



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: May 3, 2021  
SUBJECT: Damage Claims and Fair and Moral Claims (Charter Sections 1-106 and 1-107)

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**BACKGROUND:** When the City adopted Charter [Section 1-107](#) in 1946, the City had “governmental immunity,” which prevented lawsuits against the City, even if a person was injured by City actions. Section 1-107 allows Council to pay claims barred by immunity (or for other reasons), if the claims are “fair and moral obligations of the City.” For example, the City has used this provision to pay claims by bystanders hit by fire or police vehicles and claims for property damage caused by sewage back-ups.

Government immunity laws have since changed. Now, the City can be sued in certain circumstances, such as for torts. A “tort” is a wrongful act (other than a breach of contract) that leads to civil legal liability. Tort claims against the City can be filed with the City’s Risk Management Division or brought as a lawsuit. The City generally pays tort claims when a person is injured or property is damaged by the City’s negligence. However, the City through Risk Management generally denies claims if it is not negligent (such as if a water main break damages a home or police actions damage property but are appropriate under the circumstances). In addition, the City remains immune from suit for some government acts.<sup>1</sup> When immunity applies, a person who has been injured by the City can file a fair and moral claim—but the City has been reluctant to pay fair and moral claims since 1990.<sup>2</sup>

**REASON FOR PROPOSED AMENDMENTS:** Section 1-107 is outdated and confusing and has not provided a helpful remedy for people injured by the City’s actions for almost 30 years. We propose merging Sections 1-106 and 1-107 to maintain the values behind them (that the City should pay claims for which the City is legally or morally liable) and to allow the Council to direct the payment of claims when it is undisputed that the City caused the injury.

**PROPOSED AMENDMENTS:** The redline below sets forth proposed amendments. NOTE: The proposed amendments require the adoption of City Code. The Auditor’s Office would propose possible Code provisions for Council consideration.

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<sup>1</sup> It is difficult to determine whether the City is immune from suit before a claimant files a lawsuit, which further hinders the ability of community members to effectively file fair and moral claims (especially without a lawyer).

<sup>2</sup> See, e.g., *Portland Mercury* (2015): [Claim Dumpers: A Decades-Old Law Says City Hall Should Do the Right Thing. No one Remembers It](#); *The Oregonian* (2017): [A ‘Silent Coup’ at City Hall](#); *The Oregonian* (2019): [Portland Reverses Course, Will Pay for Damage by Burst Water Main](#).

## **Redline:**

Note: *Italicized double-underlined* text indicates text that has been moved.

### **Chapter 1. Corporate Existence and Powers**

#### **Article 1. Powers, Rights and Liabilities**

##### **Section 1-106. Damage Claims, Insurance.**

(a) Notice of and claims for damages arising out of the alleged torts of the City and those of its officers, employees and agents acting within the scope of their employment or duties, must be presented within the time prescribed by law. *The Commissioner In Charge may negotiate, compromise and settle any tort claims and may authorize the payment of any tort claim in an amount not to exceed five thousand dollars (\$5,000). Payment exceeding five thousand dollars (\$5,000) for any tort claim must be authorized by an ordinance.*

(b) The Council may, by ordinance, direct the payment or settlement of any claim for damages, *regardless of the City's negligence or legal liability, when it is undisputed that the damages to be paid were caused by the acts or omissions of the City or its officers, employees or agents acting within the scope of their employment or duties. The Council shall adopt by ordinance rules and procedures for the filing, evaluation, and payment of such claims.*

(c) The Council may, by ordinance, direct the payment of claims *asserted by employees for the replacement of personal property damaged in the course of performing their employment duties.*

(d) The Council shall establish a Loss Reserve Fund and shall annually budget an amount sufficient to maintain such Fund on an actuarially sound basis. The monies in such Fund may be invested and reinvested in the like manner with other City funds and the earnings from such investment and reinvestment shall be credited to the Fund. Payments may be made from the Loss Reserve Fund to pay claims against the City, its officers, employees and agents, procure insurance against such liability, and pay costs related to the payment of claims including but not limited to payment of investigative, legal and administrative expenses. In the event the Council shall deem it advantageous to procure insurance against claims, the existence of insurance shall be considered in determining the funding necessary to maintain the Loss Reserve Fund on an actuarially sound basis.

~~*The Commissioner In Charge may negotiate, compromise and settle any claims and may authorize the payment of any claim in an amount not to exceed five thousand dollars (\$5,000). Payment exceeding five thousand dollars (\$5,000) for any claim must be authorized by an ordinance.*~~

##### **Section 1-107 Certain Fair and Moral Obligations May Be Paid.**

To the end that the Council may provide for paying claims which it finds to be fair and moral obligations of the City but limited to claims that are barred by Charter exemption or by reason of governmental immunity ~~*or that are asserted by employees for the replacement of personal property damaged in the course of performing their employment duties,*~~ it may in its discretion direct payment or settlement, provided that an affidavit of the claimant or person representing the claimant and having knowledge of the facts is filed with the City Attorney within thirty (30) days after the event which caused the claim (unless the Council, upon proof of a good excuse, permits later filing) showing therein the name, age, and address of the claimant, the time and facts which give rise to the claim, the persons present, if any, able to substantiate the facts and circumstances, the name of the City officer or employee first contacted with reference to the claim, the name and address of the physician and/or surgeon who attended the claimant if the claim be based on personal injury treated by a physician or surgeon, a description of the injuries if

~~personal injury was sustained, a particular statement of the damage, if real and/or personal property was damaged, the places of residence and address of the claimant during three (3) years preceding the claim, a detail of the expense constituting the claim, in so far as expense shall have been and/or probably will be incurred, and such other data as will give the City an opportunity to readily ascertain the facts, extent of injury, cost resulting therefrom and the integrity of the claimant. When insurance (covering the claimant, the City or the City employee involved) applies, the claim shall not be allowed as to any portion covered by the insurance. No claim shall be allowed the enforcement of which would be barred by the statute of limitations, and no payment shall be made unless the claimant accepts the amounts allowed as in full compromise and settlement of all amounts claimed or to be claimed against the City, its officers or employees arising from the same facts. In the event that no settlement is made, nothing herein contained or done hereinunder shall prejudice the City in any defense that it may have in any suit or action. Nothing contained herein shall be construed as giving any right to institute or maintain any suit or action which would not otherwise exist.~~



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: September 15, 2020  
SUBJECT: Vacancies (Charter Section 2-206)

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**BACKGROUND:** Charter Section 2-206 addresses vacancies in elected offices, including provisions covering when a vacancy in office exists, how a vacancy is filled, and resignation processes. This Section has been amended several times, most recently in 2012.

**REASONS FOR PROPOSED AMENDMENTS:** The process for filling vacancies is confusing and difficult to interpret. Its tight timelines also violate federal laws for overseas and military ballot mailing and violate state law by failing to accommodate many potential election scenarios, such as recounts and logistics required for vote-by-mail. The reliance on special elections can also cause lengthy vacancies and be costly to the City. For example, Commissioner Fish's death on January 2, 2020 resulted in a vacancy lasting approximately nine months and a special run-off election costing the City approximately \$700,000.

**PROPOSED AMENDMENTS:** In subsection (a), we propose adding that a vacancy in office may exist because of an elected official's failure to satisfy the qualifications for office, as described in Sections 2-202 and 2-502 (if an officer shall cease to have the qualifications for office listed, "the office shall immediately become vacant"). For example, this may occur if an elected official failed to be registered as a voter or reside within the City, or if the Auditor fails to maintain a professional certification.

We propose that the Charter Sections on filling vacancies (subsections (b)-(d) and (f)) be amended to require that: 1) if the vacancy occurs more than 2 years into the vacating officer's term, Council shall appoint a person to serve for the remainder of the vacated term; or 2) if the vacancy occurs less than 2 years into the vacating officer's term, the successor shall be elected at the next election and Council shall adopt an ordinance to describe the election process for filling the vacancy in more detail.

We propose clarifying the resignation process (subsection (e)) by adding that Council must accept and approve a resignation by resolution and requiring that the resolution set forth the process for filling the vacancy that complies with Section 2-206.

We propose replacing the outdated titles in subsection (g).

The redline below sets forth the proposed amendments.

**Redline:**

**Chapter 2. Government**

**Article 1. The Council**

**Section 2-206. Vacancies in Office, Filling of Vacancies.**

(a) A vacancy in office shall exist when the Mayor, a Commissioner or the Auditor fails to qualify by taking the oath following ~~his or her~~ their election, or when any officer or employee dies, resigns, is removed from office, is convicted of a felony, is judicially declared to be mentally incompetent, is convicted of an offense which constitutes corruption, malfeasance or delinquency in office, forfeits ~~his or her~~ their office under specific provisions of this Charter, fails to satisfy the qualifications for office, or is elected or appointed to a different office, and qualifies, takes and assumes the duties of such different office.

(b) If a vacancy in an elective office under this Charter occurs more than two (2) years into the vacating officer's term, the majority of the remaining Council members shall no later than ninety (90) days after the vacancy occurs, by resolution appoint a person who satisfies the qualifications for the vacated office to serve in the vacant position for the remainder of the unexpired term.

- (1) Notwithstanding section (b), if the vacancy occurs within 180 days of the end of the vacating officer's term of office, the Council is not required to appoint a successor.
- (2) If a person who was a candidate for an upcoming term of the vacated office received a near-majority of the votes or was nominated to a run-off, the Council is encouraged but not required to appoint such person to fill the vacancy, if the person remains qualified for the office.
- (3) A Council member shall not cast a vote for a family member or any other person with whom the Council member has a relationship that may create a conflict of interest.

(c) If a vacancy in an elective office under this Charter occurs less than two (2) years into the vacating officer's term, a successor shall be elected. Such successor shall be elected at the next regular primary or general election, or at a special election held in concert with the next statewide election, whichever occurs first, and shall hold office for the remainder of the unexpired term. The Council shall by ordinance prescribe the manner and process for the election to fill the vacant position.

