



City of Portland Charter Commission Agenda

Charter Commission Meeting May 11, 2022 at 6:00 PM

Due to the existence of an "emergency or urgent issue", the Charter Commission & its Committees will conduct meetings by remote methods/technology at the Zoom link provided below, in accordance with the requirements of 1 M.R.S. section 403 -B and the Charter Commission Remote Participation Policy.

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For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

1. Zoom Information

- a. This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Charter Commission and as authorized under 1 M.R.S. 403-B because of the existence of an emergency or urgent issue that requires the committee to meet by remote methods. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available following the meeting.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please use *9. You will be unmuted by the host when it is time for public comment.

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2. Call to Order
3. Review and Approval of Minutes
 - a. Approval of the draft April 27, 2022 Charter Commission Meeting Minutes.
4. Discussion about Schedule and Process to Complete Commission Work
 - a. Description: Commissioners will deliberate on the schedule and process for actions prior to filing the Final Report on or by July 11, 2022. Example actions include the following:
 - a. Public hearings on the report;
 - b. Changes to the proposal texts (corrections, changes, and refinements);
 - c. Grouping of proposals into Charter revision ballot questions;
 - d. Preparation of summaries for Charter revision ballot questions that are too large to be placed verbatim on the ballot; and
 - e. Preparation of the Final Report for filing with the Council on or by July 11, 2022.Relevant documnt(s);
 - a. None identified
5. Discussion of Grouping and Order of Ballot Questions
 - a. Description: Commissioners will deliberate on the grouping and order of the proposals into Charter revision ballot questions.
Relevant document(s):
 - a. Preliminary Report
6. New Business
7. Adjourn

City of Portland Charter Commission Meeting Minutes

April 27, 2022

1. **Call to Order.** Chair Kebede called the meeting to order at 6:13 p.m.

Present were: Chair Kebede; Commissioners Barowitz, Buxton, Chann, Eglinton (joined 6:30), Houston, Lizanecz, O'Brien, Sheikh-Yousef, Stewart-Bouley, Washburn (joined 6:57), Waxman.

2. **Review and Approval of Minutes.** On motion by Commissioner Lizanecz, seconded by Commissioner Sheikh-Yousef, the Commission voted to approve the draft meeting minutes of April 20, 2022 by unanimous roll call vote of 10 to 0 (Eglinton, Washburn absent).

3. **Ratification of Final Language for School Budget Process from Education Committee**

Description: Commissioners will deliberate and vote to approval final language for this proposal.

Relevant document(s):

- a. Proposal for school budget process

Commissioner O'Brien expressed his concerns that this is likely to lead to a costly lawsuit and that there are other ways to address this, such as clarifying or amending State law.

On Motion of Commissioner Houston, seconded by Commissioner Lizanecz, the Commission voted by roll call vote of 8 (Kebede; Barowitz, Buxton, Chann, Houston, Lizanecz, Sheikh-Yousef, Stewart-Bouley) to 2 (O'Brien, Waxman) (Eglinton, Washburn absent) to ratify the final language to include in the Preliminary Report.

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

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 Houston, seconded by Commissioner Lizanecz, the Commission voted by roll call vote 10 to 0 (Eglinton, Washburn absent to ratify the final language to include in the Preliminary Report.

5. Deliberation and Vote on final language for Mayor’s Economic Development Leadership Amendment

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

Commissioner O’Brien presented the proposal to allow mayor to work with City staff on large economic development proposals.

Commissioner Buxton asked if public comment was needed before final ratification of this language. Chair Kebede regarded this as an amendment to the Governance Model.

Commissioner Chann thought the proposal was too specific - why not include other tasks the mayor can do? Commissioner Waxman stated she won’t be supporting it because this power already exists. Chair Kebede was comforted by statement of this authority of mayor.

On Motion of Commissioner Barowitz, seconded by Commissioner O’Brien, the Commission voted by roll call vote 7 (Houston, O’Brien, Barowitz, Lizanecz, Buxton, Sheikh-Yousef, Kebede) to 4 (Chann, Waxman, Eglinton, Stewart-Bouley) (Washburn absent) to include the language in the Preliminary Report as an amendment to the Governance proposal.

6. Ratification of Final Language for Governance Model

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

Main Motion. Commissioner Houston made a motion, seconded by Commissioner Sheikh-Yousef, to approve the Governance Model proposal language to and include it in the Preliminary Report.

Amendment. Commissioner Lizanecz moved to amend the motion to add language with regard to the mayor’s powers, seconded by Commissioner O’Brien. The proposed language read:

The mayor shall not interfere with the daily operations of the City.

The mayor shall not independently direct department heads, the COO, or their subordinates.

Commissioner Buxton was concerned about the breadth of this language; Commissioner Barowitz shared this concern. Chair Kebede understand wanting to avoid a meddlesome mayor, but worry about language, and suggested adding “unless authorized to do so by City Council.”

Commissioner Lizanecz was concerned about this potential Council loophole. He also suggested adoption of this language as a concept to be mentioned in Preliminary Report and anchored later.

On a roll call vote of the Commission, the amendment failed by vote of 4 in favor (O'Brien, Houston, Lizanecz, Kebede) and 7 opposed (Barowitz, Waxman, Sheikh-Yousef, Washburn, Stewart-Bouley, Buxton, Eglinton) with one abstention (Chann).

Amendment. Commissioner Buxton proposed an amendment for the City Council to elect a council president and vice-president to serve with mayor as Executive Committee, seconded by Commissioner Washburn.

Attorney Katsiaficas made a note to fix language in Section (e) that the Commission previously had agreed to – the mayor's duties include to set agendas and preside over council meetings, but not to be a member of the Council.

Commissioner Barowitz noted that Jeff Levine thought it a poor idea to blend the executive mayor and City Council. Commissioner O'Brien observed that he didn't want a council president at loggerheads with mayor, and so couldn't favor this amendment. Chair Kebede favored a clear separation of powers. Commissioner O'Brien noted that the mayor's role under the proposal is not to seek a result but to run a process – that he doesn't want to create a second position of power in City government.

On a roll call vote of the Commission, the amendment failed by vote of 6 in favor (Buxton, Barowitz, Houston, Washburn, Kebede, Sheikh-Yousef) and 6 opposed (O'Brien, Lizanecz, Chann, Waxman, Stewart-Bouley, Eglinton)

Amendment. Commissioner O'Brien moved to amend the Mayor, Article I, Section 2 language to make the division of mayor/council authority less divisive than it appear to be in the Westbrook charter language that was used as a model, seconded by Commissioner Lizanecz.

Chair Kebede agreed the amendment is better language because the Westbrook mayor has hiring/firing authority, and the Portland mayor would not. Commissioner Barowitz asked to change "supervision" to "oversight" as a friendly amendment, which was accepted.

On a roll call vote of the Commission, the amendment passed by vote of 8 in favor (Barowitz, Lizanecz, Buxton, Houston, Sheikh-Yousef, O'Brien, Washburn, Kebede) and 4 opposed (Chann, Waxman, Stewart-Bouley, Eglinton)

Amendment. Commissioner Chann moved to amend the proposal amendment to among other matters: remove executive/legislative" language in Article I, Section 2; move mayor back to Council as Chair; restore City Manager; Mayor to work with City Manager on budget and CIP; . remove executive committee since mayor would be on Council; clarify Council-staff communications; and place department heads back under City Manager subject to Council confirmation, seconded by Commissioner O'Brien. Commissioner shared his written draft amendment by email.

Commissioner Washburn asked why this was necessary. Commissioner Chann responded that this amendment would assure more than six people would support the Governance proposal, which would give mayor more authority and would break down firewalls and is in keeping with existing charter language.

Commissioner O'Brien stated this was the first time he'd seen the amendment and that he was inclined to support it. He said it was consistent with guidelines of the governance committee proposal – that Commissioner Chann had pulled much of this from the s from governance committee.

Commissioner Buxton noted the desire to have a mayor run on a policy agenda, but the mayor's policy options are limited in and left to the Council as reflected in sections (3)(a) and (b) and (f) also remains – implementation of city policies.

Commissioner Sheikh-Yousef asked why the amendment eliminated the executive committee. Commissioner Chann responded that the mayor would be the parliamentarian – the executive committee is not needed if don't have to keep mayor or council in loop through executive committee. Mayor would be in addition to the 9 to 12 Councilors. Commissioner Lizanecz thought this was something City can get behind – it moves the needle.

Commissioner Buxton stated she won't support this and had discomfort with this as a different proposal that doesn't fit with the Governance Proposal before them that it was a new proposal offered as an amendment to the proposal. Chair Kebede thought a wholesale change could be offered this way. Commissioner Barowitz had the same concerns as Commissioner Buxton -- This is a complex amendment that reverting to current system with a few minor enhancements to mayor's role.

On a roll call vote of the Commission, the amendment failed by vote of 6 in favor (O'Brien, Stewart-Bouley, Waxman, Chann, Lizanecz, Eglinton) and 6 opposed (Houston, Barowitz, Buxton, Washburn, Kebede, Sheikh-Yousef).

Motion to table was made by Commissioner O'Brien, seconded by Commissioner Lizanecz; motion retracted. Commissioner Lizanecz asked if further possible changes could be brought forward during May and June Commission meetings, and this was agreed to – proposed changes could be made by amendments.

Main motion. On a roll call vote of the Commission, the main motion to include this Governance Model proposal in the Preliminary Report and to ratify the final language to include in the Preliminary Report passed by vote of 8 in favor (to include this governance proposal in Preliminary Report in favor of ratification of the final language to include in the Preliminary Report.) and 4 opposed (Chann, Waxman, Stewart-Bouley, Eglinton).

7. Ratification of Final Language for Peaks Island Council Proposal

Description: Commissioners will deliberate and vote to approve final language for this proposal.

Relevant document(s):

- a. Final language for Peaks Island Council proposal

Commissioner Stewart-Bouley noted that while she is an Island resident, she was not a part of this proposal nor was she approached on it, but that she supports it.

On Motion of Commissioner Washburn, seconded by Commissioner O'Brien, the Commission voted by unanimous roll call vote 12 to 0 to ratify the final language to include in the Preliminary Report.

8. Ratification of Final Language for Clean Elections Proposal

Description: Commissioners will deliberate and vote to approve final language for this proposal.

Relevant document(s):

- a. Final language for Clean Elections proposal
- b. Perkins Thompson memorandum

Attorney Katsiaficas provided explanation of language and question of whether necessary to include Section 13 since it duplicates State law provisions that apply to Portland municipal elections.

Commissioner Buxton stated that although the Section 13 language duplicates State law, it is important to have it in the Charter in case State law is changed or overturned.

On Motion of Commissioner Washburn, seconded by Commissioner Waxman, the Commission voted by unanimous roll call vote 11 to 0 (Eglinton absent) to ratify the final language to include in the Preliminary Report

9. Ratification of Final Language for Redistricting Proposal

Description: Commissioners will deliberate and vote to approve final language for this proposal.

Relevant document(s):

- a. Final language for Redistricting Proposal

Motion by Commissioner O'Brien, seconded by Commissioner Barowitz, to ratify the final language to include in the Preliminary Report.

Commissioner Houston asked whether there should be 12 councilors, or 13 to avoid ties.

Commissioner Sheikh-Yousef moved to amend to enlarge the number of districts for City Council from 9 to 12, seconded by Washburn; after discussion, motion to amend was withdrawn.

