



City of Portland Charter Commission Agenda

Charter Commission Meeting
June 22, 2022 at 6:00 PM

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

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available following the meeting in our Agenda Portal.

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

1. 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.

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/84203873068?pwd=cENncThZZGlaajAzdmdOd3YwbXc5QT09>

Passcode: 053930

Or One tap mobile :

US: +19292056099,,84203873068#,,, *053930# or
+13017158592,,84203873068#,,, *053930#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900
6833 or +1 253 215 8782 or +1 346 248 7799

Webinar ID: 842 0387 3068

Passcode: 053930

International numbers available: <https://portlandmaine-gov.zoom.us/j/kcSKZO5Yrb>

2. Call to Order (6:00-6:05)
3. Review and Approval of Minutes (6:05-6:10)
 - a. Approval of Draft June 8, 2022 Charter Commission Meeting Minutes
4. Public Hearing on Preliminary Report (6:10-8:00)
 - a. Description: Commissioners will hold a public hearing on the Preliminary Report
Relevant Document(s):
 - a. Preliminary Report
5. Amendments to Preliminary Report (8:10-9:30)
 - a. Description: Commissioners will suggest amendments to the reforms proposed in the Preliminary Report.
Relevant document(s):
 - a. Commissioner O'Brien's amendment
 - b. Police Oversight Proposal amendment
 - c. Clean Elections Amendment
 - d. Universal Resident Voting
6. Other Sections of Report
 - a. Description: Commissioners will discuss minor reports and other decisions of the Final Report.
Relevant document(s):
 - c. Commissioner Barowitz's "other considerations"
7. New Business
8. Adjourn

**City of Portland
Charter Commission
Meeting Minutes**

June 8, 2022

1. **Call to Order.** Chair Kebede called the meeting to order at 6:05 p.m.

Present were: Chair Kebede, Commissioners Barowitz, Buxton, Chann, Eglinton, Houston, Lizanecz, O'Brien, Sheikh-Yousef, Washburn (arrived 6:30 p.m.), Waxman (arrived 6:50 p.m.), (Stewart-Bouley, absent)

2. **Review and Approval of Minutes.**

- a. Approval of the draft May 25, 2022 Charter Commission Meeting Minutes. On motion by Commissioner Eglinton, seconded by Commissioner Houston, the Commission voted to approve the draft meeting minutes of May 25, 2022 by roll call vote of 9-0.

3. **Discussion of How to Present Ballot Questions**

Description: Commissioners will deliberate about how to present questions to voters.

Relevant document(s):

- a. Preliminary Report

On motion by Commissioner Eglinton, seconded by Commissioner Houston, the Commission voted to move this matter to later in the Agenda after discussion of amendments by roll call vote of 9-0.

4. **Discussion of Amendments**

Description: Commissioners will deliberate and vote on amendments to the proposals.

Relevant Document(s):

- a. Preliminary Report
- b. Commissioner Buxton's Clean Elections Amendment

Commissioner Buxton presented the four amendments to the Clean Elections proposal that had emerged from workshop discussions. One would change the implementation date from 2024 to 2023; one would bar foreign contributions or expenditures on ballot question campaigns to curb their influence on elections; another would authorize the City Council to adopt additional regulations and ordinances governing campaign spending; and another would restore a prior bar on contracting with the City within two years of making a campaign donation to a City election candidate. Attorney Katsiaficas noted: that the City Clerk had recommended the 2024

implementation date; that as to the foreign contributions provision, the Governor had vetoed such a bill last year and that State law appears to preempt local home rule authority to regulate election spending, so that this provision (and the limitation on contracts to local candidate donors) would be beyond the ability of the City to add to the Charter; and that authority of the City to adopt additional regulations and ordinances also should be consistent with State law.

Chair Kebede recommended that the Commission act on the amendments this evening, and obtain a memo from Perkins Thompson on its legal opinion and any differing legal opinions from others to allow further consideration of these at later meetings. These amendments were acted upon by several votes.

1) Implementation date. Commissioner O'Brien suggested Clean Elections could be placed in the FY 2023-2024 budget to allow implementation for the November 2023 election. On motion by Commissioner Buxton, seconded by Commissioner Eglinton, the Commission voted to amend the Clean Elections to change the implementation date to be for inclusion the FY 2023-2024 budget to allow implementation for the November 2023 election by roll call vote of 9-0.

2) Foreign Contributions. On motion by Commissioner Buxton, seconded by Commissioner Washburn, the Commission voted to amend the Clean Elections to add Section 13(b) to prohibit foreign contributions by roll call vote of 8 (Kebede, Barowitz, Buxton, Chann, Houston, Lizanecz, Sheikh-Yousef, Washburn) to 2 (Eglinton, O'Brien).

3) Additional Regulations and Ordinances. On motion by Commissioner Buxton, seconded by Commissioner Washburn, the Commission voted to amend the Clean Elections to add Section 13(c) to allow the City Council to adopt additional regulations and ordinances governing campaign spending that are consistent with Section 13 of the Charter and with State law by roll call vote of 8 (Kebede, Barowitz, Buxton, Chann, Houston, Lizanecz, Sheikh-Yousef, Washburn) to 2 (Eglinton, O'Brien).

4) Contract Bar for Candidate Donations. Following discussion on how this would affect ability of City employees and appointees to contribute to local candidates, how this might address in-kind contributions, and whether this is a real concern since the individual donation limit to a local candidate is \$500, Commissioner Buxton withdrew the motion to approve, subject to possible later consideration.

c. Commissioner O'Brien's Governance Amendment

Commissioner O'Brien presented a summary of his proposed changes to the Governance Proposal for first reading. He explained that in preparing this, he was attempting to answer former Councilor and Mayor Anne Pringle's questions of what is the Commission trying to address, and what is the problem it seeks to solve? He believes that the current Charter does not allow the elected mayor to lead on major operational issues, such as food truck location or housing for asylum seekers or two-way operation of City streets - these are decisions made by City staff and not elected leaders. Therefore, his proposed amendments would augment the Governance Model's focus on an elected mayor with a council that provides a check on the mayor's powers, and he reviewed those specific changes. There were clarifying questions about

the scope of the Mayor's Executive Order authority and how that squares with the Council's general legislative authority and about how to fill a vacancy in the office of mayor if the mayor is removed, with an election being the method unless fewer than six months remain, in which case, the COO might act as the City's Chief Executive until the next election. The Commission directed Perkins Thompson to prepare these amendments in charter language form for consideration at the June 22 meeting.

d. Commissioner Chann's Governance Amendment

Commissioner Chann presented a summary of his proposed changes to the Governance Proposal, several of which had previously been considered. The amendments would return the mayor to being a member of the Council, retain the city manager, strengthen budget language, clarify removal of the mayor, and modify the current staff communications policy. Discussion followed regarding the removal of the mayor, with general consensus being that the standard for removing the mayor be different than for council and school board members.

