



City of Portland Charter Commission Committee

Wednesday, April 27, 2022 at 6:00 PM Charter Commission Meeting
April 27, 2022 at 6:00 PM.

1. Zoom Information

- a. Due to the existence of an "emergency or urgent issue", the Charter Commission Committees will conduct this meeting 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.

Please click the link below to join the webinar:

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2. Call to Order (6:00-6:05 pm)

3. Review and Approval of Minutes (6:05-6:10 pm)

- a. Approval of the draft April 20, 2022 Charter Commission meeting minutes

4. Ratification of Final Language for School Budget Process from Education Committee (6:10-6:30 pm)

- a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):

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- a. Proposal for school budget process
5. Ratification of Final Language for Capital Improvement Program Process Proposal from Education Committee (6:30-6:40 pm)
 - a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Proposal for capital improvement program process
6. Deliberation and vote on final language for Mayor's Economic Development Leadership Amendment (6:40-7:00 pm)
 - a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Final language for Mayor's Economic Development Leadership Amendment
7. Ratification of Final Language for Governance Model (7:00-7:15 pm)
 - a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Governance model in charter language from Perkins Thompson.
8. Ratification of Final Language for Peaks Island Council Proposal (7:15-7:25 pm)
 - a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Final language for Peaks Island Council Proposal
9. Ratification of Final Language for Clean Elections Proposal (7:25-8:00 pm)
 - a. Description: Commissioners will deliverate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Final Language for Clean Elections Proposal
 - b. Perksin Thompson memorandum
10. Ratification of Final Language for Redistricting Proposal (8:00-8:20 pm)
 - a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant doucment(s):
 - a. Final Language for Redistricting Proposal.
11. Ratification of Final Language for Ethics Proposals (8:20-8:40 pm)

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- a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Final language for Ethics Proposals
 - b. Perkins Thompson Memorandum
12. Ratification of Final Language for Proportional Ranked Choice Voting Proposal (8:40-9:00 pm)
 - a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Final language for Proportional Ranked Choice Voting Proposal
13. Ratification of Final Language for Universal Resident Voting Proposal (9:00-9:30 pm)
 - a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Final language for Universal Resident Voting Proposal
 - b. Perkins Thompson Memorandum
14. Ratification of Final Language for Vacancies proposal (9:30-9:50 pm)
 - a. Description: Commissioners will deliberate and vote to approve final language for this proposal.
Relevant document(s):
 - a. Proposals for Vacancies
15. New Business
16. Adjourn

City of Portland Charter Commission Meeting Minutes

April 20, 2022

1. **Call to Order.** Chair Kebede called the meeting to order at 6 p.m.

Present were: Chair Kebede; Commissioners Barowitz, Buxton, Chann, Eglinton, Houston, Lizanecz (joined 6:10pm), O'Brien, Sheikh-Yousef, Stewart-Bouley, Washburn, Waxman.

2. **Review and Approval of Minutes.** On motion by Commissioner Waxman, seconded by Commissioner Washburn, the Commission voted to approve the draft meeting minutes of April 13, 2022 by roll-call vote of 11 to 0 (Lizanecz absent).

3. **Public Hearing, deliberation and Vote on Governance Model in Charter language**

a. Description: Commissioners will hold a public hearing, then deliberate and vote on language intended to capture Commissioners' unofficial votes on reforms to the basic structure of Portland's government. Relevant document(s):

a. Governance Model in charter language from Perkins Thompson

Older documents:

b. Chann-O'Brien and Buxton-Washburn-Sheikh-Yousef-Kebede Overlap

c. Chann-O'Brien Proposal

d. Amendment to Chann-O'Brien Proposal (amended by Commissioners

Buxton, Sheikh-Yousef, Kebede)

e. Commissioner Sheikh-Yousef's governance model proposal

f. Matrix comparison of two models

g. Commissioner Barowitz's organizational charts

h. Relevant research and interviews

The Commissioners proceeded to discuss and obtain consensus by a show of hands on each proposed amendment to the Governance proposal.

A. 1. Mayor to serve no more than two consecutive 4-year terms; unanimously approved to retain this provision.

A. 2. Mayor to be elected on same cycle as US President; unanimously approved as Commission previously had adopted this.

- A. 3. Set Mayor's salary at minimum level of 10% more than salary of highest paid department head; failed 1-11.
- A. 4. Change "increasing" to "re-setting"; unanimously approved.
- A. 5. Mayor able to introduce policy directly to Council; failed 6-6.
- A. 6. Replace "COO" with "Mayor"; approved 10-2 with deletion of language in first sentence after "priorities."
- A. 7. Remove mayor presiding over council and elect council president; failed 2-10, and unanimous consensus to revise opening to read "To preside over meetings of the city council" rather than "To preside as chair of the city council."
- A. 8. Replace "facilitate" with "ensure"; approved 8-4
- A. 9. Prohibition on mayor intervening on behalf of an individual; approved 11-1.
- A. 10. Mayor veto power over supplemental appropriations (addressed in later comments).
- A. 11, A. 13. Language to avoid micromanaging by mayor while not undermining mayor's executive powers --strike suggested second sentence and replace "be in charge of" with "manage"; approved 8-4.
- A. 12. Envision staff for mayor? Consensus to leave topic alone – Mayor and Council are capable of building staffing needs into the City's annual budget.
- A. 14, A. 15. Council president next in line to replace mayor; withdrawn as council president concept failed.
- A. 16. Amend to replace second sentence with "The ethics commission shall review such complaints under its ordinances and procedures."; approved 9-3.
- A. 17. Enlarge council to 13 members; set aside - this has been addressed by the Commission in the Redistricting Proposal.
- A. 18. Reduce length of council term from 3 years to 2; failed 2-10.
- A. 19. Council president; withdrawn based on earlier vote.
- A. 20. Change swearing in of newly elected officials from December to January; failed 5-7.

- A. 21. Request for discussion of public advocate; Commission also discussing similar and somewhat overlapping accountability officer, ombudsman and Office of Information – passed over.
- A. 22. Appointment of Chief of Police in same manner as constitutional officers; left as department head appointment under current process; withdrawn
- A. 23. Use “nominated and confirmed” instead of “recommended and approved”; approved 8-3.
- A. 24. Use “nominated and confirmed” instead of “recommended and approved”; approved 9-2 (global change).
- A. 25. Duties of the COO -- revise proposed change to fourth sentence so that the sentence reads: “Such person shall be responsible for the administration of all departments and for the delivery of city services, and shall be responsible to the mayor.”; approved 7-4.
- A. 26. Communications policy – passed over for later discussion in a separate Communications Proposal.
- A. 27. COO filing budget memo to council, with change to make filing permissive rather than mandatory; approved 9-3.
- A. 28. COO authority to recommend council changes; withdrawn.
- A. 29. COO to keep council advised as to city’s business and financial condition; withdrawn.
- A. 30. Mayor or other person, rather than COO, to name interim COO during temporary absence; withdrawn.
- A. 31., A. 32. Membership of the Executive Committee and duties; Executive Committee to consist of mayor and two councilors, chaired by mayor; approved 7-5. In absence of mayor, most senior member of Committee, on basis of length of Committee service and then number of terms on city council, is chair pro tem; approved 8-4. Mayor sets agenda for city council meetings in accordance with the city council rules place in Mayor’s duties); approved 8-4. For Review Committee, consensus to default to existing Mayor and Council authority to review constitutional officers under current Art. II, Section 5 (j).
- A. 33. Strike mayor’s submittal of comments on budget, since mayor submits budget; approved 8-4.
- A. 34. Restore language excepting appropriations for current department expenses from mayor’s appropriations veto; approve 10-2.
- A. 35. Make supplemental appropriations subject to mayor’s appropriations veto; approve 8-4.

A. 36. Restore language excepting appropriations for debt service and school appropriation from mayor's appropriations veto; approve 10-2.

A. 37. Increase percentage of votes needed to override mayor's appropriations veto from 2/3 to 3/4; failed 6-6.

On Motion of Commissioner Washburn, seconded by Commissioner Sheikh-Yousef, the Commission voted by roll call vote of 7 (O'Brien, Kebede, Buxton, Houston, Washburn, Barowitz, Sheikh-Yousef) to 5 (Waxman, Chann, Eglinton, Stewart-Bouley, Lizanecz) in favor of the Governance Model in charter language from Perkins Thompson as amended by the individual amendments adopted by the Commission (as recited above).

4. Public Hearing, deliberation and vote on Communication Policy

a. Description: Commissioners will hold a public hearing, deliberate, then vote on this proposal. Relevant document(s):

a. Communication proposal

Chair Kebede provided an overview of this Proposal which had been recommended by the Procedures Committee, and explained its origin in comments by former Councilor, Mayor and Charter Commission member James Cohen that the language being removed had caused numerous problems in its operation.

Public hearing was opened, and there was no comment.

Commissioners collaborated on changes to the Communication Proposal to reflect the Governance proposal, so that the new language would read: "The mayor shall recommend for adoption by the city council rules that govern communications between city staff and elected officials."

On Motion of Commissioner Washburn, seconded by Commissioner Buxton, the Commission voted by roll call vote 11 to 1(Waxman) in favor of the proposal in its new language.

5. Public Hearing, deliberation and vote on Office of Information Proposal

a. Description: Commissioners will hold a public hearing, deliberate, then vote on this proposal. Relevant document(s):

a. Office of Information Proposal

Commissioner O'Brien presented this proposal, which is intended to gather the various communication and information tasks and operations now being conducted separately into one

office to promote the free and efficient flow of information. Existing staff would be used. This would allow for a consistent approach to the provision of constituent services, which otherwise tends to change from one administration to the next.

Public hearing was opened, and public comment was received.

On Motion of Commissioner O'Brien, seconded by Commissioner Washburn, to approve the proposal and have it drafted in Charter language, the proposal failed by a Commission roll call vote of 5 for (O'Brien, Houston, Eglinton, Buxton, Kebede) and 7 against (Washburn, Chann, Barowitz, Stewart-Bouley, Waxman, Lizanecz, Sheikh-Yousef).

6. Ratification of Final Language for School Budget Proposal from Education Committee

a. Description: Commissioners will deliberate and vote to approval final language for this proposal. Relevant document(s):

- a. Proposal for school budget process

On Motion of Commissioner Houston, seconded by Commissioner Chann, the Commission voted by unanimous roll call vote to table the proposal to include a final change to the Charter language.

7. Ratification of final language for Capital Improvement Program Process Proposal from Education Committee

a. Description: Commissioners will deliberate and vote to approve final language for this proposal. Relevant document(s):

- a. Proposal for capital improvement program process

On Motion of Commissioner Eglinton, seconded by Commissioner Washburn, the Commission voted by unanimous roll call vote to table the proposal for editing for consistency with the Governance proposal.

8. Ratification of final language for Vacancies and Participatory Budgeting Proposals

a. Description: Commissioners will deliberate and vote to approve final language for this proposal. Relevant document(s):

- a. Proposal for Vacancies and Participatory Budgeting

On Motion of Commissioner Washburn, seconded by Commissioner Lizanecz, the Commission voted by unanimous roll call vote to ratify the final language of these proposals.

9. Scheduling Discussion

a. The Commissioners decided by consensus to cancel the optional additional meetings tentatively scheduled for April 22 and 25, and it hold the meeting on Wednesday, May 4. This meeting is in addition to the Commission's already-scheduled meeting for Wednesday, April 27, 2022.

10. New Business

11. Adjourn

On motion of Commissioner Washburn, seconded by Commissioner Houston, the Commission voted unanimously to adjourn at 11:26 p.m.

Amend ARTICLE III., BOARD OF PUBLIC EDUCATION, Section 5, School Budget, as follows:

Prior to the submission of a school budget, the school board and city council shall establish a Joint Committee on Budget Guidance, consisting of four city councilors and four school board members, appointed by the Mayor and school board chair, respectively. The purpose of the joint committee is to develop guidance for the city and school district on budget priorities and constraints, covering a two-year period and updated annually. The joint committee shall obtain public comment on the guidance prior to submitting the guidance as a proposed non-binding joint resolution to the city council and school board for their approval.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

~~During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated representatives.~~

The budget submitted by the superintendent ~~to be reviewed jointly by the school board and the city council~~ shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for ~~joint~~ review by the school board, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall ~~submit to the city council~~ prepare a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~

The school board shall hold a budget hearing on such budget estimates shall be held at least seven (7) days prior to final action by the city council determining the total amount of the school budget. Within a reasonable period of time, the city council may, at its discretion and after holding a public hearing, provide a nonbinding resolution with its recommendations to the school board for consideration. The school board may or may not adopt, in whole or in

part, the recommendations of the city council. The city council shall thereafter submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the school budget validation referendum or, if discontinued, at the budget referendum, as appropriate, or (ii) not be less than the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council or the voters. (Referendum 6/13/78; 11/2/10)

Amend ARTICLE VI. ADMINISTRATIVE OFFICERS, Section 5. Appointment; qualifications; powers and duties of the city manager in the second paragraph, subparagraph (i), as follows:

Section 5. Appointment; qualifications; powers and duties of the ~~city manager~~Chief Operating Officer (COO).

...

The ~~city manager~~COO's powers and duties shall be as follows:

...

