

CITY COUNCIL STUDY SESSION MINUTES

July 18, 2017

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a Study Session at 5:32 p.m. in the Municipal Building Conference Room on the 18th day of July, 2017, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray, and the Norman Public Library at 225 North Webster 24 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Allison, Bierman
Castleberry, Clark, Hickman, Holman,
Karjala, Wilson, Mayor Miller

ABSENT: None

Item 1, being:

DISCUSSION REGARDING POTENTIAL CITY-WIDE ELECTION FOR VOTERS' CONSIDERATION OF CHARTER AMENDMENTS CONCERNING COUNCILMEMBER ELECTION MATTERS.

Mr. Jeff Bryant, City Attorney, said on March 16 and May 30, 2017, the City Council Oversight Committee discussed potential amendments to the City Charter as well as Municipal election report filing that is inconsistent with State law requirements. On July 11, 2017, a City Council Conference was held to review the Oversight Committee's recommendations and Council requested additional discussion in the July 18, 2017, Study Session.

Mr. Bryant highlighted recommendations from the Oversight Committee that included providing for election dates and candidate filing dates that were consistent with those allowed under State law for elections conducted by the Cleveland County Election Board; moving up swearing-in dates to reduce the time period from the election to swearing-in of elected candidates; incorporating clean-up language to rename the "primary" election to "municipal" election to address the Cleveland County Election Board recent ruling; and increasing the length of terms of Councilmembers and Mayor.

Election Dates

City Council wanted to broaden the language regarding the selection of election and filing dates to provide more flexibility in complying with current and potential future changes in State law provisions. Mr. Bryant said the current Charter sets the candidate filing period as the first Monday, Tuesday, and Wednesday in January; however, in accordance with State law those dates did not match available filing dates of the Cleveland County Election Board. Because of that Council passed a resolution in 2016, setting December filing dates in order to meet the Cleveland County Election Board regulations.

Council expressed a preference for a spring election cycle, preferably a February municipal election with an April run-off, if needed. Staff prepared language expressing a preference for a February/April election cycle that includes flexibility to deviate from this option only if State law changed again and eliminated those dates as an option. Mr. Bryant said this flexibility is needed to avoid having to amend the Charter every time State law changes.

City Council expressed a desire to move the swearing-in dates to reduce the time period from the election to the swearing-in of elected candidates from the first Tuesday in July to a date in February and April after the municipal election and run-off election. The Oversight Committee seemed to reach consensus to

Item 1, continued:

Swearing-In Dates

move the swearing in dates closer to the end of the election cycle with preferences being the first regularly scheduled Council meeting following the municipal election and the first regularly scheduled Council meeting following the municipal election run-off, which would result in two swearing-in dates. Council also expressed desire for any *unopposed* candidate, once certified by the Cleveland County Election Board, to be sworn in at the next regularly scheduled Council meeting. The election of the Mayor Pro Tem would occur at the same time as the final election of all newly elected Councilmembers, which currently takes place in July.

Clean-Up Language

In order to have consistent language throughout the Charter, it was proposed that “primary” or “general” election should be replaced with “municipal” election. This change will make the wording identifying “municipal elections” consistent with the terms used in other sections of the Charter pertaining to municipal elections and municipal run-off elections as well as address the Cleveland County Election Board’s recent ruling.

In the July 11th meeting, Council wanted additional discussion on the swearing-in date proposal so Staff drafted two options for their consideration with one of the options anticipated to be moved forward as Council desires. Option 1 is draft language that includes the changes to the swearing-in dates and Option 2 eliminates the swearing-in date changes and only includes language amending the election/filing period dates as well as some clean-up housekeeping language replacing references to a “primary” and “general” election with “municipal election” and “municipal run-off election.”

Length of Terms

Mr. Bryant said the Oversight Committee also discussed changing the length of terms for Council seats and the Mayor and there seemed to be a wide variety of views on the issue. There did not appear to be consensus on the issue as some Oversight Committee members felt this was a “substantive” issue needing public input before moving forward.

