



City of Portland Charter Commission Agenda

February 21, 2022 at 6:00 PM

Due to the existence of an "emergency or urgent issue", the Charter Commission & its Committees will conduct meetings 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.

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 in our Agenda Portal.

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.

1. Call to Order

- a. This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Charter Commission 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 use *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/83199707714?pwd=V2UyN0xWMHdUK1FTQWl4V3hQc2Rqdz09>

Passcode: 696972

Or One tap mobile :

US: +13126266799,,83199707714#,,,*696972# or
+16465588656,,83199707714#,,,*696972#

Or Telephone:

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

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

Webinar ID: 831 9970 7714

Passcode: 696972

International numbers available: <https://us06web.zoom.us/j/83199707714?pwd=V2UyN0xWMHdUK1FTQWl4V3hQc2Rqdz09>

2. Review and Approval of Minutes

- a. Approval of the Draft January 31, 2022 and February 7, 2022 meeting minutes

3. Presentation & Discussion on Ethics Board Proposal
 - a. Supporting Document on Ethics Board Proposal
4. Vote to forward to full Commission if deemed necessary by Committee
5. New Business : Members of the Committee may present any additional tasks for us to take on before the end of our term.
6. Adjourn



City of Portland, Maine Charter Commission

Departments Committee

MINUTES

January 31, 2022

Committee Members Attending via Zoom: Commissioner [Ryan Lizanecz](#) (Chair), Commissioner Zachary Barowitz, Commissioner Marcques Houston. Governance Committee members Commissioner Robert O'Brien and Commissioner Nasreen Sheik-Yousef also in attendance. 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 Barowitz, and Lizanecz were present. Commissioner Houston joined the meeting at 6:30. Commissioner O'Brien and Commissioner Sheik-Yousef from the Governance Committee also in attendance.

2. **Review and Approval of Minutes**

Chair Lizanecz called for a motion to approve the minutes of the Committee's December 20th and January 3rd meetings. Commissioner Barowitz motioned to approve the January 3rd minutes, and Chair Lizanecz seconded. The motion passed unanimously.

Commissioner Barowitz stated that he had noticed errors in the December 20th minutes. Chair Lizanecz motioned to amend the minutes and Commissioner Barowitz seconded. The motion passed unanimously.

3. **Interviews: Monique Y. Glaude', Director of Community Engagement & Ombudsman, City of Topeka, Kansas**

Chair Lizanecz prefaced interviews by stating that Jennifer Prado, Director of the Mayor's Office of Constituent Services for Wilmington, Delaware, had needed to cancel. Michael Pastor, Professor of Law at New York Law School, had been added to the agenda in her stead.

On her work, experience, and path to the Ombudsman's office.

Glaude' has spent over 15 years as a public servant in Topeka. She began serving as a Community Liaison in 2012, her first position directly related to that of Ombudsman. She was appointed the city's Director of Community Engagement, her first citywide office. Topeka's Ombudsman position was created in 2020 to address distrust between the city government and the public, and she is the first to serve in the position. Since assuming she has distributed over 18,000 infographics informing citizens of the office, and raised awareness through social media, television interviews, and community meetings.

Glaude' sees the Ombudsman office as a conduit between citizens and the government. She describes the work as 30% providing resource information, 25% as serving for the initial contact for complaints, 20% is devoted to following up on complaints and service requests, and 25% is educating the public on how the government works and government processes.

Topeka has a "See-Click-Fix" system where residents can file complaints via an app or website, that has transformed the dynamics of how complaints are addressed, as citizens are often able to resolve issues themselves.

The position requires exemplary customer service skills, tough skin, and assertiveness. She strives create positive interactions between residents and their government. The creation of the office has cut down on complaints to the governing body and the City Manager's office.

Thoughts on the term "Ombudsman."

She has found the title to be confusing for people, and she often describes herself as a liaison between the public and city government, and prefers the term "Resident Liaison."

On her the structure of Topeka's government and her office's role in Topeka.

Glaude' reports to the City Manager. She maintains direct contact to the Manager, and keeps him informally apprised of her office's work. The manager has declined her offer of monthly reports. All complaint forms are logged in a shared file accessible to the Manager and his assistant. She is also accessible to Council members and department heads, and who often direct members of the public to her office.

Government officials and staff must acknowledge and respond to any formal request from the Ombudsman's office within 24 hours. This system was instituted by the City Manager after being proposed by Glaude'.

Glaude' does not handle the entirety of the city's constituent service needs, but she is often the point of contact for people following up on an initial complaint.