- (i) To jointly prepare with the ~~Portland Public Schools~~ superintendent a five (5) year rolling capital improvement plan, at the direction of the mayor, for annual presentation by the mayor to a joint meeting of the city council and school board, which plan includes the following:
 1. A one (1) year plan of specific projects and their cost.
 2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; ~~and~~
 3. A discussion of the basis for the plan and the factors which went into its development or amendments; and
 - ~~3-4.~~ A listing and discussion of capital improvements pending or in process of construction or acquisition.

Mayor's Economic Development Duties Proposal

Amend ARTICLE 2., MAYOR, Section 3, Mayor's Powers and Duties, to add subsection (n), as follows:

(n) To work in collaboration with city staff to advance the city's economic development programs by, among other things, meeting, negotiating, and planning with actual or prospective investors in significant economic development projects.

PART I CHARTER*

***Editor's note**--Historical references are cited in parentheses at the end of each section. Such references cite only the various amendments adopted by referenda conducted pursuant to home rule powers granted by P.L. 1970, c. 563 (30 M.R.S.A. § 1911 et seq.). Prior to 1970 and home rule the charter and its various amendments were enacted by the Maine Legislature and such are not cited in said parentheses. A history of the charter and amendments is attached as Appendix A.

State law reference(s)--Home rule, 30 M.R.S.A. § 2101 et seq.

Preamble

- Art. I. Grant of Powers to the City, §§ 1, 2**
- Art. II. City Council; Mayor, Ranked Choice Voting §§ 1--11**
- Art. III. Board of Public Education, §§ 1--6**
- Art. IV. Elections, §§ 1--11** **Art. V. Recall, §§ 1--7**
- Art. VI. Administrative Officers, §§ 1--8**
- Art. VII. Business and Financial Provisions, §§ 1--16**
- Art. VIII. Miscellaneous Provisions, §§ 1--5**

PREAMBLE

We, the People of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the general health, safety and welfare of our community. In so doing, we build a government that meets the needs of the people it serves and whose character it reflects. Our government shall further cooperation, encourage leadership, solicit our input and support the active participation of our residents in their governance. Our government shall be effective and accountable and shall promote equal rights and representative democracy.

Our government shall provide public education that enables all residents to acquire the knowledge and skills necessary to participate fully in Portland's civic, intellectual, cultural and economic life, in order to enrich and strengthen our community and our common future.

(Referendum 11/2/10)

ARTICLE I. GRANT OF POWERS TO THE CITY

Section 1. Corporate existence retained.

The inhabitants of the City of Portland shall continue to be a body politic and corporate by the name of the City of Portland, and shall have, exercise, and enjoy all the rights, immunities, powers, privileges, and franchises and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise, pertaining to or incumbent upon such city as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable by-laws, regulations, and ordinances for municipal purposes, not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof as such by-laws, regulations, or ordinances shall provide. Such penalties shall not limit nor diminish in any way the city's authority to seek and obtain higher or different penalties provided by state or other law. (Referenda 12/4/72; 11/2/10)

Section 2. Powers and duties.

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the "school board"), and also except as otherwise provided by this charter, shall be and are vested in the mayor and in one body of nine members, which shall constitute and be called the city council, all of whom shall be inhabitants of the city, and shall be sworn in the manner hereinafter prescribed.

The executive powers of the city shall be vested wholly in the mayor and may be exercised either personally or through the chief operating officer ("COO") and the several departments and boards of the city, under the mayor's general supervision and control

The legislative powers of the city shall be vested in the city council. The mayor and the members of the city council shall be and constitute the municipal officers of the City of Portland for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers and mayors of cities under the laws of this state.

All other powers now or hereafter vested in the inhabitants of such city, and all powers granted by this charter, except as

herein otherwise provided, shall be vested in the city council.
(Referendum 11/2/10)

ARTICLE II. MAYOR

Section 1. Election, tenure of office.

The position of mayor shall be elected by majority vote as provided in section 3 of article III. The candidate(s) for mayor shall be nominated in the same manner as at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two consecutive terms. The election and position of mayor shall be a non-partisan, full-time position.

Notwithstanding the prior paragraph, for the municipal election in November of 2023, the election for mayor shall be for a one-time one-year term ending in 2024. Thereafter, the mayor shall be elected every four (4) years in line with the U.S. presidential election.

Section 2. Compensation of the mayor.

Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation, but no such order re-setting the mayor's compensation shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than one and one-half (1.5) times the median household income for Portland as most recently published by the U.S. Census Bureau, American Community Survey, or successor index thereto, at the time such compensation is set or adjusted, plus customary city benefits.

The mayor shall not hold any office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected.

Section 3. Mayor's powers and duties.

The mayor shall be the chief executive officer of the city, responsible for providing leadership, and shall have the following

powers and duties:

- (a) To articulate the city's vision and goals and build coalitions to further such vision and goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that purpose;
- (b) To introduce policy and legislation to the city council through a public process, such as a task force created for such purpose, or through standing city council committees;
- (c) To convene and lead an annual workshop session of the city council to discuss and identify the city's goals and priorities. The COO shall attend this workshop session, and a summary of the session shall be made available to the public;
- (d) To represent the city with other municipalities, levels of government, community and neighborhood groups, and the business community;
- (e) To set the city council agendas in accordance with city council rules and preside as chair of the city council, but without a vote on any matters before the city council except as otherwise provided by this charter;
- (f) To ensure the implementation of city policies and keep the city council informed as to the progress on all city council directives, the general financial standing of the City, the current status of all negotiations, and recommendations for city council action. With regard to the delivery of city services, the mayor may inquire about specific issues pertaining to city services but shall not intervene on behalf of an individual regarding city business.
- (g) To direct the COO in the preparation of all city budgets and present the budget to the city council for approval;
- (h) To direct the COO in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (i), and to present such program plan to the city council;
- (i) To facilitate among the COO, city council, board of public education and the public to secure passage by the city

- council of the annual city and school budgets;
- (j) To exercise veto power over the annual city appropriation as provided in article VIII, section 8;
- (k) To be a voting member of the executive committee established pursuant to article VII, section 9;
- (l) To be a voting member of the review committee established pursuant to article VII, section 10;
- (m) To be the public figurehead for the city. In this role the mayor:
1. Shall serve as the official representative of the city in Augusta, nationally and internationally;
 2. Shall serve as the official spokesperson for the city;
 3. May form public task force(s) by right with reasonable staffing support for any issue not taken up by the city council; and
 4. Shall be a voting member of the city council's legislative committee.

Notwithstanding the foregoing, the COO shall manage the day to day operations of the city and administration of the city budgets presented by the Mayor and approved by the city council.
(Referendum 11/2/10)

Section 4. Absence or disability of mayor; acting mayor.

In the temporary absence or disability of the mayor, the mayor may select an acting mayor from among the ~~other~~ council members and such person shall perform the duties of the mayor during such temporary absence or disability for a maximum of sixty consecutive (60) days or return of the mayor, whichever comes first. If through physical or mental incapacity the mayor is unable to select an acting mayor, or if the mayor's absence or disability exceeds sixty (60) consecutive days, the council shall select an acting mayor from among its membership until such time as the mayor is able to resume his or her duties or a vacancy is declared pursuant to section 7 below and a new mayor elected. (Referendum 6/13/78; 11/7/00; 11/2/10)

Section 5. Vacancy of mayor.

A vacancy in the office of mayor shall occur upon the happening of the following: (1) the death of the mayor; (2) the effective date of the resignation of the mayor; (3) the removal of mayor from the city; (4) the conviction of the mayor of a felony while in office; (5) the recall of the mayor pursuant to the provisions of article V; or (6) the removal of the mayor by the council pursuant to section 6 of this article.

The council shall declare a vacancy in the office of mayor to exist upon the qualification of the mayor for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

The mayor may in writing addressed to the council resign his or her office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and the mayor's office shall become vacant on such specified future date.

If a vacancy in the office of mayor 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. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

Section 6. Recall and removal of mayor.

The mayor may be removed from office by the city council for office for any of the following reasons:

- (a) Engaging in official misconduct or neglect of duty. Complaints received by the city that the mayor is engaging or has engaged in official misconduct or neglect of duty shall be sent to the ethics commission for review. The ethics commission shall review such complaint under its ordinance and procedures. A recommendation to remove the mayor for official misconduct or neglect of duty shall specify as particularly as possible the acts of misconduct or the instances of neglect of duty complained of, should be

filed with the city clerk, who shall serve a copy of that recommendation upon the mayor at the mayor's residence. Any vote to order a recall election of the mayor for official misconduct shall require a vote of three-fourths (3/4) of all the members the city council.

- (b) Conviction of a felony materially related to the duties of the mayor. Upon the conviction of the mayor of a felony materially related to the duties of the mayor, the city council shall vote on a resolution to remove the mayor for such conviction. Any vote to remove the mayor for a conviction shall require a vote of three-fourths (3/4) of all the members of the city council.

At any hearing of the ethics commission or meeting of the city council in which the removal of the mayor is the topic, the mayor shall have the right to be present, speak, be represented by counsel, and present a defense.

ARTICLE ~~IIII~~. CITY COUNCIL

Section 1. City to be divided into election districts.

For the purpose of all elections the city, including its islands, shall be divided into five (5) districts to establish compact and contiguous districts of approximately equal population.

The city council for voting purposes may by ordinance divide the election districts into voting districts. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/2/11)

Section 2. Composition, election, tenure of office.

The city council shall be composed of nine (9) members, ~~including the mayor who shall be one of the nine (9) members of the city council,~~ and shall hold office for a term of three (3) years and until their successors are elected and qualified, ~~except as provided below for the term of mayor and for one at large seat in the election of 2013 only.~~ Four (4) members, ~~including the mayor,~~ shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the five (5) districts heretofore provided for, from and by the registered voters of each district. ~~References in this charter to the city council, councilors, council, its members or membership, shall be deemed to include the mayor, unless otherwise~~

~~specifically provided.~~

For the municipal election in November of 2013, one of the two at large seats up for election shall have a one-time four year term ending in 2017. Thereafter, the council term shall return to be three (3) years for this seat. The city clerk shall designate which seat shall be for the four (4) year term prior to the availability of nomination papers for the 2013 election, and nomination papers shall be separately issued for each of the two at large seats. Each at large candidate may take out and file nomination papers for only one of the at large seats. The municipal ballot will list the 4-year and 3-year council seats as separate questions.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the five (5) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

~~Beginning with the regular municipal election in November, 2011, the at large position then up for election shall be designated as the mayor's position and shall continue as the mayor's position thereafter. The position of mayor only shall be elected by majority vote as provided in section 3 of this article. The candidate(s) for mayor shall be nominated in the same manner as other at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two consecutive terms. The election and position of mayor shall be a non-partisan, full-time position. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10; 11/6/12)~~

Section 3. Ranked choice voting; instant runoff tabulation.

For the positions of mayor, city councilor, and school board member, the city clerk shall implement a ranked choice voting protocol according to these guidelines:

- (a) The ballot shall give voters the option of ranking candidates in order of choice.
- (b) If a candidate receives a majority, i.e. at least one more than fifty percent (50%) of the first choice votes cast, that candidate is elected.
- (c) If no candidate receives a majority of first choice

votes, an instant runoff re-tabulation shall be promptly conducted by the city clerk and completed within five (5) business days of the election. The instant runoff re-tabulation shall be conducted in successive rounds, with the majority determined for each successive round by the number of votes cast in that round. The candidate with the fewest votes after each successive round in which no candidate receives a majority of the votes cast in that round shall be eliminated, and the votes in the successive rounds shall be re-tabulated among the remaining candidates until one candidate receives a majority of the votes cast in that round. In each successive round, each voter's ballot shall count as a single vote for whichever candidate the voter has ranked highest who has not been eliminated in a prior round, if any.

(d) After the first round, a majority is determined as at least one (1) more than fifty percent (50%) of the votes cast for a remaining candidate in a particular round.

(e) The city clerk may adopt additional regulations consistent with this subsection to implement these provisions. The ballot shall contain instructions on how to vote for each office.

(Referenda 11/2/2010; 3/3/2020)

Section 4. Compensation of councilors ~~and mayor.~~

~~Except as otherwise provided in the paragraph below for the mayor's compensation, the~~ The city council shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, and specify when any compensation shall be payable, but no such order increasing their compensation, ~~including that of the mayor,~~ shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance.

