



City of Portland Charter Commission Agenda

Charter Commission Departments Committee Meeting January 31, 2022 at 6:00 PM

1. Call to Order

- a. This meeting will take place remotely using Zoom.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Nominating Committee and as authorized under 1 M.R.S. 403-B because of the existence of an emergency or urgent issue that requires the committee to meet by remote methods. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available following the meeting.

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

You are invited to a Zoom webinar.

When: Jan 31, 2022 06:00 PM Eastern Time (US and Canada)

Topic: Charter Commission Departments Committee

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/85364591724?pwd=N0hwbDNkQnI2bGtiZ0FSUURGSTgxdz09>

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2. Review and Approval of Minutes from prior meeting

- a. Approval of the Draft December 20, 2021 meeting minutes and the January 3, 2022 meeting minutes
3. Monique Y. Glaude', Director of Community Engagement & Ombudsman, City of Topeka, KS - 6:00 PM - 6:30 PM
4. Jennifer Prado, Director, Mayor's Office of Constituent Services, City of Wilmington, DE - 6:30 PM - 7:00 PM
5. Jessica Grondin, Director of Communications & Digital Services, City of Portland - 7:00 PM - 7:30 PM
6. Quick Break
7. Discussion of Constituent Services/Ombudsman model
 - a. Discussion to reconcile three conceptual proposals with the Governance Committee
 1. Chief of Staff
 2. Public Advocate
 3. Consituent Services
8. New Business
9. Adjourn



City of Portland, Maine

Charter Commission

Departments Committee

MINUTES

December 20, 2021

Committee Members Attending via Zoom: Commissioner Ryan Lizanacz (Chair), Commissioner Zach Barowitz , Commissioner Marcques Houston. Staff member Jesse Denno taking minutes.

1. **Call Meeting to Order and Conduct Roll Call**

Chair Lizanecz called the meeting to order at 5:00pm and called the roll. Commissioners Barowitz and Houston present.

2. **Approval of Minutes**

Chair O'Brien called for a motion to approve the minutes from the Committee's meeting December 6th. Commissioner Barowitz motioned to approve, and Commissioner Houston seconded. The motion passed unanimously.

3. **Interviews with Experts**

The members of the Departments Committee hosted four interviews with experts on subject of public sector Ombuds and Public Advocates.

Mary Hull-Caballero: Auditor, City of Portland, Oregon

- The Honorable Hull-Caballero described Portland's position of the Auditor, an elected office that promotes accountable and open government through six sub-offices: Archives and Records Management, Audit Services, the City Elections Office, the Ombudsman, Council Clerk, and Independent Police Review.
- The Ombudsman is one of the Auditors Office's multiple tools of accountability, and takes complaints with the authority to investigate any administrative act.

- She has found the inclusion of the Ombudsman into the Auditor's office effective, as the office complements Audit Services, who monitor decisions of management.
 - An ombudsman differs from a Public Advocate in that the Ombudsman does not advocate for the public, but advocates for "food government and
 - Utilizes a "carrot and stick" approach to rectifying aid complaints, seeking to resolve issues at the lowest administrative level, with the authority to take matters up the hierarchy and ultimately, to the public.
 - Audit Services, in contrast, analyzes data and seeks to identify systemic problems.
 - Hull-Caballero recommends both Auditors and Ombudsmen for good municipal government.
 - The Auditor possesses sole authority, under the Charter, to select the audits the office conducts.
- On City Council and its role
 - City Council members head department/bureaus with professionals overseeing day-to-day operations.
 - Portland OR has a weak mayor-strong council form of government.
- On Portland, Oregon's Independent Police Review office
 - The system is currently undergoing revision, but as it looks now, functions as a civilian version of Internal Affairs, that receives misconduct complaints and monitors IA processes.
 - Does not investigate officer-involved shootings, but monitors every aspect of the Police Department's internal investigation, ensuring all rules and processes are correctly followed.
 - The Ombudsman also can investigate bureaucratic mismanagement of the Police Department, though not officer misconduct complaints.
 - The Independent Police Review will soon be memorialized in the charter and become a stand-alone board.
- On the Auditor's relationship with other city officials
 - As the Auditor, she maintains an "arms-length distance" from other elected officials.

