

PORTLAND CHARTER COMMISSION
MINUTES of MARCH 25, 2010

Agenda #1: Chair Plumb called the meeting to order at 5:30 p.m.

Agenda #2: Public comment on agenda

*Stephen Scharf

- Make electronic notice to include the public “interested parties”
- Keep warden as resident of city of Portland
- Prefer Chairman, not chair or chairperson
- Bond issues – define what a newspaper of general circulation is, should be multiple newspapers and multiple locations
- Voter referendum issue: surprised to see we use the state certified valuation; bonding should be based in charter on a very specific number. -
- Should say in Charter than anything over \$2 million should go to voters.
- Should bring back closer to minimum thresholds.
- Need more input regarding capital improvement plan and write it into the charter.

*Dan Skolnik

- Could restructure the way citizens interact with city government
- Should be streaming audio of meetings on the web and should be archiving the videos on the website.
Easy ways to increase amount of input citizens would have

Agenda #3: Minutes of 3/18/2010 meeting approved (9-0)

Agenda #4: Announcements - Commissioners

*Chair Plumb

- Next meeting is April 1 for discussion and preliminary agreement on remaining Mayor issues
- Two subcommittees from last meeting
 1. Question asked on consolidation – Comms. Ranaghan, Valleau and O’Brien

*Comm. Ranaghan – scheduled for noon in 209 on Wednesday.

Clarification of task – Article VII of Charter talks about Finance Director paying all bills, certifying payrolls, preparing financial statements for both city and schools. That has drifted apart so that we have two finance departments. Want to bring school and city side together to discuss how we could structure charter language to accomplish a consolidation and bring it back to the original intent.

*Comm. Valleau – From the last meeting, my recollection is we were to see if its feasible; and, if so, to bring back a “strawman.”

2. Preamble language; subcommittee to get together but may just present language to the Commission

*Comm. Valleau

- Would like a list of the mayor outstanding issues on the April 1 agenda.

Agenda #5 – Technical Issues

*Chair Plumb – We will do all of the items together, except the ones listed #'s 3, 9, 18, 20 and 31. Any others to be taken off for discussion.

Motion to take #'s 6, 12, and 26 off the consent agenda as well (See attachment) (Chipman/Spritz) passes 9-2 (Ranaghan/Gooch).

*Comm. Spritz wants discussion of including something about CIP process in Charter.

Motion that we discuss whether or not to add something to the Charter about the Capital Improvement Plan process passes 9-2 (Valleau/Plumb)

Move passage of consent agenda – all items on Technical Issues Chart which were not taken off the agenda (Valleau/Ranaghan), passes 11-0

Item #3 – Appointment of acting mayor

Authority of the mayor to name a mayor pro-tempore for temporary absences of 60 days moved and passed 11-0.

(Staff to make sure it's clear whether it's city council or school committee when referring to "member" in charter).

Item #6 - Permit notice of calling of special meetings of the City Council to be by electronic means.

*Comm. Cohen – currently all councilors have internet connection from city.

*Comm. Chipman – how many special meetings per year? Is it too burdensome to have paper notification. (Estimate of about 6 per year)

*Chair Plumb - Issue is whether electronic should be the exclusive notification

*Comm. O'Brien – Motion that notice may be electronic "when feasible" - fails for lack of second

*Comm. Mermin moves that we add "In addition" to beginning of sentence on electronic communication, seconded by Comm. Spritz.

*Comm. Cohen – intent that this would be exclusive means of notification, now making it an additional requirement for notice. Suggest we just put this out in concept rather than drafting language.

*Comm. Plumb – concept is that we want to permit electronic communication but if not appropriate then notice would be given by an alternate means.

*Comm. Ranaghan, use the language in Section 7 about adjourned meetings, which does not specify the form of notice

*Comm. Mermin – key part is that people can actually receive the notice perhaps there should be some confirmation that they did.

*Comm. Spritz – feels like we're over-lawyering this. The system is working now – just refer to appropriate notice.

*Comm. Chipman – Don't mind having personal notice to someone's home and keeping in person notice, with electronic as additional.