~~Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than one and one half (1.5) times the median household income for Portland as most recently published by the U.S. Census Bureau, American Community~~

~~Survey, or successor index thereto, at the time such compensation is set or adjusted, plus customary city benefits.~~ No member shall hold any office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

~~Section 5. Mayor's powers and duties.~~

~~The mayor shall be the official head of the city, responsible for providing leadership, and shall have the following powers and duties:~~

- ~~(a) To articulate the city's vision and goals and build coalitions to further such vision and goals. The mayor shall give an annual state of the city address during a special meeting of the city council called for that purpose;~~
- ~~(b) To convene and lead an annual workshop session of the city council to discuss and identify the city's goals and priorities in order to provide guidance for the city manager and to inform the public. The city manager shall attend this workshop session, and a summary of the session shall be made available to the public;~~
- ~~(c) To represent the city with other municipalities, levels of government, community and neighborhood groups, and the business community;~~
- ~~(d) To preside as chair of the city council, and vote upon all matters in the same manner as other members of the city council, except as provided in article VII, section 8. The mayor shall direct the city manager in the preparation of council meeting agendas;~~
- ~~(e) To facilitate the implementation of city policies through the office of the city manager;~~
- ~~(f) To consult with and provide guidance to the city manager in the preparation of all city budgets and to provide comments on such budgets at the time they are presented by the city manager to the city council for approval;~~
- ~~(g) To consult with and provide guidance to the city manager in the preparation of the annual capital improvement program plan described in article VI, section 5, paragraph (i), and to provide comments on such program plan at the time it is presented by the city manager to the city~~

~~council;~~

- ~~(h) To facilitate among the city manager, city council, board of public education and the public to secure passage by the city council of the annual city and school budgets;~~
- ~~(i) To exercise veto power over the annual city appropriation as provided in article VII, section 8;~~
- ~~(j) (n) To establish performance guidelines in conjunction with the other members of the city council for regular evaluations, no less than annually, by the city council of the performance of the city manager, corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities;~~
- ~~(k) To chair any subcommittee with at least two (2) other city councilors to recommend the appointment or removal of the city manager, corporation counsel or the city clerk, but the full city council shall have the final decision in regard to such appointment or removal by a vote of at least five (5) members of the council; and~~
- ~~(l) To appoint the members and chairs of the city council committees and various ad hoc committees and communicate such appointments to the city council, which may override such appointments by a vote of at least six (6) council members.~~

~~Notwithstanding the foregoing, the city manager shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council. (Referendum 11/2/10)~~

~~**Section 6. Absence or disability of mayor; acting mayor.**~~

~~In the temporary absence or disability of the mayor, the mayor may select an acting mayor from among the other council members and such person shall perform the duties of the mayor during such temporary absence or disability for a maximum of sixty consecutive (60) days or return of the mayor, whichever comes first. If through physical or mental incapacity the mayor is unable to select an acting mayor, or if the mayor's absence or disability exceeds sixty (60) consecutive days, the council shall select an acting mayor from among its membership until such time as the mayor is able to resume his or her duties or a vacancy is declared pursuant to section 7 below and a new mayor elected. (Referendum~~

~~6/13/78; 11/7/00; 11/2/10~~

Section 7. Vacancies.

A vacancy in the membership of the city council 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 provisions of article V. The council 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 city council, or at least sixty (60) percent of the regular meetings of the city council held in any one calendar year unless such member shall be excused (by vote of at least four (4) other members) for health reasons or other good cause.

The council shall declare a vacancy in its membership to exist upon the qualification of any member for any city or school department office, or the acceptance of any employment with the city or school department, the compensation for which is payable by the city or school department.

A member may in writing addressed to the council resign his or her office effective at a future date specified in such written resignation. Once submitted to the council, such resignation may not be withdrawn, and such member's office shall become vacant on such specified future date.

If a vacancy in the membership of the city council 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. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

Section 8. Meetings of the council.

The city council shall meet at the usual place for holding meetings on the first Monday in December following the regular municipal election, or as soon thereafter as possible, and at such meeting the mayor and councilors-elect shall be sworn to the faithful discharge of their duties by a justice of the peace, or

by the city clerk. The city council shall at such meeting establish by resolution or rule a regular place and time for holding its meetings, and shall meet regularly at least twice each month. (Referenda 6/13/78; 11/4/86; 11/7/00; 11/2/10)

Section 9. Special meetings.

Special meetings may be called by the mayor, and in case of his or her absence, disability, or refusal, may be called by five (5) or more members of the city council. At least twenty-four (24) hours notice of the time and place of holding such special meeting shall be given to all members of the city council. (Referendum 11/2/10)

Section 10. Quorum.

Five (5) members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours' notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referendum 11/2/10)

Section 11. Procedure.

The city council shall keep a record of its proceedings and shall determine its own rules of procedure and make lawful regulations for enforcing the same. The meetings of the city council shall be open to the public in accordance with state law. The city council shall act only by ordinance, order, or resolve. All ordinances, orders, and resolves, except orders or resolves making appropriations of money, shall be confined to one subject which shall be clearly expressed in the title. An appropriation order or resolve shall be confined to the subject of appropriations only.

No ordinance and no appropriation order or resolve shall be passed until it has been read on two separate days, except when the requirement of a second reading on a separate day has been dispensed with by the vote of at least seven (7) members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance, order, and resolve shall require on final passage the affirmative vote of at least five (5) members of the city council. No ordinance shall take effect until

thirty (30) days after its passage and no order or resolve shall take effect until ten (10) days after its passage, except as herein otherwise provided for emergency ordinances, orders and resolves.

The city council may, by vote of at least seven (7) of its members, pass emergency ordinances, orders, or resolves to take effect at the time indicated therein, but such emergency ordinances, orders, or resolves shall contain a section in which the emergency is set forth and defined, provided, however, that the declaration of such emergency by the city council shall be conclusive. (Referendum 11/2/10)

ARTICLE ~~III~~IV. BOARD OF PUBLIC EDUCATION

Section 1. Composition, election, tenure of office, compensation.

The board of public education shall be composed of nine (9) members who shall hold office, except as hereinafter provided, for a term of three (3) years and until their successors are elected and qualified. Four (4) shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the five (5) districts heretofore provided for in section 1 of article II, from and by the registered voters of each such district.

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the five (5) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

The city council shall by order establish the amount each member of the school board shall be entitled to receive as compensation for all services rendered, which compensation shall be the same as that received by members of the city council, ~~other than the mayor~~. The city council shall provide additional compensation to the chair of the school board appropriate to reflect his or her additional responsibilities as chair. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 2. Chair.

On the first Monday in December following the regular

municipal election, or as soon thereafter as possible, the board of public education shall elect one of its members as chair for the ensuing year and until a successor is elected and qualified, and may fill for the unexpired term any vacancy as chair that may occur.

At a date and time to be mutually agreed upon by the chair of the school board and the mayor, the chair shall deliver an annual address on the "state of the public education system in Portland" to the city council and the public. (Referenda 11/2/76; 6/13/78; 11/7/00; 11/2/10)

Section 3. Organization.

The school board shall meet for organization on the first Monday in December following the regular municipal election, or as soon thereafter as possible. The members-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the city clerk, and a record made thereof. The members shall at such meeting, or as soon thereafter as possible, establish a regular place and time for holding meetings and shall meet regularly at such place and time. Five members of the school board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours' notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referenda 6/13/78; 11/7/00; 11/2/10)

Section 4. Powers and duties.

The board of public education shall have all the powers, and perform all the duties in regard to the care and management, including sound fiscal management, conduct, and control of the public schools of the city, which are now conferred and imposed upon school committees and school boards by the laws of this state, except as otherwise provided in this charter. (Referendum 11/2/10)

Section 5. School budget.

Not later than three and one-half (3.5) months before the end of the fiscal year, the superintendent shall submit to the school board budget estimates of the various sums required for the support of public schools for the ensuing fiscal year and shall thereafter provide the school board with such information relating to such estimates as the school board shall require.

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the ~~city manager~~COO shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated subcommittees.

The budget submitted by the superintendent to be reviewed jointly by the school board and the city council shall provide a complete financial plan of all school funds and activities for the ensuing fiscal year. In organizing the school budget for joint review, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

Not later than the last Monday in April of each fiscal year, the school board shall submit to the city council a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, and shall thereafter provide the city council with such information relating to such budget as the city council shall require.

A budget hearing on such budget estimates shall be held prior to final action by the city council. The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall not be less than the sum required to be appropriated for such purposes by the general laws of the state. Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council. Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council.

(Referendum 6/13/78; 11/2/10)

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 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.
(Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

ARTICLE ~~IVV~~. ELECTIONS

Section 1. Continuity in office.

In the event redistricting of the city shall cause a then council member or school board member to reside in a district other than that from which such person was elected, the office of such member shall not thereby be considered vacated but such member shall continue in office until a successor is duly elected and qualified. Each district councilor and district school board member in office on the effective date of any such redistricting shall be deemed to represent the newly constituted district of the

same numerical designation as that formerly represented and shall continue to serve in that capacity until expiration of his or her term. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 2. Regular municipal election.

On the first Tuesday after the first Monday in November of each year, the regular municipal election shall be held and the registered voters of the city or district, as the case may be, shall ballot for a mayor and for such councilors and for such members of the school board as may be necessary to fill the offices of those whose terms would then normally expire and fill any existing vacancy in an unexpired term of office. (Referenda 12/1/75; 11/2/76; 6/13/78; 11/4/86; 11/7/00; 11/6/01; 11/2/10)

Section 3. Wardens and ward clerks.

The wardens and ward clerks shall be nominated by the city clerk and appointed by order of the city council. They shall be and remain residents of the city and all other qualifications for appointment shall be as provided in Title 21-A of the Maine Revised Statutes. They shall hold their office for one year from the date of appointment, unless a shorter term is specified by the order of appointment, and until others have been chosen and qualified in their stead. The warden and the ward clerk shall be sworn to the faithful performance of their duties by a person qualified under the statutes of the state to administer oaths, and a certificate of such oath shall be entered by the clerk on the records of such ward. (Referenda 11/2/76; 6/13/78; 11/4/86, 11/4/08; 11/2/10)

Section 4. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for mayor or an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy-five (75) nor more than one hundred fifty (150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

Section 5. Form of nomination petition.

The signatures to nomination petitions need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers of each petition, and that each signature appended thereto was made in his or her presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer giving the street and number of the street, or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

To the city clerk of the City of Portland

We, the undersigned voters of the City of Portland, hereby nominate, _____ whose residence is _____ for the office of _____ to be voted for at the election to be held in the City of Portland on the _____ day of _____, _____, and we individually certify that we are qualified to vote for a candidate for the above office.

Name _____ Street and Number _____, being duly sworn, deposes and says, that he (she) is the circulator of the foregoing nomination petition containing _____ signatures, and that the signatures appended thereto were made in his or her presence and are the signatures of the persons whose names they purport to be.

(Signed) _____.

Subscribed and sworn to before me this _____ day of _____, _____.

Attorney, State of Maine Bar # _____
Notary Public

If this petition is deemed insufficient by the city clerk, he or she shall forthwith notify by mail _____ at _____. (Referendum 11/2/10)

Section 6. Filing of nomination petitions, and acceptance of nomination.

The city clerk shall make nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to

the election. The nomination petitions for any one (1) candidate must be assembled and united into one (1) petition and filed with the city clerk during normal business hours not earlier than eighty-five (85) nor later than seventy-one (71) days before the date of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing at the time of filing of such nomination petitions his or her consent accepting nomination, agreeing not to withdraw and, if elected, to qualify. Such nomination petitions and consent, once filed may not be withdrawn. Any challenge to a nomination petition must be submitted to the city clerk in writing, setting forth the specific reasons for the objection, no later than five (5) days, excluding Saturdays, Sundays, and legal holidays, from its date of filing, or it is barred. No person shall take out nomination papers for more than one position at the same election, nor be nominated, nor shall any person consent to being nominated, at the same election for any other elective office provided for by this charter, and no person shall simultaneously hold more than one (1) elective office provided for by this charter. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/6/01; 11/4/08; 11/2/10)

Section 7. Form of ballot.

All official ballots for use in all municipal elections shall be prepared by the city clerk and furnished by the city, consistent with the voting machines used and the form of any state ballot(s), and the use of ranked choice voting. Ballots for use in elections under this charter shall contain the names of the various candidates, with their residence, and the office for which they are candidates, and instructions on how to mark the ballot. The candidates for each office shall be grouped under the title of each office, plainly and distinctly marked. There shall be as many blank spaces under the name of each office as there are vacancies to be filled. The procedure for counting write-in votes shall be governed by Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern. Notwithstanding the foregoing, in the event of an emergency such as the illness, death or disqualification of a nominee for municipal office prior to the general election, the time frame for accepting a declared write-in candidate may be shortened by the city clerk. Such ballots may also contain such measures as may be submitted to the voters of the city by the legislature or by the city council and shall be without party mark or designation.

In preparing all ballots for election under this charter, the city clerk shall arrange the names of all qualified candidates for

each office in alphabetical order according to surnames.
(Referenda 11/2/2010; 3/3/2020))

Section 8. Specimen ballots.

The city clerk shall cause specimen or sample ballots to be prepared and to be posted in public places in each ward and voting precinct and advertised in the newspapers not later than ten (10) days prior to the municipal election. Such specimen ballots shall be printed on colored paper and marked "Specimen Ballot," and shall contain the names of the certified candidates with the residence of each, instructions to voters, and such measures as may be submitted to the voters by the legislature or by the city council. Such specimen ballots shall also be without party mark or designation. (Referendum 11/6/01; 11/2/10)

Section 9. Count of ballots.

Upon closing of the polls, ballots shall be counted in accordance with Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern, and the results thereof delivered to the city clerk by the wardens. (Referendum 11/2/10)

Section 10. Canvass of returns.

The city clerk shall examine the records of the several voting places and within forty-eight (48) hours after such election shall determine and declare the successful candidates as follows: The person or persons, not exceeding the number to be voted for at any one time for any office, having the majority of votes cast at such election, shall be determined and declared to be elected. If no candidate for mayor, city council, or school board has a majority of the votes cast as provided in article II, section 3, the city clerk shall conduct an instant runoff tabulation as provided in such section until the candidate with the majority of votes cast is determined. The city clerk shall provide written notice of the election results to all candidates. (Referenda 11/6/01; 11/2/10; 3/3/2020)

Section 11. State election laws applicable.

