CITY OF WESTBROOK, MAINE
IN CITY COUNCIL

Date: August 2, 2021
Order: 2021-69

Appraising Referendum for Charter Amendment Regarding Ranked Choice Voting for Municipal Offices

That the Westbrook City Council hereby authorizes the placement of the attached referendum question on the ballot at the election held on November 2, 2021.

First Reading: July 12, 2021
Second and Final Reading: August 2, 2021

Attest:

City Clerk

Mayor
REQUEST FOR COUNCIL ACTION

PROPOSED TITLE:  Approving Referendum for Charter Amendment Regarding Ranked Choice Voting for Municipal Offices

REQUESTED BY:  Angela Holmes

DATE:  8/2/2021

SUMMARY:
First reading and public hearing scheduled for the City Council meeting held on Monday, July 12, 2021. Notice of the public hearing published in the Portland Press Herald on Friday, July 2, 2021, posted on the City of Westbrook’s website, and at City Hall.

Second and final reading of this legislation slated for Monday August 2, 2021.
TO:          Honorable City Council Members  
FROM:              Angela Holmes, Asst. City Administrator/City Clerk  
DATE:               July 1, 2021 - UPDATED  
RE:  Implementing Ranked Choice Voting at Municipal Elections

Last year, Councilor David Morse outlined a desire to send a referendum question to voters concerning a Charter change to implement Ranked Choice Voting (RCV) at municipal elections. At the time, I asked him to hold on any Committee referral until after the November 3, 2020 Presidential Election, so that I could conduct research on this matter. The referral is now before you, and this memo is intended to provide information to take into consideration during discussions on this matter.

The questions that warrant discussion are as follows:

- Given past election trends, what is the likelihood that RCV would be used in future municipal elections?
- Would a Charter commission be required for this Charter amendment?
- Would this apply to all municipal candidates appearing on a ballot (including Mayor, City Council, School Committee, Wardens, Ward Clerks, Portland Water District Representative), or some portion of that list?
- What are the logistical requirements to implement RCV?
- What are the costs associated with implementing RCV?
- When would the implementation take place, if adopted by voters?
- What are the referendum adoption requirements?
- What other items should be considered?

Language
For clarity, it is important to note that use of the term “RCV” incorporates two elements: (1) the “front end” process that voters use to rank candidates in order of preference, and (2) the “back end” process of runoff tabulation rounds. Note that the runoff tabulation rounds are only necessary when certain conditions are met – i.e., when there are three or more candidates and when no candidate has won by more than 50% of the votes (at least 50% + 1 additional vote). It is possible for voters to vote using the RCV method of ranking candidates without triggering the need for runoff tabulation rounds, namely, if a candidate garners more than 50% of the votes at initial tally.
Past Election Results
The first question to consider is the likelihood and frequency of use for RCV runoff tabulation rounds in future municipal elections, given past election trends. Included below is an outline of past elections, noting where three or more candidates were in a race, which race was affected, and the ranking percentage. I have also added notes indicating whether or not RCV runoff tabulation rounds would have been needed, had RCV been an option at that time.

Note that until recent years, certain At-Large positions had a “vote for two” option; data from elections occurring 2012 or earlier are not included.

