

CITY COUNCIL OVERSIGHT COMMITTEE MEETING

**MUNICIPAL BUILDING CONFERENCE ROOM
201 WEST GRAY**

THURSDAY, OCTOBER 19, 2017

8:30 A.M.

**CONTINUED DISCUSSION REGARDING POSSIBLE AMEND-
MENTS TO THE CITY COUNCIL ETHICS ORDINANCE.**



office memorandum

Date: October 12, 2017
To: City Council Oversight Committee
From: Leah Messner, Assistant City Attorney *LM*
Subject: Conflicts of Interest Ordinance

BACKGROUND

On September 21, 2017, the Oversight Committee met and discussed the current City of Norman Conflicts of Interest Ordinance. The Committee asked that Staff prepare several items for the Committee to consider at their October 19, 2017 meeting.

DISCUSSION:

Staff has prepared a memo researching when a person becomes a candidate for office. That memo is attached. In addition, Staff has prepared proposed language amending Chapter 2, Section 2-103 regarding when a Councilmember can endorse a candidate for office. As suggested by the Committee, the amendment would allow Councilmembers to endorse candidates for all offices except candidates for City offices without violating the ordinance.

Staff has also attached minutes from previous Committee meetings and Council Study Sessions on the topics of ethics and conflicts of interest to provide additional insight into the history of the current ordinance. In addition, the relevant provisions from the Code of Ordinances of the cities of Tulsa and Oklahoma City are also attached.

CONCLUSION:

Staff will be available at the October 19, 2017 Oversight Committee Meeting to discuss the materials and to answer any additional questions.

Attachments: Memo RE: Candidacy for Office
Proposed Language Amendment for Chapter 2, Section 2-103
Minutes from Committee Meetings and Study Sessions
Ordinances from Tulsa and Oklahoma City

xc: Steve Lewis, City Manager
Jeff Bryant, City Attorney
Brenda Hall, City Clerk

Memo

RE: Candidacy for Office



office memorandum

Date: October 10, 2017
To: Jeff Harley Bryant, City Attorney *JHB*
From: Kristina L. Bell, Assistant City Attorney *KLB*
Subject: Definition of "Candidate" under Council Ethics Ordinance

I. Background

Our office has been asked to define "candidate" as used in the City Council Ethics Ordinance's prohibition of Councilmembers using their office to endorse or oppose "any candidate for office."

II. Brief Conclusion

An individual is a candidate for office when that person has either filed a sworn written statement of candidacy with the local county or state election board or no later than ten (10) days after that person has either accepted or expended more than one thousand (\$1,000.00) for his or her campaign, whichever occurs first.

III. Analysis

Section 2-103(a)(7)(b) of the City's Code of Ordinances provides that "[a]n elected City Official shall not use his office to endorse or oppose any candidate for office." This provision is contained within the City Council Ethics Policy. Because this provision addresses the endorsement or opposition of "any" candidate, the prohibition is not limited to endorsement or opposition of just candidates for municipal office but would rather also include candidates for other local, state, and federal offices. The Ethics Policy does not define the term "candidate."

Although the City's Ethics Policy does not define the term "candidate," both the City's Charter (in regards to candidates for municipal office) and state statute (in regards to candidates for federal, state, or local offices) provide that an individual becomes a "candidate" for office when he or she files a sworn written notice or Declaration of Candidacy with the appropriate officials. Under these provisions, a person clearly becomes a candidate once that individual has filed such a notice or Declaration of Candidacy. The Oklahoma Court of Criminal Appeals has held that an individual can also become a candidate before such written notice is filed using the statutory definition contained in Title 21 pertaining to crimes, which contains a broader definition of a "candidate" as one who has filed, or should have filed, a statement of organization under the Oklahoma Ethics Rules. The Oklahoma Ethics Rules requires the filing of a Statement of Organization for a candidate committee no later than ten (10) days after the candidate has accepted or expended more than one thousand dollars (\$1,000.00) for his or her campaign.

A. City Charter

Sections 10(A) and (B) of Article II of the City Charter provide two ways for an individual to become a candidate for municipal office, by either filing a sworn written notice with the Secretary of the Cleveland County Election Board or by a registered voter filing a petition with the Cleveland County Election Board and the nominated person filing a written notice of willingness to become such a candidate. These provisions state the following:

Section 10. - Candidates.

A. *Filing of candidates.* Any person who is a registered voter of the City, as provided in Article II, Section 2 of this Charter, **may become a candidate for office in the proper primary election by filing with the Secretary of the County Election Board, a sworn written notice containing the following information: The candidate's name, street address, designation of the office sought, with ward number, and the date of the primary election.** A person can be a candidate for only one office at a time.

B. *Filing of candidates by petition.* **The name of candidate may also be placed upon the ballot at the primary election upon the filing of a petition for that purpose in the manner set forth herein.** Any registered voter of the City may file with the Secretary of the County Election Board, within the time provided in Section 10(D) of this Article, a petition bearing the signatures of registered voters eligible to vote for the office for which they seek to make a nomination. In the case of candidates for the office of the Mayor, the number of valid signatures required shall total one hundred (100). In the case of candidates for a Council position, the number of valid signatures required shall total fifty (50). Said petition shall contain the information required in subsection (A) of this section as well as the name of the person sought to be nominated. **Further, the person sought to be so nominated must file, within three (3) days of the filing of said petition and before the close of filing, a written notice of willingness to become such a candidate.**

§§ 10(A), (B) of Article II of the City Charter (*emphasis added*).

Under these provisions, a person becomes a candidate for municipal office after that person has either filed a sworn written notice with the Cleveland County Election Board or that person has filed a written notice of willingness to become a candidate for municipal office within three (3) days after a petition of nomination has been filed with the Cleveland County Election Board.

B. State Law

Similarly, state law provides that a person becomes a candidate for office after he or she files a Declaration of Candidacy. 26 O.S. § 5-101 provides that "[a] person may become a candidate for office and have his name appear on a ballot only after he files a Declaration of Candidacy as hereinafter provided." Sections 5-102 and 5-103 provide that candidates for federal and state offices and candidates for county offices shall file Declarations of Candidacy with the Secretary of the State Election Board or with the County Election Board, respectively. Sections 5-111 and 5-111.1 similarly require that the filing forms include identifying information and are sworn and signed by the candidate.

Like the City Charter provisions, these statutory provisions make it clear that a person who has filed a Declaration of Candidacy for federal, state, or local elected office is a candidate for office. The Oklahoma Court of Criminal Appeals, however, has also held that a person can become a candidate for office even before he or she has officially filed a Declaration of Candidacy under the statutory definition provided in 21 O.S. § 187 pertaining to Crimes Relating to Elections.

In *Leftwich v. State*, 2015 OK CR 5, 350 P.3d 149, the Oklahoma Court of Criminal Appeals rejected the argument of former Senator Deborah Ann Leftwich that she could not be prosecuted for the felony crime of Soliciting and/or Accepting a Bribe from Another for Withdrawal of Candidacy in violation of 26 O.S. § 16-108 because she was not a "candidate" at the time of the alleged violation. This case was an appeal of Leftwich's conviction for violating 26 O.S. § 16-108, which provides, "Any person who shall solicit or accept from another anything of value for withdrawing from any political contest as a candidate or nominee for any office at any election shall be deemed guilty of a felony." *Id.* at ¶ 14, 155. In her defense, Leftwich argued that she was never a candidate for re-election to her Senate seat in 2010 and therefore never withdrew from the political contest and could not be prosecuted under this statute. *Id.* The Court of Criminal Appeals determined that this issue was a matter of first impression, their review was *de novo*, and that the issue turned on a question of statutory interpretation. *Id.*

Leftwich argued that 26 O.S. § 5-101 exclusively defined "candidate" in its provision that a "person may become a candidate for office and have his name appear on a ballot only after he files a Declaration of Candidacy as hereinafter provided." *Id.* at ¶ 16, 156. The Court found that this section was contained within Article V of Title 26, entitled, "Filing," and that although it proscribed the way in which a candidate was eligible to have her name appear on a ballot, there was "[n]othing in the plain language of that statute, or any other provision in Title 26, [that] suggests that it is intended to provide a comprehensive definition of 'candidate' for purposes of the Election Code [Title 26] or any prosecutions under that Code." *Id.*

The Court noted that Title 26 does not define the term "candidate" and therefore looked to other sources, including dictionary definitions. *Id.* at ¶¶ 17-18, 156. The Court cited the "common and ordinary meaning" of the word found in Merriam-Webster as "a person who is trying to be elected" and also Webster's New World Dictionary's definition of "a person who seeks, or who has been proposed for, an office, an award, etc." *Id.* at ¶ 18, 156. It also noted that the term has no different meaning as a legal term of art in that Black's Law Dictionary defined "candidate" as "[o]ne who seeks or offers himself, or is put forward by others, for an office, privilege, or honor." *Id.*