*Chair Plumb – 2 ideas; 1 that there be appropriate notice; 2 that personal notice be retained.

*Comm. Cohen – Ok with Comm.. Ranaghan’s suggestion; notice just needs to be effective.

Motion to accept Comm. Ranaghan’s suggestion not to specify form of notice for calling special council meeting passes 9-2 (Chipman, Treverrow)

*Chair Plumb – Subcommittee to run new language by the Commission on 4/8.

Item #9 –Rename Chairman (of School Committee) to Chair or Chairperson.

*Comm. Ranaghan – Subcommittee made no recommendation on this

*Comm. Mermin – I prefer Chair

*Comm. Gooch – I prefer chairman as I think it’s more formal.

Motion to use the term chair for school committee passes 7-4 (Chipman, Gooch, Spritz, Davis)

Item #12. Deleting residency requirement for wardens and ward clerks

*Comm. Ranaghan – Clerk supported this change.

*Comm. Valleau – City Clerk has tough time filling the slots, needs a bigger pool to choose from. Warden runs the polling place and Ward Clerk is the deputy.

*Comm. Chipman – Think the wardens should be residents of City of Portland; typically live in neighborhoods and know the voters; should be able to find 11 wardens in the City.

*Comm. Spritz – it is hard to get wardens, ward clerks and election clerks; if Linda Cohen thinks she needs this, we should do it.

*Comm. Gooch – Inclined to think we just aren’t trying hard enough. I have never seen ads around it. I tend to agree with Comm. Chipman, that local elections need to be run by local people.

*Comm. Cohen – it is advertised through announcements at the council meetings, on the website, legal notice, etc. It is not for lack of effort that people are not signing up. Do not really care where they come from.

*Comm. Davis – think we should be able to find people within our own community to run our own election. It may be difficult but need to work harder at it, may be a compensation issue or other types of issues and should address those rather than looking outside.

*Comm. Mermin – can you explain the difference between warden, ward clerk, and election clerks?

*Comm. Valleau – warden has full responsibility for whatever happens in polling place; has 5-6 hours training over 2 sessions, large manual. Ever ballot has to be accounted for over 16-18 hour period. Ward Clerk is warden’s right hand person. Election clerks “foot soldiers”. One on registration , hand out ballots, direct traffic into polls, empty ballot box, count at the end of night, help packing up and warden returns everything to city hall.

*Comm. Mermin – so majority of people there are not under this requirement currently? Ans. Correct.

Motion that we approve the language and intent of proposed change of residency requirements for wardens and ward clerks. (Spritz/Ranaghan second)

*Comm. Chipman – I see these as separate, important wardens be a resident and should separate that out from ward clerks.

Motion to amend main motion to keep wardens as residents of Portland

(Chipman/Davis second) fails 4-7 (Chipman, Treverrow, Davis, Plumb)

Main Motion to adopt the recommendation of the Subcommittee to delete the residency requirement for wardens and ward clerk fails 5-6 (O'Brien, Cohen, Plumb, Spritz, Ranaghan)

Item #18 – Recall process:

*Comm. Ranaghan – Have a 3 step process: Affidavit, Petition and Election for recall. Now need 500 signatures for affidavit for at large and district; recommending affidavit signatures of 500 at-large; 125 district; for petition signatures, 3000 at large, 750 for district, and only district voters can sign the affidavit or petition

*Comm. Spritz – would this include the mayor

*Comm. Ranaghan – yes and it would be same as at-large person.

(Staff to clarify that it includes the mayor under at-large).

*Comm. Cohen – recall should be difficult; barrier should be high. The key thing is the location of the petition. That's hard and I don't think that's a bad thing. We have elections every 3 years to elect people. Elected officials have to vote on very contentious issues and recall could be used as a weapon to put a well-meaning person through a difficult and public fight. Barrier should be high. Right now anyone can sign affidavit and petition, not limited to a district. If district barrier is too high, it could be changed but very concerned that this is too low. Makes it too easy to put someone through the recall process.

*Comm. Chipman – concerned about language that requires clerk to staff locations in the city, Don't have a problem with circulating petitions but threshold should be high.