~~more than one hundred (100) days preceding the regular primary election to be held in the fourth year of the term of that office, or less than seventy one (71) days preceding the regular general election to be held in that year, the Council, by a single resolution, shall call for two (2) special elections not more than forty five (45) days apart. The first special election will be for the purpose of nomination. It shall be held not more than ninety (90) days after the vacancy occurs, unless the Council finds reasonable cause for delay beyond ninety (90) days. If one candidate receives a majority of the votes cast for the office, that candidate will be deemed elected to fill the unexpired term of the office and the second special election will not be held. If no candidate receives a majority, one of the two candidates receiving the highest number of votes cast in the first special election will be elected to fill the unexpired term in the second special election.~~

~~(e) If a vacancy occurs in an office elective under this Charter less than one hundred and one (101) days and more than seventy (70) days preceding the regular primary election to be held in the fourth year of the term of that office, the Council shall call for a special election to be held not more than forty five (45) days following the regular primary election. The regular primary election will be for the purpose of nomination to fill the unexpired term and nomination of candidates for the next four year term of the~~

office to be voted upon in the regular general election. If one candidate receives a majority of the votes cast for the office, that candidate will be deemed elected to fill the unexpired term of the office and the special election will not be held. If no candidate receives a majority, one of the two candidates receiving the highest number of votes cast in the regular primary election will be elected to fill the unexpired term in the special election.

~~(d)~~ If a vacancy occurs in an office elective under this Charter less than seventy one (71) days preceding the regular primary election, but more than seventy (70) days preceding the regular general election, to be held in the fourth year of the term of that office, and the incumbent vacating the office:

~~(1)~~ Was one of two or more candidates for the same office in the regular primary election, then if an opposing candidate was nominated by a majority of votes cast in that primary, that candidate will be deemed elected to fill the vacated office until the regular general election and the candidate elected at the regular general election will fill the balance of the unexpired term. If no candidate opposing the incumbent was nominated by a majority of votes cast in that primary, the Council shall call for a special primary election as provided in paragraph (2) of this subsection.

~~(2)~~ Was an unopposed candidate for the same office in the regular primary election, then the Council shall call for a special primary election. If the special primary election is held less than one hundred and one (101) days preceding the regular general election and no candidate is nominated by a majority of votes cast, the candidate elected in the regular election will fill the balance of the unexpired term. If the special primary election is held less than one hundred and one (101) days preceding the regular general election and a candidate is nominated by a majority of votes cast, that candidate will be deemed elected to fill the balance of the unexpired term. If the special primary election is held more than one hundred (100) days preceding the regular general election and a candidate is nominated by a majority of votes cast, that candidate will be deemed elected to fill the balance of the unexpired term.

~~(3)~~ Was not a candidate for the same office in the regular primary election, then if a candidate is nominated by a majority of votes cast in that primary, that candidate will be deemed elected to fill the balance of the unexpired term. If no candidate is nominated by a majority of votes cast, the Council shall call for a special election in which the candidate receiving a majority of votes cast will be deemed elected to fill the balance of the unexpired term.

Any election required by this subsection, between two nominees who received the highest number of votes cast in a prior election, shall be held not more than forty five (45) days after the prior election.

~~(ed)~~ A person holding an office elective under this Charter may file with the Auditor a written notice of intent to resign from office on a specific future date of the occurrence of a specific event within the unexpired term of the office. The resignation is subject to the approval and acceptance of the Council then may by resolution, which shall direct the manner and process for filling the vacancy schedule and hold the special election or elections, as provided in subsections (b) through (d) of this Section, although no vacancy has occurred. However, no candidate elected to fill an unexpired term under this subsection may take and assume the duties of the office unless and until the vacancy occurs. If the resignation of the Mayor or a Commissioner will go into effect upon the appointment of a successor, the resigning Council member may cast a vote on the appointment of the successor, as described in subsection (b), unless the Council member is resigning from office due to charges of or a conviction for corruption, malfeasance or delinquency in office, a failure to satisfy the qualifications for office, or because they are subject to a recall election.

~~(f) If a vacancy occurs in the Office of the Auditor, the Council may fill the office by appointment pending election as provided therein.~~

~~(g)~~ In the event of the death or crippling disability preventing the performance of three (3) or more members of the City Council due to natural disaster, calamity, accident or enemy attack, the following City officials in the order named shall succeed to the vacancies on the City Council: City Auditor, City Attorney, ~~Director of Office of Fiscal Administration~~ Chief Administrative Officer, and the Chiefs of Staff ~~executive assistants of disabled Council members in the order of their seniority as an executive assistant~~. Any individual serving under this Section shall have all qualifications required in this Charter for an elected official. The City Council thus constituted shall serve as an interim Council for the purpose of transacting necessary City business. The interim Council so constituted shall as soon as practical select from among qualified citizens of the City of Portland, as defined by Section 2-202 of this Charter, persons to serve as members of the City Council. The persons so selected shall serve until the next regular election. The City Council as thus constituted shall, if the regularly elected Mayor is not a member thereof, elect one of their number as Mayor. Members of the Council as thus constituted shall serve as City Commissioners by this Charter. The Council as constituted under authority of this subsection shall meet in the City Hall, if possible, but may meet at an alternate location which shall be designated in advance by the Council as an alternate site for the transaction of City business. In the event of martial law, the Council shall be organized as by this subsection provided, and it shall function to the extent possible under the order establishing martial law. The provisions of this subsection shall be supreme in the event it shall be employed, notwithstanding any other provisions of this Charter or ordinances of the City in conflict therewith.



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: September 15, 2020  
SUBJECT: Office of the Auditor (Charter Section 2-501 and other references)

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**BACKGROUND:** Portland has had a City Auditor since 1868 and an elected City Auditor since 1891. Historically, the Auditor served as the City's chief financial officer, responsible for accounting and clerical functions. Over time, accounting duties have moved to the City's Bureau of Revenue and Financial Services, and the Auditor's Office has taken on additional oversight and accountability responsibilities.

Today, the mission of the Auditor's Office is to promote open and accountable government by providing independent and impartial reviews, access to public information, and services for City government and the public. The Auditor's Office includes 51 employees in the following divisions: Archives & Records Management, Audit Services, Independent Police Review, Ombudsman, and Operations Management (which includes Council Clerk/Contracts, Elections, and Lobbying and Political Consultant Registration programs).

In 2017, voters approved Charter amendments to reflect the evolution of the Auditor's oversight functions and add safeguards to protect the independence of the Auditor's accountability work (see, e.g., [Council Resolution 37265](#)). The Charter amendments added references to the "Auditor's Office" to Chapter 2, Article 5 and Chapter 4.

**REASON FOR PROPOSED AMENDMENTS:** The Auditor proposes changing the office's name to: "City Accountability Office." The name "Auditor's Office" is often misunderstood (usually, as having a financial or accounting focus) and is not descriptive of the office's modern purpose. Similarly, the federal government's oversight office [changed its name](#) from "General Accounting Office" to "Government Accountability Office" in 2004. In 2019, an outreach consultant hired by the Auditor to improve the office's community engagement efforts suggested the name change in response to interviews with community groups.

**PROPOSED AMENDMENT:** Replace "Office of the Auditor" and "Auditor's Office" with "City Accountability Office" throughout the Charter. The redline below sets forth proposed amendments.

## **Redline:**

*NOTE: This redline shows proposed amendments to existing Charter language. The Auditor's Office has proposed additional amendments to these sections in other memos, which are not reflected in this redline.*

## **Chapter 2. Government**

### **Article 5. The Auditor**

#### **Section 2-501. ~~Office of the Auditor~~ City Accountability Office.**

To ensure an open and accountable City government, the ~~Office of the Auditor~~ City Accountability Office is established. The Office shall be under the supervision and control of the Auditor of the City of Portland.

#### **Section 2-503. Independent Authority.**

The Auditor and the ~~Office of the Auditor~~ City Accountability Office are administratively independent of the Mayor, City Council, and City departments, bureaus and other administrative agencies in the exercise of the Auditor's duties under this Charter.

#### **Section 2-506. Administrative Powers.**

(a) Administrative Authority. The Auditor may establish such rules for the ~~Office of the Auditor~~ City Accountability Office as the Auditor determines necessary to carry out the duties of the Auditor under this Charter. Prior to the adoption, amendment or repeal of any rule, the Auditor shall provide reasonable public notice and opportunity for comment. The Auditor may adopt interim rules without prior notice upon finding that failure to act promptly will result in prejudice to the public interest and shall be effective for a period of not more than 180 days.

(b) Deputies and Employees. The Auditor may appoint and remove one chief deputy. In addition, the Auditor may deputize other staff in the ~~Auditor's Office~~ City Accountability Office to perform duties required by the Council or the Charter. The Auditor may appoint employees and establish their compensation. The Auditor may determine the number of employees necessary for the efficient and economic performance of the ~~Office of the Auditor~~ City Accountability Office, subject to funding by Council. Employees may perform any act or duty required by the Auditor, and the Auditor shall be responsible for their conduct. The Auditor shall establish and administer human resources policies and rules for the ~~Office of the Auditor~~ City Accountability Office that are consistent with City human resource policies and rules, including classification and compensation, except where the Auditor determines in writing that a City human resources policy or rule impairs the Auditor's independence or ability to carry out the Auditor's duties under this Charter. The Auditor's human resource policies and rules shall provide functionally equivalent protections as the Classified Service, including for-cause disciplinary review procedures for all ~~Office of the Auditor~~ City Accountability Office employees with the exception of the Chief Deputy Auditor, Ombudsman, and Audits Director; employees hired under Section 2-507(a)6. of this Charter who are designated by Council as at-will; and employees subject to a collective bargaining agreement.

(c) Internal Controls and Periodic Review. The Auditor shall ensure that the ~~Office of the Auditor~~ City Accountability Office has adequate internal controls, complies with all applicable laws, and operates efficiently. The Auditor shall contract periodically, but no less than every four years, with outside service providers to conduct organizational efficiency and compliance assessments, the results of which shall be made public.

(d) Procurement. The Auditor has all authority granted to a contracting agency under state law to procure or supervise the procurement of goods, services and personal services the Auditor finds necessary for the proper functioning of the ~~Office~~ City Accountability Office. The Auditor shall adopt administrative rules governing the Auditor's procurement practices and procedures that are consistent with City procurement policies and rules, except where the Auditor determines in writing that a City procurement policy or rule impairs the Auditor's independence or ability to carry out the Auditor's duties under this Charter.