Non-Charter Amendment Issue – Norman Election Commission Reporting Requirements

Mr. Bryant said this language amends Chapter 7.5 of the Code of Ordinances removing the specific timeline and allowing the first campaign and expenditure report to be filed after the conclusion of the municipal election and the second report to be filed after the conclusion of the municipal run-off upon receipt of all reports for that year’s campaign cycle as required by State law. This amendment does not require a vote of the people so if Council chooses, the amended ordinance can be placed on Council’s agenda immediately.

Mr. Bryant said in order for the Charter amendments to be effective before the next municipal election cycle, the ordinance calling for a City-wide election must be placed on Council’s agenda for First Reading on August 8th and Second Reading on August 22nd.

Councilmember Clark asked for clarification purposes if proposed language makes it clear that a person must reside in the Ward in which they are seeking election for at least six months prior to the date of an election and Mr. Bryant said yes, language states, “For purposes of filing and election to the position of City Council, only persons who have been duly registered to vote in accordance with state law within the City of Norman for six months prior to the date of the municipal election and reside in the ward from

Item 1, continued:

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which they seek election, on the date of their filing, shall be eligible to seek election to the City Council.” He said this language is consistent with State law.

Councilmember Hickman said the proposed language under terms of office for swearing in the Mayor states, “the term of the Mayor shall expire at the time fixed for the next regular meeting after the date set for the municipal election, or the date set for the municipal run-off election if held for the office of Mayor beginning in 2019, “but he thought the Oversight Committee had requested that go into effect in 2020 not 2019, so no one currently sitting on Council would either benefit from that date or be negatively impacted by that date and Mayor Miller concurred.

Mayor Miller said she is concerned about the quick turn-around of being elected and seated immediately. She said by the time a Mayor finishes a three year term he or she is involved in a multitude of issues and she wonders how that position can be turned over to a new person by the next regular meeting. She feels that could be very problematic, but she does not really have a solution to that problem.

Councilmember Castleberry said if the City was a Mayor/City Manager organization that would make perfect sense, but the City is a Council/City Manager [strong] (sic) organization so the Mayor, in all due respect, is just one of nine Councilmembers and really has no more authority than any other person on Council. He does not think the Mayor is any more involved in issues than any other Councilmember. He understands the Mayor attends various events and meetings, but it would be much more problematic to replace the City Manager in a week than the Mayor. Mayor Miller said the Mayor serves the entire City and by virtue of the fact that person served three years it would be rather difficult to have that quick of a turn-around. She said the Mayor has a lot of responsibilities to a lot of different groups and she believes that being sworn-in at the very next meeting after the election would be organizationally problematic. Mr. Bryant said before the Charter language was changed to swearing-in on the first Tuesday in July it stated the swearing-in would take place the second regularly scheduled meeting in April so that could be an option.

Councilmember Clark agreed with Mayor Miller on the transitioning process because when she was sworn-in it was challenging for her. In order to make things simpler she suggested the swearing-in date be the first regularly scheduled meeting after the run-off election so there will be one swearing-in date. She felt this would give new Councilmembers a chance to acclimate themselves before being seated. Councilmember Castleberry said in discussions with former Councilmembers, the swearing-in date was set in July so seated Councilmembers could serve their full two year term and if a Councilmember felt they were going to be a lame duck because they lost the election they could always step down.

Councilmember Holman said if the City is going to hold the election in February with a run-off in April he would feel better with one swearing-in date on the second regularly scheduled meeting in April. He felt this would give newly elected officials time to get their bearings.

Councilmember Bierman said she does not have a specific leaning one way or another, but felt that if someone was not ready to get started once they are elected then why would they even run for office? If someone is going to file for office then convince a majority of voters they are the right person for the seat then there should not be a need to wait, but she does see the appeal of having only one swearing-in date versus two.