On motion by Commissioner Waxman, seconded by Commissioner Chann to approve the Chann amendments as amended to allow the mayor to direct the drafting of the City budget and to present it, the Commission voted by roll call vote of 4 yes (Chann, Lizanecz, Waxman and Eglinton) and 7 no (Kebede, Washburn, Sheikh-Yousef, Buxton, Barowitz, O'Brien, and Houston), not amend the Clean Elections to add Section 13(b), and so the Chann amendments were not approved.

5. Discussion of How to Present Ballot Questions

Chair Kebede presented his proposed grouping of Commission proposals into five ballot modification questions. Following discussion, the Commission developed preliminary consensus around the groupings shown in the chart attached to these minutes, and directed Perkins Thompson to begin drafting charter language for these questions accordingly. Ultimately, the Commission will need to approve the bundling of proposals into ballot modification questions by majority vote.

6. Other Considerations Section of the Preliminary Report

Commissioners discussed whether minority reports are permitted and in what format. The understanding is that minority reports of no more than 1,000 words each may be submitted by a Commissioner or Commissioners whose proposals were not accepted (Councilor Pay and Office of Information Systems, for example) or who were not on the prevailing side of a vote on a proposal. They may write these for inclusion. The Commission also may include a list of "Other Considerations" – for example, items that the Commission might have wish to have addressed but for the limits of time, or issues on the horizon for a future Charter Commission.

Commissioners will review these and begin to draft the same as well as the ballot summaries that will accompany the ballot modification questions where proposed revisions are too lengthy to fit on the ballot.

Commissioner O'Brien asked if Dan Amory's recent op-ed on the School Budget Autonomy proposal might be included in the Final Report; Chair Kebede noted that it, along with memoranda from the Commission's legal adviser and the School Board's attorneys, are in the record of the Commission's proceedings and so should not be included in the Final Report.

7. New Business

Commissioner O'Brien asked if Commissioners Lizanecz and Barowitz might be willing to revisit the language of the Ethics and Police Oversight proposals to pare their length in light of how later proposals were drafted, and they agreed to do so.

8. Adjourn

On motion of Commissioner Waxman, seconded by Commissioner Washburn, the Commission voted unanimously by roll call vote to adjourn at 9:10 p.m.

PART I CHARTER*

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

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

Preamble

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

PREAMBLE

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

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

(Referendum 11/2/10)

ARTICLE I. GRANT OF POWERS TO THE CITY

Section 1. Corporate existence retained.

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

Section 2. Powers and duties.

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

The executive powers of the city shall be vested 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)

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.

Commented [BJM1]: Discuss: Does this 1 year term count towards the 2 year consecutive term limit?

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 attend, with the COO, the annual workshop session of the city council to discuss and identify the city's goals and priorities. 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 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.
- (e) To direct the COO in the preparation of all city budgets and present the budget to the city council for approval;
- (f) 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;
- (g) 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;
- (h) To exercise veto power over the annual city appropriation as provided in article VII, section 8;
- (i) To exercise veto power over city council actions regarding city ordinances or amendments thereto as provided in article II, section 12.
- (j) 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;

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)

All directives issued by the mayor pursuant to this charter implementing city council approved ordinances, orders, and resolves, and affecting the outcomes of any city services, policies, procedures, or programs lasting more than 30 days (or multiple directives of a similar nature occurring within a 30-day period) shall be submitted in writing to the COO as an "Executive Order." Such Executive Orders shall appear on the next council agenda as a communication prior to taking effect. The council may schedule a public hearing and may take action on such Executive Order or allow the Executive Order to remain.

Commented [BJM2]: If it is a communication, I don't believe the Council can take action on the item so have suggested scheduling a public hearing to take action if desired.

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

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

Section 4. 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 by corporation counsel until 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; provided that if the vacancy occurs with six months or fewer remaining in the then mayor's term, then there shall be no special election to fill the vacancy. 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 5. Recall and removal of mayor.

The mayor may be censured or removed from office by the city council for official misconduct or neglect of duty. At any meeting of the city council, it shall be in order for any member thereof to give written notice, seconded in writing by a majority of at least all of the members of the city council, of the intention to move, at the next meeting thereof, occurring within not less than ten (10) days, a resolution that the mayor be removed from office.

Such notice shall specify as particularly as possible the acts of misconduct, or the instances of neglect of duty complained of, shall be entered by the city clerk in the minutes of the city council, and the clerk shall within two (2) days serve a copy thereof, upon the mayor at the mayor's residence and electronically, as well as mail an electronic copy to each of the members of the city council.

Notwithstanding the forgoing, complaints received by the city from any member of the public or by a councilor that the mayor is engaging or has engaged in illegal activity or violations of the ethics code shall first be sent to the ethics commission for review. The ethics commission shall review such complaint under its ordinance and procedures. A recommendation to censure or

~~remove the mayor for illegal activity or violations of the ethics code shall specify as particularly as possible the illegal acts or the violations of ethics code, should be filed with the city clerk, who shall serve a copy of that recommendation upon the mayor at the mayor's residence and electronically, as well as mail an electronic copy to each of the members of city council.~~

Commented [BJM3]: Code of Ethics is not currently part of the Governance grouping. May need to move Code of Ethic to Governance in order to allow for ethics commission

~~At any hearing of the ethics commission or meeting of the city council in which the recall or 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, and such proceedings shall be conducted in accordance with state and federal laws and constitutional requirements.~~

~~Any vote to order a recall election of the mayor for official misconduct or neglect of duty or any vote to censure or remove the mayor from office shall require a vote of three-fourths (3/4) of the full city council.~~

ARTICLE II. CITY COUNCIL

Section 1. City to be divided into election districts.

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

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

Section 2. Composition, election, tenure of office.

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

~~council, its members or membership, shall be deemed to include the mayor, unless otherwise specifically provided.~~

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

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

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

Section 3. Ranked choice voting; instant runoff tabulation.

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

- (a) The ballot shall give voters the option of ranking candidates in order of choice.
- (b) If a candidate receives a majority, i.e. at least one more than fifty percent (50%) of the first choice votes cast, that candidate is elected.

