (July 28, 2009).

³ Me. Const. art. VIII, pt. 2, § 1 (emphasis added).

⁴ 30-A M.R.S. § 2501 (emphasis added).

⁵ 30-A M.R.S.A. § 2501(2).

⁶ 21-A M.R.S.A. § 111(1).

ordinance allowing noncitizen residents to vote in municipal elections would not face any “constitutional impediment”.⁷ The bill at issue was an attempt by the Maine Legislature, not by a municipality, to extend municipal voting rights to noncitizens. Thus, while there is little doubt of the authority of the Maine Legislature to grant municipalities the power to extend municipal voting rights to noncitizen residents, the authority of a municipality itself to extend such rights by municipal charter alone remains in question.

Recent Developments

In the years since the last Charter Commission, the issue of noncitizen municipal voting rights has continued to be a matter of public debate. Most recently, the Maine Legislature considered L.D. 107, which sought to amend the State Constitution to expressly limit the right to vote in any state, county, municipal or local election exclusively to citizens.⁸ Attorney General Aaron Frey submitted written testimony stating that the amendment would be duplicative because “municipalities are not currently able to adopt ordinances to allow non-citizens to vote in municipal elections” since doing so would violate Titles 30-A and 21-A (as described above).⁹ The Maine Municipal Association also testified in 2021 that L.D. 107 was duplicative because, under section 2501 of Title 30-A, municipalities may only amend their charters with regard to the method of voting and the conduct of a local election, “and not with respect to who is eligible to vote.”¹⁰

Conclusion

The issue of whether a municipality has home rule authority to amend its charter to permit what now is called “universal resident voting” by noncitizen residents in municipal elections remains unresolved. There has been no relevant new legislative enactment or State constitutional amendment and there have been no Maine court decisions interpreting these provisions since the 2010 Final Report was issued. However, in the context of proposed legislation in 2021 for a constitutional amendment to limit the right to vote in municipal elections to U. S. citizens, the position expressed by the Office of the Maine Attorney General and by the Maine Municipal Association was that it was unnecessary because State law already limited voting in municipal elections to citizens, and by defeating that bill, the Maine Legislature apparently accepted that position. Thus, while the law has not changed since 2010, the opinion of parties with knowledge and influence regarding the interpretation of that law has changed. As a result, while it is impossible to state definitively how Maine courts would rule, we think the better position on the issue is that absent an amendment to State law, a municipality does not have home rule authority under Maine’s Constitution to amend its charter to extend the right to vote in a municipal election

⁷ *An Act To Allow Noncitizen Residents To Vote in Municipal Elections: Hearing on L.D. 1195 Before the J. Standing Comm. On Legal and Veterans Affairs*, 124th Legis. 1 (2009) (written testimony of Janet T. Mills, Attorney General).

⁸ See L.D. 107 (130th Legis. 2021).

⁹ *Resolution, Proposing an Amendment to the Constitution of Maine to Specify the Qualifications of Electors: Hearing on L.D. 107 Before the J. Standing Comm. On Legal and Veterans Affairs*, 130th Legis. 2021 (written testimony of Aaron M. Frey, Attorney General).

¹⁰ *Resolution, Proposing an Amendment to the Constitution of Maine to Specify the Qualifications of Electors: Hearing on L.D. 107 Before the J. Standing Comm. On Legal and Veterans Affairs*, 130th Legis. 2021 (written testimony of the Maine Municipal Association).

to noncitizens, since State law -- 30-A M.R.S. §2105(2) -- establishes voter qualifications for local elections that effectively prohibit such a charter amendment.



**Portland Charter Commission
Ad Hoc Elections Committee Activities To-Date**

TO: James N. Katsiaficas, Esq.; Jennifer Thompson, Interim Corporation Counsel
FROM: Marpheen Chann, At-Large Charter Commissioner and Chair of the Elections Committee
SUBJECT: Questions for November 16th Elections Committee Meeting
DATE: November 9, 2021

Thank you for agreeing to present at the Elections Committee workshop on November 16, 2021, at 6pm. In advance of the workshop, members of the Committee have prepared some topics and questions that we are hoping to have answered in a memo and during the meeting.