(e) Legal Services. The Auditor may obtain legal advice and representation from the City Attorney or may retain or employ independent legal counsel. If the Auditor retains or employs independent legal counsel, the ~~Office of the Auditor~~ City Accountability Office shall be the client and is entitled to the benefits and privileges thereof.

(f) The Auditor may obtain advice, services and assistance from any City department, bureau, administrative agency, officer, employee or agent in the performance of the Auditor's duties under this Charter or as may be prescribed by ordinance.

#### **Section 2-509. Office of the Ombudsman.**

(a) The Office of the Ombudsman is established within the ~~Office of the Auditor~~ City Accountability Office. The Office of the Ombudsman shall be under the supervision and control of the Auditor, who is solely responsible for its operation and management. The purpose of the Ombudsman is to provide an impartial office, readily available to the public, that is authorized to investigate the administrative acts of City departments, bureaus and other administrative agencies, issue reports and recommend changes with the goals of safeguarding the rights of persons and promoting high standards of fairness, competency, efficiency and justice in the provision of City services.

(b) The Auditor shall appoint and may remove the Ombudsman.

(c) The Office of the Ombudsman shall be guided by generally accepted standards for government ombudsmen offices serving the public.

(d) Pursuant to a complaint or on the Ombudsman's own initiative, the Ombudsman is authorized to investigate any administrative act of a City department, bureau or other administrative agency, including the ~~Office of the Auditor~~ City Accountability Office; recommend changes to City policy, practice or procedures; and issue public reports.

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#### **Chapter 4 Civil Service**

##### **Article 2. Merit System**

##### **Section 4-201. Merit System.**

Consistent with all applicable federal and state laws, the City Council shall provide by ordinance for the establishment, regulation, and maintenance of a merit system governing personnel policies and rules necessary for effective administration of the employees of the City's offices, bureaus, and agencies, other than the ~~Office of the Auditor~~ City Accountability Office, including but not limited to classification and pay plans, recruitment, examinations, disciplinary actions, types of appointments, relationships with employee organizations, and appeals and hearings. Such ordinances shall be consistent with the merit principles in Article 1. Employees in the ~~Office of the Auditor~~ City Accountability Office shall be subject to the policies and rules established by the City Auditor under Chapter 2, Article 5 of this Charter.

**Chapter 4 Civil Service**  
**Article 3. Classified Service**  
**Section 4-301. Classified Service.**

The classified service in the City shall consist of all positions in the government of the City except all officers chosen by popular election or by appointment by the City Council, all administrative staff of each City Council member, employees in the ~~Office of the Auditor~~ City Accountability Office, the deputies of the City Attorney, members of all boards and commissions, and all bureau directors hired after December 31, 2000. In addition, at the recommendation of the person responsible for administration of personnel issues, and with approval of Council by ordinance, employees may be excluded from classified service if they are in a classification with a major role in the formulation of policy that requires the exercise of independent judgment and are hired after the effective date of such ordinance.

The Mayor shall appoint and may remove the Chief of Police.

*NOTE: The term "Office of the Auditor" is also used in [Section 2-206. Vacancies in Office, Filling of Vacancies](#), subsection (f), which states: "If a vacancy occurs in the Office of the Auditor, the Council may fill the office by appointment pending election as provided therein." The context of this provision indicates that "Office of the Auditor" is intended to refer to the elected City Auditor specifically, rather than the Auditor's Office in general. The Auditor's Office proposes that this language be corrected to read: "~~O~~ffice of the Auditor" – and it is possible that this correction may be made before the Charter Commission is seated.*



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: May 3, 2021  
SUBJECT: Enforcing the Auditor's Powers and Independence (Charter Section 2-503)

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**BACKGROUND:** Portland's elected City Auditor is responsible for carrying out the City's accountability and oversight work, which includes performance audits and complaint investigations. Through voter-approved Charter amendments in 2017, the Auditor's Office became structurally independent from the bureaus that are subject to the Auditor's oversight.

**REASON FOR PROPOSED AMENDMENTS:** For the independent authority of the Auditor's Office to be meaningful, the Auditor must have the right to defend the independence of the Office, as well as the right to enforce the powers granted by voters.

A Charter amendment is needed to provide the Auditor with explicit and limited authority to file proceedings in court to protect the authority of the Auditor granted by Charter, should there be any incursion into the Auditor's independence (e.g., Council assigns the Auditor a new duty without the Auditor's consent, in violation of [Charter Section 2-507\(a\)\(6\)](#)) or noncompliance with the exercise of the Auditor's powers (e.g., a bureau refuses to provide auditors with access to records in violation of [Charter Section 2-508\(f\)](#)). In the absence of the explicit authority to seek a judicial remedy, the Auditor is without effective recourse.

Currently, [Charter Section 1-101](#) authorizes the municipal corporation to sue and be sued, and [Section 1-103](#) allows legal proceedings to be brought in the name of the City of Portland.

**PROPOSED AMENDMENT:** We propose adding language to Charter Section 2-503, which addresses the Auditor's independent authority, to explicitly grant the Auditor the authority to seek a judicial remedy, such as an injunction or writ of mandamus, to enforce the Auditor's Office's powers and responsibilities. The redline below sets forth the proposed amendment.

**Redline:**

**Chapter 2. Government**

**Article 5. The Auditor**

**Section 2-503. Independent Authority, Enforcement.**

The Auditor and the Office of the Auditor are administratively independent of the Mayor, City Council, and City departments, bureaus and other administrative agencies in the exercise of the Auditor's duties under this Charter. The City Auditor may commence and maintain an action or proceeding against the Mayor, City Council, or City departments, bureaus or other administrative agencies in any court of competent jurisdiction, to seek declaratory, injunctive, or other appropriate relief regarding, any provision of this Article. Before the filing of any such action or proceeding, the City Auditor must make a good faith effort to resolve any conflict outside of court. Should such an action or proceeding be initiated, the parties shall be represented by qualified counsel independent of the City Attorney's Office.



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: May 3, 2020  
SUBJECT: Auditor – Budget and Administrative Powers (Charter Sections 2-505 and 2-506)

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**BACKGROUND:** Portland has had a City Auditor since 1868 and an elected City Auditor since 1891. Historically, the Auditor served as the City's chief financial officer, responsible for accounting and clerical functions. Over time, accounting duties have moved to the City's Bureau of Revenue and Financial Services, and the Auditor's Office has evolved into the City's oversight and accountability office. In 2017, voters approved Charter amendments to reflect the evolution of the Auditor's oversight functions and add safeguards to protect the independence of the Auditor's oversight work (see, e.g., [Council Resolution 37265](#)). These safeguards include increased budget independence and the ability to employ independent legal counsel.

**REASON FOR PROPOSED AMENDMENTS:** Council authority over the Auditor's budget decisions remains problematic because Council members—whose bureaus the Auditor's Office audits and investigates—decide which and how many resources the Auditor's Office will receive. While the 2017 Charter amendments were a step toward ensuring that the Auditor's budget is based on the Auditor's responsibilities rather than Council priorities, the broad Charter language requires a framework for implementation. The Auditor proposed such a framework in her FY 2019-20 requested budget, which sought to establish a funding cap over five years and create a reserve fund for the Auditor's Office to retain its underspending at the end of the fiscal year, up to \$500,000. Council approved one facet of the framework through a budget note. The Auditor has unsuccessfully renewed the request for the remainder of the framework to be approved by Council in her subsequent requested budgets—FY 2020-21 and FY 2021-22. We therefore propose establishing a maximum funding level for the Auditor's Office that requires the Auditor to manage spending below the cap—without Council authority over the Auditor's line-item budget decisions. The funding cap would increase annually, but the Auditor would be required to decline surplus funds when they are not needed, and the maximum funding level could be decreased in fiscal emergencies.

The 2017 Charter changes also gave the Auditor authority to obtain legal services from the City Attorney's Office *or* independent legal counsel. We propose changing "or" to "and." The Auditor employs a General Counsel to provide independent legal advice when the Auditor's Office audits or investigates City offices or the Auditor's duties or position is at odds with other City offices. The Auditor's budget also continues to fund the City Attorney's Office, which advises and

represents the Auditor's Office on legal matters that do not raise independence concerns for the Auditor's Office (litigation, contracts, labor, etc.).

**PROPOSED AMENDMENT:** The redline below sets forth proposed amendments.

**Redline:**

**Chapter 2. Government**

**Article 5. The Auditor**

**Section 2-505. Budget.**

(a) The Council shall establish a maximum funding level for the Office of the Auditor that requires the Auditor to manage spending below the cap.

1. The Council shall increase the Auditor's funding cap by at least 2 percent or \$200,000 annually, whichever is higher, in addition to the Current Appropriation Level. Annual inflation factors applied by the City Budget Office shall also be applied to the \$200,000 to retain its purchasing power over time. The Auditor shall decline the increase when the Auditor determines that the additional funds are not necessary for the efficient and effective performance of the Office of the Auditor.
2. In the event of a fiscal emergency, the Council may decrease the maximum funding level for the Office of the Auditor, consistent with any decrease that also applies to all offices of elected officials and City bureaus, with the consent of the Auditor. If the Mayor and City Council members exempt their elective offices from budget decreases that apply to bureaus, they shall also exempt the Office of the Auditor.
3. The Council shall provide additional funds in instances in which the Auditor consents to new or expanded responsibilities through Code changes, when voter-approved Charter changes require new resources to implement, or in instances of sizable unanticipated expenditures.
4. A sub-fund in the General Reserve Fund is created to retain prior year underspending from the budget of the Office of the Auditor. Annually, as part of the Fall Supplemental Budget Process, the City Budget Office is directed to transfer prior year underspending in the Auditor's Office to the sub-fund to be used for Charter-mandated duties and those agreed to by the City Auditor at the request of Council.

