



City of Portland Charter Commission Agenda

Remote

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/89523424922?pwd=dTU5T2w4ZFBzUG0yek0yaFdNTkRxZz09>

Passcode: 508751

Or One tap mobile :

US: +13126266799,,89523424922#,,, *508751# or
+19292056099,,89523424922#,,, *508751#

Or Telephone:

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

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

Webinar ID: 895 2342 4922

Passcode: 508751

International numbers available: <https://portlandmaine-gov.zoom.us/j/89523424922>

2. Call to Order (6:00-6:05)
3. Review and Approval of Minutes (6:05-6:10)
 - a. Draft minutes from the June 29, 2022 Charter Commission Meeting.
4. Amendments to Governance Proposal (6:10-8:00)
 - a. Description: Commissioners will vote on amendments to the governance proposal

Relevant document(s):

a. Make a finding that our revisions are "minor modifications" under 30-A MRS §2105(1)(A)

Suggested Motion from Attorney Katsiafikas:

Motion that the Commission: finds, consistent with State law and prior City practice and precedent, that the proposed Charter revision constitutes "minor modifications"; recommends that the present Charter continue in force with only minor modifications; and finds it practicable that these modifications be submitted to the voters in eight separate questions as set out by the Commission in the draft Final Report (or list the eight separate questions).
 - b. Change of Chief Operating Officer to Chief Administrator
 - c. Repeal part of Ethics Board's role in the Mayoral removal provision

Section 5. Censure, removal or recall of the mayor.

The mayor may be censured or removed from office by the city council for cause. The city council also may order a recall election for the mayor to be conducted pursuant to article V, section 4.

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 censured or removed from office.

Such notice shall specify as particularly as possible the acts 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.

At any hearing of the ethics commission or meeting of the city council in which the censure, removal, or recall 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 censure, remove the mayor from office, or order a recall election shall require a vote of three-fourths (3/4) of the full city council.

d. Clarify the Mayor's power to sponsor policy

Amendment:

Add new art. I-A, section 3(k)

To submit ordinances, orders, and resolves for city council consideration pursuant to the same rules and procedures that pertain to councilor-sponsored ordinances, orders, and resolves.

e. Barowitz amendment

5. Approval of Final Report (8:10-9:30)

- a. Description: Commissioners will vote to submit their Final Report to the City Council by the Commission's July 11th deadline.

Relevant document(s):

- a. Legal support for Clean Elections reform
- b. Legal support for School Board Budget Autonomy reform
- c. Final Report

6. New Business

7. Adjourn

City of Portland Charter Commission Meeting Minutes

June 29, 2022

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

Present were: Chair Kebede, Commissioners Barowitz, Chann, Eglinton, Houston, O'Brien, Sheikh-Yousef, Washburn, and Waxman. (Commissioners Buxton, Lizanecz and Stewart-Bouley absent)

2. **Review and Approval of Minutes.** On motion by Commissioner Eglinton, seconded by Commissioner Washburn, the Commission voted to approve the draft meeting minutes of June 22, 2022, with a change to the salary of the Mayor of Salem MA, by unanimous roll call vote (9-0).

On motion by Commissioner Waxman, seconded by Commissioner O'Brien, by unanimous roll call vote (9-0), the Commission voted to reverse the sequence of items 3 and 4 on this meeting's agenda.

4. **Discussion of Legal Support for Questions in Final Report**

a. **Description:** Commissioners will discuss legal support for all the reforms to be proposed to voters. Relevant documents:

a. Foreign Contributions Ban Amendment to Clean Elections proposal. The Commission recognized that it had voted at its June 8, 2022 meeting to send the Clean Elections proposal, with the foreign contribution ban, to the voters. Commissioner Waxman moved to remove the foreign contribution ban from the Clean Elections proposal, Commissioner Eglinton seconded the motion, and the motion failed by a vote of 4 in favor (Eglinton, Chann, O'Brien and Waxman) and 5 against (Houston, Barowitz, Sheikh-Yousef, Washburn, Kebede).

b. School Board Autonomy proposal. Chair Kebede announced that Drummond Woodsum has provided a written opinion on the issue. Commissioner Waxman asked whether the Commissioners were concerned about a conflict of interest where the Portland Public Schools attorneys who have drafted the measure also were offering the written opinion. Chair Kebede referenced the portion of the Drummond Woodsum letter addressing the concern.

c. Universal Resident Voting proposal. Chair Kebede explained that no Maine attorney believes that this proposal is legal under State law. Commissioner Washburn stated that while she remains committed to permitting URV in Portland, she will withdraw the proposal and look for other ways to help. On motion by Commissioner Washburn, seconded by Commissioner Eglinton, by unanimous roll call vote (9-0), the Commission voted to withdraw the Universal Resident Voting proposal from voter consideration.

3. Approval of Ballot Question Format

a. Description: Commissioners will finalize the ballot question format. Relevant documents:

- a. Draft of Ballot Questions and Summaries
- b. Spreadsheet Showing Mode of Bundling Ballot Questions

Commissioners offered ideas as to how to organize the Charter revision proposals into Ballot Questions. After balancing the need to avoid conflicts between enacted measures with the desire to group similar or related proposals and to offer as much choice as possible among unrelated proposals, the Commission arrived at the following grouping, in this order:

Preamble/Land Acknowledgment;
Governance (Redistricting, Communications Policy, Capital Improvement Program Process, Joint Budget Guidance Committee, Participatory Budgeting, Vacancies);
Clean Elections;
PRCV;
School Budget Autonomy;
Peaks Island Council;
Police Oversight; and
Ethics Commission

5. Other Sections of Final Report

a. Description: Commissioners will finalize minority reports and other sections of the Final Report. Relevant document:

a. The Commission agreed that any minority reports would be provided to Perkins Thompson by close of business at 5pm on Thursday June 30, 2022. This will include (so far) Commissioner Chann’s draft minority report. Commissioner Barowitz’s “other considerations” and discussion of the higher rate of Councilor and School Board member pay would, along with URV, be included in the category of “Issues considered but not offered for recommendation.” Commissioners may, and are encouraged, to follow precedent and place their names on minority reports.

4. New Business

- a. Commissioner O’Brien requested that the Governance proposal be revised to remove the Mayor’s involvement in business development.
- b. Commissioner O’Brien asked for specific language to permit the mayor to introduce legislation in the same manner as councilors, and consistent with City Council rules. After a motion by Commissioner Barowitz, seconded by Commissioner O’Brien, to adopt this amendment failed by vote of 6 in favor (O’Brien, Kebede, Washburn, Barowitz, Houston, and Sheikh-Yousef) and 3 against (Eglinton, Waxman, and Chann); on motion

by Commissioner Waxman, seconded by Commissioner Washburn, the Commission voted to reconsider its vote and to review and act upon Charter language for this change at its next meeting.

- c. Commissioner Barowitz also asked for a change to the mayor's duties to remove reference to the business community. The Commission will review and act upon Charter language for this change at its next meeting
- d. Commissioner O'Brien asked the Commission to consider a different title for the COO. Chief Administrator or Deputy Mayor were among those suggested. The Commission will ponder these and other possible titles for action at its next meeting.

5. Adjourn

On motion by Commissioner Washburn, seconded by Commissioner Barowitz, the Commission voted unanimously (9-0) by roll call vote to adjourn at 8:57 p.m.

Motion to replace the title of Chief Operating Officer (COO) with Chief Administrator in the Charter Commission's final report.

Sponsored by Commissioner Robert O'Brien.
July 5, 2022.

GOVERNANCE BALLOT QUESTION

1. Proposed Summary

QUESTION # 1

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Governance and Other Governance Related Matters as Summarized Below?

Summary: These amendments establish an executive mayor, allow the council to remove the mayor, change the city manager to a chief administrator, increase the number of city council seats to twelve (12), and other changes relating to governance as follows:

- Creates an executive mayor and replaces the city manager with the position of chief administrator;
- Increases the mayor's compensation from one-and-a-half (1.5) times to two (2) times the median household income and ties city council and school board compensation to ten percent (10%) of the mayor's compensation;
- Grants the following new powers:
 - o Mayor nominates for appointment the chief administrator and department heads for council ratification;
 - o Mayor directs the administration in the development of draft city budgets; council may amend and ultimately ratify all city budgets.
 - o Mayor may exercise veto power of a city budget and of city council actions on city ordinances. Council may override vetoes by one additional vote.
 - o Council adopts rules recommended by the mayor that govern communications between city staff and elected officials;
 - o The mayor may provide executive orders in writing to the chief administrator that specify changes to city policies, procedures, programs, or services. These orders shall be communicated to the city council, which may vote to amend or negate the orders.
 - o The mayor may introduce legislation to the council under the same rules as individual councilors.
 - o The mayor may fire the chief administrator after informing the city council. The city council may vote to halt the firing with a simple majority vote.
- Establishes the chief administrator as responsible for the administration of all departments and delivery of city services and grants the chief administrator the right to remove department heads in consultation with the executive mayor;
- Changes the composition of the city council by increasing the number of members to twelve (12), representing an increase in the number of districts from five (5) to nine (9) and maintaining three (3) additional at-large councilors;
- Grants the city council the power to censure, remove, or schedule a recall election of the mayor for cause with a super-majority vote;

- Requires that the city council elect from among its members a chair and vice-chair, who shall organize the council into various committees;
- Provides that the city council chair shall preside over **city** council meetings and set the council agendas **according to council rules**;
- Requires that the city council create a review committee that shall (i) conduct regular evaluations of the performance of the corporation counsel and city clerk and (ii) hold regular meetings with the **chief administrator** and department heads to understand the general working conditions and morale at city hall; **the mayor shall lead the review committee in the annual performance review of the chief administrator but otherwise does not participate on the review committee.**
- Requires that the city council form a new ethics commission and code of ethics;
- Updates the capital improvement program process to require the **chief administrator** to jointly prepare with the **schools** superintendent a five-year capital improvement plan;
- Updates the vacancy provisions for the city council and school board to require a special election if the vacancy occurs more than six (6) months prior to the next municipal election. If the vacancy occurs within six (6) months prior to the next regular election, the city council or school board, as applicable, shall appoint a qualified person;

Section 5. Censure, removal or recall of the mayor.

The mayor may be censured or removed from office by the city council for cause. The city council also may order a recall election for the mayor to be conducted pursuant to article V, section 4.

At any meeting of the city council, it shall be in order for any member to move that the mayor be censured, recalled, or removed from office at a hearing at the next meeting thereof, occurring within fourteen (14) days. The motion should then be seconded and approved by seven (7) or more councilors. Such motions shall specify as particularly as possible the acts 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.

At any subsequent meeting or hearing of the city council in which the censure, removal, or recall 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 censure, remove the mayor from office, or order a recall election shall require a vote of three-fourths (3/4) of the full city council.

Pg 59-60 (Council Vacancies)

If a vacancy occurs within six (6) months prior to the next regular election, the city council shall appoint a qualified person from the same district or at-large, as appropriate, to serve until the next regular municipal election. In such instances, the Council Chair shall nominate and the council shall confirm. If the seat being vacated is that of the chair then the vice chair shall make the nomination. If both the chair and vice chair seats are vacant then the longest serving member shall nominate. If more than one member are determined to be longest serving then the at-large shall nominate.

OR

The council shall set rules and procedures for appointment of vacancies.

OR

The mayor shall nominate and the council shall confirm.

MEMORANDUM

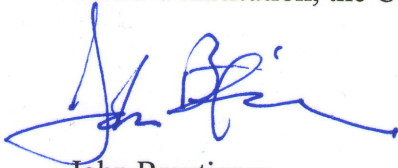
To: Michael Kebede, Esq.
Chair, City of Portland 2021-22 Charter Commission

From: John Brautigam, Esq.

Date: June 30, 2022

Re: Opinion of Attorney re: Legality of Proposed Charter Modifications

Pursuant to 30-A M.R.S.A. § 2103(5)(D)(4), it is my opinion that the Charter language in BALLOT QUESTION #4 (attached) does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.



John Brautigam
Maine Bar #8223

BALLOT QUESTION # 4

1. Proposed Summary

QUESTION # 4

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Clean Elections as Summarized Below?

Summary: These amendments establish a City of Portland Clean Election Fund to provide public campaign funds to qualified candidates for elected municipal offices, beginning in 2024. Candidate participation shall be voluntary. The city council shall provide an independent allocation from the city’s budget each year to sustain the Clean Election Fund and the city council shall by ordinance direct that the Clean Election Fund must:

- Limit the amount of funds a participating candidate may raise;
- Be limited to candidates who meet certain requirements, such as demonstrated public support and participation in a city-sponsored forum or voter education event; and
- Require that all unused funds be returned to the Clean Election Fund.

In addition to establishing the Clean Election Fund, these amendments:

- Prohibit corporate contributions to any candidate for municipal office;
- Prohibit ballot question contributions or expenditures from foreign corporations; and
- Require that all contributions to campaigns be reported to the city clerk and that the city clerk create a searchable online database of information contained in filed registrations and campaign finance reports.

2. Charter Language for Question

Note: This contains only the provisions related to the Commission proposal in **Question # 4** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

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

Section 12. Public financing of municipal elections.

The city council shall establish and fully fund a City of Portland Clean Election Fund (hereinafter, the “Clean Election Fund” or the “Fund”) to provide public campaign funds to qualified candidates for elected municipal offices. The Clean Election Fund must be available to candidates in municipal elections beginning in FY 2023-2024. Candidate participation in the Clean Election Fund shall be voluntary.

Beginning in FY 2023-2024 to allow for implementation for the November 2023

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

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

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

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

Section 13. Campaign finance rules.

- (a) **Corporate Contributions.** A business entity may not make contributions to any candidate for municipal office. The term “business entity” refers to a firm, partnership, corporation, incorporated association, or other organization, whether organization as a for-profit or a nonprofit entity. A separate segregated fund committee may not make contributions to any candidate for municipal office using funds that derive, in whole or in part, from a business entity. Where a business entity establishes a separate segregated fund committee, that business entity may provide the separate segregated fund committee with the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the business entity.
- (b) **Foreign Contributions.** The city council shall by ordinance 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 city council shall promulgate rules to specify compliance requirements and otherwise to enforce this ordinance.
- (c) **Additional Rules by Ordinance.** The city council may adopt additional regulations and ordinances governing campaign spending, not inconsistent with this section.

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

DRAFT

June 29, 2022

Delivery via email to mkebede@portlandmaine.gov and jkatsiaficas@perkinsthompson.com

City of Portland Charter Commission
c/o Perkins Thompson
P.O. Box 426
Portland, ME 04112
Attn: James N. Katsiaficas, Esq.

RE: Opinion on Proposed School Budget Charter Revision

Dear Charter Commission:

We serve as counsel to Portland Public Schools. At the request of Portland Public Schools, we provide this opinion to the Charter Commission with respect to the proposed City of Portland Charter revision to the school budget adoption procedures, which is attached hereto as Exhibit A (the “School Budget Charter Revision”).

It is our understanding that the Charter Commission intends to use this opinion to satisfy the statutory requirement that its final report to the City Council “include . . . [a] written opinion by an attorney admitted to the bar of [Maine] that the proposed charter or charter revision does not contain any provision prohibited by the United State Constitution, the Constitution of Maine or the general laws.” 30-A M.R.S.A. § 2103(5)(D).

This letter is in three parts. In Part A, we summarize the School Budget Charter Revision and address some preliminary matters; in Part B, we explain our legal analysis; and in Part C we provide our legal opinion.

A. PRELIMINARY MATTERS

1. What is the School Budget Charter Revision?

The School Budget Charter Revision directs the School Board to submit its proposed budget to a public hearing and to the City Council. After receiving public comment and City Council recommendations, if any, the School Board then determines the school budget. The City Council then submits the School Board’s total budget directly to the City of Portland voters for final approval at a budget validation referendum (BVR) or, if the City voters elect to eliminate the BVR, at a municipal school budget referendum. The School Budget Charter Revision would thus change the City Council’s role to an advisory one in the school budget process. The School Board, rather than the City Council, would determine the total proposed school budget that is submitted to the City voters. The City voters would continue to hold final authority to approve the total school budget at a referendum.

2. Who is our client?

In all matters with respect to the Charter Commission, we have been clear that our client is Portland Public Schools. That includes this opinion letter.

3. May the Charter Commission rely upon our opinion?

Although the Charter Commission is not our client, we recognize that the Charter Commission intends to include our opinion in its final report to the City Council. On the question of whether a charter commission may rely upon the opinion only of its own attorney, and may not rely on the opinion of another party's attorney, we note that the only statutory limitation is that the attorney be a member of the Maine Bar. We further note that the home rule chapter in Title 30-A, where the provision for charter revisions and the requirement for a legal opinion are housed, "shall be liberally construed to accomplish its purposes." 30-A M.R.S.A. § 2109. We also note that the Maine Law Court appears to have largely addressed this question in *Nasberg*, a case that involved the parallel situation of a petitioned charter amendment.¹ See *Nasberg v. Augusta*, 662 A.2d 227 (Me. 1995). In *Nasberg*, the Augusta city attorney wrote an opinion to the mayor and city council that a proposed charter amendment violated the Maine Constitution. The city council advised the charter amendment proponents that in order to get the amendment on the ballot, "they would have to obtain a written opinion by an attorney stating that the proposed charter amendment did not violate any law or constitutional provision." *Id.* at 228. The proponents then sought an injunction ordering the city to place the amendment on the ballot. The Court noted, however, that the proponents did so "[w]ithout securing an attorney's letter." *Id.* The Superior Court granted the city's motion to dismiss, and the Maine Law Court affirmed. Accordingly, in circumstances where the city attorney did not provide "an attorney's letter," the failure to secure a written opinion from another member of the bar to accompany the charter report was the basis of the dismissal. The Court thus effectively said that the written opinion could be provided by an attorney other than the city attorney. For these reasons, we believe the Charter Commission may rely upon this opinion letter for purposes of its final report to the City Council.

4. Is there a conflict of interest?

As previously stated, we are counsel only to the Portland Public Schools, but we acknowledge responsibility to be objective in this opinion letter. In this type of circumstance, a lawyer may have a conflict of interest if there is a significant risk that the representation of the client (Portland Public Schools) would be materially limited by the lawyer's responsibilities to a third party (the Charter Commission); however, even with the existence of such a conflict of interest, in appropriate circumstances, the lawyer may represent the client with the client's informed consent, confirmed in writing. Under the circumstances here, we do not believe there is a significant risk that our duties to Portland Public Schools would be materially limited by our responsibilities to provide an objective opinion letter to the Charter Commission. In any case, we have explained the matter to Superintendent Xavier Botana and School Board Chair Emily Figdor, who requested this letter on behalf of the School Board, and we have obtained informed, written consent to prepare and submit this letter to the Charter Commission.

¹ The *Nasberg* case involved a charter amendment by petition under section 2104 rather than a charter commission revision under section 2103, but the two sections use identical language to require a "written opinion by an attorney admitted to the bar of this State." Compare 30-A M.R.S.A. § 2103(5)(D)(4) (attorney opinion for charter commission revisions) with § 2104(5)(B) (attorney opinion for petitioned charter amendments).

5. *How is this opinion letter different from our Memoranda to Portland Public Schools?*

We have provided various memoranda to Portland Public Schools on proposals to change the budget approval process by charter revision (collectively, “DW Memoranda”). The following DW Memoranda have been circulated previously and the subject of public discussion, and for convenience, they are attached to this letter:

- Memorandum 1: “Portland Charter—School Governance, Policy, and Management Matters,” dated August 11, 2021 (providing a general overview of school governance and charter authority, including the responsibility of the city council or “other municipal legislative body” to determine the total school budget);
- Memorandum 2: “Portland Charter—School Governance, Policy, and Management: The School Budget Approval Process and Bonding Authority,” dated November 5, 2021 (addressing whether the “other municipal legislative body” could be the voters);
- Memorandum 3: “Proposals for Charter Provisions Regarding School Budget Approval Procedures and School Bonding Authority,” dated January 24, 2022 (addressing whether the “other municipal legislative body” could be the school board); and
- Memorandum 4: “Charter Revisions Regarding School Budget Approval Procedures—Review of Charter Commission Education Committee Proposal,” dated April 4, 2022 (providing additional legal analysis regarding the role of the school board as the “other municipal legislative body”).

The DW Memoranda address various subjects, while our opinion in this letter is limited to the School Budget Charter Revision. We express no opinion except as expressly set forth in Part C of this letter.

6. *Is our opinion letter a so-called “clean” opinion or a reasoned opinion?*

This is a reasoned opinion different in function from a third party legal opinion in a commercial transaction. As a reasoned opinion, it reflects our judgment on the current state of the law and our opinion that a court faced with this issue would likely rule that the School Budget Charter Revision is not prohibited by Maine law. This is not a guarantee. As we have noted in our DW Memoranda, there are arguments favoring other legal views on this matter and, consequently, the matter is not without legal risk. We refer you, for example, to the arguments advanced by Attorneys Jim Katsiaficas and Emily Arvizu in their memoranda to the Charter Commission dated December 14, 2021 and April 13, 2022. Portions of our analysis in Part B of this letter address these arguments.

B. ANALYSIS

This Part B provides a summary of our analysis and reasoning for our legal opinion in Part C.