<table>
<thead>
<tr>
<th>Election</th>
<th>Race</th>
<th>#Candidates</th>
<th>%VoteRanking</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/5/2013</td>
<td>Mayor</td>
<td>3</td>
<td>1st - 53.2%</td>
<td>RCV runoff tabulation rounds would not be needed. 1st place candidate won by 53.2% (more than 50% + 1 vote).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2nd - 34.9%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3rd - 12.0%</td>
<td></td>
</tr>
<tr>
<td>11/5/2013</td>
<td>Council, Ward 4</td>
<td>3</td>
<td>1st - 48.7%</td>
<td>RCV runoff tabulation rounds would be needed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2nd - 40.1%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3rd - 11.3%</td>
<td></td>
</tr>
<tr>
<td>11/14/2015</td>
<td>Council, Ward 3</td>
<td>3</td>
<td>1st - 64.3%</td>
<td>RCV runoff tabulation rounds not be needed. 1st place candidate won by 64.3% (more than 50% + 1 vote).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2nd - 18.4%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3rd - 17.3%</td>
<td></td>
</tr>
<tr>
<td>11/8/2016</td>
<td>Mayor</td>
<td>4</td>
<td>1st - 35.8%</td>
<td>RCV runoff tabulation rounds would be needed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2nd - 34.8%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3rd - 24.3%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4th - 5.0%</td>
<td></td>
</tr>
<tr>
<td>11/5/2019</td>
<td>Council, At-Large</td>
<td>3</td>
<td>1st - 50.6%</td>
<td>RCV runoff tabulation rounds would not be needed. 1st place candidate won by 50.6% (more than 50% + 1 vote).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2nd - 25.3%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3rd - 24.1%</td>
<td></td>
</tr>
<tr>
<td>11/8/2016</td>
<td>Mayor</td>
<td>4</td>
<td>1st - 30.9%</td>
<td>RCV runoff tabulation rounds would be needed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2nd - 28.4%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3rd - 26.8%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4th - 14.0%</td>
<td></td>
</tr>
<tr>
<td>11/5/2019</td>
<td>Council, At-Large</td>
<td>3</td>
<td>1st - 42.3%</td>
<td>RCV runoff tabulation rounds would be needed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2nd - 38.9%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3rd - 18.8%</td>
<td></td>
</tr>
</tbody>
</table>

If the desire of the Council and voters of Westbrook is that all elected municipal officials win by majority (the candidate supported by more than 50% - the majority - of the voters) and not simply plurality (the greatest number of votes, but not necessarily the majority), and if past data is an indicator of future trends, then it appears as if RCV runoff tabulation rounds would have been utilized if the option were made available, in some years at least.

Charter Commission
I consulted with City Solicitor Natalie Burns on whether or not a Charter Commission would be required to incorporate RCV for municipal elections. Her opinion is that a change to the Charter to establish RCV could be accomplished through a simple Charter amendment, provided that the
amendment is limited in scope and does not include other matters. This modification would change the manner of election of City officials but would not modify the form of government itself.

Applicability
If the City Council wishes to send this RCV question to referendum, it would be prudent to include the positions of Mayor, City Council and School Committee within the scope of applicability. I recommend excluding the Portland Water District Representative position (elected every six years). The positions of Warden and Ward Clerk as outlined in the Charter were modified in 2019 through referendum, which made these positions appointed instead of elected.

Implementation Logistics
To obtain information concerning implementation logistics and cost, I consulted with Deputy Secretary of State Julie Flynn, Portland City Clerk Katherine Jones, and the State’s election systems vendor Election Systems & Software (ES&S). It is important to note that we would want to use whatever vendor the State of Maine uses for their RCV races for continuity. The State has recently extended its contract with the vendor through June 2022 but will be going out to bid in the future for a new contract. The process (and pricing) described below reflects the process followed by ES&S and would be subject to change if the State vendor changes.

Concerning ballot coding, the format of the ballots themselves would likely need to change, due to increased content. Races would appear in the same order, but the layout would likely need to appear in landscape (horizontal) rather than portrait (vertical) to accommodate the rankings. If referendum questions appear on the ballot, it may be necessary to print plurality contests on one side of the ballot and RCV contests on the opposite side. In addition, if there are several races in which three or more candidates are running, the ballot itself may be several pages long, which would in turn affect the price.

On Election night, we would require two additional computer units to conduct the tabulations, available through the vendor ES&S. The data from each of the individual tabulators (ballot machines) would be compiled through one of the two units, and the resulting database would be transferred to the second unit to run the RCV iterations.

In addition, the testing requirements for election equipment would be more involved than in other elections, and would likely require increased staff time, especially in the first year of implementation.

Costs
As noted above, the costs provided herein pertain to products and services provided by ES&S. These are quotes only, provided in early 2021, and would be subject to change depending upon Westbrook’s implementation of RCV, and is also dependent upon whether ES&S remains the State’s election systems vendor in the future.