The Court relied on the definition of "candidate" in the Criminal Code, 21 O.S. § 187(4), which, at the time, stated that a "candidate" meant "a person who seeks nomination or election to state or local office." *Id.* at ¶ 20, 157. That provision provided further that an individual was a candidate when the individual filed a declaration of candidacy with a state or county election board, filed a declaration of candidacy with the Secretary of State and drew active opposition, was nominated as a "substitute candidate" under state law, or solicited or accepted contributions or expenditures to secure election to any state or local office. *Id.* Section 187(4) also provided specifically that the term "candidate" included a person whose candidacy was unopposed. *Id.* The Court also noted that this definition was consistent with the definition of "candidate" used by the Ethics Commission at the time of the crime. *Id.*

Because Leftwich had personally solicited, accepted, and expended funds in order to secure election in 2010 to her Senate seat and allowed others to do the same through her campaign committee, the Court found that Leftwich was a "candidate." *Id.* at ¶¶ 13, 28; 155, 159. The Court noted that under the interpretation of Title 26 for which Leftwich argued, "a person could create a candidate committee with the Ethics Commission, and could actively raise and expend funds towards an election campaign, and yet, if the filing period had not yet begun, not be a 'candidate' for election." *Id.* at ¶ 27, 159. The Court found that this interpretation was "inconsistent with the legislature's treatment of candidates in other statutes and with the Ethics Commission's treatment of candidates for office." *Id.*

The *Leftwich* case was decided on May 22, 2015. The "candidate" definition in 21 O.S. § 187(4) was amended on January 1, 2015. The Court applied the definition in place at the time the crime had been committed. The new definition of "candidate" that went into effect on January 1, 2015, defines it as "an individual who has filed or should have filed a statement of organization for a candidate committee for state office with the Ethics Commission as required by its Rules. A candidate committee shall include committees for candidates for partisan elective offices, for nonpartisan judicial offices and for judicial retention offices." Rule 2.70 of the Oklahoma Ethics Rules provides that a "Statement of Organization for a candidate committee shall be filed with the Commission at any earlier time but no later than ten (10) days after the candidate has accepted or expended more than One Thousand Dollars (\$1,000.00) for his or her campaign." Applying the rationale of the *Leftwich* decision, the new statutory definition in 21 O.S. § 187(4) expands the scope of when an individual is a candidate

from beyond just the time when he or she actually files for office to include the time frame after he or she has accepted or expended more than one thousand dollars and is therefore required to file a candidate committee Statement of Organization within ten (10) days of reaching that \$1,000 threshold. The new definition is different in that it requires an individual to have received or spent more than \$1,000 before a Statement of Organization is required. The old definition merely stated that an individual became a candidate when he solicited or accepted contributions or expenditures without any kind of minimum dollar amount required.

A review of the Charter provisions and state statutory requirements in both Title 26 and Title 21 as interpreted by the Oklahoma Court of Criminal Appeals in the *Leftwich* decision and the amendments to the Ethics Rules reveals that an individual is a candidate for office when he or she either officially files a sworn written declaration of candidacy *or* ten days after he or she or his or her candidate committee has accepted or expended more than \$1,000.00 for his or her campaign, whichever comes first. Satisfying either requirement would constitute becoming a candidate. As explained in *Leftwich*, it would not make sense for someone who has spent or raised money for the campaign to not be considered a candidate for that office just because the official filing period had not started yet. Likewise, because an individual has to meet the minimum \$1,000 threshold before a Statement of Organization is required under the Oklahoma Ethics Rules, some individuals, especially running for local offices, may never have to file one but would still be considered "candidates" once they have officially filed for a declaration for candidacy, which is required under both City Charter and/or state law to have their names placed on the ballot.

Although the *Leftwich* case was decided by the Oklahoma Court of Criminal Appeals and could be considered merely persuasive authority, no Oklahoma Supreme Court or Oklahoma Court of Civil Appeals cases were found either agreeing, disagreeing, or distinguishing that fact pattern from one that might arise in a civil context. Arguably, the rationale behind the decision explaining that someone should be considered a candidate if he has received or spent funds in support of a campaign even though the filing period has not started yet could still apply in a civil context.

IV. Conclusion

An individual is a candidate for office when that person has either filed a sworn written statement of candidacy with the local county or state election board or no later than ten (10) days after that person has either accepted or expended more than one thousand (\$1,000.00) for his or her campaign, whichever occurs first.

Cc: Steve Lewis, City Manager
Brenda Hall, City Clerk

**Proposed Language Amendment
for
Chapter 2, Section 2 – 103**

OPTION FOR CANDIDATE ENDORSEMENT PROVISION

Prohibit Endorsements for City Council Races

Sec. 2-103. - Council ethics.

(a) Members of the Council shall refrain from:

(6) Willful violations of Section 2-103;

(7) Conflict of interest.

- a. In order to assure independence and impartiality on behalf of the common good, no elected City Official shall use his official position to influence government decisions in which he has a pecuniary interest or in which he has an organizational responsibility that may give the appearance of a conflict of interest.
- b. An elected City Official shall not ~~use his office to~~ endorse or oppose any candidate for City office.

**Minutes from
Committee Meetings & Study Sessions**

PA/CC/Planning Committee

CITY COUNCIL PLANNING COMMITTEE MINUTES

September 12, 2008

The City Council Planning Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 8:00 a.m. in the Conference Room on the 12th day of September, 2008, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Butler, Dillingham, and Griffith

ABSENT: Councilmember Cubberley

OTHERS PRESENT: Mayor Cindy Rosenthal
Mr. Jeff Bryant, City Attorney
Ms. Leah Bunney, Legal Intern
Ms. Karla Chapman, Administrative Technician III
Ms. Brenda Hall, City Clerk
Ms. Suzanne Krohmer, Budget Analyst
Ms. Kathryn Walker, Assistant City Attorney

DISCUSSION REGARDING A CONFLICT OF INTEREST POLICY AND BOARD AND COMMISSION APPOINTMENTS.

Mr. Jeff Bryant, City Attorney, introduced Ms. Leah Bunney, Legal Intern in the City Attorney's Office, who provided an overview of various cities and their conflict of interest ordinances and/or policies. She said there is relevant State Law which regulates State Legislators but not municipalities. Ms. Bunney said the City of Norman Charter Article XVII, currently addresses Conflict of Interest Policy, and states, "No officer or employee of the City, elective or appointive, shall be interested, directly or indirectly, in any contract or job for work or for material, or supplies, or the profits thereof, or any purchase made for or sales made by, to or with the City, or own stock in any corporation, having any contract or subcontract, for doing any contract, job or work, and all such contracts with such City officers or employees shall be void, and the violation of this clause shall be deemed a sufficient cause for the removal from office or employment, of such officer or employee." She said the present City of Norman Ordinances Chapter 2, 2-103 addresses ethical conduct of council members and Chapter 4, 4-105 addresses qualifications for appointed board or commission.

Ms. Bunney discussed relevant policies from other cities including Oklahoma City; Tulsa; San Diego, California; Boise City, Idaho; Minneapolis, Minnesota; Chapel Hill, North Carolina, Phoenix, Arizona; Portland, Oregon; Brookings, South Dakota; Mesa, Arizona; and Laurel, Maryland. She said some of the cities have similar policies, to Norman, while others are more in-depth. Ms. Bunney said Conflict Policies are a part of many cities' municipal code, including Oklahoma City and Tulsa, and they address conflicts; conflict disclosure; procedure for recusal; and sanctions for violation. She said Oklahoma City is most similar to the City of Norman policy stating there shall be no compensation beyond salary; no holding two offices; no interest in city contracts; and no acceptance of favors. Ms. Bunney said Tulsa passed an Ethics Code July, 2005, which included creating an Ethics Advisory Committee composed of seven members appointed by the Mayor. The highlights are as follows:

- o *Norman, OK, and Oklahoma City, OK:* Charter prohibits actual conflicts
- o *Chapel Hill, NC:* Policy requiring officials to sign a pledge to follow Ethics Code
- o *Minneapolis, MN, and Brookings, SD:* Policies requiring disclosure of conflicts to City Council, City Clerk, or City Attorney
- o *Tulsa, OK, and Mesa, AZ:* Policies that allow for an Ethics Board or the City Attorney to issue advisory opinions
- o *Laurel, MD:* Extensive regulatory framework with an independent Ethics Commission having investigatory power and requires full disclosure of potential and actual conflicts

Mr. Bryant asked the Committee if they wanted to establish a formal Ethics Committee and the Committee felt a formal Ethics Committee was not necessary, but suggested improving the City's current policy to make it more clear and enforceable. The policy needed to address "actual" and "potential" conflicts of interest, stating that once appointed to a board or commission "actual" conflict of interest would require the member to abstain from voting and any "potential" conflict of interest should be disclosed. The Committee also suggested Staff place printed reminders in front of City Council Agenda Books, as well as the agendas of the Boards and Commissions, as a helpful reminder to all. The Committee suggested the policy have very clear definitions for disclosures and potential Board and Commission appointees possibly sign a pledge stating they will follow the ethics guidelines. Committee Members will review ordinances and policies and submit recommendations to the City Attorney's Office by October 3, 2008, so that the City Attorney may prepare a draft Code of Ethics to be discussed at the October 24, 2008, Planning Committee meeting.

