City of Portland
Charter Commission Agenda

March 16, 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. Please click the link below to join the webinar:
   https://us06web.zoom.us/j/87495029127?pwd=Q3lvN0l3ZVUwSjRmVFJ1WnBkaDdTUT09
   Passcode: 301000
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   Dial(for higher quality, dial a number based on your current location):
   US: +1 301 715 8592 or +1 312 626 6799 or +1 646 558 8656 or +1 253 215 8782 or
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   Webinar ID: 874 9502 9127
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   International numbers available: https://us06web.zoom.us/u/kb2aK0gqPk
2. Approval of the prior meeting minutes
   a. Approval of the March 3, 2022 draft meeting minutes.
3. Discussion and vote on Proposal for School Board Vacancies
   a. Proposal and memo from Attorney Katsiaficas on School Board Vacancies
4. New Business
5. Adjourn

City of Portland
Charter Commission Ad Hoc
Education Committee Meeting Minutes
March 3, 2022 at 6:00 PM

1. CALL TO ORDER

2. ATTENDANCE

    - PRESENT: EGLINTON, HOUSTON, CHANN.

3. APPROVAL OF LAST MEETINGS MINUTES

    - EGLINTON moves to approve minutes. CHANN seconds. Roll Call: HOUSTON, yes. EGLINTON, yes. CHANN, yes. **Minutes approved UNANIMOUSLY.**

4. PUBLIC HEARING, DELIBERATION AND VOTE ON HOUSTON PROPOSAL FOR SCHOOL BUDGET PROCESS

    - HOUSTON presents proposal for school budget process. Question from EGLINTON on whether proposal had input from Commission Attorney Katsiaficas.

    - PUBLIC HEARING:

IN FAVOR	AGAINST
1. PPS Superintendent Xavier Botana 2. Councilor Roberto Rodriguez (AL) 3. School Board Member Adam Burk (D3) 4. John Thibodeau (D4, Equity for Portland Schools) 5. School Board Member Aura Russell-Bedder (D4) 6. Jenna Vendil, former School Board Member, D4 resident 7. School Board Member Micky Bondo (D1) 8. School Board Chair Emily Figdor (D2)	1. Josh from District 3 2. Jim Hall, District 1 3. Deborah Napier, District 3 4. Sarah Michniewicz, District 1 5. Barbara Vestal, District 1 6. Cheryl Leeman, District 4 7. Karen Snyder, District 1 8. Joan Gildart, District 4

    - DELIBERATIONS:

        - EGLINTON opens with explanation that he suggested we start with one one proposal. Goes into history of school board following Great Recession.
        - CHANN spoke in favor of the proposal, willing to hear EGLINTON's amendment.
        - HOUSTON spoke in favor of the proposal.

- MOTION TO TAKE UP CHAIR HOUSTON PROPOSAL FOR FURTHER DELIBERATION AND VOTE made by CHANN. Seconded by HOUSTON.
    - EGLINTON makes Motion to Amend language to strike joint committee language in the second paragraph of HOUSTON's proposal and insert new joint committee proposal from EGLINTON. CHANN seconds. Deliberation and discussion on motion to amend.
    - ROLL CALL: CHANN, yes. EGLINTON, yes. HOUSTON, yes. **Motion to Amend passes UNANIMOUSLY.**
- MAIN MOTION: Motion to Approve Houston Proposal as amended and move to the full Charter Commission.
- ROLL CALL: CHANN, yes. EGLINTON, no. HOUSTON, yes. **Motion as amended passes UNANIMOUSLY.**

COMMITTEE BREAKS AT 8:15PM
COMMITTEE RECONVENES AT 8:21PM

5. PUBLIC HEARING, DELIBERATION, AND VOTE ON PROPOSAL FOR BONDING AUTHORITY FOR SCHOOL BOARD
    - CLARIFYING QUESTIONS:
        - EGLINTON asks if proposal was seen by Commission Attorney Katsiaficas
    - PUBLIC HEARING:

IN FAVOR	AGAINST
1. SB Chair Emily Figdor (D2)	1. Jim Hall, District 1 2. Karen Snyder, District 1 3. Nini McManamy, District 1