Commissioner O'Brien moved to amend the motion to provide one School Board member from each district and no at-large seats, for a total of 9 seats. Commissioner Buxton seconded the motion, observing that the School Board feels it would be unwieldy at 12 seats. Amendment passed by vote of 9 to 2 (Waxman, Stewart-Bouley; Eglinton absent)

Motion to amend by Commissioner O'Brien so that expanded council votes by majority of councilors present and voting so long as a quorum (7) is present, seconded by Commissioner Buxton. Motion approved by a vote of 10 to 1 (Washburn; Eglinton absent)

Main motion as amended passes by vote of 10 to 1 (Waxman; Eglinton absent).

10. Ratification of final language for Ethics Proposals

Description: Commissioners will deliberate and vote to approve final language for this proposal.

Relevant document(s):

- a. Final language for Ethics Commission/Code of Ethics Proposals
- b. Ethics Commission Introduction and Summary

Commissioner Barowitz moved to ratify the final language to include in the Preliminary Report, seconded by Commissioner Washburn.

Commissioner Barowitz offered a friendly amendment to his own motion to replace “and” with “or” in place of “and” in the sixth line of (c).

The motion passed by unanimous roll call vote of the Commission, 11 to 0 (Eglinton absent).

11. Ratification of final language for Proportional Ranked Choice Voting Proposal

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

Commissioner Chann noted that the language was obtained from the ranked choice voting (RCV) expert. It allows for proportional RCV in a multi-seat municipal election instead of using multipass RCV to fill each seat individually, with its 50% requirement.

Commissioner Washburn moved to approve with a change from “shall” to “may” in the second line, seconded by Commissioner Buxton.

Commissioner Barowitz offered a friendly amendment to delete second sentence from the proposal. amendment. Commissioner O'Brien was opposed to this, believing the election rules should be solidified and can be changed by referendum; Commissioner Chann agreed that the choice of vote counting method shouldn't be at discretion of Clerk and Council.

The amendment failed by roll call vote of 5 in favor (Barowitz, Washburn, Lizanecz, Sheikh-Yousef, Kebede) and 6 against (O'Brien, Chann, Waxman, Buxton, Houston, Stewart-Bouley) (Eglinton absent).

On the motion, the Commission voted by roll call vote of 9 in favor (O'Brien, Chann, Waxman, Washburn, Lizanecz, Buxton, Houston, Stewart-Bouley, Kebede) and 2 against (Barowitz; Sheikh-Yousef) (Eglinton absent) to ratify the final language to include in the Preliminary Report.

12. Ratification of final language for Universal Resident Voting Proposal

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

Commissioner O'Brien stated that he supports this proposal deeply as a matter of justice, but that he is not willing to put these people at risk given the legal uncertainty of this proposal. Chair Kebede responded that there will be time for a legal opinion May/June, and in the meantime, he supported including this proposal in the Preliminary Report.

On Motion of Commissioner Washburn, seconded by Commissioner Lizanecz, the Commission voted by roll call vote of 8 in favor (Chann, Barowitz, Washburn, Lizanecz, Sheikh-Yousef, Kebede, Buxton, Houston) to 3 against (O'Brien, Waxman, Stewart-Bouley) (Eglinton absent) to ratify the final language to include in the Preliminary Report.

13. Ratification of final language for Vacancies Proposal

Description: Commissioners will deliberate and vote to approve final language for this proposal.

Relevant document(s):

- a. Final language for Vacancies Proposal

On Motion of Commissioner Chann, seconded by Commissioner Waxman, the Commission voted unanimously by roll call vote 11 to 0 (Eglinton absent) to ratify the final language to include in the Preliminary Report.

14. New Business

a. Reconsideration. Commissioner Lizanecz moved for reconsideration of Governance Proposal vote, seconded by Chann; Commission voted by roll call vote of 7 in favor (O'Brien, Chann, Lizanecz, Waxman, Stewart-Bouley, Sheikh-Yousef, Buxton) and 4 against (Barowitz, Washburn, Houston, Kebede) (Eglinton absent) to reconsider the Governance Proposal vote. e

Discussion on how to proceed followed, with some Commissioners considering a tabling motion to a Wednesday May 4 meeting for preparation and circulation of amendments, and others not aware this was part of the motion to reconsider.

On motion by Commissioner Washburn, seconded by Commissioner Sheikh-Yousef, to reconsider the reconsideration motion vote, the Commission by roll call vote voted unanimously (11-0; Eglinton absent) to reconsider the reconsideration motion vote.

b. Preliminary Report. Additional discussion followed regarding whether to direct Attorney Katsiaficas to compile the ratified final language for all proposals and the Committee summaries into the Preliminary Report and to submit that Preliminary Report to the City Council for May 9. Executive Committee members would individually review the draft and send any revisions and sign off on the draft to Attorney Katsiaficas, who then would send the draft to Commission members for their individual review and sign off by the end of day Thursday, May 5, so that the Preliminary Report can be submitted Friday, May 6. Consensus of Commissioners was to adopt this approach.

c. Cancel May 4, 2022 meeting. Commissioners discussed how the May 4 meeting would be conducted since Chair Kebede would be away, Commissioner Eglinton would be late to the meeting, and Commissioner Stewart-Bouley could start the meeting, but would have to leave early. On motion by Commissioner Washburn, seconded by Commissioner Lizanecz, the Commission by roll call vote voted unanimously (11-0; Eglinton absent) in light of the approach agreed to in b. above to cancel the May 4, 2022 meeting.

15. Adjourn

On motion of Commissioner Washburn, seconded, the Commission voted unanimously (11-0; Eglinton absent) to adjourn at 10:40 p.m.

Portland Charter Commission

Preliminary Report

Michael Kebede, Chair (Appointed by Council)

Shay Stewart Bouley, Vice-Chair (District 1)

Peter Eglinton, Secretary (Appointed by Council)

Dory Waxman (Appointed by Council)

Robert O'Brien (District 2)

Zack Barowitz (District 3)

Marcques Houston (District 4)

Ryan Lizanecz (District 5)

Catherine Buxton (At-Large)

Marpheen Chann (At-Large)

Nasreen Sheikh Yousef (At-Large)

Pat Washburn (At-Large)

**Submitted to the Portland City Council
May 9, 2022**

FOREWORD

The attached report is the Portland Charter Commission Preliminary Report. The Commission's Final Report is due on July 11, 2022. Prior to that Final Report, the Commission seeks public input and comment on its recommendations for changes to the Portland City Charter.

The Commission's planned meeting schedule is as follows:

- Wednesday, May 11, 2022, 6 p.m.;
- Wednesday, May 25, 2022, 6 p.m. (including Public Hearing on Preliminary Report);
- Wednesday, June 8, 2022, 6 p.m.; and
- Wednesday, June 22, 2022, 6 p.m. (including Public Hearing on Draft Final Report).

In view of the continuing public health emergency due to the COVID-19 pandemic and the unpredictability of infection rates and variants, the Commission will conduct these meetings by Zoom under its Remote Participation Policy adopted in accordance with State law.

Any schedule changes, copies of this Preliminary Report, commission meeting minutes, agendas and background materials, as well as a list of the Commissioners and the ability to e-mail them, may be found at: <http://www.ci.portland.me.us/2665/Charter-Commission-2020-2022>

Hard copies of this report are in the Portland Public Library and Room 211 of Portland City Hall. You may also contact charter@portlandmaine.gov with your comments or concerns or send them to City of Portland, Room 211, Portland City Hall, 389 Congress Street, Portland, ME 04101.

Portland Charter Commission Preliminary Report

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I. REPORT TO THE CITY COUNCIL

The Portland Charter Commission submits its Preliminary Report to the Portland City Council. The Report includes a Background section on the Charter Commission’s creation and process. Section II discusses the Commission’s Recommendations for Charter changes, arranged by Committee. Section III contains the text of each proposed revision.

This Preliminary Report as well as all of the agendas and minutes of the Commission meetings are available on the Charter Commission’s section of the City’s website at www.ci.portland.me.us/2665/charter-commission-2020-2022. Videos of most of the Commission and its Committees meetings may be accessed on the webpage by clicking on “Live Stream City Hall Meetings.”

BACKGROUND

On October 21, 2019, following lengthy discussion on the matter of whether to send a proposed clean elections fund measure to Portland voters as a Charter amendment or through a vote on establishing a Charter commission to consider the subject as a Charter revision, the City Council voted to send the question of whether to establish a charter commission to the voters. On June 8, 2020, Portland voters approved establishing a Charter Commission. On August 10, 2020, the Council appointed three Commissioners and the voters elected nine more Commissioners on June 8, 2021. The discussions and public debates during the election periods covered a large range of subjects, including changes to the elected mayor’s powers, the relationship between the School Board and the city, Ranked Choice Voting improvements, the possibility of permitting non-citizen residents to vote in local elections, and various changes to the number and size of City Council districts and how councilors are elected.

Charter Commission Members

Michael Kebede (appointed by Council) (Chair)

Peter Eglinton (appointed by Council) (Secretary)

Dory Waxman (appointed by Council)

Shay Stewart Bouley (District 1) (Vice-Chair)

Robert O'Brien (District 2)

Zack Barowitz (District 3)

Marcques Houston (District 4)

Ryan Lizanecz (District 5)

Portland Charter Commission – Preliminary Report

Catherine Buxton (At-Large)

Marpheen Chann (At-Large)

Nasreen Sheikh Yousef (At-Large)

Pat Washburn (At-Large)

The Charter Commission held its first organizational meeting on June 28, 2021, and its first Public Hearing on July 28, 2021. Over the summer of 2021, meetings focused on: the range of issues for the Commission to consider, the process for moving forward on those issues, staffing and budget considerations for the Commission, and ways to engage the public in the process.

In late summer, 2021, the Commission formed five committees and developed a Community Agreement to govern the conduct of Commissioners and the public, and began work on many of the 26 subject areas listed by the Commission after the public hearing. Those Committees and their members are as follows:

Committee	Members	Chair
Departments	Houston, Lizanecz, Barowitz	Lizanecz
Education	Houston, Eglinton, Chann	Houston
Elections	Buxton, Chann, Washburn	Chann
Governance	Sheikh-Yousef, Lizanecz, O'Brien, Stewart-Bouley	O'Brien
Procedures	Barowitz, Waxman, Kebede, Washburn	Washburn

This Preliminary Report represents and collects the extensive work by the members of the Charter Commission. Through Commission and Committee meetings combined, they have met dozens of times since June 2021.

In its work, the Commission has followed the timeline that appears on the next page:

Portland Charter Commission Timeline

July-Aug 2020	June 8, 2021	June 28, 2021	July 28, 2021	2021-2022	May 9, 2022	July 11, 2022	August 10, 2022	Nov. 8, 2022
Election to create Commission; Appointments of Appointed Members	Election of Voter Members	Organizational Meeting (at least 7 days' notice)	Public Hearing (within 30 days of Organizational Meeting and at least 10 days' notice)	Meetings; Hearings	Preliminary Report printed and circulated (9 months after election)	Final Report submitted to City Council (12 months after election)	Commission Terminates 30 days after submitting Accounting	Election on Charter Commission's Proposed Final Report; Revision

Revised 4-8-2022

II. COMMISSION'S PROPOSED CHARTER REVISIONS

After extensive research, discussion and development of proposals in Committee meetings; after presentation, public comment, deliberation, and vote in Charter Commission meetings; and after public hearing and public comments, the Charter Commission recommends the following revisions to the City of Portland Charter.

These recommendations are organized in the pages that follow by the Committee in which they originated, and provide a summary explaining the process and content for each proposal and the actual Charter revision language for each proposal.