Items submitted for record

1. Powerpoint presentation entitled "*Proposed Conflict of Interest Policy*," dated September 12, 2008
2. City Council Planning Committee Conflict of Interest Policy for Board and Commission Appointments
3. City of Norman Conflict of Interest Additional Materials
4. New Hampshire Summer 2008 Volume 3 Number 4 City Views on Ethics and Conflict of Interest
5. The University of Tennessee Municipalities Required to Adopt Code of Ethics, dated July 25, 2006

The meeting adjourned at 8:59 a.m.

CITY COUNCIL PLANNING COMMITTEE MINUTES

October 24, 2008

The City Council Planning Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 8:00 a.m. in the Conference Room on the 24th day of October, 2008, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Butler, Cubberley, Dillingham, and Griffith

ABSENT: None

OTHERS PRESENT: Mayor Cindy Rosenthal
Mr. Jeff Bryant, City Attorney
Ms. Leah Bunney, Assistant City Attorney
Ms. Karla Chapman, Administrative Technician III
Mr. Doug Kosciński, Current Planning Manager
Ms. Suzanne Krohmer, Budget Analyst
Mr. Steve Lewis, City Manager
Mr. Jarrod Yost, University of Oklahoma Student

DISCUSSION REGARDING A CONFLICT OF INTEREST POLICY AND BOARD AND COMMISSION APPOINTMENTS.

Ms. Leah Bunney, Assistant City Attorney, presented a draft Conflict of Interest/Ethics Policy (CIEP) for the Committee's review. She said the following information included in the CIEP is the result of recommendations from the Committee at its September 12, 2008, meeting, as well as additional information received from Chair Butler and City Manager Steve Lewis:

- Actual conflict versus potential conflict
- Persons affected by the CIEP
- Duty to Report and procedure for reporting violation
- Use or disclosure of confidential information
- Role of the City Attorney in reference to CIEP
- Pledge for all officials to sign acknowledging receipt and understanding of CIEP

Ms. Bunney emphasized the difference between an actual conflict versus a potential conflict. She said Norman Code Section § 220 requires that if an elected or appointed official has an actual conflict of interest, they are barred from voting and must leave his or her Council chair and shall not participate during the debate of such item. She said if the elected or appointed official has a potential conflict of interest, that official may engage in both the vote and discussion, but the potential conflict must be disclosed prior to participation. Ms. Bunney said the persons affected by the CIEP include the Mayor, City Councilmembers, and to appointed members of all boards, committees, ad hoc committees, and commissions of the City of Norman.

Ms. Bunney said officials have the duty to report if another official is violating laws or ethics relating to the City of Norman. She said Councilmembers would report to the Mayor and if the alleged violator is the Mayor, they would report to the Mayor Pro Tem. Ms. Bunney said appointed officials would report to the Chairperson of their board or commission and the Chairperson may then report the violation to the Mayor. In situations where alleged violator is the Chairperson, the appointed official may report directly to the Mayor. She said Councilmember Butler suggested adding the use or disclosure of confidential information to the policy and the City of Norman Code § 2-103 prevents Councilmembers from making use of special knowledge or information obtained from their position before that knowledge or information is made available to the public.

Ms. Bunney said, based upon the Committee's recommendation, the draft included referring any questions about the CIEP, a conflict of interest, or other ethical problems, to the City Attorney's office rather than having a formal Ethics Committee. She said it was also the Committee's desire to have all officials sign a pledge upon taking office, either by election or appointments, acknowledging receipt and understanding of the CIEP, and expressing a willingness to abide by it.

Councilmember Cubberley said the CIEP seemed to be geared more toward a financial conflict of interest than a personal conflict of interest. Councilmember Butler asked if the CIEP applied to City employees and Mr. Jeff Bryant, City Attorney, said the City has a Personnel Manual which addresses employees and conflicts of interests. He said Staff can review the Personnel Manual and add a summary of the Personnel Manual to the CIEP. The Committee discussed whether ad hoc committees and stakeholder groups should sign a CEIP pledge, since they were volunteers who most definitely had a potential conflict of interest in those particular issues or topics. Mr. Steve Lewis, City Manager, suggested the City Attorney's Office compile and classify a list of all the boards and commissions, including the ad hoc committees, and bring back to the Committee for further discussion.

Items submitted for record

1. Memorandum dated October 21, 2008, from Leah Bunney, Assistant City Attorney, through Jeff Harley Bryant, City Attorney, to City Council Planning Committee
2. Working Draft of proposed City of Norman Conflicts of Interest/Ethics Policy
3. PowerPoint presentation entitled, "*Proposed Conflicts of Interest/Ethics Policy*," Norman City Council Planning Committee, October 24, 2008

The meeting adjourned at 9:02 a.m.

November 14, 2008

The City Council Planning Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 8:00 a.m. in the Conference Room on the 14th day of November, 2008, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Butler, Cubberley, Dillingham, Griffith, and Kovach

ABSENT: None

OTHERS PRESENT: Mayor Cindy Rosenthal
Mr. Jeff Bryant, City Attorney
Ms. Leah Bunney, Assistant City Attorney
Ms. Karla Chapman, Administrative Technician III
Ms. Brenda Hall, City Clerk
Mr. Doug Kosciński, Current Planning Manager
Ms. Suzanne Krohmer, Budget Analyst

DISCUSSION REGARDING THE PROPOSED ETHICS POLICY.

Ms. Leah Bunney, Assistant City Attorney, updated the Committee on changes to the Proposed Ethics Policy (PEP) as recommended by the Committee at its October 24, 2008, meeting.

- Preservation of Public Trust
- Actual Conflict versus Potential Conflict
- Application of Proposed Policy to Ad Hoc Committees and Employees
- Codes of Ethics for:
 - ✓ Norman Convention and Visitors Bureau
 - ✓ Norman Economic Development
 - ✓ Central Oklahoma Master Conservancy District
 - ✓ Pioneer Library System

Ms. Bunney highlighted the Preservation of Public Trust statement and said elected officials shall have a duty to engage in dialogue with citizens to hear their concerns and interests and should adhere to ethical standards that eliminate disappointment borne of dishonesty, conflicts of interest, unfairness, or illegality. She said the State of Oklahoma Ethics Commission (OEC) is a constitutionally created state agency who promulgates rules of ethical conduct and issues opinions on ethical questions and potential violations. They use "reasonably foreseeable benefit" language to cover non-pecuniary interests and existing opinions interpreting "reasonably foreseeable". Ms. Bunney provided examples to consider from published formal and informal opinions of the OEC and said the opinions are fact-specific and different circumstances could change the results.

Ms. Bunney said she revised the proposed definitions of actual and potential conflict by adding the language "pecuniary interest or reasonably foreseeable benefit" to both and explained the definition of reasonably foreseeable benefit as a detriment to a business competitor of the official, to a business competitor of a member of the immediate family of an official, or to a business competitor of a business entity with which the official or member of the immediate family of the official is associated.

Councilmember Cubberley distributed suggested language for a purpose statement as well as the definition of Pecuniary Interest. Councilmember Kovach provided information from Oklahoma Municipal League's (OML) Ethics Policy for consideration regarding conduct of public meetings; decisions based on merit; communication; and conflict of interest. Mayor Rosenthal felt Staff should consider adding the language.

Councilmember Kovach specifically recommended Staff incorporate "organizational responsibility" to the Conflict of Interest section and the Committee agreed.

The Committee discussed violations of the PEP and Ms. Bunney highlighted proposed language to address violations. She said violations by an official could be grounds for disciplinary action and said as written, complaints asserting a violation, against either an elected or appointed official, would be filed in writing with the City Clerk to be forwarded to the appropriate authority or other public body for investigation and action.

Ms. Brenda Hall, City Clerk, said members of ad hoc committees are often appointed due to their specific expertise and background in a particular area. The Committee recognized the PEP may not apply to certain boards or commissions and suggested adding a sub-section of expectations for ad hoc committees and decision making committees. Mr. Jeff Bryant, City Attorney, said Staff will review the boards and committees and develop an index of sub-committees, as well as other proposed changes and additions for the Committee to review at the December 12, 2008, Planning Committee meeting.

