

Memorandum

To: Multnomah County Charter Review Committee
From: Carol Chesarek, committee member
Re: Appointed vs. Elected Sheriff, alternate proposal
Date: July 5, 2016

I wanted to think through an appointed Sheriff process (hiring, management, and firing), assuming the county moves to an appointed County Manager position, and quickly became concerned that it was not workable. For those of you who don't want to read 5 pages, I've put my conclusions at the top. Information about Executive Sessions is attached at the end. I've done my best to think the issues through, but I'm not a lawyer and the County Attorney's office may disagree with my analysis.

Conclusions

I provided this analysis for two reasons. I also drafted a different kind of recommendation.

First, I realized that an appointed Sheriff is a complicated proposition. The County Manager proposal also adds much more complexity (without the County Manager, an appointed Sheriff could report to the Chair, similar to a Police Chief reporting to a Mayor). This committee doesn't have the time or expertise to fully consider the implications and appropriate structures of an appointed Sheriff in a single meeting.

Second, many of the problems with the County Manager position and appointed Sheriff described below would also apply to hiring and firing of Department Directors. It appears to me that the Board would be prohibited from providing guidance about hiring criteria for example -- they would only be allowed to approve or deny hiring a candidate. They may also be prohibited from providing guidance about how those Directors should be managed, for fear of providing forbidden guidance about "staff removal."

Even without an appointed Sheriff, the implications of a County Manager position, as proposed, appear more complex than this committee has considered, and we risk writing Charter language that the county will be stuck with, without any avenue for alteration, for the next 6 years. Seemingly minor mistakes in the Charter can result in long term harm.

While I am extremely uncomfortable with many aspects of the current elected Sheriff's office, and I believe there were many possible solutions we could have explored (such as shifting the Department of Corrections to report to the Chair or the Board), I believe we have waited too late in our process to reach any responsible recommendation for change.

Instead of a Charter amendment, I suggest that our Committee adopt a Resolution asking the Chair and Board to work with the Sheriff and District Attorney to establish an expert committee to review the county's Community Justice, Law Enforcement, and Corrections Division (Jail) programs and systems to ensure they are equitable, effective, and cost effective. The expert committee should work with the Sheriff, DA, Chair and Board to implement changes that don't require a Charter amendment, and would be asked to refer any changes that require a Charter amendment to the next Charter Review Committee for consideration.

How an Appointed Police Chief works in Portland

I will first explain how I understand Portland's process works for their appointed Police Chief, for comparison. Assume the Police Bureau reports to the Mayor, which is almost always the case because of the high political stakes, but in theory another Council Member can own the Police Bureau and the process would remain the same but with that Commissioner in charge instead of the Mayor. Let's use an invented Mayor Smith and former Chief Bland to create an example.

- 1) Mayor Smith, based on his experience managing the Portland Police Bureau (and possibly also based on private interviews with potential candidates), decides to hire Assistant Chief Bland as the new Police Chief. The Police Chief reports to Mayor Smith, and Mayor Smith manages him. The Mayor could choose to do a broader search for candidates and to conduct interviews or not -- the process is entirely the Mayor's choice, and no other party must approve the hiring.
- 2) Chief Bland goes skeet shooting with friends, resulting in an unfortunate accident with a firearm.
- 3) The Mayor places Chief Bland on administrative leave, reports the accident as required.
- 4) The Mayor chooses to fire Chief Bland or requests his resignation.
- 5) The Mayor hires a new Chief of Police, who serves at his pleasure.

Note the clear lines of accountability from beginning to end – the Mayor (an elected official responsible to voters) hires, manages, and fires the Police Chief at will and can act quickly to hire and fire based on his best judgement and input from the Bureau and from constituents. If the Mayor does a poor job, he is an elected official who can be recalled or forced from office.

Analysis of appointed Sheriff if the appointed County Manager proposal is approved:

First question: Who would an appointed Sheriff report to?