To avoid the perception of being seen as a "tattletale" by city officials and employees, she works hard build strong relationships with the people in city government, and seeks to convince them that she is their "quarterback," that can solve complaints on their behalf if she has the necessary information.

Topeka has a population of about 127,000, that swells to 167,000 during the day. Topeka has a Mayor-City Manager-Council form of government.

On the Ombudsman's role in larger issues like human rights violations, government corruption and malfeasance, and complaints by city employees against their superiors.

Employee complaints would be directed to the city's Human Resources department. If she was contacted by an employee dissatisfied with HR's resolution, she would take the matter directly to the City Manager.

Discrimination complaints are directed to the city's Human Rights Commission.

Allegations of misadministration or corruption in city government are outside of the Ombudsman's purview, and she would refer the matter to the City Attorney.

On the appointment process.

The idea for an Ombudsman generated within the Council, initially to provide some oversight for the Police Department. The City Manager made the Ombudsman a position with a citywide brief, and appointed Glaude' to the position.

On access to files and city staff.

If she can pull necessary information from a department's website, that is her preferred method, and she only contacts department heads when necessary. There are no restrictions on her access to staff

Chair Lizanecz and commissioners thanked Glaude' for her time and attention.

4. **Interviews: Jessica Grondin, Director of Communications and Digital Services, City of Portland**

On her path to the office, and her work for Portland.

Grondin has worked for Portland since 2014, having previously worked for the city of Boston. In the position, she seeks to provide municipal services effectively and efficiently, and use digital tools to foster civic engagement, and to facilitate public interaction with their government.

The position has evolved somewhat over time, and has come to encompass digital communications, civic engagement, and digital tools like the city's website, social media, and mass alert system. She handles media and public relations, and oversees the city's 311 system. She also oversees agenda management software, live streaming and public participation tools, serves as the city's FOIA officer, and handles internal city communications. She manages a staff of two.

Grondin reports directly to the City Manager.

Given her broad range of duties, on whether the office is appropriately balanced for its title, and whether some duties would ideally be shifted elsewhere.

She finds the balance and structure appropriate, but wishes the department had more resources. She was only recently able to add a second staff member to the department.

Grondin works closely City Manager's chief of staff, who also handles constituent services, to ensure messaging is consistent and issues are getting resolved. She also works closely with the City Clerk on digital services to ensure agendas are posted, that live-streaming is working, and videos of meetings are accessible. She is currently working with Clerk on the implementation of a new Boards & Commissions Portal.

On, as an employee reporting directly to the City Manager, how she works with the Mayor and Council.

Of all department heads, she probably works most frequently with the Mayor and Council. She routinely assists them with public information, media requests and press releases. The City Manager is made aware of their requests, but has never asked her department to deny their requests.

On whether, and if so, how, her office handles larger questions of maladministration, malfeasance, corruption and employee misconduct.

Grondin sometimes receives complaints about staff interaction, or staff not following policy, which she refers to Human Resources or the department head, and then follows up with the complainant. FOIA requests regarding city employees are handled in conjunction with Corporation Counsel and Human Resources. Grondin did not remember receiving any complaints that rose to the level of corruption.

After Human Resources and/or department takes action, there is no further means of appeal or recourse to a complainant within the municipal structure.

On whether it makes sense for constituent services and communications to be combined under one roof, or if it makes more sense for constituent services to fall under the umbrella of decisions maker, i.e. the City Manager.

As communications staff currently report to the City Manager, it doesn't greatly matter if the duties are formally grouped in the same department or not. Grondin believes people like to interact with the city in different way, and their means of access should not be strictly limited to one employee or department, or in method of accessing the city.

It is the City Manager's office that currently compiles and tracks requests and complaints.

On FOIA requests, and the office's access to files and information.

The City Clerk often handles FOIA requests for easily accessible public records, otherwise they go through Grondin's office, in cooperation with Corporation Counsel. The bulk of FOIA requests received come from reporters and other media sources.

FOIA requests involving the Police are referred by Grondin to the Police Department's attorney.

Grondin has access to the city's financial and human resources records.

Grondin also works with Corporation Counsel on requests that involve legislation, ordinances and policy matters.

On who in the city handles calls from members of the public who are upset or aggrieved, and need to vent or talk through their issues.

One of Grondin's staff members handles phone calls, listens to people, and ensures they have access to services.

Her office also often hears from people who require State or County services, or the services of a non-profit institution, and her office does its best to connect callers to the appropriate body.

On finding the balance between limiting conduits of information, and ensuring the public has access to the city, and can contact the government via their preferred means.