Section 1 Charter Commission Recommendations

A. Departments Committee

1. Citizen Police Oversight Board

Summary

CIVILIAN POLICE REVIEW BOARD PROPOSAL SUMMARY

Introduction

One overarching goal of the Charter Commission is to increase accountability and public trust in our City government. The Departments Committee has given special attention to the Police Department due to the fact that because mortal danger is inherent to police work, police reform has become one of the most pressing issues of our times.

However, the Committee did not think that the charter is the appropriate forum to examine the intricacies of police procedures or the police budget. Instead, the focus was on improving the system of civilian oversight, specifically the practice of evaluating complaints brought against the police.

Portland's current oversight system is the Police Citizen's Review Subcommittee (PCRS) which is an appointed volunteer board that reviews completed investigation of complaints against the police as to whether the process met the standards of being "fair, objective, timely, and thorough" for which the PCRS submits an annual report to the City Manager.

Because policing is a core function of municipal government, the Committee recommends that citizen oversight should be in the Charter to elevate the status of the existing boarding order to mitigate the potential for harm and to build broader public trust between civilians and police.

To these ends, the Committee looked at various models and hybrid models, including:

- The early oversight (1920s-1960s) took the form of volunteer **civilian review boards** wherein investigations conducted by police command/Internal Affairs are reviewed for being thorough, timely, objective and fair. This is the least active form of oversight and is the model that we currently use as with the PCRS.
- In the 1970s-1980s some cities initiated **investigative** offices of trained staffers to investigate misconduct. This is a far more active, and far more expensive, form of oversight than review boards.
- Beginning in the 1990s municipalities began to employ a professional **auditor** to get a big picture assessment by reviewing cases, looking for patterns, and making recommendations accordingly.
- Newer theories are focusing on gaining a degree of civilian control of policies and procedures.

Despite advances in the field, the rule of thumb of civilian oversight is not “best practice” but best *fit*. Given that Portland has both an excellent Police Department and a low crime rate, the committee did not feel that chartering a professional investigative or auditing office was either operationally or fiscally necessary; and that such action is best left to the City Council or another office. Rather, the Committee recommends retaining the current review board system with several enhancements to strengthen community involvement and oversight capabilities.

Specifically:

- The board shall deliver its reports and recommendations to the City Council.
- Removing eligibility restrictions for board membership.
- Allowing complaints to be brought directly to the board and for the board to render advisory opinions on citizen appeals.
- Retention of the “police liaison.”
- Hiring of a “community liaison” who shall assist the board in conducting outreach and other duties as the board may assign. The City Council shall decide whether the community liaison and police liaison positions are part-time or full-time and/or whether the duties of these positions may be assigned to existing employees and/or the Accountability Officer.

Methodology

The Departments Committee consulted with a diverse range of experts, readings, and community members for their input on this topic. They are as follows.

October 4th, 2021:

1. Maria Testa: (Former Member of the Portland Police Citizen Review Subcommittee)
2. Dr. Brendan McQuade: (Professor of Criminology at University of Southern Maine)
3. Cameron McElhiney: (Director of Training and Education at National Association Civilian Oversight of Law Enforcement)

October 25th, 2021:

1. Dr. Lelia DeAndrade: (Former Member of Portland’s Racial Equity Steering Committee)
2. Emily West: (Current Chair of the PCRS)
3. Ali Ali: (Former Member of Portland’s Racial Equity Steering Committee & Currently with Maine Youth Justice)

November 1st, 2021:

1. Discussion with Commission Attorney Katsiaficas

November 15th, 2021:

1. Workshop on Police Oversight Board language

December 6th, 2021:

1. Workshop on Police Oversight Board language
2. Unanimous vote for passage out of Committee

Documents & Research Consulted

Portland Charter Commission – Preliminary Report

- PCRS meeting minutes, videos and documents
- National Association for Civilian Oversight of Law Enforcement documents
 - “Guidebook for the Implementation of New or Revitalized Police Oversight”
 - “A Review of the Strengths and Weaknesses of Various Models of Police Oversight”
 - “Civilian Oversight of Law Enforcement: Assessing the Evidence”
 - “Civilian Review of Police: Approaches & Implementation” by Peter Finn; US Department of Justice, Office of Justice Programs, National Institute of Justice 2001
- Portland’s Racial Equity Steering Committee Final Report
- Memo from Commission Attorney Katsiaficas
- Memo and feedback from Portland Police Chief Heath Gorham

Text

Amend the current CHARTER by adding the following new ARTICLE IX, CIVILIAN POLICE REVIEW BOARD, as follows:

Article IX: CIVILIAN POLICE REVIEW BOARD

Section 1. Purposes, composition, term, appointment, first board, qualifications, vacancies, removal, compensation.

(a) **Purposes.** For the purposes of increasing public trust and confidence in the Portland Police Department; discouraging police misconduct; helping police officers to feel vindicated in the eyes of their fellow officers and of the public; reassuring the public that complaints are investigated thoroughly and fairly; helping the public to understand the nature of police work; providing oversight of Internal Affairs; defusing public hostility toward police officers; reducing the likelihood of lawsuits against the City; and improving police practices and procedures in interactions with the public, there shall be a civilian police review board.

(b) **Composition, term, appointment, first board.** The civilian police review board shall be composed of nine (9) or more members who shall hold office, except as hereinafter provided, for a term of three (3) years unless appointed to fill a vacancy, and until their successors are appointed and qualified, but in no case longer than 120 days after expiration of their term. A minimum of five (5) voting members shall be appointed by the city council, one (1) voting member shall be appointed by the mayor and three (3) non-voting members shall be appointed by the city council. A majority of the total number of voting members appointed shall constitute a quorum of the board and the board shall act by a majority of voting members present and voting.

For the first board appointed following its creation, the city council and mayor shall first select from the current members of the police citizen review subcommittee, currently established by City ordinance, which subcommittee shall be supplanted by the board, in making appointments to the board. On the first board, two voting members shall serve for a one (1) year term, two voting members shall serve for a two (2) year term, one voting member shall serve for a three (3) year term, and the voting member

appointed by the mayor, shall serve for a three (3) year term; and one non-voting member shall serve for a one (1) year term, one non-voting member shall serve for a two (2) year term, and one non-voting member shall serve for a three (3) year term. Thereafter, all members shall serve for a term of three (3) years. No person shall be appointed to, nor serve, more than three (3) consecutive full terms or nine (9) consecutive years, whichever is greater, on the board. Following appointment of the first board, the city council shall exercise its power of appointment only after the city clerk has published a notice announcing the availability of board positions, describing the responsibilities thereof and soliciting applications by qualified persons, in a newspaper of general circulation at least 15 days before city council acts to appoint to the board.

- (c) **Qualifications.** All candidates for the civilian police review board must be at least 18 years of age and must be residents of the City for a period of at least three (3) months prior to the date on or before which board member is to be seated.
- (d) **Vacancies.** A vacancy in the membership of the civilian police review board member shall occur by a death, resignation or removal. A vacancy in the office of civilian police review board member shall be filled by the appointing authority for that office, and the person appointed to fill the vacancy shall serve the remainder of that term. Any board member who subsequent to appointment becomes disqualified or ineligible to serve shall resign, and failure to do so shall constitute "cause" under (e) below.
- (e) **Removal.** Any civilian police review board member may be removed from office by the city council for cause, after notice and the opportunity to be heard. Failure to disclose grounds for disqualification or ineligibility to serve under (c) above shall disqualify the person from service on the civilian police review board and shall constitute "cause" for removal.
- (f) **Training.** Prior to assuming their duties hereunder, civilian police review board members shall attend training by city staff as to the board's duties and responsibilities, applicable state and local law, ordinances and rules and regulations, accepted police

practices and the police department's internal affairs investigation process.

- (g) **Confidentiality.** Each member of the civilian police review board is obligated to maintain the confidentiality of all information and documents either provided to or reviewed by them, in accordance with state law. Failure to maintain such confidentiality will be constitute "cause" for removal from the board under (c) above. All reports and requests for disclosure of any information shall be referred to the corporation counsel for review prior to release.

Section 2. Powers and duties.

- (a) **Complaints.** The civilian police review board shall receive all complaints brought by civilians regarding the Portland police department and shall refer such complaints to the Portland police internal affairs department. Members of the police department may bring complaints to the board, to internal affairs, or to command; the board shall refer any such complaints it receives to internal affairs. Portland police department command shall review internal affairs draft findings on complaints and shall submit its report on the conclusions of any investigation on complaints to the board for consideration no more than fourteen (14) days after the findings become final and after any final disciplinary action has been taken and all appeals exhausted or settled or the case has been closed with no disciplinary action. Neither police officers nor their representatives may file complaints regarding disciplinary actions or personnel matters under this subsection.

- (b) **Review, reports.** The board shall review all final investigation reports submitted by internal affairs and/or command staff under Section 2. (a) above for due process issues, including but not limited to, issues of fairness, thoroughness, objectivity, and timeliness. Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the board issued to address complaints filed under Section 2. (a) above shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable. Reports of the board shall be made available to the public to the extent consistent with the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 et seq.

- (c) Appeals.** The city council shall by ordinance adopt an appeal process consistent with federal, state, and local law for persons aggrieved by a report issued by the civilian police review board on complaints filed with the Board under Section 2. (a) above to appeal that Board report to the city council or such other body as the city council may designate or create for a hearing, in executive session where required, and for the issuance of an advisory opinion which shall not be legally binding on the city, the police department, police officers, or individuals, and which hearing and advisory opinion shall not include or address any disciplinary proceedings. Neither police officers nor their representatives may file appeals regarding disciplinary actions or personnel matters under this subsection.
- (d) Policy.** The civilian police review board shall be able to make policy recommendations to the mayor, the city council and the chief of police.
- (e) Annual report, communications, additional duties.** The civilian police review board shall hold a public hearing at least annually to receive comments upon the community complaint process and to engage City residents as to the board's purposes and goals, and shall prepare and present to the mayor, city council, and chief of police an annual report, including but not be limited to, policy and funding recommendations, and the number of complaints submitted to the board and the number of complaints resolved during the previous year. Any recommendations made by the board regarding the police department shall be based on policy evaluations, may be assigned by the city council and mayor to staff for research, and may be enacted or implemented. The board also may, in its discretion, address the city council on an as-needed basis. The city council and mayor may add to the board's duties by ordinance at any time.
- (f) Board Officers.** The civilian police review board shall annually elect one of its members to serve as chair, and shall annually elect one of its members as vice-chair, to serve in the absence of the chair. The corporation counsel or his or her designee shall serve as secretary to the board and shall furnish any necessary administrative assistance to that board.
- (g) Procedural rules.** The civilian police review board shall make suitable procedural rules, from time to time, for the conduct of its duties. Proposed rules shall be submitted to

the city council and shall become effective only when approved by the city council. All such rules shall be recorded in the office of the city clerk.

Section 3. Funding, staff, resources.

(a) **Funding, staff.** The civilian police review board shall be funded as needed by the city council through the annual budget. Such funding shall include professional staff, including but not limited to a "Community Liaison" and a "Police Liaison" familiar with Portland police department standard operating procedures. The city council shall decide whether the community liaison and police liaison positions are part-time or full-time and/or whether the duties of these positions may be assigned to existing employees. The community liaison shall serve at the direction of the board and shall ensure the public is aware of the methods for filing complaints, and shall assist the board with carrying out its duties, powers and functions, conducting outreach and with other duties as the board may assign. The board may request additional funding from the city council at any time. The police liaison may be the same person/position as the "technical advisor" described in Section 3(b) below.