- A certain tension is inherent, but generally, everything is professional.
- Relationships with bureau heads can be tense, but she seeks to avoid embarrassing anybody.
- Thoughts and advice for the Departments Committee
 - If it is decided to create an Auditor or Ombudsman position, thought she be given to where the government's structure the office is located. Ideally, an Ombuds-type office should be situated in the "highest ranks of the organization that you can."
 - The office's credibility stems from its real and perceived independence.
 - The Charter must also define what an Ombudsman can and can't investigate. In her city, the Ombudsman cannot investigate elected officials, which makes the office's duties "cleaner;" for example, they are never in the position of holding off on an investigation because a budget vote is imminent.
 - Commissioners should consider whether an Ombudsman can or can not investigate matters under litigation. In Portland, OR, the Ombudsman does not, which she finds beneficial, because when questions are taken up by another body or venue, it serves to conserve her office's resources.
 - Ombudsmen need to have legally enshrined "unfettered access" to documents and city employees.
 - While Portland OR has long had an elected Auditor, it was not until 2017 that the Ombudsman was enshrined in the charter, with language guaranteeing the Auditor's independent administrative authority.
 - The Auditor is guaranteed by Charter the authority to hire its own staff, make administrative classifications, and make its own procurement decisions.
 - The Council can control the Auditor's office to some extent through the budget. Though the Council theoretically should base funding on a definition the Auditor's goal and responsibilities, funding is largely allocated according to the interests of the Council. Currently, there is consideration of how to refine charter language to prevent tCouncil from making decisions at the line-item level.
 - The language of a charter should seek to prevent the necessity of an Auditor from asking permission from the people she investigates to do things in the public's best interest.

Kim Cook, Former Member of City Council

- On the potential creation of an ombudsman-type office in Portland.
 - From a “functionality standpoint,” not a budgetary one, an ombudsman-type office would be extremely helpful to Portland.
 - Encountered many situations as Council member where an independent body that could investigate issues would have been valuable. She gave the example of “Brickgate;” a dispute between City Manager Jennings and the firefighters’ union, involving the removal of a brick with Jennings’s name from a firefighters memorial. She further gave the example of her experiences with a glacial residential building-work permitting process.
 - An Auditor with charter-mandated unrestricted access to City staff would be valuable to the City, as Council’s access is currently limited, restraining the Council’s ability to investigate certain issues.

- On constituent services, and how they’re currently handled in Portland
 - In her tenure in Council, Council Members referred all constituent service matters to the City Manager, which could be a “black hole.”
 - Jennings had an assistant that handled constituent services, who was accountable only to Jennings.
 - As a Council Member, she was unable to access any documentation from the Manager’s office regarding requests received and actions taken.
 - An assistant in the Manager’s office who later took over constituent services was more responsive and better organized.
 - Portland has an adequate budget and staff to effectively resolve these issues, but there is a lack of accountability in the current government structure.
 - Was impressed by the Portland, Oregon, Auditor’s direct accountability to the public, and the office’s clearly defined qualifications.

- Cook’s thoughts on an elected Public Advocate-type position versus an Ombudsman-type position appointed by the Council.
 - Encouraged Commissioners to look at other municipalities and see what has worked.
 - If appointed by Council, may become part of the Council “team.”
 - An elected position would more likely have the independence necessary for the job.

- At the State level, the Auditor is appointed by the Legislature, and is a “quiet position” that does not actively investigate legislative or executive actions.
- There currently exists an imbalance between elected officials and city staff, an imbalance that would be perpetuated by an appointed position.
- Encourages the Committee to speak with representatives of these types of positions from cities similar to Portland.