- (c) If no candidate receives a majority of first choice votes, an instant runoff re-tabulation shall be promptly conducted by the city clerk and completed within five (5) business days of the election. The instant runoff re-tabulation shall be conducted in successive rounds, with the majority determined for each successive round by the number of votes cast in that round. The candidate with the fewest votes after each successive round in which no candidate receives a majority of the votes cast in that round shall be eliminated, and the votes in the successive rounds shall be re-tabulated among the remaining candidates until one candidate receives a majority of the votes cast in that round. In each successive round, each voter's ballot shall count as a single vote for whichever candidate the voter has ranked highest who has not been eliminated in a prior round, if any.
- (d) After the first round, a majority is determined as at least one (1) more than fifty percent (50%) of the votes cast for a remaining candidate in a particular round.
- (e) The city clerk may adopt additional regulations consistent with this subsection to implement these provisions. The ballot shall contain instructions on how to vote for each office.

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

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

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

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

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

Section 5. City Council Chair

As described herein the city council shall be led by a chair and vice-chair who shall be elected by majority vote by the members of the city council. The chair shall preside over meetings of the city council and set the city council agendas in accordance with city council rules. The vice-chair shall preside over council meetings in the chair's absence. In the case of an absence of the chair or vice-chair, the city council shall choose a chair, pro tempore, by a majority of those members present and voting. In case of a vacancy in the office of chair of the city council, by death, resignation or otherwise, the same shall be filled for the unexpired term by a majority vote of those members present.

Together, the chair and vice-chair, shall have the authority to organize the council into various committees and recommend chairs for such committees. The committee members shall be responsible for appointing a chair for the committee.

~~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) (k) 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~~

Commented [BJM4]: Moved to Article VI

~~least five (5) members of the council; and~~

~~(1) To appoint the members and chairs of the city council committees and various ad hoc committees and communicate such appointments to the city council, which may override such appointments by a vote of at least six (6) council members.~~

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

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

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

Section 76. Vacancies.

A vacancy in the membership of the city council shall occur upon the happening of the following: (1) the death of a member; (2) the effective date of the resignation of a member; (3) the removal of a member from the district from which he or she was elected; (4) the removal of a member from the city; (5) the conviction of a member of a felony while in office; or 6) the recall of a member pursuant to the provisions of article V. The council shall declare a vacancy in its membership to exist upon the failure of a member to attend any six (6) consecutive regular meetings of the city council, or at least sixty (60) percent of the regular meetings of the city council held in any one calendar year unless such member shall be excused (by vote of at least four (4) other members) for health reasons or other good cause.

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

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

If a vacancy in the membership of the city council occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date. Such election shall be called and held and nominations made as in other elections. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

Section 8. Meetings of the council.

The city council shall meet at the usual place for holding meetings on the first Monday in December following the regular municipal election, or as soon thereafter as possible, and at such meeting the mayor and councilors-elect shall be sworn to the faithful discharge of their duties by a justice of the peace, or by the city clerk. The city council shall at such meeting establish by resolution or rule a regular place and time for holding its meetings, and shall meet regularly at least twice each month. (Referenda 6/13/78; 11/4/86; 11/7/00; 11/2/10)

Section 9. Special meetings.

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

Section 10. Quorum.

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

Section 11. Procedure.

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

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

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

Section 12. Mayoral veto of city council action on city ordinances.

Within five (5) business days of the meeting at which the city council adopts any new or amended city ordinance, the mayor may veto such adoption by written communication to the city council. Such communication shall specify the reasons for such veto and shall, at minimum, be posted upon the city's website or similar location and sent to the councilors by electronic mail and by the same means that agendas are delivered to councilors.

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 two-thirds (2/3) of the members of the city council.

If a veto is overridden, the ordinance will take effect as legally adopted.

Section 13. Annual Performance Reports.

The city council shall request an annual report regarding the performance of (1) constituent services, (2) permitting, and (3) any other city functions the city council requests. Such reports shall be provided to the city council at a regularly scheduled public meeting and the public shall have the opportunity to provide feedback specific to the reports.

ARTICLE III. BOARD OF PUBLIC EDUCATION

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

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

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

The city council shall by order establish the amount each member of the school board shall be entitled to receive as compensation for all services rendered, which compensation shall be the same as that received by members of the city council, ~~other than the mayor~~. The city council shall provide additional

compensation to the chair of the school board appropriate to reflect his or her additional responsibilities as chair. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 2. Chair.

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

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

Section 3. Organization.

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

Section 4. Powers and duties.

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

Section 5. School budget.

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

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

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

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

A budget hearing on such budget estimates shall be held prior to final action by the city council. The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools,

which amount shall not be less than the sum required to be appropriated for such purposes by the general laws of the state. Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council. Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council.
(Referendum 6/13/78; 11/2/10)

Section 6. Vacancies.

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

If a vacancy in the membership of the school board occurs or is declared prior to the next regular municipal election, the vacancy shall be filled at a special election to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections.
(Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

ARTICLE IV. ELECTIONS

Section 1. Continuity in office.

In the event redistricting of the city shall cause a then

council member or school board member to reside in a district other than that from which such person was elected, the office of such member shall not thereby be considered vacated but such member shall continue in office until a successor is duly elected and qualified. Each district councilor and district school board member in office on the effective date of any such redistricting shall be deemed to represent the newly constituted district of the same numerical designation as that formerly represented and shall continue to serve in that capacity until expiration of his or her term. (Referenda 6/13/78; 11/4/86; 11/2/10)

Section 2. Regular municipal election.

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

Section 3. Wardens and ward clerks.

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

Section 4. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for mayor or an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not

less than seventy-five (75) nor more than one hundred fifty(150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

Section 5. Form of nomination petition.

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

To the city clerk of the City of Portland

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

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

(Signed) _____.

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

Attorney, State of Maine Bar # _____
Notary Public

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

11/2/10)

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

The city clerk shall make nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to the election. The nomination petitions for any one (1) candidate must be assembled and united into one (1) petition and filed with the city clerk during normal business hours not earlier than eighty-five (85) nor later than seventy-one (71) days before the date of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing at the time of filing of such nomination petitions his or her consent accepting nomination, agreeing not to withdraw and, if elected, to qualify. Such nomination petitions and consent, once filed may not be withdrawn. Any challenge to a nomination petition must be submitted to the city clerk in writing, setting forth the specific reasons for the objection, no later than five (5) days, excluding Saturdays, Sundays, and legal holidays, from its date of filing, or it is barred. No person shall take out nomination papers for more than one position at the same election, nor be nominated, nor shall any person consent to being nominated, at the same election for any other elective office provided for by this charter, and no person shall simultaneously hold more than one (1) elective office provided for by this charter. (Referenda 11/2/76; 6/13/78; 11/4/86; 11/6/01; 11/4/08; 11/2/10)

Section 7. Form of ballot.