(b) **Resources.** The city shall make available to the board the services of a technical advisor, as needed by the board. The technical advisor may be used for the purposes of training; briefing the board on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the board on aspects of the internal investigation process. The technical advisor shall be retained by the city manager after consultation with the chief of police, representatives of the police unions and the chair of the board. Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor. The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the board to conduct its duties hereunder. In no case shall the board have access to police officers' personnel records except to the extent that they are part of an internal affairs investigation report or are considered a public document under the Maine Freedom of Access Act.

- (c) **Coordination.** The board shall work in conjunction with the City's communication department, internal affairs, and any other city departments or offices to effectuate all powers and duties granted to it in this charter and any additional duties assigned to it by the city council or mayor.

B. Education Committee

1. Vacancies
2. School Budget Process
3. Capital Improvement Program Process

1. Vacancies

Summary

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

This proposed amendment was spurred by a request from the School Board, although it is more restrictive than the School Board suggested. It would provide the School Board and the City Council with the ability to appoint a qualified person from the same district or at-large, as appropriate, to serve until the next regular municipal election if a vacancy occurs within 6 months of the next regular election. If the vacancy occurs more than 6 months from the next regular election, the City Council maintains its ability to call a special election to fill the seat.

This proposal is similar to the process used in Auburn (as referenced in an 3/10/2022 memorandum from Perkins Thompson to the Charter Commission’s education committee chair):

If vacancy occurs more than 6 months prior to the next regular election, unexpired term is filled by special election, citywide or for a ward. If vacancy occurs within 6 months prior to next regular election, School Committee appoints a qualified person from same ward or at-large, as appropriate, to serve until next municipal election. (Article 4, § 4.3)

Brunswick also has similar language (as referenced in an 3/10/2022 memorandum from Perkins Thompson to the Charter Commission’s education committee chair):

Town Council to call a special election to fill the vacancy for the unexpired term unless the remainder of the unexpired term is less than 6 months, in which case the School Board appoints a qualified person to fill the vacancy. (Article IX, § 904(c))

Text

Amend the current ARTICLE II, CITY COUNCIL., Section 7. Vacancies, in the last paragraph as follows:

If a vacancy in the membership of the city council occurs or is declared more than six (6 months) prior to the next regular municipal election, the ~~vacaney-unexpired term~~ shall be filled at a special election, citywide or for a district, 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. If a vacancy occurs within 6 months prior to the next regular election, the city council shall appoint a qualified person from the same district or at-large, as appropriate, to serve until the next regular municipal election.

Amend the current ARTICLE III, Board of Public Education., Section 6. Vacancies, in the second paragraph as follows:

If a vacancy in the membership of the school board occurs or is declared more than six (6) months prior to the next regular municipal election, the ~~unexpired termvacaney~~ shall be filled at a special election, citywide or for a district, to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections. If a vacancy occurs within 6 months prior to the next regular election, the school board shall appoint a qualified person from the same district or at-large, as appropriate, to serve until the next regular municipal election.

2. School Budget Process Proposal

Summary

One overarching goal of the members of the Education Committee was to establish a better sense of collaboration and parity between the School Board and City Council. During workshops, members heard from various school board members, past and present, that although parity was a goal of the last Charter Commission, that sense of equal footing was not always felt or seen. Currently, the Charter states that the school budget must be drafted by the Superintendent, approved by the School Board, approved by the City Council, and then approved by the voters. This proposed amendment is intended to address recommendations received during workshops and public comment to increase the level of parity between the School Board and City Council when it comes to each body's budget processes. This proposal would create a Joint Budget Guidance Committee consisting of four city councilors and four school board members to increase collaboration between the two bodies and to set budget goals and priorities covering a two-year period. In its current form, the Charter provides that the City Council has authority over the bottom line number. This proposal seeks to remove that part of the process and give that authority to the school board in an effort to establish a greater sense of parity between the school board and city council. The goals and intentions of this proposal are to streamline the process, make it easier for voters to follow and understand, and to increase transparency and accountability.

Education Committee Work on Topic:

1. October 6th Workshop:

- a. This workshop took place early in the process after the committee received a memorandum from Drummond Woodsum giving an overview of what is in the purview of the Charter Commission surrounding education. Members of the committee held a workshop to learn more from elected officials about what has and has not worked in the past. Members of the workshop included:
 - i. Attorney Aga Dixon, Drummond Woodsum
 - ii. Portland Mayor Kate Snyder
 - iii. Former Portland Mayor Ethan Strimling
 - iv. Former Portland Mayor Michael Brennan
 - v. Former At-Large City Councilor Nick Mavodones
 - vi. Portland Superintendent Xavier Botana
 - vii. School Board Chair Emily Figdor
 - viii. City Councilor and Former School Board Member Anna Trevorrow
 - ix. Corporation Counsel Danielle West
 - x. Commission Attorney James Katsiaficas

2. November 3rd Meeting:

- a. Commissioners discussed what was heard during the October 2nd workshop and chose topics to research. Commissioner Eglinton chose to look at Capital Improvement and collaboration around budgeting. Commissioner Houston chose to research parity between Board and Council.

3. December 1st Meeting:

- a. Members of the Committee present preliminary ideas and receive public comment. Commissioner Eglinton presents his idea for a Joint Committee on Budget Guidance to increase the collaboration between Board and Council on both budgets. Commissioner Houston presents his idea for increased budget autonomy for the school board.

4. December 15th Meeting:

- a. Members of the Committee receive a memorandum from Commission Attorney Katsiaticas regarding the 8/11 memorandum from Drummond Woodsum explaining why it may not be possible to give the Board authority over the bottom line number on the school budget under Maine State law.

5. January 5th Meeting:

- a. Commissioner Eglinton presents first proposal for the Joint Committee on Budget guidance. Members of the committee discuss what this would look like in practice and what the scope of these conversations would be.

6. February 2nd Meeting:

- a. Members of the Committee receive another memorandum from Drummond Woodsum that argues for more school board budget autonomy. Members receive a briefing from School Board Chair Emily Figdor on the memorandum. Members continue to workshop the Joint Committee on Budget Guidance Proposal.

7. February 16th Meeting:

- a. Commissioner Houston presents the proposal to give more budget autonomy to the school board. Commissioners Chann and Eglinton ask clarifying questions and Commissioners deliberate on how to proceed with two competing proposals and which proposal will be put forward for a public hearing and vote. Commissioners take public comment on the proposal.

8. March 3rd Meeting:

- a. Members of the Committee hold a public hearing on the school budget process proposal brought forward by Commissioner Houston. During the public hearing, eight members of the public spoke in favor while eight members of the public

spoke against the proposal. During deliberations, Commissioner Eglinton brought forward an amendment to include the Joint Committee on Budget Guidance to be included at the beginning of the proposal. That motion to amend passes unanimously. On the main motion to Approve the School Budget Process Proposal as amended, the motion passed 2-1 with Commissioners Chann and Houston voting yes and Commissioner Eglinton voting no. The proposal was then sent to the full commission.

Memorandums Consulted Throughout the Process:

- 8/11 Memorandum from Drummond Woodsum
- 12/14 Memorandum from Perkins Thompson
- 1/24 Memorandum from Drummond Woodsum

Text

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

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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

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no such appropriation shall be exceeded except by consent of the city council or the voters. (Referendum 6/13/78; 11/2/10)

3. Capital Improvement Program Process

Summary

This proposed amendment is intended to address recommendations raised in public comments to seek greater parity for the Superintendent and School Board in the discussions around and decisions affecting Portland Public Schools. The proposal would explicitly include the Superintendent in the capital improvement program (CIP) planning process on an equal footing as the City.

This proposal is similar to the process used in Auburn, which has the following language in its Charter (as referenced in an 8/11/2021 memorandum from Drummond Woodsum to the superintendent of Portland Public Schools):

The city manager and superintendent must jointly prepare and submit to a joint meeting of the council and school board a multi-year CIP before submission of the budget, and must publish a general summary of the CIP. The CIP must be revised and extended each year with regard to capital improvements pending or in process of construction or acquisition. (§§ 8.9, 8.10)

Sanford also includes the Superintendent in the development of the CIP process (as referenced in an 8/11/2021 memorandum from Drummond Woodsum to the superintendent of Portland Public Schools):

The city manager and the superintendent annually prepare and submit to the budget committee a 5-year CIP. The budget committee reviews the CIP and makes recommendations to the council for approval. The city creates annual reserves for the CIP by raising and appropriating at least 4% of the budget each year. Projects funded by the CIP include road maintenance, vehicular replacements, roofing projects, major building renovations, major equipment purchase, airport projects, new buildings and the like. (§ 610)

Text

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.

C. Elections Committee

1. Proportional Ranked Choice Voting
2. Universal Resident Voting
3. Clean Elections
4. Redistricting

1. Proportional Ranked Choice Voting Proposal

Summary

The Elections Committee prepared this proposal to permit the use of Proportional Ranked Choice Voting (PRCV) in multiple-seat elections. In the election of at-large seats for the Charter Commission, multipass Ranked Choice Voting (RCV) was used with a 50% threshold as required by the existing Charter, rather than the lower threshold recommended by the RCV Resource Center. There was some criticism of the election results for that reason. To address that criticism and to permit flexibility, the proposal allows the City Clerk to choose a PRCV system that the City Council has authorized. At least one Commissioner observes that while regular RCV favors coalition building and PRCV may not have as great an effect in that respect, PRCV may achieve more representative voting results – that PRCV is fairer than RCV.

Text

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 may 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.

2. Universal Resident Voting

Summary

The Elections Committee undertook an extensive process in development of this proposal to allow voting by all Portland residents, whether or not U.S. citizens, in municipal elections. Non-citizens are unable to vote in State and federal elections. The Committee believes that extending the right to vote in municipal elections to all Portland residents is a matter of fundamental fairness, so that all who live in and contribute to the community may vote on how the community is governed.

Commissioner Pat Washburn as well as the Committee's legal advisor consulted with Beth Stickney, Executive Director of the Maine Immigrant Business Coalition, to create protections within the Charter language that would help (though not ensure) safeguards are in place to inform and educate non-citizens of their rights in municipal elections as well as of restrictions and consequences for voting in state/federal elections.

The Committee and the Commission are aware of concerns 1) whether the proposal is a lawful exercise of municipal home rule charter authority where State law establishes voter qualifications, and 2) whether there could be unintended consequences and impacts upon immigrants who register and vote in municipal elections, but a majority of the Commission believes this is an important measure to promote justice that should be brought to the voters to decide.

Text

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

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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 registers or 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 for municipal voters participating in municipal elections. 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, a finding of inadmissibility, and deportation;

- iii. Upon request by the registered municipal voter or formerly-registered municipal voter, the City shall 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 only in municipal elections;
- (f) Upon request by the registered municipal voter or formerly-registered municipal voter, the City shall 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. These attorneys and organizations must be able to provide potential municipal voters with information regarding their rights and the consequences of registering and/or 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 eligibility to vote in municipal, state, and federal elections.

3. Clean Elections

Summary

Clean Elections – Public Financing of Municipal Elections, Elections Committee

“Those who do not have the money or time, and who do not belong to pre-existing organizations with resources, are less able to participate and less likely to have their needs taken into account when policies are decided. The result is a system nominally based on equal rights but whose natural structure, without effort, will produce unequal participation and influenceTools designed to bring more small donors into the system are meant to enlarge the table – to help give more people, and different kinds of people, a meaningful voice. They work by giving those who do have the resources to mobilize – candidates, parties and other donor mobilizers – an incentive to pay attention to those who do not. This concern goes to the heart of successful democratic representation.”