There is value in adhering to procedures, to prevent communication breakdowns, but information should be shared for best communication and to ensure broad access.

On redundancy in city e-mail communications.

It's a largely a matter of capacity and resources. One media distribution list is shared by multiple offices, making it difficult for a constituent to pick and choose the communications they receive. She is cautious about limiting channels, because people want to find their information through different means.

Chair Lizanecz thanked Grondin for her time and service.

5. Interviews: Michael J. Pastor, Adjunct Professor of Law and Senior Fellow, New York Law School

Pastor directs an institute at the law school that focuses on the business of law and in-house counsel. He also teaches State and Local Government, and has taught similar classes at other area law schools. He has also served as an attorney in several capacities for the City of New York, most recently as General Counsel for two of the city's technology agencies.

On the mechanisms for providing "enhanced constituent services," and where in structure of a municipal government such an office is best placed.

In New York, the Public Advocate is a citywide elected position, that is by law an ombudsman, created to be a "watchdog" over city agencies, and an office specifically created as means by which members of the public can seek redress for failures of the city government. As it serves a city of 8.5 million, the office necessarily focus on issues on which it receives complaints more frequently than others. The office then sheds light on an issue through its platform, e.g. landlord not providing sufficient heat in the winter.

The Public Advocate does not have the power to mandate change. It has the authority to access records, and its power lies in its ability to bring attention to a

matter. The office reports to no one in the government, being directly elected. Its authority is buoyed by the robustness of local news in New York, as the Advocate has channels for drawing attention to a matter. The Public Advocate can be very influential, but there is the potential for creating false expectations when the office can not implement the changes it recommends.

The city's Comptroller is also a citywide independent elected office, with the statutory authority to audit agencies, and publish its results. The Comptroller also receives complaints, and can address government corruption and malfeasance.

New York also has a 311 system, through which people can file complaints about the actions of city government by phone, web browser, or mobile application. The system directs complaints to the appropriate agencies, and serves as central clearinghouse that compiles and tracks data.

On an elected Public Advocate versus an appointed Ombudsman, and which system provides better effectiveness and accountability.

Pastor believes an elected Public Advocate serves best as an effective watchdog, accountable only to the public.

New York also has a Department of Investigation, that specifically addresses issues of wrongdoing by public officials. With a Commissioner appointed by the Mayor, the agency still maintains a great deal of independence, because the commissioner can only be removed for cause.

The City Council, an elected body, also serves as a check on the Mayor, and possesses investigative powers and subpoena authority.

On commonalities in the backgrounds of people who seek the office of Public Advocate, and the political nature of the office.

The office has only existed since 1993, so there have not been that many who have held the office. They have tended to come from backgrounds in community activism and city politics.

The position often serves as a stepping stone to higher office. Prior to his election to Mayor, Bill de Blasio served as the Public Advocate, and Mark Green was the Democratic candidate for Mayor. The Public Advocate also serves as interim mayor for 60 days if the Mayor becomes incapacitated or resigns.

The Public Advocate is selected through partisan primaries, often in a crowded field, with the winner of the Democratic primary selected in the general election thus far.

On tension with other offices, particularly during campaign season.

Pastor has not noticed the tenor of the Public Advocate's press conferences and communications significantly changing in the run-up to elections, but a Public Advocate's focus may shift. It is inherently a political role, and often adversarial in its relationship to the Mayoralty and other city bodies.

On the Public Advocate's relationship to the City Council, and the potential advantages of placing such an office under the Council's purview.

In New York, the Public Advocate can introduce legislation, and participate in Council hearings. A robust Advocate can provide greater investigative authority to a city in conjunction with a City Council, and there tends to be a great deal of synergy between watchdog and lawmaking roles.

On Boards of Ethics, and how they can fit into a municipal government.

New York has a Conflicts of Interest Board, an independent body with members appointed by the Mayor and Comptroller. Pastor does not recommend placing such a body under the Council or Mayor, because it should be free to investigate those bodies. In addition to investigations, the Board issues advisory opinions, providing ethical guidelines to officials and city staff.

Chair Lizanecz thanked Pastor for sharing his expertise, and donating his time on short notice.

6. Quick Break

Chair Lizanecz called a five-minute recess.

7. Discussion of Constituent Services/Ombudsman Model

Chair Lizanecz provided an outline for discussion, if other commissioners found it amenable. Commissioner Barowitz suggested reviewing and discussing what the committee had larded through its interviews. Commissioner O'Brien suggested identifying commonalities among commissioners, and then discussing their differences.

