

PORTLAND CHARTER COMMISSION MINUTES of APRIL 29, 2010

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

Agenda #2: Public comment on agenda.
*Charles Bragdon 31 Munjoy South
-Separate out the ranked choice voting
*Bob Higgins of Sheridan Street
-Would like elected mayor and ranked choice voting separated
-Should be individually looked at by the voters

Agenda #3: Approval of 4/22/10 minutes passed unanimously

Agenda #4: Announcements
*Chair Plumb
-Next meeting is May 6 with first reading of the Preliminary Report
-Would like comments back on draft preliminary report

Agenda #5: Discussion and preliminary agreement on remaining issues
a. Separate RCV and elected mayor questions?
*Comm. Valteau
-how can we decide this without knowing what the backup is?
*Comm. Chipman
-combine the majority support for mayor into the RCV question so that if RCV does not pass, then there would not be a RCV question.
-Would prefer a plurality mayor to having a runoff election
*Comm. Smith
-Think elected mayor and RCV should be combined
-Need to have a majority elected mayor; might not support elected mayor if not combined with majority election.
-RCV is a practical alternative to holding another election.
-Essential they be linked because of powers we have given the mayor
*Comm. Spritz
-Tend to think that primary impulse to have an elected mayor, not RCV or a majority mayor.
-Not so sure we can convince voters so well on the elected mayor
-RCV aspect should be downplayed if they are not separated
*Comm. Treverrow
-If separate them out, could end up with RCV but no elected mayor.
-Tied intrinsically with elected mayor position. Other methods are conceptually different than RCV.
*Comm. Cohen
-This is not whether you support RCV; it's a political question.

- If primary goal is to put forth elected mayor, is that goal affected by combining it with RCV? My discussions with people say yes.
- The elected mayor question has failed in the past. Not a foregone conclusion that mayor question will succeed and combining it with RCV is a risk.
- Would not support moving majority vote requirement to RCV as a separate question.
- *Comm. O'Brien
 - We have not really discussed any alternative to RCV
- *Comm. Davis
 - We haven't discussed because we felt RCV went together with the elected mayor.
 - What is the role of the charter commission? We need to craft the best proposal, and if this is the better way to go, then we should put it on the ballot this way.
- *Comm. Chipman
 - Why separate out RCV as a separate issue? We could separate out other issues such as 4 year term, salary etc. We should put it out as a single issue.
- *Comm. Cohen
 - RCV was taken up as a separate issue but as of today, what makes the most sense?
 - If we separate the questions, we have to specify the alternative.
 - Runoff election if no one gets a majority, just need to specify the details of when to hold it.
- *Comm. Spritz
 - Don't think there is anything sacrosanct about having a majority elected mayor; the reality is many mayors are elected by pluralities
 - Very few places use RCV and it can be undone as in Burlington, Vt.
 - But willing to put it together; voters can say no and Portland will continue to function as it does now.
- *Comm. Treverrow
 - Want mayor to be a dynamic position; runoff does not recognize candidates in same fashion as RCV.
 - Not our job to think about likelihood of success or failure.
 - Elected mayor has higher chance of helping RCV to succeed than the other way around
- *Comm. Davis
 - People I talk to have not had difficulty understanding RCV or been opposed to it.
 - If we have to have an alternative, we need to discuss in depth; not in a position to make a recommendation on it.
- *Comm. Ranaghan
 - Difficult decision. Since I do not support an elected mayor, I do not know which way to vote because I think RCV may sink the elected mayor.

-Cannot support elected mayor or a majority election, especially in an off-year election.

*Chair Plumb

-We crafted job description that will be dependent upon having majority support in the community so I do not want a mayor elected by plurality.
-Then we looked at RCV which I am now convinced is the best way to go.
-But we did not have debate about what other alternatives there were.
-Would prefer to have a separate question with a stated backup in case RCV failed so that we do not default to plurality election for mayor.
-Since 1969 we have voted on issue of elected mayor 3 times and each time it has failed.

*Comm. Davis

-All we're voting on now is a philosophical question – i.e. to have a total mayoral package on the ballot.

Motion (Spritz/Ranaghan) that the elected mayor question and RCV be combined on the ballot passes 9-2 (Cohen, Plumb)

b. Mayor's salary

*Chair Plumb

-Had a motion on the floor from Comm. Chipman to set the salary prior to nomination papers being taken out and leave it there for four years.