Items submitted for record

1. Working Draft of City of Norman Proposed Ethics Policy Materials
2. PowerPoint presentation entitled, "*Proposed Ethics Policy*," Norman City Council Planning Committee, November 14, 2008
3. Proposed Violations language submitted by Leah Bunney, Assistant City Attorney
4. Recommended comments for Code of Ethics submitted by Councilmember Cubberley
5. Pertinent excerpts from the Oklahoma Municipal League Policy of Ethics submitted by Councilmember Kovach

The meeting adjourned at 9:04 a.m.

December 12, 2008

The City Council Planning and Community Development Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 9:00 a.m. in the Conference Room on the 12th day of December, 2008, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

- PRESENT: Councilmembers Cubberley, Dillingham, and Griffith, and Chairman Butler
- ABSENT: None
- OTHERS PRESENT: Mayor Cindy Rosenthal
Mr. Al Atkins, Planning Commission Liaison
Mr. Jeff Bryant, City Attorney
Ms. Leah Bunney, Assistant City Attorney
Ms. Karla Chapman, Administrative Technician III
Ms. Brenda Hall, City Clerk
Mr. Harold Heiple, Attorney
Mr. Doug Koscinski, Current Planning Manager
Ms. Suzanne Krohmer, Budget Analyst
Mr. Steve Lewis, City Manager

CONTINUED DISCUSSION REGARDING THE PROPOSED ETHICS POLICY.

Ms. Leah Bunney, Assistant City Attorney, updated the Committee on the latest changes to the Proposed Ethics Policy (PEP) as recommended by the Committee and recapped the points of discussion from the November 14, 2008 meeting:

- o Addition of language from Oklahoma Municipal League (OML) Policy.
- o Questions/concerns regarding organizational interests.
- o List of committees broken down by role (decision-making vs. recommendatory).
- o Separate statement for ad hoc committees.

Ms. Bunney said upon the Committee's recommendation she added language from the Oklahoma Municipal League (OML) policy to the Purpose and Preservation of the Public Trust sections of the PEP. Councilmember Cubberley suggested deleting "actual" from the second paragraph of the Purpose section because there is "potential" conflict of interest perceived, therefore the policy should not be defined so narrowly and the Committee agreed.

Ms. Bunney said the Committee requested "business or organizational competitor" be added to Reasonably Foreseeable Benefit in the Definitions section of the PEP. Councilmember Cubberley asked if "employee" should be added after "associated" or is "associated" to be interpreted as an ownership for pecuniary interest only. He said the City defines pecuniary interest as having a 5% interest in a business, but it seems if you are an employee of an organization that pressure could be brought to bear. Councilmember Cubberley said, for example, he feels it is a conflict of interest to have an employee sitting on Council and deciding on their employer's application for rezoning. Ms. Bunney said the deciding factor would be the direct versus indirect affect of the conflict, not the type of the reasonable foreseeable benefit. The Committee discussed several scenarios and determined the verbiage should remain as is. Mayor Rosenthal said it is not the Committee's desire to dampen any citizen's willingness to serve and the PEP is very helpful in terms of articulating the City's standard of ethical conduct which is very important.

which increased the amount of storm debris to be collected to 800,000 cubic yards and increased the contract amount by \$3,245,751.27. Change Order No. Two approved by City Council on September 9, 2008, modified the scope of work to add channel debris removal with no change in the contract amount. Change Order No. Three is a final change order and reduces the contact amount by \$420,031.40. He said the costs were favorable even after the City had to change course in the middle of the disposal process.

Mr. Bob Hanger, City Engineer, said during the cleanup period, the debris had originally been disposed of by burning, but due to environmental and safety issues, the process had been changed to grinding. This process cost \$205,000 more than was anticipated. He said 87% of the cleanup process was reimbursable and 100% was reimbursable for "Classified Roads." He said the total project cost was \$6,000,000 but after reimbursement, the City had expended \$619,000.

Councilmember Butler said it was important for our citizens to know how much the total costs were and how much the City had spent.

Items submitted for the record

1. Memorandum dated December 29, 2008, from Bob Hanger, City Engineer, to Honorable Mayor and Councilmembers
2. Change Order No. Three to Contract No. K-0708-107

Participants in discussion

1. Mr. Bob Hanger, City Engineer

DISCUSSION REGARDING PROPOSED CITY OF NORMAN ETHICS POLICY FOR CITY COUNCIL AND APPOINTED MEMBERS OF ALL CITY BOARDS, COMMISSIONS, AND COMMITTEES.

Councilmember Butler said the City Council Planning and Community Development Committee had been discussing the development of a City of Norman Ethics Policy for several months. She said the Committee had reviewed ethics policies from several others cities and Oklahoma Municipal League and used those sources to draft language for a City of Norman Ethics Policy. She said City Council and all members of City Boards and Commissions would use this policy.

Ms. Leah Bunney, Assistant City Attorney, said the Ethics Policy had been identified as a priority policy topic by City Council and throughout the development process the importance of public confidence in government has been stressed. The proposed policy is a consolidation of existing items in City Code, City Charter, and the Personnel Manual. She said the Planning and Community Development Committee met on September 12, October 24, November 14, and December 12, 2008, to discuss the proposed policy and, as a part of that process, examined polices from not only other Oklahoma cities, but cities in other states and policies outlined in the Oklahoma State Statutes. She said Article XVII of the City Charter prevents any officer or employee from being interested either directly or indirectly in any contract with the City of Norman and also applies to the spouse or any interest greater than 5 percent. Chapter 2, Section 2-103, of the City Code addresses the ethical conduct of City Councilmembers, the use of special knowledge, improper influence, and appointments to boards and commissions. Chapter 4, Section 4-105, of the City Code regulates who can be appointed. The proposed policy will apply to the Mayor, City Council, and appointed members of all boards, commissions, and committees. She said there is a separate statement in the proposed policy that applies to ad hoc committees. She provided a list of all boards, commissions, committees, and ad hoc committees and highlighted their method of origin either by City Charter, Code of Ordinances, or Council resolution. The list also highlighted those groups with Council representation and/or City staff representation.

She said one of the main issues was defining actual conflict versus potential conflict and the Committee defined "actual conflict" as an official having a pecuniary interest in or a direct reasonably foreseeable benefit from an action. A "potential conflict" is defined as an action with an indirect effect on a pecuniary interest or reasonably foreseeable benefit to an official. The reasonably foreseeable benefit includes a detriment to a business or organizational competitor of the official; business or organizational competitor of an immediate family member of an official, or business or organizational competitor of a business or entity with which the official or a member of the immediate family of the official is associated. The language for "reasonably foreseeable benefit" was taken from the State of Oklahoma Ethics Commission,

which is the agency that promulgates rules of ethical conduct and issues and issues opinions on ethical questions and potential violations.

She explained the policy would regulate conflict by officials not participating if there is an actual conflict. The official should disclose the actual conflict and not participate in the vote or discussion. Chapter 2, Section 2-108 of the City Code requires a City Councilmember to leave their chair. If an official has a potential conflict, the official may vote and discuss but must disclose potential conflict prior to consideration. The exceptions would be financial interests that are included within the class of citizen, such as property owners and if the majority of the remaining members decide the conflict is minimal. She said the policy also includes a discrimination statement, prohibits disclosure of confidential information, stipulates a duty to report, includes gifts to City Council/Board members, and outlines the role of the City Attorney by allowing him to answer questions about the policy and issue opinions. She said a separate document is attached to the Ethics Policy entitled "Pledge," which is an acknowledgment of the policy to be signed by all those the policy pertains to.

She said a separate policy for ad hoc committees was created due to the unique nature of the committees which serve solely as advisory committees and do not have decision-making authority. Ad hoc committees are created to encourage discussion among citizens and to achieve a special purpose. Often, committee members are selected because they are interested in or are affected by the matter under discussion and recusal would cripple the ability to complete the purpose. Ad hoc members would not be asked to follow the ethics policy regarding conflicts.

Councilmember Ezzell asked that clarification be made to the policy regarding the section on gifts where it states "...a gift under \$100 is permissible if given without the intent to influence but no amount is too small to be ethically questionable."

Mr. Bryant said by State law, if the employee has a 25% ownership interest; it was considered a conflict of interest while the City Charter lists a conflict of interest when an employee has 5% ownership interest. If you are just an employee receiving wages from the employer, it would not be considered an actual conflict. He discussed possible language changes with Council and will draft changes for Council's consideration. Councilmember Kovach said employment of the official could be listed as an actual conflict if an issue was brought forward by an employer of an official. He said it could have a negative effect on the employee if his/her employment was in danger by not supporting the employer. He said the distinction could be made with "at will" employees. Councilmember Dillingham said the Committee discussed the appearance of one's employment possibly benefitting from the action. An example was used regarding a University of Oklahoma employee being the official and the University being the entity wanting some type of action. She said the language could be amended for potential conflict by saying "a conflict with an indirect effect on a pecuniary interest or reasonably foreseeable benefit consequence or detriment to an official..." Councilmember Cubberley felt the policy should have language added to require the official to recuse themselves if they are employed by the entity making the request to alleviate any decision-making for the employee and to preserve the integrity of the process.