*Comm. O'Brien – when the school recall happened, very few people in my district signed for recall; I had worked hard in my district and it was people outside my district who primarily signed. Think that the 125 and 750 for affidavit and petition.

*Comm. Spritz – Think that it could go door to door and get signatures the way it is drafted. The petitions would be out in the community and people would be asked to sign. I'm nervous about putting something out there that gives the impression that this is a political weapon that can be used. Would not want this to be a well-used political technique.

*Comm. Valleau – I thought that someone had to certify each signature.

(Ans. circulator swears that he/she circulated the petition when it is turned in.)

*Comm. Ranaghan – think that there are two things, currently, the affidavit can be circulated; the petition cannot be circulated. Petition has to be signed at specific places.

*Comm. O'Brien – I too had the impression that each signature had to be notarized.

*Chair Plumb – what is role of notary? Just to certify that person is who they are and that they signed the

*Comm. Chipman – On affidavit they are swearing to the information on the affidavit and each signature is notarized. The petitions are signed by the circulator stating that they circulated the petition, and that circulator petition is then notarized

*Comm. Cohen – all lawyers are notary public so lawyer can carry around the affidavit and get notarized signatures, as can many other people in city.

*Chair Plumb – agree that it shouldn't be easy, but the language about staffed locations open for 4 days doesn't make sense. Would like to see ability to circulate and raise the numbers to make them hard to accomplish, or if want to have a restricted location without circulation, with some staff person already in it already and not send out people to staff the location.

*Comm. Spritz – Motion that we keep the minimum numbers for affidavits and petitions and not reduce them for districts, but allow city-wide circulation of petitions. Fails for want of a second.

*Comm. Valleau –

Motion that we leave the current language unchanged (Mermin second)

*Comm. O'Brien – this came up because clerk asked to be relieved of finding and staffing a locations, and uncomfortable in being involved in the process. Also feel there should be a second threshold for district members and only district voters could be in recall process.

*Comm. Gooch - keep the original numbers, but allow the circulation of petitions.

*Comm. Mermin – in thinking about circulating petition, the numbers would be too low. the recall was around the birth control issue in schools; very passionate issue with well organized constituency. Have entrusted your public officials to make those decisions, so now feel uncomfortable that this could be used to make these issues turn into a movement to re-vote on people's election. Given the low number of recall efforts, don't think it's that burdensome to staff locations. Most comfortable leaving it as it is. Would be open to idea that district councilors be de-elected from their own district but keep the numbers the same.

*Comm. Chipman – agree that only the district voters should sign the petitions for their district representative.

*Comm. Cohen – Appreciate Clerk's concern, it's a financial burden. It should be very hard to be recalled. Appreciate the distinction between district and at-large, but to change it is to make it easier to recall a district councilor. Once on the council, it doesn't matter how you got elected. It should be hard to be recalled.

*Chair Plumb – I could live with the language proposed with 2 changes:

Amendment to motion to keep it the way it is but limit district recall process to voters in that district for affidavit, petition etc., with no change in the numbers.

*Comm. Ranaghan – So would require 3000 signers to recall someone elected with 300 votes.

*Comm. Gooch – I would leave it the way it is but have lower threshold for district; divide by 5.

*Comm. Mermin – think it

*Comm. Davis – we have about 9700 numbers per district, but city number is 48500, we actually need to increase the number for city at-large votes.

*Comm. Ranaghan – doubt that we have 48,500 people even eligible to vote in, list may need to be purged. Why not tie it to number of voters who voted in the election from which the recall is being asked.

*Comm. Cohen – the largest hurdle to the process is the sequestering of the petitions in a location; we are spending time on how make it easier to recall somebody, we should not. This is designed so we do not have recalls and I'm happy with that.

*Comm. Gooch – I think we do want to make it easier, but not that much easier. It does not make any sense not to distinguish between the two. May want to increase the numbers and then take some proportion.

*Comm. O'Brien – 3000 votes cast for City Council in 2006 and 1500 for school committee in my district in a gubernatorial election.

2008 – when the recall happened only about 100 signatures were collected city-wide with a low percentage from my district. Making someone come to the location is the threshold. Do not think the lower number will result in recalls.

