



## **City of Portland Charter Commission Meeting Minutes**

April 6, 2022 (Remote via Zoom)

### **1. Zoom Information**

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).

### **2. Call to Order**

Chair Kebede called the meeting to order at 6:02 p.m. Commissioners present were Kebede, Barowitz, Buxton (joined 6:20 p.m.), Chann, Eglinton, Houston, Lizanecz (joined 6:55 p.m.), O'Brien, Sheikh-Yousef, Stewart-Bouley, and Washburn (Waxman absent, quorum established).

### **3. Review and Approval of Minutes**

On motion by Commissioner Eglinton, seconded by Commissioner Washburn (and amended by both to include correction of an error in March 23, 2022 meeting minutes), the Commission voted to approve the draft meeting minutes of March 30, 2022, by roll-call vote of 9 to 0. Commissioner Barowitz requested that minutes be emailed to all Commissioners when ready.

### **4. Deliberation and Vote on Governance Models**

Facilitator Samaa Abdurraqib reviewed the Overlap Analysis and suggested that six items remained for discussion and consensus. Items agreed upon to-date are in the meeting minutes for March 30, 2022.

The Commissioners decided to begin with the question of whether the mayor can introduce legislation before returning to the issue of whether the mayor should have veto power over legislation.

**a. Can the mayor introduce legislation?**

Commissioner O'Brien observed that, at high level, trying to reconcile two schools of thought among Commissioners has been and will be time-consuming. He suggested straw poll to see if majority believe this is right path – whether Commissioners conceptually agree to executive mayor and are looking at specifics. He wanted to be sure there is support for this.

Commissioners Chann and Stewart-Bouley expressed they are unsure whether they would support the end product. Commissioner Barowitz noted that when the discussion is done, there'll be a "whole" to react to. Commissioner Stewart-Bouley said that the process went off the rails months ago when second proposal and other proposals emerged after the Governance Committee had worked produce a committee proposal. Commissioner Eglinton noted he was with Commissioners Chann and Stewart-Bouley, and would have supported Governance Committee proposal.

Commissioners Sheikh-Yousef, Lizanecz and Washburn said that the majority wants to keep going, so the Commission should move forward.

Commissioner O'Brien stated that he supports the mayor's ability to introduce legislation, with qualification that creation and introduction are done publicly – by/through a public task force. Commissioner Lizanecz noted that he sees the mayor having a policy role, and supports this since the mayor runs on platform. Commissioner Sheikh-Yousef said she was 50/50 on the issue. Chair Kebede supported legislative role, not sure about task force.

The Commission broke this down into two topics:

1) Can the mayor introduce legislation/policy?

By straw poll vote, the Commission voted 8 (Kebede, Eglinton, Lizanecz, Buxton, O'Brien, Sheikh-Yousef, Washburn, Houston) to 1 (Barowitz) (Abstain – Chann, Stewart-Bouley) that the executive mayor can introduce legislation/policy.

2) Must the mayor introduce legislation through a public process (i.e., task force)?

Commissioner Barowitz suggested the alternative of a Council subcommittee to prepare draft. Commissioner O'Brien proposed a public process for the mayor to develop policy to avoid corruption in politics, and offered the alternative of a stakeholder group. Chair Kebede supported the idea of a mayor introducing legislation through task force or City Council committee. Commissioner Lizanecz suggested leaving some discretion to the Council. Commissioner Chann noted he was considering the idea of having the mayor assemble multiple task forces – maybe one for major issues or the executive committee for minor issues (e.g., proclamations). By straw poll vote, the Commission voted by roll-call vote of 10 (Kebede, Chann, Eglinton, Barowitz, Lizanecz, Buxton, O'Brien, Sheikh-Yousef, Washburn, Houston) to 0 (Abstain – Stewart-Bouley) that the mayor may introduce legislation through a public process (i.e., task force or Council committee).

**b. Does the mayor have veto power over legislation?**

Commissioner O'Brien said he was coming around to position that mayor should not have a role in legislation – that a budget veto makes sense, but not a legislative vote where the mayor does not have a role in legislative development. Commissioner Lizanecz thought that since the mayor has a policy role, the mayor should have veto power. Commissioner Barowitz also supported a mayor's legislative veto.