- Michael J. Malbin and Michael Parrott, in *The Forum, A Journal of Applied Research in Contemporary Politics*

This report includes background, research, recommendations, and the proposed language for a program that provides public financing for campaigns to qualifying candidates. For clarity we will be calling the program “Clean Elections,” a term familiar to Maine voters as a similar program exists for statewide races under this name.

History of Clean Elections Advocacy in Portland:

The Elections Committee took up the issue of public financing of municipal elections as one of its first recommendations to consider. The question to form a charter commission was put on the July 2020 ballot by the City Council. The Council did so in response to advocacy group, Fair Elections Portland, and their proposal to, by charter *amendment*, create a public financing program for local races. Corporation Counsel determined that the proposal could not be executed by ordinance or charter amendment, but instead required a Charter *revision* and therefore the formation of a Charter Commission due to the proposal’s requirement for annual funding from the Council. In October 2019, councilors agreed to put the question of forming a Charter Commission out to voters. In July 2020 voters approved the opening of the Charter, and the following spring, an election was held to nominate 9 commissioners along with 3 appointed commissioners to the Charter Commission. **Nearly every candidate who ran reported that they supported a clean elections program in some form.**¹²

What is public financing of elections?

¹ Portland Press Herald: <https://www.pressherald.com/2022/03/01/court-upholds-portlands-position-to-pursue-clean-elections-proposal-as-a-charter-revision/>

² Portland Press Herald: <https://www.pressherald.com/2019/10/22/portland-to-ask-voters-for-a-charter-commission/>

Often known colloquially as “Clean Elections” in Maine and across the country, public financing of elections is a widely popular idea with bipartisan support in the state and across the nation.³ These programs offer public campaign funds to candidates who meet qualifying criteria. Funds come from a public program – usually supported through tax payer revenue, municipal or state fees, private donations, or seed contributions from candidates.

Qualifying candidates must meet certain criteria spelled out by the program in order to participate and make use of the funds. How candidates qualify, the amount of funding they’re offered, and other details vary from state to state and program to program. Generally programs put limitations on where donations come from and from whom, and often put contribution or fundraising limits. Rules vary widely and different programs are set up and managed in different ways. Some of the different clean elections programs that are in place across the country are described later in this report.

Why public financing for elections?

Public financing of elections has long been considered a key mechanism to mitigating corporate and moneyed interests in politics. These programs do so by limiting the amount, and often the source, of campaign contributions to candidates who elect to participate in the program.

Clean elections programs also increase opportunities for candidates to run for elected office. Just four years into the Maine Clean Elections program, the Maine Ethics Commission noted that the fund encouraged more first-time candidates, especially women, encouraged challengers to incumbents, and controlled spending growth overall for candidates.⁴ A Stanford study comparing Maine and Arizona programs found that clean elections improved the overall quality and competitiveness of candidates, especially non-incumbent challengers.⁵

By creating a more even playing field, Clean Elections empower candidates without access to wealth (whether personal, family, or social networks) to run. As evidenced by these programs' success in other cities, a municipal clean elections program in Portland will help increase the diversity of candidates across race, gender, and socio-economic class, and offer more choices to voters at the polls.⁶

³Report on For The People Act, including Small Donor Public Financing Program for Federal Elections <https://campaignlegal.org/sites/default/files/2021-01/01-25-21%20HR%201%20Bipartisan%20Memo%20330pm.pdf>

⁴ 2007 Report on the Maine Clean Elections Act, https://www.mainecelelections.org/sites/default/files/research/2007_study_report.pdf

⁵ Malhotra, Neil, State Politics and Policy Quarterly, Vol. 8, No. 3 (Fall 2008): pp. 263–281 <https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf>

⁶ Elisabeth Genn et al., *Donor Diversity Trough Public Matching Funds*, Brennan Center for Justice and Campaign Finance Institute, 2006 <http://cfinst.org/pdf/state/ny/DonorDiversity.pdf>

Across the country, the benefits of Clean Elections systems are felt. In a study by the think tank *Demos*, researchers found that in Connecticut, Clean Elections programs meant that legislators were able to spend more time interfacing with constituents. The program also helped voters engage more deeply in the legislative process around issues they cared about, and empowered legislators to pass more policies popular with the public.⁷

New York City also reported that public elections financing helped improve timeliness of candidates campaign spending disclosures.⁸

Lastly, while Clean Elections funds cannot entirely override the influence of corporate or outside spending due to the influence of *Citizens United*, Clean Elections programs allow candidates to spend less time fundraising and more time engaging with their constituents. Because they are guaranteed enough funds to run a competitive campaign, per the design of the program, publicly financed candidates find they are able to distinguish themselves in a field, even against privately funded candidates. A program that prohibits Clean Elections candidates from utilizing any funds outside of their public allocation (like Maine’s program requires) could be the most effective at curbing escalating elections costs and the influence of corporate money in Portland.

What’s in Portland’s Clean Election Proposal?

The Elections Committee proposal does not prescribe a specific type of program, but simply requires that some sort of public fund for elections exist. The Council by Ordinance shall set up the specifics of the program.

It asks the city to annually fund the program, and to ensure that there is adequate funding to offer candidates enough to run competitive campaigns.

The program is voluntary. This is *essential* to the Constitutionality of the program. It is of utmost importance that the Council in its ordinance ensures that measures passed do not jeopardize the voluntariness of the program.

Stipulations of the program include that it must only be available to candidates who demonstrate public support. (In the statewide program, this is done through candidates collecting a certain number of “qualifying contributions” of \$5.) The Portland program must limit the amount of private funds that can be raised, but no specific limit is set in the Charter. Candidates must agree to only use funds provided by the program, except for the limited amount of private funds stipulated by ordinance.

After 100 days, all unused funds will be returned to the program.

⁷ Cha, J Mijin & Rapaport, *Miles Fresh Start: The Impact of Public Financing in Connecticut*, Demos, 2013

⁸ New York City Campaign Finance Board, “Impact of Public Funds” <https://www.nycfb.info/program/impact-of-public-funds/>

An agreement of the program is that all candidates must participate in a city-sponsored forum or voter engagement event. This is modeled after Seattle’s Democracy Voucher ordinance, which requires candidates to participate in 3 debates.⁹

In Maine, the City Clerk is the Elections Officer, and therefore this program will be overseen by the Clerk's office, and provided, per this Charter proposal, with adequate paid staff for implementation.

Elections Committee Process:

The Elections Committee took up clean elections early in our process and hosted three public workshops:

- **September 21, 2021**, we interviewed the following experts from both Maine and nationwide.
 - Anna Kellar - Executive Director of Maine Citizens for Clean Elections & the League of Women Voters
 - Emma Burke, Candidate Registrar, Maine Ethics Commission
 - Tom Watkowski - Democracy Policy Network, & Los Angeles for Democracy Vouchers
 - Cindy Black - Executive Direct for Fix Democracy First, advisor for Seattle Democracy Voucher Program

You can find resources from these presentations in the resource section of this report. We highly encourage the council to watch the recording of this meeting to get information about the different forms programs can take.

- **December 7, 2021:** Elections Committee workshopped the Clean Elections Proposal, drafted by Commissioner Buxton. Public comment included considerations to add campaign contribution limits, corporate contribution ban, restrictions on how funds could be spent.
- **December 21, 2021:** Elections Committee workshopped a second draft of proposal, which included some additional changes:
 - Stronger language mandating consistent funding provided by council, submitted by Commissioner Chann.
 - Stipulation to return unused funds to the program for all participating candidates
 - Requirement to make campaign contributions searchable in online database, per advice of Maine Citizens for Clean Elections

⁹ Seattle City Code, Honest Election, 2.04.620, https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT2EL_CH2.04ELCACO_SUBCHAPTE R_VIIIHOELSE_2.04.620DEVOIS

- Added language about paid staff within the office of City Clerk
- Added new section on corporate contribution ban for municipal candidates.

Public Hearings & Votes:

- **January 10, 2022:** The Elections Committee hosted a public hearing for the proposal.

During the hearing the following amendments were made:

- Language updated: Program to be administered by Office of City Clerk, with assistance of paid staff.
- Commissioner Buxton removed campaign contribution limit due to concern of legal threat posed to proposal.
- Commissioner Chann added a friendly amendment: fiscal note, utilizing LWV program cost estimate plus the cost of one mid-level staffer (60-80k per year)

The committee unanimously voted to send the proposal to the full commission.

- **January 19, 2022:** The proposal approved by the Elections Committee first read by the full Charter Commission.
- **March 9, 2022:** The proposal, tabled for some time while waiting on a Maine Superior Court decision regarding a lawsuit from Fair Elections Portland, is picked up again for a new first read and clarifying questions.
- **March 23, 2022:** The proposal has a public hearing and vote. Proposal is approved unanimously with the following amendments:
 - Commissioner O'Brien added an amendment to prohibit financial gain in the form of city contracts from individual major donors to campaigns.
Note: A similar such limitation exists in NYC.¹⁰
 - *NOTE: This amendment did not make it into the language ratified by the Commission for our preliminary report.*

Proposal passes unanimously through commission. (11-0, Stewart Bouley absent.)

During the process we also consulted with:

- John Brautigam, Esq. - Lawyer, Fair Elections Portland board member, argued Maine's Clean Elections with supreme court

¹⁰New York City Campaign Finance Board, Limits, <https://www.nyccfb.info/candidate-services/limits-thresholds/2017/>

- John Wayne - Maine Elections Commission
- Kathy Jones - Portland, Maine City Clerk

Types of Clean Elections Programs:

As noted, Clean Elections programs can take a number of different forms.

*Starred programs are formats the Elections Committee recommends the Council consider in Portland.

- ***Block Grant Program:** Maine’s statewide Clean Election program follows this format. Candidates qualify, often by gathering small, grassroots contributions. (For Maine legislators, a few dozen qualifying contributions of \$5 from 50-75 voters). Once qualified, candidates are given an allotted amount of campaign funds, and are restricted to using only those funds for their campaign expenses. Check out other rules for the Maine program here: [Maine Clean Elections Act Rules](#)
 - There are numerous benefits to this type of program. A number of research studies have shown it delivers on all the above mentioned advantages of clean elections programs. It can also help to curtail spending on elections, and is widely popular across parties in Maine.
 - One noted place where it falls short: The Maine program doesn’t go as far as other programs to encourage candidates to reach outside of their network. There are some incentives for voter engagement: Because candidates aren’t focused on fundraising they *can* spend more time with under-resourced neighborhoods or communities, but the program by design doesn’t incentivize this. Candidates could, in theory, just get their 50 qualifying contributions from 50 friends, and only outreach to their likely voters or known networks.
- **Small-Donor Matching Fund Program:** Most familiarly used in New York & Los Angeles, Matching Fund programs will generally *match* grassroots or small donations below a certain threshold at a set rate. For example, in NYC and Los Angeles, the city matches donations 6 to 1, with public dollars. There is usually a campaign contribution limit that cities will match up to (In NYC, it’s up \$175 per donor) and a total public contribution the city will give. (In NYC, they will give up to \$7 million total public funds to a mayoral candidate. That’s a lot!)
 - Widely popular, with about 90% of candidates in primaries and 75% in general elections, NYC lists a number of benefits of their program, from increasing candidate diversity to promoting more incumbent challengers to increasing diversity of donors, and increasing the influence of small donors over large wealthy ones.