- 1) Report to the Chair?
 - a) Current Chair opposes an appointed Sheriff.
 - b) Why would we trust the Chair to manage the Sheriff if we don't trust the Chair to manage any other county function? County Manager recommendation specifically assigns all County administration to the County Manager, so this would be inconsistent with that proposal.
- 2) Report to the Board as a whole?
 - a) 3 of the 5 current Board members oppose an appointed Sheriff, don't want the responsibility.
 - b) Who would Chief Bland (our example) report his hunting accident to? All 5 Board members? How would the Sheriff do that (private meetings with all 5)? What are the odds the Sheriff would actually report the incident to Board members? If the Sheriff only reports it to one, would they be able to share that information with the others? How would the Board put the Sheriff on administrative leave and report the issue to appropriate channels for investigation? In open session? In Executive Session?

- c) Would create second brand-new management responsibility for the board at the same time as they take on the County Manager, adding significant complexity and risk.
- d) Conflicts with the theory about having all Board managed county functions report into County Manager as well as the directive: “County Manager shall be the head of County administration.” And County Manager is told to “Appoint, supervise, transfer and remove all County department heads, administrative officers and employees.” Sheriff would surely be a department head.
- e) If the Sheriff is carved out as an exception to the County Manager role and does report directly to the Board and not the manager, who will provide day to day management of the Sheriff? This scenario has no clear accountability; there will be no one person responsible for providing day to day management and instructions to the Sheriff even in case of emergency.
 - i) Would the Sheriff come to the Board for approval of all policies and high level hiring, as the County Manager will?
 - ii) No majority of Board members can meet privately with the Sheriff, any discussion or direction would normally be required to be provided in open session, or in private meetings between the Sheriff and no more than 2 Board members at a time to avoid a quorum. In some cases executive session of the Board may be allowed.
 - (1) Public discussion in open session. But open session discussion won’t be appropriate for some sensitive topics, for example secret preparations to prevent potential terrorist activity or managing security for the Board. Executive sessions aren’t allowed in all cases they might be desired. Media are allowed to attend (but not report on) most executive sessions of the Board, so those aren’t a very private meeting.
 - (2) Private meetings. There’s no clear way to ensure clear and consistent direction from the Board to the Sheriff on some topics if the Sheriff can’t privately meet with a majority or preferably the full Board, but must instead meet with no more than 2 members of the Board at a time. This creates many possibilities for inconsistent management direction and reporting. Compare with a Sheriff reporting to a Mayor or Chair alone.
 - iii) Ick. I don’t see how this can work effectively and provide clear accountability to voters.

3) Report to the County Manager?

- a) Does anyone think it appropriate to have the Sheriff (the County’s chief law enforcement official, who is responsible for investigating county employees if needed) report to someone who isn’t themselves elected?
- b) It seems highly unlikely that voters would see adequate accountability for a critical position such as Sheriff in this arrangement.

- c) Chair and Board will be held responsible by voters for managing the Sheriff even though they would have no direct control over the Sheriff other than approving the candidate hired. County Manager is given full power to supervise department heads. If the board were to provide any direction about management of the Sheriff they could easily run afoul of the new prohibition against the board trying to influence firing of a staff member.

Second Question: Who would be responsible for the Sheriff hiring process?

Regardless of who the Sheriff would report to, the County Manager proposal requires the County Manager to be head County administration and to **“Appoint, supervise, transfer and remove all County department heads, administrative officers and employees,”** with Department heads subject to the confirmation by the Board. This appears to require that the County Manager recruit, screen, and narrow a list of candidates, and ultimately to choose a Sheriff to present to the board for their approval.

- 1) If the Sheriff reported to the Chair, the Chair would be responsible for the Sheriff’s results, but would not control the hiring process. This would be completely inappropriate.
- 2) Similarly, if the Sheriff reported to the Board as a whole, the Board would be responsible for the Sheriff’s results, but they would only have the ability to approve or deny the County Manager’s proposed hire. Board members would be specifically prohibited not only from suggesting potential candidates (a la Mike Reese) for the job, but also from establishing any experience or criteria they felt were critical for a successful Sheriff, even if the position reported to them:

“No Board member shall directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the Manager in matters of staff appointment or removal. “

The County Manager would therefore have to blindly guess what experience and criteria that would result in a candidate for Sheriff (or any other job candidate) being approved by the board, since the Board would be prohibited from providing any input or direction about staff appointment or removal.

