

PORTLAND CHARTER COMMISSION
MINUTES of JULY 1, 2010

1. Call to order and Review of Meeting Agenda *Chair Plumb* (7:00 p.m.)
 - Looking at recommended changes to preliminary report
 - Final meeting on July 8 with final vote on report
 - Final report published by July 19
 - Review of agenda

2. Reports from Subcommittees
 - Report on Ranked Choice Voting
 - *Comm. Smith
 - Had three sessions on this issue before 6/24 and met last Saturday.
 - *Criteria for evaluating what a good system of voting might be
 - Continue non-partisan elections
 - Provide for a mayor with a majority mandate
 - Encourage civility among candidates
 - Encourage higher voter participation
 - Encourage voter literacy regarding candidate's vision and goals
 - System that works well with more than 2 candidates
 - Manage city administrative costs
 - Manager costs of running for mayor
 - Not confuse voters
 - Engender voter confidence in method of election
 - Avoid spoiler elections where vote is divided among multiple candidates so winner does not reflect majority of electorate
 - *Election options
 - Multiple election method
 - Closed primary – partisan with Republicans, Democrats, Greens
 - Open primary (like Nashua NH), top two go to regular election
 - Single election
 - Plurality election as we have now
 - Ranked choice (instant runoff) voting
 - *Multiple elections
 - Number of voters vary as well as those who vote. Falloff may be as high as 30% on average from 1st election to second election.
 - Likely to affect people who have most difficulty getting to polls.
 - Increase candidacy costs; have to raise money for primary and then for general election.
 - Increased city costs to put on election
 - Voter fatigue and confusion about election dates
 - Increase in possibility of spoiler elections in which winner does not have a majority

- Could have up to 3 elections to get a majority; could still have more than 2 candidates even with primary (e.g. green, dem, rep, indep.); resulting in a plurality election, then have to do a runoff if want a majority
- Significant decrease in voter participation
- Open primary – open to control by well organized minority
- *Ranked choice voting – Instant Runoff Voting
 - 100 people vote; if someone gets 51 votes in first round; you have a winner.
 - Assume no winner in first round:
 - Then in next round, assume only 95 ballots have a second choice marked, so now someone can win with 48 votes which is the majority of the 95 votes. Five people self-selected out of the system by not voting for a second choice candidate. If under ½ of the 95, then you go to the next round.
 - RCV can be done by computer tabulation in a central machine in city hall. Can recount with the paper ballots if need to do so. Machines can be programmed to handle RCV
- *Recommendations
 - Continue with ranked choice voting
 - Leave it linked with mayor question

3. Public Hearing

- *Tim Honey of Bradley Street
 - Hybrid model which will lead to lack of transparency, confusion about executive authority and lack of accountability
 - Not aware of any cities where the budget is submitted by both the manager and the mayor
 - At least 100 years have separated executive authority to:
 - Hire and fire
 - Implement policy approved by policymakers
 - Submit budget
 - Should go back to recommendations coming out of subcommittee
 - This is what over 70% of communities have where there is an elected mayor and a city manager
 - Two choices
 - Either strong mayor form of government; or
 - City manager form of government
 - Big mistake trying to put together a hybrid and will cause great confusion, including confusion within the city organization
- *Chris O’Neill from Portland Community Chamber
 - Nub of it is the issue of presentation of the budget
 - Most are okay with having the manager create the budget with guidance from the mayor
 - In 5(d) replace “direct” with “guide”

- In 5(f) replace “direction” with “guidance”
- In 5(f) manager should present budget and then mayor can weigh in on it
- In 5(g) replace “direction” with “guidance”

Charter is nebulous on who the executive power is in Portland.
Article VI, Sec. 5 – okay with first change
VI, Sec. 5(e) replace “direction” for “guidance”
Strike references to joint presentation of budget by mayor and city manager

*Charles Bragdon - Munjoy South

Thought this was a done deal; public was looking for a stronger mayor; very pleased with what I see, mayor has the bones with some meat on it.
Don't separate RCV and elected mayor question
Happy to see the mayor get some veto power; gives them the executive power
Electing someone to run the city with a vision to take the city to the future.