Councilmember Hickman said to put things in perspective, the President of the United States has a sixty day transition period and that job is a little bigger than a Norman Councilmember’s job. He said February

Item 1, continued:

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to April is sixty days and if Council feels it takes as much time to acclimate to being a Mayor or Councilmember as it does to be President of the United States then fine, but the reason he is advocating for swearing-in in February is the budget process. He said Mayor/Councilmembers should get to vote on the Capital and General Budget that will be their budgets during their term. This allows Councilmembers a chance to fight for what projects they want in the budget versus having to accept what a previous Councilmember wanted. In his view, pushing the swearing-in date to April makes it more challenging because the budget process has advanced from February when amending the budget could be handled with more ease. Councilmember Castleberry disagreed and said Council does not adopt the budget until June so if there is only one new Councilmember, that one person will not be able to change the entire budget. Councilmember Holman said Councilmember Karjala was sworn in early because the previous Councilmember had to step down before his term ended and he asked for her opinion. Councilmember Karjala said she felt she did not have any influence on the budget by being seated early mainly because she really did not know what she was doing.

Councilmember Clark said the orientation of each department takes so much time and is a huge learning curve so while the new Councilmember may have an opportunity to weigh in on the budget, if they do not have the knowledge to know how the budget process works it does not really matter. She would like anyone voting on the budget to be as well informed as possible about budget issues before they begin fighting for things they want. Mayor Miller said whatever is decided, there is going to be a problem. She said the budget is complex enough that most officials will not understand the budget until the second year of their two year term.

Councilmember Wilson said she went through a run-off and was pretty tired by then so she cannot imagine being sworn in the next week, but does not have a preference on swearing-in dates. Councilmember Allison agreed he did not really know what he was doing in the beginning of his term, but felt that longer terms would help. He said taking out the discussion on three year terms for Councilmembers at this time was a mistake because that could help soften the blow of leaving the swearing-in date in July. He does not really like the July swearing-in, but there are negatives to all of the options.

Mr. Bryant said Option 2 was drafted in the event that Council felt the swearing-in date and term lengths needed more discussion. He said Option 2 would allow Council to move forward with clean-up language on filing dates to align with State law and become effective for the next election cycle. Mayor Miller felt Option 2 was the best option in order for Council to continue discussion on the swearing-in date and term lengths. In her opinion, changing term lengths is a topic that must include citizen input. Councilmember Clark agreed and said any swearing-in date and extended term lengths should take effect after this current

City Council is gone. She felt it odd to vote on something that would affect a current seated Councilmember's term. Councilmember Allison said there are options in the election calendar schedule that would not affect current elected officials unless they run again after the changes go into effect.

Mayor Miller asked if Option 2 was what Council is comfortable moving forward with and Councilmember Castleberry said yes, Council is comfortable with the filing dates, clean-up language, *and* proposed swearing-in dates because if an outgoing Councilmember feels they will be a lame duck then they should just do the right thing and resign and let the elected person be seated. He said there have been more instances where Councilmembers have done the right thing than not. If he was mad about an election loss he would resign the next day because \$100 a month and 20 hours a week is not worth fighting for, but there are those that would say they committed to two years and would serve the two

Item 1, continued:

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years. Councilmember Clark said if a Councilmember was in the process of trying to push through an issue, they have their heart and soul involved in it and it would be difficult to turn their seat over to someone new before that issue was resolved. Councilmember Castleberry said the Councilmember could still come to the City as a citizen advocating for that issue.

Mayor Miller said if a seated Councilmember loses an election, it does not mean they were not doing a good job or might not continue to actively contribute on issues by becoming a lame duck. In her opinion, Council is being pretty loose with their respect for the person that has served two years on Council. She thinks Councilmembers should have a little more respect for the time that outgoing Councilmember continues to serve.

Mr. Bryant said Staff will prepare Option 2 for First Reading on August 8th with Second Reading on August 22nd for a November 14th election and Council concurred.

Items submitted for the record

1. Memorandum dated July 14, 2017, from Kristina Bell, Assistant City Attorney, through Jeff Bryant, City Attorney to Mayor and Councilmembers with Clean-up Charter Amendments for Municipal Elections Option 1 and Option 2 and Chapter 7.5 Amendments re: NEC Reporting Requirements
2. City Council Oversight Committee Minutes dated March 16, 2017, and May 30, 2017

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Item 2, being:

DISCUSSION REGARDING A POTENTIAL CITY-WIDE ELECTION FOR THE RENEWAL OF THE OG&E FRANCHISE AGREEMENT.