- a) If the Sheriff reports to the Board, the Board would be responsible for the results, but they would have no input into managing the Sheriff, and no input into the hiring process except approval or denial of candidates presented to them by the County Manager, who will have to guess about what they want in a Sheriff.
- b) If the Sheriff position is carved out as an exception to the County Manager role so it can report directly to the Board, then who would recruit, screen, and narrow a list of candidates? What role would the board play in the hiring process aside from approving a candidate? In this County Manager world, we no longer trust the Chair (or people who report to the Chair) to run the hiring process for any other county employee (except for their own staff), why would we trust the Chair with this role for the Sheriff? If the Sheriff reports to the board but hiring is managed by the County Manager, the board is still prohibited from input except to approve or reject a proposed candidate.

- 3) If the Sheriff reports to the County Manager, the County Board (as above) will be able to approve or deny hiring a candidate proposed by the County Manager, but will still be unable to provide any other input on hiring or firing the Sheriff.
 - a) The Board will be held responsible by the public for any problems with the Sheriff, but they would be unable to fire the Sheriff or even provide any direction to the County Manager about the potential removal of the Sheriff. They only have the power to fire the County Manager, but they would apparently be unable to even explain why if the reason they fired the manager was the performance of the Sheriff due to the prohibition on influencing the Manager in matters of staff removal.

Third question: Who can fire an appointed Sheriff?

- 1) Chair? I think I've already shown that the Sheriff can't report to the Chair if the County Manager proposal is approved by voters. This isn't a viable option.
- 2) Board? The board may be prohibited from firing the Sheriff, even if he reports to them:

“No Board member shall directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the Manager in matters of staff appointment or removal. “

If the Sheriff's job is carved out as an exception to the County Manager role (in all the right places), the Board would be still be unable to meet privately with the Sheriff to express concerns about how the Department is managed (see (2)(d)(ii) above), or to discuss important issues with the Sheriff (such as Chief Bland's accident), except in some cases in Executive Session, but these sessions still require public notice and news media is often allowed to attend. Open meeting requirements appear to limit the Board's ability to act quickly and privately, as would be possible if the Sheriff reported only to the Chair or to the County Manager. Lack of privacy may discourage problems from being reported to the Board, and could discourage the Board from acting.

- 3) County Manager? I think I've already shown that this reporting structure isn't viable.

Conclusions

See the conclusions stated at the top of this document.

Summary of verbal and written comments which Support or Oppose an Appointed Sheriff:

Support increasing accountability of the Sheriff to the Board, no request for Appointed Sheriff:

- 1) Portland Immigrant Rights Coalition (PIRC), letter 03/16/16

Support Appointed Sheriff

- 1) Commissioner Shiprack, letter 11/18/15
- 2) APANO, letter 4/20/16
- 3) Causa, letter 4/20/16
- 4) Center for Intercultural Organizing, letter 4/20/16
- 5) League of Women Voters, letter 4/29/16
- 6) Partnership for Safety and Justice, letter 05/06/16

Support Retaining Elected Sheriff

- 1) Chair Kafoury, verbal comments to committee 6/28/16
- 2) Commissioner Smith, verbal comments to committee 6/28/16
- 3) Commissioner McKeel, verbal comments to committee 2/17/16
- 4) Multnomah County Corrections Deputy Association, letter 1/13/16
- 5) Northeast Multnomah County Community Association, letter
- 6) Oregon State Sheriff's Association, letter 03/16/16
- 7) Sheriff's Office Citizen Budget Advisory Committee, letter 4/18/16
- 8) Maywood Park Mayor Mark Hardie, letter 4/18/16
- 9) Wood Village Mayor Patricia Smith, letter
- 10) Troutdale City Councilor John Wilson, letter 4/17/16
- 11) Troutdale City Councilor David C. Ripma, letter 4/18/16
- 12) Verbal comments from at least 3 citizens at different meetings

About Executive Sessions:

From the State Department of Justice *Citizen's Guide to Public Records and Meetings*, underlines are my addition. See http://www.doj.state.or.us/public_records/pages/citizens_guide.aspx#2e

A meeting can be closed to the public if a governing body goes into Executive Session. The law governing Executive Session is designed to allow a public body to have confidential discussions, but does not allow any decisions to be made in secret. All decisions by a governing body must be made in public. Reasons for Executive Session include discussions about labor negotiations or the hiring or disciplining of a public employee. Journalists may attend most Executive Sessions, but cannot report or broadcast what was said. A list of exempt meetings and reasons for executive sessions are in the online [Attorney General's Public Records and Meetings Manual](#). [see below]

The following Checklist for Executive Session is from the State Department of Justice web site:

http://www.doj.state.or.us/public_records/manual/pdf/appendix_k_4.pdf

Checklist for Executive Session

This checklist is intended to assist governing bodies in complying with the executive session provisions of the Public Meetings Law; however, you should consult the appropriate section(s) of this manual for a complete description of the requirements.