*Comm. Cohen – Right now the process is designed to not have a recall; spending a lot of time rearranging deck chairs; worry that having a lower threshold for district councilors makes a district councilor more vulnerable to outside forces and groups.

*Chair Plumb - Motion on the table is to only have district signers and voters for district recalls; does not deal with numbers.

Amendment to main motion (re: recall process) to only allow district signers and voters for district recalls passes 8-3 (Valleau, Cohen, Ranaghan)

*Chair Plumb – now have to deal with the numbers; I will also propose later that we not allow circulation.

*Comm. Gooch – Cannot talk about numbers without knowing whether the petitions can be circulated. Main bar is that you cannot circ

Motion to amend the current motion to allow the petitioners to circulate (Gooch/Ranaghan second)

*Comm. Spritz – do not like this idea; recall is a very volatile issue, and concerned that stranger standing in doorway will misrepresent the case at hand. Something as significant as this, the concerned citizen who wants to do this should make their way to a central location. Opposed to having petitioners go door to door.

*Comm. Cohen – the standard line for petitions is “this is just to get it on the ballot; you can vote against it when it comes up”.

Motion to permit circulation of recall petitions fails 0-11

*Chair Plumb - only issue remaining is the numbers

*Comm. Ranaghan motion: Does not make sense to have same number for at-large and district. Thought this was an equitable split.

Motion to have 500/125 on affidavit; 3000/750 on petition (Ranaghan/Valleau second).

*Comm. Chipman - I think these make sense since voters will be going to fixed location.

*Comm. Mermin – By creating a lower number for district, you are putting the district councilor at greater risk, more subject to activist groups going after a district member. Will allow targeting of district councilors in a way different from at-large councilors. Does not give their vote the same stature in their elected official role.

*Comm. O'Brien – Need to give voters credit; have to have some egregious behavior to want to recall someone.

*Comm. Cohen – there are personal issues where people disagree and a motivated group on one of those issues, they may decide to try recall. Trust the voters to make the right choice in an actual recall election, but the problem is that we have allowed the recall election at all. It's a threat and I wonder about people voting their conscience. I was comfortable keeping it the way it is currently.

*Comm. Davis – the affidavit is circulated and that is a very low proposed number to get the petitions started. The start of the process is too easy at district level. Puts the district person at risk too easily in initial stages.

Motion to use numbers originally put forward by subcommittee (for recall affidavit and petition - 500/125 and 3000/750) fails 3-8 (Plumb, Spritz, Ranaghan)

*Comm. O'Brien –

Motion to use 250/1500 for district recall affidavit and petition (O'Brien/Plumb seconds.

*Comm. O'Brien – think this addresses issue of not being triggered by too small a group in district.

*Comm. Chipman – think the numbers are a bit too high; should use 200/1000 for district.

*Comm. Spritz – I support 250/1500, as a way of insulating the district members.

*Comm. Gooch – see the logic of higher number for district, though not proportional

*Comm. Ranaghan – no logic to the numbers of anyone; why not tie it to the numbers who voted in the election for the person who would be recalled to tie it to some reality?

*Comm. Cohen – using percentage of those who voted, it's then a function of whether a big or small prior election, i.e. general election or off-cycle election.

Sticking to fixed number is better way to go.

Motion to use 250 and 1500 for district council and school board members passes 8-3 (Chipman, Gooch and Ranaghan)

Main motion to retain current language as amended, i.e. to have only district people in the recall process for district members and to have numbers for district to be 250/1500, keeping 500/3000 for at-large passes 9-2 (Gooch, Ranaghan)

Item #20 – Appointment of acting city manager

Motion to allow city manager to appoint acting city manager for absence of 60 days or less; Council shall appoint acting city manager if absence is more than 60 days passes unanimously 11-0

Item #26 Bond issues

*Comm. Ranaghan – added that they can be authorized for “any other language permitted by state law”, clarifying language bond counsel recommended. Also deleted “daily” from notice requirement in newspaper of general circulation and permit electronic notice.

*Comm. Gooch – is there a way to wordsmith a provision to require general notice in some media form without specifying the newspaper.