(b) The Auditor shall prepare a requested budget and any budget cycle reports and submit them to the Mayor and City Council in accordance with state law and on a schedule consistent with the City's budget process. The Auditor's requested budget and budget cycle reports are not subject to review by a City department, bureau, or other administrative agency prior to their submission to the Mayor and City Council. After their submission, the Mayor or City Council may consult with a department, bureau or other administrative agency about the Auditor's requested budget and budget cycle reports. Provided that the Auditor's requested budget falls within the maximum funding level established by Council, tThe Mayor or City Council may not modify the Auditor's budget without the Auditor's consent. In doing so, the Mayor and Council should consider the Auditor's priorities and duties.

**Section 2-506. Administrative Powers.**

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(b) Deputies and Employees. The Auditor may appoint and remove one chief deputy. In addition, the Auditor may deputize other staff in the Auditor's Office to perform duties required by the Council or the

Charter. The Auditor may appoint employees and establish their compensation. The Auditor may determine the number of employees necessary for the efficient and economic performance of the Office of the Auditor, ~~subject to funding by Council~~. Employees may perform any act or duty required by the Auditor, and the Auditor shall be responsible for their conduct. The Auditor shall establish and administer human resources policies and rules for the Office of the Auditor that are consistent with City human resource policies and rules, including classification and compensation, except where the Auditor determines in writing that a City human resources policy or rule impairs the Auditor's independence or ability to carry out the Auditor's duties under this Charter. The Auditor's human resource policies and rules shall provide functionally equivalent protections as the Classified Service, including for-cause disciplinary review procedures for all Auditor's Office employees with the exception of the Chief Deputy Auditor, Ombudsman, and Audits Director; employees hired under Section 2-507(a)6 of this Charter who are designated by Council as at-will; and employees subject to a collective bargaining agreement.

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(e) Legal Services. The Auditor may obtain legal advice and representation from the City Attorney ~~or~~ and may retain or employ independent legal counsel. If the Auditor retains or employs independent legal counsel, the Office of the Auditor shall be the client and is entitled to the benefits and privileges thereof.



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: September 2, 2020  
SUBJECT: Auditor Duties (Sections 2-507 and 2-508)

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**BACKGROUND:** Portland has had a City Auditor since 1868 and an elected City Auditor since 1891. Historically, the Auditor served as the City's chief financial officer, responsible for accounting and clerical functions. Today, the City's Bureau of Revenue and Financial Services, which is overseen by a Chief Financial Officer and includes an Accounting Division and a Treasury, oversees the City's financial management. The Auditor's role in the City's accounting functions is now limited to audits and investigations (and the Auditor's Office budget), and the Auditor's responsibilities have evolved to include additional oversight and accountability duties.

### REASON FOR PROPOSED AMENDMENTS:

Although the Auditor no longer carries out the City's accounting functions, the Charter still gives the Auditor: 1) the duty to "make the final determination of acceptability and legitimacy of all claims for payment made against the City" (Section 2-508(d)); and 2) the discretion to review transactions before they are paid (Section 2-508(e)). We propose deleting these provisions because the Bureau of Revenue and Financial Services performs these functions, subject to strict internal controls and an annual financial audit.<sup>1</sup>

Section 2-507(a)(4) requires the Auditor to provide official certifications "as required by this Charter." The Charter includes only limited requirements for Auditor certifications. We propose requiring the Auditor to instead provide certifications "as needed for the conduct of City business."

Section 2-508(f) gives the Auditor access to City information to conduct audits. To provide access to information for the Auditor's transparency functions, we propose moving this provision to Section 2-507. We also propose deleting reference to Section 2-509 (Ombudsman) from Section 2-507(a)(5) because the Auditor's Office investigates in other capacities.

**PROPOSED AMENDMENTS:** The redline below sets forth proposed amendments.

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<sup>1</sup> To satisfy Section 2-508(d), the Auditor has delegated responsibility for approving payments to the Office of Management and Finance pursuant to the Auditor's delegation authority, set forth in Section 2-507(b).

## **Redline:**

*Note: GREEN text indicates text that has been moved.*

### **Chapter 2. Government Article 5. The Auditor**

#### **Section 2-507. Duties in General.**

(a) The Auditor is responsible for the following activities:

1. Performing financial and performance audits of the City, including audits of its boards and commissions, franchises and contracts as provided in Section 2-508 of this Charter;
2. Supervising City elections as provided by state law and Chapter 3 of this Charter;
3. Maintaining all official records, including records of the various bureaus, records regarding the City Charter and City Code, and all other records regarding City business;
4. Providing official certifications as ~~required by this Charter~~ needed for the conduct of City business;
5. Investigating the actions of a City department, bureau or other administrative agency, and the official conduct of any City officer, employee or agent ~~as provided in Section 2-509 of this Charter~~; and
6. Other duties as prescribed by this Charter or as assigned by the Council with the consent of the Auditor.

(b) Subject to the Auditor's supervision, the Auditor may delegate any of these duties to other City officials or may contract with outside service providers. The Auditor shall remain responsible for performing the duties. The Council shall provide staffing, funding, and facilities for the Auditor to carry out these duties.

(c) Subject to collective bargaining obligations to the City's recognized bargaining units, the Auditor shall have timely access to all employees, information and records required to conduct an audit or otherwise perform ~~a Auditor~~ duties, including confidential and legally privileged information and records so long as privilege is not waived as to third parties. The Auditor shall maintain the confidentiality of all confidential and legally privileged information and records except as required by state law or authorized by the City Council.

#### **Section 2-508. Audits.**

(a) The Auditor shall conduct financial and performance audits of City government in accordance with generally accepted governmental auditing standards, and shall appoint, coordinate and monitor the annual audit of the City's financial statements by an independent licensed public accountant.

(b) The Auditor shall appoint and may remove the Audits Director.

(c) City departments, bureaus and administrative agencies shall respond to audit recommendations made by the Auditor, through the Commissioner In Charge, to the Auditor, in writing within the time specified by the Auditor. All audit reports and responses shall be made available to the public. The Auditor shall retain workpaper files concerning all audit reports issued for at least six years.

~~(d) The Auditor shall make the final determination of acceptability and legitimacy of claims for payment made against the City.~~

~~(e) The Auditor may require at any time that any or all demands upon the City for payment of money out of the treasury be presented to the Auditor before it can be paid in order to determine whether the money is legally due and payable, and the fund from which it should be paid. Any ordinance or resolution of the City Council providing for the payment of any demand out of the treasury, whether from public funds or private funds shall be construed as allowing the auditing of the demand by the Auditor, either before payment or as part of the financial audit. The Auditor shall keep an official record of all demands audited by the Auditor showing the number, date, amount, name of the payee, the appropriation if any against which it was drawn and the fund from which it was paid.~~

~~(f) Subject to collective bargaining obligations to the City's recognized bargaining units, the Auditor shall have timely access to all employees, information and records required to conduct an audit or otherwise perform audit duties, including confidential and legally privileged information and records so long as privilege is not waived as to third parties. The Auditor shall maintain the confidentiality of all confidential and legally privileged information and records except as required by state law or authorized by the City Council.~~



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: May 3, 2020  
SUBJECT: Auditor Duties to Sign all Official Documents (Section 2-513)

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**BACKGROUND:** Portland has had a City Auditor since 1868 and an elected City Auditor since 1891. Historically, the Auditor served a financial role in the City, and there are outdated sections in Charter that still apply to the Auditor even though the responsibility now is managed by City bureaus. Charter Section 2-513(b) requires the Auditor to sign all official City documents, including all contracts, to confirm that the person signing for the City has contract-signing authority.

Systems are in place today to ensure that only authorized individuals sign City documents, and the City Attorney's Office is involved in reviewing City contracts for legality. State law also shields the City from any liability for entering into a contract signed by someone who lacked authority.

**REASON FOR PROPOSED AMENDMENTS:** Changes in State law and modernization of City government make the Auditor's signature on every official document unnecessary and inefficient. The City's current contract review and approval systems involve bureau managers, Procurement Services, the City Attorney's Office, and in some cases, City Council. Those systems serve the function intended by Charter Section 2-513's requirement that the Auditor sign all contracts and other official documents. The additional review by the Auditor's Office delays the onset of projects and operations without benefit to the City.

Instead of requiring the Auditor's signature on "all warrants, contracts, bonds, and other official documents," we propose revising Section 2-513(b) to require the Auditor's signature on an official document only "as needed" to affirm that the document and the signatures on it. This preserves the Auditor's authority should a situation arise where it was required. Or, we propose deleting Section 2-513(b) altogether.

The Auditor's Office conferred with the City Attorney's Office and the City Treasurer in preparing these proposed amendments.

**PROPOSED AMENDMENTS:** The redline below sets forth proposed amendments.

**Redline:**

***First proposal for Section 2-513:***

**Chapter 2. Government**

**Article 5. The Auditor**

**Section 2-513. Official Oaths and Certifications and Custodian of the City Seal.**

(a) The Auditor, and each of the Auditor's deputies, are authorized to administer an oath and certify any acknowledgement authorized or required to be taken by City ordinance, or law of this State, and the Auditor may require any person presenting for settlement an account or claim of any kind against the City to be sworn before him or her regarding such account or claim, and when so sworn, to answer orally or in writing as to any facts relative to the merits or justice of such account or claim.

(b) The Auditor shall cause his or her signature to be affixed to ~~all warrants, contracts, bonds, and other~~ official documents of the City as needed to ~~affirmation~~ that the document and the action it represents have been duly authorized as required by this Charter and that the signatures of the other City officials on the document are true and duly authorized.

(c) The Auditor shall be the custodian of the City's seal.

***Alternative proposal for Section 2-513:***

**Chapter 2. Government**

**Article 5. The Auditor**

**Section 2-513. Official Oaths and Certifications and Custodian of the City Seal.**

(a) The Auditor, and each of the Auditor's deputies, are authorized to administer an oath and certify any acknowledgement authorized or required to be taken by City ordinance, or law of this State, and the Auditor may require any person presenting for settlement an account or claim of any kind against the City to be sworn before him or her regarding such account or claim, and when so sworn, to answer orally or in writing as to any facts relative to the merits or justice of such account or claim.