What we've done so far:

-Already decided on salary floor 1.5 times median household income for Portland

-Reconsidered having it set once every 4 years

-Three choices:

1. No adjustment to salary during 4 years.
2. Adjust if salary set at floor if median hh income changes and need to adjust to maintain the floor.
3. Adjust the salary annually to same degree as councilor's salaries are adjusted.

*Comm. Spritz

-Discussion of what non-union increases have been in past – Ans. generally 2-3%, most recently 0%.

-Would support those modest types of increases in mayor's salary.

-Easiest to understand of the alternatives.

*Comm. Davis

-Feel that it should stay tied to the economic health of Portland household, and this ties the salaries to a different index; philosophical shift from keeping mayor's salary grounded in economic health and well-being of Portland residents.

*Comm. Chipman

-Mayor is not a worker and do not favor giving him/her automatic adjustments which are not voted upon by public officials.

*Comm. Treverrow

-Even though the adjustment is proportional to that which councilors get, the mayor is paid significantly more than other councilors.

- The councilor adjustment is not in the charter so why would we put this in?
- *Comm. Cohen
 - Not fair to freeze the mayor's salary for 4 years, even though the city manager's salary, department head salaries etc. adjust, up, down or stay the same.
 - Councilor salaries are tied to non-union salaries and non-union salaries may well be higher than the mayor's salary will be.
- *Comm. O'Brien
 - Agree on the issue of fairness
 - Struggled with the notion that the mayor would be voting on the increase, but do not think that there is any problem putting a reasonable increase in his or her budget which would be voted upon by council.
- *Comm. Smith
 - Feel that it's a real job and we should treat it like one.
- *Comm. Ranaghan
 - Nothing in charter currently that ties the councilor increase to the non-union wage increases so by order council could increase their wages by 30%.
 - Should put constraint on councilor increases in charter.
 - Also don't forget other forms of compensation – health insurance, retirement, and could be others voted upon by the council.
- *Comm. Smith
 - Perhaps we need to include the issue of benefits in the charter; I assumed benefits generally provided to full-time employees would be available to mayor in addition to salary base.
- *Chair Plumb
 - Would this mean the mayor's salary would have to increase if it's in the charter that the increases is tied to increases in councilor's salary?
 - Ans. Yes if that's what put in the charter.
- *Comm. Chipman
 - Then absolutely opposed to this; if council voted a 20% increase for themselves (which would only be around \$1000 for them), the 20% would be much more for the mayor
- *Comm. Cohen
 - Not worried about huge increases, and if the council wished to give themselves a big increase, they could wait until the 4th year when they would be re-setting .
- *Comm. Valleau
 - This would be the only salary which would be on autopilot.
- *Comm. Spritz
 - Also not worried about councilors voting themselves a huge increase.
- *Chair Plumb
 - More comfortable tying it back to the source of the non-union cost of living escalator i.e. a cpi index of some sort.

-Do think we need to adjust the floor even if it doesn't adjust the mayor's salary.

*Comm. Treverrow

-Comfortable with alternative #2 above.

*Comm. Cohen

-Only talking about adjusting the mayor's salary because we are talking about a unique freeze for the mayor's salary.

-What if we changed the language to changes in another index such as manager's salary or another index?

Motion to amend Comm. Chipman's motion to substitute the language of Alternative # 3 regarding annual adjustments in the mayor's salary.

*Comm. Chipman

-If I withdraw my motion, would Comm. Cohen withdraw his motion?

Ans. Yes, only including it because of motion to freeze the salary.

*Comm. Smith

-Goal is that the mayor be paid a salary to be set by the council from time to time provided the salary shall be no less than the floor which has been established.

*Comm. Spritz

-Care about fairness and have some sense of what to expect in terms of compensation and that salary not be voted up and down depending upon the politics of the moment.

-Like Comm. Smith's proposal to keep it as minimalist as possible.

*Comm. Valleau

-Would support Comm. Smith's proposal

*Comm. O'Brien

-How is manager's salary adjusted? Ans. Done separately by non-union council subcommittee and then put in the budget.

-Should set before nomination papers are taken out, and allow adjustment over the 4 years.

*Comm. Ranaghan

-Generally favor what Comm. Smith has put forward.