*Anthony Zelli of 612 Congress Street

In Burlington, RCV worked well. Republican won with about 30%; democratic came in 2nd; then progressive (incumbent) came in 3d. Progressive finally won.
Then a strong minority organized to repeal RCV; won with 52% of the vote.
-But in Burlington there is a history of electing democrats and progressives in Burlington and not republicans. In the rounds after the first one, republicans got very few second votes.
-Support a strong executive mayor; unsure of the veto power because that is an executive power but not a legislative power.
Confused about how the system would work

*Steven Scharf of State Street

-Have put together proposal for elected mayor with some details; the details are not that important. Big picture is that you want an elected mayor, any of those details could be changed with a simple charter amendment.
-Recommend breaking RCV from the elected mayor issue on the ballot; much rather lose RCV and not the elected mayor
-Do not currently hold the city and school budget hearing at the same time; need to correct this section of the charter.

*Justin Costa of Sawyer Street

-Personally would support a much stronger elected mayor
-People have asked what is difference between the mayor and the council if mayor has no executive authority? Veto power provides the answer.

-Support RCV and makes sense to have it as a separate issue; how we elect the mayor is a separate issue from whether we have an elected mayor

-One big benefit of RCV is it avoids “scorched earth” campaigning

4. Minutes of 6/24/2010 approved unanimously

5. Announcements

Next meeting is July 8 with vote on final language and report

*Comm. Cohen

Comparison of Mayoral Powers and Attributes – Chart provided

Believe we have created a policy mayor rather than an executive mayor, but have given the policy mayor a lot of authority.

*Comm. Spritz

Will have our photo session next week

*Comm. Smith

-Phasing in of the mayoral position in 2011 by taking that at-large seat results in no at-large position up for election in 2014.

-Looked at ways to even it out so that there is 1 at-large seat up for election every year.

-One possibility was to take the 2 at-large seats up in 2010 and make one of them a 1 year seat and then phase in the mayor in 2011.

-It is not possible to do the latter without having a vote on it prior to the vote on the charter commission recommendations, which would require a special election prior to the November election.

-This is going to be a council issue, not a commission issue.

*Chair Plumb

-Urge that this issue not be debated tonight as it is not something the commission can resolve.

Recommendation on RCV from subcommittee

*Comm. Smith

Proposed language changes in the RCV section; change preference to “choice” and clarify that it’s a majority of the votes cast in each round. May need to amend “cast” to “counted”

*Comm. Ranaghan

Cost of RCV – \$130,000

Not much difference between RCV and plurality voting

*Comm. Smith

Costs not that high – can be \$30,000 if reprogram the existing machines; will need to replace these older machines soon and that upgrade is what will cost the \$134,000.

*Comm. Cohen

Not sure this language works but let’s pass it and have counsel look at it and come back next week

Motion to approve proposed wording changes for RCV passes 10-2 (Valleau; Ranaghan)

b. Reconsideration of separating mayor and RCV – moved and seconded

*Comm. Spritz

- Have heard confusion about RCV; very few have heard of it or have any understanding of it; continue to be concerned it could dominate the debate and that out of state money and influence could run the debate for us.
- Could live with result of getting an elected mayor but not RCV.
- Country has survived for a long time with plurality elections
- Politically, it could overwhelm the mayor issue and that is my primary concern.

*Comm. Chipman

- Why separate out RCV when there are other issues that could be separated out, e.g. pay, term etc.? Do you want an a la carte mayor?
- RCV best way to get to majority support for the mayor
- If have primary and then general election, have different groups of people voting; RCV has the same group of voters at the table.
- Do not want to see another process put on the ballot.
- IRV is best way to get to majority winner.

*Comm. O'Brien

- The dominant issue I have heard is salary and whether Portland is getting the position it wants for that salary, not RCV. Most aren't too worried about RCV so I support one question.

*Comm. Davis

- Have faith we can go out to voters and explain RCV
- It's other issues more likely to sink the issue. Not enough mayor for the money, or don't want a mayor at all.
- We already spent a lot of hours talking about RCV. Came away thinking this was the best proposal.
- We designed a hybrid mayor but they need political legitimacy to make that work and this system will get us there.

*Comm. Smith

- Think the mayoral position and the way they're elected are inextricably intertwined. Providing a method whereby you can build a consensus. We have been an internet battleground but it's only about 10 people who send information and disinformation. We spent a lot of time separating the wheat from the chaff.
- Not wholly untried; 100 years in Australia; subject of major referendum in Great Britain; being successfully used in San Francisco. We want a system that brings people together in broad consensus of support for leading the city.

*Comm. Gooch

- Idea of majority mayor is intertwined with building consensus to govern under the format. Third time we have discussed this issue. We are crafting a consensus building, community organizing mayor. Should keep these two proposals joined.

*Comm. Cohen

- Originally favored separating the questions on risk basis. Now more persuaded that this is a battle occurring out of state, not in Portland.
- Real issue is whether we should have an elected mayor in Portland.