Commissioner Sheikh-Yousef suggested that the mayor could use veto against the council to favor or oppose legislation, and was against this, since it gives the mayor too much power. Chair Kebede agreed that the mayor needs to be a policy leader, but can do so through budget and budget veto and through introduction of legislation, without having a veto over legislation.

By straw poll vote, the Commission voted by roll-call vote of 3 Yes (Lizanecz, Washburn, Stewart-Bouley) to 7 No (Kebede, Buxton, Sheikh-Yousef, Eglinton, O'Brien, Houston, Barowitz) to (Abstain – Chann) not to give the mayor veto power over legislation.

**c. Should there be an executive committee? If so, what would be its responsibilities, powers, and membership?**

1) Should there be an executive committee?

By straw poll vote, the Commission voted by roll-call vote of 6 (Kebede, Eglinton, Lizanecz, Buxton, O'Brien, Houston) to 0 (Abstain – Barowitz, Washburn, Stewart-Bouley, Sheikh-Yousef) that there should be an executive committee.

Before turning to the duties of the executive committee, the Commission agreed to vote on the governance package only after it is in writing and available to review. Attorney Katsiaticas said he would have a draft out by close of business on Friday to get it to the Commission and the public to allow first reading next week, and public hearing following week (need 10 days' public notice of hearing).

2) What are the duties of an executive committee, and how many are on it?

Commissioner Washburn offered that the City Council should choose its own governance.

From the Chann-O'Brien governance model, the executive committee would set agendas, appoint Council members to committees, develop and propose council rules of procedure, and serve as official channel for mayor and council to communicate with constitutional officers about policies, priorities and agendas.

Commissioner O'Brien said that the mayor should not have a vote on executive committee, but that only the three councilors elected to it should be voting

members. He added that when administrators meet individually with councilors to bolster support/curry favor, it subverts process, and so communications should be through the executive committee.

Chair Kebede suggested that imposing a structure may be too much – that the Commission should decide the number on the executive committee and its role at a high level (set agenda, committee appointments, and all other duties assigned by Council – the last suggested by Commissioner Eglinton). The executive committee should not set rules of procedure and communication with city offices – the City Council should be empowered to do that. Commissioner O’Brien agreed with Chair Kebede: three members – mayor and two council members elected by Council.

By straw poll vote, the Commission voted by roll-call vote of 11-0 (Unanimous) for an executive committee with three members – the mayor, and two councilors elected by Council, with Mayor having power to vote on executive committee; its role is to appoint Council members to committees; set agendas for Council meetings, and take on such other duties as may be assigned by Council.

**d. Who would hire City staff?**

- 1) Does the Mayor have power to unilaterally hire and fire City staff and constitutional officers (Chief Operating Officer (COO), City attorney, and City clerk)?

By straw poll vote, the Commission voted by roll-call vote of 11-0 (Unanimous) that the mayor would not have power to unilaterally hire/fire City staff and constitutional officers.

- 2) Who will hire constitutional officers and department heads?

Commissioner Washburn suggested that department heads and COO would be vetted by executive committee and voted on by whole Council. Commissioner Sheikh-Yousef suggested that the mayor and some number of councilors serve as nominating committee – nominate candidates subject to Council vote. Commissioner Buxton suggested the executive mayor would nominate and Council would approve by supermajority. Chair Kebede favored the Washburn-Sheikh-Yousef compromise: mayor nominates, Council approves; and that the executive committee could have a candidate-reviewing function, with the mayor’s nominating and City Council’s confirming by two-thirds vote. Commissioners Eglinton and O’Brien recommended that the process needs better vetting to ensure candidates are the best and brightest. Like the current City manager provision, add that applicants will be chosen on basis of character and qualifications to increase pool of qualified applicants.

By straw poll vote, the Commission voted by roll-call vote of:

Yes 4 (Buxton, Washburn, Sheikh-Yousef, Barowitz)

No 2 (Eglinton, Lizanecz)

Abstain 5 (Kebede, O’Brien, Houston, Stewart-Bouley, Chann) on question of whether mayor nominates candidates and Council approves by two-thirds vote.

