

PORTLAND CHARTER COMMISSION MINUTES of APRIL 8, 2010

Agenda #1: Chair Pro-Tem Cohen called the meeting to order. (Comm's Smith, Davis and Chair Plumb absent)

*Purpose is to work through many issues that remain to move onto details of drafting.

*Introduction of Commission members

*Take the school items in 5 out of order since School representatives are here

Agenda #2: Public comment on agenda.

*Steven Scharf of 153 State Street

-Would like to speak to 5.f. on breaking up items related to elected mayor; Should separate RCV

-On 5. h. Westbrook has found a way to have one finance director -Do not support Superintendent's plan to reorganize his office – with CFO and COO plus Business Manager

-The school budget off-budget funding of grants needs to be appropriated by the city council – about \$10 million, never appropriated by City Council. All spending by schools needs to be approved by somebody.

-Problem of not having comment on the night the budget is approved; should put in charter there would be hearing the night of approval.

*Will Everitt of Longfellow Square – League of Young Voters

-Should hold mayor election in the off year.

-League's experience is that it was difficult to concentrate on local races in 2010 with presidential campaigns.

Would be too long to wait until 2013 when 2 seats are up

*David Marshall – City Councilor

-On budget hearings, 1 is plenty; all information is on the website

-Should hold mayoral election in the off year; not worried about taking anyone's seat away.

-If this is passed, should not have to wait until 2013

-Item 5.c., not sure what is meant. But mayor should oversee implementation of plans, have staff support, oversee the budget.

*Charles Bragdon 31 Munjoy South

-Should be in the off year 2011.

-Why not use “any and all budgets” for describing budgets mayor presents to council.

-Mayor should be in charge of executing the city charter

-State of the city address should be early in the year

-Mayor items should be broken down one by one

-City and school finance should not be forced together; current system is working well.

*Anthony Zelli of Congress Street

-Expect to be able to vote for mayor in 2011;

-Don't think there's any advantage to holding it until 2012;

- In odd years, greater attention to local issues, especially by the media;
- Less costly in the off year, including for candidates.

Agenda #3: Minutes of 4/1/2010 meeting approved 9-0 (Smith, Plumb and Davis absent)

Agenda #4: Announcements

- *Acting Chair Cohen
 - Reminder that next meeting is 4/15.
 - Asking Commissioners to hold 4/29 for a meeting
- *Comm. Valleau
 - Asks Commissioners to think about the summary of the ballot questions

Agenda # 5: Discussion and preliminary agreement remaining issues – action item

- *Comm. Cohen – taking items 5.g and 5.h out of order (preamble and school consolidation)

h. Report from technical subcommittee re issues of 1) consolidation and 2) CIP planning process

- *Comm. Ranaghan
 - Met with Finance Director, city manager, Superintendent and school representatives on 3/31, whether charter being followed;
 - Have references in Article VII to city and schools;
 - Uses the word city, but some believe that refers to both city and schools;
 - Discussion whether consolidation made sense;
 - Currently there is one account, but there are separate staffs for school and city; duplicate payroll and accounting staff; separation has been in effect a long time;
 - Feel there would be consolidation savings; transparency in reporting from one office; might make budget process smoother and consistent;
 - Staff said not savings, functioning well now;
 - Smaller communities have consolidated functions, larger ones have separate functions;
 - About 60 people right now between the two departments.
- *Comm. Valleau
 - Proposition discussed on 3/31 is on first page of report “All financial services shall be provided to the superintendent of schools by the finance director of the city of Portland.”
- *Harry Pringle, attorney for Schools
 - Had a good discussion with subcommittee; tough issues;
 - When you look at the statute, school boards are responsible for managing the schools;
 - Superintendent’s responsibility is “keeping all the financial records and accounts”;
 - School board has to provide for a financial audit;
 - 1506 – school department required to approve the bills and municipality functions effectively as the disbursing agent for the school funds;

