



City of Portland Charter Commission Agenda

March 8, 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/81586034483?pwd=TEhyS2FyYmNyMIJQK1VkQjVoVkVFdz09>

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International numbers available: <https://us06web.zoom.us/j/81586034483>

2. Review and Approval of Minutes
 - a. Approval of the draft February 22, 2022 meeting minutes.
3. Discussion of Code of Ethical Conduct Proposal
 - a. Code of Ethical Conduct Proposal
Public Comment period
Vote on Code of Ethical Conduct Proposal
4. Discussion of Citizen Initiatives Proposal
 - a. Citizen Initiative proposal
Public Comment period
Vote on Citizen Initiatives proposal
5. New Business
6. Adjourn

Charter Commission Procedures Committee

Minutes

2/22/22

1. Call to Order at 7:09

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.

Roll Call: Commissioners Washburn, Waxman, Kebede, and Barowitz are present

2. Approval of Minutes. Motion to approve by Waxman, seconded by Kebede.

Discussion:

Barowitz: I did not say "unpaid officials easier to corrupt."

Minutes approved unanimously as amended

3. Participatory Budgeting

Kebede: Language "and/or Capital Improvement Program" should be added after the word "budget." Revised language reads as follows:

"The City Council shall develop and implement a participatory budgeting system wherein a portion of the municipal budget and/or the capital improvement program is allocated based on a process that involves the input of as many residents of Portland as possible. The City Council may establish a subcommittee, a task-force, or any other structure that is necessary and proper for the design, implementation, and management of a participatory budgeting system."

Public Comment: None

Waxman: Motion to send item with new language to the full commission for consideration to include in the charter recommendation. Seconded by Kebede. Passes 4-0.

4. Code of Ethical Conduct

Barowitz: Commissioner Lizanecz of the Departments Committee has been working on a very similar item for that committee that includes an Ethics Board/Ethics Commission. He has integrated both the Department Committee language and the Procedures Committee language into one document. Request discussion on how best to proceed.

Discussion follows.

Barowitz: Motion to table item with the understanding that the integrated proposal shall be brought back to the procedures committee. Second by Washburn. Passes 4-0

5. Citizen Initiatives *First Read*

Barowitz outlines three main points:

- Clean timeline from petition to ballot
- Language of initiative should match the title.
- Petitioners shall have the opportunity to have a hearing before the city council.

Kebede: This is born out of a desire to take something out of the city code, which is more ephemeral than the charter and put it into the charter, because we value the referendum process. Main points of contention are: number of signatures; clear timelines; and petitioners' right to choose their title balanced against the possibility that the title may be inaccurate or possibly misleading.

Waxman: Can this be revised into broad guideline language?

Barowitz: Will revise into broad guideline language. Will consider including language requiring the City Clerk to prepare a memo to petitioners explaining the timeline of the process from petition to ballot.

6. New Business: None

7. Kebede: Motion to **Adjourn. Seconded by Waxman. Passes 4-0**

CITY OF PORTLAND ETHICS COMMISSION & CODE OF ETHICS

1. The proper operation of the City of Portland requires that all City officials, whether elected, appointed, or city employees be impartial, equitable, and responsive to the needs of the people and each other in the performance of their respective functions and duties; that proper conduct by City officials will promote public confidence in the integrity of government and will be maintained by all City officials; that public office not be used for personal or financial gain or advantage; and that the structure of City government be used properly in decision and policy-making. In recognition of these goals and the importance of protecting public interest and City officials, a Ethics Commission shall hereby be established for all by the City Council.

1.1 PURPOSE: To provide impartial oversight as to ensure that standards of conduct are defined and upheld; and to make public the sources of income as well as other areas of personal and pecuniary interests to city officials, their family members, and major supporters for purposes of recusal.

Section 1.2 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 in accordance with all applicable labor laws, contracts, and confidentiality requirements. 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 establish the process for filing complaints and soliciting advisory opinions by residents of Portland and city employees.

1.3 The code shall include and encompass but not be limited to the following:

- Standards of Conduct
- Disclosure of Confidential Information
- Conflicts of Interest
- Disclosure of Conflict
- Determination of Conflict

1.3.1 Whereby the disclosures as provided in Sec. 1.3 wherein prior to being sworn into office, all elected city officials and executive and senior city staff shall complete a disclosure form. The form shall disclose all sources of income, as well as those of close family members, in accordance with common and accepted practices consistent with state and community standards. Applicable forms shall be public documents and may be referenced by the public for purposes of recusal. The form shall be updated on an annual basis or upon change of employment or situation. These disclosures shall be made publically accessible and posted

together on the city's website and on the page of that city official as applicable and in accordance with all applicable labor laws, contracts, and confidentiality requirements.

1.4 The Board shall devise, with the assistance from city staff and/or outside counsel, a code of ethics for Portland City officials and employees which shall include but be not limited to:

- Councilors
- School Board
- All other elected officials
- All appointments including but not limited to boards, commissions, and task forces
- All city employees

1.5 Anyone, whether they be a city official or member of the public, may bring a complaint to the attention of city officials for the purposes of consideration of a conflict of interest or the appearance of a conflict of interest, or for any violation of the code of ethical conduct.

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 not less than once every three (3) years. 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 once every three (3) months.

Section 2.1. Independence.

The Commission shall remain an independent body, free from interference from any City employees or elected officials. The Commission may request funding from the City Council for an independent investigation as needed.

Section 2.2. Term.

Commissioners shall serve for a term of three (3) years.

Section 2.3 Duties.

The Commission shall develop the Code of Ethics. The Commission shall provide a report to the City Council no less than annually. The Commission shall consider questions and render advisory opinions.