1. *Municipal charter power is broad and entitled to a presumption of validity.*

The Legislature intended municipal home rule authority—including the power to enact and revise a municipal charter—to be a broad grant of local authority. The municipal statute provides that the home rule power, “being necessary for the welfare of the municipalities and their inhabitants, shall be

liberally construed to accomplish its purposes.” 30-A M.R.S.A. § 2109. Thus, charters are entitled to a presumption of validity by Maine courts under home rule principles articulated in the *York* decision and many other cases. See *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993) (holding that there is no express or implied denial of a municipality’s home rule power to enact a charter provision divesting school committee of authority to determine school budget presented to voters and placing that authority in a separate budget committee). Accordingly, the burden rests on the person attacking a charter provision to prove that it exceeds municipal home rule authority, and not on the municipality to prove that it does not.

2. No provision of the School Budget Charter Revision is expressly prohibited by the U.S. Constitution, the Maine Constitution, or the general laws of Maine.

The general grant of charter power is circumscribed (i) when state law expressly prohibits local regulation or (ii) when state law is silent with respect to local regulation and a court determines that the Legislature intended to prohibit local regulation because such local action would frustrate the purpose of a state law. Together, these limitations are known as the doctrine of preemption.

The first category (express preemption) is obvious because the prohibitions to locally regulate a subject area or the division of regulatory powers are expressly written into state law. With respect to the School Budget Charter Revision, we could find no provision in the United States Constitution, the Maine Constitution, or the general laws that expressly prohibit the School Budget Charter Revision.

To the contrary, the express language of the relevant law states that the school budget meeting “must be a meeting of the municipal council or other legislative body established by the charter with authority to approve the budget.” 20-A M.R.S.A. § 2307(1) (emphasis added). This provision expressly defers to charters to establish a legislative body with authority to approve the school budget. We see no express denial here of Portland’s charter authority to allow the School Board to be the “other municipal legislative body” for purposes of the school budget meeting.

3. No provision of the School Budget Charter Revision appears to be prohibited by necessary implication by the U.S. Constitution, the Maine Constitution, or the general laws of Maine.

With respect to the second category (implicit preemption), the analysis is more complex, but over a dozen Maine court cases are on point. These can be summed up as follows: First, and as previously stated, the general rule is that a charter is presumed valid. Second, it is not enough for a court to find that there is a conflict or an inconsistency between a state law and a charter provision. In order for municipal legislation to fail, a court must find that the Legislature has enacted a comprehensive and exclusive scheme for regulating the same subject matter (*i.e.*, that it has intended to “exclusively occupy the field”) and that the local regulation is so inconsistent with state law that it would frustrate the purpose or actual operation of state law.²

² See *Portland Pipe Line Corp. v. City of S. Portland*, 2020 ME 125, 240 A.3d 364; *Dubois Livestock, Inc. v. Town of Arundel*, 2014 ME 122, 103 A.3d 556; *State of Maine v. Brown*, 2014 ME 79, 95 A.3d 82; *Smith v. Town of Pittston*, 2003 ME 46, 820 A.2d 1200; *Sawyer Env'tl. Recovery Facilities v. Town of Hampden*, 2000 ME 179, 760 A.2d 257; *Perkins v. Town of Ogunquit*, 1998 ME 42, 709 A.2d 106; *International Paper Co. v. Town of Jay*, 665 A.2d 998 (Me. 1995); *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993); *Central Maine Power v. Town of Lebanon*, 5711 A.2d 1189 (Me. 1990); *Midcoast Disposal, Inc. v. Town of Union*, 537 A.2d 1149 (Me. 1988);

In the DW Memoranda, much of our preemption analysis focuses on Section 2307 of Title 20-A, which provides that “[n]otwithstanding any other law, municipal school budgets . . . must follow the same school budget requirements as regional school units.” These requirements are described in detail in our November 5, 2021 DW Memorandum but, in short, the school board prepares and approves a budget, which is then submitted to the budget meeting. Alone, that sentence of section 2307 arguably requires a budget meeting of voters, as that is the requirement for regional school units. In the case of charter municipalities, however,³ the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S.A. § 2307(1) (emphasis added).

Based on our review of Section 2307 and its context within the municipal and school statutes, the legislative history of Section 2307, and applicable case law, it does not appear that the School Budget Charter Revision is prohibited by necessary implication by Maine’s general laws for the following reasons:

- First, subsection 1 of section 2307 plainly does not prescribe what body can serve as the municipal legislative body for purposes of determining the total school budget. Rather, Section 2307 appears to prescribe a *role* of a municipal legislative body (i.e., to approve the school budget), but not its *identity*—this is left for a charter municipality to specify through its charter powers. Likewise, nowhere else does the school statute, nor does the municipal statute, circumscribe the identity of a municipal legislative body. In fact, the state law definition of “municipal legislative body” plainly provides that such a body can be a town meeting, a city council, or something else—namely, “[t]hat part of a municipal government that exercises legislative powers under a law or charter.” 30-A M.R.S.A. § 2001. Indeed, several municipalities in Maine have at one time or another established municipal legislative bodies that were something other than the familiar “town meeting” or “council” forms of a legislative body.
- Second, in the vast majority of school systems across the state, the statutory scheme provides no decision-making role at all for municipal officers in the school budget approval process. Although not official numbers, we estimate 86 school districts (RSUs, MSADs, and CSDs) in Maine, whose members include towns as well as about 25 charter municipalities. We count ten school districts composed of single municipalities (including Old Orchard Beach and Orono, both themselves charter municipalities). These operate under completely separate governance for school and municipal functions. According to our count, there are 136 town meeting towns operating as single municipality school systems. In all these cases, elected school boards are able to submit their proposed budgets directly to their voters for approval and no municipal officials are involved in the process. We have found only 24 charter municipalities that are municipal school units like Portland. It can be fairly said that the School Budget Charter Revision will align the City’s school budget approval process more closely to the statutory process the Legislature enacted for use all over Maine.

Tisei v. Town of Ogunquit, 491 A.2d 564 (Me. 1985); *Ullis v. Town of Boothbay Harbor*, 452 A.2d 153 (Me. 1983); *Schwanda v. Bonney*, 418 A.2d 163 (Me. 1980); *Begin v. Town of Sabattus*, 409 A.2d 1269 (Me. 1979).

³ Notably, subsection 1 of section 2307 defers to home rule authority of charter municipalities to establish an “other legislative body . . . with authority to approve the budget,” but not to home rule authority of town meeting towns to do something similar by ordinance. This distinction between types of municipalities suggests that no implicit purpose would be frustrated by the School Budget Charter Revision.

- Third, case law seems to support the School Budget Charter Revision. In the *York* decision—the single case where the Maine Law Court has considered whether a municipality may use its charter powers to change the school budget approval process—the Court upheld the charter amendment against legal attack.⁴ Notably, the Court called the school budget submitted to voter referendum “advisory” and so it is. Every year, in a few school units, Maine voters reject the school board’s proposed budget at the BVR. The school board must then prepare a revised budget and resubmit the budget to the voters. Likewise, under the School Budget Charter Revision, the voters are ultimately responsible for adopting the “advisory” school budget (either through the BVR, or if the BVR is eliminated by the voters, at a municipal school budget referendum).
- Fourth, we do not read Section 2307 or the school statute as a whole as mandating by implication a role for a school board that is separate and distinct from the role of a municipal legislative body. Section 2(2) of Title 20-A provides that the state policy for education is that “[i]t is the intent of the Legislature that the control and management of the public schools be vested in the legislative and governing bodies of local school administrative units as long as those units are in compliance with state statutes.” Nowhere, however, does Title 20-A define or delimit “legislative bodies.” Further, school boards are defined to mean “the governing body with statutory powers and duties.” 20-A M.R.S.A. §§ 1(28), (29) (emphasis added). It appears to us that Title 20-A reserves to school boards considerable statutory authority to exercise not only governing powers but also statutory powers that are legislative in nature. These include the statutory power to “adopt policies that govern the school administrative units,” 20-A M.R.S.A. § 1001(1-A); the power to enter into multiple year contracts of different kinds, *see e.g.*, 20-A M.R.S.A. § 15915 (service contracts and financing contracts for certain building systems up to 20 years in term); and even the authority for some types of school boards to issue bonds. *See* 20-A M.R.S.A. §§ 1311(7), 1490(7) (MSAD and RSU boards, bonding authority under 1% of valuation); 20-A M.R.S.A. §§ 1654(2)(B), 1702 (CSDs board bonding authority). We discern no implied separation of governing and legislative powers into separate bodies in Title 20-A generally, but rather a situation where the governing body has “statutory powers and duties,” many of which would be generally understood to be legislative in nature.
- Fifth, we note that Section 2307(1) and (2) are *exceptions* to the mandate that municipal school units must follow the same school budget procedures as regional school units: Section 2307(1) clarifies that, notwithstanding the statutory mandate, charter municipalities are not restricted to the town meeting for the first part of the school budget approval, but may use their own legislative body—namely, the “municipal council or other municipal legislative body established by the charter.” Section 2307(2) clarifies that municipal charters may circumscribe the role of a municipal council or other municipal legislative body to determining the total amount of the school budget. Thus, Section 2307 gives charter municipalities substantially more discretionary authority than other school administrative units to specify the details of the school budget approval process. Applying the liberal construction governing implied limits on home rule authority, it is appropriate

⁴ Specifically, the Court upheld a town charter provision that created an elected municipal budget committee, separate from the school committee and the select board, vested with the power to amend the individual articles of the school budget and the total budget before it was submitted to voters for ultimate approval at referendum. *See Town of York*, 626 A.2d at 937, 942 & n. 4. The Court determined that the charter provision establishing this budget approval process was valid because there was no direct conflict between it and any statute and because it did not interfere with the purpose of the school statute or the municipal statute. *Id.* at 946. As we noted in the August 11, 2021 DW Memorandum, since the *York* decision, the school budget approval process was modified to require a budget meeting followed by a budget validation referendum.

to ascribe broad intent to the legislative exception in section 2307(1), and so we do not believe the School Budget Charter Revision to be prohibited.

C. OPINION

Subject to and based upon the foregoing, including without limitation our legal analysis and reasoning in Part B of this letter and the DW Memoranda, and the qualifications and limitations expressed therein, in our opinion the School Budget Charter Revision does not contain any provision prohibited by the United States Constitution, the Maine Constitution, or the general laws. For purposes of this opinion, “prohibited” means in violation of the law, expressly or by necessary implication, extant as of the date of this letter. *Cf. Nasberg*, 662 A.2d at 229 (stating that “[t]he intent of the requirement for an attorney’s letter is to prevent clearly unconstitutional provisions from being placed on municipal ballots,” but declining to address the constitutionality of the written opinion requirement). We provide this letter for the purpose stated above and for no other purpose.

Very truly yours,



Agnieszka A. Dixon



E. William Stockmeyer

cc: Xavier Botana, Superintendent of Schools (via email)
Emily Figdor, School Board Chair (via email)

EXHIBIT A

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

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

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

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

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

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

The school board shall hold a budget hearing on such budget estimates ~~shall be held at least seven (7) days prior to final action by the city council determining the total amount of the school budget. Within a reasonable period of time, the city council may, at its discretion and after holding a public hearing, provide a nonbinding resolution with its recommendations to the school board for consideration. The school board may or may not adopt, in whole or in part, the recommendations of the city council.~~ The city council shall thereafter submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally

raised funds and the amounts for each cost center summary budget category proposed by the school board.

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

MEMORANDUM

TO: Xavier Botana, Superintendent Portland Public Schools FROM: Melissa Hewey, Agnieszka Dixon, and Elek Miller Drummond Woodsum DATE: August 11, 2021 RE: Portland Charter—School Governance, Policy, and Management Matters

As the newly elected City of Portland Charter Commission (the “Commission”) begins its work to evaluate and recommend modifications to the City of Portland Charter (the “Portland Charter”), you have asked us to provide an overview of the law governing the powers and duties of the Commission to address matters of school governance, policy, and management.

In Part I of this memorandum, we provide a legal overview of the Constitutional and statutory limits on the authority to amend the Portland Charter with respect to matters of school governance, policy, and management. In Part II, we identify and discuss the existing provisions in the Portland Charter which concern the school board, and we compare those provisions with the charter language of other populous Maine charter cities.

Finally, in Part III, we conclude that, while the Commission has broad authority to recommend modifications to the provisions of the Portland Charter for consideration by the voters, that authority is constrained with respect to matters of education. We therefore recommend that the school board continue to evaluate the Commission’s work through the lens of the legal framework presented next, and to seek legal review of any proposals affecting school governance, policy, or management.

I. AUTHORITY OF THE COMMISSION WITH RESPECT TO EDUCATIONAL MATTERS— A LEGAL OVERVIEW

At the outset, it should be understood that the scope of the Commission’s authority is constrained by the Maine Constitution and state law, which extensively regulates public education in the state and thereby limits the scope of any charter commission’s authority over matters of education.

A. The Legislature has plenary control over public education.

In Maine, the Legislature has plenary authority over public education. *School Committee of the Town of Winslow v. Inhabitants of the Town of Winslow*, 404 A.2d 988, 991-992 (Me. 1979). Exercising this authority, the Legislature has created a system of local school administrative units to provide free public education to Maine children. A “school administrative unit” is defined by statute as “the state-approved unit of school administration and includes a municipal school unit.” 20-A M.R.S. § 1(26). A “municipal school unit” is defined as a state-approved unit of school administration composed of a single municipality. 20-A M.R.S. § 1(19). Public education in Portland is provided by the Portland municipal school unit, which is a creature of the Legislature and not a subdivision or department of city government.

The Maine Supreme Judicial Court, acting as the Law Court, has made it clear that municipal school boards “are agents of the state and are legally distinguished from municipalities.” *Pickering v. Town of Sedgwick*,

628 A.2d 149, 150 (Me. 1993). The separate roles of the municipal school unit and the municipal government are well-defined and do not overlap.

The school board is the governing body of a municipal school unit. *See* 20-A M.R.S. § 1(28). State law provides that “the control and management of the public schools shall be vested in the legislative and governing bodies of local school administrative units, as long as those units are in compliance with appropriate state statutes.” *See* 20-A M.R.S. § 2(2). Thus, the school board has sole authority to oversee the affairs of a municipal school unit, including adoption of policies, management of the schools (including custody, care, and repair of school buildings), selection of the superintendent (who is the chief administrative officer of the municipal school unit), employment of administrators, and employment of teachers. *See* 20-A M.R.S. §§ 1001, 1051, 13201, and 13302. As discussed in greater detail in Part I.C, below, a city council has no statutory duties or authority with respect to public education, with the exception of approving the total amount of the school budget to be submitted to the voters in a budget validation referendum provided that a municipal charter confers that authority upon the council. *See* 20-A M.R.S. § 2307(2). The authority to allocate funds within the total budget and expend those funds is reserved to the school board. *Id.*

The school board is not subordinate to the city council but derives its duties and authority directly from the Legislature. “Its members,” the Law Court has observed, “are chosen by the voters of the town, but after election they are public officers deriving their authority for the law and responsible to the State for the good faith and rectitude of their acts.” *Shaw v. Small*, 124 Me. 36, 41 (1924).

B. The Commission’s authority over public education is circumscribed by the Maine Constitution and state law.

While the Legislature has plenary authority over public education and has delegated local control over education to school administrative units and their elected school boards, the home rule provisions of the Maine Constitution and state law authorize the voters of a municipality, by charter, to impose local regulation of public education only if Legislature has not expressly prohibited local regulation or where the Legislature “has intended to occupy the field and the legislation would frustrate the purpose of a state law.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993).¹

The Law Court reaffirmed this home rule limitation last year, stating that the Maine Constitution grants municipalities the power to amend their charters “on all matters, not prohibited by Constitution or general law, which are local and municipal in character” and further stating that the Constitution “commits the general power to promote education to the Legislature” *MSAD 6 Bd. of Dir’s v. Town of Frye Island*, 2020 ME 45, ¶¶ 17, 19, 229 A.3d. 514, 520-21 (internal quotations omitted). In the *Frye Island* case, the Court held that a town could not attempt to withdraw from its school administrative unit by amending its charter because such a charter provision implicated public school funding—“an issue falling squarely within the Legislature’s purview”—and was therefore not a valid exercise of the municipality’s home rule authority. *Id.* ¶¶ 19, 22 & n.7.

¹ In the *York* case, the Law Court upheld a charter provision that created a municipal budget committee, separate from the school board and the select board, with the power to approve the school budget before it was submitted to voters for approval. “The Legislature,” the Court wrote, “is free to delegate to municipalities all of its authority over education so long as the delegation is not unconstitutional.” *Town of York*, at 940. Since the charter provision did not conflict with the Constitution or state law regulating school budget approval, the Court said that the creation of the budget committee with authority over the school budget was within the authority of the charter commission. Subsequent to the *York* decision, the Legislature enacted a detailed statutory process for school budget approval assigning specific roles to the school board and the municipal legislative body, which presumably overruled the *York* decision to the extent that the *York* charter provision conflicts with that detailed process. That process is summarized in the next section.

C. A charter may modify the school budget approval process, but not the power of the school board to direct expenditures of education funds or the responsibility of the municipal legislative body to determine the total school budget.

Maine law now provides that municipal school budgets “must follow the same school budget requirements as regional school units.” 20-A M.R.S. § 2307. We are all now familiar with the school budget procedures that have been followed for over a decade, including school board formulation and approval of a budget organized by specific cost centers and warrant articles prescribed by law. The approved school board budget is then submitted to the “budget meeting.” In charter municipalities such as Portland, the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S. § 2307(1). The final step in budget approval is the budget validation referendum decided by the voters (although the voters may eliminate that step by referendum).

State law specifically provides:

In charter municipalities where the municipal charter confers upon a municipal council or other municipal legislative body the authority to determine the total amount of the school budget and confers upon the school committee or school board the authority to direct the expenditure of those funds for school purposes, the municipal council or other municipal legislative body shall determine the total amount of the school budget to be submitted to a budget validation referendum and the school committee or school board shall determine the allocation of the approved school budget among the cost centers of the cost center summary budget format.

20-A M.R.S. § 2307(2). In short, in a charter municipality like Portland, the municipal council or other municipal legislative body acts only on the total amount of the school budget, and the school board determines the budget allocation among cost centers. This delegation of authority over the school budget between the school board, on the one hand, and the municipal council or other municipal legislative body, on the other hand, is a subject matter where the Legislature appears to have “occupied the field”—and, in our view, a charter provision that alters it would likely be invalid.

Although, in our view, a charter provision may not modify the school board’s power to direct the expenditure of funds for school purposes, other charter provisions concerning the budget approval process may likely be modified or altogether eliminated. In that regard, it has been asked whether the Portland Charter may be revised to eliminate the city council’s responsibility to determine the total school budget. As noted above, state law provides that the budget meeting to approve a municipal school budget must be a meeting of either “the municipal council or other municipal legislative body.” 20-A M.R.S. § 2307(1) (emphasis added). Accordingly, we believe the Portland Charter may lawfully assign the final authority to approve the school budget to a municipal legislative body other than the city council.

We note that we know of no precedent within a city charter² regarding the form that such an alternative legislative body may take, however. In Maine, legislative bodies typically consist of (i) a town meeting

² We do know of at least one town charter which provides a municipal legislative body that is not a town council. The Town of York, which has a rather unique “Town Manager—Town Meeting by Secret Ballot Vote” form of local government, provides in its charter that its municipal legislative body is the town meeting consisting of the voters. See York Charter, Art. II, § 1 (*available at www.yorkmaine.org/DocumentCenter/View/691/Home-Rule-Charter-PDF*). There, an elected budget committee prepares the town budget and the school committee prepares the school budget, but final authority for approving a composite town and school budget, in line-item format, rests with the voters at a secret ballot budget referendum after public hearing. See *id.*, Art. II, §§ 4, 5, 10, 12. If the voters vote down a given line-item, the charter calls on the Town’s Board of Selectmen—that is, its governing body—to appropriate an amount equal to the budgeted appropriation for that line-item during the previous fiscal year. See *id.*, Art. II, § 14.C.

composed of all voters of a town, (ii) the school budget meeting composed of all voters of the member municipalities of a school administrative unit, or (iii) a representative council established by charter. Any proposal to establish a municipal legislative body, separate and distinct from a representative council, to approve the school budget would need to be thoroughly vetted against the statutory role of the school board, the continuing requirement for a budget validation referendum, and the statutory meaning of the phrase “municipal legislative body” in 20-A M.R.S.A. § 2307, among other legal considerations.

II. OTHER PROVISIONS IN THE PORTLAND CHARTER CONCERNING THE SCHOOL BOARD—A DISCUSSION AND A COMPARISON

The Portland Charter includes other provisions affecting the duties and powers of the school board, which we discuss next. For your reference, we have prepared, in [Appendix A](#), a table that identifies the key Portland Charter provisions affecting school boards and compares them with the charter provisions of other populous charter cities in Maine—namely, Auburn, Bangor, Biddeford, Lewiston, and Sanford. In [Appendix B](#), we have attached a copy of the Portland Charter showing the provisions affecting the school board highlighted in yellow.

A. In general, control over public schools is expressly delegated to the school board.

The Portland Charter, like all of the charters that we reviewed, contains a general provision excepting from the city council’s authority all duties and powers concerning the management, care, and control of the city’s public schools, and vesting that power and duty in the school board:

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”)*,¹ and also except as otherwise provided by this charter, shall be and are vested 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.

