

**PORTLAND CHARTER COMMISSION
MINUTES of APRIL 15, 2010**

Agenda #1: Chair Plumb called the meeting to order. (Smith, Mermin, Spritz absent)
Reviewed agenda items for meeting

Agenda #2: Public comment on agenda.

*Stephen Scharf of 153 State Street

- Want all grants included in school budget presentation
- Should IRV be part of mayor question; should be decided as separate issues
- what happens if IRV is not passed. Should phrase it in the alternative, do you want an IRV or runoff election.
- charter is unclear as to officially when someone takes office; should be clarified.
- should have one event after election for both schools and city council

*Michelle Bzanka 159 Oxford Street

- commend the commission for the work they are doing

Agenda #3: Approval of 4/8/10 minutes passed unanimously (8-0)

Agenda #4: Announcements

- *Will be meeting weekly
- *Anyone away on the 22nd – Naomi Mermin; Jim Cohen

Agenda #5: Preliminary agreements

a. Separate Mayor and rank choice voting issues on ballot?

*Comm. Chipman

- The two issues need to be connected
- If not connected, have to do primary election; would prefer no majority language at all to that.

*Comm. Cohen

- Large majority of commission agreed that rank choice voting was most efficient way to elect mayor by majority vote.
- But Commission also separated out RCV as a discrete issue and voted on it separately
- In past, numerous referenda have been rejected for elected mayor; going to need a lot of education before election; if lump elected mayor and RCV together, then more likely to get no votes on both
- Will give the voters more choice

*Comm. O'Brien

- Don't mind splitting them; but what would we do if it failed?

*Chair Plumb

-Could specify an alternative method and majority election was clear intent of this Commission so if RCV failed, should have an alternative prepared.

*Comm. Ranaghan

-Need to separate the two questions

-Two very significant issues; confusion factor which could result in no votes

-Would still like to have fiscal notes on all of these

-Would prefer to have plurality win if RCV goes down

*Comm. Davis

-Surprised to find this before us; thought we already decided this and allied RCV with electing mayor by majority

-The two go together; we decided on majority and on RCV as most cost effective

*Comm. Gooch

-Review of minutes showed that we didn't combine the two specifically

-Each ballot question should cover a discrete topic so these should not be combined

*Comm. Trevorrow

-Think these are inextricably tied together. Not sure I would still support the majority requirement if not going to do RCV

-Think those who support an elected mayor would support RCV

*Chair Plumb

-Agree that we should separate these issues; if RCV failed doesn't mean you would not be able to have a majority mayor.

*Comm. Ranaghan

-Why couldn't you support electing a mayor by majority if do not have RCV?

*Comm. Chipman

-Most agreed that RCV was the most efficient way to get to a majority if going to require it. Do not want a primary election in June and then in November, it stretches everything out and is more expensive.

-Have support from League of Young Voters to educate the public

*Comm. Davis

-Need to think about it not being a smorgasbord; have to craft a whole package; think this is part of a whole package. Otherwise run the risk of people choosing things that don't hang together

Motion by Comm. Cohen to separate the two questions, second Comm. Ranaghan fails 5-4 (Chipman; Trevorrow; Davis; Valleau)

*Chair Plumb

-So this is a preliminary decision since did not receive 7 votes

*Comm. Trevorrow

-Would say that it does not pass as has happened in the past

*Chair Plumb

-Clear about tie vote not passing; does this fail or is it preliminary.

Discussion of Commission Rule 2 re: final passage requires 7 votes.