1. Overview of State and Local Elections Law

The Committee would like an overview of state statutes on elections and how they affect local election ordinances and charter provisions. Does state statute preempt or limit what a municipality can or cannot do, specifically when it comes to the charter review process? Who is ultimately in charge of administering elections in municipalities? Can charter commissions create election boards, committees, departments, and offices in addition to election clerks and wardens and what can they do or not do?

2. Ranked Choice Voting

The Committee has identified several issues that we would like to address related to Ranked Choice Voting in Portland's municipal elections.

a. Proportional Ranked Choice Voting

The Committee has heard from several experts on the issue of Proportional Ranked Choice Voting (PRCV), which was recommended by the Ranked Choice Resource Voting Center to City Clerk Katherine Jones as a solution to complications with multi-winner elections such as the June 2021 Charter Commission Election and some at-large school board elections. This would require addressing and recommending a revision to the 50% threshold language in Article II, Section 3, of the City Charter. PRCV would also require revisions to Article I, Section 1, to change the layout of districts to either one (1) at-large district or larger districts with staggered elections.

The Committee would like guidance on how best to approach revising Article II, Section 3, to fit a PRCV model.

b. 2021 At-Large Council Race Tie

As you may have heard, in Portland's recent election for an at-large council seat, both candidates received the same numerical vote total after ranked-choice tabulations and eliminations were made. The solution used to resolve the tie was a method known as "drawing lots."

The Committee would like to know whether we can revise the Charter to make explicit the method used in the event of a numerical tie.

3. Clean Elections & Campaign Finance

The Committee has spent a good amount of time on the issue of Clean Elections and the Committee generally is in favor of revising the charter to include a municipal Clean Elections program. However, there is disagreement regarding the extent to which the Charter should address the specifics of the program. One suggestion is that the revised language includes a fully-funded department with staff to oversee the Clean Elections program.

The Committee would like your general thoughts and guidance on how to approach this subject. Are there limits? Are there general or best practices for revising and including language in charter and governance documents to outline with specificity a city department, its budget, and staff?

4. Universal Resident Voting

The Committee has taken up the issue of Universal Resident Voting (URV)(or noncitizen voting), which was also addressed during the 2009-10 Charter Commission proceedings. During our workshop on October 19th, the Committee heard from experts on the value and benefit of URV but also heard from immigration attorneys and experts regarding the concerns related to privacy and safety for noncitizen residents.

The Committee would like a recap and overview of former corporation counsel Gary Wood's memo on URV and what mechanisms and language can be put in place to protect the privacy and safety of noncitizen residents.

These represent the broader questions on issues the Committee has looked into to date. The Committee looks forward to your advice and guidance on these questions and looks forward to having you at our November 16th meeting. Please let me know if you have any questions.

Sincerely,



Marpheen Chann

At-Large Charter Commissioner

Chair, Charter Commission Elections Committee

ARTICLE IV. ELECTIONS

Section 1. Regular municipal election.

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

Section 2. Election participation and education a priority.

The city shall ensure that all residents are able to participate and exercise their right to vote in the city's elections. To this end, the city shall ensure that information about voting and elections is, to the extent practicable, accessible in multiple languages, platforms, devices, and forms of media.

An elections commission of five (5) members shall be established and its members appointed by the city council from among the residents of the city. The duties of the elections commission shall be to provide support to the city clerk in the oversight of elections, to hear appeals of actions of the city clerk regarding clean elections and campaign finance violations, to provide an annual report on voter turnout and participation, and to provide recommendations to the city clerk and city council.

Section 3. City to be divided into election districts.

For the purpose of all elections the city, including its islands, shall be divided into three (3) districts to establish districts of approximately equal population in order to provide for fair representation through proportional ranked choice voting.

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

Section 4. Ranked choice voting; instant runoff tabulation.