- Appropriation of funds by municipality; expenditure of funds by superintendent and then disbursement by city under statutes; that's the way the current charter is set up;
- Would it be legal for all financial services to be provided by finance director? Cannot give definitive answer; it has not been addressed by the Law Court;
- But the statute makes it the legal duty of the superintendent to manage the finances of the school department;
- Dench report said the superintendent cannot delegate ultimate responsibility for the finances;
- Superintendent has to have the authority to control if responsible for the finances; must be able to direct, control, evaluate, supervise and if necessary, remove the person or persons reporting to the superintendent with respect to financial condition of the school unit;
- The proposal to have the finance director provide all financial services takes that away from the superintendent;
- Putting aside the legal arguments, from a management point of view, cannot conceive any CEO who would say that controlling the financial management of an enterprise is not essential to managing the enterprise;
- Could have the finance director jointly hired, supervised, and fired by Council and city manager and superintendent and board of education;
- Never seen an organization work well with diffusion of power.

*Comm. Spritz

- Should we clean up the language which Comm. Ranaghan feels is inconsistent language?

*Atty Pringle

- Do not want to disagree with Comm. Ranaghan, but I don't read the charter provisions the same way.

*Comm. O'Brien

- What if either body had a check on firing those they felt were not performing; would there be the same problem?

*Atty Pringle

- I feel that the same problem would exist if don't have control over firing.

*Comm. Ranaghan

- We did not contemplate taking the superintendent's control over school budget; envision superintendent having a finance staff;
- It's the mechanical paying of the vouchers which have been approved by the school board (though that is delegated in larger districts
- Merely saying when getting down to processing payroll and cutting checks, meld the 8 people on school side with those on the city side and get the savings.
- Never contemplated taking authority to spend the budget away; but there's a separate computer at school dept which spits out checks;
- There's a lot of duplication; believe there would be savings;
- There is not a separate audit for city and schools; state allows one audit.

*Comm. Cohen

- Section 1012, School board responsible for management of schools
- Review of Section 1055 – responsibilities of a superintendent as to whether they are discretionary or ministerial, e.g. keeping all records and accounts?

*Atty Pringle

- Superintendent has to make sure it is done; and is ultimately responsible for making sure it is done well;
- Don't know where you separate out the policy function from the accounting function.
- Anyone running an organization needs to know where you stand on the budget; can say keeping all financial records and accounts is just a clerk's function but the Superintendent has to make sure it's done, and is responsible for having it done correctly; it's an essential function;
- Dench report – superintendent cannot delegate away responsibility for the budget. Report refers to “legal, non-delegable” duty.

*Comm. Cohen

- Is it inconsistent if the school committee is given the responsibility for “sound fiscal management” of the schools?

*Atty Pringle

- Not inconsistent; school board has responsibility for management of the schools and for hiring and firing the superintendent.

*Comm. Gooch

- Is there anything preventing the Superintendent from contracting out this responsibility?

*Atty. Pringle

- No. If hire an accounting firm do not hire out legal responsibility for making sure the duties are done well. If go to an accounting firm, the school board can fire them; could not fire the finance director under current system.

*Comm. Gooch

- Would require collaboration between manager and superintendent as to whether the finance director is meeting the school's needs.

*Atty Pringle

- Need more than collaboration; is really a veto power by either side.

Supt. Morse of Portland

- Practical and operational aspects of the proposal and my uneasiness
- Thinking back over the last 3 months developing the budget, for 3 months my business office has been at my beck and call every day and I am in the business office daily trying to fine tune a \$90 million dollar proposal, and how to provide the services needed. I need the business office at my fingertips. If they're here in city hall, and I am trying to work out of Allen Avenue, that won't work. Plus the work on the budget overlaps the work of the city manager on the city budget and would compete for same services at same time.
- The school finance staff also have to turn to the accountants and clerks.