Commissioner Barowitz opined that Portland would be best served by a "Goldilocks scenario," with a position less limited than that of Topeka's Ombudsman, but not with the same level of prominence as New York's Public Advocate.

Chair Lizanecz stated that he found Council appointment preferable to public section for such an office. Commissioner Barowitz responded that he was content with either method of appointment, but wished to see the office guaranteed a wide brief and independent investigative authority.

Commissioner O'Brien said the title of "Chief of Staff" currently under discussion in the Governance was created a placeholder, and "Community Liaison" or "City Liaison" would be more accurate to his vision of the office. O'Brien said he was not comfortable with placing such an office under the City Manager. He also wished to see greater transparency and availability of recourse in public complaints regarding city actions and staff.

Commissioner Sheik-Yousef expressed concern over who would provide Council oversight, if a watchdog agency was placed under the Council and reported to the Council. Commissioner Sheik-Yousef suggested the title of "Public Advocate" as a starting point for finding common ground. Sheik-Yousef said she believed the office should be elected and independent, and accountable directly to the people.

Chair Lizanecz also suggested Council committee as a means of appointment, with the availability of recall by the Council if necessary.

Commissioner O'Brien said he comfortable with Council appointment because, unlike the City Manager, the position would not directly influence policy or the budget.

Commissioner O'Brien said that, while the Governance committee had previously envisioned a Chief of staff handling Council scheduling and arranging meeting between Council members and city staff, he was now willing to jettison those duties from the position in the interest of efficiency and streamlining.

Commissioner Barowitz envisioned the position as providing a second avenue for recourse when Council and other governments acted incorrectly, before a complainant sought redress in the legal system. Commissioner O'Brien said that an independent body that could provide alternate legal interpretations would still not trump the interpretations of the City Attorney, and might be of limited utility. Barowitz said the position as he envisioned it would be limited to the powers of persuasion.

Commissioner Sheik-Yousef suggested making the City Attorney, and possibly the City Clerk, an elected position, to make the office accountable to the public. She would be more comfortable with an appointed Public Advocate/Ombudsman/City Liaison if the City Attorney were elected.

Chair Lizanecz said that eliminating the office of City Manager might make it easier to identify and call out municipal malfeasance. Lizanecz did not agree that making the City Attorney an elected position would serve the public good. Commissioner O'Brien said he was open to debating whether the City Attorney should be elected, noting that Attorneys General were often elected to office.

Commissioner O'Brien introduced the idea of a panel of attorneys that could be petitioned if a legal opinion was disputed.

Commissioner Barowitz advocated for such a body being appointed by the Council, saying it would empower the city's elected representatives.

Commissioner Sheik-Yousef reiterated her idea of an elected City Clerk, in the interest of accountability, transparency, and a government with necessary checks and balances.

Chair Lizanecz asked for ideas on how to best proceed, following the evening's conversation. He asked for conceptual, baseline areas of agreement that could be brought to the full Commission. Commissioner Houston said the Committee had created a good list of potential powers and duties that would serve as good starting point for Commission discussion.

Commissioner O'Brien agreed the committee had reached a good stopping point, and he wished to hear the thoughts of Governance Committee member Commissioner Stewart-Bouley. O'Brien suggested reconvening with an expert that could help the committee identify the pros and cons of various approaches discussed. Commissioner Sheik-Yousef agreed that it would be helpful to discuss matters with an expert, possibly an academic.

Chair Lizanecz asked staff member Denno to look into any research that addressed these issues and could help the committee.

8. **Adjournment**

Chair Lizanecz called for adjournment. The motion was made by Commissioner Barowitz and seconded by Commissioner Houston. The motion was approved unanimously and the meeting was adjourned at 9:15 pm.



City of Portland, Maine Charter Commission

Departments Committee

MINUTES

February 7, 2022

Committee Members Attending via Zoom: Commissioner [Ryan Lizanecz](#) (Chair), Commissioner Zachary Barowitz, Commissioner Marques Houston. Governance Committee members Commissioner Robert O'Brien and Commissioner Nasreen Sheik-Yousef also in attendance. 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 Barowitz, Houston and Lizanecz were present. Commissioner O'Brien and Commissioner Sheik-Yousef from the Governance Committee also in attendance.

2. **Review and Approval of Minutes**

Chair Lizanecz called for a motion to approve the amended minutes of the Committee's December 20th meeting. Commissioner Barowitz motioned to approve the January 3rd minutes, and Chair Houston seconded. The motion passed unanimously.