Franchises: The Basics

Ms. Kathryn Walker, Assistant City Attorney, said City Council met previously on the OG&E franchise renewal and asked for more information on franchises and how they work. She said a franchise is a right or privilege which allows an entity to do some act that is not available to private individuals to do at their will. The right to grant franchises is reserved for the voters by the Oklahoma Constitution and utilities are required to have a franchise to work and operate in the streets and right-of-ways to operate the utility. She said there are two laws in the Constitution to bring a franchise forward to a vote. She said Council can bring it forward to a Special Election, which has been requested to do with this item or it can move forward through the initial petition process. She said 25% of the voters who voted in the last mayoral election can sign a petition and the issue is put on the ballot. She said the question voters have is whether to approve or disapprove the franchise. She said the Court has developed throughout the years, three different requirements before a franchise is deemed constitutional. She said they cannot exceed a 25-year term, it must be non-exclusive, and reserve all lawful power to regulate any charges. She said in Oklahoma the Corporation Commission regulates the rates and charges of the utility and the franchise agreements reserve the right to the municipality, and if it changes, the City can come in and regulate the rates if Corporate Commission no longer does. She said a fee for access to the rights is common in all franchise agreements and the fee is passed on to the consumer. She said there are a number of utilities operating in Norman. Companies providing telephone service are granted a statewide access to public rights-of-way by the Oklahoma Constitution. She said AT&T pays a fee in lieu of franchise for U-Verse

Item 2, being:

Franchises: The Basics

and they have access to the right-of-way and Cox Communications operates the same way. They used to be a franchise utility but are no longer, because they were preempted by federal law. Instead the City has an agreement with them and they pay a fee in lieu of franchise. Oklahoma Natural Gas has operated as a franchise utility since 1949, OEC was franchised in 1996, and OG&E has been franchised since 1923.

Oklahoma Natural Gas

The current franchise with Oklahoma Natural Gas (ONG) was approved in 1998 for a 25-year term and will be coming up in 2024 for renewal. ONG has a 3% franchise fee and that agreement has a favored nation clause, which means if a rate is raised in another city with population over 15,000, ONG automatically raises the rates in other cities they have agreements with. She said recently the City's rates went up to 4.25% as a result of the provision in the franchise agreement. She said the City has gotten over \$1,000,000 in franchise fees from ONG in the last fiscal year. She said ONG is required to remit sales tax on the sale of gas and that was a little over \$800,000 last year. She said in ONG's agreement, they have a duty to remove or alter their lines and they will move the lines at their cost within a reasonable time if it is needed by the City for a construction project and will indemnify the City for any damages resulted from their negligence. She said ONG also has an agreement with the City called an option to purchase. She said the agreement says after the 10th or 20th year of the franchise, the City can give ONG notice that they want to purchase the property in Norman belonging to Oklahoma Natural Gas.

Councilmember Holman asked if ONG pays sales tax and, if so, why do others not have to pay. Ms. Walker said ONG and OG&E pay sales tax and rural cooperatives do not pay sales tax, because they are exempt. Mayor Miller said it was a legislative decision.

Councilmember Castleberry said the City needs to decide if they want to exercise the purchase and asked if that was in the first part of the year in 2018. Ms. Walker said she would have to look at the agreement. Councilmember Castleberry said it is something the City Council will need to consider if the agreement ends in January 2018. Ms. Walker said the 20th Anniversary will be in December 2018, and the City has the right of first refusal so if ONG were to get an offer to purchase their business in Norman, the City would have the right to have the same price and same terms and conditions as the other offer.

Ms. Walker said before OEC was a franchise, OEC operated under an agreement with the City as the City annexed more property. She said as more property was annexed the Rural Electric Cooperative was getting pulled into other cities, which lead to a franchise agreement in 1996. She said since the Oklahoma Tax Commission said OEC could no longer collect sales tax the franchise fee went from 2% to a 5% fee. She said OEC also indemnifies the City for damages resulting from negligence and there is not an option to purchase from the agreement, but there are specific Statutes that cover that. The Statues state if a city brings in a cooperative into city boundaries and the city wants to take over the utility or are already providing electricity and the City wants to add them to the utility, the City is able to negotiate that, but if the City does not come to an agreed price, then the City can go through condemnation for that.