- Results vary across programs, for example in Los Angeles the program has performed differently when compared to NYC. For example, LA historically has matched at a lower rate and their programs allows candidates to fundraise privately much more if they max out public funding available. Additionally, they are more permissive of qualifying contributions outside of the geography of the candidate, whereas NYC asks candidates to fundraise these contributions more within their district. Research finds that NYC’s small donors more accurately reflect the diversity of the city, whereas LA’s does not deliver as similar results.¹¹
 - There are some concerns that matching grants programs don’t do enough to limit overall spending on elections.
- **Democracy Vouchers:** A newer innovation in campaign financing, Democracy Vouchers is a system currently in place only in Seattle, WA, though there are efforts in Los Angeles, New Hampshire, and a number of other communities seeking to explore this system. The Democracy Vouchers system issues “vouchers” to all eligible voters, free of charge, who then can donate these vouchers back to their desired candidates. These candidates can redeem the vouchers for public campaign funds. Voters don’t have to contribute any of their own funds to use the vouchers. This is where the program differs from the others most: Democracy Vouchers capture the interests of voters who may not even be able to make those grassroots donations required in other programs.
- In Seattle every voter received 4 vouchers of \$25 to donate to any participating candidate. They could donate all to one candidate, or split them up, or use none of the vouchers. Seattle started with mail vouchers, but they now have an online system.
 - Implementation costs much higher than other programs, but experts we interviewed said that the program's benefits go beyond election financing. Because of the accompanying education campaign for the vouchers, there was an automatic voter engagement effort built into the program.
 - Adoption is slow, but studies have found positive results: Already the program has tripled the number of folks who contribute to candidates, and participation in the program doubled in just the second election cycle.¹²
 - Researchers found that the voucher program meant that donors were much more representative of the city, particularly by race, *and* more evenly distributed geographically.¹³

¹¹ Malbin & Parrot, 2017, Small Donor Empowerment Depends on the Details: Comparing Matching Fund Programs in New York and Los Angeles, The Forum <https://www.degruyter.com/document/doi/10.1515/for-2017-0015/html?lang=en>

¹² Democracy Voucher Internal Report, City of Seattle, <https://www.seattle.gov/democracymatcher/program-data/internal-program-reports>

¹³ McCabe & Heerwig, 2019 Diversifying the Donor Pool: How Did Seattle’s Democracy Voucher Program Reshape Participation in Municipal Campaign Finance?, <https://www.liebertpub.com/doi/pdf/10.1089/elj.2018.0534>

For more information and reading about the different forms a clean elections program may take, please see the following resources as well as any of the research referenced in footnotes throughout this document:

- [Common Cause’s Public Financing of Campaigns Report](#): Offers helpful pros & cons of each type of existing program and example use cases across the country.
- [Maine Citizen for Clean Elections Powerpoint](#)
- [Democracy Vouchers Resources](#)
- [Elections Committee Resources Folder](#)

Additional components of Clean Elections proposal:

Section 13a: Corporate Contribution Ban

In 2021, the Maine State Legislature passed LD 1417. It will go into effect in early 2023.

The law bans corporate contributions statewide. In the Clean Elections proposal for Portland, the Elections Committee included a ban on the municipal level. While this replicates the existing statewide ban, this language was proposed so that in the event that the state wide ban is overturned by the legislature, Portland’s would remain in effect for city races. City of Portland races in the past have seen a huge influence of funding by private companies, with candidates sometimes raising nearly 40-50% of their funds from businesses such as real estate developers. The Elections Committee is so grateful to have LD 1417 passing in our state, and would like to ensure its legacy in Portland, regardless of what happens in Augusta.

On the advice of our attorney, we added a provision to allow employees of a business to donate personal funds to a Separate Segregated Fund should a company want to allow employees to contribute in this way. This mirrors similar language in the Maine law as well.

Section 13b: Searchable Elections Database

The Clean Elections proposal also includes a stipulation that campaign contributions of all candidates, whether they use private or public funds, will be made available to the public in a searchable online database. One of the most important factors in having open, transparent elections, and curbing the influence of corporate money in politics is for the public to have easy access to all campaign contribution data. Currently, while Portland’s campaign contribution information is available online, it is not available in a way that is easily accessible or searchable for the average voter. Instead voters have to comb through scanned, often hand-written documents, hidden deep on the city website, if they want to see what and how candidates are using funds.

This amendment would help move the City towards addressing greater transparency in campaign finance, which would be of even more importance should a public financing program be passed.

Fortunately, the City of Portland has reported that they are already working on a more responsive electronic database for campaign spending reports, and it is the Committees’ hope that this clause in the Charter will motivate compliance and adoption as soon as possible. Likewise, there is pending legislation that may ask all towns with a certain population size to move their campaign finance reporting to the Maine Ethics Commission, who has a much more comprehensive and searchable system. This option would comply with the proposed charter revision.

COST ESTIMATE FOR CLEAN ELECTIONS PROGRAM IN PORTLAND, MAINE

Cost Estimate Compiled By: Commissioner Marpheen Chann (At-Large), Chair, Charter Commission Ad Hoc Elections Committee

Initiative: Establishes a Clean Elections fund to be administered by paid staff within the Office of the City Clerk, funds to be allocated by the City Council on an annual basis.

COST ESTIMATE	FY 23-24	FY 24-25
POSITIONS	1.00	1.00
Personal Services	\$87,733.73*	\$90,365.75
All Other	\$200,000**	\$200,000
 TOTAL COST ESTIMATE	 \$287,734.73	 \$290,366.75

Text

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.

4.Redistricting Proposal

Summary

The Elections Committee initially proposed to increase the number of district City Councilors from 5 to 10, with 3 at-large seats, for a total of 13 Councilors. District lines would be drawn by the City Council and adjusted as now happens under a State law requiring a reapportionment ordinance after each decennial census. (The Mayor still would be a member of the Council under this proposal, which currently is separate from the Governance Model.)

The Committee believes that a larger City Council would provide more direct representation of more diverse populations and interests, would allow more Councilors to introduce legislation and would reduce the overburdening of Councilors with committee assignments and work that now occurs. A majority of Commissioners saw during their campaigns that there was much interest among voters to broaden representation and diversity and for the Council to be more directly representative.

The Elections Committee looked at nationwide research comparing compositions of city councils and how electives are represented: at-large, solely in districts, or a combination of both. We were especially interested in how these systems produced elected bodies that are representative of a population, and how candidates of color were served, or not, by these different methods. While at-large systems often disserve representation for minority populations, this is usually contingent on minority populations being geographically concentrated. Research shows that this does not hold true for populations that were more spread out or were a much smaller percentage of the larger population. (As is the case for non-white populations in Portland.)

The Committee also heard from members of the public, as well as existing and former Council members, that they found at-large seats were useful in building coalitions regardless of geography and for including a more city-wide perspective in council decisions and legislation. While increasing district seats will bring increased neighborhood representation to the council, maintaining at-large seats will provide three representatives on the Council who will be elected by *all* Portland voters, plus the popularly elected mayor."

After a public hearing on the proposal and deliberation, the Commission amended the proposal to increase the number to 12 Councilors -- 9 district and 3-at large. Recognizing the benefit of increased direct representation for the School Board as well, the Commission further amended the proposal to provide that the three current at-large School Board seats would become elected on a district basis. In this way, the City would have the same nine districts for the City Council and the School Board, City Council representation would be increased, and more direct representation would be achieved on the School Board.

Text

1. *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.

2. *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 (43) 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 three (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)~~

3. *Amend ARTICLE II. CITY COUNCIL, Section 5. Mayor's powers and duties, (k) and (l), as follows:*

(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 seven (7) ~~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) ~~eight (8)~~ council members.

4. *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)

5. *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)

6. *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)~~ a majority of those members present and voting so long as a quorum of seven (7) members of the city council is present. 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)

7. *Amend ARTICLE III., BOARD OF PUBLIC EDUCATION, Section 11. Procedure in the second and third paragraphs, as follows:*

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) nine (9) districts heretofore provided for in section 1 of article II, from and by the registered voters of each such district.~~

To transition from the mix of district and at-large seats to all district seats, members who were elected to at-large seats shall serve until their current terms expire; for the municipal election in November of 2023, the at-large seat of the member whose term is then expiring shall become one of the new district seats; for the municipal election in November of 2024, the at-large seat of the member whose term is then expiring shall become the second of the new district seats; and for the municipal election in 2025, the remaining two at-large seats of the members whose terms are then expiring shall become the third and fourth of the new district seats.

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)~~ (3) 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)

8. *Amend ARTICLE VI, ADMINISTRATIVE OFFICERS, Section 1. Appointments, (a), as follows:*

Section 1. Appointments.

(a) The following officers shall be appointed by vote of at least ~~five (5) seven (7)~~ members of the city council: city manager, city clerk, and corporation counsel, and they may appoint constables at large.

9. *Amend ARTICLE VII., BUSINESS AND FINANCIAL PROVISIONS, Section 8. Mayoral veto of general city purposes appropriations in the appropriation resolve, in the third paragraph, as follows:*

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)~~ eight (8) members of the city council. The mayor shall not vote on such override item.

D. Governance Committee

1. Governance Model
2. Mayor’s Economic Development Duties
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10. Governance Model Proposal

Summary

Introduction to Governance Proposal

The proposed governance model represents the fruits of many hours of research and discussion. No single commissioner is responsible for it; no single commissioner can claim they got everything they wanted. It is based in considerable areas of agreement and offers significant improvements to Portland’s system of government.

This proposal seeks to establish a balanced and thoughtful government that is accessible to citizens and responsive to their concerns. Under this plan, most decision-making is centered in the hands of elected officials—the mayor and city councilors—who are directly responsible to the ultimate source of governing power: the voters. At the root of the reforms proposed here is a desire to establish effective and transparent citywide policy leadership that is directly accountable to voters. The main changes are grouped below under subheadings. The final section describes the commission’s methodology.

Executive Mayor

This proposed reform designates the mayor the city’s chief executive. However, it stops short of granting the mayor all the powers of traditional “strong” mayor systems. This proposal gives the mayor the power to propose the city budget, the power to veto the budget (including supplemental appropriations), and executive leadership over the city. The proposal would give the council the power to amend the budget, and to override the mayor’s veto by a two-thirds majority.

Critics of the current system have argued that the mayor lacks enough power to implement a policy agenda. Portland’s first elected mayor, Mike Brennan, testified that one way to solve this issue is to give the mayor the power to propose the budget. This proposal would do that.

The mayor no longer would be a member of the council. The mayor’s duties regarding the council would be limited to facilitating meetings by presiding over them, and setting meeting agendas. However, the mayor would lack a council vote. The decision to keep the mayor involved with council meetings is rooted in a desire to ensure that the mayor is fully informed of all council policy decisions and the intent behind those decisions. The decision to deny the mayor a council seat and vote was rooted in a desire to limit the mayor’s power.

The mayor would also lack the power to veto the council’s policy or legislative decisions. The decision to withhold this power from the mayor, as well as to prohibit the mayor from unilaterally firing or hiring officials, is rooted in a desire to prevent the mayor from being as strong as mayors in cities like Westbrook, Maine, and Burlington, Vermont, both of which have traditional strong-mayor systems.

City Manager changes to Chief Operating Officer

Under this proposal, the City Manager position transitions to a Chief Operating Officer (“COO”) who is expected to contribute expertise and management of day-to-day activities, but to report to the mayor. This official would be hired through the same hiring process for department heads: nominated by the Executive Committee and confirmed by the council. The official is modeled on Westbrook’s City Administrator, who has provided stable managerial expertise to decades of Westbrook mayors.

The COO is supervised by the mayor, and supervises the department heads. The mayor’s direction and supervision over department heads is intended to operate through the COO.

