

City Charter Transition Team Responses to GTAC Questions May 29, 2023

Note: All information provided is preliminary and subject to change

Questions from Meeting of May 1, 2023

What is **City Code 3.02** and why does it need to be updated now?

[Chapter 3.02 of city code](#) is titled and about Council Organization and Procedure. Code 3.02 outlines when and how council meetings occur; how the council agenda is created, organized, and facilitated; how different types of policy or items are considered and adopted; as well as, council rules and procedures, including those guiding public testimony.

The City Charter outlines general and specific authorities for the city council, mayor, and the professional city administrator. The revised charter amendments that were passed by voters in November 2022 connect with City Code 3.02 topics, so a review and update of that chapter of code is required to be compliant with the new charter and provide clarity to interested candidates, the future 2025 elected officials, city staff, and the community on how the 12-member council will operate under the new mayor-council form of government starting in 2025.

What is the **role of mayor** in regard to council meetings?

In the new form of government, the mayor will no longer sit and vote with council at meetings. The mayor is not required to attend meetings. The mayor's legislative powers include having the same authority as other councilors to add items to the council agenda and vote only in the case of a tied vote among the council when the mayor's vote will be the deciding vote.

Who **oversees** the chief of police and city attorney?

Section 2-406 authorizes the city administrator to appoint, discipline and remove all bureau directors except the chief of police and city attorney. Section 2-401 delegates appointment (subject to council confirmation) and removal authority to the mayor for the chief of police and city attorney. Section 2-301 authorizes the mayor to exercise all executive and administrative power over the bureaus, so the mayor will supervise the chief of police and city attorney.

Duties of **council president** – how much is being outlined?

The transition team is dividing this work into two areas; 1) policy choices which need to be incorporated into an update to City Code 3.02 in order to match the City Charter and to ensure the success of the council starting in January of 2025 and 2) policy recommendations for the January 2025 council to consider for more effective legislative governance. We will come back to GTAC to share our evolving work.

Will **codification of rules** of council in 2025 establish rules of procedure for all future councils?

The city charter provides future councils with the authority to revise or adopt new code and/or rules of procedure.

Questions from Meeting of May 9, 2023

The materials noted that **quasi-judicial functions** fall under the City Council, or the City Council's designee. Is this charter or code that decides this? How is "quasi-judicial" function defined? How many quasi-judicial decisions or processes are found in Portland code/rules? What are they, and who are the final decision-makers? Should we consider this an opportunity (for the council) to restructure/streamline some of these quasi-judicial processes?

The revised charter assigns quasi-judicial functions to city council, subject to more specific allocations in the charter. The general allocation of powers is provided in Section 2-101:

The municipal powers and authority of the City are vested as follows: legislative and quasi-judicial authority is vested in the City Council and executive and administrative authority is vested in the Mayor, subject to the initiative and referendum and other powers reserved to the people by the constitution of the State of Oregon as defined and prescribed by the provisions of the constitution and general laws relating thereto, and by any more specific allocation set forth in this Charter. Legislative authority means the power to make appropriations, raise revenue and make laws and quasi-judicial authority means the power to apply laws and policies to a set of circumstances. Executive and administrative authority means the power to execute and administer the laws, including by adopting administrative rules.

In practice, very few quasi-judicial matters appear on the Council agenda. The most common are Type III land use appeals and decisions fixing local improvement district boundaries. The Council has delegated some quasi-judicial matters by code, including other types of land use decisions and matters assigned to the city hearings officer. At this point, revision of these processes is not a high priority for the work of the transition team.

Are there state or charter limitations or constraints on a **city council committee** system and/or actions by a council committee? Does a "committee of the whole" work for the budget decision-making issues with state code?

Charter Section 2-111 specifically authorizes the council to establish committees and subcommittees. The charter does not otherwise define or limit what committees of the council may do. Generally, state law does not prevent a local government from creating and using a committee structure, but certain actions require action by the entire governing body.

Charter Section 2-128 states that, "The Council functions as the budget committee and is responsible for approving the budget" and state law specifies that the governing body – the whole council - acts as the budget committee under state budget law (unless the governing body establishes a separate budget committee that includes the governing body and community members, as detailed in state law). Thus, the entire council must convene and act as the budget committee.

What, if any, changes in the **council-side** of the budget processes are anticipated?

Currently, in Portland's commission form of government, city commissioners exercise administrative oversight of city bureaus and are significantly involved in the development of individual bureau budgets. Commissioners are engaged well in advance of the separate bureau budget submissions used for development of the mayor's proposed budget.