- For present it is a failed vote
 - *Comm. O'Brien
 - Would prefer it be considered "preliminary"
 - *Comm. Chipman
 - Would prefer that this not be considered a preliminary vote, but bring it up when more commissioners are present.
 - *Comm. Ranaghan
 - Have we done it once and considered it approved with less than 7 votes, then that's a precedent.
 - *Chair Plumb
 - Reality is that majority of commissioners present tonight believe it should be a separate vote, but do not have enough present to make it a final vote.
 - There won't be a final vote until the second meeting in May.
 - Suggest we agree there was a 5-4 vote in favor of separation, but not a final vote and will have to vote on this again, either as part of the language discussion or as a free-standing item.
 - Goal will be to have as many people here as possible, bring it back at a high attendance meeting.
 - Please let me know if you cannot attend a meeting.
 - *Comm. Cohen
 - We have to make a decision one way or another because there is no default to go back to.
- Did not receive 7 votes; will come back at a high attendance meeting

b. Issue of setting mayor's salary once every years

Motion to reconsider setting it annually by Chair Plumb, second Davis passed unanimously 9-0

- *Comm. Chipman
 - My thought was I didn't want mayor's salary fluctuating during the term; don't know any other elected officer where salary fluctuates during term.

Motion that mayor's salary be set once every 4 years before the beginning of the next term by Chipman, seconded Plumb

- *Comm. Ranaghan
 - When would this be set? In time for appropriation?
- *Comm. Cohen
 - Presents proposed language for Article II. City Council from Counsel, sets the floor with 1.5 times median household income; sets it prior to the date nomination papers are next available to elect the mayor;
 - Floor remains the same, but then during that term, the salary will adjust annually for those 4 years in proportion to the increases for the other members of the council. In saying it's a 4 year term we are not eliminating the possibility of routine increases. We would want to do that for the same reasons any salary gets some adjustment, usually annually.
- *Comm. Trevorrow
 - Is there anything that would prevent increases if we did not write this into the charter.

Counsel – only if you say it is set for the 4 years.

*Comm. Chipman

- Do not want to have the mayor's salary be a political football
- Don't like any automatic increases being built in, including that for councilors
- Do not want to tie this to councilors' automatic increases.
- This is not part of the motion on the floor.

*Comm. O'Brien

- Concerned about conflict of interest for the mayor; would like to have council set a package in January prior to the 4 year term starting; could put adjustments into it if they wanted

*Comm. Cohen

- Will propose an amendment to the motion on the floor for the adjustments
- Have language in the proposal which would prevent the mayor from participating in the non-union salary increase provision.
- Need information on the particular index cited which is not done annually.
- The only way we can treat the mayor like other employees is to put language in the charter.

*Comm Ranaghan

- Says compensation in first paragraph; then says salary in second paragraph
- Language needs to be fixed; what are you really talking about?
- Nothing in here about non-union salaries. I've seen salaries increased and decreased by 10% in other cities. Should included decrease.
- Council doesn't take an affirmative vote on their own salaries every year.
- Would not put in the specific index. Don't think this works well at all.

*Comm. O'Brien

- Think that personnel issues and salaries so important that I would not want the mayor to have to exclude themselves from such discussions

*Discussion of new language

Motion to amend Comm. Chipman's motion by the first sentence of paragraph 2 seconded setting salary prior to the date nomination papers are next available, passed unanimously 7-0.

Motion by Comm. Cohen, second Ranaghan to amend the main motion by adding last sentence fails 6-1.

*Comm. Ranaghan

- Does not say the mayor has to step out of any vote on any "compensation" increase.

Chair Plumb

- Would make it impossible for mayor to vote on any non-union benefit increases.

*Comm. Cohen

- Move to table this while we have only 7 people in the room

*Chair Plumb

-Let's put it into abeyance; would like to get to the language.

Item 5. c. re: setting the floor for Mayor's salary

*Comm. Valleau

-How often is the index for median household income published?

Counsel Ans. About 3 times in a decade; this was the only index found unless you went to the Metropolitan Statistical Area index.

-So mayor's pay could be set based on data which is quite old.

-But this is only the floor

*Comm. Gooch

-Not bothered by it because it is only a floor

5.c. on setting floor has been decided and data was provided.

5.d. Language on what happens if mayor cannot fill his or her duties

This only addresses what happens if an elected mayor cannot fulfill his/her duties.