~~(b) The Auditor shall cause his or her signature to be affixed to all warrants, contracts, bonds, and other official documents of the City as needed to affirmation that the document and the action it represents have been duly authorized as required by this Charter and that the signatures of the other City officials on the document are true and duly authorized.~~

~~(e**b**)~~ The Auditor shall be the custodian of the City's seal.



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: September 15, 2020  
SUBJECT: Auditor's Signature on Bonds (Charter Sections 7-203 and 15-106)

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**BACKGROUND:** Portland has had a City Auditor since 1868 and an elected City Auditor since 1891. Historically, the Auditor served as the City's chief financial officer and was responsible for accounting and clerical functions. Today, the City's Bureau of Revenue and Financial Services oversees the City's financial management, and the Auditor's responsibilities have evolved to include additional oversight and accountability duties. The mission of the Auditor's Office is to promote open and accountable government by providing independent and impartial reviews, access to public information, and services for City government and the public.

Several Charter sections address the issuance of bonds. Chapter 7, Article 2 provides for the issuance of bonds when authorized by Charter or statute or approved by vote of the people at a general or special election. Section 15-106 allows Council to issue revenue bonds in accordance with the procedures established by law and as the Council may prescribe by ordinance. Sections 7-203 and 15-106 require bonds to bear the "facsimile signature" of the Mayor and the Auditor.

**REASON FOR PROPOSED AMENDMENTS:** We propose deleting the term "facsimile signature" from Sections 7-203 and 15-106 because the term is outdated. We also propose deleting the requirement that bonds bear the signature of the Auditor and Mayor. First, the Auditor is not involved in bond processes, and it is not clear what value the Auditor's signature adds to the documents. In addition, this level of detail does not need to be included in the Charter: the ordinance authorizing the issuance of a bond could describe the type of signatures required for the bond to be valid.

**PROPOSED AMENDMENTS:** The redline below sets forth proposed amendments.

**Redline:**

**Chapter 7. Finance**

**Article 2. Bond Issues**

**Section 7-203 Bond Issuance Procedure.**

Measures to authorize issuance of bonds shall state therein whether such bonds will be general obligations of the City or limited to particular sources of revenue. Such measures shall also state in general terms the objectives or purposes for which the proceeds are to be used, but need not state that a portion of the proceeds may be used for cost of advertising, bond issuance and sale, legal fees and costs, planning, engineering, inspection, administrative costs and other costs found necessary to permit utilization, furtherance or completion of the objectives and purposes set forth in such measure, and such use hereby is authorized. The Council may provide by ordinance details or amplification in connection with the expenditure of the proceeds of any bond issue.

After approval by a majority of the electors voting on a bond measure, the Council shall, before issuing any such bonds, determine the denominations, form and term for such bonds. The Council shall prescribe the dates for the redemption of each bond issue and may authorize the issuance of bonds from time to time within the limitation of the amount authorized. ~~Such bonds shall bear the facsimile signature of the Mayor and the Auditor of the City of Portland in the manner prescribed by the City in authorizing the sale of bonds.~~ By each of such bonds the City shall be held in substance and effect to undertake and promise to pay to the holder of each of said bonds at the expiration of the time specified therein, the sum named therein, in lawful money of the United States of America, and promise to pay interest thereon in like lawful money at such rate as the Council may determine, not exceeding the percentage fixed by the Council, payable at such periods as shall be provided by the Council. The Council may prescribe other features of such bonds.

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**Chapter 15. Portland Development Commission**

**Article 1 Administration, Powers and Duties**

**Section 15-106 Issuance of Revenue Bonds.**

Upon the request of the Commission, the Council may from time to time issue revenue bonds, certificates or debentures, to be repaid, to the extent permitted or to be permitted by law, solely out of: revenues from an urban renewal and redevelopment; or from the sales of property involved in an urban renewal and redevelopment; or from tax revenues attributable to improvements existing or subsequently constructed on property in an urban renewal and redevelopment project, or tax revenues exceeding a specified level within such project, to the extent that such is permitted by law; or any combination of such methods of repayment, and to that end the Commission, with the concurrence of the Council, may, to the extent permitted or to be permitted by law, pledge such tax revenues or other revenues as hereinbefore mentioned. Such bonds or other evidences of indebtedness shall be issued by the Council in accordance with the procedures established by law and as the Council may prescribe by ordinance, and shall ~~bear the facsimile signatures of the Mayor and Auditor and~~ be known as "Urban Renewal and Redevelopment Bonds, Series . . . . ."



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: September 15, 2020  
SUBJECT: Contract Authority (Section 8-104)

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**BACKGROUND:** Since at least 1942,<sup>1</sup> Charter Chapter 8 has stated that: “The City of Portland shall not be bound by any contract nor in any way liable thereon, unless the same is authorized by an ordinance and made in writing and signed by some person or persons duly authorized by the Council.” Currently, this requirement is included in Section 8-104, which was last revised in 1994.

In 2017, voters approved Charter amendments to reflect the Auditor’s increased oversight functions and add safeguards to protect the independence of the Auditor’s oversight work.<sup>2</sup> Among other changes, the Charter amendments recognized that the Auditor’s Office is “administratively independent of the Mayor, City Council, and City departments, bureaus and other administrative agencies in the exercise of the Auditor’s duties.”<sup>3</sup>

To exercise this independence, the Charter changes gave the Auditor “all authority granted to a contracting agency under state law to procure or supervise the procurement of goods, services and personal services the Auditor finds necessary for the proper functioning of the Office.”<sup>4</sup> In other words, the Charter gave the Auditor the independent authority to enter into contracts to procure needed goods and services—without additional Council approval.

**REASON FOR PROPOSED AMENDMENT:** When the Charter was amended in 2017, Section 8-104 was not updated to reflect the Auditor’s new, independent contracting authority. We propose updating Section 8-104 now.

**PROPOSED AMENDMENT:** We propose adding “or Charter” in Section 8-104, after “authorized by an ordinance” and “authorized by the Council.” The redline below sets forth the proposed amendments.

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<sup>1</sup> In 1942, Section 8-104 was numbered as Section 8-105 and also included “thereunto” after “duly authorized.”

<sup>2</sup> See, e.g., [Council Resolution 37265](#).

<sup>3</sup> [Charter Section 2-503](#).

<sup>4</sup> [Charter Section 2-506\(d\)](#). See also [Auditor’s Office Administrative Rule 2.01 – Procurement Rules for the Auditor’s Office](#).

**Redline:**

**Chapter 8. Advertising and Contracts**

**Article 1. Authorization**

**Section 8-104 When Written Contracts Required.**

The City of Portland shall not be bound by any contract nor in any way liable thereon, unless the same is authorized by an ordinance or the Charter and made in writing and signed by some person or persons duly authorized by the Council or Charter. But an ordinance may authorize any board, body, officer or agent to bind the City without contract in writing for the payment of any sum not exceeding twenty thousand dollars (\$20,000); such amount to be adjusted annually based on the average inflation rate for the Portland Metropolitan Area as determined from the U.S. Department of Labor statistics. Notwithstanding the provisions of this Section, however, the Council may waive the written contract requirement when work, materials or supplies are necessary for an emergency involving public safety or health.



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: September 15, 2020  
SUBJECT: Chapter 2, Article 1 – Council Clerk Functions

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**BACKGROUND:** Chapter 2, Article 1 covers the City Council, and includes requirements for records related to Council meetings. The Auditor's Office serves as the Clerk of the Council, produces the agenda for Council meetings, and maintains minutes and other records of the Council's actions. [Section 2-510](#) covers the Auditor's duties as Clerk of the Council.

**REASON FOR PROPOSED AMENDMENTS:** We propose amendments to update the terms used in Chapter 2, Article 1 and promote consistency, including:

- Section 2-112 requires "Council" to keep a journal of proceedings. We propose changing "Council" to "Auditor" for consistency, because Section 2-510 requires the Auditor, as Clerk of the Council, to keep the journal (and in practice, the Auditor's Office manages Council records).
- "Journal" and "summary" are outdated terms. The Auditor's Office produces agendas and provides video recordings and minutes for Council meetings (see [ORS 192.650\(1\)](#)). Replacing "journal" with "record" and "summary" with "agenda" reflects modern practices and terminology.
- Section 2-117 states that ordinances require the vote of three Council members, but Sections 2-120 and 2-127 state that a vote of four members is needed to pass emergency ordinances and consent agendas. We propose amending Section 2-117 to clarify that the vote of three members is required, except for emergency ordinances and consent agendas. Another option is to delete the following language: ", and every ordinance shall require the affirmative vote of three (3) members" because the number of votes is covered elsewhere, and this section is about the votes needed to transact Council business.
- Section 2-122 is titled, "Ordinances, Attestation." We propose: 1) clarifying that the Auditor "attests" to the adoption of ordinances, to be consistent with the title of the Section; 2) adding that Council members' votes shall be recorded in the minutes (similar to language used in the [League of Oregon Cities' Model Charter](#) Section 4.2); and 3) deleting record-keeping requirements because they are covered elsewhere.

**PROPOSED AMENDMENTS:** The redline below sets forth the proposed amendments.

**Redline:**

**Chapter 2 Government  
Article 1 The Council**

**Section 2-112 Meetings and ~~Journal~~ Record.**

All regular and special meetings of the Council shall be public. It shall hold one regular legislative meeting each week, and such other meetings as it may prescribe. The ~~Council Auditor~~ shall keep a journal record of its Council proceedings, in a manner prescribed by Council rules and the laws of the state of Oregon, which shall be a public record.

**Section 2-113 Calendar.**

The Auditor shall produce for distribution at least twenty-four (24) hours before each legislative session ~~an agenda summary~~ of all matters to come before the Council at the next regular legislative session. Only matters contained in said ~~agenda summary~~ shall be considered at such legislative session unless four (4) members of the Council shall vote to consider otherwise.

**Section 2-117. Transaction of Business.**

In the transaction of legislative or judicial business the Council shall act only by the ordinance. The ayes and nays shall be taken upon the passage of all ordinances and entered upon the ~~journal record~~ of the proceedings of the Council. Every member when present must vote, unless the remainder of the Council approves the member's excuse for disqualification, and every ordinance shall require the affirmative vote of three (3) members, except that emergency ordinances and ordinances placed on a consent agenda shall require the affirmative vote of four (4) members.

