



City of Portland Charter Commission Minutes Meeting Minutes

March 9, 2022 (Remote via Zoom)

1. Call to Order

- a. The meeting was conducted as a remote meeting by Zoom videoconference in accordance with the Commission's Remote Participation Policy and State law (1 M.R.S. §403-B).
- b. Chair Kebede called the meeting to order at 6:02 p.m.
Commissioners present were Barowitz, Buxton, Chann, Eglinton, Houston (joined at 6:20 p.m.), Kebede, Lizanecz, O'Brien, Sheikh-Yousef, Stewart-Bouley, Washburn, and Waxman. (Quorum established)

2. Review and Approval of Minutes

On motion by Commissioner Washburn, seconded by Commissioner Eglinton, the Commission approved the draft meeting minutes of February 23, 2022, by roll-call vote of 11-0 (Houston absent).

3. Public Hearing, deliberation, and vote on Governance Models

Commissioner Chann presented the "Chann/Lizanecz/Stewart-Bouley Two-Branch Compromise Framework" ("Compromise"). He explained that under this proposal, the mayor is separate from the Council, and that the mayor, together with the city manager, would implement the policies set by the Council. A Joint Executive/Legislative Committee would appoint constitutional officers, department heads and City board and commission members with Council ratification. The proposal also includes an ombudsman to help with citizen services, Freedom of Access Act requests and ethics/conflicts of interest – a check on the executive power.

Commissioner Waxman expressed concern where this proposal and Commissioner Sheikh-Yousef's governance proposal had come from, since they had not been developed in the public committee process. Commissioner Stewart-Bouley voiced a similar interest in providing more background for the public .

Commissioner Chann explained that the Compromise proposal was in response to the committee proposal, taking elements from the Governance Committee and Sheikh-Yousef proposals to arrive at a compromise the voters might endorse.

Commissioner Washburn asked how this proposal achieved greater accountability. Commissioner Chann responded that the realignment of the executive branch, with the city manager reporting to the mayor, along with the ombudsman for public access and the Council holding staff accountable, results in greater accountability.

Commissioner Buxton asked “If you work for the City, who is your boss?” Commissioner Chann responded that it would be your supervisor, who reports to a department head and to the city manager and mayor, with the city manager having day-to-day administrative responsibility, but that the power to hire and fire rests with the Joint Executive/Legislative Committee to insulate that process from political motivation.

Commissioner O’Brien explained his “Leadership Model,” which would retain the mayor as a member (and chair) of the Council and feature an ombudsman to assist the Council with constituent services and provide FOAA, ethics, and conflict of interest support. The ombudsman would be a “constitutional officer,” along with city clerk, corporation counsel, and the city manager. There also would be an oversight board similar to the Office of Program Evaluation and Government Accountability (OPEGA) at the State Legislature level. The model retains the legislative branch as the focus of power in Portland, and avoids duplication of roles between mayor and city manager by making the mayor part of the Council.

Commissioner Sheikh-Yousef asked if the mayor might instead be called “President of the Council” to avoid confusion with the strong executive powers that a mayor often has. Commissioner O’Brien agreed with the comment, but noted that the position of mayor under his model is consistent with what Mainers think of as a mayor. Responding to a question from Commissioner Barowitz, Commissioner O’Brien expanded on the concept that the mayor and at-large Councilors might run as a ticket. Commissioner Sheikh-Yousef noted that the Leadership Model is similar to the Compromise and that while both featured two branches rather than the three she proposed, she might agree with the Compromise.

The Commission took public comment.

Following discussion on process and how to move this matter forward, Chair Kebede suggested tabling the matter to the next meeting and offered to talk with potential facilitators to see if they might help facilitate the discussion.

On motion by Commissioner O’Brien, seconded by Commissioner Washburn, the Commission voted to table this matter to the next meeting by roll-call vote of 12-0.

4. Public hearing, deliberation, and vote on Universal Resident Voting from Elections Committee

Commissioner Washburn introduced the measure and explained the extensive process undertaken by the Elections Committee in developing the proposal.

The Commission took public comment.

Commissioner O'Brien expressed concerns about the legality of the measure and its impact on immigrants – that the measure might not promote the justice the Commission sought to promote. Commissioner Sheikh-Yousef favored putting the measure on the ballot and letting the voters decide. Commissioner Stewart-Bouley said that she wanted to support this, but was concerned about unintended consequences. Commissioners Buxton, Lizanecz, and Chann favored moving the proposal forward. Commissioner Barowitz offered that there is a difference between legality and lawsuits, and that the Commission should not fear lawsuits. Chair Kebede offered that legal challenges can lead to positive changes in the law. Commissioner Houston voiced his support for the proposal.