Executive Committee

This proposal would also establish a new institution: the Executive Committee. This committee would be made up of the mayor and two councilors elected by the council. The Executive Committee is intended to solve concerns around cronyism, patronage, and the spoils system. The committee would nominate key officials in city government: department heads, the city clerk, corporation counsel, and the Chief Operating Officer. Subordinate city staff would, in turn, be hired by these officials, such that no Portland mayor can unilaterally hire officials.

Under the current system, the chief executive, the city council appoints the city manager, the city clerk, and the corporation counsel — but the city manager is the sole appointer of department heads, subject to council confirmation. Under the proposed system, that power would not reside in one office, but would be shared by the three members of the Executive Committee.

In addition to checking and balancing the mayor’s power, the Executive Committee would also have the role of legitimizing the mayor’s power of presiding over council meetings. Some commissioners raised the prospect of the mayor serving as “illegitimate council-chair,” since the voters — and not the council — elect the mayor. The presence in the Executive Committee of leadership elected by the council is designed to solve this issue. Under this system, it will be three voices — one chosen by the people (the mayor) and two chosen by the council — that constitute the council’s leadership.

Below is a more specific outline of the proposed changes.

1. The Mayor is City’s Chief Executive Officer. (Changes to Article I, Section 2 and new Article II)
 - a. Mayor has supervisory role over the Chief Operating Officer (“COO”), or COO is responsible to the Mayor, and they will work on a coordinated approach to management of department heads; Mayor does not manage the rest of the City staff.
 - b. The Mayor oversees implementation of City Council policy (Article II, Mayor, Section 3(f)).
 - c. The Mayor is the “Public Figurehead” (Article II, Mayor, Section 3(m)) – in this role, the mayor:

- 1) shall serve as the official representative of the City in Augusta, nationally and internationally or “worldwide,”
 - 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 Council; and
 - 4) shall be a member of City’s Legislative Committee.
2. COO provides professional managerial expertise (Addressed in new Article II and revisions to Article VII, Administrative Officers)
- a. Day-to-day administration of the City is carried out by the COO and Department Heads.
 - b. COO is responsible to the Mayor.
 - c. COO oversees Department Heads.
 - d. City staff is managed exclusively by Department Heads.
3. The City Council is City’s Legislative Branch. (Changes to Article I and to Article III)
- a. The Mayor presides over meetings of the City Council and is “political leader” of City; set agendas for Council meetings and acts as facilitator of Council meetings, but has no vote; and the Mayor and Executive Committee assign committee/subcommittee membership.
 - b. Budgetary Powers. (Article II, Mayor, Section 3(j) and Article VIII, Business and Financial Provisions, Section 8)
 - 1) Mayor directs the COO in the preparation of the budget and communicates it to the City Council for consideration and adoption. (Article II, Mayor, Section 3(g) and (h)).
 - 2) Mayor may veto City budget and Council may override veto by 2/3 vote.
 - c. Legislative Authority.
 1. The executive mayor can introduce legislation/policy, but must do so through a public process (i.e., task force or a Council committee).
 2. Mayor has no veto power over legislation.
4. Executive Committee. (Article VII, Administrative Officers, Section 9) There should be an Executive Committee with three members – the Mayor, and two councilors elected by Council, with Mayor having power to vote on Executive Committee; its role is to:
- a. appoint Council members to committees, and
 - b. take on such other duties as may be assigned by City Council.
5. Hiring of City Staff (Article VII, Administrative Officers, Section 1)
- a. Mayor does not have power to unilaterally hire and fire City staff and Constitutional Officers (COO, City Attorney and City Clerk).
 - b. Hiring of Constitutional Officers and Department Heads - candidates are vetted by Executive Committee and recommended to Council for approval by simple majority.
6. Removal of City Staff (Article VII, Administrative Officers, Section 10)
- a. Removal of Constitutional Officers (direct reports to City Council) Process is:
 1. Mayor, any Councilor, or the Executive Committee may file or register a complaint against a Constitutional Officer,
 2. Review Committee (on which Mayor will be a member, Article VII, Administrative Officers, Section 10) will perform performance review or conduct

- review/investigation and will determine whether to bring forward request for removal to Council,
3. After Council hearing in executive session, may remove by 2/3 Council vote.
- a. Removal of Department Heads - Process for department head removal is:
1. Mayor or any Councilor may file or register a complaint against a Department Head,
 2. Review Committee (on which Mayor will be a member) will review and investigate complaint, and will make recommendation to Council,
 3. After Council hearing in executive session, may remove by majority Council vote,
 4. COO would be a consultant/advisor to the process.
- c. Removal of Mayor - Process for removal of mayor is:
- 1.) If mayor engages in official misconduct or neglect of duty, complaint is sent to Ethics Commission for recommendation and recall election can be ordered by $\frac{3}{4}$ vote of Council (Article II, Section 6, and Article I for citizen petition recall)
 - 2.) If mayor is convicted of a felony materially related to duties, removal by $\frac{3}{4}$ vote of Council. (Article II, Section 6)

Under the current Charter, the Mayor is subject to the same rules for election, vacancy, and recall as an at-large councilor. Therefore, a non-councilor mayor requires breaking those sections and others out from the current City Council article into its own article, which is the reason for the new Article I-A.

Methodology

The Governance Committee, as well as the entire charter commission, consulted a variety of experts, civil servants, and community members for their input on this topic. Some charter commissioners stated that their vote on various aspects of this final governance plan arose from conversations they had with constituents during the campaign trail. Commissioners also consulted research on municipal government. Although it is impossible to account for every conversation and source, this list identifies some key personalities and research:

February 14th, 2022 Workshop with:

- Dr. Jered Carr (perhaps the leading national expert on municipal government)
- Dr. Andrea Benjamin (an expert on quantitative political science)
- Dean Anthony Crowell (worked for ICMA, as chief counsel for Mayor Bloomberg's office, and as council for six charter commissions)
- Maine State Historian Earle Shettleworth Jr., and
- Tom MacMillan (wrote masters thesis about the Portland Charter Commission)

Nov. 8: Interview with Dr. Chyrl Laird (political scientist knowledgeable about municipal leadership models).

Nov. 10: Interview with Tanisha Briley (served as City Manager in several cities with a weaker mayor)

Nov. 10: Joe Gray (former City Manager of Portland just before the last Charter changes)

Nov. 10: Kevin Sutherland (Town Manager of Bar Harbor, served as Chief of Staff to a strong mayor in Ithaca, NY, and later as City Administrator to a weaker mayor in Saco)

Nov. 8: Dominick Pangallo (Chief of Staff to an executive mayor in Salem, MA)

Nov. 8: Dr. Jim Svava (editing researcher of the National Civic League's 9th edition of the Model City Charter)

Former and current Portland officials interviewed in October and November of 2021: Kate Snyder, Michael Brennan, Jill Duson, Jim Cohen, Karen Gerghety, Ethan Strimling, Belinda Ray, Pious Ali, David Marshall, Kimberley Cool

Research Consulted

In addition to interviewing experts, these are some of the peer-reviewed journal articles that informed the commissioners' thinking:

- Carr, Jered B. (2015). *What have we learned about the performance of council-manager government? A review and synthesis of the research*. Public Administration Review 75(5): 673–89.
- Carr, J. B., & Karuppusamy, S. (2008). *The adapted cities framework: On enhancing its use in empirical research*. Urban Affairs Review, 43, 875-886.
- Carr, J. B., & Karuppusamy, S. (2009). *Beyond ideal types of municipal structure: Adapted cities in Michigan*. American Review of Public Administration 39, 304-321.
- Besley, T. and S. Coate, (2003), *Elected versus Appointed Regulators: Theory and Evidence*, Journal of the European Economic Association, 1(5), 1176-1206.
- Deno, K. and S. Mehay, (1987), *Municipal Management Structure and Fiscal Performance: Do City Managers Make a Difference?* Southern Economic Journal, 53(3), 627-642.
- Choi, C.G., Feiock, R. C. and Bae, J. (2013). *The Adoption and Abandonment of Council Manager Government*. Public Administration Review 73(5): 727–36.

Text

Note: This contains only the provisions related to the Governance Model proposal and only those sections which will be changed if this proposal is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend ARTICLE I, GRANT OF POWERS TO THE CITY, by amending Section 2, Powers and duties, as follows:

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 in the mayor and exercised through the chief operating officer ("COO") and the several departments and boards of the city, under the mayor's general oversight.

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)

2. Amend the current CHARTER by adding the following new ARTICLE I-A, MAYOR, as follows:

ARTICLE I-A. 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 over meetings 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 VII, section 8;
- (k) To be a voting member of the executive committee established pursuant to article VI, section 9;
- (l) To be a voting member of the review committee established pursuant to article VI, 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 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 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. Upon receipt of a recommendation from the ethics commission to remove the mayor for official misconduct or neglect of duty, the city council shall vote whether to call a recall election of the mayor under Article V. 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 of 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.

3. Amend ARTICLE II., CITY COUNCIL, by amending Section 2, Composition, election, tenure of office, Section 4, Compensation of councilors and mayor, Section 5, Mayor's powers and duties, and Section 6, Absence or disability of mayor; acting mayor, as follows:

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 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)~~

4. Amend ARTICLE III., BOARD OF PUBLIC EDUCATION, by amending Section 1, Composition, election, tenure of office, compensation, and Section 5, School budget, as follows:

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 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)

5. Amend ARTICLE IV., ELECTIONS, by amending Section 2, Regular municipal election, and Section 4, Nominations, as follows:

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 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)

6. Amend ARTICLE V., RECALL, by amending Section 1, Applicability, Section 2, Petition for recall, Section 4, Calling of recall election, Section 5, Form of ballot, and Section 7, Election may be ordered, as follows:

Section 1. Applicability.

The mayor or Any 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.

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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 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 I-A, 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 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 I-A, section 5, article II, section 7 and article III, 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)

7. Amend ARTICLE VI., ADMINISTRATIVE OFFICERS, by amending Section 1, Appointments, Section 4, Compensation and tenure of offices, Section 5, Appointment; qualifications; powers and duties of the city manager, Section 6, Vacancy in office of city manager, adding Section 9, Executive Committee, and adding Section 10, Review Committee as follows:

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 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 ~~council~~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 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 VI, section 1(a) and of department heads as provided in article VI, 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.

8. Amend ARTICLE VII., BUSINESS AND FINANCIAL PROVISIONS, by amending Section 1, Accounts and records, Section 5, Annual budget, Section 6 Budget content, Section 7, Appropriation resolve, and Section 8 Mayoral veto of general city purposes appropriations in the appropriation resolve, as follows:

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 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 VII 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

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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)

9. Amend ARTICLE VIII., MISCELLANEOUS PROVISIONS, by amending Section 1, No personal interest, as follows:

Section 1. No personal interest.

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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)

11. Mayor’s Economic Development Duties Proposal (to be added to Governance Model)

Summary

PURPOSE. To ensure the elected mayor has access to early conversations between city staff and prospective developers of large-scale projects where details are being agreed upon for a final proposal to the Planning Board and City Council.

RATIONALE. The elected mayor’s role may represent the public’s interest in the development before the parameters of the proposal are solidified. The mayor’s involvement may touch upon increased asks of the developer for environmental/energy, preservation, public amenities, affordable housing, labor, taxation, subsidies, massing and scale, business types, design, or any number of aspects available for negotiation if a project needs accommodations from the city.

LEADERSHIP. Because the mayor has a seat at the table with the development team, the mayor may meet with neighbors and with councilors representing the district where the development will occur, and be able to convey those legitimate concerns early on to developers, likely leading to an improved and more palatable project that will meet less resistance as it approaches a vote on the council.