*Comm. Trevorrow

- Your vote carries through each round and expresses the real will of the voters.
- Level of digging by subcommittee was impressive; started at the beginning and arrived at RCV again.
- Not concerned with influence from outside Portland

*Comm. Mermin

- Remain convinced this is the way to elect the mayor
- Subcommittee's recent work has been very helpful to look at each of the issues raised and address them.
- Should keep the two issues together; if separated, RCV would probably fail on its own

*Chair Plumb

- Favor separating the issues

Motion to reconsider separating the questions fails 2-10 (Plumb, Spritz)

Taking up 6.d. out of order – Clarification of the budget language

*Comm. Cohen

- Clarification of June 24 language – proposed amendments
 - Replace “direction” with “guidance”
 - Separating presentation of the budget from comments from mayor;
 - Confusion that this was becoming a joint budget
 - To clarify what we arrived at last week.

Moved and seconded to put the Cohen amendments on the table

*Comm. Gooch

- Let's regard these as a whole and not go item by item
- Favor these changes because it gets much closer to the work of the subcommittee

*Comm. Spritz

- We talked about these words a lot last week and thought we ended up in a good place; “direction” is what we are asking the mayor to provide.
- Do not support changing “direction” to “guidance”
 - Direction is saying that here is what I envision, let's make it happen
- We take “direction” all the time in our lives

*Comm. Gooch

- Concern we hoped to address by using “guidance” rather than “direction” was not to govern the day to day relationship between mayor and manager, but when there is a breakdown between manager and mayor we wanted language to have a firm foothold for someone in regard to the budget – we elected to give the edge to the manager for preparing the budget.
- Strength of the word “direction” means would have a mayor who could overstep the policy role and start administrating, preparing budgets.
- Can differ about where the final word should lie, but the desire here was to provide clarity in the event of a breach between manager and mayor.

*Comm. Mermin

-We gave the leverage to the manager in the budget prior to it going to the council. So this is a first cut professionally prepared budget; there is no chance of manager going far astray. Council and mayor deserve to have a professionally prepared budget prepared by the professional administrator to look at. If the council feels that the manager did not appropriately carry out the policies, then the council can change it, and the manager can be sanctioned through performance review.

*Comm. Smith

-Have power and prerogatives of manager and of city council. In constructing mayor, we have chipped away at power and prerogatives of each.

-“Joint presentation” has caused problems; and having the mayor comment on it is fine.

-Direction versus guidance must be looked at in context of the upcoming proposal for a mayoral override which gives the mayor more clout with the council.

-More sympathetic to this shift from direction to guidance in that context.

*Comm. Valleau

-Support the Cohen changes; it is a duty for the city manager to present a professional budget and then let elected officials go at it.

*Chair Plumb

-Support these amendments; much closer to what subcommittee originally proposed and is much clearer about who presents what and when than reference to “joint” presentation

*Comm. Trevorrow

-Would like to separate out issue of “direction” vs “guidance” for vote.

Amendment to Cohen amendments to keep “direction” fails 4-8, (Davis, Spritz, Chipman, Trevorrow)

Chair Plumb

Suggest adding policy “guidance” from the mayor and council – fails for lack of a second

Cohen amendments pass 8-4 (Davis, Spritz, Chipman, Trevorrow)

c. Veto power

*Comm. Cohen

-Comm. O’Brien and I looked at this issue and consulted with counsel

-Got information back that veto power generally lies with mayors who are executives and who only vote in the event of a tie.

-Policy mayors generally do not have veto authority and some vote as council members and some do not

-Any recommendation on veto is pushing a little further in the direction of strong mayor.

-Did not think a broad veto power would be appropriate for a primarily legislative mayor

-Under amendment, mayor could veto appropriation resolve and council could over-ride the veto by a vote of 6 members of the council.

-Budget veto was one of the things Chamber’s report recommended.