Anna Kellar, Chairperson of Fair Elections Portland

- On Fair Elections Portland and its work
 - It is an advocacy group since 2017 that works on improving the accessibility, accountability, and transparency of Portland’s election system.
 - It advocated for the creation of a municipal elections funding system, and the expansion of ranked-choice voting.
 - In pursuing its work, it has run into situations where Fair Elections found city staff to not be working in accordance with the law, or disagreed with city staff’s interpretation of the law, and found they had little recourse outside the court system, and little opportunity to present their theories to the Council.
 - Ultimately sued the city, and learned the additional hardship seeking redress in the court system puts on the public.
 - Fair Elections came up with the idea of the creation of a position that would serve as a check on city staff, and that would be able to provide a second opinion, and started looking at ombudsman and public advocate models.
 - Fair Elections does not wish to impugn city staff, but any group of people will make mistakes and have set or legal interpretations that may not be reflective of changing external circumstances.
- On Fair Election Portland’s perception of the chokepoints where Portland is failing to maximize accessibility, accountability, and transparency.
 - Corporation Counsel has a vested interest in protecting the interests of the city government over the public.
 - Corporation Counsel has significant authority in that it is generally the sole advisor to the City Council on legal matters.
 - Fair Elections is only able to present complex legal arguments to City Council in the form of three-minute public testimony.

- Suing the city was only feasible through attorneys willing to work pro bono, and funding from national clean-election organizations.
 - When the League of Women Voters sought to clarify language on the city's web site regarding absentee ballots, there was nobody with any authority to compel the City Clerk to take action even after the State Secretary of State and several council members had requested the action, until influence was exerted on the City Manager.
 - The public in Portland may often not know where to turn for help with a situation, and a Public Advocate could help rectify this.
 - Public trust in Portland's government is severely eroded.
- On the type of position Fair Elections believes could help Portland address its deficiencies
 - Strongly encourages the creation of an Ombudsman, Auditor, or, ideally, Public Advocate office.
 - The position should have the ability to seek redress through multiple, escalating avenues, from an informal conversation with a staff member to filing a lawsuit if necessary.
 - Independence of such a position is "absolutely key," including independence of the budget.
 - An elected position would have more independence and increase public awareness of the position.
 - In New York City, the Public Advocate's budget is defined as a percentage of the Mayor's budget, in a system that seems to work well.
 - Collecting multiple offices under one roof would serve to maximize efficiency of resources and staff.
 - The School Board's ability to bring in outside counsel for a second opinion has proven valuable.
 - In New York City, the Public Advocate's position is a "public muck-raking job," that is effective in raising awareness and effecting change.
 - On how Portland compares to other municipalities Fair Elections has studied in how adversarial or conflict-adverse its government is
 - Portland is in an awkward space between cities that have aggressive competitive politics and the ideal a small-town public meeting system.
 - The small-town ideal can exclude voices with valid complaints or minority points of view.

- After attending a Council meeting in South Portland recently, Kellar observed a very different tenor of public comment than the hostile one found in Portland Council meetings, and concluded that something fundamental has broken down in Portland in the relationship between the government and the public.

Patrick Dowd, Vice President of the Board of Directors of the U.S. Ombudsman's Association

- On his experience and the USOA's work
 - Dowd also serves as Director for the Washington State Office of the Family and Children's Omsbud.
 - In his State position, he is appointed by the Governor to a three-year term, and can only be removed for cause.
 - An attorney, Dowd has also worked in the State Office of Public Defense.
 - The USOA works to promote the establishment of public-sector ombudsmen, and provides technical service and advice to municipalities and ombudsmen nationwide.
- On what an ombudsman does and how the office functions.
 - The core function of an omsbud is to respond to individual complaints surrounding governmental misconduct, to provide information, and to independently investigate those complaints in an impartial manner.
 - An ombuds does not act as an advocate for an individual with a complaint, but investigates, gathers facts, and issues a determination on whether an agency's actions were consistent with law and policy.
 - If an ombuds makes a determination of misconduct, the ombuds then seeks to resolve the complaint with the agency.
- On ombudsmen in cities nationwide that are similar in size and economic importance to Portland
 - Dowd has seen the creation of multiple ombuds offices in Washington State in the last 30 years, and also the expansion of ombuds offices nationwide.
- On the benefits and deficiencies of an appointed Ombudsman-type office versus an elected Public Advocate