Portland Charter, Art. I, § 2 (emphasis added); *see also* Biddeford Charter, Art. I, § 2 (same), Lewiston Charter, § 1.02(a) (same). Importantly, the Portland Charter does not purport to address educational policy or operation of the schools, and this approach is consistent with the Legislature’s scheme which assigns local responsibility for public education to the elected school board. Indeed, the Portland Charter explicitly acknowledges the broad responsibilities of the school board with regard to public education:

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.

Portland Charter, Art. III, § 4; *see also* Bangor Charter, Art. III, § 1 (same), Biddeford Charter, § 3(a) (same), Lewiston Charter, § 5.03(a). As discussed in Part I, any departure from the principle that a school board controls the public schools would likely run afoul of the Constitutional and statutory scheme regarding governance of municipal school units and the limits on home rule authority.

B. The school board controls the preparation and expenditure of the school budget, while the city council approves and appropriates the total school budget.

The Portland Charter provides that the school board must submit to the city council an annual school budget, and any information relating to the budget, to the council. *See* Portland Charter, Art. III, § 5. The city council approves the total budget after holding a hearing and makes one gross appropriation for the

support of the public schools. *Id.* This separation of powers between the school board and city council rests in state law, as discussed, and is a common feature of other city charters. *See, e.g.,* Bangor Charter, Art. III, § 1; Lewiston Charter, §§ 5.03, 6.07(f); Biddeford Charter, Art V, § 4. Unique to the Portland Charter is a provision that the city council may not reduce the school board’s proposed budget except by vote of at least six of its nine members. *See* Portland Charter, Art. III, § 5.

C. The Portland Charter contains specific school budget reporting, consultation, and audit requirements, as well as provisions concerning borrowing and bonding, procurement, and capital improvements.

In addition to this general delegation of responsibility over the school budget, city charters sometimes include school budget reporting, consultation, and audit requirements which may affect how and when a school budget is prepared. For example, the last Portland charter revision in 2010 added specific provisions to the Portland Charter requiring the school board and the city council, or their designated subcommittees (the finance committees), to share information about, review, and consult on the school budget within certain timeframes. *See* Portland Charter, Art. III, § 5. The Portland Charter also requires detailed monthly reporting to the city’s finance director. *See id.; see also* Art. VII, §§ 1, 3. The Portland Charter also delegates responsibility to the mayor to “facilitate among the city manager, city council, [school board] and the public to secure passage by the city council of the annual city and school budgets” Portland Charter, Art. II, § 5(h).

Most of the city charters that we reviewed likewise contain some school budget-related consultation, reporting, and audit requirements—although the scope and detail of such requirements vary to a great degree, and some charters are largely silent on these details. *See, e.g.,* Bangor Charter. When charters do speak on these issues, they may:

- Include instructions on the transfer of funds among departments or functions. *See, e.g.,* Sanford Charter, § 613. (Note that we question whether the funds transfer limitation in the Biddeford Charter, Art. IX, § 3, is valid, as it appears to conflict with the school board’s cost center transfer authority under 20-A M.R.S. § 1485(2).)
- Impose deadlines for submitting the school budget to the council or budget committees and prohibitions on the expenditure of funds that exceed appropriation resolves. *See, e.g.,* Lewiston Charter, § 5.03.
- Contain contingency procedures for budget shortfalls. *See, e.g.,* Sanford Charter, § 619.3.
- Include detailed procedures for selecting auditors and conducting annual audits. *See, e.g.,* Auburn Charter, § 8.11.

These types of school budget consultation, reporting, and auditing provisions usually do not conflict with the ultimate authority of the school board to direct expenditures or that of the council to approve only the total school budget. Provided they also do not conflict with other provisions of state law, they likely fall within a charter’s home rule authority to modify or eliminate.

In addition, like most other charters, the Portland Charter houses other finance-related provisions—including requirements for the procurement of goods and services, borrowing and bonding, and capital improvement planning—that may affect school management decisions. For example, the Portland Charter encourages the city and school department to share staff and resources and cooperate to provide better services in a cost-effective manner. *See* Portland Charter, Art. VII, § 2.

The Portland Charter also imposes limits and procedures on the sale of bonds or notes pledged on the credit of the city. *Id.* Art. VII, § 11. The Charter is silent with respect to the issuance of bonds specifically for school construction or renovation projects; however, state law provides that in a municipal school unit

“where the responsibility for final adoption of the school budget is vested in the municipal council by municipal charter, a locally funded project may be approved without a referendum vote if the charter does not require a referendum.” 20-A M.R.S. § 15905-A. Care must be taken to adhere to legal requirements when modifying any bond issuance provisions in a charter, as they could affect the city’s ability to issue bonds. Review by bond counsel of any such modifications is strongly recommended.

Notably absent from the Portland Charter is the role of the school board in the capital improvement program (CIP) planning process. Other charters provide a clear roles for the superintendent and school board in preparing and authorizing CIPs, usually jointly with the city manager and council, which can thereby qualify school capital project for capital reserve funding. *See, e.g.*, Bangor Charter, §§ 8.9, 8.10; Sanford Charter, § 610.

D. The Portland Charter contains specific provisions affecting school board governance, including provisions concerning school board elections and conflicts of interest

The Portland Charter contains governance provisions affecting school boards, including the composition of the school board, election and recall procedures, how vacancies are filled, and compensation provisions. While most charters include such provisions, the specifics vary greatly. For example, the Portland Charter is the only charter we reviewed where school boards are elected using ranked choice voting. *See* Portland Charter, Art. II, § 3. In addition, unlike most charters, the Portland Charter contains detailed provisions concerning conflicts of interest and incompatibility of office. In contrast, most other charters are silent on these topics, presumably because there is already a rich framework of state law and case law on these two topics. Please refer to the table in Appendix A for a side-by-side comparison of how each of these provisions appear in the Portland Charter and in the other city charters that we reviewed.

III. CONCLUSION

This memorandum is intended to provide a general overview of the legal landscape affecting charter revision and public education. We encourage the school board to monitor the Portland Charter revision process and to provide input to the Commission on any school-related issues or proposals. The school board may also wish to make proposals to the Commission to change existing charter language, particularly with regard to the school budget process, consistent with the legal principles and recommendations discussed in this memorandum. We are available to assist the school board in evaluating or preparing any such proposals.

Enclosures:

Appendix A: A Comparison of Select Charter Provisions of the Most Populous Maine Charter Cities
Appendix B: Portland Charter, with School-Related Provisions Highlighted

APPENDIX A
A COMPARISON OF SELECT CHARTER PROVISIONS OF THE MOST POPULOUS MAINE CHARTER CITIES

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
General—Delegation of Authority over Schools	The council is vested with administering all fiscal, prudential, and municipal affairs of the city, “except the general management, care, conduct, and control of the schools.” (Art. I, § 2) The school board is vested with “the care and management, including sound fiscal management, conduct, and control of the public schools” as conferred on school boards by state law. (Art. III, § 4)	The council is vested with all powers granted by charter and state law, except the care and management of the public schools, which is vested in the school committee. (§§ 2.1, 4.1)	The council is vested with all powers granted by charter and state law, except the care and management of the public schools, which is vested in the school committee. (Art. II, § 1) The school committee is vested with “the care and management of the public schools” as conferred on school boards by state law. (Art. III, § 1)	The mayor and council are vested with administering all fiscal, prudential and municipal affairs of the city, except the general management, care, conduct, and control of schools, which is vested in the school committee. (Art. I, § 2) The school committee is vested with “the care and management of the City’s public schools” pursuant to state law. (Art. V, § 3(a))	The mayor and council are vested with administering all fiscal, prudential and municipal affairs of the city, except the general management, care, conduct, and control of schools, which is vested in the school committee. (§ 1.02(a)) The school committee is vested with the “care and management of the city’s public schools” pursuant to state law. (§ 5.03(a))	The school committee is vested with all the “care and management of the public schools” of the city as conferred on municipal school committees by state law. (§ 505.1). The Department of Education is governed and administered the school committee and superintendent, in accordance with state law. (§ 501)
School Budget—Approval, Appropriation, Expenditure	The school board must submit an annual school budget to the council, including any information relating to the budget that the council requires. The council approves the school budget after holding a hearing, and makes one gross appropriation for the support of the public schools. The appropriation may not be less than the school board budget, except by a vote of at least six councilors. (Art. III, § 5) The council adopts an annual appropriation resolve, which contains one gross amount for school purposes. The total appropriation must not exceed the city’s estimated revenues. (Art. VII, § 7) The mayor may veto the annual city appropriation but any such veto of the appropriation may not affect the school budget appropriation. (Art. II, §§ 2, 5(i); Art. VII, § 8) The school board has authority to expend the appropriation but may not exceed it except with the council’s consent. (Art. III, § 5)	Refer to § 8.9 for budget creation process, which is collaborative between city and school department. Authority rests with council to finally approve the budget. (§§ 2.6; 8.7; 8.9) The school committee must expend funds within the limits of the council’s appropriation resolves, together with any other revenues the school committee may receive. (§ 4.1)	The school committee must submit an annual estimated school budget to the council. On the basis of the estimated school budget, the council makes one gross appropriation for the support of the public schools. (Art. III, § 1) Expenditures are under the direction and control of the school committee. The council’s appropriation may not be exceeded except by consent of the council and certification of availability of unanticipated funds. (Art. III, § 1, 10)	The school committee must submit the school budget to a budget committee, which submits it to the council after review. The council decision is final, subject to budget validation referendum. (Art. V, § 4) The council adopts an annual appropriation resolve, which contains amounts necessary for general city purposes and for a contingency fund. (Art. XI, § 3) The school committee may not transfer funds from one function to another without a two-thirds vote of both the school committee and council. (Art. V § 4)	The school committee must submit the school budget to the council at least three months prior to the end of the fiscal year. (§ 5.03(a)) The council adopts the city budget, including the school budget, by resolution. If the council fails to do so at least 20 days prior to the end of the fiscal year, the school committee’s final budget is deemed to be automatically adopted. Adoption of the city budget by the council constitutes appropriations of the amounts specified as expenditures from the funds specified. (§ 6.07(f))	The school committee must submit to the budget committee a line-item balanced school budget containing a complete and detailed financial plan for all school funds and activities. The budget committee must hold public hearings to review the expenditures of each municipal agency or department proposed by the city manager, and of each school agency or department proposed by the superintendent. The council authorizes the school budget, which is then presented to the budget validation referendum. The budget committee’s budget may be changed only by a majority vote of the council. (§§ 505.2, 604, 607) Adoption of the municipal and school budgets by the council constitutes appropriations. The council may authorize the transfer of any unencumbered appropriations between the municipal budget articles, and the school committee may authorize the transfer of any unencumbered appropriations between the school budget articles. (§ 613) If it appears probable to the city manager or superintendent that revenues are insufficient to cover appropriations, the council may take action to prevent or minimize any deficit, including by reducing appropriations to the extent not inconsistent with 20-A M.R.S.A. §§ 15004 and 15613(8). (§ 619.3)

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
School Budget—Consultation, Reporting, and Auditing Requirements	The mayor is responsible for facilitating among the city manager, council, school board, and the public to secure passage by the city council of the annual city and school budgets. (Art. II, § 5(h)) The superintendent must submit a balanced budget estimate, which provides a “complete financial plan of all school funds and activities,” to the school board no later than 3½ months before the end of the fiscal year. During the 30 days following submission, the school board and council, or their designated subcommittees, must meet jointly at least twice to review the budget estimate. (Art. III, § 5) Accounts must be kept by the finance director of finance, showing the transactions of all departments of the city and the school department. The finance director must publish a monthly financial statement and furnish a monthly detailed report to the city manager of revenues, expenses, and expenditures 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 city and school accounts are audited annually by an auditor selected by the council. (Art. VII, §§ 1,3)	An audit committee, composed of two councilors and two school committee members, select and direct the work of an independent auditor, and report back to a joint meeting of the council and school committee. The council selects the accountant upon recommendation of the committee. The committee also reviews the procurement policy and report to the council and school committee as to the strengths and weaknesses of the policy. (§ 8.11)	The city audits must be audited annually by a CPA chosen by the council. (Art VIII, § 2)	The council must provide an annual independent audit of all City accounts and may provide more frequent audits. (Art. III § 9)	The city administrator establishes a system of bookkeeping, auditing, purchasing and records pertaining to all financial transactions of the school committee, and may establish rules governing such procedure consistent with local and state law. (§ 5.04)	The school committee must present an "audit action plan" with remedies as appropriate to the council for review and approval. (§ 505.3)
Procurement	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 (Art. VII, § 2)	The council must adopt a procurement policy for the city’s purchase of materials and services for all city departments, including the Department of Education. A procurement policy committee composed of two councilors, two school committee members, and a mutually selected fifth member develop the procurement policy, and report back to the council and school board. (§ 8.16)	The city’s purchasing agent purchase all supplies for the city, but educational supplies for the city schools are excepted and may be purchased by the purchasing agent upon requisition by the school committee (Art. VIII, § 5)		The city administrator establishes a system of bookkeeping, auditing, purchasing and records pertaining to all financial transactions of the school committee, and may establish rules governing such procedure consistent with local and state law. (§ 5.04)	The city manager will act as purchasing agent for all departments, except the school department. Whenever possible, the city manager must work with the superintendent to negotiate contracts for supplies, materials and equipment commonly purchased by both the city and school. (§ 402.13)
Capital Improvement Program (CIP)	The mayor must consult with and provide guidance to the city manager in the preparation of an annual CIP. (Art. II, § 5(g)) The city manager must prepare a 5-year rolling CIP for annual presentation to the council. (Art. IV, § 5(i))	The city manager and superintendent must jointly prepare and submit to a joint meeting of the council and school committee a multi-year CIP before submission of the budget, and must publish a general summary of the CIP. The CIP must be revised and extended each year with regard to capital improvements pending or in process of construction or acquisition. (§§ 8.9, 8.10) The council must adopt the CIP by resolution, with or without amendment, after a public hearing (§ 8.10(B))	The charter contains no specific CIP provision.	The charter contains no specific CIP provision.	The administrator prepares and submits to the council a 5-year CIP, including the CIP proposed for the school department. The planning board review the proposed CIP each year, and following public hearing, forward its recommendations to the council. After notice and hearing, the council by resolution adopts the CIP with or without amendment. Adoption does not constitute the appropriation of funds. (§§ 6.05, 6.06)	The city manager and the superintendent annually prepare and submit to the budget committee a 5-year CIP. The budget committee reviews the CIP and makes recommendations to the council for approval. The city creates annual reserves for the CIP by raising and appropriating at least 4% of the budget each year. Projects funded by the CIP include road maintenance, vehicular replacements, roofing projects, major building renovations, major equipment purchase, airport projects, new buildings and the like. (§ 610).

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
Borrowing and Bonding	Money may be borrowed, within the limits fixed by the Constitution and state law, 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 council issues an order providing for the issue of bonds after notice and hearing. A council order authorizing the issuance of bonds must be approved by at least 7 councilors. With some exceptions, the issuance of general obligation bonds greater than 0.05% of the city’s last state valuation or any obligation to expend tax funds over multiple years greater than 0.075% of the city’s last state valuation for a single capital improvement or piece of equipment and the issuance of must be submitted to voter referendum. (Art. VII, §§ 11, 16)	The city may issue bonds pledging the credit of the city in the manner prescribed by state law. The council votes to issue the bonds after notice and hearing. (§ 8.13)	Money may be borrowed by order of the council, within the limits fixed by the Constitution and state law, by the issue and sale of bonds or notes pledged on the credit of the city, or on other enumerated revenues. (Art. VII, § 13) With some exceptions, the issuance of general obligation bonds greater than 0.05% of the city’s last state valuation or any obligation to expend tax funds over multiple years greater than 0.075% of the city’s last state valuation for a single capital improvement or piece of equipment and the issuance of must be submitted to voter referendum. (Art. VIII, § 19)	Money may be borrowed, within the limits fixed by the Constitution state law, by the issue and sale of bonds or notes pledged on the credit of the city. (Art. XI, § 6)	Money may be borrowed temporarily in anticipation of taxes or of the issuance of bonds, in accordance with the provisions of 30-A M.R.S.A. § 5771 (§ 6.13)	The budget committee must review all bond requests presented by the council and school committee, and shall make recommendations for bonding to the city manager and superintendent when appropriate during the budget review process. (§ 604.4). Capital projects of the municipal and school departments to be financed through the issuance of bonds for \$250,000 or less may be approved by the council. (§ 705.1) See amended § 705 for more information on bonding, including for bonds over \$250,000.
School Board Composition and Election Procedures	The school board is composed of nine members, four at large and one from each of the five districts who hold office for a term of three years and until their successors are elected and qualified. All candidates must be residents of the city for a period of at least three months prior to the date on or before which nomination papers are to be filed. The candidate from each of the 5 districts must be a resident of such district. (Art. III, § 1) For the positions of mayor, city councilor, and school board member, the city uses a ranked choice voting protocol. (Art. II, § 3; Art. IV, § 10) Nominations are by petition, with minimum signature requirements. (Art. IV, § 4) For vacancy provisions, refer to Art. II, § 7; Art. III, § 6. Recall procedures are set forth in Art. V, § 2.	The school committee is composed of the mayor, or a city councilor selected by the mayor and 7 other members. Five members are elected, one from each ward by and from its registered voters. Two members are elected at-large. Members hold office for a term of two years. (§ 4.2). For vacancy provisions, refer to § 4. Recall procedures are set forth in § 9.1(C).	The school committee is composed of seven members elected at large who hold office for a term of 3 years with a term limit of 3 consecutive terms. (Art. III, § 2) The members of the school committee annually by majority vote designate one of its members to serve as Chair.(Art. III, Sec.3)	The school committee is composed of seven members at large who hold office for a term of 2 years, but no more than two members from any one ward, who shall hold office for a term of two years. The mayor is the ex officio chair with no veto power, who may not make a motion and may only vote to break a tie. (Art. V, §§ 1,2) For vacancy provisions, refer to Art. V, § 5. Recall procedures are set forth in Art. IX, § 2.	The school committee is composed of nine members, one elected from each ward, one at-large, and one council member nominated by the mayor and appointed by the council from any ward. Members hold office for a term of 2 years. (§ 5.01(a)) For vacancy provisions, refer to § 5.01. The charter contains no specific recall procedures.	The school committee is composed of five members, who are elected at-large and who hold office for a term of 3 years. Nominations are by petition, with minimum signature requirements. (§§ 501, 1103) For vacancy provisions, refer to § 503. Recall procedures are set forth in § 1201.
School Board Compensation	The council establishes the amount each member of the school board is entitled to receive as compensation, which must be the same as that received by members of the city council, other than the mayor. The council must provide additional compensation to the chair of the school board. (Art. III, § 1)	Compensation is set by the council through ordinance, upon recommendation from school committee. (§ 4.2)	The charter contains no specific school board compensation provision.	School committee members receive compensation at the rate of \$10 for every regularly scheduled meeting attended, not to exceed \$500 per year. (Art. V, § 1)	Compensation is set by the council through ordinance. (Sec. 5.01(b)).	Compensation is fixed each year by the school committee. (§ 507)

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
School Board Conflicts of Interest	No member of the council or school board or board or commission thereof and no officer or employee of the city or school department 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. (Art. VIII, § 1)	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	The charter contains no specific conflict of interest provision.	No school committee member shall hold any other compensated city office or city employment, except as on-call emergency personnel, during their term of office. No school committee member shall hold any paid office or position of employment with the school department. If a member of the school committee ceases to possess any of these qualifications or is convicted of a crime punishable by imprisonment for more than six months, the office shall immediately become vacant. (§ 502)
Incompatibility of Office	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. (Art. II, § 4)	Except where authorized by law, no member shall hold any other elected public office during the term for which the member was elected. No member shall hold any other city office or employment during the term for which the member was elected. No former member shall hold any compensated appointive city office or city employment until at least one year after expiration of the member’s elective term.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision for school board members.	The charter contains no specific incompatibility of office provision. See above section for more information on prohibited positions.

	PORTLAND	AUBURN	BANGOR	BIDDEFORD	LEWISTON	SANFORD
Web Link	https://www.portlandmaine.gov/DocumentCenter/View/1102/City-Charter---Revised-332020?bidId	https://www.auburnmaine.gov/CMSContent/City_Clerk/charter.pdf (<i>See also</i> https://www.auburnmaine.gov/pages/government/city-charter-ordinances).	https://ecode360.com/14036615	City of Biddeford, ME City Charter (ecode360.com)	https://www.lewistonmaine.gov/DocumentCenter/View/181/City-Charter?bidId= (<i>See also</i> https://www.lewistonmaine.gov/151/City-Charter).	https://www.sanfordmaine.org/index.asp?SEC=B7910104-37A4-4F19-8A4E-58A42A843356&DE=FE82D1BD-194C-4DA6-856D-13123C3BD050&Type=B_BASIC (<i>See also</i> https://www.sanfordmaine.org/vertical/sites/%7B9A3D3C8D-76EE-4CC5-B86E-C19FDBF5E473%7D/uploads/Final_Report_Corrected_Website.pdf

APPENDIX B
PORTLAND CHARTER, WITH SCHOOL-RELATED PROVISIONS HIGHLIGHTED

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

All other powers now or hereafter vested in the inhabitants of such city, and all powers granted by this charter, except as herein otherwise provided, shall be vested in the city council.