According to the revised city charter, the mayor must submit a proposed budget to the city council by May 5 of each year. The council functions as the budget committee and is responsible for approving the budget. A mayor would likely engage city council to pass their proposed budget. This work could start as early as the budget development phase. The city council could engage community and work to have both community and council priorities reflected in the proposed budget or, while seated as the budget committee.

The materials are not entirely clear on executive branch adoption of **administrative rules** – who adopts them and how they are adopted. Does the new city structure create “separation of powers” problems with administrative rules? What is the line of accountability from the rules to the voters in the new government? Is there, or should there be, a legislative role?

Adoption of these rules is an administrative/executive function. The revised charter assigns administrative rulemaking to the city administrator. It states in Section 2-406 (I) that the city administrator has the authority to, “Prescribe such general rules and regulations as the Administrator may deem necessary or expedient to the general conduct of the administrative departments under the Administrator’s jurisdiction. The Administrator may delegate rulemaking authority to other bureau directors.”

The city council currently has and will continue to have investigative authority regarding implementation of legislatively adopted code to provide accountability related to the adoption or enforcement of administrative rules. Additionally, Council always has the option to amend the code to provide additional direction and clarity in the implementation of legislation.

Is there a list of **administrative rules** that will need to be adopted on Day1? Or annual adoption? Or is the transition considering only rules that might be inconsistent with the new government structure for changes? Should we consider this an opportunity for the city to restructure/streamline rulemaking?

In the new form of government, revision and adoption of administrative rules is delegated by charter to the city administrator. As a result, our primary focus during the transition will be amendments to rules that are inconsistent with the new government structure.

Who presides at the first meeting of the city council *before* the council president is elected? Maybe the same question, but maybe not, how does **the council president’s election** occur? Who presides?

Initial research of comparator cities indicates that this role is often taken by either the City Attorney or the Council Clerk. However, discussions are underway regarding what is most appropriate for City of Portland. The first order of business at the new council’s first meeting will be the election of the council president.

How is the City Attorney’s Office planning to deal with “conflicts” between the legislative branch and the executive branch? Are there plans for a separate, or “firewall-separated” **legislative counsel**?

The Office of the City Attorney provides legal services to the City of Portland and to the elected officials, officers and employees acting on its behalf. The Office’s only client is the City of Portland. Areas of disagreement will be addressed similarly to the way they are currently, and in a manner appropriate to the disagreement. If the Office deems it advisable, outside council will be retained.

Is there a full list of **boards and commissions** and their memberships? Will the current terms of current members of Boards and Commissions expire with the change of government? Will Boards and Commissions (both appointments and advisory function) be fully an executive branch function, or will

it be it case-by-case? What is the impact of council districts on Boards and Commissions membership? Should we consider this an opportunity to restructure/streamline Boards and Commissions?

The Office of Community and Civic Life, led by Commissioner Ryan, is developing a strategy and proposal to take a new look at advisory bodies at the City. They have a [full list of all advisory bodies](#) and are in process on creating a complete and current membership list.

Terms for current boards and commissions are not tied to the change of government, and do not expire with that change. Each advisory body has a different term length – most often 2 or 4 years, and most also have been set up with staggered appointments so not all seats need to be filled at the same time.

We are still determining whether all advisory bodies will now be under the executive branch, particularly given that some were established requiring direct appointment by council. As those advisory bodies generally also report directly to council, we are working to determine what their role should be in the future government.

There likely will be only minimal impact to advisory bodies due to council's geographic districts. This is because, with only a few exceptions, the only requirement for participating on most city advisory bodies is that an applicant, "live, work, play, go to school, and/or worship in the City of Portland." We currently do not anticipate that this will need to change with districts.

If you are interested in more information about the Office of Community and Civic Life's work regarding city advisory bodies, please reach out to Ocean Eale, Advisory Bodies Analyst in the Office of Civic Life.

The materials were blurry in their descriptions of the **mayor's role versus the administrator's role**. For example, it says the city administrator will "administer the affairs of the city" and "execute the laws." And the mayor will "administer the code" and "execute the code." Is there a difference? If so, what is it? To what extent do the contours of **the mayor/administrator relationship** need to be codified?

The mayor may delegate their authority to the city administrator. Examining the contours of the relationship between the mayor and the city administrator is being considered as part of the governance work that is underway.

The materials acknowledge the "grey areas" will need to be navigated carefully. They say the city will need to decide in some cases **whether a grey area is legislative or executive**, and that the city attorney will assist and help to provide role clarity. How will that decision/clarity process occur? How will such navigation be made accountable to voters?

The process to provide role clarity will proceed the way it does now, by consultation with the City Attorney's Office and within the political process. As time passes and precedent is established, role clarity will become more developed.