All official ballots for use in all municipal elections shall be prepared by the city clerk and furnished by the city, consistent with the voting machines used and the form of any state ballot(s), and the use of ranked choice voting. Ballots for use in elections under this charter shall contain the names of the various candidates, with their residence, and the office for which they are candidates, and instructions on how to mark the ballot. The candidates for each office shall be grouped under the title of each office, plainly and distinctly marked. There shall be as many blank spaces under the name of each office as there are vacancies to be filled. The procedure for counting write-in votes shall be governed by Title 21-A, Maine Revised Statutes, unless inconsistent with article II, section 3, in which case the charter provisions shall govern. Notwithstanding the foregoing, in the event of an emergency such as the illness, death or disqualification of a nominee for municipal office prior to the general election, the time frame for accepting a declared write-in

candidate may be shortened by the city clerk. Such ballots may also contain such measures as may be submitted to the voters of the city by the legislature or by the city council and shall be without party mark or designation.

In preparing all ballots for election under this charter, the city clerk shall arrange the names of all qualified candidates for each office in alphabetical order according to surnames. (Referenda 11/2/2010; 3/3/2020))

Section 8. Specimen ballots.

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

Section 9. Count of ballots.

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

Section 10. Canvass of returns.

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

Section 11. State election laws applicable.

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

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

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

ARTICLE V. RECALL

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.

In the case of either the mayor, or an at large member of the city council or of the school board, any five hundred (500) registered voters of the city may affirm and file with the city clerk an affidavit containing the name of the mayor or of the member of the city council or of the school board whose removal is sought, together with a statement of the reasons why such removal is desired. In the case of a district member of the city council or of the school board, any two hundred and fifty (250) registered voters of the member's district may affirm and file with the city

clerk an affidavit containing the name of the district member whose removal is sought, together with a statement of the reasons why such removal is desired. Members of the city council and of the school board shall not be included on the same affidavit and only one member's name shall be on an affidavit.

Within seven (7) calendar days of receipt of such an affidavit, the city clerk shall prepare a sufficient number of petitions which shall contain the signature of the city clerk, his or her official seal, the date, and the name of the person whose removal is sought. In addition, the statement of reasons for removal referred to above shall either be printed on such petitions or attached thereto. Such petitions shall be on paper of uniform size with as many individual sheets as reasonably necessary.

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

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

To mandate a vote in the case of the mayor or ~~an~~ at large councilor or an at large member of the school board, the recall petition must be signed by at least three thousand (3,000) registered voters of the city, or in the case of a district

councilor or district member of the school board, by at least fifteen hundred (1,500) registered voters of that member's district. (Referenda 12/1/75, 11/4/86; 11/2/10)

Section 3. Verification of recall petition.

At the expiration of the thirty (30) day period for signing petitions described in section 2, the city clerk shall declare the petition closed and, within ten (10) days thereafter, shall ascertain whether or not the petitions have been signed by the requisite number of registered voters. The city clerk shall attach his or her certificate, showing the results of such examination, to the petitions.

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

Section 4. Calling of recall election.

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

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

Section 5. Form of ballot.

Unless the mayor or the member or members whose removal is sought shall have resigned within ten (10) days after the receipt by the city council of the clerk's certificate or of the council's vote to hold a recall election for the mayor, the form of the question to be submitted to the voters shall, as nearly as possible, be: "Shall (name of official and his or her title) be recalled?" (Referendum 11/4/86)

Section 6. Count of ballots.

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

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

Section 7. Election may be ordered.

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

ARTICLE VI. ADMINISTRATIVE OFFICERS

Section 1. Appointments.

(a) The following officers shall be appointed by a vote of at least a majority of the city council: city clerk, corporation counsel, and they may appoint constables at large.

~~(a)(b)~~ Based on the procedure provided in this Article VI, section 1(e), the COO~~The following officers shall be nominated for appointment by the mayor and confirmed appointed by a vote of at least five (5) members~~a majority of the city council: city manager, city clerk, and corporation counsel, and they may appoint constables at large.

~~(b)(c)~~ Based on the procedure provided in this Article VI, section 1(e), All~~department heads shall be nominated for appointment by the mayor and confirmed by a vote of at least a majority of the city council.~~ appointed by the city manager, subject to confirmation by the city council.

~~(e)(d)~~ 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.

Commented [BJM5]: Who has the power to remove associate counsel?

(e) 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)(f)~~ The mayor shall declare the intent of the city to appoint any vacant COO or department head position. The city staff shall post the declared positions pursuant to city procedure and provide the mayor with a list of qualified candidates that applied for such appointment. All persons nominated for appointment by the mayor shall be nominated solely on the basis of character and qualification to perform the duties of the office or position to be filled by the appointment.

Section 2. Organizational powers.

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

(Referendum 11/4/86)

Section 3. Civil service rules.

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

Section 4. Compensation and tenure of offices.

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

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

The ~~city manager~~COO shall be nominated for appointment by the mayor and chosen confirmed by the city council solely on the basis of character and executive administrative qualifications, and may or may not be a resident of the City of Portland or of the State of Maine at the time of appointment. Such person shall give bond for the faithful discharge of his or her duties to the City of Portland and in such sum as the city council shall determine and direct, and with surety or sureties to be approved by the city council. The premium on such bond shall be paid by the city. Such person shall be responsible for the administration of all departments and for the delivery of city services the administrative head of the city and shall be responsible to the ~~city council~~mayor ~~for the administration of all departments.~~ The mayor shall recommend for adption 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 hold annual reviews of department heads. The status and results of such reviews shall be provided to the mayor.

~~(b)~~(d) To implement the policy decisions of the mayor and city council.

~~(e)~~(e) To coordinate city programs and operations and recommend improvements in such programs and operations to the ~~council~~mayor.

~~(e)~~(f) 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.

~~(e)~~(g) To make appointments as provided in this charter.

~~(f)~~(h) 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.

~~(g)~~(i) 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.

~~(h)~~(j) 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.

~~(i)~~(k) To prepare and submit to the city council such reports as are requested or he or she deems advisable; and

~~(j)~~(l) 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 7. Removal of COO.

The mayor shall have the right to remove the COO from office. Prior to any removal from office, the mayor shall inform the city council, during executive session, of such intention and the reasons for the removal. Following the executive session, the city council shall have two business days to schedule a public hearing to be held within 30 days to discuss the removal of the COO. At the public hearing, the city council may override the mayor's decision to remove the COO from office by a vote of a majority of the entire city council.

Commented [BJM6]: There may be some FOAA and constitutional issues regarding giving the council the power to override the removal of COO given the council can only take action in public.

Section 67. 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 78. Duties of administrative officers.

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

Section 89. Continuity in office.

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

Section 10. Removal of officers.

Except for the COO, officers may be removed from office by a vote of a majority of the full council.