Councilmember Thompson said the policy had no consequences to Councilmembers if a conflict of interest did exist and the Councilmember did not recuse himself.

Councilmember Butler said the City Charter and City Code provide methods for removal. She said the policy did not have these types of provisions because the Committee was trying to keep from depriving officials from providing input and ward representation due to their employment situation.

Mr. Bryant said there are provisions in the Charter and State law that address removal of Councilmembers as well. He said Roberts Rules of Order addresses the issue of an official with a conflict of interest who does not raise the issue by allowing another Councilmember to bring it to the Chairperson's attention to be debated by Council. He said the language can be strengthened on Potential Conflict to address Councilmembers' concerns. He said the suggested changes will be made to the policy and submitted to the Planning and Community Development Committee.

Mayor Rosenthal said the policy was an important balancing act with different values and types of representation. She said the process is broadly opened to many types of people to participate. She said stronger language on potential conflict would result in process transparency and disclosure of all types of conflicts.

Items submitted for the record

1. Memorandum dated January 2, 2009, from Leah Bunney, Assistant City Attorney, through Jeff Bryant, City Attorney, to Norman City Council
2. City of Norman Ethics Policy
3. Pledge to Follow Ethics Policy for Appointed and Elected City Officials
4. Board, Committees, Commissions, and Ad Hoc Committees list
5. City of Norman Board/Commissions/Committees application
6. City Council Planning Committee minutes of September 12, October 24, November 14, and December 12, 2008
7. PowerPoint presentation entitled, "Proposed Ethics Policy, City Council Study Session, dated January 6, 2009"

Participants in discussion

1. Ms. Leah Bunney, Assistant City Attorney
2. Mr. Jeff Bryant, City Attorney
3. Mr. Steve Lewis, City Manager

The meeting adjourned at 6:30 p.m.

ATTEST:

City Clerk

Mayor

nuisance party violations at any of the major apartment complexes in Norman, but the traditional single-family neighborhoods where students have moved have been a problem. Ms. Snider said for a nuisance party violation to occur, three or more of the following issues must be taking place at the residence: minor in possession, parking problems, littering, and public intoxication. She said one concern with the nuisance non-convictions is the citation is issued to the resident at the property, not the property owner; therefore, the next semester a different resident can move into the property. Ms. Snider said because of that it is difficult to get three convictions against a person at the same residence, but the letters being sent out by the Code Compliance Division is certainly helping. She said the City Attorney's Office is firmly prosecuting those violations by imposing a \$200 minimum fine even though the range is \$50 to \$750 and even tougher on social host violations. She said disturbing the peace violations are left up to police officer, stating the police officers have to assess each situation and determine if a complaint is either a nuisance or social host violation.

Mayor Rosenthal asked if there have been any violations of three or more unrated persons at a residence and Ms. Price said Staff has received a few complaints and have been working those complaints. Staff also advises the complaining party to utilize forms to help obtain the vehicle description and tag numbers. Ms. Leah Bunney, Assistant City Attorney, said she made a presentation to the Norman Board of Realtors Association (NBRA) and updated them on the ordinance and explained violations are on a complaint basis only. Councilmember Griffith asked if the Police Department has ever used under cover officers to infiltrate neighborhood parties and Chief Cotten said they did a few years ago when the social host issue first surfaced. He said the officers were equipped with video cameras, but the people at these parties were not concerned and simply started to mock and ridicule the officers. Ms. Snider said the Police Department routinely will go out into the neighborhoods at least two or three weeks before college resumes to inform students what is not acceptable in reference to noise, party house, and social host ordinances.

Mayor Rosenthal thanked Staff for the update and Chief Cotten said his Department will continue to monitor nuisance and party houses.

Items submitted for record

1. Memorandum dated February 5, 2009, from Phil Cotten, Chief of Police, to Steve Lewis, City Manager

CONTINUED DISCUSSION ON THE PROPOSED ETHICS POLICY.

Ms. Leah Bunney, Assistant City Attorney, said after the January 6, 2009, Study Session, it was Council's desire to discuss the affects of the proposed Ethics Policy related to a person's employment. She provided examples from the Oklahoma Ethics Commission (OEC) to the Committee, demonstrating how they have incorporated the employment factor in their ethics policy and said the Committee may want to take the same approach. Ms. Bunney said in any situation OEC first determines whether a pecuniary interest exists and if so, the voting member would recuse themselves. If there is not a pecuniary interest, the next step is to determine if there is a reasonably foreseeable benefit. If yes, the voting member would recuse themselves at that time. If the answer is maybe, the voting member would need to determine if the reasonably foreseeable benefit is incidental, if the answer is no, no action is needed and the voting member would not need to recuse.

Ms. Bunney said the City's policy language is similar to that of OEC and provided several scenarios to the Committee, demonstrating the same steps OEC uses. Mr. Jeff Bryant, City Attorney, said under the current City Charter, pecuniary is defined as either the voting member or their spouse having five percent, or greater, ownership of a business that is attempting to contract services with the City. Ms. Bunney said just as OEC, the Councilmember would need to determine if a pecuniary interest exists, if yes the Councilmember would need to recuse. If determined not, the next step would be to ask if it is a benefit, detriment or an employment consequence. She said Councilmember Dillingham suggested changing the proposed ethics policy verbiage to read, "benefit, detriment or employment consequence" at the January 6, 2009, Study Session. Ms. Bunney said if it is a benefit, detriment or employment consequence, then the Councilmember would need to determine if it is actual or potential conflict. If actual, the Councilmember would recuse; if potential, the Councilmember would need to disclose the information.

The Committee discussed all the scenarios and the various situations for recusal and Mayor Rosenthal suggested the recusal apply to voting party as well as acting as an advocate on an issue coming before the board in which the person serves. For example, someone on the Planning Commission recuses from voting on an item and represents a developer requesting a zoning variance. Mr. Bryant said it is hard to draw the line on issues because Councilmembers usually have constituents they represent through some interest. Councilmember Griffith asked if it could be left up to the board or commission to determine if the member would need to recuse from voting as well as representing and Mr. Bryant said language could be written into a policy for the Boards and Commission, but Council would be a different because of the code provision which has the presumption that all elected representatives will vote. According to the code provision, the only way to avoid voting is if the body accepts the representative's request to be recused.

Councilmember Griffith asked if the City Attorney's Office would advise Councilmembers, when a particular issue might be a conflict of interest or would they wait until a Councilmember requests an opinion. Mr. Bryant said if the City Attorney's office is aware a Councilmember has a five percent ownership interest in a matter that is coming before Council, they would take the initiative and discuss it with the Councilmember. He said usually the City Attorney's Office does not initiate discussions that are discretionary issues because it is assumed the Councilmember has thought through the situation and come to their own resolve; however, should a Councilmember contact the City Attorney's Office requesting guidance on an issue they would respond. Mayor Rosenthal asked if a Councilmember is required to give an explanation for a recusal request, i.e., they are an employee of a company seeking Council approval. Mr. Bryant said the Code provision is written that an explanation is not required and the request to be excused is voted on without debate. He requested Council guidance on whether this policy needed to be rewritten to force the Councilmember to recuse or leave the recusal process in the discretion of the board member. Mr. Bryant said the key point from today's discussion is can Council vote to have another Councilmember recuse, or is it at the discretion of the Councilmember unless there is a pecuniary interest? The Committee agreed it should be at the discretion of the Councilmember and Council should accept the request to recuse. Mr. Steve Lewis, City Manager, said the rules are different in the policy for elected and appointed officials. Mr. Bryant said when Staff first started working on an Ethics Policy, it was directed at the boards and commissions, but as the meetings continued the discussions focused on Councilmembers.

Councilmember Butler asked the Committee if another Study Session is needed and Mayor Rosenthal suggested Staff have another small group demonstration with the other Committee members who were not present today. Councilmember Griffith said today's Staff demonstration would be valuable information at future new Councilmember orientation.

Items submitted for record

1. Memorandum dated February 9, 2009, from Leah Bunney, Assistant City Attorney I, through Jeff Bryant, City Attorney, to City Council Planning and Community Development Committee, Councilmembers Butler, Cubberley, Dillingham, and Griffith

The meeting adjourned at 9:06 a.m.

JOINT CITY COUNCIL AND OVERSIGHT COMMITTEE STUDY SESSION MINUTES

July 19, 2011

The City Council of the City of Norman, Cleveland County, State of Oklahoma, and the Oversight Committee met in Study Session meeting at 5:30 p.m. in the Municipal Building Conference Room on the 19th day of July, 2011, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Dillingham, Ezzell
Gallagher, Griffith, Kovach, Lockett, Mayor
Pro Tem Quinn,

ABSENT: Councilmember Spaulding and Mayor
Rosenthal

DISCUSSION REGARDING ORDINANCE NO. O-1011-5 AMENDING CHAPTER 2 REGARDING COUNCIL ETHICS.