- If I cannot control the finances of a \$90 million budget then you do not need a superintendent.
- Saying there would be savings is not the same as documenting potential savings.
- Losing control of the day to day functions of the finances
- *Comm. Gooch
 - What is the structure of school finance office?
- *Supt. Morse
 - 2 people with payroll
 - 3.5 accounting staff
 - Business manager
 - Already running a pretty lean staff
 - Put capable people in place on school side
 - We now have the staff who have the skills to do what needs to be done.
- *Comm. O'Brien
 - How often do you need to have people work beyond business hours?
- *Comm
 - During budget and audit season, not uncommon to see accounting staff and clerical staff working overtime
- *Comm. Mermin
 - Strongly favor having School Department working very closely with City of Portland
 - But this proposal goes too far into operations
 - Charter is not the place for this to happen but do think there are opportunities for better public policy and transparency
- *Supt. Morse
 - Met with community before we even started doing the budget; have tried to improve transparency, and keep things understandable.
- *Ellen Sanborn - City Finance Director
 - City has the bank account; master general ledger with school dept ledger
 - School department funds are part of the general fund
 - People who do those functions are hired and fired by the City of Portland
 - We rely on the accuracy of school finance people in the same way we rely on the departments to do their jobs
 - We do the financial statement, reports, audits, testing
 - Their budget is primarily wages and benefits; if they happen to pay somebody they're not supposed to or use inaccurate pay rates, unless we saw significant aberrations, we might not catch it.
- *Comm. Cohen
 - Are there global risks to city that might affect the City of Portland's finances?
- *Director Sanborn
 - There are always risks, fraud, stealing, ineptness, etc. but we try to manage those risks
- *Comm. Ranaghan

-School Department has control over checks which superintendent signs for payroll and invoices.

*Comm. Spritz

-Is there a recommendation and a motion

*Comm. Ranaghan

-Didn't do a lot of wordsmithing; just says that the finance director will provide financial services to the schools.

*Comm. Cohen

-Hearing there is a proposal here that is raising the legal issues

-Where are we on this issue?

*Comm. Spritz

-Hearing that the current system is working, even from subcommittee

-Loathe to make changes to charter if system is working

*Comm. Valleau

-Content with the charter the way it stands

*Comm. Cohen

-This is not a 2007 discussion; more a question of sustainability; maximizing revenues

-Pleased to see that there is movement

-Persuaded that trying to have single director of finance is not a practical solution

-Would like to see senior management for school in city hall

-Would like school meetings in council chambers

*Comm. Gooch

-System seems to be working at the moment but because of disposition of people running it

*Comm. O'Brien

-Opposed to this; discussion of management not for the Charter

*Comm. Trevorrow

-Oppose this for same reasons; untested idea; too weighty for us to get into

*Comm. Chipman

-Agree with commissioners Gooch and Cohen

-Would like to work this through tonight and finish it

*Acting Chair Cohen

-Would be glad to talk further with Supt Morse to see if some general language works

2. CIP Planning and charter

*Comm. Ranaghan

-Many charters require capital planning

-reference to Standard & Poor's ratings

-one of criteria for a good rating is to have a five year rolling plan, with projects and sources of funding identified, including school projects.

-general agreement that there should be planning provision in the charter

*Comm. Valleau

-proposal at end of their report; would revise to delete reference to a specific month and just say prior to the budget

*Comm. Spritz

-Mayor would direct the city manager to put together CIP, including the schools

Motion to accept the recommendation of the Committee as presented on the last page of the report from the subcommittee, but use similar language that mayor will direct the city manager to prepare the CIP plan passes 9-0 (deleting reference to specific month but to be done prior to budget.)

g. Preamble to address school and city issues?

*Comm. Spritz

-Decided wanted to have one preamble at beginning of charter

-Comm. Davis wants to address the issue of the schools so would like to go back to this when Comm. Davis is here.