3. **Interview: Kaitlin Caruso, Visiting Professor, University of Maine School of Law**

On her background and qualifications

Currently in Maine teaching Civil Procedure as a visiting professor, Caruso has held a variety of legal and administrative positions in state and local governments in New York City, San Francisco, New Jersey, and others, and has also held various academic posts.

On the means by which by which municipalities create oversight bodies, and the most effective ways of maximizing efficient oversight of municipal government.

Titles tend to change across municipal governments, which can make things confusing. Most governments that Caruso has encountered have some office that addresses constituent complaints, and/or provides some level of oversight of the officials and bodies. Offices range from a constituent services office within the office of the Mayor, to New York City's myriad watchdog and investigative agencies. Constituent services offices tend to be placed within the executive branches of governments, and collate public questions and concerns, then refer them to the appropriate departments. Ombudsman-type positions have more substantive expertise, and focus on broader issues of effective good government, with investigative powers and some sort of public reporting and assessment function. Typically, neither position has a "forcing function," the ability to control outcomes, but ombudsmen can exert "soft pressure" to influence changes.

On whether it is appropriate for an ombudsman to take on individual complaints, rather than just broader civic issues.

The duties are sometimes found in the same office, and this is a core question for Commissioners to answer. Caruso recommended that Commissioners clearly and concisely identify the problem they want to solve, then fit the form of the position to the desired function.

When developing a new office, Caruso advised Commissioners to leave room for flexibility as the practicalities of the office are developed, and decide how much precision should be built into the charter and how much of the responsibilities should be defined and amended by the default power of the City Council.

Caruso recommended that the Commission learn all the means by which complaints are currently handled, and the ways they come in, and decide whether the envisioned office is intended to supplant all of those functions, or specific portions of it, to clearly identify the scope of the potential office.

On the best means of ensuring the independence of such an office, and the positives and negatives of appointment versus election.

Such questions are contingent on the structure of a municipal government. Elected and appointed versions of these types of office both exist (e.g. elected Public Advocates and appointed ombudsmen), with appointed versions more common. Despite the prominence of New York City's Public Advocate, it is a fairly unique position that evolved through a complex history.

Commissioners must weigh the oversight and the competition of interest functions of such a position. An appointed officer may be the most subject to control, dependent on where their office is situated in the government's structure, and if that control is deemed desirable (e.g. accountability to the Mayor or Council).

It is fundamentally a question of the "practice of oversight and the practice of norms:" the expectations set by the rules and regulations of the office and the laws surrounding the office's power and independence. Norms will ultimately define the role as much as the chartered powers and structural incentives of the office. A

constituent services office within the Mayor's office will have a different expectation of independence than an investigative office. Structural protections (e.g. no other city office can end an investigation) and communication of intentions by Commissioners will largely determine an office's degree of independence. Setting qualifications (e.g. chartered accountant, member of the bar) can clarify structural incentives.

An elected office will have inherent independence, but will also be more political, and can lead to complex dynamics of power and ambition.

There are models that apply to Portland's current system of government, both elected and appointed, but there are an infinite variety of municipal government configurations, and the Commission has a great deal of leeway in where an office is located, to whom it is accountable, and where it reports.

The Commission faces a challenge in untangling structural changes from managerial and oversight relationships. It is difficult to contemplate individual institutional actors in "a black box" when designing a charter. She recommends that Commissioners give thought to how they want to channel information and lines of reporting. She further advised Commissioners to be clear about where changes are made, and the Commission's expectations and thought processes, which will be of guidance when the changes are implemented.

On whether elected positions have more of built-in transparency and accountability.

Appointment does not mean a lack of accountability, but can differ from elected positions in to whom they are accountable. It is the Commission's responsibility to determine the form and value the office's accountability.

On fulfilling these duties through individuals, offices, boards, or commissions.

It largely depends on the position's day-to-day work. Example of all types are found in New York City, which has an individual elected Public Advocate, an appointed Commissioner of the Department of Investigation, and a Conflicts of Interest Board. Boards generally require support staff to be effective, and are an option for a body with investigative functions. Constituent service functions are usually best served by an individual or office. Another model is that of bodies that serve as "an institutional face for a neutral provision of expertise," like an Independent Budget Office. Caruso also raised the model of Inspectors General, independent bodies embedded within administrative institutions that deal with waste, fraud, and abuse. These types of positions possess specific expertise, as opposed to the other, generalist, oversight models.