-Think even the councilor salaries should be an open vote every year as well as that of the mayor.

*Comm. Cohen

-No freeze in salary and let council adjust it from time to time as it sees fit.

-Also comfortable with setting it and then letting it fluctuate with some sort of objective index.

*Comm. Davis

-Comfortable with Comm. Smith's proposal but do not want the floor to drop below the median household income.

*Chair Plumb

-Would like to have the floor and have the floor move with that median household income salary index, regardless of what the salary of the mayor is and would like to have the council set the mayor's salary, at the floor or

higher for four years, but have the capacity to have that salary impacted by some identifiable cost of living indicator.

*Comm. Smith

-Difference is that there would not be a freeze, as the council may set the salary from time to time, plus customary benefits

-Leave it to the council as to how long it is set for e.g. 2 years, 1 year, 4 years.

Withdrawal of pending motion on the floor on mayor's salary by Comm. Cohen

*Chair Plumb

-Shall we start with a clean slate?

*Comm. Davis

-Let's take alternative # 2 and add to that the ability of council to adjust above the floor

Motion (Smith/seconded) that the mayor shall be paid an annual compensation consisting of an annual salary to be set by the council from time to time at not less than the floor of 1.5 times the median household income for Portland, plus customary city benefits.

*Discussion of setting the salary initially before nomination papers are taken out and whether that had been voted on

*Comm. Spritz

-To understand: if we have the language already approved, plus the above language, then somewhere between November and nomination papers being taken out, the council would set the initial salary, council may adjust and then would adjust from time to time.

-Comm. Smith – would use the “prior to nomination papers being taken out” just for setting the initial salary.

*Comm. O'Brien

-Prefer a more structured approach to setting the salary would like to have it be more of an incremental adjustment rather than having entire package being available every year.

*Comm. Smith

-Sympathetic to idea of being able to know in advance what the pay would be, but would like to keep this somewhat minimalist.

-This would probably come up through the finance committee and

-Don't have any problems with setting the salary in advance; if someone is thinking about running, if it could drop substantially, that could make it impossible for someone to run.

*Comm. Cohen

-Value of first sentence is to set the initial salary so there will be a starting point; beyond that not much point in having it or not since every year there will be a budget.

-There is not much discussion about individual salaries, but council salaries are line items in the budget which are reviewed, and mayor has line item as well, just not separately voted on.

*Comm. O'Brien

-Think the budget process will sort this out.

Plumb Amendment to Motion: Salary to be set by the council once every 4 years prior to the nomination papers being available, not less than the floor, and that it be open during those four years only for cost of living escalators attached to an acceptable index, plus customary benefits (not automatic cola but council could increase it by cola).

*Comm. Plumb

- Every 4 years the salary is set.
- So people know in advance what the salary would be.
- No possibility of having the salary monkeyed with for political reasons, but not cut out the possibility of a cost of living increase.

*Comm. Ranaghan

- Could decrease the mayor's salary (subject to floor) every 4 years.

*Comm. Cohen

- Prefer the flexibility of Comm. Smith's amendment
- Would rather than have it go up automatically by the index, or it may increase without fixing it to an index.

*Comm. Chipman

- Should not have a required change in the mayor's salary in the charter.
- Should limit how much it can increase but have flexibility for increase.

*Comm. Davis

- Support Chair Plumb's amendment because it brings back predictability, whereas Comm. Smith's amendment would allow significant change in salary.

*Comm. Spritz

- Think it should be certain that there would be an annual cost of living increase, should not just be a possibility.

*Comm. O'Brien

- Like the flexibility of Comm. Smith's language; should not mandate a cola; could adjust salary and benefits with major swings in the economy if appropriate.

*Comm. Treverrow

- Prefer Comm. Smith's version for reasons outlined by Comm. O'Brien

Plumb amendment to Comm. Smith's motion fails 5-6 (Davis, Plumb, Valleau, Gooch, Chipman).

Smith main motion passes unanimously.

*Chair Plumb

- So this supersedes motion from prior meeting by Comm. Chipman.

c. Collaboration language on city and schools

*Comm. Cohen

Motion to add the language "To the extent convenient and lawful, the city and the school department shall endeavor to share staff and resources and otherwise cooperate with one another in order to provide city and school services in a cost effective manner."

*Comm. Cohen

- Would be put in appropriate place once in charter.