- Rather than carving out some of the manager's authority, this looks to power of mayor relative to rest of the council.
- Mayor has 5 days to veto, excluding weekends and holidays, then at next meeting which is at least 5 days later, any member can schedule vote for override. Current charter already has language for a continuing resolution which can be done until a budget is in place.
- *Comm. O'Brien
 - So if veto is upheld, then start with the old budget and attempt to pass it again with some changes.
- *Comm. Ranaghan
 - Favor this provision; think it has a limited use. Think it would be used very judiciously.
 - Would the mayor initially vote on the budget? Would not vote on the override.
 - Can the mayor vote on the initial budget
- *Comm. Mermin
 - How often is a budget passed on a 5-4 vote?
- *Comm Cohen
 - Not common on final budget.
- *Chair Plumb
 - My sense is that the resolve was seldom a 5-4 vote, but there is jockeying back and forth before the final vote.
- *Comm. Chipman
 - Support the change and don't think it would be used very often. Gives the mayor another tool.
- *Comm Smith
 - Don't recall many close final votes, but had some close votes along the way.
 - Logically possible for mayor to vote on the budget and then veto it
 - Could have budget pass by 6 votes and then have mayor veto it and be overridden right away.
 - How does the appropriation resolve come back up?
- *Counsel: No specific procedure spelled out, if not overridden, expectation would be that finance committee would go back to work to try to come up with either a budget that would not be vetoed or would be veto proof.
- *Comm. Smith
 - Please look at making sure that the council can move quickly after a veto so that there can be some finality so that tax rate can be set.
- *Comm. Spritz
 - Favor proposal but nothing here that would limit this being dragged out forever.
 - Want some language that would get us past a logjam.
- *Comm Ranaghan
 - In many cities, prior year's budget takes effect until new budget is implemented.
 - Tax due dates can be changed; should not put in a short time frame.

*Comm Chipman

City won't shut down; money can be appropriated and those appropriations cannot be vetoed.

*Comm. Gooch

- Kept looking for way to give the mayor a lever without impinging on professional role of the manager.
- Limited veto creates need for mayor to build consensus from a leadership position
- Do not expect it to be used that often.

*Chair Plumb

- Not wild about veto power; reduces the incentive to build agreements; concerned that it would build camps of pro-mayor and anti-mayor; whenever you require a supermajority vote, you have essentially empowered a minority. Not helpful for getting decisions made.
- Needs to say something about what happens next if there is a veto power; no direction about where that budget goes next and gets back to deliberative process.

Motion to put veto amendments on the table seconded

*Comm. Gooch

Should we write in some language about the continuation of current budget in the event of an override?

*Comm. Cohen

- Have language in the charter about what happens if you do not pass the appropriation resolve by 5 votes.
- Gap is how you get something on agenda; maybe the resolve should have to come back to the council.

Motion to approve amendment to add mayoral veto approved 10-2, (Plumb, Mermin)
(counsel to come back with refined language).

e. Required council sponsorship for agenda items

*Comm. Chipman

- Have a basic requirement that to get an item on the agenda, have to have the sponsorship of at least one councilor
- Have more accountability for having things on the agenda; if manager or corporation counsel want to put things on agenda, just have to get a council sponsor.

*Comm. Spritz

- Don't know how big an issue this is; reluctant to tinker with how council operates without a sense of the magnitude of the issue

*Comm. Smith

- Solution in search of a problem
- Manager puts a fair number of items on the agenda, but they are administrative items which need council attention; added administrative burden to find a sponsor.

*Comm. Chipman

-At state level, every bill has at least one sponsor to take up time at the legislature. Medical marijuana dispensaries issue put on by corporation counsel; nobody knew why it was there and got 9-0 vote.

-Council also has their own rules and could do this through the rules and doesn't have to be in the charter.

*Chair Plumb

-No desire seen to pursue this through the charter

f. Communication between staff and councilors – Art. VI, Sec. 5 amendment

*Chair Plumb

These came from subcommittee originally and Comm. Smith wanted to look at it again.

Motion to put revised language on the table seconded.

*Comm. Smith

-Agree with proposed amendment

-Important to provide professionalism in city staff and need to provide certain protections for people. Have essentially 10 bosses, 9 councilors and the manager.

-Language like this is common in other charters

-Can make requests, but cannot give orders; important to remind councilors that there is a sphere of professionalism and chain of command. This gives other councilors something to call people if they are overstepping their bounds.

*Comm. Ranaghan

-Silent on what they can do in directing orders to city manager, corporation counsel and city clerk – can order them to do things within the confines of the law.

-Councilors still should direct their requests for information through the city manager.

*Comm. Spritz

-Agree with idea but would like to tweak the language to reverse the order of the sentences so that it starts in the positive with “The city manager may assign... ; however, neither the.... and delete “Notwithstanding the foregoing”...

-Accepted as a friendly amendment

*Comm. Mermin

-Think it's superfluous to put it in the charter; think this will confuse when the line has been crossed and when it has not.

It's clear in other parts of the charter that city manager manages staff and not the job of the council.

-Adds verbiage that could lead to confusion in application.

*Chair Plumb

Support the amendment; not uncommon for councilors to sometimes forget that it takes a majority vote of council to make things happen.

