



City of Portland, Maine
Charter Commission
Departments Committee
MINUTES

December 20, 2021

Committee Members Attending via Zoom: Commissioner Ryan Lizanecz (Chair), Commissioner Zachary 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 Lizanecz 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 good government.
- 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 Council 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 muckraking 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 Ombuds.
 - 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 ombuds 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 omsbud 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.**