*Or, another option could be:*

**Section 2-117. Transaction of Business.**

In the transaction of legislative or judicial business the Council shall act only by the ordinance. The ayes and nays shall be taken upon the passage of all ordinances and entered upon the ~~journal record~~ of the proceedings of the Council. Every member when present must vote, unless the remainder of the Council approves the member's excuse for disqualification, ~~and every ordinance shall require the affirmative vote of three (3) members.~~

**Section 2-122 Ordinances, Attestation.**

~~After a~~An ordinance ~~when has been~~ passed by the Council, ~~shall be signed by the Auditor. It shall enter the vote of each Council member into the Council minutes and shall attest to its adoption~~ shall be carefully filed and preserved in the custody of the Auditor.

**Section 2-127. Consent Agenda.**

Notwithstanding the provisions of Sections 2-116, 2-117, and 2-120 of this Charter, the Council by rule may publish a procedure under which any ordinance, resolution or other action may be placed on a consent agenda. At any meeting at which there is a consent agenda on the calendar, the ayes and nays shall be taken upon the passage of all items on the consent agenda by a single Council vote. It shall not be necessary that there be a reading or readings of the titles or the effect of the items on a consent agenda or that time elapse between the introduction and final passage of the items. The unanimous vote of all members of the Council present, and of not less than four (4) members, shall be required to pass a consent agenda. All items to be contained in a consent agenda shall be so listed in the ~~summary agenda~~ of matters to come before the Council prepared under Section 2-113 of this Charter. Items on a consent agenda shall not be subject to amendment or debate. Any item shall be removed from a consent agenda on the request

of a Council member, or on the request of any person who wished to be heard on the item, provided the request is made prior to taking the ayes and nays on the consent agenda. An item so removed from a consent agenda shall be treated as a regular calendar item for the meeting for which it was on the consent agenda.

## **Chapter 2 Government**

### **Article 5 The Auditor**

#### **Section 2-510. Auditor's Duties as Clerk of the Council.**

The Auditor shall serve as the Clerk of the Council and shall maintain a ~~journal~~ record of its proceedings and all of the public records in connection with the Council's official business. The Auditor shall produce an agenda for all formal meetings of the Council; maintain a record of the Council's actions; and make the records available for public inspection as provided by the State Public Records laws. As Clerk of the Council, the Auditor shall maintain and make available current versions of the City Charter and Code and maintain a record of Charter and Code revisions.



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: December 11, 2020  
SUBJECT: Chapter 3, Article 3 – Campaign Finance in Candidate Elections

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**BACKGROUND:** City Charter [Chapter 3, Article 3 – Campaign Finance in Candidate Elections](#) establishes contribution and expenditure limits for candidate campaigns of City Elected Officials. It requires funding disclosures in campaign communications and registration with the Oregon Secretary of State. The current Charter requires the Auditor to investigate complaints under strict timelines and impose mandatory fines on campaigns and private donors. Voters approved the Charter amendment in November 2018, and City Council adopted the same text in Code.

**REASON FOR PROPOSED AMENDMENT:** The Auditor's Office based this proposal on its experience implementing the constitutional sections of Article 3, beginning prior to the May 2020 primary. Constitutionality questions, imprecise language, inflexible investigatory timelines, and mandatory financial penalties hampered implementation, compliance, and enforcement.

Candidate committees and donors struggled to comply with the regulations. Some donors were surprised by steep fines that resulted from donations they had made as far back as 2016. The mandatory nature of the fines added to their frustration and did not allow the Auditor's Office discretion to consider mitigating factors before imposing the fines. This is out of step with other regulatory programs the Auditor's Office enforces that, as a matter of fairness, include an education phase followed by a gradual penalty schedule for violations.

Because the provisions are in Charter and Code, proposals cannot be presented to City Council to adjust them for clarity, efficiency, and changing campaign tools and methods, as can be done for the Open and Accountable Elections program, which exists only in Code. The inability to do so likely will become more problematic because changes to election law at the state and federal levels are under consideration. Conflicts with Oregon law already exist, such as when contributors must register as political action committees. Aligning requirements to match those already in place would simplify the process, improve compliance by participants, and reduce the need to impose financial penalties. In its current form, the City's only option for such common-sense adjustments is to repeatedly take them back to the voters.

**PROPOSED AMENDMENTS:** We propose simplifying Article 3 to make campaign finance disclosures, limits, and enforcement mandatory in City elections, while leaving regulatory details in the Code (attached). **We would appreciate the Charter Commission's willingness to consider this issue prior to the next candidate filing period, which begins September 2021.**

## **Chapter 3. Nominations and Elections**

### **Article 3. Campaign Finance Disclosures and Limits in City Candidate Election**

#### **Section 3-301. Disclosures in Candidate Elections Communications**

Certain entities providing communications to voters related to City candidate elections shall be required to disclose funding information. Such information shall provide transparency to voters regarding the true funding sources behind voter communications. Required disclosures must be prominent and timely.

#### **Section 3-302. Contribution Limits in Candidate Elections**

The City Council shall impose limits of no greater than \$500, as adjusted for inflation, on the acceptance of campaign contributions by a candidate or affiliated committee within an election cycle. In-kind and other contributions shall be limited as specified for candidates and affiliated committees. Contributions subject to publicly financed program regulation, and determined lawful in writing by such program, shall be exempt from such limits.

#### **Section 3-303. Enforcement and Penalties**

The City Council shall provide for the enforcement of the requirements described in this Article, including the authority to investigate complaints, make findings, issue penalties, and have subpoena power with a specified enforcement mechanism.

## **Chapter 2.10**

### **Campaign Finance in Candidate Elections**

#### **- Note**

(Chapter added by Ordinance No. 189348, effective January 16, 2019.)

#### **2.10.010 Contributions in City of Portland Candidate Elections.**

**A.** An Individual or Entity may make Contributions only as specifically allowed to be received in this Chapter.

**B.** A Candidate or Candidate Committee may receive only the following Contributions during any Election Cycle:

- 1.** Not more than \$500 from an Individual or a Political Committee other than a Small Donor Committee;
- 2.** Any amount from a qualified Small Donor Committee;
- 3.** A loan balance of not more than \$5,000 from the Candidate;
- 4.** No amount from any other Entity, except as provided in Section 2.10.040.

**C.** Individuals shall have the right to make Contributions by payroll deduction by any private or public employer upon the employer's agreement or if such deduction is available to the employees for any other purpose.

#### **2.10.020 Expenditures in City of Portland Candidate Elections.**

**A.** No Individual or Entity shall expend funds to support or oppose a Candidate, except those collected from the sources and under the Contribution limits set forth in this Chapter.

**B.** An Entity shall register with the Oregon Secretary of State as a Political Committee under Oregon law within 3 business days of making aggregate Independent Expenditures exceeding \$750 in any Election Cycle to support or oppose one or more Candidates in any City of Portland Candidate Election.

**C.** Only the following Independent Expenditures are allowed per Election Cycle to support or oppose one or more Candidates in any particular City of Portland Candidate Election:

- 1.** An Individual may make aggregate Independent Expenditures of not more than \$5,000.
- 2.** A Small Donor Committee may make Independent Expenditures in any amounts from funds contributed in compliance with Section 2.10.010.

**3.** A Political Committee may make aggregate Independent Expenditures of not more than \$10,000, provided that the Independent Expenditures are funded by means of Contributions to the Political Committee by Individuals in amounts not exceeding \$500 per Individual per year.

#### **2.10.030 Timely Disclosure of Large Contributions and Expenditures.**

**A.** Each Communication to voters related to a City of Portland Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:

- 1.** The names of any Political Committees and other Entities that have paid to provide or present it; and
- 2.** For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle:
  - a.** The name of the Individual or Entity providing the Contribution.
  - b.** The types of businesses from which the maker of the Contribution has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
- 3.** For each of the largest five Dominant Independent Spenders paying to provide or present it:
  - a.** The name of the Individual or Entity providing the Independent Expenditure.
  - b.** The types of businesses from which the maker of the Independent Expenditure has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the NAICS.

**B.** If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee (other than a Small Donor Committee) or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.

**C.** The disclosure shall be current to within 10 business days of the printing of printed material or within 5 business days of the transmitting of a video or audio communication.

#### **2.10.040 Coordination with Public Funding of Campaigns.**

A Candidate participating in a government system of public funding of campaigns (including the Open and Accountable Elections Fund established under Portland City Code Chapter 2.16) may receive any amount that such system allows a participating candidate to receive.

## **2.10.050 Implementation and Enforcement.**

- A.** The provisions of this Chapter shall take effect on September 1, 2019.
- B.** Each violation of any provision in this Chapter shall be punishable by imposition of a civil fine which is not less than 2 nor more than 20 times the amount of the unlawful Contribution or Expenditure or Independent Expenditure at issue.
- C.** Any person may file a written complaint of a violation of any provision in this Chapter with the City Auditor.
- D.** The City Auditor, otherwise having reason to believe that a violation of any provision has occurred, shall issue a complaint regarding such violation.
- E.** Upon receipt or issuance of a complaint, the City Auditor:
  - 1.** Shall examine the complaint to determine whether a violation has occurred and shall make any investigation necessary.
  - 2.** Within 2 business days of receiving or issuing a complaint, shall issue a notification, including a copy of the complaint, to every person who is the object of the complaint.
  - 3.** Shall accept written materials supporting or opposing the complaint for a period of 10 business days following any such notification.
  - 4.** Shall render a decision on the complaint within 10 business days of the close of the material submission period.
- F.** If the complaint is received or issued within 30 calendar days of the date of the election involving the object of the complaint, then all time periods stated in Subsections 2.10.050 E.3. and 2.10.050 E.4. shall be reduced by one-half.
- G.** The City Auditor may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Chapter.
- H.** Upon finding a violation of the requirement for timely disclosure set forth in Section 2.10.030, the City Auditor shall determine the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication at issue and shall immediately issue a statement to all interested parties and news organizations containing all of the information about the involved donor(s) required by Section 2.10.030.
- I.** The complainant or any person who is the object of the complaint may, within 30 calendar days of the issuance of the decision, appeal that order to the appropriate Circuit Court as an agency order in other than a contested case.