Mayor Miller asked how the decision was made to pay 2% by not paying sales tax. Ms. Walker said it was 3% and the goal was to get to the sales tax rate of the City's portion. Mr. Jeff Bryant, City Attorney, said the State's sales tax is 4.25% and the City was 3%, but now it has gone up. Councilmember Castleberry said OEC originally paid 2% franchise fee and they were paying the sales tax at 3%, which totaled to 5%.

Item 2, continued:

Oklahoma Electric Cooperative:

Councilmember Castleberry asked if OEC's 5% franchise fee will change since the City's sales tax has increased. Ms. Walker said OEC's franchise is not tied to the City's sales tax rate. Councilmember Castleberry said his thought is that it is higher, because OEC does not pay sales tax. Ms. Walker said there is nothing stated in the agreement that requires the franchise fee to increase. She said the agreement is approaching renewal in 2021.

Oklahoma Gas & Electric:

Ms. Walker said OG&E's franchise was voted and approved in 1993 and expires in 2018 and the franchise fee is 3%, which is close to \$2,800,000 in the last fiscal year. The duty to move lines is covered by State Statute and OG&E pays for that move at their own cost. The City only pays for it if there is an upgrade to the service, i.e., putting lines underground when the lines were overhead before. OG&E provides free electricity for a portion of the City's operation of traffic signal lights and buildings operated for municipal purposes, provided it does not exceed one-half percent (0.5%) of the kilowatt hours sold to Norman in a fiscal year; value of this was \$534,045.90. The franchise fee remitted to the City for the last fiscal year was \$2,808,327.47. She said OG&E indemnifies the City for damages resulting from negligence and this agreement does not have an option to purchase.

Councilmember Clark asked if the option is to build our own plant. Ms. Walker said yes if they are willing; however, OG&E is not interested in selling their assets.

Councilmember Hickman asked if the \$2,800,000 sales tax is collected from the customers. Ms. Walker said they collect it from who they are making the sale to and then remit it to the City. Councilmember Hickman asked if there was any dollar cost to OG&E regarding the value of the credits through the franchise agreement. He also asked if there has to be a specific grant provided to have the power to condemn and is that based on the Charter. Ms. Walker said even if there was a specific grant in the Charter it would not be valid according to the case. She said the State Legislature has to grant the City power.

Ms. Walker said the public utilities are targeting a Statute, but they would have to give the City the grant to get past the Supreme Court. Councilmember Hickman asked if it would be unlawful to put a provision in the franchise agreement that states if provided by law the City may exercise its powers of eminent domain or a provision subject to within the scope of the law that if state or federal law changed the City's Charter could utilize condemnation powers and could have our own city utility. He said he is concerned if the City does not put a provision in the franchise agreement then for twenty-five years if the law changes, their agreement might foreclose that opportunity versus a provision right now the City recognizes they cannot exercise.

Ms. Walker said if the law changes the City will have that power regardless what the franchise agreement says. She said the franchise agreement is not exclusive. She said if the law changed and the City wanted to come in and put in their own facilities they can do that. She said if the City wanted to condemn OG&E's property there is an argument the franchise agreement could affect this, but regardless what is put into the franchise agreement the City has to have the statutory grant.

Councilmember Hickman asked could the City put a provision in the agreement if the law did change to protect the City from OG&E. Ms. Walker said yes a provision can be put into the agreement if OG&E is willing to have it in the agreement.

Item 2, continued:

Oklahoma Gas & Electric, continued:

Mayor Miller asked if the City would be bound to the 25-year agreement if the law changed and Ms. Walker said the City can establish their own if the City wants to purchase the OG&E facilities regardless of what is in the franchise agreement. The City could not do that until the law changed. Mayor Miller asked if there were more than one law to change. Ms. Walker said the City has to have the grant to exercise condemnation.