The laws of the state in Title 21-A of the Revised Statutes relating to the qualifications of electors, registration, the manner of voting, the duties of election officials, and all other particulars in respect to preparation for conducting and managing

elections, so far as they may be applicable, shall govern all municipal elections in the City of Portland, except as provided below regarding 42-day pre-election reports and as otherwise provided herein.

In addition to the reports required for municipal candidates by Title 21-A of the Maine Revised Statutes, 42-day pre-election reports must be filed by municipal candidates no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Nothing in this charter shall prohibit the use of electronic or revised voting methods and procedures to the extent authorized by state and/or federal law. (Referenda 11/4/08; 11/6/2018)

ARTICLE VVI. RECALL

Section 1. Applicability.

The mayor or Aany member of either the city council or the school board may be recalled and removed from office by the registered voters of the City of Portland, as hereinafter provided, except that this provision shall not apply to a member of either body who has one (1) year or less to serve in his or her term, i.e., any petition to recall a member must be certified by the clerk no later than November 30 of the year prior to that member's next scheduled November re-election date. (Referenda 11/4/86; 11/2/10)

Section 2. Petition for recall.

In the case of either the mayor, or an at large member of the city council or of the school board, any five hundred (500) registered voters of the city may affirm and file with the city clerk an affidavit containing the name of the mayor or of the member of the city council or of the school board whose removal is sought, together with a statement of the reasons why such removal is desired. In the case of a district member of the city council or of the school board, any two hundred and fifty (250) registered voters of the member's district may affirm and file with the city clerk an affidavit containing the name of the district member whose removal is sought, together with a statement of the reasons why such removal is desired. Members of the city council and of the school board shall not be included on the same affidavit and only one member's name shall be on an affidavit.

Within seven (7) calendar days of receipt of such an

affidavit, the city clerk shall prepare a sufficient number of petitions which shall contain the signature of the city clerk, his or her official seal, the date, and the name of the person whose removal is sought. In addition, the statement of reasons for removal referred to above shall either be printed on such petitions or attached thereto. Such petitions shall be on paper of uniform size with as many individual sheets as reasonably necessary.

The city clerk shall file the completed petitions in his or her office. During the thirty (30) days following their filing, the city clerk shall arrange to have petitions, noting that removal is being sought as well as the reasons therefor, available for signature both at city hall and also at public places as indicated below. Notice of the location of the public places where petitions may be signed shall be given by publication at least forty-eight (48) hours in advance and such notice shall contain the specific location of such public place or places, the dates it or they will be open, and the times during which petitions may be signed. In the case of either a district councilor or a district school board member, the city clerk shall select one (1) site outside of city hall, but within the district of the member whose removal is sought, and such location shall be open for four (4) days between the hours of noon and 8:00 p.m. In the case of at large councilors or members of the school board, the city clerk shall select four (4) sites outside of city hall and such locations shall be open for four days each between the hours of noon and 8:00 p.m.

The city clerk shall designate election clerks to supervise each such site. Election clerks shall be residents of Portland and at least eighteen (18) years of age. They shall be sworn to the faithful performance of their duties by the city clerk. Each qualified voter who signs a petition shall include his or her place of residence, providing either the street and number or a description sufficient to identify the place.

To mandate a vote in the case of the mayor or—an at large councilor or an at large member of the school board, the recall petition must be signed by at least three thousand (3,000) registered voters of the city, or in the case of a district councilor or district member of the school board, by at least fifteen hundred (1,500) registered voters of that member's district. (Referenda 12/1/75, 11/4/86; 11/2/10)

Section 3. Verification of recall petition.

At the expiration of the thirty (30) day period for signing

petitions described in section 2, the city clerk shall declare the petition closed and, within ten (10) days thereafter, shall ascertain whether or not the petitions have been signed by the requisite number of registered voters. The city clerk shall attach his or her certificate, showing the results of such examination, to the petitions.

If the clerk's certificate should show that the petitions are insufficient, he or she shall advise both the city council and also the person or persons whose removal was sought of that fact. A finding of insufficiency shall not prejudice the filing of a new petition for the same purpose, except that such new petition shall not be filed within twelve (12) months from the date of the receipt of the clerk's certificate by the city council. (Referenda 11/4/86; 11/2/10)

Section 4. Calling of recall election.

If the clerk's certificate should show that the petitions are sufficient, he or she shall submit them, together with the clerk's certification, to the city council at its next regular meeting following certification, and shall also notify the person or persons whose removal is sought. The city council shall, within ten (10) days of receipt of the clerk's certificate, or on its own in the case of a council vote to hold a recall election for the mayor under article II, section 6, order an election to be held not less than forty-five (45) nor more than ninety (90) days thereafter; except that, if a regular municipal election should occur within ninety (90) days after receipt of the certificate, the city council may, in its discretion, schedule the recall election for the same date as the regular municipal election. The recall election shall be called and held as other elections under this charter, except for the specific limitations imposed by this article.

All registered voters in the city may vote on the recall of the mayor or an at large member of the council or school board; only the registered voters of the applicable district may vote on the recall of a district member of the council or school board. (Referenda 11/4/86; 11/2/10)

Section 5. Form of ballot.

Unless the mayor or the member or members whose removal is sought shall have resigned within ten (10) days after the receipt by the city council of the clerk's certificate or of the council's

vote to hold a recall election for the mayor, the form of the question to be submitted to the voters shall, as nearly as possible, be: "Shall (name of official and his or her title) be recalled?" (Referendum 11/4/86)

Section 6. Count of ballots.

In case a majority of those voting for and against the recall of any official shall vote in favor of recalling such official, he or she shall be thereby removed, and, in that event, the candidate to succeed such person for the balance of the unexpired term shall be determined as provided for in the case of a vacancy in the office.

If a majority of those voting should decline to recall a particular official, then no proceedings, seeking the recall of that same official, shall be initiated under this article within twelve (12) months from the date of the election in which his or her recall was sought. (Referendum 11/4/86)

Section 7. Election may be ordered.

If the mayor or a member of either the city council or school board who is recalled should either request a recount or dispute the election as permitted by law, then that member shall remain in office until the recount or dispute has been finally determined; and the provisions of article II, section 7, ~~and~~ article III, section 6, and article IV, section 6 relating to vacancies in the office of the mayor, city council or school board, shall be stayed. (Referendum 11/4/86; 11/2/10)

ARTICLE VII. ADMINISTRATIVE OFFICERS

Section 1. Appointments.

- (a) The following officers shall be nominated for appointment by the executive committee and confirmed appointed by a vote of at least five (5) members of the city council: ~~city manager~~COO, city clerk, ~~and~~ corporation counsel, and ~~they may appoint~~ constables at large.
- (b) All department heads shall be nominated for appointment by the executive committee and confirmed by a vote of at least five (5) members of the city council. ~~appointed by the city manager, subject to confirmation by the city council.~~

(c) All attorneys employed in the corporation counsel's office shall be ~~appointed~~nominated for appointment by the corporation counsel, subject to confirmation by the city council.

(d) All other employees shall be ~~appointed~~nominated for appointment by the ~~city manager~~COO upon recommendation of the heads of their departments. (Referendum 11/4/86; 11/2/10)

~~(d)~~(e) All persons nominated for appointment shall be nominated solely on the basis of character and qualification to perform the duties of the office or position to be filled by the appointment.

Section 2. Organizational powers.

The city council shall have power to provide by ordinance for the organization, conduct, and operation of the departments, agencies, offices, and boards of the city, for the creation of additional departments, agencies, offices, and boards and for the division of any such departments, agencies, offices, and boards; and for the alteration, abolition, assignment, or reassignment of all such departments, divisions, agencies, offices and boards; provided, however, there shall be a director of finance to perform the functions specified in article VII of this Charter. The city council shall, by ordinance, designate those department heads responsible for performing duties required by state law. (Referendum 11/4/86)

Section 3. Civil service rules.

The city council shall provide by ordinance for a system of civil service rules for the appointment, promotion, demotion, lay-off, reinstatement, suspension, and removal of the members of the police department and of the fire department, other than the chiefs of such departments, and for a civil service commission to administer the same.

Section 4. Compensation and tenure of offices.

The city council shall fix by order the salaries of the appointees of the city council. Salaries of the appointees of the ~~city manager~~COO shall be fixed by the ~~city manager~~COO, subject to the approval of the city council. All appointive officers shall hold office during the pleasure of the appointing power.

Section 5. Appointment; qualifications; powers and duties of the ~~city manager~~Chief Operating Officer (COO).

The ~~city manager~~COO shall be nominated for appointment by the mayor and chosen confirmed by the city council solely on the basis of character and executive administrative qualifications, and may or may not be a resident of the City of Portland or of the State of Maine at the time of appointment. Such person shall give bond for the faithful discharge of his or her duties to the City of Portland and in such sum as the city council shall determine and direct, and with surety or sureties to be approved by the city council. The premium on such bond shall be paid by the city. Such person shall be responsible for the administration of all departments and for the delivery of city services ~~the administrative head of the city~~ and shall be responsible to the ~~city council~~mayor ~~for the administration of all departments.~~ The mayor shall recommend for adoption by the city council rules that govern communications between city staff and elected officials. ~~Neither the mayor nor members of the city council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment. Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards and commissions, council committees, neighborhood and other groups and organizations, on city work.~~

The ~~city manager's~~COO's powers and duties shall be as follows:

- (a) To see that the laws and ordinances are enforced, but shall delegate to the chief of the police department the active duties connected therewith regarding criminal conduct.
- (b) To exercise control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.
- (c) To implement the policy decisions of the mayor and city council.
- (d) To coordinate city programs and operations and recommend improvements in such programs and operations to the

~~ecouncil~~mayor.

- (e) To prepare city budgets, ~~at the direction of the mayor in consultation with and incorporating policy guidance of the mayor, and to present such budgets to the council. Upon presentation of the budget by the mayor to the council, the COO may provide a memo to the council on behalf of city staff, which memo may include, but shall not be required, such advice, guidance, information or requests that the COO believes is relevant on behalf of all non-union staff and departments.~~
- (f) To make appointments as provided in this charter.
- (g) To attend meetings of the city council, except when his or her removal is being considered, and recommend for adoption such measures as he or she may deem expedient.
- (h) To keep the city council fully advised as to the business and financial condition and future needs of the city and to furnish the city council with all available facts, figures, and data connected therewith when requested.
- (i) To prepare a five (5) year rolling capital improvement plan, ~~at the direction of the mayor,~~ for annual presentation by the mayor to the city council, which plan includes the following:
 - 1. A one (1) year plan of specific projects and their cost;
 - 2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; and
 - 3. A discussion of the basis for the plan and the factors which went into its development or amendments.
- (j) To prepare and submit to the city council such reports as are requested or he or she deems advisable; and
- (k) To perform such other duties as may be prescribed by this charter or required by ordinance of the city council. (Referenda 11/4/86; 11/2/10)

Section 6. Vacancy in office of ~~city manager~~COO.

During any vacancy in the office of ~~city manager~~COO, and during any absence or disability of the ~~city manager~~COO of more than sixty (60) days, the city council shall designate a properly qualified person to perform the duties of manager and fix such person's compensation. During a temporary absence of sixty (60) days or less, the ~~city manager~~COO may designate a qualified person to perform the duties of manager during such absence. While so acting, such person shall have the same powers and duties as those given to and imposed on the ~~city manager~~COO. Before entering his or her duties, he or she shall give bond to the City of Portland in a sum and with surety or sureties to be approved by the city council. The premium on such bond is to be paid by the city. (Referendum 11/2/10)

Section 7. Duties of administrative officers.

Duties of administrative officers shall be prescribed by the appointive power, but such duties shall not be inconsistent with this charter or any ordinance enacted by the city council as provided herein. (Referendum 11/4/86; 11/2/10)

Section 8. Continuity in office.

Any and all officers, department heads, and employees of the City of Portland on the effective date of this charter shall continue in such capacity until a successor is appointed and qualified as provided herein, unless sooner removed by the appointive power designated herein. (Referendum 11/4/86; 11/2/10)

Section 9. Executive committee.

The executive committee shall consist of the mayor and two (2) city councilors elected annually by the city council. The mayor shall serve as chair of the executive committee. In the absence of the mayor, the more senior city councilor serving on the committee shall serve as chair pro tem. The executive committee shall appoint the members and chairs of the city council committees and various ad hoc committees and communicate such appointments to the city council and undertake such other duties as may be assigned by the city council. The executive committee shall also nominate the appointment of the COO, corporation counsel and the city clerk, as provided in article VII, section 1(a) and of department heads as provided in article VII, section 1(b).

Section 10. Review committee.

The review committee shall consist of the mayor and members of the city council. The review committee shall ~~To establish performance guidelines in conjunction with the other members of the city council for regular evaluations, no less than annually, by the mayor and city council of the performance of the city manager~~COO, corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities;

ARTICLE ~~VII~~VIII. BUSINESS AND FINANCIAL PROVISIONS

Section 1. Accounts and records.