**J.** The decision in the matter shall be deemed final, following completion of any judicial review. Such decision shall be enforced by the City of Portland. If the decision is not enforced within 30 calendar days of the decision becoming final, the complainant may bring a civil action in a representative capacity for the collection of the applicable civil penalty, payable to the City of Portland, and for any appropriate equitable relief.

#### **2.10.060 Adjustments.**

All dollar amounts shall be adjusted on January 1 of each odd-numbered year to reflect an appropriate measure of price inflation, rounded to the nearest dollar.

#### **2.10.070 Severability.**

For the purpose of determining constitutionality, every section, subsection and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

#### **2.10.080 Definitions.**

Unless otherwise indicated by the text or context of this Chapter, all terms shall have the definitions at Chapter 260 of Oregon Revised Statutes, as of January 1, 2018. Terms found therein or defined below are capitalized in this Chapter.

**A.** “Candidate” has the meaning set forth at ORS 260.005(1).

**B.** “Candidate Committee” has the meaning set forth at ORS 260.039 - 260.041, as of November 8, 2016, for the term “principal campaign committee.”

**C.** “City of Portland Candidate Election” means an election, including a primary election, to select persons to serve (or cease serving) in public offices of City of Portland.

**D.** “Communication” means any written, printed, digital, electronic or broadcast communications but does not include communication by means of small items worn or carried by Individuals, bumper stickers, Small Signs, or a distribution of 500 or fewer substantially similar pieces of literature within any 10 business-day period.

**E.** “Contribution” has the meaning set forth at ORS 260.005(3) and 260.007, as of November 8, 2016, except it does not include:

- 1.** Funds provided by government systems of public funding of campaigns; or
- 2.** Providing rooms, phones, and internet access for use by a candidate committee free or at a reduced charge.

**F.** “Dominant Contributor” means any Individual or Entity which contributes more than \$1,000 during an Election Cycle to a Candidate Committee or Political Committee.

**G.** “Dominant Independent Spender” means any Individual or Entity which expends more than \$1,000 during an Election Cycle to support or oppose a particular Candidate.

**H.** “Election Cycle” means:

- 1.** Generally, the period between an election at which a Candidate is elected and the next election for that same office, disregarding any intervening primary or nominating election, any recall election, or any special election called to fill a vacancy.
- 2.** For any recall election: the period beginning the day that the recall election is called or declared and ending at midnight of the day of the recall election.
- 3.** For any special election called to fill a vacancy: the period beginning the day that the special election is called or declared and ending at midnight of the day of the election.

**I.** “Entity” means any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual.

**J.** “Expenditure” has the meaning set forth at ORS 260.005(8) and ORS 260.007, as of January 1, 2018, except that:

- 1.** It does not include a Communication to its members, and not to the public, by a Membership Organization not organized primarily for the purpose of influencing an election.
- 2.** The exception in ORS 260.007(7) does not apply.

**K.** “General Election Period” means the period beginning the day after the biennial primary election and ending the day of the biennial general election.

**L.** “Individual” means a citizen or resident alien of the United States entitled to vote in federal elections; however, when this Chapter expresses a limitation or prohibition, “Individual” means any human being.

**M.** “Membership Organization” means a nonprofit organization, not formed or operated for the purpose of conducting or promoting commercial enterprise, which has Individual members who have

taken action to join the organization and have made a payment of money or volunteer time to maintain membership in the organization.

1. It cannot have commercial enterprises as members.
2. It can transfer to one and only one Small Donor Committee not more than 40 percent of the amount paid to the organization by each Individual member, with a limit of \$100 transferred per Individual member per calendar year.
3. It shall within 30 calendar days of any such transfer notify each paying member of the amount transferred, expressed in dollars or as a percentage of the member's amount paid to the organization. Such notice may be provided by regular mail or electronic mail to each affected member or by posting the information on the organization's main website. If the amount transferred is the same for each member or category of members (in dollars or in percentage of amount paid), the posting may state that amount or percentage without identifying individual members.

**N.** "Primary Election Period" means the period beginning on the 21st day after the preceding biennial general election and ending the day of the biennial primary election.

**O.** "Prominently Disclose" means that the disclosure shall be readily comprehensible to a person with average reading, vision, and hearing faculties, with:

1. any printed disclosure appearing in a type of contrasting color and in the same or larger font size as used for the majority of text in the printed material;
2. any video disclosure remaining reading on the regular screen (not closed captioning) for not less than 4 seconds;
3. any auditory disclosure spoken at a maximum rate of 5 words per second;
4. any website or email message in type of a contrasting color in the same or larger font size as used for the majority of text in the message;
5. any billboard or sign other than a Small Sign: in type of a contrasting color and not smaller than 10 percent of the height of the billboard or sign.

**P.** "Small Donor Committee" means a Political Committee which has never accepted any Contributions except from Individuals in amounts limited to \$100 per Individual contributor per calendar year.

**Q.** "Small Sign" means a sign smaller than 6 square feet.



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: September 15, 2020  
SUBJECT: Auditor's Role in Bureau of Transportation Administrative Processes (Charter Section 2-105 and Charter Chapter 9)

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**BACKGROUND:** Portland has had a City Auditor since 1868 and an elected City Auditor since 1891. Historically, the Auditor served as the City's accounting and clerical officer. Over time, some bureaus have taken on increased clerical responsibilities related to their programs and duties—including the Portland Bureau of Transportation. However, the Charter has not been updated to remove the Auditor from certain Bureau of Transportation administrative processes.

In addition, the Charter is meant to be the City's foundational document, which sets forth our form of government and how it functions. Some of the Charter sections listed in this memo include detailed processes that may be more appropriately set forth in City Code.

**REASON FOR PROPOSED AMENDMENTS:** We propose updating and simplifying the Charter to more accurately reflect clerical duties performed by the Bureau of Transportation and/or to omit details that should be set forth in City Code rather than Charter.

**NOTE:** The Auditor's Office was unable to collaborate with the Bureau of Transportation on the proposed amendments prior to the deadline for submitting this memo, but we are happy to do so as the Charter Review process moves forward.

**PROPOSED AMENDMENTS:** For most of the proposed updates, the redline below presents two options for the Charter Commission's consideration:

1. Replacing reference to the Auditor with reference to the appropriate office or official—or, where appropriate, with "the City official designated by ordinance," which is a term currently used in other parts of the Charter. In some cases, additional amendments are proposed to reflect current notice procedures.
2. Deleting provisions that are not appropriate for Charter, so that they can be added to City Code.

**Redline:**

**Chapter 2. Government**

**Article 1. The Council**

**Section 2-105. Continuation of Specific Powers.**

***Reference to the Auditor could be replaced:***

(a) Among such specific powers, the City has power and authority: \*\*\* **20.** To provide for surveying the blocks and streets of the City and for marking the boundary lines of such blocks and streets; to change by ordinance the number, letter or designation of any lot, block or tract of land within the City which may be conflicting or otherwise unsuitable and to give by ordinance a designation to any tract of land within the City not numbered, lettered or designated. A certified copy of such ordinance shall be transmitted by the Auditor ~~[either: City Engineer or the City official designated by ordinance]~~ to the recording officer of the County, who shall record the same in the record of plats of said County and shall make a reference to the record of such ordinance upon the recorded plat on file. No charge shall be made by the recording officer.

***Or, the Charter language requiring the ordinance to be transmitted to the County could be either: 1) deleted completely; or 2) deleted from Charter and added to Code:***

(a) Among such specific powers, the City has power and authority: \*\*\* **20.** To provide for surveying the blocks and streets of the City and for marking the boundary lines of such blocks and streets; to change by ordinance the number, letter or designation of any lot, block or tract of land within the City which may be conflicting or otherwise unsuitable and to give by ordinance a designation to any tract of land within the City not numbered, lettered or designated. ~~A certified copy of such ordinance shall be transmitted by the Auditor to the recording officer of the County, who shall record the same in the record of plats of said County and shall make a reference to the record of such ordinance upon the recorded plat on file. No charge shall be made by the recording officer.~~

**Chapter 9. Local Improvements; Assessments; Collections**

**Article 2. Street Grades**

**Section 9-204 Notices and Hearing.**

***Reference to the Auditor could be replaced:***

The Council may approve the initial report of the City Engineer by resolution, or make changes therein, and declare its intention to make such change of grade, stating the location and nature of the proposed grade change. The ~~[either: City Engineer or the City official designated in the Council resolution]~~ shall publish in five (5) successive publications of the City official newspaper notice of the proposed change of grade, setting forth the nature of the proposed change, the time within which objections against such proposed change of grade and claim for damages may be filed in writing with the City official designated by ordinance, and the time when said matter and objections will be heard by the Council. Objections and claims for damages may be filed within twenty (20) days from the first publication of the notice. The time for hearing shall be the next regular meeting of the Council following said twenty (20) days. Within five (5) days from first publication of the notice, the City Engineer shall cause to be posted on the street or streets affected by the proposed change of grade, a notice headed, "Notice of Change of Grade," containing a legible copy of the notice published. One of such notices shall be posted at or near each street intersection where the proposed change of grade is to be made. If no intersection is

affected by the change of grade then the posting of one notice at or near the intersection closest to the maximum point of change of grade shall be sufficient. The City Engineer shall maintain in the project file an affidavit of posting stating the date when and the places where the notices were posted. The [*either: City Engineer or the City official designated in the Council resolution*] also shall send notice to the persons named as owners of the property within the affected area designated in the Engineer's report as adopted by the Council. If the address of any named owner is unknown and if that person has an agent whose name and address is known, notice shall be mailed to that agent; otherwise it shall be mailed to the named owner addressed at Portland, Oregon. However, failure of any such person or the true owner to receive the mailed notice shall not invalidate the proceedings.