Councilmember Hickman asked if the clause is put in the agreement does it hurt the City or give the City flexibility. Mr. Bryant said OG&E has not given Staff the impression they are willing to agree to the clause.

Councilmember Wilson asked if there is a way to do a revisit at 5 or 10 years. Ms. Walker said the City has talked about that, but OG&E is not willing to do that with their agreements. OG&E is trying to stick with twenty-five years, because of the amount of capital investment it requires to make upgrades.

Councilmember Allison said as of March 11, 2017, OG&E has spent \$10,400,000 in a municipalization project. He said the City does not have that kind of money and would like the money in the budget to go to other projects that are beneficial to residents and other things talked about in the budget.

Councilmember Castleberry said not to assume the City can provide electricity cheaper than OG&E.

Councilmember Wilson said she agrees outsourcing is a great plan, but she worries about the language of the twenty-five years and the no opt-out gives the City little room to leverage for the better. She would like to see the City require wind energy similar to University of Oklahoma.

Councilmember Castleberry said the University of Oklahoma committed to buying and the City cannot commit their customers to buy wind energy. Councilmember Allison agrees but the City can ask OG&E to provide.

Councilmember Holman said he does not know about the City providing electricity to the whole city, but he likes the idea later on if the City is interested in wind farm or solar plant and would like to see options given to the City. He said his biggest concerns are the environmental issues and the sources of the energy. One of the biggest problems the City has had is the downtown power grid issue. Councilmember Castleberry said the City has a commitment from OG&E to fix that issue.

Councilmember Hickman asked why the City Council has to vote on this, because by voting it implies to our constituents the City is okay with it. Mayor Miller said it has to go to the voters. Councilmember Castleberry said the City's Charter says City Council has to do it.

Councilmember Hickman said if a petition is put on the ballot and the City does not pass a franchise agreement to put on the ballot it continues on as an implied contract with a reasonable period of termination, which is not a 25-year agreement. He asked if Council wants to have the ability, if the law allows the City, to be able to leverage that we want cleaner environmental utility services in the community. He said the City could structure 5% if you are not using green energy and 3% fee if you are getting green energy and bill customers accordingly and it would be an incentive and could market the community for green energy, but if this is moot then Council should move on.

Item 2, continued:

Oklahoma Gas & Electric, continued:

Councilmember Clark agrees with Councilmember Hickman but would advocate for a shorter period. She feels twenty-five years is too long and if the City has a 25-year contract, then what is the point of talking about green energy. She supports a ten-year or a fifteen-year agreement. Mayor Miller said the City can put anything in the agreement and give it back to OG&E, but they have to agree to it and she does not know what the City has for leverage.

Councilmember Wilson asked what the consequences are if the City's agreement expires. She asked if there is a franchise fee that changes or credits the City gets. Ms. Walker said if OG&E continues to provide service after the franchise agreement expires and the City accepts it then the City does have an implied contract, but that does not mean they have to continue to provide it.

Councilmember Bierman said the City might lose credits and the Council should look over everything.

Councilmember Clark said she is having a problem with the 25-year agreement that is locked in. She said OG&E pays approximately \$500,000 a year in energy credits and collects around \$3,000,000 from customers and the benefit to the City is only \$500,000 worth of electricity. She said it would be difficult to tell people to support and vote on this issue. She said when issues arise over electricity, she wants to be able to tell supporters issues are getting repaired. Mayor Miller said the Council's job is to make sure residents have services and the decision was made back in 1923 of how the citizens were going to get electricity. She said she is not a strong advocate for any particular utility company, but she thinks the City does have reasonable utility rates in Oklahoma and she does not see how the City can take this over because it is a complicated business. Mayor Miller said she is fine with negotiating to whatever degree Council can, but it is not about how much money the City is making on OG&E, it is about our citizens getting a good service and if OG&E does not provide it who will.

Councilmember Karjala said there are a lot of people who are not happy with their OG&E service. She asked if the City can negotiate with OG&E to bury so many miles of electrical lines per year and help the City invest in green energy. Mr. Bryant said legally the City does not have any leverage. The City has talked to OG&E about these concerns and asked if the City could go a shorter term, negotiate a clause to the ONG franchise agreement, and talk about some of these other issues and what the Staff has gotten back from OG&E is they want to stay with the franchise agreement, which is a uniform agreement with all cities around the state.