*Comm. Cohen

-Don't want to wordsmith it, but there is a difference between the proposal as originally drafted and the proposed changes

-Want to be sure that city manager's ability to assign staff is not limited.

Counsel: switching the language really changes the focus of it, which was to limit the councilors communicating directly with staff.

*Comm. Mermin

-This illustrates the problem of trying to craft language which does not have unintended consequences; other parts of the charter clearly state that manager supervises staff and could assign staff to committees etc. Do not need this language in the charter.

*Comm. Gooch

-This is worth doing; draws line between administrative, professional world and policy and politics and city leadership world. This is hardly ever a problem but when it is a problem it can be a huge problem.

-This creates a refuge for the councilor for those very rare instances where a councilor is "off the leash" to say that the charter says we don't run ourselves this way.

-There is value in way it was drafted

*Chair Plumb

-Do want this in the charter; but agree with language as originally drafted.

Motion as changed by friendly amendment to reverse order and take out "notwithstanding the foregoing" fails 6-6 (Mermin, Plumb, Valleau, Gooch, Trevorrow, Chipman against)

Motion for the amendment as originally proposed passes 8-4 (Mermin, Davis, Chipman, Trevorrow)

Unagended item:

*Comm. O'Brien

-Comes from campaign season

-Got a lot of feedback where you enter city hall and get inconsistent answers or different procedures under the same ordinance.

-No sort of permanent solution to what became a problem

-Example of complaints of problems with permitting process for small businesses in west end; kept getting bounced from department to department

-Reiche community center which the neighborhood association has advocated for what they feel should be the effective use of the community center.

-Proposing that the mayor, in instances where ordinance is vague, could issue a written memo that clarified the ordinance and the council could overrule. Would not tie up the council with re-visiting every ordinance.

*Comm. Gooch

-Is there anything that would prohibit the mayor from doing this without this amendment?

*Comm. O'Brien

- This gives explicit authority which is binding
- *Comm. Mermin
 - Is this to clarify the legislative intent or to clarify the administrative interpretation?
- *Comm. O'Brien
 - Really more clarifying the administrative issues.
- *Comm. Valleau
 - Who does it give guidance to and how will it work
- *Comm. O'Brien
 - Not meant to interfere with oversight or day to day jobs of city employees; to clarify things on the books to the manager.
 - This would be effective when there is a flaw in the ordinance
- *Comm. Gooch
 - So mayor would give guidance to manager to solve a problem and manager would use it?
- Moved and seconded to put O'Brien amendment on the table
- *Comm. Ranaghan
 - Applaud in what Robert is trying to get to; but do not support doing this.
 - Would like to fix some of this but need to work through the manager's office and city council and find out what and where the issues are.
- *Comm. Smith
 - Sympathetic to the issue. It's a "who's in charge" question?
 - As drafted, this is limiting as to what the mayor might do. Could go to manager and say "Go fix it; don't make me take it to council."
 - Informality could be equally effective. Like the spirit of the proposal but don't see why the mayor couldn't do it anyway.
- *Comm. Gooch
 - Took the city 2 month to give the city permission to issue signs on its own property about the bayside trail, so I am sympathetic to the problem; but strikes me as managerial problem. Keeping it informal is probably better than formalizing it. Really is a question of management and whether or not departments are well managed or coordinated. Like the sense of the motion but not the fallout.
- *Comm. Cohen
 - Need to be clear about divisions of authority and not blur the lines.
 - My concern here is that either it doesn't mean anything, or it is intended to mean something new which seems more like executive authority so left feeling this leaves confusion about how government is done. If there is confusion, people are going to perform worse.
 - Have provided enough tools to mayor to make sure management of city is done effectively.
- *Comm. O'Brien
 - My first concern is the idea that we can solve the problems internally together; that has been tried over and over and they have not been solved.
 - Okay from time to time to have someone clarify these things without a committee.

No prohibition on informal communication.
But if a systematic problem, allows mayor to fix it

*Comm. Spritz

-Feels like it is turning the mayor into glorified ombudsman. Mayor as defined has all of these powers already.
-Could see mayor running roughshod over everything that comes out of the chambers.

*Comm. O'Brien

-Would be put forward as a communication to the council so council could modify it or dismiss it altogether.
-Would do this only in the most important cases

Motion to adopt the O'Brien amendment to add to mayor's powers issuance of written policy guidance when ordinance is vague fails 2-10 (Chipman/O'Brien)

Upcoming July 8 agenda

Revised language draft based on changes made tonight

Revised preliminary report made into final report

Revised ballot questions based on substantive changes made in the language

Adjourned 9:00 p.m.