*Chair Plumb

-Two pieces to language; if mayor can choose someone to be acting then he/she can do so; but if unable to select because of mental or physical disability, then council can do so.

-Substantially parallels what we have done in other areas

Motion to adopt language drafted by counsel re Section 6 Absence or disability of mayor/acting mayor (Gooch/Davis) passes unanimously 9-0.

*Chair Plumb

-Let's go back to 5.b. on Comm. Chipman motion to have mayor's salary set every 4 years, with the Cohen amendment

*Comm. O'Brien

-This will be a substantive debate and we might have to debate it again if don't get a final vote.

Motion to postpone Item b to meeting where there are 11 or more members present fails 4-5.

Motion to postpone to next meeting with 10 either 4/22 or 4/29, passes preliminarily.

Work with executive board on the language proposed for 5.b. We agreed to the first sentence of the first paragraph.

5.e. Preamble

*Chair Plumb

-Final was Comm. Davis' edit to Comm. Spritz' language.

Motion to adopt Comm. Davis edits as preamble to Charter, seconded by Comm. Ranaghan

*Comm. Ranaghan

-do not favor education having its own paragraph. Education only one of the important services the city provides.

Motion by Comm. Ranaghan to strike the second paragraph and add education to "health, safety and welfare" – fails for lack of second

Motion by Comm. Ranaghan to revise last sentence of 1st paragraph by saying "Our government"... seconded and passed unanimously.

Motion to revise last sentence to read “shall be effective and accountable in its mission...” seconded and passes 7-2 (Gooch, Cohen)

Motion by Comm. Ranaghan to strike “strive to” passes unanimously 9-0

*Comm. Cohen – is there a question about whether the City is “providing” public education

Counsel Ans. Was not thinking of that distinction; I was thinking of it as financial support

*Comm. Gooch

-Charter includes both city and schools and “government” refers to both

-Rejected having the school department be totally separate; Charter

provides for a unitary government.

Motion by Comm. Ranaghan to change self-government to self-governance seconded; amended to refer only to “local governance” passes unanimously.

Motion to approve amended preamble passes unanimously 9-0

5.f. -Propose we insert education with “health, safety and welfare”

Postpone until we have the language in front of us.

5.g. Issue of manager having a contract

*Comm. Gooch

-Deleted the language about “at will”

-Pointed out that this won’t necessarily work in terms of getting performance evaluations done by the council.

-Other cities hire their managers by contract

*Comm. O’Brien

-Like the idea; would like to have it renewed each year to trigger the intended review.

*Comm. Ranaghan

-Portland has never had a manager contract; fear that any positive gain of annual review process is far outweighed by the cost of breaking that contract.

-Will not gain much; will always be left to council in terms of doing a good job at evaluations.

*Comm. Davis

-We previously talked about having the mayor chair a review committee for annual reviews; wouldn’t that accomplish the intent.

*Comm. Valleau

-Agree with Comms. Davis and Ranaghan in terms of no contract. ---

Contract gives rights to both employer and employee and issues of breach of contract and wrongful dismissals can arise.

-Can evaluate the city manager without creating an employment contract.

*Comm. Gooch

-Not married to idea of contract, but some degree of formal review is needed

-Buyout of contract would involve heavy costs but if things are that bad would be in area of termination of contract for cause.

- If we have a review process, then we are in better shape.
- Still feel it's a good idea; hope we would insert something in charter to require such a review.

*Comm. O'Brien

- How much would it cost to hire someone to do a modest review every year if council is so queasy with doing a review.

*Comm. Ranaghan

- Would not favor having an outside party do the review; could hire someone to help the Council do a council review.
- Often it's just a change in direction that results in wanting a new manager; not so much that he/she was a bad manager.

*Comm. Cohen

- Not having a contract has positive effect of having the manager understand that he/she is accountable to the council on a daily basis.

*Chair Plumb

- No question the evaluation process has not worked well, but do not favor enshrining in charter the methodology – i.e. the contract – would like council to see if there are other ways to do evaluations.

No motion made on this issue.