Section 11. Removal of department heads.

In consultation with the mayor, the COO shall have the right to remove any department head. The COO shall provide notice and written explanation to the review committee within one week of such removal.

Section 12. Review committee.

The review committee shall consist of 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 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.~~

The mayor shall lead the annual review of the COO in

conjunction with the review committee.

The review committee shall hold regular meetings, no less than annually, with the COO and department heads (either separately or together) in executive session to understand the general working conditions and morale at city hall.

Commented [BJM7]: We have reservations that this likely does not qualify for executive session

ARTICLE VII. BUSINESS AND FINANCIAL PROVISIONS

Section 1. Accounts and records.

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

Section 2. Collaboration between city and schools.

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

Section 3. Reports.

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

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

Section 4. Fiscal year.

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

Section 5. Annual budget.

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

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

Section 6. Budget content.

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

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

Section 7. Appropriation resolve.

The city council shall adopt the annual appropriation resolve for the next fiscal year on or before the last day of the twelfth month of the fiscal year currently ending. Such resolve shall appropriate those amounts deemed necessary for general city purposes and additionally one gross amount for school purposes as required by section 5 of article III. The total amount

appropriated shall not exceed the estimated revenue of the city.

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

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

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

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

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

An order to override the veto shall be placed on the next city council agenda which is at least five (5) calendar days after the date of the mayor's veto communication, and such veto may be overridden by a vote of at least six-(6)two-thirds (2/3) of the members of the city council. ~~The mayor shall not vote on such override item.~~

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

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

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

Section 9. Unexpended appropriations.

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

Section 10. Borrowing.

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

Section 11. Bond issues.

Money may be borrowed, within the limits fixed by the constitution and statutes of the state, now or hereafter applying to Portland, by the issue and sale of bonds or notes pledged on the credit of the city, or on the revenues or assets of the

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

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

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

Section 12. Temporary loans.

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

Section 13. Payments.

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

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

Section 14. Bonds of officers.

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

Section 15. Collection and custody of city moneys.

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

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

- (a) The city council shall submit the following to voter referendum:
 - (1) Orders or resolves authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment; or
 - (2) Orders or resolves directly or indirectly obligating the city to expend, over a term greater than one (1) municipal year, municipal tax funds in excess of an amount greater than seven and one-half one-hundredths of one (1)

percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment.

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

Shall the order or resolve entitled " _____
_____", be approved?
(Referendum 11/4/86; 11/2/10)

ARTICLE VIII. MISCELLANEOUS PROVISIONS

Section 1. No personal interest.

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

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

Section 2. Ordinances, rules and regulations continued.

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

Section 3. Continuity of actions.

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

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

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

Section 5. Effect of private and special laws.

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

APPENDIX A

Charter Legislative History

1. Town of Portland incorporated by Act of Commonwealth of Massachusetts on July 4, 1786; Town of Portland Records, p. 1
2. City of Portland incorporated by adoption of charter on March 26, 1832; original charter can be found in Chapter 248, Special Laws of Maine 1832, p. 380; amendments as follows:
 - c. 325, S.L. 1833, p. 501
 - c. 500, S.L. 1834, p. 749
 - c. 402, S.L. 1838, p. 511
 - c. 541, S.L. 1839, p. 648
 - c. 33, P & SL 1842, p. 25
 - c. 200, P & SL 1845, p. 258
 - c. 266, P & SL 1845, p. 310
 - c. 233, P & SL 1849, p. 333
 - c. 330, P & SL 1850, p. 458
 - c. 167, P & SL 1853, p. 158

c. 35, P & SL 1857, p. 48
c. 103, P & SL 1857, p. 93
c. 109, P & SL 1857, p. 100
A total revision of the charter was accomplished in 1863; c. 275, P & SL 1863, p. 257; amendments as follows:
c. 348, P & SL 1870, p. 316
c. 647, P & SL 1871, p. 624
c. 21, P & SL 1875, p. 16
c. 8, P & SL 1881, p. 9
c. 86, P & SL 1881, p. 86
(c. 450, P & SL 1897, p. 707--Revision of charter rejected by voters in 1897)
c. 384, P & SL 1901, p. 569
c. 68, P & SL 1903, p. 116
(c. 287, P & SL 1905, p. 328--abolishing common council rejected by voters April 24, 1905)
c. 344, P & SL 1907, p. 638
c. 427, P & SL 1907, p. 758
(c. 148, P & SL 1921, p. 513--"Murray Bill" charter revision rejected by voters September 13, 1921)
(c. 149, P & SL 1921, p. 532--"Brewster Bill" charter revision rejected by voters September 13, 1921)
A total revision of the charter was accomplished in 1923 by adoption by voters of "Brewster Bill" on September 11, 1923; c. 109, P & SL 1923, p. 596; ("Nichols Bill" c.104, P & SL 1923, p. 557 was rejected same date); amendments as follows:
c. 56, P & SL 1929, p. 484
(c. 112, P & SL 1929, p. 604--Mayor--Alderman form rejected by voters on September 10, 1929)
c. 31, P & SL 1931, p. 353
c. 50, P & SL 1945, p. 629
c. 113, P & SL 1945, p. 736
c. 144, P & SL 1945, p. 71
c. 72, P & SL 1947, p. 722
c. 72, P & SL 1949, p. 765
c. 103, P & SL 1949, p. 803
c. 28, P & SL 1953, p. 528
c. 108, P & SL 1955, p. 756
c. 88, P & SL 1957, p. 707
c. 143, P & SL 1959, p. 873
A total revision of the charter was accomplished in 1961; c. 194, P & SL 1961, p 1125; amendments as follows:
c. 64, P & SL 1963, p. 966
c. 65, P & SL 1963, p. 967
c. 157, P & SL 1963, p. 1187

City of Portland
Code of Ordinances
~~Article VIII~~

Charter

~~Rev. 12-6-12~~

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

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

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

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

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

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

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

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

Referend12/4/72 Art. I,
a 1
Referend12/1/75 Art. II, 2
a
Art. IV, 2
Art. IV, 4
Art. V,
2
Art. VII 1
,
Referend11/2/76** Art. II, 1
a
Art. II, 4
Art. III 1,2,5
,
Art. IV, 2,3,4,
6
Art. V,
2
Referenda 6/13/78 Art. II, 1,2,3,5
Art. III, 1,2,3,4
Art. IV, 1,2,3,6
Art. VII,3,4,5,6
Referenda 11/4/86***Art. II, 1,2,4,5
Art. III, 1,5
Art. IV, 1,2,3,4,6,7,9
Art. V, 1,2,3,4,5,6,7
Art. VI, 1,2,5
Art. VII 7-10 (Rpld)
Art. VI, 11-12 (Rnbd as Art. VI,
7-8)
Art. VII, 3,4,9,10,16
Art. VIII, 1,4,5
Art. VIII, 6 (Rpld)
Referenda 11/3/87 Art. II, 2