Mayor Pro Tem Quinn said the proposed ethics Ordinance No. O-1112-5, was on the July 12, 2011 City Council agenda for First Reading. He said Council discussed and agreed the Oversight Committee would review the proposed ordinance, existing charter, and statutory provisions prior to the Second Reading and final Council consideration scheduled for July 26, 2011. Due to time constraints it was felt a joint meeting would be better and allow the full Council opportunity for input on the proposed ordinance prior to the July 26, 2011, Council meeting.

Ms. Kathryn Walker, Assistant City Attorney, said Ordinance No. O-1112-5 would incorporate the Ethics Policy into the Norman City Code, Section 2-103, Council ethics; as well as change some existing language in Section 2-103. She said Section 2-103(a)(2-3) currently provides that members of Council shall refrain from making decisions involving business associates, customers, clients, friends and competitors, and from using their influence to secure contracts, zoning, or other favorable municipal action for friends, customers, clients, immediate family members, or business associates. Section 2-103(a)(6) also requires that Council refrain from repeated and continued violations of Council rules.

Ms. Walker said the proposed ordinance would strike "friends" from Section 2-103(a)(2) and (a)(3) and strike the "repeated and continued" modifier from the prohibition of repeated and continued violations of Council ethics rules by Section 2-103(a)(6). She said Section 2-103(a)(7) adds new language about conflict of interest including the process for processing violations.

Ms. Walker said the amendment will also incorporate the Ethics Policy adopted by Council in April 2009, into the rest of Section 2-103 of the Code. The definitions of pecuniary interest in the Ethics Policy is expanded in the proposed ordinance to include the expectation of an employment consequence and to classify any ownership interest valued over \$20,000 as a de facto pecuniary interest. Appointed City Officials include any member of a board, commission, committee, or authority of the City who is appointed to such position by action of the Mayor and/or City Council and appointed City Official may not be full-time City of Norman employees.

The Ethics Policy, as incorporated into the proposed Ordinance, requires that alleged violations of the ethics code be reported by City Councilmembers to the Mayor, or the Mayor Pro Tem if the alleged violator is the Mayor. Appointed officials are required to report alleged violations to the Chairperson of their board, commission, or committee, who may then report such violation to the Mayor. If the alleged violator is the Chairperson, the reporting official is to report the allegation directly to the Mayor. The Ethics Policy, as

adopted, does not set forth a remedy should such an allegation be sustained and under the proposed additions in Ordinance No. O-1112-05, violations of the conflict of interest provisions by a Councilmember would be forwarded to Municipal Court with enforcement in accordance with Article XVII, Section 4 of the Charter.

Mayor Pro Tem Quinn asked whether there were any issue(s) regarding enforcement of the Ethics Policy and any conflict(s) with State law and the proposed ethics ordinance. Ms. Walker said the existing Charter provisions for Article X, Section 1, of the City Charter sets forth the procedure by which a member of an appointive board or commission created by Charter or ordinance may be removed, which states a member may be removed from position if five (5) or more Councilmembers approve a motion to remove at a regular Council meeting.

Ms. Walker said, Article XI, Section 3, of the Charter provides for removal of Mayor and Councilmembers and the language states the removal process is provided by State law.

Article XVIII, Section 4, of the City Charter referred to in the proposed ordinance as providing a remedy for conflicts of interest violation and Mayor Pro Tem Quinn asked Staff to speak about the proposed additions to the ordinance giving jurisdiction for removal based on conflict of interest to Municipal Court. Ms. Walker said the proposed additions would give jurisdiction for removal based on conflict of interest to Municipal Court; however, this appears to be contrary to the City Charter and State law. She said one of the benefits of limiting enforcement to the procedures outlined in State law is that it removes City employees, both prosecutors and judges from the adjudicative process. Furthermore, under the Rules of Professional Conduct applicable to lawyers, it is possible that participation in such action could create an impermissible conflict of interest, necessitating the need for special counsel and appointed Judge for matters related to ouster or removal of municipal officials.

Councilmember Kovach asked whether replacing "municipal court" with "district court" in proposed Section 2-103(a)(7)(c) would make the ordinance harmonious with the Charter and Ms. Walker said "municipal court" could be replaced with "district court", but felt it would be better to instead state that removal or ouster actions for other alleged ethical violations could be pursued under the avenues provided by State law. She said there is concurrent jurisdiction in some instances where it would not necessarily be District Court, but could be filed at the Supreme Court, and Councilmember Dillingham said it would also allow for additional changes to State law. Councilmember Ezzell asked if this change would create any inconsistency issue when State law is referenced since the current Charter provision references removal for *county officers* per State law. He asked Staff if it made more sense to reference the Charter provision regarding removal rather than referencing generically State law and Ms. Walker felt that would be a good idea as it would be clear reference to the proposed Ordinance. Councilmember Kovach requested Staff to draft such language that would be appropriate for the proposed amendment.

Councilmember Dillingham asked whether the possible causes for removal are specific enough or if the language "willful neglect" could be construed to be a violation of the proposed ordinance and Ms. Walker said Title 22 states one of the causes for removal is the willful neglect of duty, i.e., knowing there is a duty and knowingly refusing to honor such duty. Councilmember Kovach asked if the proposed amendment to Section 7(c), **Conflict of Interest**, is sufficiently clear for any violations of the Ethics Policy and potential removal would be because of conflict of interest violations as stated in the Charter. Ms. Walker said removal can be pursued for reasons other than conflict of interest, but if the goal of this proposed amendment is to limit conflict of interest under these provisions in the City's Ethic Policy, then she felt the language is sufficiently clear. Councilmember Kovach felt that is the intent of the proposed amendment and removal should only apply to pecuniary interest under the proposed amendment for "Conflict of Interest" as envisioned in the Charter.

Mayor Pro Tem Quinn asked if the proposed amendment included a definition for *organizational responsibility* and Ms. Leah Messner, Assistant City Attorney, said it is categorized under **Benefit, Detriment, or Employment Consequence** (c) "...a business or organization with which the official is associated...". She said the definition came from Oklahoma Ethics Commission language and was used because it had a body of interpretation the City could rely on when interpreting the Ethics Policy. Mayor Pro Tem Quinn asked if a definition for *personal relationship* was included in the proposed amendment and Ms. Messner said it is not. She said Staff would refer to Webster's Dictionary to interpret the meaning of the word in cases where there may not be a definition. Mayor Pro Tem Quinn said he was asking from a personal standpoint; since he is a realtor he has personal relationships with several people who go before Council on issues such as zoning, platting, etc., and based on the language of the proposed ordinance amendment would he need to abstain each time this or a similar issue was scheduled for Council consideration. Staff said it was a fairly broad definition and the language would apply to almost any Councilmember and Mayor Pro Tem Quinn stated that is precisely why he has a concern. Councilmember Kovach said he would support striking the verbiage "personal relationship" from Section 2-103(7)(a) from the proposed ordinance amendment.

Mayor Pro Tem Quinn asked Staff what exactly are the "Council rules" in Section 2-103(a)(6) i.e.; are they rules posted on a wall; are they "Robert's Rules"; or are they State law or Charter language. Ms. Walker said "Council rules" is language in the current ordinance and Staff felt it should be more clear. Councilmember Dillingham suggested striking "Council rules" and replacing it with "Violations of Section 2-103" and Council agreed.

Council discussed whether Councilmembers should get warning(s), if they violated Council ethics. Councilmember Dillingham felt forgetting to abstain can at times be a simple oversight, i.e., if a Councilmember, who is also on a social services board, forgets to abstain when a social services grant is scheduled for Council consideration; and Councilmember Gallagher suggested each Councilmember get one warning, but anything after that would be considered a violation. Councilmember Ezzell said the first violation for a Councilmember may not be innocuous, such as Councilmember Dillingham described, and would not validate a warning, i.e., if a Councilmember voted to award a contract to a business partner instead of abstaining. Councilmember Kovach felt having all violations forwarded to a District Court Judge was a good idea because they would be a neutral arbitrator looking at each violation separately to determine if the violation is deliberate and/or enforceable. Ms. Walker said the State statute reads "...a willful violation or neglect of duty could be grounds for removal...", and in a case such as Councilmember Ezzell illustrated, the City Charter also provides that the contract would be void. Council agreed the word "willful" should be added before "Violations" in Section 2-103(a)(6) and Staff said this change would also be consistent with State law.

Mayor Pro Tem Quinn asked if the definition for *potential conflict* needed any changes and said felt the verbiage "indirect benefit" was vague. Councilmember Kovach said under potential conflict, an elected official would simply need to state the conflict, although the effect of the conflict is not certain and Council agreed no changes should be made.