Councilmember Bierman asked if Council decided to go with a 15-year agreement with a five-year re-visit of the agreement with an option to purchase, and passes it, does it go to voters and if it goes to the voters and they pass it, what happens. Ms. Walker said it is not binding until OG&E agrees with the agreement. Mayor Miller said the law requires all utilities to have a territory and another electric company cannot come in and take over the territory.

Councilmember Hickman stated the Ordinance calling for the election is not signed by OG&E, it is signed by the Mayor and the City Clerk. He said it is an interesting concept if the Council passes the agreement they are willing to put out for a vote. Ms. Walker said case law says they have to agree.

Councilmember Hickman asked if they sign something. Ms. Walker said OG&E will sign a letter recognizing the franchise was approved by the voters. She said it is not a contract where both parties sign, but they do transmit something indicating the agreement and they are the ones proposing the agreement. If the City changes some language on the agreement, that is all agreed to before it gets to the voters.

Item 2, continued:

Oklahoma Gas & Electric, continued:

Councilmember Hickman asked if the City requires permits for a construction in the rights-of-way, does OG&E pay a permit fee, and does the City inspect the work OG&E does. Ms. Walker said the franchise exempts the utilities from paying permit fees.

Mr. Shawn O'Leary, Director of Public Works, said the City requires a right-of-way permit when they work within the right-of-way. He said it is for traffic safety not monitoring the utility companies' work. He said the City is not qualified to do that, but the City wants to make sure when they are working in the right-of-way they are honoring the City's traffic safety standards and not blocking and damaging roads.

Councilmember Hickman asked if the utility company is putting in a new pole the City does not inspect to make sure it is done correctly. Mr. O'Leary said the Corporation Commission determines how the utilities install and operate.

Councilmember Hickman said if the model franchise agreement from the American Public Works Association had a termination provision that provided for an ability to terminate for performance reasons or a process to go through to terminate and asked if that was prohibited by law. Ms. Walker said it is not prohibited by law, but when you can have only one electric provider in a certain territory it is problematic and a lot of times you will see the termination provisions where there are multiple providers that way the City is not terminating service so that customers do not have anybody to provide electricity.

Councilmember Holman asked if the City did a petition how many days do they have. He said he does not want the City to get bypassed and have no say. Ms. Walker said it still comes to Council that you are required to set it for a special election, which means there is still a first and second reading as the election is set by ordinance and then the deadline has to be met with the Cleveland County Election Board to get it in November.

Councilmember Holman asked are they forced to vote yes. Ms. Walker said the Council is required to pass it on to the voters, because it is not a vote of approval for the Council.

Councilmember Hickman said the Council needs to be practical to what OG&E will agree to, because they have not agreed to any other community. He asked why the City would continue to negotiate if OG&E will not agree to anything.

Mayor Miller recognized James Chappel from OG&E.

Mr. James Chappel, Community Affairs Manager, said a couple of years ago OG&E spent \$218,000 to rework the downtown area, which includes upgraded substations at Sooner Road and Rock Creek, 12th Avenue, Rock Creek Millennium. He said at one point the downtown substation is going to go away and there will be four substations to serve downtown. He said OG&E is making \$1,000,000 investments into this community.

Mayor Miller asked Mr. Chappel if there is a timeline when the other substations will be ready. Mr. Chappel said the timeline is a matter of figuring out when they can take the Norman substation out of service and get everything into place. He said OG&E is still working through everything they have committed to do. He said OG&E just rebuilt the transformer station behind Comanche and Main Street and made a commitment to keep up with downtown. OG&E also wants to give the community the opportunity to have renewables.

Item 2, continued:

Oklahoma Gas & Electric, continued:

Councilmember Karjala asked how the franchise fee is calculated and collected on a customer's bill and if the money collected is going to this year or last year's fees. Mr. Chappel said the calculation is based on the end of the year and it is sent to the City before it is collected. He said the fees are collected every month.