Accounts shall be kept by the director of finance, showing the financial transactions of all departments of the city, and the school department. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the city. The director of finance shall furnish to the ~~city manager~~COO and mayor each month a report containing in detail the revenues, expenses and expenditures of the city on all accounts, and for each appropriation item the expenditures made and the obligations incurred during the preceding calendar month and the total unencumbered balance. All the accounts of the city and the school department shall be audited annually by a qualified certified public accountant to be chosen by the city council. (Referendum 12/1/75; 11/2/10)

Section 2. Collaboration between city and schools.

To the extent practicable and lawful, the city and the school department shall endeavor to share staff and resources and otherwise cooperate with one another in order to provide better city and school services in a cost effective manner. (Referendum 11/2/10)

Section 3. Reports.

The director of finance shall publish each month a set of financial statements reflecting the financial condition of the city and the school department, and such other financial information as may be required by the city council.

The director of finance shall produce a comprehensive financial report on an annual basis which conforms to "Generally Accepted Accounting Principles." (Referendum 11/2/10)

Section 4. Fiscal year.

The fiscal year of the city shall be July 1 through June 30, or such other fiscal year as the city council shall determine. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 5. Annual budget.

Not later than two (2) months before the end of the fiscal year, the ~~city manager~~mayor shall submit to the city council a proposed city budget prepared by the ~~city manager~~COO and mayor for the ensuing fiscal year. ~~The mayor shall submit comments on the proposed city budget, along with any proposed modifications, concurrently with the manager's submission.~~

The city council shall fix a time and place for holding a public hearing upon the proposed city budget prepared by the ~~manager~~COO and mayor, and shall give not less than ten (10) days prior public notice of such hearing, which hearing shall be at least ten (10) days before the final passage of the appropriation resolve. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 6. Budget content.

The proposed city budget prepared by the ~~manager~~COO and mayor shall provide a complete financial plan of city general and enterprise funds and activities for the ensuing fiscal year. In organizing the budget, the ~~city manager~~COO and mayor shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating proposed tax levies, and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year.

The total of proposed expenditures shall not exceed the total of proposed income. (Referenda 6/13/78; 11/2/10)

Section 7. Appropriation resolve.

The city council shall adopt the annual appropriation resolve for the next fiscal year on or before the last day of the twelfth month of the fiscal year currently ending. Such resolve shall

appropriate those amounts deemed necessary for general city purposes and additionally one gross amount for school purposes as required by section 5 of article III. The total amount appropriated shall not exceed the estimated revenue of the city.

If it fails to adopt such resolve by this date, the city council may make appropriation for current departmental expenses, chargeable to the appropriation for the year, when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force. These continuing appropriations shall not be subject to the mayor's veto in section 8 below.

The city council may by resolution appropriate to any purpose or object for which there shall have been no appropriation for the current year, or for which the appropriation for the current year has proved insufficient, any accruing revenue of the city not appropriated as hereinbefore provided and any unencumbered appropriation balance, or portion thereof, remaining after the purpose of the appropriation shall have been satisfied or abandoned. Such supplemental appropriations ~~shall not beare~~ subject to the mayor's veto in section 8 below. (Referenda 6/13/78; 11/2/10)

Section 8. Mayoral veto of general city purposes appropriations in the appropriation resolve.

Within five (5) business days of the meeting at which the city council adopts the annual appropriation resolve or any supplemental appropriation resolution referenced in section 7 of article VIII above, the mayor may veto the appropriation or the supplemental appropriation for general city purposes in such resolve by written communication to the ~~other members of the city council~~. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

Any such veto of the appropriation for general city purposes shall not affect city payment of debt service obligations on previously authorized bonds, nor shall it affect the school budget appropriation.

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be

overridden by a vote of at least ~~six (6)~~two-thirds (2/3) of the members of the city council. ~~The mayor shall not vote on such override item.~~

If a veto is overridden, the general city purposes appropriation will take effect on the first day of the fiscal year, or on the day immediately following the override vote, if such vote is after the first day of the fiscal year.

If a veto is not overridden, then at the same meeting the override vote is taken, the general city purposes appropriation which was vetoed shall become an item for further consideration by the city council, without the need for a motion for reconsideration, and the city appropriation may be modified, amended, or otherwise acted upon to secure passage at that meeting or a subsequent meeting without the need for two readings prior to passage.

In the event the city council does not override the veto or does not secure passage of the annual appropriation for general city purposes prior to the start of the fiscal year, or has not otherwise acted to provide continuing appropriations under the second paragraph of section 7 above, then the appropriations for general city purposes in effect for the prior fiscal year shall go into effect as of the first day of the fiscal year, with expenditures chargeable to the appropriation for the year, until the appropriation for general city purposes is approved.
(Referendum 11/2/10)

Section 9. Unexpended appropriations.

All appropriations in the annual budget shall lapse at the close of the fiscal year unless specifically continued by order of the city council, and the unexpended appropriations shall be transferred to the appropriate fund balance account. (Referendum 11/2/10)

Section 10. Borrowing.

The borrowing of money by and for the city shall be limited as to form and purpose by section 11 and section 12 of this article. The credit of the city shall in no manner be loaned to any individual, association or corporation. (Referendum 11/2/10)

Section 11. Bond issues.

Money may be borrowed, within the limits fixed by the

constitution and statutes of the state, now or hereafter applying to Portland, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the projects financed with the proceeds of such borrowings, the proceeds to be used for the acquisition of land, the construction, reconstruction, major alteration, extraordinary repairs, and equipment of buildings and other permanent public improvements, the purchase of departmental equipment, for economic development to the extent determined by the City Council to serve a valid public purpose, to create reserves to settle workers' compensation obligations, to fund, refund, pay or to create reserves for the payment of the city's unfunded pension fund liabilities and for the payment of refunding bonds, notes and other evidences of indebtedness previously issued, or for any other purpose permitted by state law.

No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in two (2) public places in the City of Portland and publishing such notice at least twice in a newspaper of general circulation in Portland at least two (2) weeks before final action of the city council. In addition, the city council may, in its discretion, provide that such notice shall be published on the city's website and in such other additional media as the city council determines are appropriate to notify the general public of the public hearing.

Any order authorizing the issue of bonds must be approved by vote of at least seven (7) members of the city council. (Referenda 11/4/86; 11/5/91; 11/8/94; 11/2/99; 11/2/10)

Section 12. Temporary loans.

Money may be borrowed in anticipation of receipts from taxes during any fiscal year but the aggregate amount of such loans outstanding at any one (1) time shall not exceed eighty percent of the revenue received from taxes during the preceding fiscal year. All such loans shall be paid within the year out of the receipts from taxes for the fiscal year in which the loans are made. Money may be borrowed in anticipation of money to be received from the sale of bonds to be issued, in case such bond issue has been authorized; all such loans shall be subject to the provisions of the laws of the State of Maine in relation thereto. This section shall not limit in any way the power granted to towns and cities to borrow money as contained in the Revised Statutes of the State of Maine and acts amendatory thereof and additional thereto. (Referendum 11/4/86; 11/2/10)

Section 13. Payments.

The director of finance shall establish adequate financial controls to reasonably ensure that all payrolls, bills and other claims and demands against the city are in proper form, correctly computed, duly certified and legally due and payable.

The director of finance may require any claimant to make oath to the validity of his or her claim, may investigate any claim and for such purpose or purposes may examine witnesses under oath. (Referendum 11/2/10)

Section 14. Bonds of officers.

The city council shall require a bond with sufficient surety or sureties, satisfactory to the city council, from all persons trusted with the collection, custody or disbursement of any of the public moneys; and may require such bond from such other officials as it may deem advisable; the premium charges for such bonds to be paid by the city. (Referendum 11/2/10)

Section 15. Collection and custody of city moneys.

All moneys received by any officer, employee or agent of the city belonging to the city, or for or in connection with the business of the city, shall forthwith be paid by the officer, employee or agent receiving the same into the city treasury, and shall then be deposited by the director of finance with a federally insured banking institution or institutions or insured credit union or unions. All interest from all deposits of money belonging to the city shall accrue to the benefit of the city. (Referendum 11/2/10)

Section 16. Voter referendum required for certain city council actions.

- (a) The city council shall submit the following to voter referendum:
 - (1) Orders or resolves authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment; or
 - (2) Orders or resolves directly or indirectly obligating the

city to expend, over a term greater than one (1) municipal year, municipal tax funds in excess of an amount greater than seven and one-half one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment.

- (b) The provisions of this section shall not be applicable to any order or resolve authorizing (i) the refunding of any securities or other obligations of the city; (ii) the issuance of general obligation securities, or other direct or indirect obligations, of the city for streets, sidewalks, or storm or sanitary sewers; or (iii) any construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other declared emergency. For purposes of this section, the city council may by vote of at least seven (7) of its members adopt emergency orders or resolves authorizing construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other emergency and such orders or resolves shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the city council shall be conclusive.
- (c) Any order or resolve described in subsection (a) of this section shall be approved by separate action of the city council.
- (d) No order or resolve described in subparagraph (a) of this section, not excepted by subparagraph (b), shall become effective until approved by a majority of voters voting at a regular or special municipal election. In the event that the total number of votes cast for and against the question for the referred order or resolve should be less than ten (10) percent of the registered voters of the city, then such order or resolve shall be deemed to be approved and effective.
- (e) The form of the ballot question for the referred order or resolve shall be substantially as follows:

Shall the order or resolve entitled " _____
_____", be approved?

(Referendum 11/4/86; 11/2/10)

ARTICLE ~~VIII~~IX. MISCELLANEOUS PROVISIONS

Section 1. No personal interest.

No member of the city council or school board or board or commission thereof and no officer or employee of the city or school department, including but not limited to the mayor, shall:

- (a) Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland or the school board, except his or her employment contract, or in the sale to or by the city or school department of any land, materials, supplies or services when such officer, employee or member exercises on behalf of the city or school department any function or responsibility with respect to such contract or sale. All contracts or sales made in violation hereof are void, and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such transaction.
- (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties.
- (c) Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Referenda 11/4/86; 11/2/10)

Section 2. Ordinances, rules and regulations continued.

All ordinances in force at the time that this charter takes effect, not inconsistent with this charter, shall continue in force until amended or repealed. All rules and regulations of the municipal officers or of any office of the City of Portland in force at the time that this charter takes effect, not inconsistent with the provisions hereof, shall continue in force until amended or repealed.

Section 3. Continuity of actions.

All rights, actions, proceedings, prosecutions and contracts of the city or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent therewith shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Section 4. Summons before city council and civil service commission.

The clerks of the supreme judicial and superior courts may issue summonses or subpoenas for witnesses to attend and to produce books, documents and papers at any meeting of the city council or of the civil service commission of the City of Portland at which a hearing is had in any matter regarding any alleged dereliction, which summonses shall be served as summonses are required to be served in matters before the supreme judicial or superior courts. Failure to obey a summons or subpoena shall be punished by the appropriate court in the same manner as contempt is punished under the general law. (Referendum 11/4/86)

Section 5. Effect of private and special laws.

Private and special laws which apply to the City of Portland in effect on November 4, 1986 shall continue in force until amended or repealed. (Referendum 11/4/86)

APPENDIX A

Charter Legislative History

1. Town of Portland incorporated by Act of Commonwealth of Massachusetts on July 4, 1786; Town of Portland Records, p. 1
2. City of Portland incorporated by adoption of charter on March 26, 1832; original charter can be found in Chapter 248, Special Laws of Maine 1832, p. 380; amendments as follows:
 - c. 325, S.L. 1833, p. 501
 - c. 500, S.L. 1834, p. 749
 - c. 402, S.L. 1838, p. 511
 - c. 541, S.L. 1839, p. 648
 - c. 33, P & SL 1842, p. 25
 - c. 200, P & SL 1845, p. 258
 - c. 266, P & SL 1845, p. 310

- c. 233, P & SL 1849, p. 333
- c. 330, P & SL 1850, p. 458
- c. 167, P & SL 1853, p. 158
- c. 35, P & SL 1857, p. 48
- c. 103, P & SL 1857, p. 93
- c. 109, P & SL 1857, p. 100

A total revision of the charter was accomplished in 1863; c. 275, P & SL 1863, p. 257; amendments as follows:

- c. 348, P & SL 1870, p. 316
- c. 647, P & SL 1871, p. 624
- c. 21, P & SL 1875, p. 16
- c. 8, P & SL 1881, p. 9
- c. 86, P & SL 1881, p. 86

(c. 450, P & SL 1897, p. 707--Revision of charter rejected by voters in 1897)

- c. 384, P & SL 1901, p. 569
- c. 68, P & SL 1903, p. 116

(c. 287, P & SL 1905, p. 328--abolishing common council rejected by voters April 24, 1905)

- c. 344, P & SL 1907, p. 638
- c. 427, P & SL 1907, p. 758

(c. 148, P & SL 1921, p. 513--"Murray Bill" charter revision rejected by voters September 13, 1921)

(c. 149, P & SL 1921, p. 532--"Brewster Bill" charter revision rejected by voters September 13, 1921)

A total revision of the charter was accomplished in 1923 by adoption by voters of "Brewster Bill" on September 11, 1923; c. 109, P & SL 1923, p. 596; ("Nichols Bill" c.104, P & SL 1923, p. 557 was rejected same date); amendments as follows:

- c. 56, P & SL 1929, p. 484

(c. 112, P & SL 1929, p. 604--Mayor--Alderman form rejected by voters on September 10, 1929)

- c. 31, P & SL 1931, p. 353
- c. 50, P & SL 1945, p. 629
- c. 113, P & SL 1945, p. 736
- c. 144, P & SL 1945, p. 71
- c. 72, P & SL 1947, p. 722
- c. 72, P & SL 1949, p. 765
- c. 103, P & SL 1949, p. 803
- c. 28, P & SL 1953, p. 528
- c. 108, P & SL 1955, p. 756
- c. 88, P & SL 1957, p. 707
- c. 143, P & SL 1959, p. 873

A total revision of the charter was accomplished in 1961; c. 194, P & SL 1961, p 1125; amendments as follows:

- c. 64, P & SL 1963, p. 966
- c. 65, P & SL 1963, p. 967
- c. 157, P & SL 1963, p. 1187
- c. 177, P & SL 1963, § 1, p. 1291
- (c. 6, P & SL 1965, p. 649 rejected by voters on December 6, 1965)
- c. 7, P & SL 1965, p. 650
- c. 81, P & SL 1965, p. 760

(c. 127, P & SL 1965, p. 849 rejected by voters on December 6, 1965)

c. 221, P & SL 1967, p. 136

c. 83, P & SL 1969, p. 1628

c. 136, P & SL 1969, p. 1792

c. 146, P & SL 1969, p. 1820

(c. 185, P & SL 1969, p. 1958 rejected by voters on November 3, 1970)

State constitutional law reference--Municipal home rule,
Const. of Maine, Art. VIII, Pt. 2.