*Comm. O'Brien

-Like idea, but would change word convenient to “practicable” or “suitable”

*Comm. Spritz

-Like the idea of including this in the charter as direction.

*Comm. Davis

-Should go in a section that includes both the city and the schools rather than just under schools - .

Harry Pringle

-Language is fine; I would put it in Article VII, new section 2.

*Comm. Gooch

-Take out “and convenient”; it’s never convenient to change the way things are done, but the principle is a good idea and it should be recommended

*Comm. Smith

-Why the reference to “to the extent lawful”?

Harry Pringle

-Should leave that language in – sharing resources may raise some crossover legal issues.

*Comm. O’Brien

-Goal is to serve the public; Change “convenient” to “practicable”; consolidating may be cost effective but not serve the public.

*Comm. Ranaghan

-Would just leave this out; don’t want wishy-washy language in charter; the council and school committee could do this today; language doesn’t add anything.

Motion to change word to “practicable” passes 10-1 (Ranaghan)

Motion to delete word “cost” fails 3-8 (Davis, Valleau, Treverrow)

*Comm. Davis

-Now uncomfortable with language because only focused on cost effectiveness; that is very narrow; should not be the only goal.

Motion (Chipman/Davis) to amend “including but not limited to cost effectiveness” fails 4-7 (Chipman, Treverrow, Davis, Spritz)

Motion (Smith) to amend in order to provide “better” city and school services in a cost effective manner

*Comm. Cohen

-That doesn’t allow changes that simply maintain the status quo.

-Suggest that it say that they come together for one of two reasons

1. improve the quality or
2. save money

Smith amendment passes 3-8 (O’Brien, Cohen, Ranaghan)

Main motion as amended passes 10-1 (Ranaghan)

d. Two technical issue items.

Article I, Section 2 last sentence “provided, however, that this provision shall not be construed to prohibit a member’s right to seek election to a city or school office.”

-Counsel agree this should be deleted.

Fund balance language

-At request of Comm.Ranaghan, this would be held over.

6. Language on popularly elected mayor language

*Comm. O'Brien

-Could a city or school employee run for office and retain their position until they are elected?

Ans. Under current City Personnel Policy, a city employee could not even take out nomination papers to run for a city or school office.

*Comm. Ranaghan

-Do not favor the term limit for mayor to two terms. Wonder about having the mix of term limited mayor with non term limited councilors.

*Comm. Valleau

-Issue of ability to direct the preparation of the agenda.

-How would a member of city council put an item on the agenda if the mayor did not want it on the agenda.

*Comm. Cohen

-Currently no guidance on how agenda is managed; but by custom if a councilor wants an agenda item, then it is put on the agenda.

Counsel

-Thought this did mean the mayor determined what went on agenda

*Comm. Smith

-If chair of meeting makes a ruling, it can be overturned by members of the council.

-Does Robert's Rules have anything similar about who can put things on an agenda?

-Is there a parliamentary rule answer to this?

Ans.

Can look at Robert's Rules and other charters on this issue.

*Comm. Valleau

-If mayor controls agenda and the budgets, this is a powerhouse mayor.

-Was that the intention of the Commission when it was crafted.

*Comm. Cohen

-My interpretation was that this was not really changing how items get on the agenda, just who prepares the agenda. Where does the responsibility reside for preparing it?

*Comm. Gooch

-Agree that if there is any danger that a mayor would take the bit in his mouth and run, then that would be an assault on the council as a whole and since mayor cannot do anything without 4 other councilors so there is still a balance of power

*Comm. Chipman

-Does raise concern that a councilor can be stonewalled and not get something on the agenda; curious what other cities and towns do on this.

*Comm. Ranaghan

-If go to section 11, Procedure, could add in there that any city councilor can add an item to the agenda upon notification to mayor.

*Comm. Smith

-Having raised this, it's the prerogative of the council to take items out of order or add items to the agenda so if mayor tried to keep issues off the agenda, there would be political consequences. Overlay of parliamentary rules and reference to "preparation" of the agenda means it does not trump parliamentary rules.

Motion (Cohen) to change "said" to "such" in 5 a. of Mayor's powers and duties passes unanimously

*Comm. O'Brien on changing issue of being able to run for council

-Would like some conversation on whether an employee of city or schools should take out nomination papers.