(Referendum 11/2/10)

ARTICLE II. CITY COUNCIL

Section 1. City to be divided into election districts.

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

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

Section 2. Composition, election, tenure of office.

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

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

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

for a period of at least three (3) months prior to the date on or before which the nomination papers are to be filed.

Beginning with the regular municipal election in November, 2011, the at large position then up for election shall be designated as the mayor's position and shall continue as the mayor's position thereafter. The position of mayor only shall be elected by majority vote as provided in section 3 of this article. The candidate(s) for mayor shall be nominated in the same manner as other at large members of the council. The term of mayor shall be four (4) years, with a maximum limit of two (2) 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 city council shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, and specify when any compensation shall be payable, but no such order increasing their compensation, including that of the mayor, shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance.

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

No member shall hold any office or employment the compensation of which is payable by the city or school department during the term for which he or she was elected.

(Referenda 12/1/75; 6/13/78; 11/4/86; 11/3/87; 11/2/10)

Section 5. Mayor's powers and duties.

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

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

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

Notwithstanding the foregoing, the city manager shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council.

(Referendum 11/2/10)

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

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

Section 7. Vacancies.

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

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

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

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

Section 8. Meetings of the council.

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

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

Section 9. Special meetings.

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

Section 10. Quorum.

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

Section 11. Procedure.

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

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

resolve shall require on final passage the affirmative vote of at least five (5) members of the city council. No ordinance shall take effect until thirty (30) days after its passage and no order or resolve shall take effect until ten (10) days after its passage, except as herein otherwise provided for emergency ordinances, orders and resolves.

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

ARTICLE III. 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 (5) 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 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 (6) of its members, calls a special election on an earlier date and shortens the time for obtaining and filing nomination petitions established in article IV, section 6. Such election shall be called and held and nominations made as in other elections. (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 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 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.

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 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 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 (4) 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 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, 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 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 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, 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 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, relating to vacancies in the 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 vote of at least five (5) members of the city council: city manager, city clerk, and corporation counsel, and they may appoint constables at large.

(b) All department heads shall be appointed by the city manager, subject to confirmation by the city council.

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

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

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 shall be fixed by the city manager, 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.

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

and commissions, council committees, neighborhood and other groups and organizations, on city work.

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

- (a) To see that the laws and ordinances are enforced, but shall delegate to the chief of the police department the active duties connected therewith regarding criminal conduct.
- (b) To exercise control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.
- (c) To implement the policy decisions of the city council.
- (d) To coordinate city programs and operations and recommend improvements in such programs and operations to the council.
- (e) To prepare city budgets, in consultation with and incorporating policy guidance of the mayor, and to present such budgets to the council.
- (f) To make appointments as provided in this charter.
- (g) To attend meetings of the city council, except when his or her removal is being considered, and recommend for adoption such measures as he or she may deem expedient.
- (h) To keep the city council fully advised as to the business and financial condition and future needs of the city and to furnish the city council with all available facts, figures, and data connected therewith when requested.
- (i) To prepare a five (5) year rolling capital improvement plan for annual presentation to the city council, which plan includes the following:
 - 1. A one (1) year plan of specific projects and their cost;

2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; and
 3. A discussion of the basis for the plan and the factors which went into its development or amendments.
- (j) To prepare and submit to the city council such reports as are requested or he or she deems advisable; and
- (k) To perform such other duties as may be prescribed by this charter or required by ordinance of the city council. (Referenda 11/4/86; 11/2/10)

Section 6. Vacancy in office of city manager.

During any vacancy in the office of city manager, and during any absence or disability of the city manager 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 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. Before entering his or her duties, he or she shall give bond to the City of Portland in a sum and with surety or sureties to be approved by the city council. The premium on such bond is to be paid by the city. (Referendum 11/2/10)

Section 7. Duties of administrative officers.

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

Section 8. Continuity in office.

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

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 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 shall submit to the city council a proposed city budget prepared by the city manager for the ensuing fiscal year. The mayor shall submit comments on the proposed city budget, along with any proposed modifications, concurrently with the manager's submission.

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

Section 6. Budget content.

The proposed city budget prepared by the manager 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 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 appropriations shall not be 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, the mayor may veto the 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) 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 (80) 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 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
3. 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)
0. 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
4. A total revision of the charter was accomplished in 1961; c. 194, P & SL 1961, p 1125; amendments as follows:
- c. 64, P & SL 1963, p. 966
 - c. 65, P & SL 1963, p. 967
 - c. 157, P & SL 1963, p. 1187
 - c. 177, P & SL 1963, § 1, p. 1291
 - (c. 6, P & SL 1965, p. 649 rejected by voters on December 6, 1965)
 - c. 7, p & SL 1965, p. 650
 - c. 81, P & SL 1965, p. 760

(c. 127, P & SL 1965, p. 849 rejected by voters on December 6, 1965)
c. 221, P & SL 1967, p. 136
c. 83, P & SL 1969, p. 1628
c. 136, P & SL 1969, p. 1792
c. 146, P & SL 1969, p. 1820
(c. 185, P & SL 1969, p. 1958 rejected by voters on November 3, 1970)

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

Referenda 12/4/72	Art. I, 1
Referenda 12/1/75	Art. II, 2
	Art. IV, 2
	Art. IV, 4
	Art. V, 2
	Art. VII, 1
Referenda 11/2/76**	Art. II, 1
	Art. II, 4
	Art. III, 1,2,5
	Art. IV, 2,3,4,6
	Art. V, 2
Referenda 6/13/78	Art. II, 1,2,3,5
	Art. III, 1,2,3,4
	Art. IV, 1,2,3,6
	Art. VII,3,4,5,6
Referenda 11/4/86***	Art. II, 1,2,4,5
	Art. III, 1,5
	Art. IV, 1,2,3,4,6,7,9
	Art. V, 1,2,3,4,5,6,7
	Art. VI, 1,2,5
	Art. VII 7-10 (Rpld)
	Art. VI, 11-12 (Rnbd as Art. VI,
	7-8)
	Art. VII, 3,4,9,10,16
	Art. VIII, 1,4,5
	Art. VIII, 6 (Rpld)
Referenda 11/3/87	Art. II, 2
	Art. III, 1
Referenda 11/5/91	Art. VII, 9
Referenda 11/8/94	Art. VII, 9
Referenda 11/2/99	Art. II, 4
	Art. III, 5
	Art. VII, 9
Referenda 11/7/00	Art. II, 3,5
	Art. III, 2,3
	Art. IV, 2
Referenda 11/6/01	Art, IV, 2,6,8,10
Referenda 11/4/08	Art. IV, 3,4,5, 6,7,11
Referenda 11/2/10****	Charter Revisions recommended by the Portland Charter Commission established on November 4, 2008, and passed by the voters on November 2,2010

****Editor's note**--The amendment establishing district councilor elections became effective January 1, 1976, except that for the purpose of nomination and election of district councilors such amendment shall apply as the

presently occupied district seats become available thereafter by normal expiration of term or by vacancy and to every district election thereafter.

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

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

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

MEMORANDUM

TO: Xavier Botana, Superintendent
Portland Public Schools

FROM: Agnieszka A. Dixon
Drummond Woodsum

DATE: November 5, 2021

RE: Portland Charter—School Governance, Policy, and Management:
The School Budget Approval Process and Bonding Authority

This memorandum follows our August 11, 2021 memorandum, in which we provided an overview of the law on behalf of Portland Public Schools governing the powers and duties of the City of Portland Charter Commission (the “Commission”) to address matters of school governance, policy, and management.

You have asked us whether the Portland Charter could be revised to task the School Board with approving the total amount of the school budget. As explained in Part I, below, the matter is not free from doubt. Nonetheless, we believe there is a strong legal basis to recommend that the Charter Commission propose a Charter revision to require the City Council to submit the total school budget to the voters, acting as the legislative body at a city-wide referendum. This would in effect limit the role of the City Council to calling and overseeing the school budget referendum.

You have also asked us whether the Charter could be revised to authorize the School Board to issue its own general obligation bonds to finance school construction and renovation projects. In Part II, below, we explain why this is not advisable, and we suggest a Charter revision whereby the City Council would continue to issue bonds for such projects but would direct the City Council to present any School Board recommended bond questions to the voters for ultimate approval.

I. THE SCHOOL BUDGET APPROVAL PROCESS

In the August 11 memo, we discussed the concept of home rule authority and the limits on that authority imposed by the Maine Constitution and state law. In short, under home rule, a municipality may, by charter, impose local regulation of public education unless state law has expressly prohibited local regulation or unless the Legislature “has intended to occupy the field and the legislation would frustrate the purpose of a state law.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993) (discussed below). With respect to the school budget approval process, and based upon the *York* decision, we stated that a charter could likely be revised to modify the school budget approval process as long as the power of the school board to direct expenditures and the responsibility of a municipal legislative body to determine the total school budget is not altered.

As you are well aware, municipal school budgets “must follow the same school budget requirements as regional school units.” 20-A M.R.S. § 2307. Accordingly, the school board prepares and approves a budget, which is organized by specific cost centers, and warrant articles prescribed by law. The school board budget is then submitted to the budget meeting. In charter municipalities, the budget meeting is a “meeting of the municipal council or other municipal legislative body established by the charter with authority to approve the budget.” 20-A M.R.S. § 2307(1). The final step in budget approval is presentation of the total budget for ultimate approval by the voters in a budget validation referendum—although the voters are required

under state law to determine, every three years by referendum, whether or not to eliminate this step of the process. *See* 20-A M.R.S. § 1486(1).

State law contemplates that the school budget is approved by either “the municipal council *or other municipal legislative body*.” 20-A M.R.S. § 2307(1), (2) (emphasis added). It therefore appears that assignment of the authority to determine the total school budget to a municipal legislative body *other than* a city council is contemplated by the school statute. Accordingly, it may be argued that a charter provision that assigns this school budget function to a different body while leaving the decision for final budget authority with the voters would be within the municipality’s statutory home rule authority as articulated in the *York* decision.

In Maine, final approval of a school budget is typically the responsibility of (i) a town meeting composed of voters of a town, (ii) a school budget meeting composed of voters of the member municipalities of a school administrative unit, or (iii) a representative body, such as a council, established by charter. To our knowledge, most (if not all) city charters assign the responsibility for determining the total amount of the school budget to a city council. Of course, as a legal matter, just because something has not been done does not mean that it cannot be done. In evaluating the question posed, we could find no state law that would directly conflict with or be undermined by a charter provision that confers on the voters of a city the authority to act as the legislative body to approve a school board’s proposed total school budget. We therefore suggest that the Charter could be revised to direct the City Council to present the total school budget prepared and initially approved by the School Board to the voters for ultimate approval at a city-wide referendum.¹

Case law seems to support this school budget approval approach. In *York*, the Law Court upheld a town charter provision that created an elected municipal budget committee, separate from the school committee and the select board, vested with the power to amend the individual articles of the school budget and the total budget before it was submitted to voters for ultimate approval at referendum. *See Town of York*, 626 A.2d at 937, 942 & n. 4. The Court determined that the charter provision establishing this budget approval process was valid because there was no direct conflict between it and any statute and because it did not interfere with the purpose of the school statute or the municipal statute. *Id.* at 946. Moreover, the Court emphasized that, under the town’s charter framework, the “budget figures that are submitted to the voters are advisory” and that responsibility for the adoption of a final school budget is vested in the voters—vis-à-vis a budget referendum—and not the school committee. *See id.* at 941. Similarly here, a Charter revision directing the School Board to prepare the school budget and submit it to the City Council for the sole purpose of passing it on to the voters for ultimate approval would vest final approval of the total budget in a traditionally recognized municipal legislative body—the city’s voters.²

This approach also appears consistent with the plain language of the school statute. State law specifically provides:

1. Budget Meeting. In charter municipalities the budget meeting required by section 1485, subsection 3³ must be *a meeting of the municipal council or other municipal legislative body* established by the charter with authority to approve the budget.

¹ Specifically, under this approach, we envision a process by which the Charter would direct the City Council to call a budget validation referendum or, in the event the voters eliminate this step pursuant to 20-A M.R.S. § 1486, a municipal school budget referendum.

² As we noted in the August 11 memo and as we discuss next, since the *York* decision, the school budget approval process was modified to require a budget meeting followed by a budget validation referendum.

³ Section 1485, subsection 3 of Title 20-A provides:

2. Municipal charter. In charter municipalities where the municipal charter confers upon a municipal council or other municipal legislative body the authority to determine the total amount of the school budget and confers upon the school committee or school board the authority to direct the expenditure of those funds for school purposes, *the municipal council or other municipal legislative body shall determine the total amount of the school budget* to be submitted to a budget validation referendum and the school committee or school board shall determine the allocation of the approved school budget among the cost centers of the cost center summary budget format.

20-A M.R.S. § 2307 (emphasis added) (hereafter, “Section 2307”). In short, Section 2307 calls on a city council *or the municipal legislative body* to approve the total amount of the school budget at a meeting of the council or body. *See id.* In light of the presumptions in favor of home rule and the statutory authority of the voters to eliminate the budget validation referendum pursuant to 20-A M.R.S. § 1486(1), it can be fairly said that Section 2307 mandates a two-step school budget approval process: (1) preparation and initial approval of the school budget by a school board, followed by (2) ultimate approval of the initial budget by a municipal council *or* a municipal legislative body. It therefore does not appear to us to contradict or frustrate the purpose of Section 2307 for a municipal charter to direct the School Board to prepare and approve the school budget, and to then present the total proposed budget to a separate municipal legislative body, consisting of the voters at a City-wide referendum, for ultimate approval.

Likewise, the municipal statute appears to contemplate that there may be a municipal legislative body that is something other than a city council.⁴ It defines “municipal legislative body” as follows:

Municipal legislative body. “Municipal legislative body” means:

- A. The town meeting in a town;
- B. The city council in a city; *or*
- C. *That part of a municipal government that exercises legislative powers under a law or charter.*

30-A M.R.S. § 2001(9) (emphasis added). The third prong to this definition supports the proposition that a municipal legislative body can be something other than the town meeting or the city council so long as a law or charter establishes such a body and confers upon it the authority to exercise legislative powers. Certainly, it is conceivable that this third prong encompasses a referendum meeting of municipal voters, even though it is not enumerated in the above definition. Because the definition of “municipal legislative body” is housed in the municipal statute—and not in the school statute—it may well be that a court might not find it dispositive when interpreting the text of Section 2307. But, to the extent this definition may inform the analysis, in our view, a charter-enabled voter referendum would likely meet the state law definition of “municipal legislative body.”

In sum, although the matter is not free from doubt, it is our view that the Charter may be revised to direct the School Board to prepare and initially approve the school budget and to transmit it to the City Council, and to direct the City Council to submit the initially approved budget to the voters, serving as the legislative

Budget approval. A regional school unit’s cost center summary budget must be approved at a regional school unit budget meeting and by a budget validation referendum as provided in section 1486.

⁴ This concept is consistent with general principles of municipal law, which recognize that a municipal government has the power to create its form of local government pursuant to its home rule powers. *See* 2 McQuillin Mun. Corp. § 4:96 (3d ed.) (in general, the form of municipal government is subject to legislative control, but the power to adopt, alter, or revise a form of local government ordinarily may be delegated to a municipal corporation or its electors); *see also* 2A McQuillin Mun. Corp. § 9:2 (3d ed.) (stating that the effect of the adoption of a municipal charter “is to invest the governing authorities of the municipality—either a majority of the voters, or such officers as are prescribed—with the power of local government over inhabitants in that district”).

body, either via a budget validation referendum or, if it is discontinued by the voters pursuant to state law, a municipal school budget referendum for final approval.

In our role as legal counsel to Portland Public Schools, we have intentionally limited our analysis on this matter to the relevant legal considerations. We defer to others to deliberate on the policy implications and merits of pursuing such a change to the Charter. In weighing whether or not to pursue a revision to the Charter that would modify the established school budget approval structure, we encourage the School Board and the Commission to weigh the litigation risks, consider the policy implications, and evaluate alternative approaches that might address the underlying policy issues without raising the specter of lengthy and costly litigation.

II. BONDING AUTHORITY

The authority of a municipality to issue general obligation bonds is expressly set forth in the municipal statute. *See* 30-A M.R.S. § 5772. Likewise, the school statute grants certain types of school administrative units such authority. *See, e.g.*, 20-A M.R.S. § 1490 (authorizing regional school units to issue bonds or notes for school construction purposes); § 1311 (same for school administrative districts). Neither the municipal nor the school statute makes provision for the school committee of a municipal school unit to issue bonds in the name of the municipality. There is a strong legal argument that there is a comprehensive statutory scheme governing the issuance of municipal bonds and that a charter provision authorizing a municipal school committee to issue bonds would be deemed to be inconsistent with that scheme. Accordingly, a charter revision such as this likely would mean that a clean bond opinion could not be given and the bonds could not be issued.

Given that a statutory framework already exists for the issuance of municipal bonds, a simpler approach might be for the Charter to be revised to clarify that the role of the City Council with respect to the issuance of school construction or renovation bonds. Specifically, the Charter could be revised to (1) grant the School Board the authority to request the placement of a school construction or renovation bond question before the City voters at the next scheduled municipal election or at a special referendum, and (2) direct the City Council to call and oversee that referendum, thereby placing the question before the voters. In light of the presumptions in favor of home rule and given that the responsibility to approve school bonds under this approach would rest with the City voters, in our view, this approach would not likely run afoul of any home rule limitations.

We trust this memorandum is responsive to your inquiry. We are always available to answer any further questions you may have.

MEMORANDUM

TO:	Portland Public Schools School Board and Xavier Botana, Superintendent of Schools
FROM:	Agnieszka A. Dixon and E. William Stockmeyer Drummond Woodsum
DATE:	January 24, 2022
RE:	Proposals for Charter Provisions Regarding School Budget Approval Procedures and School Bonding Authority

At your request, we write in response to a memorandum prepared by Attorneys Jim Katsiaficas and Emily Arvizu to the Portland Charter Commission Education Committee, dated December 14, 2021 (which we refer to here as the “Perkins Thompson Memo”). In that memo, Attorneys Katsiaficas and Arvizu questioned (1) the scope of the City’s charter authority to assign the role of determining the total school budget to a municipal legislative body other than the City Council including, specifically, the School Board, and (2) the proper roles of the City Council and School Board in issuing school construction and renovation bonds. We respond to both of these issues in turn.

I. AUTHORITY TO REPLACE THE CITY COUNCIL WITH ANOTHER MUNICIPAL LEGISLATIVE BODY TO DETERMINE THE TOTAL SCHOOL BUDGET

As you know, in our memo dated August 11, 2021, we provided an overview of the law governing the powers and duties of the Charter Commission to address matters of school governance, policy, and management (the “August 2021 Memo”). You then asked us whether the Portland charter could be revised to task the School Board with determining the total amount of the school budget, and we responded that there appears to exist a strong legal basis to do so (the “November 2021 Memo”). Specifically, we stated in our November 2021 Memo that a charter provision that assigns the responsibility to determine the total school budget to a municipal legislative body other than the City Council while leaving the decision for final budget authority with the voters would likely be within the City’s charter authority.

In reviewing the Perkins Thompson Memo, it appears to agree with us on this point. Where our opinions seem to diverge is on the scope of the City’s home rule authority to identify *who* can serve as the municipal legislative body for this limited purpose.

In considering this question, we think it noteworthy that the Maine Law Court has not only held that the school statute did not implicitly preempt municipal charters from designating an entity responsible for preparing the school budget, but emphasized that the budget figures prepared by such an entity are “advisory” and that, perhaps, what mattered most was that “[r]esponsibility for the adoption of a final school budget . . . is vested in the voters, not the School Committee.” *School Committee of Town of York v. Town of York*, 626 A.2d 935, 940 (Me. 1993). Indeed, the Law Court unequivocally rejected the contention that interposing a budget committee between the school committee and the town meeting frustrated the legislative scheme set out in the school statute on grounds that it undercut state policy dividing school authority between the school board and the municipal legislative body. *Id.*

We think the *York* decision could lend credence to a variety of ways that the Portland charter could be revised to remove the City Council’s current role from the school budget approval process while respecting the plain language of Section 2307. We next discuss two of the various possible alternatives, and we respond to the objections to these two alternatives raised in the Perkins Thompson Memo.

- **Alternative #1: The voters determine the total school budget.**

The Perkins Thompson Memo states (correctly, we believe) that “the use of the phrase ‘or other [municipal] legislative body’ could be considered to allow Portland to amend its charter to transfer budget adoption authority from the City Council to a City-wide voter referendum.” (Perkins Thompson Memo at p. 4.) One alternative approach to the status quo, then, would be to have the charter direct the City Council to call a City-wide municipal school budget referendum for the purpose of determining the total school budget, followed by the statutory budget validation referendum (BVR). While the Perkins Thompson Memo objects to this approach, it does not appear to be on legal grounds but rather on the policy ground that holding two referendums (the first to set the total budget, and the second to ratify that budget) is a waste of effort. Yet there may well be sound policy reason for such a two-vote process.¹ Moreover, the Legislature established a two-vote process for nearly all school administrative units as a matter of state policy, and it also established a process by which voters can vote to discontinue the BVR should they find it to be an unnecessary duplication. In other words, the Portland voters could vote to eliminate the statutory BVR in short order, leaving a single referendum vote by charter to determine the total school budget.