- An elected position faces the risk of becoming a partisan office, whereas non-partisanship is integral to the office of an ombudsman.
- The traditional model for an ombudsman is that the office is appointed by the legislative branch of government, on the theory that the executive branch generally appoints the agency heads, to make for an effective separation of powers.
- On the utility of an ombudsman for Portland, and whether there would be sufficient complaints to investigate that would justify the office.
 - Dowd has never known of an ombudsman that did not have enough to do.
 - In his State position, he has always had more complaints than he could handle.
 - As ombudsman offices are created, both the public and the government see their value, and often their duties are expanded.
- On his relationship as an ombudsman to elected government officials
 - Elected officials are treated as stakeholders with whom an ombudsman can partner to address systemic issues.
 - An ombudsman may testify at legislative hearings, and provide information on proposed bills.
 - It is an important that an ombudsman remain neutral, and must be cautious in his or her relationships with elected officials to maintain impartiality.
 - If a legislator approaches an ombuds with a constituent complaint, the best practice is to have the constituent contact the ombuds directly, rather than to continue to go through the legislator, so the ombuds is not perceived as working on behalf of a legislator.
- On the qualifications and certification process for an ombudsman, and the availability of certified professional.
 - Ombudsmen must have the ability to organize and conduct investigations, and good writing and communications skills.
 - Ombudsmen can come from diverse backgrounds, but often have experience as attorneys, journalists, or in law enforcement.
 - The USOA has a training curriculum, that takes about a week to complete.
- On the determinations of an ombudsman and their enforceability, or lack thereof.

- An ombuds does not issue binding determinations, but makes recommendations and reports.
 - Once an ombudsman has the power to mandate that an agency implement a decision, it is no longer independent, but part of that system.
 - It can be a source of frustration for the public when an ombudsman can not compel an agency to take corrective action the ombudsman says it should do.
 - In his experience, in 90 percent of complaints regarding the child welfare office on which his office has made a finding, the recommendation has been adopted by the agency.
- On who might be responsible for appointing an Ombudsman in Portland's form of government.
 - For the City Council to be responsible for the appointment would be consistent with general best practices, as the legislative body.

4. **Chair Lizanecz asked for any additional business. Hearing none, he called for adjournment. The motion was approved unanimously and the meeting was adjourned at 7:00pm.**



City of Portland, Maine Charter Commission

Departments Committee

MINUTES

January 3, 2022

Committee Members Attending via Zoom: Commissioner [Ryan Lizanecz](#) (Chair), Commissioner Zach Barowitz, Commissioner Marcques Houston. Staff member Jesse Denno taking minutes.

1. **Call Meeting to Order and Conduct Roll Call**

Chair Lizanecz called the meeting to order at 6:00 pm and called the roll. Commissioners Houston, Barowitz, and Lizanecz were present.

2. **Review and Approval of Minutes**

Chair Lizanecz called for a motion to approve the minutes of the Committee's December 20th meeting. Commissioner Houston motioned to approve and Commissioner Barowitz seconded the motion. The motion passed unanimously.

3. **Introduction of the Idea of Community Chairs**

Commissioners briefly discussed the Committee's next meeting, scheduled for the 24th. Chair Lizanecz stated that Jessica Grondin, Portland's Communications Director, and Jennifer Prado, Director of Constituent Services for Wilmington Delaware, were scheduled to speak at the meeting. Commissioner Barowitz suggested inviting Portland's Director of Public Works to speak to the Committee. Chair Lizanecz suggested inviting a speaker from the Peaks Island Council.

Chair Lizanecz noted that the Committee was scheduled to present their ideas for a Police Oversight Board to the full Commission soon, and that commissioners should prepare for that discussion.

Commissioner Barowitz commenced the discussion, stating that Portland currently had Neighborhood Associations, which exist outside of the Charter or code. The Associations, which have no official role in city governance, operate independently and govern themselves in different ways, and have proved a valuable tool for community engagement. City Councilors have defined districts, but they are geographically large and encompass disparate neighborhoods.