- Provide notice of an executive session in the same manner you give notice of a public meeting. The notice must cite to the specific statutory provision(s) authorizing the executive session.

Permissible grounds for going into executive session are:

(a) To consider the employment of an officer, employee, staff member or agent if: (i) the job has been publicly advertised, (ii) regularized procedures for hiring have been adopted, and (iii) in relation to employment of a public officer, there has been an opportunity for public comment. For hiring a chief executive officer, the standards, criteria and policy to be used must be adopted in an open meeting in which the public had an opportunity to comment. This reason for executive session may *not* be used to fill vacancies in an elective office or on any public committee, commission or other advisory group, or to consider general employment policies. ORS 192.660(2)(a) and 192.660(7).

(b) To consider dismissal or discipline of, or to hear charges or complaints against an officer, employee, staff member or agent, if the individual does not request an open meeting. ORS 192.660(2)(b).

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990(3). ORS 192.660(2)(c).

(d) To conduct deliberations with persons you have designated to carry on labor negotiations. ORS 192.660(2)(d).

(e) To conduct deliberations with persons you have designated to negotiate real property transactions. ORS 192.660(2)(e).

(f) To consider information or records that are exempt from disclosure by law, including written advice from your attorney. ORS 192.660(2)(f).

(g) To consider preliminary negotiations regarding trade or commerce in which you are in competition with other states or nations. ORS 192.660(2)(g).

(h) To consult with your attorney regarding your legal rights and duties in regard to current litigation or litigation that is more likely than not to be filed. ORS 192.660(2)(h).

(i) To review and evaluate the performance of an officer, employee or staff member if the person does not request an open meeting. This reason for executive session may *not* be used to

do a general evaluation of an agency goal, objective or operation or any directive to personnel concerning those subjects. ORS 192.660(2)(i) and 192.660(8).

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments. ORS 192.660(2)(j).

(k) For a health professional regulatory board to consider information obtained as part of an investigation of licensee or applicant conduct. ORS 192.660(2)(k). 2

(l) For the State Landscape Architect Board or its advisory committee to consider information obtained as part of an investigation of registrant or applicant conduct. ORS 192.660(2)(L).

(m) To discuss information about review or approval of programs relating to the security of any of the following: (A) a nuclear-powered thermal power plant or nuclear installation; (B) transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation; (C) generation, storage or conveyance of (i) electricity, (ii) gas in liquefied or gaseous form, (iii) hazardous substances as defined in ORS 453.005(7)(a), (b) and (d), (iv) petroleum products, (v) sewage, or (vi) water; (D) telecommunications systems, including cellular, wireless or radio systems; or (E) data transmissions by whatever means provided. ORS 192.660(2)(m).

(n) To conduct labor negotiations, if requested by negotiators for both sides. ORS 192.660(3).

- Announce that you are going into executive session pursuant to ORS 192.660 and cite the specific reason(s) and statute(s) that authorize the executive session for *each* subject to be discussed. See sample script on p. K-9. (You may hold a public session even if an executive session is authorized.)
- If you intend to come out of executive session to take final action, announce when the open session will begin again.
- Specify if any individuals other than the news media may remain.
- Tell the media what may *not* be disclosed from the executive session. If you fail to do this, the media may report everything. If you discuss matters other than what you announce you are going to discuss in the executive session, the media may report those additional matters.
- A member of the news media must be excluded from executive sessions held to discuss litigation with legal counsel if he or she is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party.
- Come back into open session to take final action. If you did not specify at the time you went into executive session when you would return to open session, and the executive session has been very short, you may open the door and announce that you are back in open session. If you unexpectedly come back into open session after previously announcing you would not be doing so, you must use reasonable measures to give actual notice to interested persons that you are back in open session. This may require postponing final action until another meeting.
- Keep minutes or a sound, video or digital recording of executive sessions.