- **Alternative #2: The School Board determines the total school budget, and the voters ultimately approve the budget.**

As we discussed in our November 2021 Memo, we can also envision a school budget approval process that removes the City Council from the budget process but does not require two referendums. Such a process stems from my suggestion during the Education Committee’s panel discussion that there appears to be no statutory prohibition on the School Board serving as the “municipal legislative body” for purposes of Section 2307. The Perkins Thompson memo objects to this alternative process primarily on grounds that Section 2307 was amended to “clearly delineate and balance the roles and power of the school board and the existing municipal legislative body having school budget approval authority.” (Perkins Thompson Memo at p. 4.)

This objection, however, contradicts the plain reading of Section 2307 and requires the inference that the phrase “or other municipal legislative body” confines charter municipalities to a single form of legislative body—the town meeting. Yet while it is true that in charter municipalities the council and the town meeting are the two traditional forms for the municipal legislative body, nothing about the language of Section 2307 indicates that other forms are excluded. Indeed, Sanford (as the Perkins Thompson Memo noted) and, arguably, York (as we’ve noted) have at one time or another established an “other municipal legislative body” that in each case was something quite different than a town meeting. Additionally, as we discuss in our November 2021 Memo, the definition of “municipal legislative body” in the municipal statute does not support such an inference. Finally, although a statute otherwise clear on its face might require a narrower interpretation in the face of a constitutional objection, the constitutional separation of powers doctrine does not generally apply to municipal bodies or school budget approval procedures. It strikes us that reading such an intent into the language or legislative history of Section 2307 goes too far when the constitutional ground does not exist. Rather, Section 2307 addresses the role of the

¹ For example, the initial referendum to determine the total budget could be an opportunity for the School Board to inform voters on the details of the budget through the presentation of the eleven cost centers and to get an early indicator of the voters’ proclivity; and the BVR would then serve to ratify the approved budget—which is, in fact, the role the BVR serves in school budget approval procedures for regional school units and school administrative districts throughout the state.

municipal legislative body, not its identity, and just as importantly, does so by affording greater deference to charters, not less.²

For these reasons, we think Section 2307 leaves room for the Portland charter to assign the School Board the advisory role of determining the total budget before it is finally adopted by the voters. We also think that such an approach would be consistent with the holding in *York*. And, while there are arguments favoring different legal views on this matter and a charter revision that assigns the role of determining the total school budget to a school board is not without legal risk, such a charter revision would be entitled to a presumption of validity by Maine courts under home rule principles the Court articulated in *York* and many other cases.

- **The school statute and case law leave ample room to explore alternatives to the current school budget approval process.**

Should the Charter Commission entertain the idea of removing the City Council from its current role in the school budget approval process, both the school statute and case law leave ample room to explore these or other alternatives. To that end (because more often than not it is helpful to read proposals rather than legal memos), we have enclosed examples of the two charter revisions discussed above. We also would be happy to discuss other possible school budget approval processes that we believe fall within the legal limits of municipal home rule authority and address the parity issues raised by the existing charter process.

II. BONDING AUTHORITY

There is clear agreement between us and Attorneys Katsiaficas and Arvizu that there is insufficient legal basis to reassign the authority to issue school construction and renovation bonds from the City Council to the School Board. Our suggestion in the November 2021 Memo, however, does not concern who issues such bonds; rather, we propose that, whenever such a bond exceeds a charter-established threshold so that it must be submitted to a referendum, the voters should have an opportunity to vote on the bonding amount and purpose proposed by the School Board, rather than the proposal of the City Council.

Accordingly, we suggest a charter revision that would have the City Council continue to issue such bonds and to call and oversee the referendum, but require the City Council to place the *School Board's* proposed question before the voters. To further clarify our intent, we have attached a suggested charter revision for your review and consideration.

We trust this memo is responsive to your request. We are available should you have further questions.

² Notably, Section 2307(1) and (2) are exceptions to the mandate that municipal schools must follow the same school budget procedures as regional school units: First, Section 2307(1) clarifies that, notwithstanding the statutory mandate, charter municipalities are not restricted to the town meeting for the first part of the school budget approval, but may use their own legislative body—namely, the “municipal council or other municipal legislative body established by the charter.” Second, Section 2307(2) clarifies that municipal charters may circumscribe the role of a municipal council or other municipal legislative body to determining the total amount of the school budget. Section 2307 indeed “delineates and balances” roles, but only by giving charter municipalities substantially more room than other school administrative units to apply the details of the two-step school budget approval process.

SUGGESTED CHARTER REVISIONS TO ARTICLE III, SECTION 5. SCHOOL BUDGET

EXAMPLE 1: The voters determine the total school budget at a school budget referendum.

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

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

presented to the school budget referendum shall be the amount proposed by the school board. The warrant calling the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board. The school budget approved at the school budget referendum shall thereafter be submitted to a budget validation referendum until such time that the voters discontinue use of the budget validation referendum process.

A budget hearing on such budget estimates shall be held by the school board at least seven (7) days prior to ~~final action by the city council~~the school budget referendum.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the public schools, which amount shall equal the greater of (i) the amount adopted by the voters at the school budget referendum and ratified at the budget validation referendum, as necessary, ~~not be less than~~or (ii) 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.

EXAMPLE 2: The School Board determines the total school budget, followed by a budget validation referendum or, if eliminated, by a school budget referendum.

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

During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated 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~~prepare a budget of the various sums required for the support of the public schools for the ensuing fiscal year in the format provided above, ~~and shall thereafter provide the city council with such information relating to such budget as the city council shall require.~~

The school board shall hold a~~A~~ budget hearing on such budget estimates ~~shall be held at least seven (7) days prior to determining the total amount of the school budget final action by the city council.~~ The city council shall thereafter

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

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

SUGGESTED CHARTER REVISIONS TO ARTICLE VII, SECTION 11. BOND ISSUES

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, except as set forth in Section 11.A.

Section 11.A. Bond issues for school bonds.

The city council shall submit school project bonds to voter referendum in accordance with this section. When the school board has voted to propose that the city issue bonds for school construction, renovation, or other capital purposes in an amount that requires the city council to submit an order or resolve to voter referendum by Section 16 this Charter, the school board shall submit to the city council (i) a description of the project concept and concept budget; (ii) the major components of the project

concept budget, including as applicable sums for real estate acquisition, design and other services, construction and site development, equipment, infrastructure, and project contingencies; and (iii) the proposed sources and amounts of funding for the project budget, including project debt. The city council shall order the issuance of bonds for the school project as proposed by the school board, subject to voter ratification of its bond order as provided in Section 16, in an amount sufficient to fund the debt portion of the project concept budget after deduction of issuance and other costs. The city council shall submit its order authorizing the issuance of debt for the project to voter referendum at the next regular city election occurring at least 120 days after the school board has submitted the project concept to the city council or at an earlier election. The city council shall use a separate referendum question to submit its bond order for each school project as proposed, except that if the school board has consolidated school projects into a single concept that it has approved, then the city council shall use a single referendum question to submit its bond order for that consolidated school project as proposed.

MEMORANDUM

TO: Portland Public Schools School Board and Xavier Botana, Superintendent of Schools FROM: Agnieszka A. Dixon and E. William Stockmeyer Drummond Woodsum DATE: April 4, 2022 RE: Charter Revisions Regarding School Budget Approval Procedures —Review of Charter Commission Education Committee Proposal
--

At your request, we have reviewed the proposal of the Portland Charter Commission Education Committee to revise the school budget approval process, which was presented to the Charter Commission for a first reading last Wednesday, March 23, 2022 (the “Proposal”).

If accepted by the Charter Commission and adopted by the City voters, the Proposal would make two material changes to the school budget approval process:

1. Joint Budget Guidance Committee: The Proposal would establish a joint budget guidance committee composed of an equal number of City Council and School Board members to develop, prior to the preparation of the city and school budgets, non-binding guidance to the City Council and the School Board on budget priorities and constraints.
2. School Board Determines Total School Budget, Followed By Voter Approval: The Proposal would remove the City Council’s role from the school budget approval process and direct the School Board to determine the total budget, which would then be submitted to the voters for approval at a budget validation referendum (BVR) or, if the BVR is eliminated, at a municipal school budget referendum. This portion of the Proposal essentially incorporates the second of two alternatives that we identified and discussed in our memo dated January 24, 2022.

The establishment of an advisory joint budget guidance committee does not appear to us to run afoul of any limits on municipal home rule authority. Likewise, as we discussed in our January 24 memo, we think state law leaves room for the Portland charter to assign the School Board the role of determining the total school budget while leaving the decision for final budget authority with the voters, as set forth in the Proposal,¹ for the following reasons:

¹ Should the Charter Commission adopt the Proposal, we recommend a slight adjustment to the first and last sentence of the last paragraph of Article III, Section 5 of the charter to (1) clarify the process for appropriating funds for the school budget, and (2) provide some flexibility in how appropriated budget amounts may be exceeded (we make this latter recommendation because the process to secure voter consent can be lengthy whereas the need to do so may arise in emergency situations or otherwise when time is of the essence), so that the charter amendment would read:

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 school which amount shall equal the greater of (i) the amount adopted by the voters at the budget validation referendum or, if discontinued, at the school budget referendum, or (ii) not be less than the sum required to be appropriated for such purposes by the general laws of the state. ~~Such gross amount shall not be less than the sum requested by the school board except by a vote of at least six (6) members of the city council.~~ Such appropriation shall be expended under the direction and control of the school board but no such appropriation shall be exceeded except by consent of the city council or the voters.

- The school statute, and specifically the plain language of Section 2307 of Title 20-A, does not prescribe who can serve as the municipal legislative body for purposes of determining the total school budget.
- The school statute does not confine charter municipalities to the two “classic” forms of the municipal legislative body—*i.e.*, the town meeting or the council. Indeed, several municipalities in Maine have at one time or another established municipal legislative bodies that were something other than these classic forms.
- The state law definition of “municipal legislative body” in Section 2001 of Title 30-A (the statute governing municipalities) plainly provides that a municipal legislative body can be a town meeting, a city council, or something else—namely, “[t]hat part of a municipal government that exercises legislative powers under a law or charter.”
- Section 2307 specifies the *role* of the municipal legislative body, not its *identity*, and does so by affording greater deference to charter communities, not less. Indeed, Section 2307 is an exception to the general state law mandate that municipal school units must follow the same school budget procedures as regional school units.
- Finally, while there are arguments favoring different legal views on this matter and, consequently, the Proposal is not without legal risk, charters are entitled to a presumption of validity by Maine courts under home rule principles articulated in the *York* decision and many other cases. Accordingly, the burden rests on the person attacking a charter provision to prove that it exceeds municipal home rule authority, and not on the municipality to prove that it does not.

We trust this memo is responsive to your request. We are available should you have any additional questions.

Portland Charter Commission

Final Report

Michael Kebede, Chair (Appointed by Council)
Shay Stewart Bouley, Vice-Chair (District 1)
Peter Eglinton, Secretary (Appointed by Council)
Dory Waxman (Appointed by Council)
Robert O'Brien (District 2)
Zack Barowitz (District 3)
Marcques Houston (District 4)
Ryan Lizanecz (District 5)
Catherine Buxton (At-Large)
Marpheen Chann (At-Large)
Nasreen Sheikh Yousef (At-Large)
Pat Washburn (At-Large)

**Submitted to the Portland City Council
July 11, 2022**

FOREWORD

The attached report is the Portland Charter Commission Final Report. The Commission filed its Preliminary Report on May 9, 2022. Since that Preliminary Report, the Commission has sought public input and comment on its recommendations for changes to the Portland City Charter.

After the filing of the Preliminary Report, the Commission held meetings as follows:

- Wednesday, May 11, 2022, 6 p.m.;
- Wednesday, May 25, 2022, 6 p.m. (including Public Hearing on Preliminary Report);
- Wednesday, June 8, 2022, 6 p.m.; and
- Wednesday, June 22, 2022, 6 p.m. (Public Hearing)
- Wednesday, June 29, 2022, 6 p.m.; and
- Wednesday, July 6, 2022, 6 p.m. (including Public Hearing on Draft Final Report).

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

Copies of this Final Report, commission meeting minutes, agendas and background materials, as well as a list of the Commissioners and the ability to e-mail them, may be found at:

<http://www.ci.portland.me.us/2665/Charter-Commission-2020-2022>

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

Portland Charter Commission Final Report

Table of Contents

	Page No.
Foreword	
I. REPORT TO THE CITY COUNCIL	
A. Background	
B. Timeline	
II. COMMISSION RECOMMENDATIONS AND EXPLANATIONS	
A. Departments Committee	
1. Citizen Police Oversight Board	
B. Education Committee	
1. Vacancies	
2. School Budget Process	
3. Capital Improvement Program Process	
C. Elections Committee	
1. Proportional Ranked Choice Voting	
2. Clean Elections	
3. Redistricting	
D. Governance Committee	
1. Governance Model	
2. Peaks Island Council Proposal	

E. Procedures Committee

- 1. Preamble and Land Acknowledgement**
- 2. Code of Ethics**
- 3. Participatory Budgeting**
- 4. Communications Policy**

III. BALLOT QUESTIONS – PROPOSED SUMMARIES AND CHARTER LANGUAGE FOR EACH QUESTION

Q#1 Preamble and Land Acknowledgement

- 1. Proposed Summary**
- 2. Charter Language for Question**

Q#2 Governance

- 1. Proposed Summary**
- 2. Charter Language for Question**

Q#3 Clean Elections

- 1. Proposed Summary**
- 2. Charter Language for Question**

Q#4 Proportional Ranked Choice Voting

- 1. Proposed Summary**
- 2. Charter Language for Question**

Q#5 School Board Budget Autonomy

- 1. Proposed Summary**
- 2. Charter Language for Question**

Q#6 Peaks Island Council

- 1. Proposed Summary**

2. Charter Language for Question

Q#7 Police Oversight

1. Proposed Summary

2. Charter Language for Question

Q#8 Ethics Commission

1. Proposed Summary

2. Charter Language for Question

IV. MINORITY REPORTS

1. Minority Report on Governance Proposal for Strong Executive Mayor

2. Minority Report on Proportional Ranked Choice Voting

3. Minority Report on School Budget Autonomy

V. ISSUES CONSIDERED BUT NOT RECOMMENDED; OTHER CONSIDERATIONS

A. Charter Commission Issues Considered But Not Recommended

1. Councilor Pay Proposal

2. Office of Information Services

3. Universal Resident Voting

4. Executive Committee

B. Other Considerations

V. FULL CITY CHARTER WITH ALL RECOMMENDED DELETIONS AND ADDITIONS, ASSUMING ALL QUESTIONS PASS.

VI. ATTORNEY LEGAL OPINIONS

1. Perkins Thompson

2. Drummond Woodsum

3. John Brautigam, Esq.

DRAFT

I. REPORT TO THE CITY COUNCIL

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

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

A. BACKGROUND

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

Charter Commission Members

Michael Kebede (appointed by council) (Chair)

Peter Eglinton (appointed by council) (Secretary)

Dory Waxman (appointed by council)

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

Robert O'Brien (District 2)

Zack Barowitz (District 3)

Marcques Houston (District 4)

Ryan Lizanecz (District 5)

Catherine Buxton (At-Large)

Marpheen Chann (At-Large)

Nasreen Sheikh Yousef (At-Large)

Pat Washburn (At-Large)

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

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

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

Through Commission and committee meetings combined, the Charter Commission has met dozens of times since June 2021. The Commission submitted its Preliminary Report to the city council on May 9, 2022, and following additional public hearings and deliberation, submits this Final Report which it adopted at its July 6, 2022 meeting.

B. Timeline

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

Portland Charter Commission Timeline

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

Revised 4-8-2022

II. COMMISSION RECOMMENDATIONS AND EXPLANATIONS

After extensive research, discussion and development of proposals in committee meetings; after presentation, public comment, deliberation, and vote in Charter Commission meetings; and after public hearing and public comments, the Charter Commission recommends that the present charter continue in force with only minor modifications, and so as authorized under 30-A M.R.S. §§ 2103 and 2105 (1) (A) recommends the following revisions to the City of Portland Charter in eight separate Charter modification questions. The Charter modifications submitted to the voters in 2010 were submitted in three separate questions and included recommended modifications for a popularly elected mayor, ranked choice voting, and changes to the school board, and so there is precedent for similar provisions recommended by this Charter Commission to be deemed “minor modifications.”

These recommendations and explanations are organized in the pages that follow by the committee in which they originated, and summarize the process and content for each proposal.

Section 1 Charter Commission Recommendations

A. Departments Committee

1. Citizen Police Oversight Board Recommendation

Introduction

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

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

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

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

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

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

Despite advances in the field, the rule of thumb of civilian oversight is not "best practice" but best *fit*. Given that Portland has both an excellent Police Department and a low crime rate, the committee did not feel that chartering a professional investigative or auditing office was either operationally or fiscally necessary; and that such action is best left to the city council or another

office. Rather, the committee recommends retaining the current review board system with several enhancements to strengthen community involvement and oversight capabilities.

Specifically, these enhancements include:

- Requiring that the board shall deliver an annual report and recommendations to the city council;
- Removing eligibility restrictions for board membership;
- Allowing complaints to be brought directly to the board and for the board to render advisory opinions on citizen appeals;
- Retention of the “police liaison”; and
- Hiring of a “community liaison” who shall assist the board in conducting outreach and other duties as the board may assign. The city council shall decide whether the community liaison and police liaison positions are part-time or full-time and/or whether the duties of these positions may be assigned to existing employees and/or the accountability officer.

Methodology

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

October 4th, 2021:

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

October 25th, 2021:

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

November 1st, 2021:

1. Discussion with Commission Attorney Katsiaficas

November 15th, 2021:

1. Workshop on Police Oversight Board language

December 6th, 2021:

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

Documents & Research Consulted

- PCRS meeting minutes, videos and documents
- National Association for Civilian Oversight of Law Enforcement documents
 - “Guidebook for the Implementation of New or Revitalized Police Oversight”

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

DRAFT

B. Education Committee

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

DRAFT

1. Vacancies Recommendation

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

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

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

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

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

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

2. School Budget Process Proposal Recommendation

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

Education Committee Work on Topic:

1. October 6th Workshop:

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

2. November 3rd Meeting:

- a. Commissioners discussed what was heard during the October 6th workshop and chose topics to research. Commissioner Eglinton chose to look at capital Improvement and collaboration around budgeting. Commissioner Houston chose to research parity between the board and council.

3. December 1st Meeting:

- a. Members of the committee present preliminary ideas and receive public comment. Commissioner Eglinton presents his idea for a Joint Committee on Budget Guidance to increase the collaboration between board and council on both budgets. Commissioner Houston presents his idea for increased budget autonomy for the school board.
- 4. December 15th Meeting:**
- a. Members of the Committee receive a memorandum from Commission Attorney Katsiaficas regarding the 8/11 memorandum from Drummond Woodsum explaining why it may not be possible to give the Board authority over the bottom line number on the school budget under Maine State law.
- 5. January 5th Meeting:**
- a. Commissioner Eglinton presents first proposal for the Joint Committee on Budget Guidance. Members of the committee discuss what this would look like in practice and what the scope of these conversations would be.
- 6. February 2nd Meeting:**
- a. Members of the committee receive another memorandum from Drummond Woodsum that argues for more school board budget autonomy. Members receive a briefing from school board chair Emily Figdor on the memorandum. Members continue to workshop the Joint Committee on Budget Guidance Proposal.
- 7. February 16th Meeting:**
- a. Commissioner Houston presents the proposal to give more budget autonomy to the school board. Commissioners Chann and Eglinton ask clarifying questions and Commissioners deliberate on how to proceed with two competing proposals and which proposal will be put forward for a public hearing and vote. Commissioners take public comment on the proposal.
- 8. March 3rd Meeting:**
- a. Members of the committee hold a public hearing on the school budget process proposal brought forward by Commissioner Houston. During the public hearing, eight members of the public spoke in favor while eight members of the public spoke against the proposal. During deliberations, Commissioner Eglinton brought forward an amendment to include the Joint Committee on Budget Guidance at the beginning of the proposal. That motion to amend passes unanimously. On the main motion to Approve the School Budget Process Proposal as amended, the motion passed 2-1 with Commissioners Chann and Houston voting yes and Commissioner Eglinton voting no. The proposal was then sent to the full commission.

Memorandums Consulted Throughout the Process:

- 8/11/2021 Memorandum from Drummond Woodsum
- 12/14/2021 Memorandum from Perkins Thompson
- 1/24/2021 Memorandum from Drummond Woodsum

- 4/4/2022 Memorandum from Drummond Woodsum
- 4/13/2022 Memorandum from Perkins Thompson

DRAFT

3. Capital Improvement Program Process Recommendation

This recommendation is intended to address recommendations raised in public comments to seek greater parity for the superintendent and school board in the discussions around and decisions affecting Portland Public Schools. The recommendation would explicitly include the superintendent in the capital improvement program (CIP) planning process on an equal footing as the city.