For Westbrook, it is estimated that the introduction of RCV would cost an additional $20,000 - $25,000 per election for the rental of the computer units in years that have municipal candidate elections.
Additional funds, approximately $1,000 - $3,000, would likely need to be included for additional printing costs associated with multiple ballot pages. In addition, both the State of Maine and the City of Portland have a representative from the vendor on site for elections where RCV is used. It would be advisable to engage vendor support in Westbrook for this purpose as well. The costs of having a vendor representative on site are unknown.

Note that since the Charter change of 2012, municipal elections generally take place two out of every three years. Additional funds would need to be included in budgets for years in which municipal candidate elections take place, and we would need to anticipate this extreme volatility during budget cycles. An additional factor to note is that we would need to budget for RCV needs without knowing if a race would generate the three or more candidates needed to actually use the RCV method. If RCV were approved for an At-Large Councilor’s race (for example), and the race only generated two candidates, standard plurality tabulation methods (and costs) would apply.

**Timing**

If the Committee discusses this matter and agrees to refer the question to Council for consideration, City Council would need to vote on whether or not to include the referendum question on the November 2021 ballot soon. The earliest day that candidates may take out nomination petition papers for the November 2nd election is 120 days prior to the election, which falls on July 5th (the observed Independence Day holiday), and papers would be due by September 3rd (60 days prior to the election, 30-A M.R.S.A. § 2528(5)). This deadline would also apply to the inclusion of any referendum question being added to the ballot. This provides time for the ballots to be printed before absentee voting starts, 30 days before the election.

City Council would need to adopt an Order to send this question to referendum, with a public hearing occurring at least 10 days prior to the final vote. If this question were approved by voters, RCV could be used at the November 2022 municipal election. Funds for election equipment would need to be included in the FY 2022-2023 for this purpose.

**Referendum Adoption Requirements**

Title 30-A M.R.S.A. § 2104(4) states that the total number of votes cast on either side of a Charter change referendum must be equal to at least 30% of the total votes cast in the City at the last gubernatorial election (or 2,584 votes). The projected turnout for the November 2, 2021 election (a State Referendum + Municipal Candidate election) is 25.4%, which based upon our current voter population equates to approximately 3,776 voters.

Based on this information, I believe the projected turnout would accommodate this inclusion of this question on the November ballot.

**Other Items for Consideration**

Based upon the feedback from the Secretary of State’s Office and from the Portland City Clerk’s Office, the implementation of RCV now works very smoothly. However, it does require greater staff time and dedication, which may result in some temporary modification to the other duties performed in the City
Clerk’s Office around election season. However, in the past we have been able to accommodate such modifications through greater use of seasonal election staff and the Customer Service Representatives in the Finance Department, and minor adjustments to the non-election services offered by the City Clerk’s Office and anticipate that we would be able to do the same in the future.

It is also important to note that additional time may be required to tabulate RCV rankings on election night. However, while this process may take up to several days at the State level, we anticipate that election results would still be available on election night. Since Westbrook consolidated polling locations, and since absentee ballot processing occurs within the Community Center, all of the ballot tabulators are located under one roof, eliminating any delays which may occur at the State or in Portland due to the transportation of the tabulator memory drives containing results.

Another item for consideration relates to elections where Westbrook voters may be asked to select more than one candidate. The recent Charter Commission election in Portland called for voters to select two At-Large Commission members, consistent with a provision in 30-A M.R.S.A. Sec 2103(1), which states that the number of voting members must be the same as the number of municipal officers and that the voting members must be elected “in the same manner” as the municipal officers. This being the case, Portland voters were asked to vote for two At-Large candidates according to RCV tabulation methods — of course, it is impossible for two candidates to both receive more than 50% of the votes. It was determined that the City of Portland could use a nuanced approach to RCV tabulation to account for this anomaly, but it took significant effort to arrive at this solution, as their Charter was silent upon this issue. The proposed Charter amendment language included with this memo incorporates proportional representation when two or more candidates must be elected to the same office, which may occur in the event of a Charter Commission. This language is based upon the Massachusetts statute utilized by Cambridge, MA in its proportional representation method.