For all elected offices in the City of Portland, the city clerk shall implement a ranked choice voting protocol according to these guidelines:

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

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

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

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

(e) For multi-seat elections, including for council and school board, a proportional ranked choice system shall be implemented and votes shall be counted in a series of rounds of tabulation until the number of winning candidates equals the required number of winning candidates with respect to the election. A candidate shall be considered a winning candidate and shall be elected to one of the offices if:

(A) in any round, the candidate has a vote total that exceeds the multi-seat election threshold, as determined under this section; or

(B) the candidate is a continuing candidate and the number of remaining continuing candidates plus the number of candidates already designated as winning

candidates is equal to or less than the required number of winning candidates with respect to the election.

(f) The multi-seat election threshold with respect to an election shall be equal to the total number of valid votes cast in the election divided by the sum of the number one and the required number of winning candidates with respect to the election, plus one, with any fractions disregarded.

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

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

Section 3. Continuity in office.

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

Section 4. Composition, election, tenure of office.

a. Council Composition, election, tenure of office.

The city council shall be composed of nine (9) members, and shall hold office for a term of three (3) years and until their successors are elected and qualified. Three (3) members shall be elected from each district heretofore provided for, from and by the registered voters of each district.

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

period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

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

b. School Board composition, election, tenure of office, compensation.

The board of public education shall be composed of nine (9) members who shall hold office, except as hereinafter provided, for a term of three (3) years and until their successors are elected and qualified. Three (3) shall be elected from each district and from and by the registered voters of the entire city.

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

The school board shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, which compensation shall be no more than that received by members of the city council, other than the mayor. The school board shall provide additional compensation to the chair of the school board appropriate to reflect his or her additional responsibilities as chair. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. Wardens and ward clerks.

The wardens and ward clerks shall be nominated by the city clerk and appointed by order of the city council. They shall be and remain residents of the city and all other qualifications for appointment shall be as provided in Title 21-A of the Maine Revised Statutes. They shall hold their office for one year from the date of appointment, unless a shorter term is specified by the order of appointment, and until others have been chosen and qualified in

their stead. The warden and the ward clerk shall be sworn to the faithful performance of their duties by a person qualified under the statutes of the state to administer oaths, and a certificate of such oath shall be entered by the clerk on the records of such ward. (Referenda 11/2/76; 6/13/78; 11/4/86, 11/4/08; 11/2/10)

Section 6. Nominations.

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

Section 7. Form of nomination petition.

The signatures to nomination petitions need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers of each petition, and that each signature appended thereto was made in his or her presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer giving the street and number of the street, or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

To the city clerk of the City of Portland

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

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

(Signed) _____.

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

Attorney, State of Maine Bar #_____
Notary Public

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

Section 8. Filing of nomination petitions, and acceptance of nomination.

The city clerk shall make nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to the election. The nomination petitions for any one (1) candidate must be assembled and united into one (1) petition and filed with the city clerk during normal business hours not earlier than eighty-five (85) nor later than seventy-one (71) days before the date of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing at the time of filing of such nomination petitions his or her consent accepting nomination, agreeing not to withdraw and, if elected, to qualify. Such nomination petitions and consent, once filed may not be withdrawn. Any challenge to a nomination petition must be submitted to the city clerk in writing, setting forth the specific reasons for the objection, no later than five (5) days, excluding Saturdays, Sundays, and legal holidays, from its date of filing, or it is barred. No person shall take out nomination papers for more than one position at the same election, nor be nominated, nor shall any person consent to being nominated, at the same election for any other elective office provided for by this charter, and no person shall simultaneously hold more than one (1) elective office provided for by this charter. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/6/01; 11/4/08; 11/2/10)

Section 9. Form of ballot.

All official ballots for use in all municipal elections shall be prepared by the city clerk and furnished by the city, consistent with the voting machines used and the form of any state ballot(s), and the use of ranked choice voting. Ballots for use in elections under this charter shall contain the names of the various candidates, with their residence, and the office for which they are candidates, and instructions on how to mark the ballot. The

candidates for each office shall be grouped under the title of each office, plainly and distinctly marked. There shall be as many blank spaces under the name of each office as there are vacancies to be filled. The procedure for counting write-in votes shall be governed by Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern. Notwithstanding the foregoing, in the event of an emergency such as the illness, death or disqualification of a nominee for municipal office prior to the general election, the time frame for accepting a declared write-in candidate may be shortened by the city clerk. Such ballots may also contain such measures as may be submitted to the voters of the city by the legislature or by the city council and shall be without party mark or designation.