Referend12/4/72 Art. I,
a 1
Referend12/1/75 Art. II, 2
a
Art. IV, 2
Art. IV, 4
Art. V,
2
Art. VII 1
,
Referend11/2/76** Art. II, 1
a
Art. II, 4
Art. III 1,2,5
,
Art. IV, 2,3,4,
6
Art. V,
2

Referenda 6/13/78 Art. II, 1,2,3,5
Art. III, 1,2,3,4
Art. IV, 1,2,3,6
Art. VII,3,4,5,6
Referenda 11/4/86***Art. II, 1,2,4,5
Art. III, 1,5
Art. IV, 1,2,3,4,6,7,9
Art. V, 1,2,3,4,5,6,7
Art. VI, 1,2,5
Art. VII 7-10 (Rpld)
Art. VI, 11-12 (Rnbd as Art. VI,
7-8)
Art. VII, 3,4,9,10,16
Art. VIII, 1,4,5
Art. VIII, 6 (Rpld)
Referenda 11/3/87 Art. II, 2

Art. III, 1
Referenda 11/5/91 Art. VII, 9 Referenda 11/8/94 Art. VII, 9
Referenda 11/2/99 Art. II, 4
Art. III, 5
Art. VII, 9
Referenda 11/7/00 Art. II, 3,5
Art. III, 2,3
Art. IV, 2
Referenda 11/6/01 Art, IV, 2,6,8,10 Referenda 11/4/08 Art. IV,
3,4,5, 6,7,11
Referenda 11/2/10**** Charter Revisions recommended
by the Portland Charter Commission established on November 4,
2008, and passed by the voters on November 2,2010

****Editor's note--**The amendment establishing district councilor elections became effective January 1, 1976, except that for the purpose of nomination and election of district councilors such amendment shall apply as the presently occupied district seats become available thereafter by normal expiration of term or by vacancy and to every district election thereafter.

*****Editor's note--**A referendum passed Nov. 4, 1986 and effective July 1, 1987, repealed former sections 7 through 10 of article VI to eliminate references to obsolete offices (assistant assessors, director of public welfare) and renumbered former sections 11 and 12 as 7 and 8 respectively. Former sections 7 through 10 derived from the legislation enumerated in the first editor's note to this Charter.

*****Editor's note--**A referendum passed Nov. 4, 1986, effective July 1, 1987, amended section 4 of article VIII to clarify the summons-subpoena power and to provide that failure to obey either a summons or a subpoena will subject offenders to contempt. Former section 5 of this article was deleted as a result of the amendment to section 4 and a new section 5 added to preserve certain rights granted to the city by special acts of the legislature. Former section 6 was deleted to conform to 30 M.R.S.A. § 1915(4) which establishes the effective date of Charter revisions. See the editor's note to the Charter for derivations of deleted sections.

******Editor's note--**Portland voters approved a referendum passed on November 4, 2008 to establish a Portland Charter Commission to make recommendations to revise the Portland City Charter. Those recommendations were subsequently passed by the voters on November 2, 2010, and incorporated the provisions on the popularly elected mayor in Article 2, as well as making changes to the School and Elections articles and technical amendments throughout the

document.

Peaks Island Council Proposal

Amend ARTICLE VIII., Miscellaneous Provisions, to add Section 1.-B, as follows:

Section 1.-B. Peaks Island Council.

The city council shall maintain an ordinance establishing the “Peaks Island Council”, including powers, duties, membership requirements and other necessary provisions deemed appropriate by the city council. The Peaks Island Council shall act as an elected advisory body to the city council.

Amend ARTICLE IV., ELECTIONS, to add Section 12, Public financing of municipal elections, and Section 13, Campaign finance rules, as follow:

Section 12. Public financing of municipal elections.

The city council shall establish and fully fund a City of Portland Clean Election Fund (hereinafter, the “Clean Election Fund” or the “Fund”) to provide public campaign funds to qualified candidates for elected municipal offices. The Clean Election Fund must be available to candidates in municipal elections beginning in 2024. Candidate participation in the Clean Election Fund shall be voluntary.

The city council shall provide an independent allocation from the city’s budget each year to ensure the Clean Election Fund is sustained at a level that facilitates competitive campaigns for participating candidates who meet qualifying criteria. The Clean Election Fund shall be administered by the city clerk and the city council shall appropriate sufficient funds to ensure there are adequate resources, including paid staff, to effectively administer the Fund.

The city council shall maintain an ordinance directing the operation of the Clean Election Fund. The ordinance shall direct that the Clean Election Fund must:

- (a) Limit the amount of private funds a participating candidate may raise;
- (b) Be limited to candidates who
 - i. demonstrate public support;
 - ii. enter into a binding agreement stating that the candidate will not accept private contributions other than those which are permitted by the Clean Election Fund; and
 - iii. agree to participate in at least one (1) city-sponsored forum or voter education event.
- (c) Require that all unused funds from a participating candidate’s campaign be returned to the Clean Election Fund within one hundred (100) days after the date of the election.

The city council may adopt additional regulations and ordinances not inconsistent with this section.

Section 13. Campaign finance rules.

- (a) **Corporate Contributions.** A business entity may not make contributions to any candidate for municipal office. The term “business entity” refers to a firm, partnership, corporation, incorporated association, or other organization, whether organization as a for-profit or a nonprofit entity. A separate segregated fund committee may not make contributions to any candidate for municipal office using funds that derive, in whole or in part, from a business entity. Where a business entity establishes a separate segregated fund committee, that business entity may provide the separate segregated fund committee with the use of

offices, telephones, computers and similar equipment when that use does not result in additional cost to the business entity.

- (b) **Campaign Contributions Reporting.** All contributions to campaigns for candidates or ballot questions must be reported to the city clerk, in conformance with any applicable State law. The clerk must establish a searchable, online, and publicly-accessible database of all information included in all registrations and campaign finance reports filed with the clerk.

MEMORANDUM

TO: Portland Charter Commission
FROM: Jim. Katsiaficas
DATE: April 22, 2022
RE: Campaign Contributions and Expenditures

The Elections Committee has offered a Clean Elections proposal that directs the City Council to prepare and enact a Public Campaign Financing mechanism (Section 12), and also contains Campaign Finance Rules for All Candidates (Section 13) which applies to all candidates, even if a candidate does not choose public campaign financing.

The question I raised at the March 23, 2022 Charter Commission meeting is whether the proposed prohibition on business entity contributions included as Section 13 A is prohibited by State or federal law or constitution. To place the question in context, Section 13 is part of the Elections Committee “Clean Elections Proposal,” but is not actually part of the proposed “Clean Elections” public financing option. It instead is a separate campaign finance proposal that would apply to all candidates for municipal office, regardless whether they choose to participate in the proposed public financing of the campaign (the “clean elections” option).

I approached the analysis without appreciating the distinction between corporate expenditures in support of a candidate and corporate contributions in support of a candidate, and applied the case law on the former to the latter. After researching the question further, I now recognize that under federal law, there is a distinction between campaign contributions and expenditures. However, while federal statute (2 U.S.C. §441b) has prohibited direct contribution by corporations to candidates for federal office since 1907, that statute does not apply to state and local elections. That statute also contains an exception to permit corporate contributions to a separate segregated fund (SSF) to finance political action committees (2 U.S.C. §441b(b)(2)).

Maine regulates State and municipal election campaigns, contributions and expenditures under the Campaign Reports and Finances provisions of State law (21-A M.R.S. §§1001-1020-A). Those

April 22, 2022

statutes currently permit business entities to contribute to candidates, subject to dollar limits similar to those that apply to contributions by individuals. 21-A M.R.S. §1015(1) and (2). In addition, Maine law currently considers a campaign expenditure made in cooperation and consultation with a candidate (21-A M.R.S. §1015(5)) to be a campaign contribution, somewhat blurring the distinction between contributions and expenditures.

Effective January 1, 2023, Maine will prohibit a business entity (a firm, partnership, corporation, incorporated association, labor organization or other organization, whether organized as a for-profit or nonprofit entity) “from making contributions to a candidate.” 21-A M.R.S. §1015(2-A) and (10). This will apply to State and municipal elections. As under federal law, the new State campaign finance law that will become effective in Maine on January 1, 2023 contains a limited exception to the prohibition on corporation contributions – corporations may contribute to a “separate segregated fund” (SSF) that the business entity itself establishes and only where those nonmonetary contributions do not result in additional costs to the business entity. For example, the business entity can let the SSF use office space, provided that such use doesn’t result in extra costs to the business entity. Monetary contributions are still prohibited. This is in 21-A M.R.S. §§1015(2)(A) and 1056-D(2).

Thus, under this analysis, as of January 1, 2023, a prohibition on business entity contributions to a candidate for state or municipal office would not be prohibited by State or federal law or constitution, and the Elections Committee proposal generally would follow State law. Adding the exception to Section 13.A for SSFs to be consistent with State and federal laws would be helpful to minimize the risk of legal challenge.

However, placing the Section 13 “Campaign Finance Rules for All Candidates” in the Charter duplicates State law. Maine cities with populations of 15,000 or more already are governed by the Campaign Reports and Finances provisions of State law, including the business entity contribution prohibition and the candidate finance reporting requirements described above that will become effective as of January 1, 2023, without having to place these provisions in the Charter. *See* 21-A M.R.S. § 1011; 30-A M.R.S. § 2502. These Campaign Reports and Finances provisions of Maine law apply to “any primary, general or special election for State or county office or municipal office in any municipality” – in other words, to candidates in Portland municipal elections.

Therefore, since the imminent prohibition against corporate campaign contributions and the campaign contribution reporting requirements already will apply to Portland municipal elections under State law (21-A §§1011, 1015, 1017), Section 13 is redundant and (with the addition of the SSF provisions) duplicates requirements that already will apply to candidates in Portland elections. I have confirmed with Deputy Secretary of State Julie Flynn that these provisions will apply to Portland elections. As to the database to be prepared by the City Clerk under Section 13.B, the City Clerk informs me that this information already is filed with the City Clerk as required by Section 1017(3-A) and (5), and that when uploaded by the candidate, is then uploaded onto the City’s website. In addition, adopting measures already in State law and applicable to Portland elections risks the Charter becoming out of compliance if State law is further amended or if for some reason, State law is struck down.

April 22, 2022

For these reasons, I continue to recommend that Section 13 not be part of the proposed Clean Election charter proposal -- not because its terms are prohibited by law, but because it duplicates State law and is unnecessary. The added bar on contracts with corporate donors will be rendered moot by the State bar on their contributions; perhaps a bar on contracts with individual donors can be added to the Code of Ethics or the purchasing ordinance.

I have raised these concerns with Commissioner Buxton, who is concerned that the State could repeal the relevant provisions of the Campaign Reports and Finances State statute, and so wants to Section 13 to remain in the Proposal. For this reason, I have prepared the Clean Election Proposal in Charter Language that includes Section 13, and have added the SSF provision to ensure that it tracks State law. The Commission can decide whether to retain or remove Section 13.

Redistricting

Amend ARTICLE II. CITY COUNCIL, Section 1. City to be divided into election districts in the second paragraph, as follows

For the purpose of all elections the city, including its islands, shall be divided into ~~five (5)~~ nine (9) districts to establish compact and contiguous districts of approximately equal population.