Councilmember Clark asked if the concerns are put into an agreement and it goes to the voters what happens if it does not pass. Councilmember Clark said she respects the community partnership Mr. Chappel has with the non-profits and sees what OG&E does, but she is not comfortable with twenty-five years with all of the technology that is available. Mr. Chappel said OG&E is putting in millions of dollars' worth of equipment that they want to pay for over a period of 25 years. Councilmember Clark said that is great, but negotiate with the City for 10 years.

Councilmember Hickman asked if the commercial lighting ordinance passed by the Council requiring full-cut off lighting fixtures is costing the businesses more money. Mr. Chappel said the fixtures OG&E has to offer do not meet the detail the Council is looking for. In January 2018 OG&E will start installing LED lights. He said the customer may pay extra, but will have a better product. Councilmember Hickman said he likes the idea about the LED and asked if OG&E would go through the commission process to get a full cutoff light fixture. Mr. Chappel said if OG&E did then they would install them all over the state, not just in Norman.

Mayor Miller said the main concerns she has heard have been about renewables, green energy, and the tree cutting and spraying. She said it is these things that are an issue and not the actual service. She also hears Councilmembers say they would probably go ahead with the agreement, but do not like the twenty-five year commitment. She said if Council decided they wanted to do their own utility, they could begin a process to do that, but the City would have to build everything themselves.

Councilmember Hickman said he thinks the thing to do, if it is not a negotiation, is for OG&E to submit a franchise agreement they want on the ballot and encouraged OG&E to send a letter that commits to do and follow through on the things they are doing. He said when it comes on the agenda he can confirm with his constituents and say this is not in negotiation, I am voting yes hypothetically to put it on the ballot for voters to decide and OG&E has indicated they are committing to do some things they are not required to do. He said he thinks that is almost the best the City can ask for if OG&E chooses to go that route and would encourage those kinds of commitments be in writing. Mr. Chappel said OG&E will continue to keep the City growing and does not want to be the cause of a holdup on a project.

Councilmember Hickman said it is helpful to have an agreement written out and a commitment should be listed in the agreement about renewables and green energy. Mr. Chappel said there is motivation for OG&E to want to do something like this. Mayor Miller said the Environmental Advisory Board will be working on climate issues and sustainability. Councilmember Castleberry asked as renewable energy becomes more cost effective and more available as technology increases will OG&E embrace that and continue to be supportive to keep doing it. Mr. Chappel said as long as OG&E has customers. Councilmember Castleberry asked if OG&E will pass the cost onto the customers. Mr. Chappel said regulators do not like OG&E to bill stuff they do not use and try to put the cost on the customers. He said OG&E likes to make it whole and then do the math.

Item 2, continued:

Oklahoma Gas & Electric, continued:

Councilmember Hickman asked if this is the agreement OG&E has proposed to put on the ballot. Mayor Miller said yes and it is up to OG&E to convince the voters. Councilmember Clark asked OG&E to do a PR campaign.

Mr. Casey Holcomb was concerned about environmental issues and climate change and the industry practices that defect the public health and safety. He said OG&E is emitting 16.7 million metric tons of greenhouse gas into the atmosphere. He is concerned about a natural gas pipeline at Andrews Park and thinks the City should be concerned about other utilities not just OG&E. The City needs to talk about the energy audits. City Council passed a resolution insisting to have energy audits to determine the footprint in the City and he said he put in an open records request in March and still has not received any documentation back.

Ms. Karen Chapman asked if the franchise does not expire until late 2018 what is the urgency to have it on the ballot in November. Are there options with other companies for franchise agreements. Mayor Miller said that is not an option legally, because Oklahoma law states whatever electric company or utility company has the territory. She said the City is limited because OG&E has been providing services since 1923 and they have the entire infrastructure, but the City can continue to negotiate.

Items submitted for the record

1. Memorandum dated July 14, 2017, from Jeff Bryant, City Attorney and Kathryn Bell, Assistant City Attorney II, to Mayor and City Councilmembers; Franchise Agreements

The meeting adjourned at 7:42 p.m.

City Clerk

Mayor