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

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

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

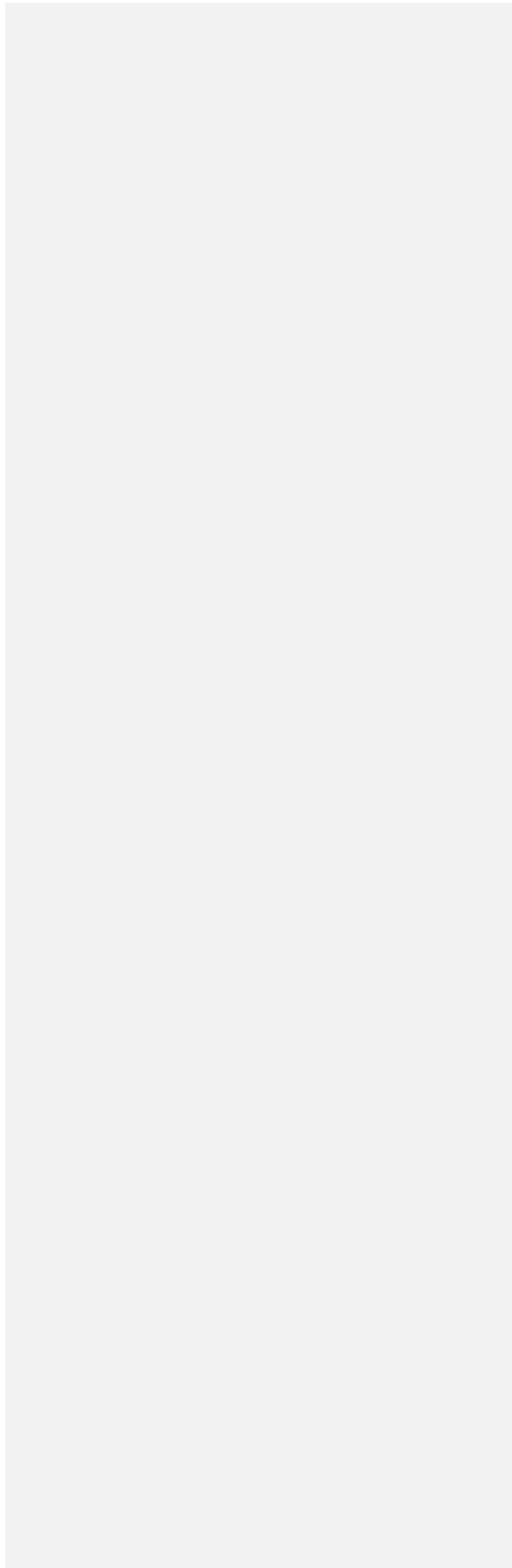
*****Editor's note--**A referendum passed Nov. 4, 1986, effective July 1, 1987, amended section 4 of article VIII to clarify the summons-subpoena power and to provide that failure to obey either a summons or a subpoena will subject offenders to contempt. Former section 5 of this article was deleted as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

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

City of Portland
Code of Ordinances
~~Article VIII~~

document.

Charter
~~Rev. 12-6-12~~



Amend the current ARTICLE VIII, MISCELLANEOUS PROVISIONS, by renumbering it ARTICLE IX, MISCELLANEOUS PROVISIONS and by adding the following new ARTICLE VIII, CIVILIAN POLICE REVIEW BOARD, as follows:

Article VIII: 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, there shall be a civilian police review board.; ~~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 four (4) 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, 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 & removal.** ~~The City Council shall provide by ordinance procedures for vacancies and removal of members.~~ 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 under (e) above shall disqualify the person from service on the civilian police review board and shall constitute “cause” for removal.~~

(f) **(e) 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)(f) **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 constitute “cause” for removal from the board under (e) (d) above. All board reports and requests received by the board for disclosure of any information or documents in the custody of the board or its members 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 & Procedural Rules.** The civilian police board shall annually elect one of its members to serve as chair, and shall annually elect one of its members to serve as vice-chair, to serve in the absence of the chair. The City Council shall by ordinance establish rules of procedure and board member roles. The board may recommend such rules to the City Council. ~~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.

MEMORANDUM

TO: Portland Charter Commission
FROM: Jim Katsiaficas, Emily Arvizu
DATE: June 17, 2022
RE: Proposed Charter Provisions Regarding Campaign Finance

At the June 8, 2022 Charter Commission meeting, Commissioner Buxton presented four amendments to the Clean Elections proposal that had emerged from workshop discussions. Of these, one would bar foreign contributions or expenditures on ballot question campaigns to curb their influence on elections, and another would bar corporations and individuals from contracting with the City within two years of making a campaign donation to a City election candidate. While the latter was withdrawn pending further consideration, it is addressed in the event of that further consideration.

Foreign Contributions or Expenditures on Ballot Question Campaigns

We have two sets of concerns regarding this proposal.

Home Rule Preemption. One concern is that State election law on campaign finance preempts the City’s home rule authority to amend its charter to regulate campaign finance. As we know, Art. VIII, Part Second, Section 1 of Maine’s Constitution authorizes municipalities “to alter or amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character.” Local election laws in Title 30-A are in some instances preempted by the State election laws in Title 21-A, and this appears to be the case in the area of campaign finance regulation.

The opening provision of local election laws in Title 30-A M.R.S. states:

§2501. Applicability of provisions

Except as otherwise provided by this Title or by charter, the method of voting and the conduct of a municipal election are governed by [Title 21-A](#).

With regard to campaign finance, the very next section of “this Title,” Title 30-A, provides:

§2502. Campaign reports in municipal elections

1. Reports by candidates. A candidate for municipal office of a town or city with a population of 15,000 or more is governed by [Title 21-A](#), sections 1001 to 1020-A, except that registrations and campaign finance reports must be filed with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by [Title 21-A](#), sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

2. Municipal referenda campaigns. Municipal referenda campaigns in towns or cities with a population of 15,000 or more are governed by [Title 21-A, chapter 13, subchapter 4](#). The registrations and reports of political action committees and ballot question committees must be filed with the municipal clerk. A town or city with a population of less than 15,000 may choose to be governed by [Title 21-A, chapter 13, subchapter 4](#) by vote of its legislative body at least 90 days before a referendum election. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to that subchapter.

Thus, in Portland, with a population over 15,000, Title 21-A governs election candidate and referenda campaign registration and reports. The sections cited in 30-A M.R.S. §2502(1) also restrict contribution limits (for example, limiting individual contributions to municipal candidates to \$500 and as of January 1, 2023, prohibiting business entity candidate contributions).