    - DELIBERATIONS:
        - EGLINTON and CHANN opposes.
        - HOUSTON supports.
    - ROLL CALL: CHANN, no. EGLINTON, no. HOUSTON, yes. **MOTION FAILS 2-1.**
6. PUBLIC HEARING, DELIBERATION, AND VOTE ON CAPITAL IMPROVEMENT PROJECTS PROPOSAL
    - CLARIFYING QUESTIONS:

- PUBLIC HEARING:

IN FAVOR	AGAINST
1. Jim Hall, District 1 2. SB Chair Emily Figdor (D2) 3. Karen Snyder, District 1	

- DELIBERATIONS: All in favor.
- ROLL CALL: CHANN, yes. EGLINTON, yes. HOUSTON, yes. **Motion to approve proposal and move to Commission passes UNANIMOUSLY.**

7. PUBLIC HEARING, DELIBERATION, AND VOTE ON SCHOOL BOARD VACANCIES PROPOSAL
   - CLARIFYING QUESTIONS:
     - EGLINTON asked if Attorney Katsiaficas saw the proposal and asked a question about special elections.
   - PUBLIC HEARING:

IN FAVOR	AGAINST
1. SB Member Adam Burk (D3) 2. SB Chair Emily Figdor (D2)	1. Sarah Michniewicz, District 1 2. Karen Snyder, District 1

     John Thibodeau (neither in favor or against) suggested that perhaps a person can be appointed and not be able to run for reelection.
   - DELIBERATIONS:
     - EGLINTON gets the intent behind the proposal, having experienced special election himself. EGLINTON suggests three amendments.
     - MOTION to Table and seek input from City Clerk made by CHANN. EGLINTON seconds.
     - Roll Call on Motion to Table: CHANN, yes. EGLINTON, yes. HOUSTON, yes. **Motion to Table passes UNANIMOUSLY.**
   - ROLL CALL:
8. NEW BUSINESS

9. ADJOURN

EGLINTON moves to ADJOURN. Roll Call: CHANN, yes. EGLINTON, yes. HOUSTON, yes. **Motion passes unanimously.** Meeting is adjourned.

SCHOOL BOARD VACANCIES

Section 6. Vacancies.

A vacancy in the membership of the board of public education shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or (6) the recall of a member pursuant to the provision of Article V. The school board shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the school board or at least sixty (60) percent of the regular meetings of the school board held in any one calendar year unless such member shall be excused (by a vote of at least four (4) of the members) for health reasons or other good cause. A member may in writing addressed to the school board resign his or her office effective at a future date specified in the written resignation. Once submitted to the school board, such resignation may not be withdrawn and such member's office shall become vacant on the specified future date.

If a vacancy in the membership of the school board occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections. If a candidate wins an election for vacancy in the membership of the school board in an election year for which the term expires that November, the candidate does not need to run for re-election again that November but would serve for both the remainder of the existing term and the new three-year term. If a vacancy in the membership of the school board will exceed sixty (60) days, the school board may make an interim appointment

until the next election. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

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MEMORANDUM

TO: Commissioner Marcques Houston

FROM: James N. Katsiaficas, Esq.

DATE: March 10, 2022

RE: Filling School Board Vacancies

You have sent a draft of language that would amend the Portland Charter regarding the filling of vacancies in the office of School Board.

Currently, Article III, Section 6 of the Charter provides that if a vacancy occurs or is declared prior to the next regular election, it shall be filled by a special election to take place on the same date as the next scheduled State or municipal election that is at least 127 days after the vacancy occurs or is declared, unless the City Council by vote of 6 or more members votes to shorten the tie to obtain and file nomination papers. That 127-day (or shortened time period) minimum presumably is to allow time for the City Clerk to advertise the vacancy, make nomination papers available, accept and process nomination papers (to check validity of signatures), and to call and conduct the election.

You have suggested a change as noted below, and ask whether this would work and what other municipalities do.

> If a candidate wins an election for vacancy in the membership of the school board in an election year for which the term expires that November, the candidate does not need to run for re-election again that November but would serve for both the remainder of the existing term and the new three-year term. If a vacancy in the membership of the school board will exceed sixty (60) days, the school board may make an interim appointment until the next election.

I've reviewed State law and several charters from Maine's larger municipalities (because these have school boards or committees instead of just representatives to a regional school administrative unit) to provide guidance and examples.