No clarity in state law on whether school employee can run for school office, but not sure whether school employee could run for council.

No motion made on this issue.

*Comm. Ranaghan

-Am troubled by requiring supermajority for council to reject mayoral appointment.

*Comm. Cohen

-Commission wanted it to be decided by a super majority

*Comm. Smith

-Think that it should be a supermajority in favor of the mayor's appointments.

Motion to amend (j) to be 5 votes rather than 6 to reject mayoral appointment fails 2-9 (Ranaghan, Valleau)

*Comm. Cohen

-In (d), any concern about language "to oversee the implementation of city policies through the office of the city manager" in terms of clarity, because we have tried to make sure there is a distinction between role of mayor as political leader and role of manager as the administrator.

Counsel

-Would need more clarification as to what the Commission's intent was

*Comm. Spritz

-Think the original language was "to implement" but then we backed off it to say "oversee the implementation"

-Understanding that the city manager makes the city run, but there are policies which guide it.

*Comm. Smith

-Problem would be if mayor wants to tell assistant city manager or director of public services what to do going around the manager.

-Might want to make it clear who these folks are working for.

*Comm. Spritz

-Think "through the office of the city manager" says this already and the amendment is unnecessary.

Smith amendment “provided however, direct supervisory responsibility for employees below the level of city manager shall remain with the city manager” to language in (d) fails for lack of 7 votes, 6-5 (O’Brien, Davis, Cohen, Ranaghan, Spritz) (since this is a change in the language, not an amendment to a pending motion)

*Chair Plumb

-Discussion of rule: Final passage of any item shall require 7 affirmative votes; feel that what we intended last summer was that we would not put anything out that did not have the vote of 7 members of the group.

*Comm. Gooch

-Feel that changes to the items we have already voted upon should require 7 votes even though this is on first reading.

Consensus that 7 votes are needed.

*Comm. Valleau

-Going back to issue Comm. Cohen raised

-Can well imagine circumstances where an activist mayor could look at duties and decide “I’m in charge of agenda; in charge of budget and in charge of implementation of policy”; this is a very strong mayor.

-Is this what Commission intended

Motion to delete letter (d) in its entirety

*Comm. Gooch

-Wide impression in community that city manager had capacity to fast track things the city manager agreed with, and delay things which city manager disagreed with, and that it was difficult to get leverage on that.

-Imbued mayor with “soft” powers so that mayor had certain degree of persuasive ability over city manager position if they were to have any ability to sway policy decisions which were a change in direction.

-While section (d) in the hands of a run amok mayor, we have not given the position the degree of autonomy which would allow them to dictate.

-It provides an important tone for the position vis a vis the political arm and administrative arm of Portland’s government.

*Comm. Smith

-This is the accountability piece; what we are expecting in this position is that the mayor move the ball along on policy

*Comm. Spritz

-Like that we have created a document that a wide range of personalities and political scenarios can play out.

-We are carving out a central position in city government but think these people will be able to reach consensus for the good of Portland.

*Comm. Cohen

-Don’t think we should change the language at this point but would be interested if counsel finds any tweak that might be helpful.

Motion to delete letter (d) in its entirety fails 2-9 (Valleau, Ranaghan)

Chair Plumb: Review of process

-Not precluded from changing these items between May 6 and sending recommendations to city council

-First reading on the 6th

Final reading and a vote on May 13
Published as preliminary report on May 21
Series of public hearings or events or conversation to get comments
Second meeting in June, can propose changes based on public comment
First meeting in July, further changes possible from public comment
Second meeting in July final vote of Commission; no more changes
Final report published on July 19

6. School language

*Comm. Ranaghan

-On school budget language in section 5, we require at least two joint meetings to review school budget

-Should not dictate number of meeting

Motion to strike the words “at least twice” from Article III, section 5.

*Comm. Cohen

-Think we did discuss having at least two meetings.

*Comm. Smith

-Think one big issue was of communication between city and schools on budgetary issues and this would facilitate communication.

*Comm. Ranaghan

-Can just meet the letter of the law with 2 short meetings rather than one large productive all day meeting.

Motion to remove words “at least twice” from Article III, Section 5, fails 4-7
(O’Brien, Valleau, Spritz, Ranaghan)

Chair Plumb – please get me your comments, edits of the draft of the report which has been circulated.

Adjourned.