By straw poll vote, the Commission voted by roll-call vote of:

Yes 8 (Buxton, Washburn, Sheikh-Yousef, Eglinton, Lizanecz, Kebede, O'Brien, Houston)

No 0

Abstain 3 (Stewart-Bouley, Chann, Barowitz) on question of whether candidates are vetted by executive committee and recommended to Council for approval by simple majority.

**e. How would the removal of City staff be handled?**

Commissioner Lizanecz offered that the mayor should not be able to hire the COO, but should be able to set a performance review, convening a committee or whole council for a regular or special performance review. Commissioner Buxton suggested that removal could originate with mayor, executive committee, or Council subject to two-thirds Council vote. Commissioner Washburn recommended removal of an officer or a department head by two-thirds vote of Council. Mayor, executive committee, or any councilor may request removal, with removal subject to two-thirds vote by Council. Commissioner O'Brien proposed that the mayor chairs the review committee for annual review – if outside of a time for annual review, the mayor could call an executive session of Council to review the COO, whom the Council may fire by simple majority. The mayor would chair the Council Review Committee for performance reviews.

The Commissioners divided this subject into two categories: constitutional officers and department heads.

1) Removal of COO, Corporate Counsel and City Clerk – direct reports to City Council

By straw poll vote, the Commission voted by roll-call vote of:

Yes 9 (Buxton, Washburn, Sheikh-Yousef, Eglinton, Lizanecz, Kebede, O'Brien, Houston, Barowitz)

No. 0

Abstain 2 (Chann, Stewart-Bouley) to approve that the process for removal of constitutional officers (direct reports to City Council) is:

- i) Mayor, any councilor, or the executive committee may file or register a complaint against a constitutional officer;
- ii) Review committee (on which mayor will be a member) will perform performance review or conduct review/investigation and will determine whether to bring forward the request for removal to Council; and
- iii) After Council hearing in executive session, may remove by two-thirds Council vote.

2) Removal of Department Heads

Commissioner Sheikh-Yousef suggested that the mayor would recommend firing, subject to two-thirds Council vote. Commissioners Kebede and Buxton noted that department heads report to the COO (as Supervisor), but would be nominated by the executive committee and approved by Council, which is not consistent.

Commissioner O'Brien suggested using the "non-union committee" or that the COO can recommend dismissal to the executive committee to sign off. Chair Kebede offered that the executive committee can initiate constitutional officer and department head removal.

By straw poll vote, the Commission voted by roll-call vote of:

Yes 9 (Buxton, Washburn, Sheikh-Yousef, Eglinton, Lizanecz, Kebede, O'Brien, Houston, Barowitz)

No 0

Abstain 2 (Stewart-Bouley, Chann) to approve that the process for department head removal is:

- 1) Mayor or any Councilor may file or register a complaint against a Department Head;
- 2) Review Committee (on which Mayor will be a member) will review and investigate complaint, and will make recommendation to Council;
- 3) After Council hearing in executive session, may remove by majority Council vote; and
- 4) COO would be a consultant/advisor to the process.

**f. How would the removal of mayor be handled?**

Commissioners Kebede and Barowitz have concerns with potential for corruption and want removal available. Commissioner Washburn suggested extending the ability to recall to mayor. Commissioner Lizanecz recommended holding the mayor to higher standard given the prominence of the office. A censure vote was offered as a reprimand by the Council. What would justify removal? Commissioner O'Brien recommended referring complaints to the Ethics Commission for review and advisory opinion and then a recommendation to Council.

By straw poll vote, the Commission voted by roll-call vote of Yes 11 (unanimous) on the following process for the removal of the mayor:

- i) If mayor engages in official misconduct or neglect of duty, complaint is sent to Ethics Commission for recommendation and recall by three-fourths vote of Council
- ii) If mayor is convicted of a felony materially related to duties, removal by three-fourths vote of Council.