Amend ARTICLE II. CITY COUNCIL, Section 2. Composition, election, tenure of office, as follows:

The city council shall be composed of ~~nine (9)~~ twelve (12) members, ~~including the mayor who shall be one of the nine (9) members of the city council,~~ and shall hold office for a term of three (3) years and until their successors are elected and qualified, except as provided below for the term ~~of mayor and for four new districts one at large seat~~ in the election of ~~2013-2023~~ only. ~~Four~~ Three (3) members, ~~including the mayor,~~ shall be elected at large from and by the registered voters of the entire city, and one (1) shall be elected from each of the ~~five (5)~~ nine (9) districts heretofore provided for, from and by the registered voters of each district. ~~References in this charter to the city council, councilors, council, its members or membership, shall be deemed to include the mayor, unless otherwise specifically provided.~~

~~For the municipal election in November of 2013-2023, one of the two at large seats up for election shall have a one-time four year term ending in 2017. Thereafter, the council term shall return to be three (3) years for this seat. The city clerk shall designate which seat shall be for the four (4) year term prior to the availability of nomination papers for the 2013 election, and nomination papers shall be separately issued for each of the two at large seats. Each at large candidate may take out and file nomination papers for only one of the at large seats. The municipal ballot will list the 4-year and 3-year council seats as separate questions. one of the new districts shall have a one-time one year term ending in 2024, two of the new districts shall have a one time two year term ending in 2025, and one of the new districts shall be elected for the standard three year term. Thereafter, the council term for all seats shall return to be three (3) years for the respective seats. The city clerk shall designate which seats shall be for the one (1) year term, two (2) year term, and (3) year term, and nomination papers shall be issued for each seat.~~

All candidates must be residents of the city for a period of at least three (3) months prior to the date on or before which nomination papers are to be filed. The candidate from each of the ~~five (5)~~ nine (9) districts must be a resident of such district for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

~~Beginning with the regular municipal election in November, 2011, the at large position then up for election shall be designated as the mayor's position and shall continue as the mayor's position thereafter. The position of mayor only shall be elected by majority vote as provided in section 3 of this article. The candidate(s) for mayor shall be nominated in the same manner as other at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two~~

~~consecutive terms. The election and position of mayor shall be a non-partisan, full-time position. (Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10; 11/6/12)~~

Amend ARTICLE II. CITY COUNCIL, Section 9. Special meetings, as follows:

Special meetings may be called by the mayor, and in case of his or her absence, disability, or refusal, may be called by ~~five (5)~~seven (7) or more members of the city council. At least twenty-four (24) hours notice of the time and place of holding such special meeting shall be given to all members of the city council. (Referendum 11/2/10)

Amend ARTICLE II. CITY COUNCIL, Section 10. Quorum, as follows:

~~Five (5)~~Seven (7) members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken. (Referendum 11/2/10)

Amend ARTICLE II. CITY COUNCIL, Section 11. Procedure in the second and third paragraphs, as follows:

No ordinance and no appropriation order or resolve shall be passed until it has been read on two separate days, except when the requirement of a second reading on a separate day has been dispensed with by the vote of at least ~~seven (7)~~nine (9) members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance, order, and resolve shall require on final passage the affirmative vote of at least ~~five (5)~~seven (7) members of the city council. In the event of a tie vote, the chair of the city council shall cast the deciding vote. No ordinance shall take effect until thirty (30) days after its passage and no order or resolve shall take effect until ten (10) days after its passage, except as herein otherwise provided for emergency ordinances, orders and resolves.

The city council may, by vote of at least ~~seven (7)~~nine (9) of its members, pass emergency ordinances, orders, or resolves to take effect at the time indicated therein, but such emergency ordinances, orders, or resolves shall contain a section in which the emergency is set forth and defined, provided, however, that the declaration of such emergency by the city council shall be conclusive. (Referendum 11/2/10)

Amend ARTICLE VIII., MISCELLANEOUS PROVISIONS, by adding a new Section 1-A, Ethics Commission and Code of Ethics, as follows:

Section 1.-A Ethics Commission and Code of Ethics

Ethics Commission and Code of Ethics Ordinance. The city council shall enact and maintain an ordinance that establishes an ethics commission and, with input from the ethics commission, shall enact a code of ethics ordinance to be administered by the ethics commission. The ethics commission shall provide impartial oversight and render decisions and advisory opinions to ensure that standards of ethical conduct are observed by elected and appointed City officials and City employees.

(a) Ethics Commission Ordinance. The city council shall enact an ordinance directing it to create an ethics commission, appointed by the city council and consisting of seven (7) members who are residents of the City, serving for three (3) year terms, to undertake the following duties:

- i. Prepare and recommend a code of ethics ordinance to the city council for enactment as provided in subsection (b) below;
- ii. Review the ethics commission and code of ethics ordinances not less than once every three (3) years and make recommendations for any amendments to the city council;
- iii. Hear complaints and render written decisions with findings of fact regarding alleged violations of the City’s code of ethics ordinance, provided that complaints regarding City employees’ ongoing or prior alleged violations or misconduct shall be referred to the City for appropriate action under its personnel policies;
- iv. Hear and render advisory opinions regarding questions of prospective application of the City’s code of ethics ordinance;
- v. Hear and render advisory opinions regarding questions of compliance with the City charter;
- vi. Hear and render advisory opinions regarding adherence to council and board rules and procedures;
- vii. On receipt of requests from a majority of the city council or of any board or committee, procure a second legal opinion from outside legal counsel; and
- viii. Design and oversee program evaluations.

Elected City officials, candidates for any City elected office, and their immediate family members are not eligible to be appointed as members of the ethics commission.

The ethics commission shall meet as needed, but no less than annually.

The ethics commission ordinance shall establish the process for filing, hearing and deciding complaints and for soliciting advisory opinions. Complaints may be filed by any official, employee, or resident of the city, by the accountability officer, or may be initiated by the ethics commission, in accordance with that process. Requests for advisory opinions may be filed by any official or employee of the city, in accordance with that process. Receipt of a complaint or request shall be acknowledged by the ethics

commission. If the ethics commission finds any complaint filed with it to have been based upon allegations it determines to be frivolous, scurrilous, libelous, unsubstantiated, unfounded, of nuisance, or with malice, it may so determine and may dismiss the complaint without deciding the merits of the complaint.

The ethics committee ordinance and complaint process shall protect the identity and rights of complainants, whistleblowers, and persons complained against in accordance with and as required by all State and federal laws, regulations, codes, municipal ordinances, and policies, including but not limited to the Maine Freedom of Access Act, the Maine Whistleblowers' Act, and the City of Portland's personnel policies. The ethics commission shall refer any complaint alleging corruption, fraud, or abuse of a criminal nature to the appropriate law enforcement agency.

The ethics commission shall be an independent body, free from interference from any City elected and appointed officials and employees. The ethics commission may request funding from the city council for independent investigations, legal services, staffing, or other demands pertinent to its mission.

(b) Code of Ethics. The city council shall, with the recommendation of the ethics commission, enact and maintain a code of ethics ordinance defining the code of ethical conduct for elected and appointed City officials and City employees. At a minimum, such code of ethics ordinance shall include and address:

- i. Standards of Conduct;
- ii. Conflicts of Interest;
- iii. Confidential Information; and
- iv. Disclosure Forms for City elected and appointed officials to complete and file with the city clerk and update as appropriate.

(c) Appointment of Accountability Officer.

The ethics commission may recommend that the city council appoint an accountability officer and fund that position. The accountability officer shall: serve as an ombudsperson to members of the public; provide City information to the public and officials to educate them about government accountability, integrity, and transparency; provide training for public officials on ethical matters; and undertake such other duties as may be requested by the ethics commission and authorized by the city council. The accountability officer may provide administrative support for the civilian police review board. The accountability officer also shall receive complaints from the public about alleged government waste, favoritism, mismanagement, and violations of the public trust; the accountability officer will refer matters that are within the scope of the ethics commission's duties to the ethics commission, and vice versa.

(d) Violations of the Code of Ethics.

Violations of the code of ethics ordinance shall be addressed as set out in that ordinance, provided, however, that any city councilor or mayor found by the ethics commission to

be in violation of or to have violated the ethics code may be reprimanded or censured by the city council.

Ethics Commission Proposal

Introduction and Summary

Introduction:

Ethics boards, ordinances and charter amendments can be found in municipalities across the State of Maine and across the country. They provide guidelines for city officials to execute their duties in an ethical and forthright manner. This Proposal brings Portland up to speed with other municipalities across the state that have similar provisions.

What does this Proposal do?

- Requires the Portland City Council to form an Ethics Commission (EC).
- Requires the City Council to adopt a Code of Ethical Conduct ordinance as recommended by the EC.
- Instills discretionary power of the EC to render advisory opinions on a number of matters of City business.
- Requires training to City officials on standards of ethical conduct.
- Allows the City to hire an Accountability Officer to provide education and guidance and to serve as an independent ombudsperson. The Accountability Officer may also look at administrative processes (“red tape”) and provide trainings to City boards, commissions and committees on ethical conduct. (See chart below on the differences between the Accountability Officer and the Ethics Commission).

Why are the Ethics Commission and Code of Ethical Conduct Ordinance needed?

Currently, Portland does not have an ethics board, a written code of ethics, nor requirements of written disclosures of conflicts. While the existence of such instruments may not in and of themselves prevent a bad actor from seeking pecuniary gain or to otherwise use or abuse their power or position; it does provide standards and a process for which such matters may be addressed. Additionally, while incidences of waste, fraud, abuse, and corruption are relatively rare in most municipal governments; the most common breaches of ethical standards include improper sharing of information, improper gifts, and indecent treatment of colleagues. (*Siewert & Udani*). Finally, a Code of Ethics serves no purpose if it just sits in a drawer, it should be a living document. The existence of the Ethics Commission and the Accountability Officer will ensure the utility of the Code and supervise training of City officials to make certain that the standards are understood.

State law (30-A M.R.S. §2605) governs Portland’s officials (elected and appointed) in matters of conflicts of interest. It requires that where elected and appointed officials directly or indirectly

own at least a 10% interest in the business entity before them in the matter of a question or contract, they must disclose their financial interest in the matter before them and abstain from voting upon the matter. The law also limits or prohibits the ability of former City or School Department officials from acting in a proceeding for another party in which they had a role on behalf of the City or School Department, and directs that every municipal official “shall attempt to avoid the appearance of a conflict of interest by disclosure or abstention.”

Portland’s Charter currently provides that no City Councilor (including the Mayor), School Board member, or City officer or employee of the City or School Department shall have a direct or indirect substantial financial interest in any contract entered into by or on behalf of the City or the School Board, except for his or her own employment contract and contracts entered into in the course of his or her employment with the City or School Department. It also prohibits these persons from purchasing or accepting anything from the City or School Department unless these also are offered to the public under the same terms and procedures that apply to the public, and from accepting or receiving any free pass, ticket, or free service from any person or entity acting under a contract or license from the City or School Department.

Portland’s non-union employee Personnel Policy generally applies the State conflict of interest law and the Charter prohibition on direct or indirect substantial financial interest and on gifts to City employees:

“In addition to adhering to general standards of conduct for employees of any organization, public employees are expected to treat everyone they serve with complete impartiality and are prohibited from using their official position for personal profit or the profit of friends and family. Employees must comply with the conflict of interest standards of State law 30-A M.R.S.A. Sec. 2605.”

However, unlike Maine cities such as Bangor and Waterville, Portland has no generally applicable ordinance that establishes standards of conduct for its elected and appointed officials and department heads. This Proposal provides the framework for both a Code of Ethical Conduct ordinance and an Ethics Commission to administer it.

This Proposal is not intended to imply that City officials currently act unethically. Rather, it is a provision that ensures our City maintains a code of ethical conduct for officials that will build public trust and ensure Portland government has high ethical standards. This Proposal is a product of public comment, campaign discussions and research by Commission members.

Other Purposes:

- Encourage proper use of office
- Compliance with advisory opinions

- Mitigate instances of personal gain, political favors, political solicitation, and favoritism.
- Protect against the “revolving door” of City officials, consultants, and contractors.

General Reasoning for an Ethics Commission:

- Protect whistleblowers.
- Fight and discourage corruption, waste, fraud, abuse, and favoritism from both elected and unelected individuals.
- Increase transparency and accountability in municipal government.
- Be a safe, independent place to send complaints and concerns regarding ethical conduct.
- Creates an ethics mission and code for the City of Portland.
- Cost effective, productive ethical conduct oversight that has proven to work elsewhere in Maine.
- To bring more voices to the table and the community oriented decisions on what ethical conduct is, rather than one individual.
- Build public trust in municipal government

Differences in Roles of Ethics Commission & Accountability officer

While the Ethics Commission considers actions and behaviors of officials that may not rise to the level of illegality but are still wrong (such as being visibly drunk at a public meeting); the role of the Accountability Officer role is to resolve disputes, help streamline bureaucratic procedures, and provide training for city officials.

| <p style="text-align: center;">Ethics Commission</p> <p style="text-align: center;">Gives advisory opinions on behaviors that may be wrong but not illegal</p> | <p style="text-align: center;">Accountability Officer</p> <p style="text-align: center;">Resolves disputes & cuts red tape</p> |
|--|--|
| Sharing of information that should not be shared. | Help avoid lawsuits and unneeded controversy. |
| Gifts (large and small) | Complaints against city staff from members of the public/red tape and overly-rigid adherence to administrative procedures concerning trivial matters. Make recommendations to staff when a process has gone off the rails. |
| Disrespectful behavior toward colleagues | Provide training for public officials on ethical matters. |
| Putting forth bad faith arguments in favor of a policy. | 2nd opinions on legal matters/avoid lawsuits |
| <p>“Bad faith” gathering of public input, for example scheduling meetings at the least convenient time for most stakeholders, and deliberately poorly advertising opportunities for public input.</p> <p>Withholding information critical to the deliberation of a policy.</p> | Recognize when regulatory requirements are poorly communicated, improve public understanding of why regulations are in force Address situations when regulations are being poorly or selectively enforced, either by calling on policy makers to update the regulations or by updating administrative procedures for more judicious enforcement |
| Quid pro quo deals that do not rise to the level of actual bribes, but confer some kind of private benefit to the official or allies. These are distinct from the normal legislative deal making process. | <p>Implementation of policy that is not being implemented</p> <p>Help standardize procedures against unyielding bureaucratic norms</p> |

Proportional Ranked Choice Voting Proposal

Amend ARTICLE II. City Council, Section 3. Ranked choice voting; instant runoff to add Section 3(f) as follows:

(f) For elections conducted by ranked choice voting where more than one person is to be elected to a single office (i.e., a multiple seat election), the winners shall be determined by a proportional method of ranked choice voting. Such method shall provide for candidates to be elected on the basis of thresholds determined by the number of seats to be filled plus one, ballots to be counted in rounds, votes to be transferred from defeated candidates, and for votes, in fractions or in whole, in excess of the threshold to be transferred from elected candidates. The City Council shall by ordinance establish such a proportional ranked choice voting system.