Chair Kebede restated the two major concerns as being the potential for adverse consequences to immigrants and the potential for costly litigation. Regarding the first concern, he noted comments he had seen indicated those were not a problem. Addressing the second concern, he said the courts exist to litigate such disputes.

Attorney Katsiaficas advised that his concern was not that there might be a lawsuit, but that he could not provide the written opinion required for a charter question on this proposal – “that the proposed charter or charter revision does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.” He reviewed opinions on the ability of municipalities to amend their charters under home rule to change the qualifications to vote in municipal elections, and read from the last line from his November 12, 2021, memorandum to the Commission on the issue: “we think the better position on the issue is that absent an amendment to State law, a municipality does not have home rule authority under Maine’s Constitution to amend its charter to extend the right to vote in a municipal election to noncitizens, since State law -- 30-A M.R.S. §2105(2) -- establishes voter qualifications for local elections that effectively prohibit such a charter amendment.”

The Commission discussed the possibility of obtaining other legal counsel to provide the required written opinion.

On motion by Commissioner Washburn, seconded by Commissioner Sheikh-Yousef, the Commission voted to refer this proposal to its legal adviser to place the proposal in Charter language by a roll-call vote of 10 (Washburn, Buxton, Kebede, Sheikh-Yousef, Houston, Barowitz, Lizanecz, Stewart-Bouley, O'Brien and Chann) to 2 (Waxman, Eglinton).

5. Public Hearing, deliberation, and vote on Councilor Pay proposal from Procedures Committee

Commissioner Washburn presented the committee proposal, explaining that serving on the City Council is a time-consuming job that deserves to be compensated; assuming a 20-hour/week workload, this proposal would increase councilor pay from the current annual stipend of about \$7,000 to between \$17,000 and \$18,000. Commissioners noted that the Charter ties school board stipends to Council stipends for parity.

The Commission took public comment.

Discussion included comments that the Charter currently permits the Council to set compensation; the Council might not want to be seen as increasing its own pay; people may be too busy with other jobs to participate on Council without this financial incentive; that school board pay should have parity under this proposal; and that public opinion is running against this proposal. Commissioner O'Brien offered an amendment – to place a floor on the stipend of 10% of the Mayor's salary for what councilors and school board members receive, similar to what is done by Salem, MA. Commissioners Waxman and Eglinton believed this proposal does not belong in the Charter, as the Council can address the issue under its current Charter authority.

Commissioner Buxton moved to refer this proposal to the Commission's legal adviser to place the proposal, with the stipend to apply to both Council and School Board members, in Charter language. The motion was seconded by Commissioner Sheikh-Yousef.

Commissioner O'Brien moved to amend the proposal to place a floor of 10% of the Mayor's salary on the Council and School Board member stipend. The amendment failed by roll-call vote of 4 (Chann, Houston, Barowitz, and O'Brien) to 8 (Washburn, Buxton, Kebede, Sheikh-Yousef, Waxman, Eglinton, Lizanecz, and Stewart-Bouley).

The main motion failed on a tie vote of 6 (Kebede, Buxton, Sheikh-Yousef, Washburn, Barowitz, and Lizanecz) to 6 (Chann, Waxman, Eglinton, O'Brien, Stewart-Bouley, and Houston).

6. First reading on Code of Ethics proposal from Procedures Committee

Commissioner Barowitz introduced the proposal on a code of ethics, noting that it began with his realization that there were no disclosure forms for City Councilors. He suggested that there should be disclosure of interest forms and a code of ethics. Commissioner Lizanecz added his thought that if ethics oversight was desired, there should be an ethics commission; he also provided a list of Maine municipalities that have adopted codes of ethics, with Portland being absent.

7. First reading on Participatory Budgeting proposal from Procedures Committee

Commissioners Kebede and Waxman presented the following proposal for a Participatory Budgeting proposal:

"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."

The Procedures Committee believed that creating a full participatory budgeting program as part of the Charter was too great a lift and too large a document. Therefore, the committee proposal directs the City Council to direct and implement a participatory budgeting system.

8. First reading on Clean Election Proposal and Cost Estimates

Commissioner Buxton introduced the Clean Election proposal.

9. Social Media Policy

Attorney Katsiaficas briefly outlined general guidance for Portland elected officials, including Charter Commissioners, on social media use as discussed in the memorandum he prepared for inclusion in the Commission packet.

10. New Business

Commissioner Waxman asked where the Commission stood with regard to its budget and expenses. She asked for an itemization, particularly since the Commission was considering hiring two facilitators.

11. Adjourn

On motion by Commissioner Washburn, seconded by Commissioner Houston, the Commission voted to adjourn by roll-call vote of 12-0. Meeting adjourned at 10:22 p.m.