**g. Mayor as public figurehead.**

By straw poll vote, the Commission voted by roll-call vote of Yes 11 (unanimous) on the duties of the mayor as public figurehead as listed on the slide entitled "Public Figurehead" in "Two Plans for Portland – An Overlap Analysis," with two changes: the mayor shall serve as the official representative of the City in Augusta, nationally, and internationally or "worldwide," and the mayor shall be a member of City's Legislative Committee.

**5. Public hearing, deliberation, and vote on Code of Ethics proposal from Procedures Committee**

On motion by Commissioner Lizanecz, seconded by Commissioner Sheikh-Yousef, the Commission voted to table the Code of Ethics proposal to the next meeting. Yes 7 (Washburn, Houston, Chann, O'Brien, Lizanecz, Kebede, Stewart-Bouley) to No 4 (Eglinton, Barowitz, Buxton, Sheikh-Yousef).

**6. Public hearing, deliberation, and vote on School Budget Process Proposal From Education Committee**

Commissioner Houston presented the Education Committee proposal, which had no changes since it last was presented. It features a Joint Committee on budget guidance, and the presentation of the school district budget to voters at a budget validation referendum (or referendum if a budget validation referendum no longer is held) without an intervening City Council vote on the budget amount.

The Commission conducted a Public Hearing, and then began its deliberation.

Motion by Commissioner Washburn, seconded by Commissioner Sheikh-Yousef, to approve the proposal.

The Commission's legal advisor observed that the State law for school budget adoption mandates a three-step process – the school board prepares a budget, the legislative body votes on the budget amount, and the voters hold a budget validation referendum. While other states may have different models, for municipal schools in Maine, the municipal council or other municipal legislative body vote is the second step (21-A MRS § 2307). While the school board attorney advises nothing in law prohibits the omission of the legislative body step or the transfer of the municipal council duty to a school board as an "other municipal legislative body," nothing permits it and it appears contrary to State law, which requires the three-step process and appear to create separate roles for the school board and legislative body. If not lawful, could invalidate budget process and budget and expenditures, and the Charter takes time to amend.

Commissioner Eglinton said he opposes the proposal for several reasons. From his experience on the school board and working as COO for the district, Drummond Woodsum instructs new school board members that although they are voted by the residents of the city the school board members do not represent them, and so Council has that role. Commissioner Eglinton will move to amend to keep the new Joint Committee on budget guidance but follow the language currently in Charter for the City Council's role in approving the overall budget. He noted that the hour was late and a number of people had dropped off the Zoom meeting. He said that the members of the public who stayed and spoke were largely on or previously served on the school board and proposed tabling the item for more public comment at the next meeting.

Commissioner Washburn and Commissioner Sheikh-Yousef agreed to withdraw their

motion to approve the proposal. Commissioner Eglinton moved to table, seconded by Commissioner Washburn, which passed by unanimous roll call vote of 11 to 0.

**7. Public hearing, deliberation, and vote on Capital Improvement Program Budget Process Proposal from Education Committee**

On motion by Commissioner Lizanecz, seconded by Commissioner Sheikh-Yousef, the Commission voted by roll-call vote of 11 to 0 to table this proposal.

**8. First Reading on School Board Vacancies**

Commissioner Houston presented a proposal to allow for filling of school board vacancies, modeled after the City of Auburn charter. Commissioner Buxton noted that the City Council provision contains the same vacancy language as the school board. Commissioner Houston agreed this language should be same for both the school board and City Council, and that an amendment will be prepared.

**9. New Business**

Commissioner O'Brien stated that his constituent services first draft is ready (the "Office of Information").

On motion by Commissioner Houston to reconsider the Councilor Pay proposal, and to change Councilor pay from 1.7 times the minimum wage to 1.3 times minimum wage (to \$13,000 annually on 20 hours per week), seconded by Commissioner Washburn, the Commission voted by roll-call vote 5 (Washburn, Buxton, Sheikh-Yousef, Houston, Kebede) to 5 (Barowitz, Eglinton, O'Brien, Chann, Stewart-Bouley); motion fails on tie vote.

**10. Adjourn**

On motion by Commissioner Chann, seconded by Commissioner Washburn, the Commission voted to adjourn by roll-call vote of 9 to 2 (Buxton, Sheikh-Yousef). The meeting adjourned at 11:30 p.m.