Motion by Comm. O'Brien that mayor nominate a professional (could be internal staff) to conduct a review process of the city manager every 3 years, seconded.

*Comm. Gooch

- Agree with sentiment but this is a policy recommendation
- Would not support requiring

*Comm. Davis

- We should charge mayor with duty to see that regular evaluations be done

*Chair Plumb

- Not related to motion on the floor
- We have not addressed it in regard to current mayor

*Comm. Valleau

- HR Director answers to City Manager; imagine if you were in role of designing the evaluation.

*Comm. Ranaghan

- Up to council to do the review

*Comm. Cohen

- Too prescriptive for charter

*Comm. O'Brien

- Intent was to design the process, not to do the review.

Motion that mayor nominate a professional (could be internal staff) to conduct a review process of the city manager every 3 years, fails 2-9 (O'Brien/Chipman)

5. h. Issue of budget

*Comm. Plumb reads the proposed language

Counsel tweak of language

“To direct the city manager in the preparation of any city budget which requires the specific approval of the city council, including the city operating budget,

capital improvement program budget, and the housing and community development budget, and to present such budgets to the city council for approval.”

*Comm. Ranaghan

- should have more general language rather than reference to HCD.
- Council decides what needs approval other than the operating budget
- Would not specifically name a state or federal program.

Motion to approve language as read by counsel by Comm. Cohen/second by Comm. Valleau

*Comm. Valleau

- Move to strike the language “housing and community development”

*Comm. Cohen

- Would this fall into catchall language if stricken?

Ans. Yes, HCD budget would still require council approval

Motion to strike the words “housing and community development” passes unanimously 9-0.

Motion to approve the language read by counsel and as amended passes unanimously 9-0

*Chair Plumb

- Will come back to Items 5. b. and 5. f.

Agenda Item #6.

*Chair Plumb

- This is the language presented by counsel reflecting our prior votes.

*Comm. Valleau

- Is this just discussion or vote?

*Chair Plumb

- Discussion but would like to get any issues out on table tonight

*Comm. Valleau

- Reviewed carefully and I approve them.

*Comm. Ranaghan

- Concerned about the votes on 12/10 and 3/ regarding parity in compensation

- Does the chair of the school committee have parity with the compensation of the mayor?

*Chair Plumb

- It is not tied to the compensation of the mayor.

- Language says “other than the mayor”

*Comm. O’Brien

- may want to change sound fiscal “management” to sound fiscal “oversight”

- present to school board by March 15; to city council by end of April

- parity in the recall provisions still in the technical amendments

- Would like to have Superintendent do the state of the schools address

*Comm. Gooch

-Supt may be better person to make the presentation to the council but not sure where that would go.

-Schools do have management responsibility for schools

-Parallels the state language

*Comm. Davis

-Could we say the “chair will direct the superintendent” to give annual address

*Comm. Valleau

-Like having chair of school board give annual address; parallel to mayor giving annual address. If you’re an elected official and head of a board, you should stand up once a year and speak for the body.

*Comm. O’Brien

-If you want the speech to be most effective, you may not have the most effective speech from a newly elected chair. Have the superintendent do the speech at the direction of the school board.

*Chair Plumb

-revise “mayor of the city” in section 2 to “mayor”

-first suggested change was to change mayor to superintendent – no motion

-“at the direction of the chair, the superintendent shall deliver....”

*Chair Davis

-could just say that the chair “or his or her designee”

Motion to add chair or “his or her designee” seconded; fails by a 4-5 vote (Plumb, Davis, O’Brien, Gooch)

Counsel – have corrected the “mayor of the city council” to mayor of the city
Withdraw replacing word management to “oversight”.

*Comm. Cohen

-Some members wanted to revisit name change to board of public education

*Chair Plumb

-Nothing proposed

Bring back language regarding 5. f. when Comm. Cohen is next present.

*Chair Plumb Cannot all be here all the time but try to make as many meetings as possible; please e-mail me with your availability for next meetings.

Adjourned.