An additional element for consideration is voter education. If a Charter change were adopted by voters, we would want to engage in a voter education campaign about the modification. However, given the State’s existing use of RCV for certain races, I anticipate that the transition to using this voting method at the municipal level would occur fairly effortlessly.
CITY OF WESTBROOK
DRAFT REFERENDUM QUESTION & CHARTER AMENDMENT
RANKED CHOICE VOTING FOR MUNICIPAL OFFICERS

**Question 1.** Shall the City of Westbrook approve the charter amendment reprinted below?

**Section 6.2. Mayor, City Councilors and other officers; how elected, terms.**

**A. Officials and terms.** The municipal elections shall take place on the first Tuesday after the first Monday in November and shall be conducted in the manner provided by the laws of this state. The Mayor, two (2) City Councilors and two (2) School Committee members shall be elected from the citizens at large, by the legal voters of the City voting in their respective wards. One (1) City Councilor and one (1) School Committee member shall be elected in each ward, being residents in the ward where elected. The City Council may divide any ward into two (2) or more precincts.

All said officers shall be elected by a plurality of the votes given and shall hold office for three (3) years from the first Monday in December, and until others shall be elected and qualified in their places.

Warden and Ward Clerk shall be appointed annually by the City Council based upon the recommendation of the City Clerk.

**B. Ranked choice voting: instant runoff tabulation.** For the positions of Mayor, City Councilor, and School Committee Member, the City Clerk shall implement a ranked choice voting protocol according to these guidelines:

i. The ballot shall give voters the option of ranking candidates in order of choice.

ii. If a candidate receives a majority, i.e. at least one more than fifty percent (50%) of the first choice votes cast, that candidate is elected.

iii. If no candidate receives a majority of first choice votes, an instant runoff re-tabulation shall be promptly conducted by the City Clerk and completed within five (5) business days of the election. The instant runoff re-tabulation shall be conducted in successive rounds, with the majority determined for each successive round by the number of votes cast in that round. The candidate with the fewest votes after each successive round in which no candidate receives a majority of the votes cast in that round shall be eliminated, and the votes in the successive rounds shall be re-tabulated among the remaining candidates until one candidate receives a majority of the votes cast in that round. In each successive round, each voter’s ballot shall count as a single vote for whichever candidate the voter has ranked highest who has not been eliminated in a...
prior round, if any.

iv. After the first round, a majority is determined as at least one (1) more than fifty percent (50%) of the votes cast for a remaining candidate in a particular round.

iv. The City Clerk may adopt additional regulations consistent with this subsection to implement these provisions. The ballot shall contain instructions on how to vote for each office.

Section 6.5 Vote required for election; offices to be filled; vacancies.

Whenever two (2) or more persons are to be elected to the same office, the several persons up to the number to be chosen, receiving the highest number of votes shall be deemed and declared to be elected shall be elected by proportional representation. The City Clerk shall implement a proportional representation voting protocol according to these guidelines:

(a) The total number of ballots indicating a valid vote for a candidate shall be determined prior to counting of ballots for individual candidates.

(b) Each candidate shall be credited with one vote for every valid ballot that is sorted to that candidate as first choice, or otherwise credited to that candidate as hereinafter provided, and no ballot shall ever be credited to more than one candidate at the same time.

(c) A "quota" is the smallest number of votes which any candidate must receive in order to be assured of election without more candidates being elected than there are offices to be filled. It shall be determined by dividing the total number of valid ballots by one more than the total number of candidates to be elected and adding one to the result, disregarding fractions. Whenever at any stage of the counting the number of ballots credited to a candidate becomes equal to the quota, that candidate shall be declared elected, and no ballots in excess of the quota shall be credited to that candidate except as provided in (f) or (l) of this section.

(d) The ballots shall be sorted according to the first choices marked on them.

(e) If a candidate is elected while the ballots are being sorted according to first choices, any subsequent ballots which show that candidate as first choice shall each be credited to the second choice marked on it, or, if the second choice also has been elected, to the next choice marked on it for a candidate not yet elected.

(f) If during the first sorting of ballots, ballots are found which are marked for a candidate already elected as first choice, but show no clear choice for any unelected candidate, such ballots shall at the end of the sorting be given to the candidate of their first choice, and in their place an equal number, as nearly as possible, of the last ballots sorted to that candidate which show a clear choice for unelected candidates, all as determined by the City Clerk, shall be taken and re-sorted to unelected candidates as if they were then being sorted for the first time.