The mayor would also be expected to champion the project before the council to reduce the frequency and magnitude of last-minute challenges or demands on the project that might threaten its viability. This would require the mayor to gauge support, opposition, or reservations of councilors throughout the project evolution.

The mayor’s inclusion in the economic development process would legitimize the mayor’s role in serving as diplomat for the City of Portland with investors scouting the city, as mayors do in many other cities.

DESIRED OUTCOMES. With the mayor’s early and increased participation in the crafting of development deals, the city will ideally experience fewer controversial and divisive votes on the city council approving developments, making investments in Portland less risky and more predictable; concerned citizens will have a vehicle to have their grievances assuaged; and residents will have a more advantageous proposal with increased public value reflected in the development.

Text

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.

12. Peaks Island Council Proposal

Summary

The Commission prepared this proposal in response to this request from the Peaks Island Council sent to the Commission on Sunday, January 30, 2022:

Dear Commissioners,

At our last meeting, the Peaks Island Council unanimously voted to recommend that the Charter Commission draft language to codify the Peaks Island Council into our Portland City Charter. We have explained our rationale in the attached resolution.

We look forward to discussing this further with you.

Resolution

Whereas Peaks Island is a small community of Portland with very unique needs, different from those of any other neighborhood in the city.

Whereas Peaks Islanders have historically felt under-represented and underheard by City Hall. Whereas there has been an active secession effort on the island dating back to the 1880's, with the most recent secession effort in the 2000s leading to State Legislature action and eventually the creation of the Peaks Island Council in 2007.

Whereas the Peaks Island Council has met monthly since January 2008, with subcommittees of community members meeting regularly to cover topics such as Environment & Sustainability, Ferry Service, Anti-Racism, Parking, Community Priorities, and more.

Whereas now in its 15th year, the Peaks Island Council has become a stable and reliable institution providing a conduit between City Hall and the Peaks Island Community, advocacy on behalf of Peaks Islanders, and support for island organizations and special projects.

Whereas the members of the Peaks Island Council are elected every November at Peaks Island's precinct 1-3—the voting precinct with consistently the highest turn-out in the city. Whereas the Peaks Island Council was created by ordinance and is therefore the only office elected by the residents of Portland that does not exist in a city or district charter.

Be it resolved that the members of the Peaks Island Council request the Charter Commission protect the institution of the Peaks Island Council by codifying its role as an officially elected advisory body of the City Council into the Portland City Charter.

Signed,
Peter Eckel, chair
S.E. Rafferty, vice chair
Peter McLaughlin, secretary
Fred Somers

Jerzy Sylvester
Natasha Markov-Riss
Scott Mohler

The City of Portland, by adoption of Chapter 9, Article IV of its Code of Ordinances, established the Peaks Island Council as a body of seven voting members with listed duties and responsibilities. This proposal would recognize the Peaks Island Council through the City Charter as well as by ordinance.

Text

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.

E. Procedures Committee

1. Preamble and Land Acknowledgement
2. Code of Ethics
3. Participatory Budgeting
4. Communications between City Staff and Council

1. Preamble and Land Acknowledgement

Proposal Summary

In recent years, many institutions have considered their history and set out to make some kind of amends for the wrongs of the past. While we cannot say that our City is perfect, we can at least acknowledge the violent and genocidal nature of the events that led to its creation.

In crafting this acknowledgment, we have consulted with Native American leaders and historical resources. Many Indigenous people of the Wabanaki nation were killed and most were driven out of the ancestral lands where they had lived, hunted, fished, and raised their families.

By acknowledging those events and saluting the surviving Maine tribes in our preamble, we seek to ensure that such events never happen again, and to make clear that Portlanders of all races dwell on unceded land. We show respect and honor the truth -- both values that Wabanaki tribes hold dear -- while paying tribute to the original stewards of this place.

Text

Amend PREAMBLE by deleting the current language in its entirety and replacing it, as follows:

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)~~

We, the people of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the health, safety, and common good of all people in our community. In so doing, we seek to build a representative, responsive, and effective government that encourages leadership and participation from all members of that community, with an emphasis on accountability, equity, and inclusion, and a system of public education that supports Portland's civic, intellectual, cultural, and economic life.

Land Acknowledgement

Portland is located in the unceded territory of the Aucocisco Band of the Wabanaki, which also includes the Abenaki, Maliseet, Mi'kmaq, Passamaquoddy, and Penobscot people. European colonizers displaced Wabanaki people by force and went on to displace and harm indigenous peoples throughout what is now Maine and the United States. We acknowledge that displacement and that harm with sorrow, even as we celebrate and honor the Wabanaki knowledge and culture that continue to thrive in the Tribal Nations that have and always will call this place, the Dawnland, their home.

2. Ethics Commission and Code of Ethics Proposal

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 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;">Examples:</p>	<p style="text-align: center;">Accountability Officer</p> <p style="text-align: center;">Resolves disputes & cuts red tape</p> <p style="text-align: center;">Examples:</p>
<p>Sharing of information that should not be shared.</p>	<p>Help avoid lawsuits and unneeded controversy.</p>
<p>Gifts (large and small)</p>	<p>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.</p>
<p>Disrespectful behavior toward colleagues</p>	<p>Provide training for public officials on ethical matters.</p>
<p>Putting forth bad faith arguments in favor of a policy.</p>	<p>Obtain second opinions on legal matters/avoid lawsuits</p>
<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>	<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</p>
<p>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>	<p>Implementation of policy that is not being implemented</p> <p>Help standardize procedures against unyielding bureaucratic norms</p>

Text

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 or 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 or 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.

3. Participatory Budgeting

Proposal Summary

Participatory budgeting is a system that sets aside a portion of a municipality's budget to be allocated by residents directly. The commission spent two Procedures Committee meetings discussing the concept. Every member of the committee, and the members of the public who spoke, supported the concept, and expressed their desire to see it enshrined in city government. However, during deliberations, a consensus emerged that establishing the specifics of a participatory budgeting system is a task better suited for the city council. Accordingly, this proposal does not set forth specifics of such a system for Portland, but requires the City Council to establish one.

Text

1. *Amend ARTICLE VI. BUDGET, Section 5. Appointment; qualifications; powers and duties of the city manager, subsection i., as follows:*

(i) To prepare a five (5) year rolling capital improvement plan, utilizing the participatory budgeting process established by the city council pursuant to Article VII, Section 5, for annual presentation 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.

2. *Amend ARTICLE VII. BUDGET, Section 5 Annual Budget, as follows:*

The city council shall develop and implement a participatory budgeting system wherein a portion of the city budget is allocated based on a process that involves the input from as many residents of Portland as possible. To achieve such participatory system, the city council may establish a subcommittee, task force, or any other structure that is necessary and proper for the design, implementation, and

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management of a participatory budgeting system.

After the participatory budgeting process, but in no event ~~Not~~ later than two (2) months before the end of the fiscal year, the city manager shall submit to the city council a proposed city budget prepared by the city manager 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, 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)

4. Communications Policy (to be added to Governance Model)

Summary

Communications between City Staff and Elected Officials

Portland's current charter allows the city's executive to take a strict approach to how, when, and whether elected officials may talk with city staff. Portland's Charter gives the city manager the power to direct or make requests of city staff, and denies that power to elected officials. Article VI, Section 5 of Portland's current charter provides:

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.

Under the system that this provision establishes, elected officials may make promises to constituents about how the city will function, and about how they will execute their vision. But realizing those promises depends on the cooperation of the city manager. The city manager has the exclusive power to direct city staff of every department, and to make requests of them. Indeed, the next sentence in the same section of the charter underscores this interpretation:

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.

This section empowers the city manager to prohibit or monitor communications between city staff and elected officials. Such a power is relatively expansive, even compared with other council-manager systems.

In recent years, this rule proved cumbersome for local officials. Indeed, it's very drafter, Attorney Jim Cohen, a former charter commissioner, has admitted as much to current charter commissioners. Accordingly, charter commissioners decided to consider a new structure for governing this area of municipal government.

To answer the questions presented, commissioners combined analysis of the charters of a random selection of cities across the country, and interviews with the city clerks of some of those same cities. The research turned up three dominant models for governing this area of municipal government. The first model is *executive supremacy*. Under this model, a charter gives its city's chief executive relatively broad powers to restrict communications between city staff and elected officials. Some charters spell out those powers in some detail, and others leave those details vague and to be spelled out in the city code or policy manual. But they all give the executive the exclusive, or almost exclusive, power to govern communications between city staff and elected

officials. The National Civic League's *Model City Charter*, Palo Alto, California (council-manager) Hartford, Connecticut (council-mayor), and Austin, Texas all favor this model. The second model is *limited executive power*, where the executive branch proposes rules to the legislative branch, which the latter enacts after deliberation. Burlington, Vermont and Youngstown, Ohio both favor this model. The third dominant model is *legislative supremacy*, where charters grant a city's legislative branch the exclusive power to write the rules that govern communications between city staff and elected officials. Portland, Oregon uses this model.

Of the three models, the commission opted for limited executive power because it seemed most likely to foster cooperation between legislative and executive branches in a manner that leads to a smooth and workable culture of communication between city staff and elected officials.

Text

Amend ARTICLE VI, ADMINISTRATIVE OFFICERS, by amending the first paragraph of Section 5. Appointment; qualifications; powers and duties of the city manager, as follows:

Section 5. Appointment; qualifications; powers and duties of the city manager. The city manager shall be chosen 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 the administrative head of the city and shall be responsible to the city council for the administration of all departments. ~~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 mayor shall recommend for adoption by the city council rules that govern communications between city staff and elected officials.

Section 2. Charter Commission Issues Considered But Not Recommended

1. Councilor Pay Proposal

This proposal, intended to establish greater equity for and access to public offices, would have defined the position of City Councilor as a 20-hour-a-week job to be compensated at a rate roughly equal to a non-executive job at a city business.

2. Office of Information Services

PURPOSE. The purpose of the proposed Office of Information is to consolidate disparate but related functions in Portland’s government into one department to ensure the efficient transfer of public information between City Hall and individual councilors, the press, and members of the public.

RATIONALE. The concept of “gatekeeping”, or the act of controlling the allocation of information or access to resources as either a leveraging tool or as a defensive measure, is present in virtually every administration where the most powerful actor also controls the information. This is not an indictment of any individual – it can happen periodically, episodically, or selectively from administration to administration, and as such, one individual may not experience it while another might quite frequently. The checks and balances to guard against gatekeeping are often insufficient, such as the ability of a council or board to fire the power actor or laws codifying access to public documents, because gatekeeping may include delivering incomplete documents, intentionally supplying different documents than requested, redacting documents, delaying documents, altering documents, and providing documents on the same topic with contradictory information. These various tactics create enough doubt and frustration that rarely a case prevails against the power actor. These tactics may also be employed to augment allies and diminish opponents.

SOLUTION. By creating an independent office with access to all public documents but without a stake in the success or fall of any actor (be it mayor, manager, or councilor), information requests would be transactional rather than political. Because this office would be a standalone department, there would be no bureaucracy to obfuscate the cause of undelivered information – either the source failed to deliver the information or the office failed to procure it upon request. In either case, the council may easily intervene.

DESIRED RESULTS. The Office of Information would allow our democracy to function more freely and transparently with more rigorous oversight over public officials and a more robust marketplace of proposals. It would allow the press to investigate city business without deterrence; it would allow dissenting politicians to craft or bolster proposals without supplicating an adversary; and it would allow engaged residents to request their government’s documents without invoking state laws or threatening lawsuits.