*Or, some or all of the specific procedures described in Section 9-204 (as well as other procedures related to establishing and changing street grades set forth in Article 2) could be deleted from Charter and added to City Code.*

## **Chapter 9. Local Improvements; Assessments; Collections**

### **Article 3. Elimination of Grade Crossings**

#### **Section 9-304 Filing of Plans and Objections.**

*Reference to the Auditor could be replaced:*

The City Engineer shall ~~file with the Auditor~~ produce a public report on elimination of the grade crossing with the necessary plans, specifications and estimates of the cost. The City official designated by ordinance shall notify in writing each interested railroad company, and any company shall have thirty (30) days from date of the notice to file with the [*either: City Engineer or the City official designated by ordinance*] objections thereto, or to propose modifications thereof, or to file other or different plans and specifications, together with the estimates of the cost.

*Or, some or all of the specific procedures described in Section 9-304 (as well as other procedures related to eliminating grade crossings set forth in Article 3) could be deleted from Charter and added to City Code.*

## **Chapter 9. Local Improvements; Assessments; Collections**

### **Article 3. Elimination of Grade Crossings**

#### **Section 9-306 Apportionment of Damages and Benefits.**

*Reference to the Auditor could be replaced:*

Upon filing of the City Engineer's report on damages, the [*either: City Engineer or the City official designated by ordinance*] shall publish in four (4) successive publications in the City official newspaper a notice that such report has been filed, stating the amount of damages to each property as estimated by the City Engineer, the date when the report of the City Engineer will be heard by the Council, and that written objections thereto may be filed with the [*either: City Engineer or the City official designated by ordinance*] any time prior to the day of hearing. The date of hearing shall be not less than five (5) days after the last publication of notice. The [*either: City Engineer or the City official designated by ordinance*] shall also send a copy of the published notice to each person interested in land affected. If the address of such person is unknown, and if such person has an agent whose name and address is known, notice shall be mailed to the agent; otherwise it shall be mailed to the owner addressed at Portland, Oregon. \*\*\* Whenever the street is occupied or used by more than one railroad company, the railroad's share of the total cost of the

improvement shall be apportioned among them. The cost and expense of raising or lowering the grades or tracks outside street area to be borne by the affected companies shall be apportioned by the Council unless, within thirty (30) days after the Council orders the improvement, all affected companies file with the [*either: City Engineer or the City official designated by ordinance*] their mutual agreement thereon.

*Or, some or all of the specific procedures described in Section 9-306 (as well as other procedures related to eliminating grade crossings set forth in Article 3) could be deleted from Charter and added to City Code.*

## **Chapter 9. Local Improvements; Assessments; Collections**

### **Article 3. Elimination of Grade Crossings**

#### **Section 9-308 Remonstrances, Assessments and Collections.**

*Reference to the Auditor could be replaced:*

If a portion of the cost of eliminating a railroad grade crossing is to be financed by local improvement assessments, the procedures for establishing a local improvement district and assessing property shall be followed. Remonstrances may be filed with the [*either: City Engineer or the City official designated by ordinance*] by property owners within the time to be fixed by resolution. Upon the expiration of that time, the Council shall determine whether or not to proceed with the matter. If the Council determines to proceed it may overrule any and all remonstrances. \*\*\*

*Or, some or all of the specific procedures described in Section 9-308 (as well as other procedures related to eliminating grade crossings set forth in Article 3) could be deleted from Charter and added to City Code.*

## **Chapter 9. Local Improvements; Assessments; Collections**

### **Article 4. Streets and Street Improvements**

#### **Section 9-403 Remonstrances.**

*Reference to the Auditor could be replaced:*

Street improvement procedures established by ordinance shall provide for mailed notice to the property owners within the proposed district of the Council's intention to improve any street, and an opportunity for the owners of the property within the proposed assessment district to make and file written objections or remonstrances against the proposed improvement. \*\*\* If an objection, remonstrance or petition is signed by the agent or attorney of any property owner, the agent or attorney's authority to sign shall be filed with the [*either: City Engineer or the City official designated by ordinance*] within the time provided for the remonstrance or petition or the signature shall be disregarded. If objections or remonstrances legally signed by the owners of three-fifths of the property affected are not filed, the Council may order the improvement.

*Or, some or all of the specific procedures described in Section 9-403 (as well as other procedures related to street improvements set forth in Article 4) could be deleted from Charter and added to City Code.*

**Chapter 9. Local Improvements; Assessments; Collections**  
**Article 5. Sewer Improvements**  
**Section 9-501 Assessment District; Remonstrances.**

*Reference to the Auditor could be replaced:*

When the Council has declared its intention to construct a sewer or sewer system and has fixed the boundaries of the assessment district to be benefitted and assessed therefor, the ~~Auditor~~ City official designated by ordinance shall mail notice of such intention to the property owners within the proposed district, in accordance with procedures prescribed by ordinance. The procedures shall provide that an owner of any property within the proposed assessment district or such owner's agent who files proof of his or her authority, may file with the ~~Auditor~~ the City official designated by ordinance a written remonstrance against the proposed sewer or the plans therefor, and the Council, upon hearing the remonstrance, may discontinue proceedings in the matter. The period for filing of written objections or remonstrances shall be set by ordinance but shall not exceed sixty days from the date notice is mailed. \*\*\*

*Or, some or all of the specific procedures described in Section 9-501 (as well as other procedures related to sewer improvements set forth in Article 5) could be deleted from Charter and added to City Code.*

**Chapter 9. Local Improvements; Assessments; Collections**  
**Article 6. Other Improvements**  
**Section 9-602 Lighting Districts.**

*Reference to the Auditor could be replaced:*

Whenever the owners of fifty percent or more in area of the property within any district make and file with the [either: City Engineer or the City official designated by ordinance] a petition to establish a special street lighting system within that district, the Council has authority to install, operate and maintain such a system as a local improvement and to furnish electrical current therefor. \*\*\*



## MEMORANDUM

TO: Charter Commission  
FROM: Mary Hull Caballero, City Auditor  
DATE: September 15, 2020  
SUBJECT: Auditor's Role in Administrative Processes Related to Franchises (Chapter 10, Article 2)

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**BACKGROUND:** Portland has had a City Auditor since 1868 and an elected City Auditor since 1891. Historically, the Auditor served as the City's accounting and clerical officer. While the Auditor continues to serve as Council Clerk, some clerical and administrative functions are performed electronically or are no longer required, and some bureaus have taken on increased administrative responsibilities related to their programs. However, several sections of the Charter, including related to franchises (Chapter 10, Article 2), have not been updated to remove obsolete practices.

NOTE: The Auditor's Office collaborated with the City's [Office for Community Technology](#) to propose these amendments.

**REASON FOR PROPOSED AMENDMENTS:** Section 10-207 outlines a detailed process for giving notice of potential franchises, which are embodied in ordinances. The Auditor's Office and Office of Community Technology propose deleting these processes because the process for Council consideration of ordinances is already explained in Charter, Code, and administrative rule. In addition, notices are no longer required to be published in a City official newspaper.

The Auditor's Office and Office of Community Technology propose deleting Section 10-212, which sets forth requirements for written acceptances, because this language does not reflect current processes and this level of detail does not need to be included in the Charter.

Section 10-213 requires the Auditor to file franchise statements "and make and keep an index of the same in a book to be kept by the Auditor for that purpose, which book shall be a part of the public records of the City." The Auditor's Office and the Office of Community Technology propose deleting this language because franchises are passed by ordinance, and ordinances have their own records retention requirements. We also propose changing references to the "Auditor" to the "City."

**PROPOSED AMENDMENT:** The redline below sets forth proposed amendments.

**Redline:**

**Chapter 10. Public Utilities and Franchises**

**Article 2. Franchises**

**Section 10-207 Method of Granting.**

Every franchise shall be embodied in an ordinance, which shall contain all the terms and conditions of the proposed grant, and shall be filed with the Auditor. Thereupon such proposed ordinance shall be published in full, once in the City official newspaper. There shall also be published, in a conspicuous place in such daily newspaper of the City having a circulation in excess of fifteen thousand (15,000), as the Council may direct, a notice prepared by the Auditor, that an application has been made for a franchise, giving the name of the applicant, the character and location of the proposed grant, and requesting any person having any objections to such proposed franchise or any provisions thereof to file the same in writing with the Auditor within twenty (20) days from the first publication of such notice. If the request is made therefor, the Council shall fix a time for a hearing upon such objections and give reasonable notice of the time thereof and not less than five (5) days. All of such publications and notices shall be at the expense of the applicants for such franchises.

**~~Section 10-212 Written Acceptance.~~**

~~Every grantee of any franchise, right or privilege shall within thirty (30) days after the ordinance granting the same shall be enforced, file with the City Recorder a written acceptance of the same, and a failure on the part of the grantee to file such written acceptance within the time specified shall be deemed an abandonment and rejection of the rights and privileges conferred, and the ordinance granting the same shall thereupon be null and void; such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in the ordinance granting the same.~~

**Section 10-213 Statements.**

Within ninety (90) days after this Charter shall take effect, the holder of any franchise shall file with the ~~Auditor~~ City a full and correct statement of the franchise, rights and privileges owned or claimed to be owned, and shall designate the same by the numbers and titles of the ordinances by which such franchises were granted, and any holder of any franchise, on failure so to do, shall be guilty of an offense punishable by a fine of not less than ten dollars (\$10) and not more than one hundred dollars (\$100) per day while such refusal or neglect continue. The holder of every franchise, and the grantees of every franchise hereafter granted, on sale, transfer, mortgage or lease being made of such franchise, shall within sixty (60) days thereafter file with the ~~Auditor~~ City a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, transfer or lease, certified and sworn to as correct by the grantee, in person, if an individual, or by the president or secretary or authorized agent, if a corporation.

Every sale, transfer, mortgage or lease of such franchise, whether voluntary or involuntary, shall be deemed void and of no effect unless the grantee shall, within sixty (60) days after the same shall have been made, file such certified copy as required by this Section and consented to as provided in Section 10-216 of this Charter, also unless the Council agrees to such sale by an ordinance expressly passed for that purpose, as provided by Section 10-216.

~~The Auditor shall file all such documents and shall make and keep an index of the same in a book to be kept by the Auditor for that purpose, which book shall be a part of the public records of the City.~~