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

Section 10. Specimen ballots.

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

Section 11. Count of ballots.

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

Section 12. Canvass of returns.

The city clerk shall examine the records of the several voting places and within forty-eight (48) hours after such election shall

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

Section 13. State election laws applicable.

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

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

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

ARTICLE IV. ELECTIONS

~~Section 1. Continuity in office.~~

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

Section 1. Regular municipal election.

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

Commented [CH1]: Will this be necessary? Should it be changed to even years or odd years only? (see comment below on term lengths)

Section 2. Election participation and education a priority.

The city shall ensure that all residents are able to participate and exercise their right to vote in the city's elections. To this end, the city shall ensure that information about voting and elections areis, to the extent practicable, accessible in multiple languages, platforms, devices, and forms of media.

An elections commission of five (5) members shall be established and its members appointed by the city council from among the residents of the city. The duties of the elections commission shall be to provide support to the city clerk in the oversight of elections, to hear appeals of actions of the city clerk regarding clean elections and campaign finance violations, to provide an annual report on voter turnout and participation, and to provide recommendations to the city clerk and city council.

An elections commission shall be established in order to provide oversight, to hear appeals of the city clerk's actions regarding clean elections and campaign finance, to provide an

annual report on voter turnout and participation and documentation of efforts to improve, and to provide recommendations to the city clerk and city council.

Commented [CH2]: established by ordinance? Any specific number of commissioners or qualifications? controls on who appoints the commission?

Section 3. City to be divided into election districts.

For the purpose of all elections the city, including its islands, shall be divided into ~~five (5)~~ three (3) districts to establish ~~compact and contiguous~~ districts of approximately equal population in order to provide for fair representation through proportional ranked choice voting.

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

Section 4. Ranked choice voting; instant runoff tabulation.

For all elected offices in the City of Portland, the city clerk shall implement a ranked choice voting protocol according to these guidelines:

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

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

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

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

(e) For multi-seat elections, including for council and school board, a proportional ranked choice system shall be implemented and votes shall be counted in a series of rounds of tabulation until the number of winning candidates equals the required number of winning candidates with respect to the election. A candidate shall be considered a winning candidate and shall be elected to one of the offices if:

(A) in any round, the candidate has a vote total that exceeds the multi-seat election threshold, as determined under this section; or

(B) the candidate is a continuing candidate and the number of remaining continuing candidates plus the number of candidates already designated as winning candidates is equal to or less than the required number of winning candidates with respect to the election.

(f) The multi-seat election threshold with respect to an election shall be equal to the total number of valid votes cast in the election divided by the sum of the number one and the required number of winning candidates with respect to the election, plus one, with any fractions disregarded rounded up to four decimal places.

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

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

Commented [CH3]: Slightly changed the threshold to the standard threshold in use in the United States - this uses a whole number instead of a four-decimal-place number.

Commented [CH4]: Will need additional law defining how to conduct the proportional RCV count - this needs to be mandatory not permissive. May also be better to run that through the council because then it will be more public than the RCV regs were.

Section 3. Continuity in office.

In the event redistricting of the city shall cause a then council member or school board member to reside in a district other than that from which such person was elected, the office of such member shall not thereby be considered vacated but such member shall continue in office until a successor is duly elected and qualified. Each district councilor and district school board member in office on the effective date of any such redistricting

shall be deemed to represent the newly constituted district of the same numerical designation as that formerly represented and shall continue to serve in that capacity until expiration of his or her term. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 4. Composition, election, tenure of office.

a. Council Composition, election, tenure of office.

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

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

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the ~~five-three (35)~~ districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

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

Commented [CH5]: change to 2 or 4 so you can line up muni elections on a set odd- or even-year schedule?