The sections cited in 30-A M.R.S. §2502(2) also address ballot question committee spending, but are silent as to regulation of foreign organization contributions to ballot question campaigns. Last year, the Maine Legislature attempted to amend Title 21-A, chapter 13, subchapter 4, by adding a new section that would have instituted a ban on foreign contributions and expenditures to ballot question campaigns, but the Governor vetoed that bill. Specifically, LD 194 provided that “[a] foreign national¹ may not make, directly or indirectly, a contribution or an expenditure to influence a referendum.” It further prohibited any person from knowingly soliciting, accepting, or receiving such a contribution. In a letter to the Legislature explaining her reasoning for the veto, Governor Mills cited the bill’s broad definition of “foreign national” which captured “dozens of businesses that we regard as very much part of the fabric of the Maine community. Entities with direct foreign investment employ thousands of Mainers.”

The proposed amendment directs the Council to “enact a prohibition on ballot question contributions or expenditures from any entity that is substantially under foreign influence, including any entity owned by a foreign government and any entity with substantial foreign ownership.” The amendment does not go on to specifically define what constitutes “substantially under foreign influence” or “foreign” but it seems likely that many of the businesses that would

¹ LD 194 defined “foreign national” as a foreign government and “a firm, partnership, corporation, association, organization or other entity with respect to which a foreign government holds, owns, controls or otherwise has direct or indirect beneficial ownership of 10% or more of the total equity, outstanding voting shares, membership units or other applicable ownership interests.”

have been subject to the LD 194 prohibitions would be subject to those proposed here. Because the Legislature and Governor have already considered a prohibition on contributions and expenditures by these foreign entities and have rejected such a prohibition, and because City of Portland local elections are governed by Title 21-A pursuant to 30-A M.R.S. §2502, the proposed amendment would likely be found to be preempted by State law. State law regulates referendum campaign spending and does so to the exclusion of municipal home rule authority to regulate foreign contributions to elections.

Constitutionality. Another concern is that the federal constitution has been interpreted to prohibit bans and restrictions on contributions to ballot question campaigns.

Federal case law distinguishes between contributions for the purposes of candidate advocacy and of issue advocacy, and the Supreme Court has upheld the constitutionality of bans on foreign contributions to candidate elections.² In a three-judge district court opinion summarily affirmed by the Supreme Court, now-Justice Kavanaugh explained that, under their interpretation of the precursor to the Act’s current ban on contributions by foreign nationals³, the statute “does not restrain foreign nationals from speaking out about issues or spending money to advocate their views about issues . . . It restrains them only from a certain form of expressive activity closely tied to the voting process – providing money for a candidate or political party or spending money in order to expressly advocate for or against the election of a candidate.” *Bluman v. FEC*, 800 F.Supp.2d 281, 290 (D.D.C. 2011), *aff’d*, 565 U.S. 1104, 132 S.Ct. 1087 (2012). Prohibitions on contributions for candidate advocacy survive constitutional challenge because they serve the governmental interest of preventing the “corruption of elected representatives through the creation of political debts.” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 787 n. 26 (1978). As a general matter, the Supreme Court has left open “the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation’s political process.” *Citizens United v. FEC*, 558 U.S. 310, 362 (2010).

While it seems clear that a ban on contributions by foreign nationals for the purposes of candidate advocacy would withstand constitutional challenge, it is doubtful that a similar ban on contributions for issue advocacy is constitutional.

The *Bluman* decision did not address the issue of whether Congress could prohibit foreign national contributions on issue advocacy, but it does suggest that Congress’s exercise of restraint in limiting the ban to only candidate advocacy contributions may be the result of “conclud[ing] that the risk of undue foreign influence is greater in the context of candidate elections than it is in the case of ballot initiatives.” *Bluman*, 800 F.Supp.2d at 291. In the *Bellotti* decision, the Supreme Court commented that there is “no comparable problem” of potential corruption of elected officials in the context of corporate speech on public issues. *Bellotti*, 435 U.S. at 787 n. 26. Where “the legislature’s suppression of speech suggests an attempt to give one side of a debatable public

² With respect to state and local elections, the Ninth Circuit has applied the holding of *Bluman* to a ban of contributions by foreign nationals in state and local elections, citing “Congress’s broad power to regulate foreign affairs and condition immigration.” *United States v. Singh*, 979 F.3d 697, 710 (9th Cir. 2020).

³ While the decision dealt only with foreign national individuals, the Court was clear that “[o]ur holding means, of course, that foreign corporations are likewise barred from making contributions and expenditures prohibited by 2 U.S.C. § 441e(a).” *Bluman*, 800 F.Supp.2d at 292 n.4.

question an advantage in expressing its views to the people, the First Amendment is plainly offended.” *Id.* at 785-86. Governor Mills came to a similar conclusion when she voted the above-described LD 194, describing the bill as “offensive to the democratic process, which depends on a free and unfettered exchange of ideas, information, and opinion. Such limitations on what the Supreme Court has called ‘core political speech’ are also highly suspect as a constitutional matter, and Governor Mills observed that “If L.D. 194 were to become law, I question whether it could survive constitutional challenge.”

Moreover, the Federal Elections Committee has turned down foreign corporation ballot question spending challenges. Recently, the FEC dismissed allegations that certain foreign corporations had violated the Federal Election Campaign Act of 1971, as amended, (the “Act”) by making contributions for the purposes of opposing a Montana ballot initiative. In the dismissal, the FEC explained that, due to the Act’s definition of “election”, “spending relating only to ballot initiatives is generally outside the purview of the Act because such spending is not ‘in connection’ with elections.”

With respect to the proposed amendment, there are a number of outstanding questions. It is not entirely clear whether a court would recognize the foreign entities subject to the ban as holding First Amendment rights. Because the terms are not defined in the amendment, it is not certain that the subjected entities are “foreign” for First Amendment purposes. It is also not clear that the activities subject to the proposed ban fall within the category of activity that the Supreme Court has recognized as justifiably denied to foreign nationals. As explained in the *Bluman* decision, Supreme Court case law has often upheld the denial of certain rights and privileges to foreign citizens, “draw[ing] a fairly clear line: The government may exclude foreign citizens from activities ‘intimately related to the process of democratic self-government.’” *Bluman*, 800 F.Supp.2d at 287 (collecting cases). *Bluman* seems to suggest, however, that spending money to advocate views on public issues may not be considered participation in democratic self-government. *Id.* at 290.

In summary, it is not clear whether the proposed amendment would survive constitutional challenge, but it seems likely that it would not due in part to its lack of defined terms and due to the strong First Amendment protections afforded speech pertaining to issue advocacy.