4. Thirty-Minute Discussion on Various Model and Experts

Chair Lizanecz recommended that this option of the meeting be postponed until after the discussion on the Ethics Board model. Commissioner Barowitz motioned

to amend the agenda, and Commissioner Houston seconded. The motion passed unanimously.

5. **Ethics Board Proposal Consideration and Feedback**

Chair Lizanecz introduced the proposal. Lizanecz had drafted the proposal after reviewing the ethics codes and bodies of other municipalities, which he had used as a basis for the proposal's language. Such bodies usually consist of members appointed by the executive branch who periodically reviewed a city's ethics code, determined the ramifications of violations of the code, and issued advisory opinions.

Lizanecz provided an example of awarding a contract to a family member or friend as an example the type of ethical violation the board would be charged with investigating and preventing.

Commissioner O'Brien inquired whether such a Board would be redundant with State Laws and local ordinances that already govern behavior and ethics. Chair Lizanecz replied that such bodies allowed a municipality to determine the precise ethical standards that guided their elected and appointed officials.

Commissioner Barowitz commended Lizanecz's draft, and noted that the proposed Board would mesh well with disclosure requirements for city officials being contemplated by the Procedures Committee. Barowitz said such a Board would help uncover and prevent both large and small issues of ethically dubious behavior, and strengthen trust in civic government.

Commissioner O'Brien questioned the demand for such an institution, stating that conflicts of interest rules were already present in almost every function of the city, and such issues are effectively resolved at the committee or Council level. The Corporation Counsel also currently has the authority to advise bodies about these matters. Chair Lizanecz responded that there is currently no body that looks into undeclared conflicts, and it is impossible to know the extent of ethical violations that take place currently. Lizanecz said there was value in an impartial body that could make public determinations, and serve both a proactive and deterrent role.

Commissioner Barowitz noted that there have been examples in Portland where members of the public believed a Councilor or the like should have recused themselves, and there was no impartial referee to turn to if the official refused and was not in violation of the law. Barowitz said accusations of corruption were being more frequently heard, and the city lacked an effective mechanism for determining their validity. He contended that, in Portland, an Ethics Board would not have workload that requires a full-time staff, and its function could be served by as-needed meetings.

Commissioner Houston raised the issue of campaign finance, and asked if the Board as envisioned would also take on campaign finance violations in any capacity. Chair Lizanecz said he could easily imagine such duties being added to the Board's duties, but it would depend on decisions of the full Charter Commission.

Commissioner O'Brien expressed concern about such a Board halting or slowing city business, whereas the City Attorney can issue immediate opinions, minimally disrupting the work of a body. O'Brien also raised concerns about the difficulty of policing personal connections in a city of Portland's size. O'Brien also noted the the State Human Rights Commission and Campaign Finance Board would trump a local office, and cautioned against creating a municipal office that could create false expectations.

O'Brien also raised the idea of an Ethics Board focusing on institutions as well as individuals, stating that there was currently no mechanism for a Councilor to compel the City Council to follow its own rules, and no way to charge the city for failing to follow the Charter, or ensure that a program is being dutifully carried out.

Chair Lizanecz said he envisioned that these issues would be considered by the body charged with creating the code of ethics.

Commissioner O'Brien suggested that a public option be added that would allow people outside of city government to trigger investigations and advisory opinions. Commissioner Barowitz added that a mechanism could be created by which complaints could be deemed frivolous, without requiring consideration by the Board.

Barowitz also envisioned a means by which an individual or body could proactively present information to the Board in advance of meetings.

Chair Lizanecz said the discussion had been productive, and hoped that Commissioners could workshop a draft for an Ethics Boards to be presented to the full Commission at the Committee's next meeting. Commissioner Sheik-Yousef praised the plan, and said it would be presentable with some more thought and tweaks.

6. Thirty-Minute Discussion on Various Models and Experts

Chair Lizanecz opened the discussion. He said the conversation at the joint Committee's previous meeting had been valuable, but there had been little consensus among Commissioners on models for a Constituent Services/Ombudsman/Public Advocate position. He suggested drafting a report to submit to the full commission outlining areas of agreement and disagreement, fo the discussion to be taken up by the larger body.

Commissioner Barowitz suggested focusing on the positions authorities and responsibilities rather than its place in city government and the method of selection.

Chair Lizanecz chose to use a template created by Commissioner Barowitz as a starting point of discussion. The document delineated the potential duties and authorities of different models.

Commissioner Barowitz presented his favored model, influenced by Portland Oregon's City Auditor, that would conduct performance and financial audits, be

responsible for public records, have the authority to review contracts, and address complaints large and small in a independent advisory capacity.