(g) When all the ballots have been thus sorted and credited to the first available choices marked on them, every candidate who is credited with fewer ballots than the number of signatures required for that candidate's nomination shall be declared defeated.

(h) All the ballots of the candidates thus defeated shall be transferred, each to the candidate indicated on it as next choice among the continuing candidates. A "continuing candidate" is a candidate not as yet either elected or defeated. Any ballot taken for transfer which does not
clearly indicate any candidate as next choice among the continuing candidates shall be set aside as "exhausted".

(i) When all the ballots of the candidates thus defeated have been transferred, the one candidate who is then lowest on the poll shall be declared defeated and all that candidate’s ballots transferred in the same way.

(j) Thereupon the candidate who is then lowest shall be declared defeated and all that candidate’s ballots similarly transferred; and in like manner candidates shall be declared defeated one at a time and all their ballots transferred.

(k) If, when a candidate is to be declared defeated, two or more candidates are tied at the bottom of the poll, that one of the tied candidates shall be declared defeated who was credited with fewest ballots immediately prior to the last transfer of ballots. If two or more of the tied candidates were tied at that stage of the count, also, the second tie shall be decided by referring similarly to the standing of candidates immediately prior to the last transfer of ballots before that. This principle shall be applied successively as many times as may be necessary, a tie shown at any stage of the count being decided by referring to the standing of the tied candidates immediately prior to the last preceding transfer of ballots. In interpreting this and other rules contained in this section the transfer of all ballots from candidates defeated together under rule (g) of this section, and the transfer of all ballots from each candidate defeated thereafter shall each constitute a single separate transfer.

(l) Whenever candidates to the number to be elected have received the quota, any transfer of ballots in progress when the last quota was reached shall be completed, but immediately thereafter all continuing candidates shall be declared defeated and the election shall be at an end. Whenever all ballots of all defeated candidates have been transferred, and it is impossible to defeat another candidate without reducing the continuing candidates below the number still to be elected, all the continuing candidates shall be declared elected and the election shall be at an end.

(m) A record of the count shall be kept in such form as to show, after each sorting or transfer of ballots, the number thereby credited to each candidate, the number thereby set aside as exhausted, the total for each candidate, the total set aside as exhausted, and the total number of valid ballots found by adding the totals of all candidates and the total set aside as exhausted.

(n) Every ballot that is transferred from one candidate to another shall be stamped or marked so that its entire course from candidate to candidate can be conveniently traced.

(o) If at any time after the first sorting of the ballots a ballot is found to have been credited to the wrong candidate, it may be transferred, as part of the transfer that is in progress, to the continuing candidate, if any, to whom it should have been credited at the time the error was made, or, if it should previously have become exhausted, may be set aside as exhausted as part of the transfer that is in progress; provided, that if the number of misplaced ballots found is sufficient to make it possible that any candidate has been wrongly defeated, so much of the sorting and transferring as may be required to correct the error shall be done over again before the count proceeds. If in correcting an error any ballots are re-sorted or re-transferred, every ballot shall be made to take the same course that it took in the original count unless the correction of an error requires its taking a different course. The principles of the rules of this section shall apply also to any recount which may be made after the original count has been completed.
If it shall appear that there is no choice of Mayor, or any of the other officers to be elected from the citizens at large, or from any of the several wards, or if the person elected Mayor, or any person or persons elected to any other of the offices aforesaid, shall refuse to accept the office, or shall die before qualifying, or if a vacancy in the office of Mayor shall occur subsequently and more than three (3) months previous to the expiration of the municipal year, warrant shall forthwith be issued for a new election, and the same proceedings shall be had in all respects as hereinbefore provided, and shall be repeated until such election is completed.

A vacancy occurring in the City Council by death, resignation or removal from the City of any member thereof, shall be filled for the unexpired term by a majority vote of the remaining members present and voting, voting by roll call; and if such vacancy be occasioned by the death, resignation or removal from the City of a member elected by a ward, the same shall be filled from the ward where it occurs.

A vacancy occurring in the School Committee by death, resignation or removal from the city, of any member thereof, shall be filled for the unexpired term by a majority vote of the remaining members present and voting, from the ward where it occurs, or if at large from any ward.