Council discussed the Duty to Report section of the proposed ordinance, specifically how to report an alleged violation. Councilmember Dillingham felt it is appropriate for an elected official to give notice of an alleged violation to the Mayor or Mayor Pro Tem, but the actual reporting of the alleged violation should be given to the City Attorney. Ms. Walker said the proposed language does not actually result in an ouster action and suggested changing the verbiage to reflect "...Elected officials have a duty to report in accordance with State law or City Charter...", so it will recommence the ouster or removal process through the Attorney General or District Court. Councilmember Kovach asked Staff is there was any issue with the existing language where it refers to consulting with the City Attorney's Office and Ms. Walker said no, because it is the role of the City Attorney's Office to advise Council, just as long as it is not the role for the City Attorney's Office to report any

Council violation(s). Council requested Staff to delete second paragraph in its entirety and replace with the verbiage "Elected officials have a duty to report in accordance with State law".

Ms. Brenda Hall, City Clerk, said Staff prepared the draft ordinance amendments and submitted to Council for first reading just as it was received from the requestors. She said Staff will need to clean up and submit the ordinance according to the uniformed method and format in which they are typically submitted to MuniCode. Ms. Hall said the verbiage would include changes recommended tonight and requested authorization from Council as to whether or not Staff could make the modifications to the ordinance and Council agreed Staff could make the appropriate changes.

Ms. Hall said the original Ethics Policy was drafted to also include Boards and Commissions, but the heading for Section 2-103 reads Council ethics and she asked whether the proposed amendment would still be applied to Boards and Commissions in this manner. Councilmember Ezzell said the intent was to have the proposed amendment only apply to Council and the language in Resolution No. R-0809-123 would still apply to Boards and Commissions. Ms. Messner suggested deleting the definition for "*appointed city official*" and strike all references to "appointed officials" throughout the ordinance and Council agreed that would be an appropriate change.

The ordinance will be considered in its second and final reading on July 26, 2011.

Items submitted for the record

1. Memorandum dated July 14, 2011, from Ms. Brenda Hall, City Clerk, to Mayor and City Councilmembers
2. Proposed Draft Ordinance No. O-1112-5, amending Chapter 2, Section 2-103 Council Ethics
3. Memorandum dated July 14, 2011, from Ms. Brenda Hall, City Clerk, to Mayor and City Councilmembers
4. City Council Planning Committee Minutes dated September 12, 2008, October 24, 2008, November 14, 2008, December 12, 2008, February 13, 2009, and March 27, 2009
5. Memorandum dated July 15, 2011, from Ms. Kathryn L. Walker, Assistant City Attorney II, and Ms. Leah Messner, Assistant City Attorney I, through Mr. Jeff H. Bryant, City Attorney, to Honorable Mayor and Council Members

The meeting adjourned at 6:20 p.m.

ATTEST:

City Clerk

Mayor

Ordinances
from
Tulsa & Oklahoma City

CHAPTER 6. - ETHICS CODE

Section 600. - General policy.

It is the policy of the City of Tulsa that the proper operation of democratic government requires that public officials and employees be independently impartial and responsible to the people of the City; that government decisions and policies be made only through proper channels of the governmental structure; that no City official should have any interest, financial, personal or organizational, direct or indirect, or engage in any business, transaction or activity or incur any obligation that is in conflict with the proper discharge of their duties in the public interest; that public office and public employment are positions of public trust imposing the duty of a fiduciary upon all officers, employees, members of boards and committees and trustees of public trusts with the City of Tulsa as a beneficiary; and such individuals shall not use their public positions for personal gain nor should they act in such a way as to give an appearance of any impropriety.

The purpose of this chapter is to provide direction to City officials of the policy of the City of Tulsa.

The appropriate appointing authority shall create and maintain such rules as are necessary to implement and comply with the provisions of this chapter.

Section 601. - Definitions.

For purposes of this chapter, the following words and phrases shall have the meanings given herein.

Appointing Authority means the office with authority to appoint an individual to a position. For purposes of this chapter, the City Council shall act as the appointing authority for the City Auditor and individual City Councilors, and the City Auditor shall act as the appointing authority for the Mayor.

City Official means every City of Tulsa elected official, officer or employee; member of a City of Tulsa Board, Authority, Commission or Committee; or Trustee appointed by the City to a public trust with the City of Tulsa as a beneficiary.

Financial interest in an official action exists when the action may result directly or indirectly in a financial gain or loss accruing to the City official and/or his immediate family to a greater extent than could reasonably be expected to accrue to the general public. Financial interest in a company, business, organization or other entity exists when the City official and/or their immediate family owns, individually or combined, a five percent (5%) or more share of the company, business or other entity and the value of such share exceeds Five Thousand Dollars (\$5,000.00).

Immediate family means the City official's spouse, children, parents or spouse's parents and any other family members within two degrees of affinity or consanguinity.

Organizational interest in a company, business, organization or other entity exists when the City official is a director or a member of a board which establishes policy and/or budgetary decisions for the entity.

Personal interest means a direct or indirect interest, matter or relationship not shared by the general public which could be reasonably expected to impair the City official's objectivity or independence of judgment.

Section 602. - Use of City resources.

City officials shall not use or permit the use of City resources for personal or private purposes, except as provided by rules adopted by the appropriate appointing authority to address minor or incidental uses common to an ordinary workplace.

Section 603. - Participation on items of personal, financial or organizational interest prohibited.

Except as otherwise permitted under applicable federal, state, and City laws and policies, no City official shall participate in any City business in which they have a related personal, financial or organizational interest. Such City official shall not discuss the matter with a City official who is participating in the action other than to state his disqualification. The possibility, not the actuality, of a conflict shall govern.

Section 604. - Disclosure on items of personal, financial or organizational interest.

- A. A City official who may receive some benefit, not shared by the general public, to a personal, financial or organizational interest as a result of an item before the individual in their capacity as a City official or the public body to which the individual has been elected or appointed, shall disclose the interest to their supervisor, or their authority, board or commission, or file a written disclosure with the City Clerk. The reasonable possibility, not the actuality, of a conflict shall govern.
- B. A City official who is required to refrain from participation in City business pursuant to Section 603 of this chapter, shall file a written disclosure describing the disqualifying interest with the City Clerk.

Section 605. - Gifts and favors.

- A. City officials and their immediate family shall not directly or indirectly solicit or receive gifts, entertainment or other favors which may influence or be reasonably perceived as influencing a City official in the performance of their official duties.
- B. Campaign contributions shall be permitted as provided by law.

Section 606. - Use and disclosure of information prohibited.

A City official is prohibited from disclosing or offering to disclose information not available to the general public and acquired by reason of his position with the City, to any party not entitled to receive such information nor shall he use such information for his personal gain or benefit.

Section 607. - Contracts related disclosure required.

- A. City officials must disclose all personal, organizational or financial interests where they or their immediate family have a financial interest in a business that is receiving City funds, directly or indirectly, through a business agreement with the City or a City contractor.
- B. The disclosure required by this chapter shall be accomplished by filing with the Tulsa City Clerk a written statement of the City official involved describing the interest being disclosed.

Section 608. - Participation in ethics investigations.

- A. City officials shall not participate in investigations of their own actions, except to provide information or testimony. The appropriate entity including but not limited to the Human Resources Department, Police Department, City Auditor's Office and/or the City Attorney's Office may assist and participate in investigations involving City officials.
- B. City officials shall respond fully and truthfully to inquiries made in the course of official investigations of alleged or potential violations of this chapter.

Section 609. - Violation.

- A. Intentional violation of this chapter by a City official shall be grounds for disciplinary action up to and including dismissal or removal from office as may be provided by law.
- B. A complaint asserting a violation of this chapter against an elected official, officer, member of a City of Tulsa Board, Authority or Committee; or Trustee of a public trust with the City of Tulsa as a beneficiary shall be filed in writing with the City Clerk. The City Clerk shall forward the complaint to the appropriate appointing authority or other public body for investigation and action.
- C. A complaint asserting a violation against any other employee shall be filed in writing with the Mayor or his designee. The Mayor or his designee shall initiate an investigation or forward the complaint to the appropriate appointing authority or other public body for investigation and appropriate action.
- D. All records generated or compiled in response to a complaint, including the initial complaint, shall be released to the public only as required by law or court order.

Section 610. - Ethics Advisory Committee.