*Comm. O’Brien – could this be changed by charter amendment rather than commission? Ans. yes

*Comm. Davis – is there a way to craft something which recognizes there are multiple forms of media and intention is that it be widely available in multiple forms of media?

*Comm. Ranaghan – run this back by bond counsel; would like his thoughts on it.

*Comm. Cohen – bond counsel just want to know what the rules and follow those rules; whatever we do has to be very specific.

*Comm. Gooch – if bond counsel if not comfortable with broad language, that’s okay too

Motion to seek advice of bond counsel and intention is to use whatever media are appropriate to reach the largest number of people and are acceptable to bond counsel, passes 11-0

#Item 31 – Threshold for triggering bond referendum.

*Comm. Ranaghan – this involves two things: referendum is triggered by \$900,000 or .0005 equalized state valuation, whichever is great – the \$900,000 floor is long gone, we’re now in \$4 million range, so floor is irrelevant. Covers a single project when GO bonds will be issued.

\$1,350,000 for multi year single purchase – non-bonded capital project which gets financed over multiple years. Now around \$6million trigger using the formula.

Again the number is now meaningless, so taking out the two specific numbers and leaving in the formula.

Equalized state valuation is used because it is used for determining total bonding authority of city under state law.

Motion to accept the recommended language which strikes the \$900,000 and \$1,350,000 threshold for referenda passes 11-0 (Retains the formula based on percentages of state valuation).

Other issues:

*Comm. Spritz – think the process of presenting and agreeing on Capital Improvement Projects could use more oversight and review. Don’t know if this is a charter issue or a recommendation from the commission to the council.

*Chair Plumb – need to look at what that process is and make sure there is no misunderstanding about the process, then if there is interest in doing something about it in the charter, bring it back on April 8. There is a significant process with a multi-year plan and brought to council.

*Comm. Cohen – equate it to the general fund budget process; it is developed behind the scenes with departments and discussions with councilors, informal input of committees, and is brought to council with a certain public hearing

process, and maybe put to finance committee. There is a larger plan, with a laundry list of projects that would be funded if we had the money, parks, roads. Very fluid based upon needs of the day with money coming from other places. We have set up the process for the general fund budget to come from the mayor. Might want to talk about whose final CIP is it, i.e. mayor or manager?

*Chair Plumb – do we want to have a group look at this and bring back on the 8th?

*Comm. Ranaghan - Could begin talking about it at the subcommittee level meeting next week on finance consolidation. Probably should be done with both city and school sides. Some charters outline the process; it is an important planning tool.

*Chair Plumb- Does the Commission want to have the subcommittee come back to us on with recommendation regarding the CIP issue, and enough background information so that the members of the Commission can make their own decision.

Ans. Yes. So this issue will be brought back on April 8th.

Adjourned

Attachment - Technical Issues Removed from Consent Agenda

#3. City Council Chairman - Use mayor throughout. Add at the beginning of the second paragraph the authority of the mayor to name a mayor pro-tempore for temporary absences of 60 days or less.

#6. Permit notice of calling of special meetings of the City Council to be by electronic means.

#9. Rename Chairman of School Committee to Chair or Chairperson.

#12. Delete residency requirement for Wardens and Ward Clerks and have their qualifications governed by State law.

#18. Recall - Revise language in entirety to distinguish between at-large and district seats in terms of number of signatures required for affidavit to begin petition process (500 and 125); permit circulation of petitions by qualified voters for 30 days; distinguish between at-large and district seats in terms of signatures required for petition (3000 and 750); only district residents can sign on a district affidavit or petition.

#20. Vacancy in office of city manager - Define vacancy as absence or disability of more than 60 days in which case Council can appoint an acting manager; if 60 days or less, manager can appoint acting manager.

#26. Bond issues - Add at the end of 1st paragraph “or any other purpose permitted by state law”; permit posting to be by publicly available electronic form; delete reference to “daily” newspaper of general circulation to be just a “newspaper of general circulation”.

#31. Voter referendum on expenditures: Revise by deleting the “the larger of \$900,000.00 or” in paragraph (a)(1) and “the larger of \$1,350,000.00 or” in paragraph (a)(2).