Commented [CH6]: This seems to require 12 members (or maybe 15)? I think expanding the size of the council is the right move (would even argue to expand it to 15 and do three five-member districts for greater proportionality) but the first line still says 9 members.

Right now this requires:
3 at-large from each district and by the registered voters of the entire city - this is hard to parse. Is it saying the same thing as the next line? Or requiring some mix of at-large elections with nominations limited by district?
3 members from each of 3 districts

electd by majority vote as provided in ~~section 3 of~~ section 4 of this article. The candidate(s) for mayor shall be nominated in accordance with section 6. ~~the same manner as other at large members of the council, except that five hundred (500) signatures.~~ The term of mayor shall be four (4) years, with a maximum limit of two (2) consecutive terms. The election and position of mayor shall be a non-partisan, full-time position. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10; 11/6/12)

b. School Board composition, election, tenure of office, compensation.

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

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

The school board ~~city council~~ shall by order establish the amount each member ~~of the school board~~ shall be entitled to receive as compensation for all services rendered, which compensation shall be ~~the same as~~ no more than that received by members of the city council, other than the mayor. The school board ~~city council~~ shall provide additional compensation to the chair of the school board appropriate to reflect his or her additional responsibilities as chair. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. Wardens and ward clerks.

The wardens and ward clerks shall be nominated by the city clerk and appointed by order of the city council. They shall be and remain residents of the city and all other qualifications for appointment shall be as provided in Title 21-A of the Maine Revised Statutes. They shall hold their office for one year from the date

of appointment, unless a shorter term is specified by the order of appointment, and until others have been chosen and qualified in their stead. The warden and the ward clerk shall be sworn to the faithful performance of their duties by a person qualified under the statutes of the state to administer oaths, and a certificate of such oath shall be entered by the clerk on the records of such ward. (Referenda 11/2/76; 6/13/78; 11/4/86, 11/4/08; 11/2/10)

Section 6. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for mayor shall be signed by not less than three hundred (3300) nor more than five hundred (500500) registered voters of the city. The petition of a candidate for a an-at-large council seat or a at-large school board seat shall be signed by not less than seventy five (15075) nor more than one hundred and fifty (300150) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy-five (75) nor more than one hundred fifty (150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

Commented [CH7]: 5 The parentheticals here read (300) and (500) but the text read five hundreded and seven hundred and fifty. Not sure which controls. Updated to make the parentheticals match the text.

Commented [CH8]: Same issue as above - text and parentheticals did not match.

Section 7. Form of nomination petition.

The signatures to nomination petitions need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers of each petition, and that each signature appended thereto was made in his or her presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer giving the street and number of the street, or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

To the city clerk of the City of Portland

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

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

(Signed) _____.

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

Attorney, State of Maine Bar # _____
Notary Public

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

Section 8. Filing of nomination petitions, and acceptance of nomination.

The city clerk shall make nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to the election. The nomination petitions for any one (1) candidate must be assembled and united into one (1) petition and filed with the city clerk during normal business hours not earlier than eighty-five (85) nor later than seventy-one (71) days before the date of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing at the time of filing of such nomination petitions his or her consent accepting nomination, agreeing not to withdraw and, if elected, to qualify. Such nomination petitions and consent, once filed may not be withdrawn. Any challenge to a nomination petition must be submitted to the city clerk in writing, setting forth the specific reasons for the objection, no later than five (5) days, excluding Saturdays, Sundays, and legal holidays, from its date of filing, or it is barred. No person shall take out nomination papers for more than one position at the same election, nor be nominated, nor shall any person consent to being nominated, at the same election for any other elective office provided for by this charter, and no person shall simultaneously hold more than one (1) elective office provided for by this charter. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/6/01; 11/4/08; 11/2/10)

Section 9. Form of ballot.

All official ballots for use in all municipal elections shall be prepared by the city clerk and furnished by the city, consistent

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

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

Section 10. Specimen ballots.

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

Section 11. Count of ballots.

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

Section 12. Canvass of returns.

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

Section 13. State election laws applicable.

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

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

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