In those charters, an interim appointment until a special election is held, or where only short periods of time remain in a term, is not unusual. The proposal you've provided, however, is for appointment for a remaining term that exceeds 60 days – not the common type of short-term appointment seen in several charters.

However, the concept that a person can avoid running for a new term at the expiration of the remainder of a term of office to which that person was elected or appointed to fill a vacancy is unique and most likely not feasible because persons are elected to serve a term of office, which has a defined beginning under statutes, charters, and ordinances -- upon election and qualifying for office. Each term is its own separate entity, and vacancies are filled until the next regular election, or until the election at the end of the remaining term. Under State law (20-A M.R.S. §1003), unless otherwise established by Charter, " The term of newly elected school board members shall start **1. After election**. Immediately upon being elected and sworn in; or **2. Fixed date**. On a fixed date established by the voters on an appropriate article at a properly called town meeting, the date shall be between the municipal election and July 1st." Under Portland's Charter, the mayor and councilors-elect are sworn in (Article II, Section 8) and new School Board members are sworn in and a Chair is elected (Article III, Sections 2 and 3) on the first Monday in December following the regular municipal election, and their terms begin.

Finally, City Council vacancies are filled in the same manner as School Board vacancies (see Article II, Section 7); nothing requires that these be treated the same, but where the vacancy provisions now are the same, you might consider whether the same change should be made to each.

A. State law.

In the absence of a charter specifying the methods of selection, recall and term of office of a school committee, municipal schools' filling of school board vacancies is governed by 20-A M.R.S. §2305 (See 20-A M.R.S. §2301). Section 2305(4) provides:

4. **Filling a vacancy.** A vacancy may be filled:

   A. By the school committee within 30 days. The term of a member appointed by the school committee to fill a vacancy shall expire at the next annual meeting; or

   B. Whenever the remaining members of the school committee fail to appoint a person to fill a vacancy, by election at a town meeting called for the purpose.

B. Municipal Charters.

Augusta, Article IV, Sec. 1

In case of vacancy on Board of Education, the City Council shall call a special election in same manner as for Council vacancy (by election called by the Council as soon as practical if vacancy would exceed 6 months).

Saco, Article IV, Section 4.01 f

1. If less than one year of three-year term remains, School Board appoints a resident of the affected ward;

2. If more than one year remains in that unexpired term, City Clerk to conduct a special election for the affected ward.

Biddeford, Article V, Sec. 5

School Committee Chairperson nominates a person, eligible and qualified, to fill the vacancy within 30 days of its occurrence, subject to confirmation of the School Committee and serves until the first Monday in December following the next biennial election.

Auburn, Article 4, Sec. 4.3

If vacancy occurs more than 6 months prior to the next regular election, unexpired term is filled by special election, citywide or for a ward. If vacancy occurs within 6 months prior to next regular election, School Committee appoints a qualified person from same ward or at-large, as appropriate, to serve until next municipal election.

Lewiston, Article V, Sec. 5.01(c)

Vacancy in office of any elected school committee member is filled for remainder of unexpired term by nomination of the mayor, subject to consent of City Council, except at-large school committee member vacancy may be filled by person from any ward, and school committee City Council member vacancy may only be filled by a city councilor appointed by mayor with Council consent.

Bangor, Article VI, Sec. 2

(a) Vacancy occurring within six months prior to the normal expiration of the term of office shall be filled at the next regular City election.

(b) Vacancy occurring more than six months prior to normal expiration of the term of office will be filled at the next regular City election or at the discretion of the City Council, by special election.

South Portland, Article IX, Section 904

Vacancy on the school board is filled by a majority vote of the City Council and the member elected will serve until the next regular municipal election when a new member shall be elected to fill the vacancy for the unexpired term, if any.

Sanford, Article V, Sec. 503

Vacancy on School Committee is filled within 30 days by majority vote of remaining School Committee members until Dec. 31st of the year in which the vacancy occurs; remainder of term filled by special election.

Brunswick, Article IX, Sec. 904(c)

Town Council to call a special election to fill the vacancy for the unexpired term unless the remainder of the unexpired term is less than 6 months, in which case the School Board appoints a qualified person to fill the vacancy.

Gorham, Article IV, Sec. 403

Vacancy in membership of superintending School Committee to be filled by majority vote of remaining members until the next municipal election (when qualified person is elected to serve remaining unexpired term).