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

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

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

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

C. Elections Committee

- 1. Proportional Ranked Choice Voting**
- 2. Clean Elections**
- 3. Redistricting**

DRAFT

1. Proportional Ranked Choice Voting Recommendation

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

2. Clean Elections Recommendation

Clean Elections – Public Financing of Municipal Elections, Elections Committee

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

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

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

History of Clean Elections Advocacy in Portland:

The elections committee took up the issue of public financing of municipal elections as one of its first recommendations to consider, as it was this issue that sparked efforts to open the Charter for revision. **Nearly every candidate who ran reported that they supported a clean elections program in some form.**¹²

What is public financing of elections?

Public financing of elections is a widely popular idea with bipartisan support in the state and across the nation.³ These programs offer public campaign funds to candidates who meet qualifying criteria as set by ordinance or statute. Funds come from a public program – usually supported through tax revenue, municipal or state fees, private donations, and/or seed contributions from candidates.

Qualifying candidates must meet certain criteria spelled out by the program in order to participate and make use of the funds. How candidates qualify, the amount of funding they’re

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

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

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

offered, and other details vary from state to state and program to program. Generally programs put limitations on where donations come from and from whom, and often put contribution or fundraising limits. Some of the different clean elections programs that are in place across the country are described later in this report.

Why public financing for elections?

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

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

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

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

New York City also reported that public elections financing helped improve timeliness of candidates' campaign spending disclosures, thus increasing transparency of the electoral process.⁸

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

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

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

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

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

Lastly, while Clean Elections funds cannot entirely override the influence of corporate or outside spending due to the influence of *Citizens United*, Clean Elections programs allow candidates to spend less time fundraising and more time engaging with their constituents. Because they are guaranteed enough funds to run a competitive campaign, per the design of the program, publicly financed candidates find they are able to distinguish themselves in a field, even against privately funded candidates.

A program that prohibits Clean Elections candidates from utilizing any funds outside of their public allocation (like Maine’s statewide program) could be the most effective at curbing escalating elections costs and the influence of corporate money in Portland.

What’s in Portland’s Clean Election Proposal?

The Clean Elections Proposal establishes a public fund, though it does not prescribe a specific type of program. The council by ordinance shall set up the specifics of the program.

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

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

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

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

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

In Maine, the city clerk is the elections officer, and therefore this program will be overseen by the clerk's office, and provided, per this Charter proposal, with adequate paid staff for implementation.

Elections Committee Process:

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

⁹ Seattle City Code, Honest Election, 2.04.620,
https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT2EL_CH2.04ELCACO_SUBCHAPTER_VIIIHOELSE_2.04.620DEVOIS

- **September 21, 2021**, we interviewed the following experts from both Maine and nationwide.
 - Anna Kellar - Executive Director of Maine Citizens for Clean Elections & the League of Women Voters
 - Emma Burke - Candidate Registrar, Maine Ethics Commission
 - Tom Watkowski - Democracy Policy Network, & Los Angeles for Democracy Vouchers
 - Cindy Black - Executive Director for Fix Democracy First, advisor for Seattle Democracy Voucher Program
- **December 7, 2021**: Elections committee workshopped the Clean Elections Proposal, drafted by Commissioner Buxton. Public comment included considerations to add campaign contribution limits, a corporate contribution ban, and restrictions on how funds could be spent.
- **December 21, 2021**: Elections committee workshopped a second draft of the proposal, which included some additional changes:
 - Stronger language mandating consistent funding provided by council, submitted by Commissioner Chann;
 - Stipulation to return unused funds to the program for all participating candidates;
 - Requirement to make campaign contributions searchable in online database, per advice of Maine Citizens for Clean Elections;
 - Added language about paid staff within the office of city clerk; and
 - Added new section on corporate contribution ban for municipal candidates.

Public Hearings & Votes:

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

During the hearing the following amendments were made:

- Language updated: Program to be administered by office of city clerk, with assistance of paid staff.
- Commissioner Buxton removed campaign contribution limit due to concern that making Clean Elections program *too* attractive for candidates might threaten voluntariness and therefore legality of the proposal.
- Commissioner Chann added a friendly amendment: fiscal note, utilizing LWV program cost estimate plus the cost of one mid-level staffer (60-80k per year).

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

- **January 19, 2022**: The proposal approved by the elections committee first read by the full Charter Commission.
- **March 9, 2022**: The proposal, tabled for some time while waiting on a Maine Superior Court decision regarding a lawsuit from Fair Elections Portland, is picked up again for a new first read and clarifying questions.

- **March 23, 2022:** The proposal has a public hearing and vote. Proposal is approved unanimously with the following amendments:
 - Commissioner O'Brien added an amendment to prohibit financial gain in the form of city contracts from individual major donors to campaigns.
Note: A similar such limitation exists in NYC.¹⁰
 - *NOTE: This amendment was later removed due to concerns around redundancy and concerns about constitutionality and low contribution limits.*

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

During the process we also consulted with:

- John Brautigam, Esq. – Maine Lawyer, Fair Elections Portland board member, represented Maine's Clean Elections Law in front of US Supreme Court
- John Wayne - Maine Elections Commission
- Kathy Jones - Portland, Maine City Clerk

Types of Clean Elections Programs:

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

*Starred programs are formats the elections committee recommends the council consider in Portland.

- ***Block Grant Program:** Maine's statewide Clean Election program follows this format. Candidates qualify, often by gathering small, grassroots contributions. (For Maine legislators, a few dozen qualifying contributions of \$5 from 50-75 voters). Once qualified, candidates are given an allotted amount of campaign funds, and are restricted to using only those funds for their campaign expenses. Check out other rules for the Maine program here: [Maine Clean Elections Act Rules](#)
 - There are numerous benefits to this type of program. A number of research studies have shown Block Grant programs deliver on all the above-mentioned advantages of clean elections programs. This type of program can also help curtail overall spending on elections, and is widely popular across parties in Maine.
 - One noted place where it falls short: The Maine program doesn't go as far as other types of programs to encourage candidates to reach *outside* of their network. There are some incentives for voter engagement: Because candidates aren't as focused on fundraising they *can* spend more time with under-resourced neighborhoods or communities, but the program by design doesn't incentivize or require this. Candidates could, in theory, just get their 50 qualifying contributions from 50 friends, and only outreach to their likely voters or known networks.

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

- **Small-Donor Matching Fund Program:** Most familiarly used in New York & Los Angeles, Matching Fund programs will generally *match* grassroots or small donations below a certain threshold at a set rate. For example, in NYC and Los Angeles, the city matches small donations 6 to 1, with public dollars. There is usually a campaign contribution limit that cities will match up to (In NYC, it's up to \$175 per donor) and a total public contribution the city will give to any one candidate.
 - This program is widely popular, with about 90% of candidates in primaries and 75% in general elections in places that employ this. NYC lists a number of benefits of their program, from increasing candidate diversity to promoting more incumbent challengers to increasing diversity of donors, and increasing the influence of small donors over large wealthy ones.¹¹
 - Results vary across programs. For example, in Los Angeles the program has performed differently when compared to NYC. LA historically has matched at a lower rate (as low as 3 to 1) and their programs allow candidates to fundraise privately if they max out public funding available. Additionally, LA is more permissive of qualifying contributions outside of the geography of the candidate, whereas NYC asks candidates to fundraise these contributions more within their district. Research finds that NYC's small donors more accurately reflect the diversity of the city, whereas LA's does not deliver as similar results.¹²
 - There are some concerns that matching grants programs don't do enough to limit overall spending on elections.
- **Democracy Vouchers:** A newer innovation in campaign financing, Democracy Vouchers is a system currently in place only in Seattle, WA, though there are efforts in Los Angeles, New Hampshire, and in a number of other communities seeking to explore this system. The Democracy Vouchers system issues "vouchers" to all eligible voters, free of charge. Voters then can donate these vouchers back to their desired candidates. Candidates can redeem the vouchers for public campaign funds.

Voters don't have to contribute any of their own funds to use the vouchers. This is where the program differs from the others most: Democracy Vouchers capture the interests of voters who may not even be able to make those grassroots donations required in other programs.

- In Seattle every voter receives 4 vouchers of \$25 to donate to any participating candidate. They can donate all to one candidate, or split them up, or use none of the vouchers. Seattle started with mail vouchers, but they now have an online system.
- Implementation costs much higher than other programs, but experts we interviewed said that the program's benefits go beyond election financing.

¹¹ New York City Campaign Finance Board, 2022, <https://www.nyccfb.info/program/benefits/>

¹² Malbin & Parrot, 2017, Small Donor Empowerment Depends on the Details: Comparing Matching Fund Programs in New York and Los Angeles, The Forum <https://www.degruyter.com/document/doi/10.1515/for-2017-0015/html?lang=en>

Because of the accompanying education campaign for the vouchers, there was an automatic voter engagement effort built into the program.

- Adoption is slow, but studies have found positive results: Already the program has tripled the number of folks who contribute to candidates, and participation in the program doubled in just the second election cycle.¹³
- Researchers found that the voucher program meant that donors were much more representative of the city, particularly by race, *and* more evenly distributed geographically.¹⁴

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

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

Additional components of Clean Elections proposal:

Section 13(a): Corporate Contribution Ban

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

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

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

Section 13(b): Foreign Contributions

¹³ Democracy Voucher Internal Report, City of Seattle, <https://www.seattle.gov/democracymvoucher/program-data/internal-program-reports>

¹⁴ McCabe & Heerwig, 2019 Diversifying the Donor Pool: How Did Seattle’s Democracy Voucher Program Reshape Participation in Municipal Campaign Finance?, <https://www.liebertpub.com/doi/pdf/10.1089/elj.2018.0534>

After receiving feedback from a number of constituents as well as fellow commissioners, this section of the amendment was introduced in order to set up some measures to curb spending on ballot questions. Court precedents have made it challenging to curb spending on ballot measures by corporations, but turning to foreign contribution limits or bans may be one route to curbing foreign spending on citizen referenda.

Per the *First National vs. Belotti* decision, limiting corporate spending on ballot questions is not allowed. However, there is some precedent in *Bluman v. FEC*, that says it is constitutional to exclude foreign *citizens* from activities of democratic self-government, like campaign spending. This can be applied to individuals within companies and corporate spending. Limiting contributions from companies with significant foreign control could in some small way limit corporate spending on local races.

We will leave specifics about the ban and who is included/excluded, including what percentage of foreign ownership a company must be under, to the council to establish by ordinance. We strongly recommend the council be specific in language about banning *companies* with foreign holdings, and to ensure individuals are not included in this ban.

Section 13(d): Searchable Elections Database

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

This amendment would help move the city towards addressing greater transparency in campaign finance, which would be of even more importance should a public financing program be passed. Fortunately, the City of Portland has reported that they are already working on a more responsive electronic database for campaign spending reports, and it is the committees' hope that this clause in the Charter will motivate compliance and adoption as soon as possible. Likewise, there is pending legislation that may ask all towns with a certain population size to move their campaign finance reporting to the Maine Ethics Commission, who has a much more comprehensive and searchable system. This option would comply with the proposed charter revision.

COST ESTIMATE FOR CLEAN ELECTIONS PROGRAM IN PORTLAND, MAINE

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

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

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

4. Redistricting Recommendation

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

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

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

After a public hearing on the proposal and deliberation, the Commission amended the proposal to increase the number to twelve councilors -- nine district and three at-large. Recognizing the benefit of increased direct representation for the school board as well, the Commission further amended the proposal to provide that the three current at-large school board seats would become elected on a district basis. In this way, the city would have the same nine districts for the city council and the school board, city council representation would be increased, and more direct representation would be achieved on the school board. District lines would be drawn by the city council and adjusted as now happens under a state law requiring a reapportionment ordinance after each decennial census.

D. Governance Committee

- 1. Governance Model**
- 2. Mayor’s Economic Development Duties**
- 3. Peaks Island Council Proposal**

DRAFT

1. Governance Model Recommendation

Introduction to Governance Model

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

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

I. Executive Mayor and Strong Council

This proposed reform designates the mayor as the city's chief executive. The mayor in this proposal resembles the mayors of traditional council-mayor systems like those in Westbrook, Maine; Burlington, Vermont; and Salem, Massachusetts. Under this proposal, voters would retain the power to remove the mayor and councilors through the recall process.

This proposal would give the mayor the power to:

- propose the city budget,
- veto the budget (including supplemental appropriations),
- veto council ordinances,
- nominate the chief administrator and department heads,
- enact executive orders affecting city policies, and
- propose legislation to the council for a vote.

The proposal would give the council the power to:

- amend and set the budgets,
- intervene in executive orders,
- ratify all nominations,
- elect from among its members a chair and vice-chair,
- pass a communications policy for access to city staff,
- be informed of employment matters at city hall,
- halt the firing of the chief operating officer by the mayor,
- override the mayor's veto by a two-thirds majority (one additional vote), and
- remove or censure the mayor by a supermajority vote.

Crucially, the mayor would no longer be a member of the council. This will ensure that the council functions as an autonomous policymaking body and an independent watchdog over mayoral powers.

II. City Manager Becomes Chief Operating Officer

Under this proposal, the city manager position transitions to a chief operating officer (“COO”) who is expected to contribute expertise and management of day-to-day activities, but to report to the mayor. This official would be hired through the same hiring process for department heads: nominated by the mayor and confirmed by the council. This official is modeled on Westbrook’s city administrator, who has provided stable managerial expertise to decades of Westbrook mayors.

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

III. How this Proposal Would Solve Flaws in the Current System

Critics of the current system argue that it misleads voters, sets mayors up to fail, concentrates too much power in the hands of an unelected official whom the voters cannot directly hold accountable, and pays the mayor too much for too little in return. This section will describe each criticism, and state how this governance proposal would help solve it.

a. The Current System Misleads Voters

To the average voter, the term “mayor” carries its ordinary definition: the head of the city’s executive branch, and not its council chair. Indeed, some commissioners stated that when they first learned that Portland’s mayor lacked many of the powers of traditional mayors – the power to propose a budget, for instance – they experienced shock, and felt misled. Some members of the public testified that they experienced something similar upon learning that Portland’s mayor lacks the power to make important decisions – that that power rests with the City Manager. This governance proposal would cure the misnomer in our charter; if voters approve this reform, mayor will mean mayor.

b. The Current System Sets Mayors up to Fail

Voters understandably expect citywide policy leadership from mayors. Media coverage of mayoral races, and mayoral candidates themselves, sustain the illusion that Portland already has a mayor who can accomplish the policy goals they promise to accomplish. Yet, no popularly-elected mayor in Portland has won re-election. Some commissioners, and members of the public, have argued that this is partly because the mayor lacks enough power to implement a policy agenda.

Portland’s first popularly elected mayor since the charter reforms of 1923, Mike Brennan, testified that one way to solve this issue is to give the mayor the power to propose the budget. This proposal would do that by giving the mayor the power to put their policy ideas in the first draft of the city’s budget, and by giving the mayor power over the implementation of the city’s policy priorities.

The current system relies on the elected mayor to convince the council and the administration of their policy objectives separately. If the council declines to take up the mayor’s platform, or the administration ignores the mayor’s goals, the only other avenue for the mayor is to pursue these

outside of city hall. That means aligning with referendum campaigns, or forming public-private partnerships that exclude council oversight and coordination. The result is frequent legislation-by-referendum – lawmaking that is often out of sync with the council. Successful referenda laws cannot be altered for five years after passage, so bad laws remain on the books longer than the drafters might even intend. Giving the mayor the power to effectively pursue a platform promises to lead Portland out of the two poles of frustrated mayors, or conflict-ridden ones.

c. The Current System Gives Us Less Than We Pay For From Our Mayor

One way out of this conflict-or-frustration equation is for the mayor to serve not as what voters generally understand by the term “mayor,” but as a lame-duck politician coordinating the activities of the city council. Such a mayor is almost guaranteed to have no real policy legacy, leaving citizens and activists frustrated with the official, and threatening the government’s legitimacy. This is not what Portland taxpayers expect to pay for.

Indeed, critics have argued that Portland gets less than it pays for from its mayor. The mayor’s primary duty under the current system is to serve as council chair. Yet, the current charter gives the mayor a full-time salary of 1.5 times the city’s median household income – approximately \$92,000. The proposed system would change this by giving the mayor the duties traditionally associated with mayors. It would also increase the mayor’s pay to 2 times the city’s median household income with the goal of attracting highly qualified candidates.

d. The Current System Over-Empowers an Unelected Official

Critics have taken issue with the tremendous decision making power the City Manager wields in the current system. On decisions such as housing refugees, ending outdoor dining, phasing out the Community Support Fund, or ordering food trucks to move from the Eastern Promenade, Portland’s City Manager has, by design, had far-reaching influence.

Defenders of the current system have argued that these decisions are “operational” and not policy decisions. Regardless of the terminology, there is no getting around the fact that voters care deeply about some of these decisions, and many want the tools to hold the responsible officials accountable. Currently, the person who makes these decisions is accountable to only a simple majority of councilors.

The governance proposal would give voters the power to elect, re-call, or vote-out a mayor who makes unwise decisions. The proposal would also give the city council the power to censure or remove a destructive executive mayor. Thus, whereas the current system gives only the council the power to remove the city’s executive, the governance proposal gives that power to both the council and the voters.

IV. Methodology

The Governance Committee, as well as the entire charter commission, consulted a variety of experts, civil servants, and community members for their input on this topic. Some charter commissioners stated that their vote on various aspects of this final governance plan arose from conversations they had with constituents during the campaign trail. Commissioners also

consulted research on municipal government. Although it is impossible to account for every conversation and source, this list identifies some key personalities and research:

May 19, 2022 Workshop with:

- Westbrook Mayor Mike Foley
- Westbrook City Administrator Jerre Bryant

February 14, 2022 Workshop with:

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

November 10, 2022 Workshop with:

- Tanisha Briley (served as City Manager in several cities with a weaker mayor);
- Joe Gray (former City Manager of Portland just before the last charter changes);
- Kevin Sutherland (Town Manager of Bar Harbor, served as Chief of Staff to a strong mayor in Ithaca, NY, and later as City Administrator to a weaker mayor in Saco).

November 8, 2021 Workshop with:

- Dr. Chyrl Laird (political scientist knowledgeable about municipal leadership models);
- Dominick Pangallo (Chief of Staff to an executive mayor in Salem, MA);
- Dr. Jim Svava (editing researcher of the National Civic League's 9th edition of the Model City Charter)

Former and current Portland officials interviewed in October and November of 2021:

Mayors

- Kate Snyder
- Michael Brennan
- Jill Dusen
- Jim Cohen
- Karen Gerghety
- Ethan Strimling

City Councilors

- Belinda Ray
- Pious Ali
- David Marshall

- Kimberley Cook

V. Research Consulted

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

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

2. Peaks Island Council Recommendation

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

Dear Commissioners,

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

We look forward to discussing this further with you.

Resolution

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

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

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

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

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

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

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

Natasha Markov-Riss
Scott Mohler

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

DRAFT

E. Procedures Committee

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

DRAFT

1. Preamble and Land Acknowledgement Recommendation

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

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

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

2. Ethics Commission and Code of Ethics Recommendation

Introduction:

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

What does this Proposal do?

- Requires the Portland City Council to form an Ethics Commission (EC).
- Requires the City Council to adopt a Code of Ethical Conduct ordinance as recommended by the EC.
- Grants discretionary power to the EC to render advisory opinions on a number of matters of City business.
- Allows the EC to recommend the hiring of an Accountability Officer to provide education to the public and officials; to serve as an independent ombudsperson in resolution of disputes in an advisory capacity; and to provide training to city officials on ethical matters.

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

Currently, Portland does not have an ethics board or any requirements of written disclosures of conflicts. While the existence of such instruments may not in and of themselves prevent a bad actor from seeking pecuniary gain or to otherwise use or abuse their power or position; it does provide standards and a process for which such matters may be addressed. Additionally, while incidences of waste, fraud, abuse, and corruption are relatively rare in most municipal governments; the most common breaches of ethical standards include improper sharing of information, improper gifts, and indecent treatment of colleagues. (*Siewert & Udani*). Finally, a Code of Ethics serves no purpose if it just sits in a drawer, it should be a living document. The existence of the Ethics Commission and the Accountability Officer, if recommended and hired, will ensure the utility of the Code and supervise training of City officials to make certain that the standards are understood.

State law (30-A M.R.S. §2605) governs Portland's officials (elected and appointed) in matters of conflicts of interest. It requires that where elected and appointed officials directly or indirectly own at least a 10% interest in the business entity before them in the matter of a question or contract, they must disclose their financial interest in the matter before them and abstain from voting upon the matter. The law also limits or prohibits the ability of former City or School Department officials from acting in a proceeding for another party in which they had a role on behalf of the City or School Department, and directs that every municipal official "shall attempt to avoid the appearance of a conflict of interest by disclosure or abstention."

Portland's Charter currently provides that no City Councilor (including the Mayor), School Board member, or City officer or employee of the City or School Department shall have a direct or indirect substantial financial interest in any contract entered into by or on behalf of the City or the School Board, except for his or her own employment contract and contracts entered into in the course of his or her employment with the City or School Department. It also prohibits these

persons from purchasing or accepting anything from the City or School Department unless these also are offered to the public under the same terms and procedures that apply to the public, and from accepting or receiving any free pass, ticket, or free service from any person or entity acting under a contract or license from the City or School Department.