Amend ARTICLE IV., ELECTIONS, by amending Section 11, State election laws applicable, and adding Section 11-A, Municipal voter qualifications, as follows:

Section 11. State election laws applicable.

The laws of the state in Title 21-A of the Revised Statutes relating to the qualifications of electors, registration, the manner of voting, the duties of election officials, and all other particulars in respect to preparation for conducting and managing elections, so far as they may be applicable, shall govern all municipal elections in the City of Portland, except as provided below regarding 42-day pre-election reports, municipal voter qualifications under Section 11-A, and as otherwise provided herein.

In addition to the reports required for municipal candidates by Title 21-A of the Maine Revised Statutes, 42-day pre-election reports must be filed by municipal candidates no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Nothing in this charter shall prohibit the use of electronic or revised voting methods and procedures to the extent authorized by state and/or federal law. (Referenda 11/4/08; 11/6/2018)

Section 11-A. Municipal voter qualifications.

The right of all persons, regardless of United States citizenship status, who are of legal voting age, as determined under 21-A M.R.S. § 111(2), and are residents of Portland, as determined under 21-A M.R.S. § 112, to vote in municipal elections and on municipal initiatives is established. Hereinafter, "municipal voter" shall refer to any person who, on the date of the election, (1) is a resident of Portland; (2) is of legal voting age; (3) meets all qualifications for registering or pre-registering to vote under 21-A M.R.S. § 111, except for possessing United States citizenship; (4) and has registered to vote in municipal elections in Portland under this Section.

To ensure and protect the right of municipal voters to vote in municipal elections and on municipal initiatives, the city council shall by ordinance implement a municipal voter protocol that must comply with the following:

(a) Registration forms.

- i. Registration forms for municipal voters shall be distinct from registration forms for state and federal elections and shall state that municipal voters will be registered for municipal elections only and are not qualified to vote in state or federal elections;
- ii. Registration forms for municipal voters shall not include questions regarding immigration or citizenship status and no inquiry shall be made as to the immigration status of a potential municipal voter or municipal voter;
- iii. Registration forms for municipal voters shall be translated in a manner consistent with translations of the statewide registration forms;
- iv. Registration forms for municipal voters shall include the following notice: "IMPORTANT NOTICE FOR NON-UNITED STATES CITIZENS. Any information you provide on this municipal voter registration form, including your name and address, may be obtained by Immigration and Customs Enforcement (ICE) and other agencies, organizations, and individuals. Additionally, if you apply for naturalization, you will be asked whether you have ever registered or voted in a federal, state, or local election in the United States and, if you have, you will have to provide an explanation. It is advisable that you consult with an immigration attorney or an organization that protects immigrant rights before providing any information on this form and before registering as a municipal voter. You can find information on how to contact local immigration attorneys and organizations that protect immigrant rights at portlandmaine.gov."

- (b) Public education regarding municipal registration and voting. Public education efforts shall be undertaken in multiple languages to advise Portland residents about municipal voter registration and the risks involved in participating in municipal elections as a municipal voter. Portland residents shall have access to written information regarding registering as municipal voters. Such information shall be translated into all of the languages listed on the Portland

Public Schools list of home languages, updated annually, and shall be made available in multiple formats, including without limitation, on a dedicated page on the City of Portland's website and in printed form at the city clerk's office. At a minimum, the following information must be included:

- i. Municipal voters are eligible to vote in municipal elections only, and are not eligible to vote in state or federal elections;
 - ii. Under federal immigration law, there are severe consequences for persons who are not United States citizens and who vote in state and/or federal elections. These consequences include denial of permanent residency or naturalization to U.S. citizenship, inadmissibility, and deportation;
 - iii. Upon request by the registered municipal voter or formerly-registered municipal voter, the City will provide such individual with a written confirmation of the dates during which the individual was registered as a municipal voter and an explanation of the municipal voter's rights and privileges afforded under this Section;
 - iv. Before registering as a municipal voter, it is advisable to consult with an immigration lawyer or an organization that protects the rights of immigrants;
 - v. Information regarding how to find immigration attorneys and organizations that protect the rights of immigrants;
 - vi. The City cannot guarantee that municipal voter registration rolls will not become public or be accessed by federal immigration officials or other agencies or individuals.
- (c) Municipal voters shall be identified on the City's voter registration rolls, however lists of municipal voters shall not be published, distributed, or otherwise provided to the public or any governmental agency separately from a complete voter registration list of all voters qualified to vote in a municipal election in Portland;
- (d) Procedures shall be established to safeguard against municipal voters receiving state and federal ballots, including the production of separate ballots, clearly marked as "Municipal Ballot", to be distributed to municipal voters whenever a municipal election occurs

on the same date and in the same district as an election in which a municipal voter is not eligible to vote;

- (e) Training shall be provided to election officials regarding, at a minimum, municipal voter registration, qualifications, and eligibility to vote in municipal elections only;
- (f) Upon request by the registered municipal voter or formerly-registered municipal voter, the City will provide such individual with a written confirmation of the dates during which the individual was registered as a municipal voter and an explanation of the municipal voter's rights and privileges afforded under this Section;
- (g) Procedures shall be established to facilitate meaningful review at pre-determined intervals by local advocacy groups, community associations, and immigration attorneys to determine whether the City needs to revise the municipal voter protocols;
- (h) The City shall maintain on its website contact information of local immigration attorneys and organizations that protect immigrant rights that are able to provide potential municipal voters with information regarding their rights and the consequences of registering to vote and voting as a municipal voter under this Section; and
- (i) Procedures shall be established to allow municipal voters to cancel their municipal voter registration, to change their address, and, whenever applicable, to change their municipal voter registration to reflect United States citizenship status and entitlement to vote in municipal, state, and federal elections.

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MEMORANDUM

TO: Portland Charter Commission
FROM: Jim Katsiaficas, Emily Arvizu
DATE: April 22, 2022
RE: Universal Resident Voting

In a previous memorandum dated November 12, 2021, we detailed the legality under Maine’s Constitution and the Maine Revised Statutes of a municipality adopting a charter provision that provides for universal resident voting in municipal elections. This memorandum approaches the legal issues of implementing such a provision with an eye toward consequences for municipal voters.¹

Background on Immigration Law regarding Voting

Before addressing potential consequences, we will provide some context regarding immigration law. The Immigration and Nationality Act (the “INA”) governs United States immigration law and under the INA, “[a]ny alien² who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.”³ The consequences of inadmissibility are far-reaching. An individual deemed inadmissible is not permitted to enter or remain in the United States and therefore may be subject to removal proceedings and ultimately deported. Additionally, an individual deemed inadmissible would be ineligible for permanent residence and citizenship.

A finding of inadmissibility often arises in the context of applying for an immigration benefit, such as citizenship. The Application for Naturalization, Form N-400, includes the questions “Have you **EVER** registered to vote in any Federal, state, or local election in the United

¹ Note that we use the term “municipal voter” as it has been defined under the Universal Resident Voting proposal: “[M]unicipal voter’ shall refer to any person who, on the date of the election, (1) is a resident of Portland; (2) is of legal voting age; (3) meets all qualifications for registering or pre-registering to vote under 21-A M.R.S. § 111, except for possessing United States citizenship; (4) and has registered to vote in municipal elections in Portland under this Section.”

² We will refer to any person who resides in the United States but is not a United States citizen as a “noncitizen”. The term “noncitizen” refers to persons of varying status in the United States, including without limitation, asylees, refugees, permanent residents, and undocumented individuals. We recognize the stigmatization of immigrants that accompanies use of the term “alien” and use it only when directly quoting the INA.

³ 8 U.S.C.A. § 1182(a)(10)(D)(i).

States?” and “Have you **EVER** voted in any Federal, state, or local election in the United States?”. If an applicant responds yes, the applicant will need to provide an explanation.⁴

Bearing this context in mind, there are two primary concerns: (1) the potential for invalidation of the Universal Resident Voting Charter provision after municipal voters have already registered and/or voted in a municipal election; and (2) the potential for municipal voters inadvertently registering and/or voting in a state and/or federal election.

Risk to Noncitizen Municipal Voters Following Invalidation of the Charter Provision

The first concern relates to issues we have highlighted in our previous memorandum. The issue of whether a municipality has home rule authority to amend or revise its charter to permit universal resident voting by noncitizens in municipal elections remains unresolved. In 2021, the Office of the Maine Attorney General and the Maine Municipal Association expressed their position that a bill proposing a constitutional amendment to limit the right to vote in municipal elections to U.S. citizens was unnecessary because State law already limited voting in municipal elections to citizens. Without clear authority on the constitutionality of a universal resident voting charter provision, the provision could face legal challenge and it is impossible to state definitively how Maine courts would rule.

Should the provision be challenged and ultimately found invalid under State law, there could be unintended consequences for noncitizens who registered and/or voted in a municipal election prior to its challenge. As stated above, noncitizens are deemed inadmissible if they have voted in any election in violation of any state constitution or statute. A noncitizen could make the argument that, at the time of the election, the noncitizen was authorized to vote pursuant to the Charter provision, but this presupposes that the noncitizen understands the question on the citizenship application form and can articulate the argument for why he or she voted. To successfully argue this point, a noncitizen would likely need the assistance of an immigration attorney⁵ and the need for immigration attorneys in Portland currently far exceeds their availability.

The resulting risks of the Charter provision being invalidated are not limited to just the invalidation of the election results and the administrative difficulties that follow for the municipality; the risks extend to the noncitizen voters themselves and could create nuanced issues that require skilled immigration legal assistance.

Necessary Safeguards to Ensure Noncitizens Do Not Vote in State or Federal Elections

Assuming the Charter provision is valid under State law and the State Constitution, the second concern is ensuring that noncitizen municipal voters do not vote in state or federal elections. With this concern in mind, we have drafted the proposal to include a number of safeguards that

⁴ For this reason, we have drafted a provision requiring that, upon request by the noncitizen voter, the City provide the voter with written confirmation of the dates during which the voter was registered as a municipal voter and an explanation of the municipal voter’s rights and privileges under the Charter provision.

⁵ It should be noted that in the context of removal proceedings, a noncitizen does not have any constitutional right to an attorney and the majority of noncitizens proceed without representation.

must be developed and implemented by ordinance. These safeguards include: (1) public education to inform the public of the right to vote in municipal elections and the risks of doing so; (2) the creation of municipal voter registration forms that are distinct from state and federal voter registrations and that include a notice to noncitizen voters; (3) the creation of separate municipal ballots whenever a municipal election occurs on the same day as a state or federal election; (4) training for election officials to ensure they are aware of municipal voter rights and noncitizen ineligibility to vote in state and federal elections; and (5) periodic review of municipal voter protocols to determine if revisions are needed.

Other Considerations

These concerns must also be balanced against the overarching concern of information regarding immigration or citizenship status becoming available to the public and/or Immigration and Customs Enforcement (ICE) or other federal immigration agencies. To mitigate these risks, we have drafted into the proposal limitations on collecting information regarding immigration or citizenship status. This is for two reasons. First, the proposal specifically does not limit the right to vote in municipal elections to those of certain immigration statuses and therefore the collection of such information is unnecessary. There is no need for election officials or municipal voters themselves to determine or verify immigration status, a task that can prove difficult even for skilled immigration attorneys. Second, by limiting the collection of information on voters' immigration status, there is less risk that such information would become available to the public or ICE. That being said, municipal voters must be notified that the City cannot guarantee that information will not become public or accessible by federal immigration officials.

Conclusion

The field of immigration law is incredibly complex and nuanced and requires careful attention to detail. A singular misstep can result in deportation. With this in mind, we have drafted the proposal with input from Beth Stickney, Esq. co-founder of the Immigrant Legal Advocacy Project and currently an immigration law and policy consultant, but the Commission may wish to also seek further input from other local immigration attorneys and organizations that protect immigrant rights.