Proposed Preamble: "We, the People of Portland, Maine, establish this Charter to secure the benefits of local self-government. In so doing, we build a Government that meets the needs of the people it serves and whose character it reflects. Our Government shall solicit our input and be efficient and accountable to its citizens; it shall strive to promote equal rights and representative democracy; it shall sustain public education; it shall further cooperation and leadership; and it shall provide for the future progress of our City."

*Comm. O'Brien

-Would like to adopt this preliminary and let Comm. Davis wordsmith it

*Comm. Gooch

-Comm. Davis is looking for more than just a word or two.

*Comm. Ranaghan

-Remiss if we do not mention the health, safety and welfare of the citizens

*Acting Chair Cohen

-Health, safety and welfare standard language for government

No action taken on g. Preamble

a. When would the mayor position start? At which election?

*Comm. Chipman

-Do we need to designate or can council schedule it?

*Counsel Boynton - Yes, need to designate; otherwise statute may require a special election

*Comm. Spritz

-Changed position on this; think it should be an off-year election

-Should commence in 2011.

*Comm. Mermin

-Should go into effect the year following adoption of charter

*Comm. Ranaghan

-Cannot reconcile those supporting rank order voting wanting to go to the smallest election, and get a majority of fewer people.

-Should want a big majority, not a small majority

-People will be in tune with local election

*Comm. Chipman

-Agree it should start in 2011

-Cannot see any reason to wait an extra year for an elected mayor

*Comm. Trevorrow

- Agree starting in 2011
- Should set it right away
- *Comm. O'Brien
 - Undecided, but am swayed that it would bring out more people in the off-year elections
- *Comm. Gooch
 - Agree that it should be held in off-year; could ameliorate fact that fewer people come out in off-year
- *Acting Chair Cohen
 - Appeal for patience
 - Want to be comfortable that we have selected a process that needs to survive long-term
 - Enthusiasm to get out there should not drive the issue
 - More people will turn out on a general election than an off-cycle
 - Will a mayoral race get attention in on-year election
 - 2008, council race was very contested
 - 2002, many worked on council races
 - Often more energized about local races than in house and senate
 - Very comfortable that will get both attention and better turnout
- *Comm. Valleau
 - If this is what Portland wants, then let's get on with it.
 - 2 year hiatus not best direction to take
 - If on off-year, will be more clearly a vote about Portland and where community wants to go.
- *Comm. Ranaghan
 - Will be electing new mayor with far fewer than a majority of registered voters
- *Comm. O'Brien
 - If have a lackluster race for mayor, then won't get many people out; if have a contested race, then people will turn out?

Motion that there be language in the charter that the first election for the elected mayor shall occur in 2011 and every 4 years hence passes 7-2 (Cohen, Ranaghan)

- b. Which at large seat should the mayor's position fill
 - *Only one at-large seat is up in 2011 – that of Councilor Waxman
 - *Comm. Chipman
 - Should have one of the at-large seats up in November put on a cycle so that the one with the fewest votes only serves one year and then that becomes the mayor's seat.
- c. What happens if the mayor cannot fulfill his duties
 - *Discussion of current charter language which relates to when a vacancy is declared in a council position and coordinating that language with appointment of a mayor pro-tem. Counsel to bring back language.
- d. When should the mayor's state of the city address be?
 - *Comm. Ranaghan – annual state of the city should also be the budget address when the budget is presented to the council.