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

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

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

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

Other Purposes:

- Encourage proper use of office
- Compliance with advisory opinions
- Mitigate instances of personal gain, political favors, political solicitation, and favoritism.
- Protect against the “revolving door” of City officials, consultants, and contractors.

General Reasoning for an Ethics Commission:

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

Differences in Roles of Ethics Commission & Accountability officer

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

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

3. Participatory Budgeting

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

4. Communications Policy Recommendation

Communications between City Staff and Elected Officials

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

Neither the mayor nor members of the city council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment.

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

Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards and commissions, council committees, neighborhood and other groups and organizations, on city work.

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

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

To answer the questions presented, commissioners combined analysis of the charters of a random selection of cities across the country, and interviews with the city clerks of some of those same cities. The research turned up three dominant models for governing this area of municipal government. The first model is *executive supremacy*. Under this model, a charter gives its city's chief executive relatively broad powers to restrict communications between city staff and elected officials. Some charters spell out those powers in some detail, and others leave those details vague and to be spelled out in the city code or policy manual. But they all give the executive the exclusive, or almost exclusive, power to govern communications between city staff and elected officials. The National Civic League's *Model City Charter*, Palo Alto, California (council-manager) Hartford, Connecticut (council-mayor), and Austin, Texas all favor this model. The second model is *limited executive power*, where the executive branch proposes rules to the

legislative branch, which the latter enacts after deliberation. Burlington, Vermont and Youngstown, Ohio both favor this model. The third dominant model is *legislative supremacy*, where charters grant a city's legislative branch the exclusive power to write the rules that govern communications between city staff and elected officials. Portland, Oregon uses this model.

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

DRAFT

**III. BALLOT QUESTIONS – PROPOSED SUMMARIES AND CHARTER
LANGUAGE FOR EACH QUESTION**

DRAFT

BALLOT QUESTION # 1—Preamble and Land Acknowledgement

1. Proposed Summary

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission to Amend the Preamble and Include a Land Acknowledgement as Summarized Below?

Summary: This modification updates the existing Preamble of the Charter, restates the purpose of the city’s government and of its system of public education, and adds a land acknowledgment to address and respect Portland’s past.

2. Charter Language

Note: This contains only the provisions related to the Commission proposal in **Question # 1** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend the Table of Contents as follows:

Preamble and Land Acknowledgement

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

PREAMBLE

~~We, the People of Portland, Maine, establish this Charter to secure the benefits of local governance and to provide for the general health, safety and welfare of our community. In so doing, we build a government that meets the needs of the people it serves and whose character it reflects. Our government shall further cooperation, encourage leadership, solicit our input and support the active participation of our residents in their governance. Our government shall be effective and accountable and shall promote equal rights and representative democracy. Our government shall provide public education that enables all residents to acquire the knowledge and skills necessary to participate fully in Portland’s civic, intellectual, cultural and economic life, in order to enrich and strengthen our community and our common future.~~

(Referendum 11/2/10)

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

Land Acknowledgement

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

BALLOT QUESTION # 2—Governance

QUESTION # 2

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Governance and Other Governance Related Matters as Summarized Below?

Summary: These modifications establish an executive mayor, change the city manager to a chief operating officer (COO), increase the number of city council seats to twelve (12), and make other changes relating to governance as follows:

- Creates an executive mayor and replaces the city manager with the position of chief operating officer;
- Increases the mayor's compensation to two (2) times the median household income and ties city council and school board compensation to ten percent (10%) of the mayor's compensation;
- Grants the executive mayor the following powers: nominate for appointment and remove the COO; nominate for appointment all department head positions; exercise veto power of the city budget and of city council actions regarding city ordinances; and recommend for adoption by the city council rules that govern communications between city staff and elected officials;
- Establishes the COO as responsible for the administration of all departments and delivery of city services and grants the COO the right to remove department heads in consultation with the executive mayor;
- Changes the composition of the city council by increasing the number of members to twelve (12), representing an increase in the number of districts from five (5) to nine (9) with three (3) at-large councilors;
- Grants the city council the power to censure or remove the mayor for cause, and to order a recall election of the mayor;
- Requires that the city council elect from among its members a chair and vice-chair, who shall organize the council into various committees;
- Provides that the city council chair shall preside over city council meetings and set the council agendas;
- Requires that the city council create a review committee that shall (i) conduct regular evaluations of the performance of the corporation counsel and city clerk and (ii) hold regular meetings with the COO and department heads to understand the general working conditions and morale at city hall;
- Changes the composition of the school board by increasing the number of districts from five (5) to nine (9) and eliminating the at-large members so that all members will represent a district;
- Directs the school board and city council to establish a joint committee on budget guidance, consisting of four (4) city councilors and four (4) school board members, appointed by the council chair and school board chair, respectively, to develop a proposed non-binding budget guidance document for the city council and school board;

- Directs the city council to develop and implement a participatory budget development process for the city budget that involves input from as many Portland residents as possible;
- Modifies the capital improvement program process to require the COO to jointly prepare with the superintendent a five-year capital improvement plan; and
- Modifies the vacancy provisions for the city council and school board to require a special election if the vacancy occurs more than six (6) months prior to the next municipal election. If the vacancy occurs within six (6) months prior to the next regular election, the city council or school board, as applicable, shall appoint a qualified person.

Note: This contains only the provisions related to the Commission proposals in **Question #2** and only those sections which will be changed if this proposal is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend the Table of Contents as follows:

Art. I-A. MAYOR, §§1--5

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

Section 2. Powers and duties.

The administration of all the fiscal, prudential, and municipal affairs of the City of Portland, with the government thereof, except the general management, care, conduct, and control of the schools of such city which shall be vested in a board of public education as hereinafter provided (also referred to herein as the “school board”), and also except as otherwise provided by this charter, shall be and are vested in the mayor and in one body of ~~nine~~ twelve 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)

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

ARTICLE I-A. MAYOR

Section 1. Election, tenure of office.

The position of mayor shall be elected by majority vote as provided in section 3 of article II. 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 five-year term ending in 2028. Thereafter, the mayor shall be elected every four (4) years in line with the U.S. presidential election.

Section 2. Compensation of the mayor.

Prior to the date nomination papers are available for the first mayoral election, the city council shall set the mayor's compensation and shall re-set it prior to the date nomination papers are available for each mayoral election thereafter. During the mayor's term, the city council may adjust the mayor's compensation, but no such order re-setting the mayor's compensation shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance. At minimum, the mayor shall be paid compensation consisting of a salary which is no less than two (2) 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, and community and neighborhood groups;
- (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 (j), 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 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 11.
 - (j) To be the public figurehead for the city. In this role the mayor shall serve as:
 - 1. the official representative of the city in Augusta, nationally and internationally; and
 - 2. 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, including, but not limited to, exercising control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.

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.

Section 4. Vacancy of the 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 5 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 (6) 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.

Section 5. Censure, removal or recall of the mayor.

The mayor may be censured or removed from office by the city council for cause. The city council also may order a recall election for the mayor to be conducted pursuant to article V, section 4.

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 censured or removed from office.

Such notice shall specify as particularly as possible the acts 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.

At any hearing of the ethics commission or meeting of the city council in which the censure, removal, or recall 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 censure, remove the mayor from office, or order a recall election shall require a vote of three-fourths (3/4) of the full city council.

4. Amend ARTICLE II., CITY COUNCIL, by amending Section 1, City to be divided into election districts, Section 2, Composition, election, tenure of office, Section 4, Compensation of councilors and mayor, Section 5, Mayor's powers and duties, Section 6, Absence or disability of mayor; acting mayor; Section 7, Vacancies, Section 8, Meetings of the council, Section 9, Special meetings, Section 10, Quorum, Section 11, Procedure, and adding new Section 12, Annual performance reports as follows:

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)~~ nine (9) 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)~~ twelve (12) members, including the ~~mayor chair and vice-chair~~ who each shall be one of the ~~nine (9)~~ twelve (12) 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~~ four new districts in the election of ~~2013~~ 2023 only. ~~Four~~ Three (3) (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~~ nine (9) (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~~ 2023, ~~one of the two at large seats up for election shall have a one-time four year term ending in 2017. Thereafter, the council term shall return to be three (3) years for this seat. The city clerk shall designate which seat shall be for the four (4) year term prior to the availability of nomination papers for the 2013 election, and nomination papers shall be separately issued for each of the two at large seats. Each at large candidate may take out and file nomination papers for only one of the at large seats. The municipal ballot will list the 4-year and 3-year council seats as separate questions.~~ one of the new districts shall have a one-time one year term ending in 2024, two of the new districts shall have a one-time two year term ending in 2025, and one of the new districts shall be elected for the standard three year term. Thereafter, the council term for all seats shall return to be three (3) years for the respective seats. The city clerk shall designate which seats shall be for the one (1) year term, two (2) year term, and three (3) year term, and nomination papers shall be issued for each seat.

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

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

Section 4. Compensation of councilors and mayor.

~~Except as otherwise provided in the paragraph below for the mayor's compensation, the~~ The city council shall by order establish the amount each member shall be entitled to receive as compensation for all services rendered, and specify when any compensation shall be payable, but no such order increasing their compensation, including that of the mayor, shall take effect during the then current municipal year, and no such payment of compensation shall be made in advance. At minimum, the city council shall be paid compensation at a level which is no less than ten percent (10%) of the salary paid to the mayor.

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) ~~To establish performance guidelines in conjunction with the other members of the city council for regular evaluations, no less than annually, by the city council of the performance of the city manager, corporation counsel and city clerk, such evaluations to be based upon those guidelines. Such performance guidelines shall have measurable goals and objectives, taking into consideration, as applicable, the achievement of city policies and priorities;~~
- (k) ~~To chair any subcommittee with at least two (2) other city councilors to recommend the appointment or removal of the city manager, corporation counsel or the city clerk, but the full city council shall have the final decision in regard to such appointment or removal by a vote of at least five (5) members of the council; and~~

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

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

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

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

~~Section 7~~ Section 6. 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 more than six (6) months prior to the next regular municipal election, the vacancy unexpired term shall be filled at a special election, citywide or for a district, to take place on the same date as the next scheduled municipal or state election which is no less than 127 days after the date the vacancy occurs or is declared, unless the council, by a vote of at least six (6) of its members, calls a special election on an earlier date. Such election shall be called and held and nominations made as in other elections. If a vacancy occurs within six (6) months prior to the next regular election, the city council shall appoint a qualified person from the same district or at-large, as appropriate, to

serve until the next regular municipal election. (Referenda 11/2/76; 11/4/86; 11/2/99; 11/2/10)

~~Section 8~~ Section 7. 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~~ Section 8. 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~~ seven (7) ~~(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~~ Section 9. Quorum.

~~Five~~ Seven (7) ~~(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~~ Section 10. 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)~~ nine (9) members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance, order, and resolve shall require on final passage the affirmative vote of at least ~~five~~ seven (7) ~~(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)~~ nine (9) of its members, pass emergency ordinances, orders, or resolves to take effect at the time indicated therein, but such emergency ordinances, orders, or resolves shall contain a section in which the emergency is set forth and defined, provided, however, that the declaration of such emergency by the city council shall be conclusive. (Referendum 11/2/10)

Section 11. 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 12. 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 presented to the city council at a regularly scheduled public meeting and the public shall have the opportunity to provide feedback specific to the reports.

5. Amend ARTICLE III., BOARD OF PUBLIC EDUCATION, by amending Section 1, Composition, election, tenure of office, compensation, Section 5, School budget, by amending the first three paragraphs of the current charter and adding a new first paragraph, and Section 6, Vacancies, as follows:

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

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

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

are then expiring shall become the third and fourth of the new district seats.

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

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

Section 5. School budget.

Prior to the submission of a school budget, the school board and city council shall establish a Joint Committee on Budget Guidance, consisting of four (4) city councilors and four (4) school board members, appointed by the chair of the council and school board chair, respectively. The purpose of the joint committee is to develop guidance for the city and school district on budget priorities and constraints, covering a two-year period and updated annually. The joint committee shall obtain public comment on the guidance prior to submitting the guidance as a proposed non-binding joint resolution to the city council and school board.

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

~~During the thirty (30) days following submission of the superintendent's proposed budget to the school board, the school board and the city council, or their designated subcommittees, shall meet jointly at least twice to review the proposed school budget, focusing on its underlying assumptions and supporting data and the ability of the city to raise the necessary funds for the support of such proposed budget. The superintendent and the city manager shall provide information regarding such proposed budget as reasonably requested by the school board and the city council, or their designated 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 by the school board, the superintendent shall utilize the most feasible combination of expenditure classification by fund, organization, unit, program, purpose or activity, and object. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income and all proposed expenditures, including debt service for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. The total of proposed expenditures shall not exceed the total of proposed income.

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

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

Section 2. Regular municipal election.

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

Section 4. Nominations.

The nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for mayor or an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy-five (75) nor more than

one hundred fifty (150) registered voters of the respective district. Voters may sign petitions for more than one (1) candidate for each office to be filled at the election. (Referenda 12/1/75; 11/2/76; 11/4/86; 11/4/08; 11/2/10)

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

Section 1. Applicability.

The mayor or any ~~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 the mayor or a member of either body who has ~~one~~ (4) year six (6) months 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 the mayor or at large councilors or members of the school board, the city clerk shall select four (4) sites outside of city hall and such locations shall be open for four days each between the hours of noon and 8:00 p.m.

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

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

Section 4. Calling of recall election.

If the clerk's certificate should show that the petitions are sufficient, he or she shall submit them, together with the clerk's certification, to the city council at its next regular meeting following certification, and shall also notify the person or persons whose removal is sought. The city council shall, within ten (10) days of receipt of the clerk's certificate, or on its own in the case of a council vote to hold a recall election for the mayor under article I-A, section 5, order an election to be held not less than forty-five (45) nor more than ninety (90) days thereafter; except that, if a regular municipal election should occur within ninety (90) days after receipt of the certificate, the city council may, in its discretion, schedule the recall election for the same date as the regular municipal election. The recall election shall be called and held as other elections under this charter, except for the specific limitations imposed by this article.

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

Section 5. Form of ballot.

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

Section 7. Election may be ordered.

If the mayor or a member of either the city council or school board who is recalled should either request a recount or dispute the election as permitted by law, then that member shall remain in

office until the recount or dispute has been finally determined; and the provisions of article I-A, section 4, article II, section 7 6, and article III, section 6, relating to vacancies in the office of the mayor, city council or school board, shall be stayed. (Referendum 11/4/86; 11/2/10)

8. Amend ARTICLE VI., ADMINISTRATIVE OFFICERS, as follows:

Section 1. Appointments.

- (a) The following officers shall be appointed by a vote of at least a majority of the city council: city clerk and corporation counsel. By a vote of at least a majority, the city council also may appoint constables at large.
- (b) Based on the procedure provided in this article VI, section 1(f), the COO shall be nominated for appointment by the mayor and confirmed by a vote of at least a majority of the city council.
- (c) Based on the procedure provided in this article VI, section 1(f), department heads shall be nominated for appointment by the mayor and confirmed by a vote of at least a majority of the city council.
- (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. The corporation counsel shall have the right to remove any attorney employed in the corporation counsel's office.
- (e) All other employees shall be appointed by the city manager—COO upon recommendation of the heads of their departments. (Referendum 11/4/86; 11/2/10)
- (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~~ until removed pursuant to this charter.

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 ~~mayor~~ city council ~~for the administration of all departments.~~ The mayor shall recommend for adoption by the city council rules that govern communications between city staff and elected officials. ~~Neither the mayor nor members of the city council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the city manager is responsible, nor shall any of them give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of that officer's or employee's city employment. Notwithstanding the foregoing, nothing herein is intended to prevent the city manager from assigning staff to work and communicate directly with councilors, boards and commissions, council committees, neighborhood and other groups and organizations, on city work.~~

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

- (a) To see that the laws and ordinances are enforced, but shall delegate to the chief of the police department the active duties connected therewith regarding criminal conduct.
- (b) To exercise control over all departments, divisions, agencies, and offices created herein or that may be hereafter created.
- (c) To hold annual reviews of department heads.

- (d) To implement the policy decisions of the mayor and city council.
- (e) To coordinate city programs and operations and recommend improvements in such programs and operations to the ~~council~~ mayor.
- (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.
- (g) To make appointments as provided in this charter.
- (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.
- (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.
- (j) To jointly prepare with the superintendent a five (5) year rolling capital improvement plan utilizing the participatory budgeting process established by the city council pursuant to article VII, section 5, at the direction of the mayor, for annual presentation by the mayor to a joint meeting of the city council and school board, which plan includes the following:
 - 1. A one (1) year plan of specific projects and their cost;
 - 2. A two (2) through five (5) year plan of specific projects and general categories, and amounts of proposed spending and funding sources; and
 - 3. A discussion of the basis for the plan and the factors which went into its development or amendments.
 - 4. A listing and discussion of capital improvements pending or in process of construction or acquisition.
- (k) To prepare and submit to the city council such reports as are requested or he or she deems advisable; and
- (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 6. 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 may allow the removal to proceed without taking any further action or may, within two business days, schedule a hearing to be held within 30 days to discuss the removal of the COO.

If the council schedules a hearing in which the removal of the COO is the topic, the COO shall have the right to be present, speak, be represented by counsel and present a defense, and such hearing shall be conducted in accordance with state and federal laws and constitutional requirements.

Following the 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.

~~Section 6~~ Section 7. 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 ~~city manager COO~~ and fix such person's compensation. During a temporary absence of sixty (60) days or less, the ~~city manager COO~~ may designate a qualified person to perform the duties of manager during such absence. While so acting, such person shall have the same powers and duties as those given to and imposed on the ~~city manager COO~~. Before entering his or her duties, he or she shall give bond to the City of Portland in a sum and with surety or sureties to be approved by the city council. The premium on such bond is to be paid by the city. (Referendum 11/2/10)

~~Section 7~~ Section 8. Duties of administrative officers.

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

~~Section 8~~ Section 9. 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 establish performance guidelines for regular evaluations, no less than annually, by the city council of the performance of the 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 based upon the established performance guidelines.

To the extent consistent with state law, the city's personnel policies, and labor agreements, the review committee shall hold regular meetings, no less than annually, with the COO and department heads. The purpose of these meetings shall be to understand the general working conditions and morale at city hall.

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

Section 1. Accounts and records.

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

Section 5. Annual budget.

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

~~Not~~ After the participatory budgeting process, but in no event 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 be~~ are 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)

...

10. Amend ARTICLE VIII., MISCELLANEOUS PROVISIONS, by amending Section 1 as follows:

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)

BALLOT QUESTION #3—Clean Elections

1. Proposed Summary

QUESTION #3

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Clean Elections as Summarized Below?

Summary: These modifications establish a City of Portland Clean Election Fund to provide public campaign funds to qualified candidates for elected municipal offices, beginning in FY 2023-2024. Candidate participation shall be voluntary. The city council shall provide an independent allocation from the city’s budget each year to sustain the Clean Election Fund and the city council shall by ordinance direct that the Clean Election Fund must:

- Limit the amount of funds a participating candidate may raise;
- Be limited to candidates who meet certain requirements, such as demonstrated public support and participation in a city-sponsored forum or voter education event; and
- Require that all unused funds be returned to the Clean Election Fund.

In addition to establishing the Clean Election Fund, these modifications:

- Prohibit corporate contributions to any candidate for municipal office;
- Prohibit ballot question contributions or expenditures from any entity that is substantially under foreign influence; and
- Require that all contributions to campaigns be reported to the city clerk and that the city clerk create a searchable online database of information contained in filed registrations and campaign finance reports.

2. Charter Language

Note: This contains only the provisions related to the Commission proposals in **Question # 3** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

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

Section 12. Public financing of municipal elections.

The city council shall establish and fully fund a City of Portland Clean Election Fund (hereinafter, the “Clean Election Fund” or the “Fund”) to provide public campaign funds to qualified candidates for elected municipal offices. The Clean Election Fund must be available to candidates in municipal elections beginning in FY 2023-2024. Candidate participation in the Clean Election Fund shall be voluntary.

Beginning in FY 2023-2024 to allow for implementation for the November 2023 election, the

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

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

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

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

Section 13. Campaign finance rules.

- (a) **Corporate Contributions.** A business entity may not make contributions to any candidate for municipal office. The term “business entity” refers to a firm, partnership, corporation, incorporated association, or other organization, whether organization as a for-profit or a nonprofit entity. A separate segregated fund committee may not make contributions to any candidate for municipal office using funds that derive, in whole or in part, from a business entity. Where a business entity establishes a separate segregated fund committee, that business entity may provide the separate segregated fund committee with the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the business entity.
- (b) **Foreign Contributions.** The city council shall by ordinance 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 city council shall promulgate rules to specify compliance requirements and otherwise to enforce this ordinance.
- (c) **Additional Rules by Ordinance.** The city council may adopt additional regulations and ordinances governing campaign spending, not inconsistent with this section.

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

BALLOT QUESTION # 4—Proportional Ranked Choice Voting

1. Proposed Summary

QUESTION # 4

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Proportional Ranked Choice Voting as Summarized Below?