Commissioner Lizanecz presented a model for a position tentatively titled “Constituent Advocate,” combining the duties of constituent services and complaint resolution, appointed by the Council, with some investigative authority and statutory independence. The Advocate would refer requests and resolve complaints, and handle FOIA requests. Its oversight capabilities would be limited.

Commissioner O’Brien expressed concern about the public’s appetite for new staff and expenses, and that the creation of too many new staff positions could put charter revisions at risk at the polls. Commissioner Barowitz opined that existing staff could possibly be reassigned, and that costs should be balanced against money saved by preventing fraud, waste and abuse.

Chair Lizanecz identified whether or not constituent services were separate from an Ombudsman/Auditor/Advocate position as an issue to be determined.

Commissioner Houston said the envisioned constituent services duties fulfilled a need in Portland, and he was undecided as to whether those duties should be consolidated with other oversight roles. Houston noted that constituent service matters consume much of the time of volunteer Council members, and would serve to lighten their load. Commissioner Barowitz said it depended on the city government’s ultimate structure and to whom the office reported.

Commissioner O’Brien said he believed the city’s finances are currently periodically reviewed by an outside auditor, and he wished to see more information about the current system and how the potential new position would replace or enhance it.

Commissioner O’Brien said he believed constituent and informational services and oversight responsibility were two separate entities in his opinion.

Chair Lizanecz found there was bad consensus for separating constituent services from Advocate/Ombudsman/Oversight duties. Lizanecz also found there was broad agreement that the committee should recommend some level of increased oversight. Commissioners disagreed regarding the independent hiring powers of the potential individual or office. The specific functions and method of selection would need to be determined by the full commission.

Commissioner Barowitz said the disagreements were largely a matter of degree or extent, rather than disagreement about the office’s role in the city.

Commissioner Sheik-Yousef said further work needed to be done to ensure the office’s accountability and transparency

Chair Lizanecz said he was reluctant to further delve into details. The conversation had captured the high-level points, and the full Commission would determine the best way forward.

7. Adjournment

Chair Lizanecz called for any new business. Hearing none, he called for adjournment. Commissioner Houston motioned to adjourn, and Commissioner Barowitz seconded. The motion passed unanimously. The meeting concluded at 8:00 pm.

CITY OF PORTLAND ETHICS COMMISSION & CODE OF ETHICS

Section 1. Ordinance required.

The City Council shall maintain an ordinance defining the code of ethical conduct of elected and appointed City officials, as well as all employees of the City. The ordinance shall be developed and recommended by the Ethics Commission, as provided in Section 2, and be approved and later amended with the approval of 2/3 of City Councilors present and voting. The ordinance shall outline the process for soliciting advisory opinions by residents of Portland, and all city employees.

Section 2. Formation of Ethics Commission.

The ordinance shall direct the formation of an Ethics Commission, consisting of seven (7) members who are residents of the City, to review the code ordinance once every three (3) years. Two (2) members shall be attorneys in good standing with the Maine Bar. The commission shall be appointed by the City Council. Elected officials, candidates for any elected office, and their immediate family members shall not be permitted to be members of the commission. The commission shall meet as needed, but no less than every three (3) months.

Section 3. Independence.

The Commission shall remain an independent body, free from interference from any City employees or elected officials. The Commission shall provide a report to the City Council no less than annually. The Commission may request funding from the City Council for an independent investigation.

Section 3. Advisory Opinion.

The Ethics Commission or quorum of at least five (5) members, shall be convened on request for an advisory opinion by no less than two (2) members of the City Council, the Mayor, or the Chief Executive of the City. ~~The Ethics Commission shall be convened for an advisory opinion on any grievance by no less than 50 signatures of registered voters of the City of Portland.~~ The Commission may issue, at its discretion, advisory opinions upon request of any city officer, official, employee, or resident of the City of Portland at any time.

The Ethics Commission may also render advisory opinions on City compliance with:

- (1) The City Charter;
- ~~(2) Applicable City rules and ordinances;~~
- ~~(3) Program Delivery.~~

The Ethics Commission shall deliver all advisory opinions to the City Attorney, Chief Executive and City Council in compliance with applicable law, no less than 14 days after a decision is made.

Section 4. Violations of Ethics Code.

If the Commission finds violations of the ethics code, the Commission may recommend to the applicable hiring authority any appropriate disciplinary or removal proceedings and notify the city attorney that further action should be taken in accordance with state law. Any City Councilor or Mayor found in violation of the ethics code may be reprimanded by the City Council. The Council may decide to do nothing, censure a member, remove a member, or allow the public to start a recall petition. If removal is selected, the Council may remove a Councilor or Mayor by a 2/3rds majority vote of the City Council. Suspected criminal conduct shall be reported to the police department.

