City of Portland
Ad Hoc Committee Agenda

Location, Date, etc.

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: Dec 21, 2021 06:00 PM Eastern Time (US and Canada)
   Topic: Charter Commission Election Committee

   Please click the link below to join the webinar:
   https://us06web.zoom.us/j/82589354505?pwd=c2RoZDNQZkJMMW0zeUxKZGVUVXU4Zz09
   Passcode: 532960
   Or One tap mobile :
   US: +13017158592,,82589354505#,,,,*532960# or +13126266799,,82589354505#,,,,*532960#
   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: 825 8935 4505
   Passcode: 532960
   International numbers available: https://us06web.zoom.us/u/kdBDpsPAB1

2. Approval of the prior meeting minutes

   a. Approval of draft minutes from December 7, 2021 meeting.

3. Workshop

   a.

   - Clean Elections Proposed Language- Commissioner Buxton
   - Public Comment
   - Elections Commission Proposed Language- Commissioner Chann
   - Public Comment

4. Public Hearing

a.
- Universal Resident Voting- Commissioner Washburn

5. New Business
6. Adjournment

Elections Committee Dec. 7, 2021

Meeting called to order 6:02 p.m.
Present: Chann, Buxton, Washburn

Approval of Nov. 30 minutes

Buxton moved, Washburn second

Buxton: Tiebreakers, is there a requirement that there be an apparent winner before a recount can be ordered? Washburn and Chann say yes. Buxton will clarify on her own later.

Minutes approved unanimously.

Workshop on draft Clean Elections proposal

Suggestion that program should be administered by City Clerk's office rather than creating new structures/offices.

Should we ban corporate contributions (which would include labor unions)? Yes, but let's do it for everyone, not just Clean Elections candidates. Buxton and/or Washburn to draft this language.

Should we restrict how the candidates can spend their funds? Voters actually have a pretty good handle on this. Refer to John Wayne (Maine Ethics Commission) or counsel.

What to do with unused funds? CE candidates, roll back into fund. Non-CE candidates, what are we allowed to specify?

Public comment on Clean Elections proposal

Anna Kellar: also look at setting a lower threshold for contributions (statewide it's $500). Also look at streamlining campaign finance reporting and make the information more accessible.

Karen Snyder: Good first draft, agrees on streamlining information and City Clerk administration. Also, look at other cities.

Workshop on draft Elections Commission proposal

Washburn questions why this is necessary. Chann cites need to increase voter engagement and turnout. Buxton and Washburn suggest including diversity rationales.

Public comment on Elections Commission proposal

Anna Kellar: Why not set a turnout/engagement goal for the City Clerk's office? Also allow residents to submit complaints to the commission.

LWV has done some research on voter turnout by race, age, and poverty rates in Maine. Poverty tends to correlate with lower voter turnout. Group could help with that.

Big question: Does this commission have an enforcement role?

Workshop on Universal Resident Voting proposal

Buxton asks to provide more structure around role of city staff and their responsibilities. Washburn agrees and will consult relevant counsel.

No public comment was offered.

Meeting adjourned 8:33 p.m.

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 are, 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. In appointing members of the elections committee, the city council shall ensure the body is diverse and representative of the city and that it includes representation of historically underrepresented communities.

In manners not inconsistent with applicable state law, the duties of the elections commission shall be to support the city clerk in conducting elections outreach, education, and community engagement, to provide an annual report on voter turnout and participation, and to provide recommendations to the city clerk and city council when necessary.

The city council may, by ordinance, adopt additional regulations and guidance on the duties and responsibilities of the elections commission not inconsistent with this section.

Section 12a. Public Financing of Municipal Elections

The City Council shall establish and fully fund a mechanism providing public campaign funds to qualified candidates for mayor, city council, and school board. The Council will provide an independent allocation from the City's budget each year in order to ensure the program is sustained and can be made available to candidates for each election.

Commented [1]: included this to address Marpheen's concrn about sustainability.

The mechanism must:

- Provide sufficient funds to allow candidates who meet qualifying criteria to conduct competitive campaigns.
- Be voluntary.
- Limit the amount of private funds a candidate may raise.
- Only be available to candidates who demonstrate public support.
- Require that contributions to any campaigns are searchable in a public database, regardless if a candidate uses public funds or not.
- Be limited to candidates who enter into a binding agreement not to accept private contributions other than those allowed by the public funding program.
- Require that all unused funds from a candidate's campaign from a particular year are returned to the municipal public election funding program within 100 days of the election.
- Be limited to candidates who agree to participate in at least one city-sponsored debate or voter education event.

The mechanism must be available by the **2024** municipal elections.

The mechanism shall be administered by paid staff within the Office of the City Clerk, with the assistance and oversight of the Elections Commission, as established by Section 3 of this article.

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

Section 12b. Corporate Contributions

A business entity may not make contributions to any candidate for municipal office. The term business entity refers to a firm, partnership, corporation, incorporated association or other organization, whether organized as a for-profit or a nonprofit entity.

Commented [2]: what about refereda? how would that back fire? for example would campaign committees be able to exist still?

Commented [3]: I did not put a ban on unions in here or mention
separate segregated funds...is that necessary?

Add to Article II the following:

Section 4.

The right of all adult residents of Portland to vote in municipal elections and on municipal initiatives is established, regardless of citizenship status.

City officials will take all reasonable care to ensure that exercising this right does not allow non-citizen voters to violate federal or state laws, including providing translated or interpreted information for non-English speakers.

While the city's voter list is a matter of public record, city officials will not make public the citizenship status of any voter or provide information to any enforcement agency beyond what is on the public record.

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

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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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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

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[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.