Summary: This Charter modification authorizes the city to use a proportional ranked choice voting method for elections in which more than one person is to be elected to a single office (i.e. a multiple seat election), and directs the city council to enact an ordinance to establish the proportional ranked choice voting method.

2. Charter Language

Note: This contains only the provisions related to the Commission proposal in **Question # 4** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

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

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

BALLOT QUESTION # 5—School Board Budget Autonomy

1. Proposed Summary

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to School Board Budget Autonomy as Summarized Below?

Summary: This Charter modification would change the current school budget adoption process by transferring school budget adoption authority from the city council to the school board. The city council would have discretion to conduct a public hearing on the proposed school budget and to provide a non-binding recommendation to the school board for its consideration, which the school board may or may not adopt, in whole or in part. The adopted school budget would continue to be voted upon at the State-required budget validation referendum election, but if that is discontinued by the voters, the adopted school budget would be voted upon at a municipal school budget referendum.

QUESTION # 5

2. Charter Language

Note: This contains only the provisions related to the Commission proposal in **Question # 5** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

Amend ARTICLE III. BOARD OF PUBLIC EDUCATION, Section 5, School Budget, in the next to last and last paragraphs of the current charter, as follows:

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

The school board shall hold a-A budget hearing on such budget estimates shall be held at least seven (7) days prior to final action by the city council determining the total amount of the school budget. Within a reasonable period of time, the city council may, at its discretion and after holding a public hearing, provide a nonbinding resolution with its recommendations to the school board for consideration. The school board may or may not adopt, in whole or in part, the recommendations of the city council. The city council shall thereafter submit the school budget determined by the school board to a budget validation referendum. If the voters discontinue use of the budget validation referendum process, the city council shall instead submit the school budget to a municipal school budget referendum. The warrant calling the budget validation referendum or the school budget referendum shall include voter information containing the amount of locally raised funds and the amounts for each cost center summary budget category proposed by the school board.

The city council in its appropriation resolve for the ensuing year shall, in addition to amounts appropriated for other general city purposes, appropriate one gross amount for the support of the

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

BALLOT QUESTION # 6—Peaks Island Council

1. Proposed Summary

QUESTION # 6

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Peaks Island Council as Summarized Below?

Summary: This Charter modification requires the city council to maintain the ordinance it has enacted establishing the Peaks Island Council as an elected advisory body to the city council and setting forth its powers, duties, membership requirements, and other provisions.

2. Charter Language for Question

Note: This contains only the provisions related to the Commission proposal in **Question # 6** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

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

Section 1.-B. Peaks Island Council.

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

BALLOT QUESTION # 7—Civilian Police Review Board

1. Proposed Summary

QUESTION # 7

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to the Civilian Police Review Board as Summarized Below?

Summary: This Charter modification replaces the current Police Citizens Review Subcommittee, established by current city ordinance, with a civilian police review board consisting of nine or more members, with powers, duties, funding and staffing as provided in the proposed Charter language and subject to city council’s enactment of procedural ordinance provisions.

The civilian police review board shall:

- Be appointed by the city council;
- Receive complaints directly from civilians for referral to Portland Police Department Police Command and/or Internal Affairs for investigation;
- Review the Department’s Command and Internal Affairs investigation reports for due process issues, including issues of fairness, thoroughness and objectivity, and may issue its own reports on those investigation reports; and
- Be funded, as needed by the city council, to provide for part-time or full-time staff, including a community liaison and a police liaison.

Appeals of the civilian police review board reports may be taken to the city council.

2. Charter Language for Question

Note: This contains only the provisions related to the Commission proposal in **Question # 7** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

1. Amend the Table of Contents as follows;

Art. IX. Civilian Police Review Board, §§ 1 – 3

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

Article IX: CIVILIAN POLICE REVIEW BOARD

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

- (a) **Purposes.** For the purposes of increasing public trust and confidence in the Portland Police Department, 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 and Removal.** The City Council shall provide by ordinance procedures for vacancies and removal of members.
- (e) **Training.** Prior to assuming their duties hereunder, civilian police review board members shall attend training provided 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.
- (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 (d) above. All reports prepared

by the board and all 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.

- (g) **Transition.** The city council shall promptly consider and enact an ordinance to implement this Article, which ordinance upon its effective date also shall repeal the existing Police Citizen Review Committee ordinance provisions in Chapter 2, Art. IV, Div. 4 of the Code of Ordinances, City of Portland, Maine.

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 be ordinance establish rules of procedure and board member toles. The board may recommend such rules to the City Council.

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.

BALLOT QUESTION # 8—Ethics Commission and Code of Ethics

1. Proposed Summary

QUESTION # 8

Shall the Municipality Approve the Charter Modifications Recommended by the Charter Commission Relating to Universal Resident Voting as Summarized Below?

Summary: This modification requires the City Council to form an independent Ethics Commission and to adopt a Code of Ethical Conduct recommended by the Ethics Commission.

- The Ethics Commission shall have discretionary power to render advisory opinions on matters of city business and violations of public trust.
- The modification also allows the Ethics Commission to recommend the hiring of an Accountability Officer to provide education to the public and officials; to serve as an independent ombudsperson in resolution of disputes in an advisory capacity; and to provide training to city officials on ethical matters.

2. Charter Language for Question

Note: This contains only the provisions related to the Commission proposal in **Question # 8** and only those sections which will be changed if this question is adopted. Deletions are shown by ~~strikeouts~~; new language is underlined.

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

Section 1-A Ethics Commission and Code of Ethics

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

(a) Ethics Commission Ordinance.

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

1. Prepare and recommend a code of ethics ordinance to the city council for enactment as provided in subsection (b) below;
2. Review the ethics commission and code of ethics ordinances not less than once every three (3) years and make recommendations for any amendments to the city

- council;
3. Hear complaints and render written decisions with findings of fact regarding alleged violations of the City’s code of ethics ordinance, provided that complaints regarding City employees’ ongoing or prior alleged violations or misconduct shall be referred to the City for appropriate action under its personnel policies;
 4. Hear and render advisory opinions regarding questions of prospective application of the City’s code of ethics ordinance;
 5. Hear and render advisory opinions regarding questions of compliance with the City charter;
 6. Hear and render advisory opinions regarding adherence to council and board rules and procedures;
 7. On receipt of requests from a majority of the city council or of any board or committee, procure a second legal opinion from outside legal counsel; and
 8. Design and oversee program evaluations.

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

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

The ethics commission ordinance shall establish the process for filing, hearing and deciding complaints and for soliciting advisory opinions. Complaints may be filed by any official, employee, or resident of the city, by the accountability officer, or may be initiated by the ethics commission, in accordance with that process. Requests for advisory opinions may be filed by any official or employee of the city, in accordance with that process. Receipt of a complaint or request shall be acknowledged by the ethics commission. If the ethics commission finds any complaint filed with it to have been based upon allegations it determines to be frivolous, scurrilous, libelous, unsubstantiated, unfounded, of nuisance, or with malice, it may so determine and may dismiss the complaint without deciding the merits of the complaint.

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

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

(b) Code of Ethics.

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

1. Standards of Conduct;
2. Conflicts of Interest;
3. Confidential Information; and
4. Disclosure Forms for City elected and appointed officials to complete and file with the city clerk and update as appropriate.

(c) Appointment of Accountability Officer.

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

(d) Violations of the Code of Ethics.

Violations of the code of ethics ordinance shall be addressed as set out in that ordinance, provided, however, that any city councilor or mayor found by the ethics commission to be in violation of or to have violated the ethics code may be reprimanded or censured by the city council.

IV. MINORITY REPORTS

1. Minority Report on Governance Proposal for Strong Executive Mayor

TO:	Portland Charter Commission, Portland City Council
FROM:	Commissioners Marpheen Chann, Peter Eglinton, Shay Stewart-Bouley, and Dory-Anna Richards Waxman
DATE:	Wednesday, June 29, 2022
SUBJECT:	Minority Report on Governance Proposal for Strong Executive Mayor

I. Introduction

We are members of the Portland Charter Commission (“Commission”) who represent the minority opposing the Charter Commission Governance Proposal (“Proposal”) to shift Portland from a Council-Manager system to a Council-Executive Mayor system. We believe the proposal goes too far, too fast, for the City of Portland, whose home rule powers over municipal affairs do not exist in a vacuum and are derived from and delegated to the city by the state of Maine. In order to provide the public with the basis for our objections to the Proposal, we are filing this minority report to be included in the Final Report to the Portland City Council.

II. Original Governance Committee Recommendations On The Right Track

While the final Proposal reflects a slight improvement over the proposal in the Commission’s Preliminary Report, we believe it still constitutes a significant departure from the Governance Committee recommendations introduced earlier in the year. The Governance Committee followed a thoughtful public process that included values mapping, interviews with former mayors, testimony from experts on municipal governance structure, former city managers, and current and former city councilors. This process was supplemented by a professionally facilitated discussion of weaknesses in our current system and identified possible solutions. After a months-long public process, the Governance Committee decided against recommending an executive mayor.

In fact, we believe that some of the Governance Committee recommendations would have garnered unanimous approval from the full Charter Commission but for a competing proposal developed outside of the public process. The original Governance Committee recommendations included: (1) Clarifying and strengthening the role of the Mayor with regard to budgetary powers; (2) Establishing a process for both the Mayor and the Council to develop and introduce policy proposals; (3) Establishing a process to allow for the Mayor and the City Council to

communicate with City Staff to research and develop policy solutions. In addition, we agree generally with a process allowing for the impeachment and removal of the Mayor.

III. Experts on Municipal Governance Warn Against “One-Size-Fits-All” Thinking

Proponents advocating for the concentration of power in one, executive mayor, make the case that a mayor, as an elected official, is more accountable and answerable to the voters of Portland, while the city manager is unelected and unaccountable to the voters of Portland. We believe this argument obscures the nuances of a municipal government operating under home rule in Maine, ignores the fact that the city manager is appointed by elected officials, and ignores expert testimony provided.

At a workshop in February 2022 on council-manager and strong mayor-council forms of local government, experts on municipal governing structures offered testimony contradicting arguments that, across the board, a strong mayor-council system is more transparent and more accountable to voters than a council-manager or council-mayor-manager hybrid system. We wholeheartedly agree.

We also object to the notion that the Charter Commission uncritically choose models of governance from cities in different regions of the United States with their own home rule jurisprudence and unique histories and patterns of development. We also object to comparisons with neighboring Westbrook. Westbrook has faced high-profile instances of mayoral overreach and has a budget, city staff, and population that is less than a third of Portland's. In fact, we agree wholeheartedly with Westbrook City Administrator Jerre Bryant that what matters more when it comes to accountability and transparency in city government are the people elected and appointed, and not necessarily the structure and positions themselves.

IV. Governance Proposal Gives Mayor Unprecedented Powers to Issue Executive Orders

We also find issue with granting the mayor the power to issue executive orders, a power untested and unprecedented in Maine's history of home rule. In our opinion, it would give Portland's mayor power that exceeds even that of Westbrook's mayor. In addition, executive orders risk creating confusion among city staff in cases where the Mayor's executive orders are in contravention to ordinances and policy set by the democratically-elected City Council, Portland's legislative body.

Concerns were also raised regarding the potential of a mayor to interfere and micromanage day-to-day operations. Giving the mayor the power to issue executive orders at the municipal level runs counter to those concerns. It also risks conflicting with technical standards, rules, and procedures that city staff are tasked with administering according to state and federal laws, regulations, and guidance.

We believe the power to set policy and ordinances should rest solely with the democratically elected City Council, of which the Mayor is currently a part, and that the implementation and

administration of those policies and ordinances are within the realm of a competent and highly qualified public administrator and city staff.

V. Governance Proposal Disempowers Portland's Representative Body

An accountable and transparent governing structure requires a careful balancing of powers. The current Governance Proposal aims to weaken the power of the City Manager and establish an executive Mayor. In our opinion, it goes much further and weakens our democratically elected legislative body, the City Council. The checks provided, namely in the provisions outlining the removal of the mayor and a council override of the mayor's firing of the Chief Operating Officer, are more stylistic than substantive in nature. Ultimately, we believe the checks provided would only be utilized in extreme cases, and even in those cases would only serve to create more confusion, less clarity, and disempowers the City Council.

We believe checks and balances are important at the municipal level and work only when they are provided throughout the democratic process, and not just in the eleventh hour when it is often too late.

VI. Conclusion

As such, we oppose the Governance Proposal given the lack of demonstrated need for an executive mayor and believe that more targeted fixes would have garnered near-unanimous support of the full Commission. We are concerned about the risks of polarization between an executive mayor and Council, and the possibility of undue political influence over the day-to-day operations of the city.

2. Minority Report on Proportional Rank Choice Voting

While the tabulation of Rank Choice Voting (RCV) is complex and often necessitates the hiring of a specialist, the tabulation of Proportional Rank Choice Voting (pRCV) is far more complex and all but requires the hiring of an even more specialized expert. If it were conclusive that pRCV is the superior method of tabulation in all instances then the trouble and expense of pRCV would be worthwhile. But the melancholy truth is that there is not a perfect method of tabulating votes in an election with more than two candidates, much less when there is more than one open seat, because the weights of the preferences of each voter is difficult to determine by a ranked list.

Proponents of pRCV (e.g., the consultants at the Ranked Choice Voting Resource Center who assisted with the drafting of the amendment) cite that pRCV favors minority candidates. While this may indeed be a good thing, it might also favor extremist candidates whose views are far outside the plurality of the electorate. Add to this the fact that this system's byzantine complexity is nearly impossible to explain succinctly in casual conversation to the average voter. One fears this topic will soon again be a matter for revision of the city charter.

Portland currently uses the "instant run-off" method; but the range of options for RCV are myriad. Some are Tideman's 'Condorcet-Hare', Baldwin's and Nanson's methods, Kemeny-Young method, and Dodgson's method, among many others. Many of these are considered accurate; but arcane and computationally complex.

While experts disagree on what the best or better methods may be, one simple method is Approval Voting. Voters check off all those candidates who they favor in what is essentially an unranked list; the votes are tabulated accordingly and the top vote getter(s) gain the seat(s). Proponents like Approval Voting because it does not require a specialist to tabulate and tends to favor centrist/consensus candidates. It is a statistically sound method and easy for the voters to understand which, ultimately, is what one wants in an electoral democracy.

Zack Barowitz
District 3

3. Minority Report on School Board Budget Autonomy

TO:	Portland Charter Commission, Portland City Council
FROM:	Commissioners Peter Eglinton, Dory-Anna Richards Waxman, and Robert O'Brien
DATE:	Wednesday, June 29, 2022
SUBJECT:	Minority Report on School Board Budget Autonomy

We are members of the Portland Charter Commission (“Commission”) who represent the minority opposing the School Board Budget Autonomy Proposal (“Proposal”) to remove the City Council from the school district budget approval process. To explain the basis for our objections, we are filing this minority report to be included in the Final Report to the Portland City Council. We start with brief biographical summaries that demonstrate direct experience with the school district, city government, and budget process.

In addition to volunteering as a parent in Portland Public Schools (PPS), Commissioner Eglinton served on the Portland School Committee¹⁵ for 3.5 years, including as finance committee chair (1 year) and board chair (2 years); served for 3 years as the PPS Chief Operations Officer; and was appointed to and served as chair on two PPS groups dealing with comprehensive planning, school enrollment, and facilities issues. While on the School Committee, he dealt with significant budgetary issues that required close collaboration with the City and the need to strengthen the public’s confidence in the fiscal management of the school district.

Commissioner Waxman was a parent volunteer in PPS for 18 years, and served on the Portland School Committee for 3 years, including as communications committee chair and member of the budget committee and buildings operations committee. During her tenure, the School Committee dealt with failed high school and middle school renovations, which required the City Council and the School Committee to work together to find resources to help the schools function without severely impacting classrooms. These efforts included seeking a bond, with voter support, for unexpected construction overruns. Ms. Waxman also served on the City Council for 3 years, including 2 years on the finance committee. She’s been a small business owner for 35 years.

Commissioner O’Brien served on the Portland School Committee for 3 years from 2006-2009. He chaired the policy committee, and served on the finance and facilities committees during his tenure. He also served on the 2009-2010 Charter Commission. Mr. O’Brien is a graduate of the Portland Public Schools and currently has two children enrolled in the district.

¹⁵ Now known as the Portland Board of Public Education.

These experiences inform our opposition to the Proposal. Although we sometimes wished the School Committee had autonomy over its budget, we realized then as we do now that having City Council input and oversight over the total budget amount – not line items – is important for weighing school needs and the burden on all City residents, most having no children in the school district. Currently, the Council requires two-thirds vote to reduce the requested school budget, which is a high bar not often exercised. What can often be frustrating even if the Council does not vote to reduce the budget is that their input on the school budget comes at the end of the process, not as guidance with public input before the budget is prepared. This frustration drove a separate Commission proposal (which we support) to form a Joint Budget Guidance Committee, with equal representation of school board members and councilors, to seek public input and identify budget priorities and challenges before the school and city budgets are developed.

Why is Council approval over the total school budget important? The school budget is a large fraction of the property tax rate, and the School Board’s role – as defined by the State – does not include representing the taxpayers. Indeed, on January 2, 2020, Assistant Attorney General Sarah Foster addressed this point in a memorandum to Maine Department of Education Commissioner A. Pender Makin on “current state law and the responsiveness of school boards to the public.”¹⁶ The Assistant Attorney General specifically stated that:

The Maine Constitution affords control over education to the Maine Legislature. School boards are creatures of statute, with their duties and responsibilities described therein. The nexus of the concern about school boards’ “responsibilities for, and responsiveness to, their respective communities” appears to be the statement, contained in a decision of Maine’s Law Court that

... the [school] committee acts as a public board. It in no sense represents the town. Its members are chosen by the voters of the town, but after election, they are public officers deriving their authority from the law and responsible to the state for the good faith and rectitude of their acts. Shaw v. Small, 124 Me. 36, 41 (1924). [emphasis added]

Of course, given the requirement for the public to vote on the school budget and the desire for resident support for public education, School Board members understandably seek to be responsive to the school community as well as to the broader public. Even if some feel that this responsiveness supports budget autonomy, there are lingering legal questions about doing so. Although the School Board’s legal counsel, DrummondWoodsum, is willing to sign off on the proposal passed by the Charter Commission, the Commission’s legal counsel (attorney Jim Katsiaficas of Perkins Thompson) is not. He specifically concludes the following in a memorandum to the Portland Charter Commission Education Committee on December 14, 2021:

1) the City Charter could be amended to transfer City Council budget approval authority to another legislative body such as a voter referendum [with public hearing, or a

¹⁶ <https://legislature.maine.gov/doc/3849>, accessed on June 29, 2022.

Citywide “town meeting”], 2) but transferring such City Council (“Council”) budget approval to the Board of Public Education (“School Board”) is of questionable validity because a) the Maine Legislature intended to occupy the field, b) the Legislative intent is to create a separation of powers between the School Board and City Council, and c) the legislative history of 20-A M.R.S. § 2307 suggests that “other municipal legislative body” is not intended to refer to an alternative to the municipal council where a municipal council exists...

Pursuing these legal issues in the courts could be costly, with uncertain benefits. Indeed, attorney Dan Amory has stated publicly that Portland would be susceptible to state “clawback” laws for taxes paid with a 25% interest should a judge invalidate the provision.

V. ISSUES CONSIDERED BUT NOT RECOMMENDED; OTHER CONSIDERATIONS

A. Charter Commission Issues Considered But Not Recommended

1. Councilor Pay Increase

This proposal, intended to establish greater equity for and access to public offices, would have raised the compensation of City Councilors to match a 20-hour work week at a reasonable rate of pay for a worker in the city. It failed in a close vote, although later action did add a lesser increase to the governance proposal. The position of city councilor remains unaffordable for many Portlanders whose energy and talents might make them effective contributors in the role.

2. Office of Information Services

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

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

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

DESIRED RESULTS. The Office of Information would allow our democracy to function more freely and transparently with more rigorous oversight over public officials and a more robust marketplace of proposals. It would allow the press to investigate city business without deterrence; it would allow dissenting politicians to craft or bolster proposals without supplicating

an adversary; and it would allow engaged residents to request their government's documents without invoking state laws or threatening lawsuits.

3. Universal Resident Voting

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

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

The Committee and the Commission are aware of concerns 1) whether the proposal is a lawful exercise of municipal home rule charter authority where State law establishes voter qualifications, and 2) whether there could be unintended consequences and impacts upon immigrants who register and vote in municipal elections, but a majority of the Commission believes this is an important measure to promote justice that should be brought to the voters to decide. It received considerable support but was not able to attract a legal certification. Portland's immigrant and asylum-seeker families are an important part of the city's future, and more work is needed to increase their voice in its government and education.

4. Mayor's Economic Development Duties Recommendation

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

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

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

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

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

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

5. Executive Committee

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

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

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

B. Other Considerations

1. Staff for Mayor and Council.

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

Because the process of citizens initiatives and citizens veto is long and complex and the election comes at an expense; government is a collaboration between members of the public and elected officials; and 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.

DRAFT

V. FULL CITY CHARTER WITH ALL RECOMMENDED DELETIONS AND ADDITIONS, ASSUMING ALL BALLOT QUESTIONS PASS.

DRAFT

VI. ATTORNEY LEGAL OPINIONS

DRAFT