Limitation on Contracts to Local Candidate Donors

Home Rule Preemption. State law also regulates candidate contributions and does so to the exclusion of municipal home rule authority to set different campaign limits, and so the limitation on contracts to local candidate donors may well be beyond the ability of the City to add to the Charter. Pursuant to 30-A M.R.S. § 2502, provided above, municipal elections in Portland are governed by 21-A M.R.S. §§ 1001 to 1020-A, Campaign Reports and Finances. Section 1015 establishes limitations on contributions and expenditures by individuals, party committees, PACs, and business entities. An individual may not make a contribution of more than \$500 for a candidate for municipal office. § 1015(1). Because the Legislature has set the contribution limit at \$500 for individuals and municipal elections are governed by that provision, a charter revision establishing another limit would conflict with State law.

Constitutionality. The proposed amendment placing limitations on City contracts to donors may also face constitutional challenge due to the low contribution limits and the lack of ability to adjust those limits. “[C]ontribution limits . . . implicate fundamental First Amendment interests, namely, the freedoms of political expression and political association.” *Randall v. Sorrell*, 548 U.S. 230, 246 (2006) (internal quotation marks omitted). Such limits “are permissible as long as the Government demonstrates that the limits are ‘closely drawn’ to match a sufficiently important interest”, one of which is preventing corruption or the appearance of corruption. *Id.* at 247 (internal quotation marks omitted). However, “that rationale does not simply mean ‘the lower the limit the better.’ . . . [C]ontribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability.” *Id.* at 248-49.

The Court has flagged a couple of “danger signs” of when contribution limits may violate the First Amendment. *Thompson v. Hebdon*, 140 S.Ct. 348, 350 (2019). The first so-called danger sign is when a limit is “substantially lower than the limits we have previously upheld.” *Id.* (noting that the lowest contribution limit the Court had upheld at that time was over \$1600 in 2019 dollars). Another danger sign is when the “contribution limit is not adjusted for inflation.” *Id.* at 351. This is because a “failure to index limits means that limits which are already suspiciously low will almost inevitably become too low over time.” *Id.* (quoting *Randall*, 548 U.S. at 261). Where such danger signs are present, the Court looks to whether there is any special justification warranting the low limit. *Id.*

Here, the proposed amendment essentially establishes a contribution limit potentially as low as \$250 over a two-year period by foreclosing the donor from receiving financial gain from City contracts of a certain value within two years of having made the donation. While this arguably serves the compelling interest of preventing corruption or the appearance of corruption, the very low limit and the failure to index the limit would make this provision unlikely to pass constitutional muster, absent some special justification.

MEMORANDUM

TO: Portland Charter Commission

FROM: Jim Katsiaficas, Emily Arvizu

DATE: June 17, 2022

RE: Amendments to the Universal Resident Voting Proposal

In drafting the language of the Universal Resident Voting Proposal, we drew on language and ideas implemented in other locations, including from the New York City charter amendment allowing certain noncitizens to vote in municipal elections.

One area of concern that we identified in a previous memo dated April 22, 2022 is the need for certain safeguards to minimize the risk of noncitizens voting in state or federal elections. With this concern in mind and in consultation with Beth Stickney, Esq., co-founder of the Immigrant Legal Advocacy Project and currently an immigration law and policy consultant, we drafted a provision requiring the creation of separate municipal registration forms with a notice informing noncitizen registrants of the risks of voting in elections in the United States. To ensure that potential voters would understand this notice, we required that the registration forms, including the notice, be “translated in a manner consistent with translations of the statewide registration forms,” as is required in New York’s amendment.

This, however, is an inappropriate standard for Portland because Maine does not require that voter registration forms be translated. Therefore, after further communication with Attorney Beth Stickney, we are suggesting that the attached Universal Resident Voting Proposal be amended, as shown in the attached draft, to require that the notice be available on the City of Portland’s website as well as in printed form at the city clerk’s office and at each polling location. The notice must be translated into all of the languages listed on the Portland Public Schools’ list of home languages.

As stated in our earlier memorandum, the Commission may wish to seek further input from local immigration attorneys and organizations that protect immigrant rights as well as from the city clerk’s office regarding the logistics of facilitating noncitizen municipal voting.

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

Section 11. State election laws applicable.

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

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

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

Section 11-A. Municipal voter qualifications.

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

~~iii. 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.”~~

~~iv. The above notice must be available on the City of Portland’s website and made available in printed form at the city clerk’s office and at each polling location. The notice must be translated into all of the languages listed on the Portland Public Schools’ list of home languages, updated at least annually.~~

(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.

1) Under the current charter the Council and/or the Mayor may have their own aides (i.e., advisors and administrators who answer solely to them and not to a city manager/COO) who may advise them on matters of policy. While elected officials can and should seek policy guidance from the civil service, it would nevertheless behoove our elected officials to retain their own staff to aid them in their decision making for several reasons:

- Political aides are devoted to making elected officials more effective.
- Protects city staff and civil servants from political interference and "deal-making."
- The role of the civil service is to give the best possible policy guidance regardless of the political implications. The elected officials should receive the staff recommendations but make their own decisions as to their political feasibility; political advisors serve an invaluable role in this regard. City staff should not be baking political considerations into their recommendations although they may be consulted to those ends.
- If elected officials cannot seek advice from their own trusted staff people then they will seek advice from outside of government often in the form of special interests and lobbyists.
- Political staffers can offer specialized expertise and fresh perspectives to complement the institutional knowledge of the civil service.

It should be noted that currently the city manager has staff to aid not just in administration but in policy, communications, constituent services, and specialty areas.

2) Ballot Questions & Citizen Initiatives

Whereas, the process of citizens initiatives and citizens veto is long and complex and the election comes at an expense;

Whereas, government is a collaboration between members of the public and elected officials;

Whereas, the right to bring ballot questions is fundamental to democracy;

Therefore, the Portland City Council shall consider ballot questions before their certification in the manner thus described: After the petitioners submit the question to the City Clerk, the City Council shall set a hearing in which the petitioners and/or their representatives or designees shall present the question.

At this hearing the council shall:

1. Consider the question/initiative and language.
2. Check for congruence between the title and the content.
3. Discuss the timeline.
4. Consider adoption or whether to enter into a negotiation with the petitioners wherein the petitioner would agree to withdraw the question should the council adopt acceptable policy.

Secondly, if the council decides to put a competing measure on the ballot such that the choices are A. Citizen Measure, B. Competing Measure, or C. None of the above. The winner ought to be determined by the highest vote getter rather than the majority, as the latter is difficult to achieve in a 3-way race.