- *Comm. Chipman
 - Would like it separated from the budget address
- *Comm. Gooch
 - Would support having it with the budget
 - Have talked about the budget as a means of setting policy and the two things go together.
- *Acting Chair Cohen
 - Budget document is pretty technical; not sure I want a broad speech brought down to level of budget detail.
 - Move it into the fall and have some pomp and circumstance around the address.
- *Comm. Mermin
 - Should not be concurrent with the budget
 - Should be a broad policy speech and directional speech
- *Comm. Spritz
 - Not a good idea to consolidate with budget
 - Meant to be opportunity for mayor to say why I ran and this is what I am going to try to do next year for the city
 - February makes more sense
- *Comm. Ranaghan
 - Mayor can do what he wishes in the budget address; the plan is the budget, both capital and operating
 - Don't need two half hour speeches; mayors can call meetings at any time and press conferences at any time.
- *Comm. Trevorrow
 - I like February when state of the state is done.
 - State of the City address needs to be separate from budget
- *Comm. Mermin
 - Constitution says the President will inform the Congress from "time to time" as to the state of the union; we should not set a specific time.

Mayor shall give an annual state of the city address – passes 8-1 (Gooch)

e. Should there be language stating that the Mayor is charged with executing the intent of the City charter?

- *Comm. Spritz
 - Should the mayor be able to say that the intent of the charter is not being followed?
- *Comm. Gooch
 - We have not created an actual executive branch with enforcement ability
 - Intent of the charter will be expressed in the preamble and in the document itself and everyone has role of carrying out charter
 - This is not a true executive position and there is no enforcement mechanism in the charter
 - Should not put in a half measure
 - Should not hint at executory power
- *Comm. Ranaghan
 - Don't know what cans of worms are out there which this might start

-Am not comfortable with it

*Comm. Valleau

-Support Comm. Spritz; City Attorney does interpret the charter and gives opinions on it and lets them know if it is not being followed.

*Acting Chair Cohen

-Mayor and all councilors take oath of office to uphold the charter and ordinances;

-Do you divest other councilors if you say the mayor enforces the charter;

-Ultimately the courts would decide this

No motion on it issue e.

f. Should the Mayor issues be put out as one item or broken up into sub-items?

*Comm. Spritz

-The major division being thought of is between RCV and Elected Mayor

*Comm. Chipman

-Do not want to separate the two issues

*Comm. Mermin

-If take IRV out, then we need to spend time on what would be done if IRV went out; don't think it's simple

*Comm. Gooch

-We did imbed these two questions together and concluded they are inextricably linked.

-Late in the day to decouple them

Acting Chair Cohen

-Know that "majority" was a clear baseline for commission

-Do not recall a specific conversation about inextricable linkage of the two issues; if we separate them, then the only option is a runoff election

-Am concerned about having it all go down; do not want IRV tail to wag the mayor dog.

*Comm. Mermin

-Have never had a discussion about a runoff election

-How do you conduct the runoff? Top two candidates?

-That's a whole new conversation; we did decide between two options – primary or IRV and we decided on IRV.

*Comm. Spritz

-Do not recall IRV and Mayor being inextricably linked

-I am a little concerned about whether Portland voters will support IRV.

*Comm. Gooch

-I think there are enough of us committed to IRV

-We need to consult minutes about what we did say

Motion to table until subsequent meeting passes 8-1 (Cohen)

*Acting Chair Cohen – presentation of last two items, not discussion

i. Should the manager have a contract for a specific number of years

*Comm. Gooch

-Sent out a memo; would revise to not have a specific number of years mandated.

j. Issue of what budgets are included in the city budget.

*Counsel Boynton

-Review of what's in operating budget

All departments

All enterprise funds

HCD and Grant funding to extent they show up in operating budget, e.g. funding a position

-No reason mayor could not direct manager in managing HCD budget process and CIP budget.

“The mayor shall direct the city manager in the preparation of the city operating budget, the capital improvement program budget, the housing and community development budget, and any similar city budgets which require council approval, and shall present all such city budgets to the city council.”

*Comm. Ranaghan

-Language needs further discussion

*Comm. Trevorrow

-Comm. Davis had some input about budgets.

Check minutes on discussion of IRV and Mayor issue

Language on vacancy in mayor's position

Issue of finance functions – Comm. Cohen to work on it

Preamble discussion

i and j in next meeting

Adjourned.