Community Chairs would serve as an intermediary position between residents and Council Members, with two or three Community Chairs per council district. They would have geographically specific districts and serve as liaisons between residents and the Council. The neighborhoods could receive an allotment for participatory budgeting, with the process overseen by the Chairs. Chairs could play a role in the appointments to boards and committees, and possibly sit on committees. The Chairs would serve as a means for communities to engage with development process, and provide input early in the process, as well as make their land use needs known to the city. The Chairs could potentially review and make recommendations on development projects, and serve as platforms for leadership development.

Commissioner Barowitz and staff member Denno briefly discussed their knowledge of the role Community Boards play in New York City. Denno agreed to provide commissioners with information regarding New York's Community Boards, and to find examples of other municipalities that had instituted similar structures.

Commissioner Barowitz noted that the Education Committee was also discussing the idea of introducing participatory budgeting, and Chair Lizanecz suggested scheduling a joint meeting in February. Commissioners agreed to further discuss the idea, conduct research and interviews, and workshop language for eventual presentation to the Commission.

4. Introduction of the idea of a Communications/Constituent Services Office

Commissioner Barowitz again began the discussion. Barowitz said the most common complaint he heard from residents was "why am I only hearing about this now?" The idea behind the Communications or Constituent Services Offices was to better communicate with the public and keep the public better informed of the city's activities and mechanisms. He stated that Portland currently had Jessica Grondin serving as Communications Director, leading an office of two, previously one. Such offices generally have two broad duties: serving as a press office, primarily for the executive branch; and serving as community affairs office, working with the public and constituent groups.

Chair Lizanecz said the Governance Committee was also discussing similar issues, under the umbrella of a Chief of Staff position. Lizanecz said the position, as currently being imagined, would report to the Council and Mayor, perform community affairs work, process FOIA requests, and serve as liaison between the Council and Administration.

Chair Lizanecz noted that cities of Portland's size often group multiple duties into one office, and suggested that this office might fit under the umbrella of the Chief of Staff position under discussion. Commissioner Barowitz was not averse to the idea, but cautioned that it was confusing for the public when an official's title did not clearly match his or her duties. Lizanecz agreed, and said it was a matter to raise with the full Commission.

Commissioners agreed to discuss the matter with the Governance Committee before drafting any language.

Chair Lizanecz suggested that a revision could be made to the charter mandating that roll call vote archives be recorded and made publicly available. Commissioner Barowitz agreed with this idea, saying that current necessity of searching through past minutes to find such information was untenable. Commissioner Houston said that it was his understanding that this was a service provided by Wilmington's Communications Office, and hopefully the Communications Director would discuss it as a guest at the Committee's next meeting. Commissioner Barowitz suggested broadening to the language, to ensure the recording and accessibility of public information.

5. New Business

Chair Lizanecz said the Committee's preliminary reports were due in March, and recommended scheduling joint meeting with committees studying overlapping issues. Lizanecz suggested the Governance Committee and Elections Committee might wish to collaborate on the issues of Community Chairs. Commissioners agreed that Lizanecz should inquire of the other Boards' chairs if they wished to mutually discuss these issues before they went to the full Commission.

Chair Lizanecz asked Commissioners if they had initial thought on the Ombudsman/Public Advocate-type position following the interviews and expert testimony on the Committee's January 3rd meeting. Lizanecz determined that Commissioners wished to proceed on the issue, and scheduled a workshop for drafting language at the February 7 meeting. He asked Commissioners to come to the meeting with proposals.

Commissioner Barowitz suggested the Committee should focus on the description of the position, and leave questions of how the position should be filled to the full Commission. Chair Lizanecz concurred with Barowitz, and said the position's duties may depend on the structure of government settled on by the Commission.

Commissioners identified preliminary proactive and reactive duties for the position, and agreed to independently draft proposals for the February 7th meeting, where they would workshop the language to present to the Commission.

6. Adjournment

Chair Lizanecz called for adjournment. The motion was made by Commissioner Houston and seconded by Commissioner Barowitz. The motion was approved unanimously and the meeting was adjourned at 7:30pm.