Section 2.3.1. Advisory Opinions.

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 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 names of complainants shall be protected by confidentiality, unless they elect to waive it. No complainant shall be retaliated against for filing a complaint.

Section 2.3.2. Advisory Interpretation of the City Charter

The Ethics Commission may, at its discretion, also render non-binding, advisory opinions on City compliance with The City Charter. The Commission shall provide its written interpretation of the Charter on the written request of any resident or official of the City. The Commission's interpretation is advisory only and for educational purposes and shall not be the basis for any legal action. A copy of the request and the proposed response shall be provided to the City Council, Mayor and City Manager for review prior to being issued.

Section 2.3.3. The Ethics Commission shall deliver all advisory opinions including but not limited to ethics violations, conflicts of interest, and charter opinions, to the City Attorney, Chief Executive/Administrator, Mayor and City Council in compliance with applicable law, no less than 14 days after a decision is made. **AND PUBLIC REVIEW??**

Section 3. Violations of Ethics Code.

Violations apply to both elected and appointed officials and any member of city staff. If the Commission finds violations of the ethics code, the Commission may recommend, by a simple majority vote, advisory opinions 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. Opinions rendered by the Commission are not legally binding and purely advisory in nature and shall be

rendered in accordance with all applicable labor laws, contracts, and confidentiality requirements. .

In no circumstances shall the ethics commission have access to any personal information protected by 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 set a recall election. Whichever option is selected, requires a 2/3rds majority vote of the City Council.

Suspected criminal conduct shall be reported immediately to the Portland police department.

The complainant shall receive a response to the complaint regarding the outcome.

Section 3.1 Conflict of Interest of Elected Officials, Boards, and *ad hoc* Committees

3.1.1 Determination of Conflict

If the subject is a member of an elected or appointed body, including but not limited to council, board, committee, or task force, the complaint shall be brought to the attention of the chair (or equivalent) of that body. Once the complaint of conflict of interest has been initiated against a member of a body as provided above, the body shall deliberate the matter themselves or refer deliberation to an appropriate office or entity.

If the complaint is against the chair, then the complaint shall be brought to the attention of the next most senior member who is not subject of the complaint or who is not the complainant themselves.

Once a complaint has been made, the subject shall be notified of the complaint and shall have the option to recuse themselves or to request deliberation. Public notice shall be given of the complaint unless confidentiality requirements prohibit it.

Complaints determined by the chair of the relevant body (or the next most senior member, to whom the complaint is not against) to be frivolous, scurrilous, libelous, baseless, unfounded, of nuisance, or otherwise without account need not be deliberated or referred if the complaint is publicly designated as such.

Members of the public may bring their complaint to the entire body or to other city officials including the Ethics Commission. The Commission may refer complaints to the appropriate office or body for consideration. Except as described in the preceding paragraph, all complaints shall be considered or deliberated in as timely manner as possible and in any case shall be considered in advance of deliberation on the relevant proposal or law.

Section 3.2 Acknowledgement of Complaint

The complainant shall receive a response to the complaint regarding the outcome.

Section 3.3 Failure to Disclose or Comply with Code of Ethics

Failure to disclose or comply with the code of ethics shall result in disciplinary action that may include termination of the individual from their position with the city.

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/vyhli4191/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-](https://www.townofogunquit.org/vertical/Sites/%7B2524508A-BBA7-433A-9EAA-E74D93FCB25D%7D/uploads/CODE_OF_ETHICS_FOR_BOARDS_AND_COMMITTEES.pdf)

[E74D93FCB25D%7D/uploads/CODE_OF_ETHICS_FOR_BOARDS_AND_COMMITTEES.pdf](https://www.townofogunquit.org/vertical/Sites/%7B2524508A-BBA7-433A-9EAA-E74D93FCB25D%7D/uploads/CODE_OF_ETHICS_FOR_BOARDS_AND_COMMITTEES.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 Chapter 68 (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>

El Paso, TX: Population: 679,813

- Charter Title 2, Chapter 2.92 (establishes board, Standard of Conduct, duties, jurisdiction, and procedures)
https://library.municode.com/tx/el_paso/codes/code_of_ordinances?nodeId=TIT2ADPE_CH2.92ET_ARTIIIETRECO_2.92.150ADOP
- Ordinance
https://library.municode.com/tx/el_paso/ordinances/code_of_ordinances?nodeId=1078214

Philadelphia, PA: Population 1.58 Million

- Charter Chapter 11 (establishes Board, powers and duties)
https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-182492
 - Code (defines duties, standards, prohibited conduct, penalties, establishes standard of conduct and financial disclosure requirements)
https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-217009
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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=>
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Bourne, MA: Population: 19,872 - Charter Compliance Commission

- Charter Amendment:
https://www.townofbourne.com/sites/g/files/vyhlf7346/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>
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Reasoning:

1. Protect whistleblowers.
2. Fight and discourage corruption, waste, fraud, abuse, and favoritism 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. To bring 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. No associated costs chartered in.

Whereby, the process of citizens initiatives and citizens veto is long and complex, and the election comes at an expense;

Whereby, government is a collaboration between members of the public and elected officials;

Whereby, the right to bring ballot questions is fundamental to democracy;

Heretofore, the Portland City Council shall consider ballot questions before their certification in the manner thus described: Within xx days of the petitioners submitting the question to the City Clerk, the City Council shall set a hearing in which the petitioners and/or their representatives or designees shall present the question.

At this hearing the council shall:

1. Consider the question and language
2. Check for congruence between the title and the content.
3. Discuss the timeline
4. Consider adoption or whether to enter into a negotiation with the petitioners wherein the petitioner would agree to withdraw the question should the council adopt acceptable policy.