- A. There shall be created an Ethics Advisory Committee which shall act as a recommending body to the City of Tulsa on ethical issues.
- B. The committee shall consist of seven (7) individuals, appointed by the Mayor and confirmed by the City Council. A committee member shall not be a City official, nor shall a Committee member be immediate family of a City official. Every committee member shall be a resident of the City of Tulsa. Initially, two (2) of the members shall be appointed for a term of office of one (1) year; two (2) members for a term of office of two (2) years; and three (3) for a term of office of three (3) years. Thereafter, terms of office shall be for three (3) years; provided, however, that all members shall hold office until their successors

are appointed and qualified. All members shall serve without compensation. Members shall not hold public office nor be candidates for public office. A member who has served three (3) successive terms shall not be eligible for reappointment for a period of two (2) years.

- C. Any elected official; Charter division or department head; member of a City of Tulsa Board, Authority or Committee; or Trustee of a public trust with the City of Tulsa as a beneficiary may request an opinion from the Ethics Advisory Committee on an ethical issue arising under this chapter.
- D. The Ethics Advisory Committee may provide ethics opinions or recommendations for ethics policies, procedures or guidelines.
- E. The Ethics Advisory Committee shall provide a written report to the City Council by April 1 of every year on its activities for the preceding twelve (12) months and anticipated activities for the next twelve (12) months.
- F. The Ethics Advisory Committee shall provide the Mayor with its budgetary recommendation by January 15 for the next fiscal year.
- G. The Ethics Advisory Committee shall meet no less than once per calendar quarter.

(Ord. No. 21084)

Section 8. - City Official Cannot Hold Two Offices.

No person holding office or employment under the United States Government or the State of Oklahoma, notaries public excepted, or any other State, or municipality, shall hold any office or regular employment under this City of whatever kind or nature, except that a member of a Federal, County or State Advisory Board or Commission may hold office or serve on a City Board or Commission of this City.

(Charter, 2-8-27; am. 4-2-57)

Section 9. - No Compensation Except Salary.

No elective or appointive officer shall receive any further compensation than specified in the salary attaching to his position at the time of his election or appointment, no person being permitted under any circumstances to draw more than one salary from the City for any and all services, and all fees collected shall be accounted for by the proper officer and turned over to the City Treasurer; provided however, nothing contained in this Section shall prohibit the payment or reimbursement of authorized expenses incurred or to be incurred by City employees, the making to City employees of authorized payments in lieu of such expenses, and/or the making of authorized incentive or merit payments to City employees, to the extent not otherwise prohibited by the law of the State, and such payments or reimbursements shall in no event be deemed to be compensation for the purposes of this Section.

(Charter, 2-8-27; am. 6-18-85)

Section 10. - Bribery Prohibited.

It shall be unlawful for any candidate for City office, or any officer or employee of the City, directly or indirectly, to give, or promise to give, any person or persons any office, position, employment, or anything of value for the purpose of influencing or obtaining support, political or otherwise, aid, influence or the vote of any person or persons; the doing of any of these things shall be grounds for removal from office or employment, in the manner provided by law.

(Charter, 2-8-27; am. 4-2-57)

Section 11. - City Officers or Employees Shall Not Violate 11 O.S. § 8-113.

No officer or employee of the City, elective or appointive, shall violate the provisions of 11 O.S. § 8-113 as it now reads or may hereafter be amended by the Oklahoma Legislature. The penalty for a violation of this section of the Charter shall be the same penalty as provided for in said 11 O.S. § 8-113.

(Charter, 2-8-27; am. 4-2-57; am. 11-4-08)

Section 12. - Cannot Accept Passes or Favors.

No officers or employee of the City, elective or appointive, shall accept or receive, directly or indirectly, from any person, firm or corporation operating within the City any interurban railway, street railway, airlines, bus line, gas works, electric light or power plant, telephone exchange, heating plant or other business using or operating under a public franchise or franchises, any frank, free ticket or free service or accept or receive, directly or indirectly, from any such person, firm or corporation any other service upon terms more favorable than is granted the public generally, or any salary, commission, compensation, or thing of value whatsoever. Any violation of this section shall be grounds for removal from office by the responsible superiors of such officer or employee. Provided that this provision shall not void the terms of any franchise now outstanding, or prevent the granting of franchises conditioned upon free service to the City and to its officers and employees while engaged in the performance of their official duties.

(Charter, 2-8-27; am. 4-2-57)

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(Charter, 2-8-27; am. 4-2-57)

DIVISION 2. - FINANCIAL DISCLOSURE^[3]

§ 2-36. - Financial interest affidavit required; form of affidavit.

- (a) The Mayor and all members of the Council shall each file a financial interest affidavit with the City Clerk within ten days of assuming office and thereafter on or before March 15 of each year during their respective terms of office. The Mayor and each Councilmember shall also file a financial interest affidavit upon leaving such office.
- (b) The required affidavit shall be in the following form:

FINANCIAL INTEREST AFFIDAVIT

Date: _____

I, _____, being duly sworn, do hereby declare on this _____ day of _____ / _____ / _____, 20 _____, that I do not have any financial interest in or reap any financial benefit, directly or indirectly, from any expenditures of The City of Oklahoma City or any of the public trusts of which said City is the beneficiary, save and except as the result of the general benefit arising from the maintenance of public works and the making of special improvements in the streets, alleys, parks, and public places in The City of Oklahoma City.

And, I do hereby further declare that I have not, at any time during my term of office, had any financial interest in or reaped any financial benefit from any such expenditures of The City of Oklahoma City or any of said public trusts.

Furthermore, I do hereby declare that, to the best of my knowledge, information and belief, the foregoing statements are true and accurate.

	_____ Mayor/Councilmember
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Subscribed and sworn to before me this _____ day of _____ / _____ / _____, 20 _____, a notary public in and for the State of Oklahoma.

	_____ Notary Public
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My Commission Expires:

(SEAL)

(Ord. No. 17585, § 1, 3-13-84; Code 1980, § 2-36)

Charter reference— Forfeiture of office for having financial interest or benefit in certain expenditures, Art. II, § 8.

§ 2-37. - Disclosure of certain gifts received and accepted by the Mayor or a Councilmember.

(a) As used in this section:

- (1) *"Gift"* shall mean a voluntary transfer of property, real or personal, or services provided to another gratuitously and without consideration, including but not limited to money, travel expenses, tickets, meals and personal services.
- (2) *"Economic interest"* shall mean a personal financial interest in a City or City-beneficiary public trust purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services when the person who has the economic interest is taking action to influence the City or public trust purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services.
- (3) *"First degree of consanguinity"* shall mean the Mayor's or Councilmember's parents, children and their spouses.
- (4) *"First degree of affinity"* shall mean the Mayor's or Councilmember's spouse, spouse's parents and spouse's children.
- (5) *"Second degree of consanguinity"* shall mean the Mayor's or Councilmember's grandparents, grandchildren, uncle, aunt, first cousin, nephew, niece, brother, sister and their spouses.
- (6) *"Second degree of affinity"* shall mean the grandparents, grandchildren, uncle, aunt, first cousin, nephew, niece, brother and sister of the spouse of the Mayor or Councilmember.

(b) Beginning on December 1, 2014, and on June 1 and December 1 of every year occurring thereafter, the Mayor and each Councilmember shall file a written disclosure statement with the City Clerk, on a form provided by the City Clerk, listing all gifts received and accepted by the Mayor or Councilmember from any single person, or from any agent or employee of such person, during the preceding six (6) months, if such gifts, in the aggregate, exceed a value of more than three hundred dollars (\$300.00) and if the Mayor or Councilmember accepting such gifts knows or should know that such person, or the agent or employee on behalf of such person:

- (1) is seeking to do business or is doing business with the City or any public trust with the City as its beneficiary; or
- (2) has an economic interest in actions or matters before or affecting the City or any public trust with the City as its beneficiary.

(c)

The disclosure required by this section shall include: (i) the nature of each gift, (ii) the approximate value of each gift, and (iii) the identity of the person, or the agent or contractor of such person, who tenders the gift. The disclosures required by this section shall be filed on a form provided by the City Clerk.

(d) This section shall not apply to the following:

- (1) Election campaign contributions, as defined by Oklahoma law, donated to or for the benefit of the Mayor or Councilmember.
 - (2) Gifts given to the Mayor or Councilmember by his or her relative in the first or second degree of consanguinity or first or second degree of affinity.
 - (3) Any property or services received and accepted by the Mayor or Councilmember in exchange for lawful consideration.
 - (4) Any property or services received and accepted by the Mayor or Councilmember from the City, from any City-beneficiary public trust, or from any officer, employee, agent, or contractor of the City or City-beneficiary public trust if such property or services are tendered for the purpose of facilitating the performance of the official duties and/or the public services performed by the Mayor or Councilmember on behalf of the City, the City-beneficiary public trust, or the public.
- (e) Failure to comply with the provisions of this section shall constitute a violation of this Code. Any person violating the provisions of this section shall, upon conviction thereof, be guilty of a Class "a" offense as provided in Section 1-6 of this Code.

(Ord. No. 24879, § 1, 4-29-14, eff. 6-1-14)

§§ 2-38—2-50. - Reserved.