Examples of Ethics Boards/Commissions/Ordinances/Charter Amendments:

Bangor, ME: Population: 31,753

- Ordinance: <https://ecode360.com/6889057>
- Charter Amendment (establishes board & requires creation of code):
<https://ecode360.com/14956369>

Waterville, ME: Population: 15,828

- Ordinance: <http://www.waterville-me.gov/ordinances/wp-content/uploads/sites/25/2018/02/Ethics-Ordinance-Revised-010518.pdf>
- Charter Amendment: Article VI (establishes board & requires creation of code)
<http://www.waterville-me.gov/clerk/wp-content/uploads/sites/10/2017/08/2020-Charter-with-Revision-Markups.pdf>

Windham, ME: Population: 18,434

- Ordinance (establishes both the Ethics Board & code):
<https://www.windhammaine.us/DocumentCenter/View/1017/Ethics-Policy---Board-of-Ethics?bidId=>

York, ME: Population 13,723

- Ordinance (no board established - up to chairs & department heads to regulate conduct):
<https://www.yorkmaine.org/DocumentCenter/View/1348/a-Code-of-Ethics-2021-06-14?bidId=>

Bristol, ME: Population 2,834

- Ordinance (no board established but complaints are brought straight to the selectmen to decide).
https://www.bristolmaine.org/sites/g/files/vyhlf4191/f/uploads/code_of_ethics_and_conduct.pdf

Lisbon, ME: Population 9,711

- Ordinance (establishes an ethics panel of three voters and issues advisory opinions on conflicts of interests)
https://library.municode.com/me/lisbon/codes/code_of_ordinances?nodeId=PTICOOOR_C_H12ETCOIN_S12-3ETPA

Ogunquit, ME: Population 1,577

- Ordinance (no board, ethics violations are determined internally on boards and committees)
https://www.townofogunquit.org/vertical/Sites/%7B2524508A-BBA7-433A-9EAA-E74D93FCB25D%7D/uploads/CODE_OF_ETHICS_FOR_BOARDS_AND_COMMITTEE_S.pdf

Madison, ME: Population 2,433

- Ordinance (includes ethics board with advisory opinions provided to select board)
<https://ecode360.com/9856843>

Kennebunk, ME: Population 11,536

- Internal procedures governing rules for the council.
<https://www.kennebunkmaine.us/DocumentCenter/View/218/Select-Board-Code-of-Ethics?bidId=>

Bridgton, ME: Population 5,418

- Ordinance (establishes penalty for violation and applies to all elected officials and employees) <https://bridgtonmaine.org/wp-content/uploads/2017/09/Code-of-Ethics.pdf>

New York, NY: Population: 8.5 Million

- Charter (establishes the Conflicts of Interest Board, defines its powers and obligations, defines prohibited interests and conduct, establishes reporting requirements, establishes the Board's power to impose penalties, authorizes the Board to investigate and adjudicate gifts by lobbyists):
<https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCcharter/0-0-0-5995>
 - The Rules of the City of New York
<https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-86448>
-

Examples of Charter Compliance Commissions:

Provincetown, MA: Population: 2,994 - Charter Compliance Commission

- Charter Amendment:
<https://www.provincetown-ma.gov/125/Charter-Compliance-Commission>
- <https://www.provincetown-ma.gov/DocumentCenter/View/202/Charter-PDF?bidId=>
(page 6)

Bourne, MA: Population: 19,872 - Charter Compliance Commission

- Charter Amendment:
https://www.townofbourne.com/sites/g/files/vyhlij7346/f/uploads/town_charter_2016.pdf
- <https://www.townofbourne.com/charter-compliance>

Milton, VT: Population 2,507 - Charter Compliance Commission

- Charter Amendment:
<https://legislature.vermont.gov/statutes/section/24appendix/129/00702>
-

Reasoning:

1. Protect whistleblowers.
2. Fight and discourage corruption from both elected and unelected individuals.
3. Increase transparency and accountability in municipal government.
4. Be a safe, independent place to send complaints and concerns regarding ethical conduct.
5. Creates an ethics mission and code for the City of Portland.
6. Cost effective, productive ethical conduct oversight.
7. More voices at the table and the community oriented decisions on what ethical conduct is, rather than one individual.

8. Build public trust in municipal government
9. Benefits - no associated costs chartered in.