

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

October 19, 2017

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 8:42 a.m. in the City Council Executive Conference Room on the 19th day of October, 2017, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Castleberry, Holman and
Chairman Allison

ABSENT: Councilmember Karjala

OTHER STAFF PRESENT: Mayor Miller
Ms. Leah Messner, Assistant City Attorney II
Ms. Regina Oliphant, Administrative Tech III
Ms. Kathryn Walker, Assistant City Attorney III
Mr. Noah Wolfe, City Intern for the Community
Scholars Program

Item 1, being:

CONTINUED DISCUSSION REGARDING POSSIBLE AMENDMENTS TO THE CITY COUNCIL ETHICS ORDINANCE.

Ms. Leah Messner, Assistant City Attorney, said at the last Oversight Committee meeting the Committee met with Staff to discuss some of the concerns they have with the current City of Norman Conflicts of Interest Ordinance, e.g., when a person becomes a candidate for office and proposed language changes regarding when a Councilmember can endorse a candidate for office.

Ms. Messner said the first item in the packet is a memorandum from Ms. Kristina Bell, Assistant City Attorney, regarding Candidacy for Office and the brief conclusion is essentially 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) for his or her campaign, whichever occurs first.

She said an additional item the Committee asked Staff to look for was language for a possible ordinance change for the exception of when Councilmembers can endorse candidates for office. She said after listening to the discussion and reading through the minutes she felt the Committee wanted to delete the language of "use his office to" because it was hard to interpret and confusing as to when a person is using his office and when a person is not. She said the discussion seemed to reflect a consensus of the Committee being comfortable with the endorsement of candidates for office outside of City offices, e.g., state or federal races. She said Councilmembers discussed the importance of involvement in state level races because of how that influences what happens in the City of Norman; therefore, adding "City" to the language changes, the new language would read "An elected City Official shall not endorse or oppose any candidate for City office."

Mayor Miller asked if this language change is all that will be said about elections. Ms. Leah Messner said yes, so the Councilmembers can be involved with any capacity in any other campaign other than campaigns for City office.

Mayor Miller said she still does not think one should use their position but she understands how confusing it becomes as to when a person is using their elected position or not.

Councilmember Castleberry said he thinks Section 2-103(7)b should be removed completely. He said they should be able to oppose or endorse any candidate for any office.

Mayor Miller said she hears what the argument is and that it may not be a good idea for her to have a party at her house for someone running for the legislature while sending an invite from Mayor Miller; however, it should not be an ethical violation. She asked Councilmember Castleberry if he is referencing wanting the same for the City. Councilmember Castleberry said yes.

Councilmember Holman said as Councilmembers when there is a Mayoral Election and the candidate is not a member of the current Council, he would like to be allowed to be in attendance of a meet and greet; getting to know the candidate without issues of endorsement or an ethics violation.

Councilmember Castleberry said ultimately it should not be unethical for Councilmembers to exercise their First Amendment Right, may not be a good political strategy, but should not rise to the level of being unethical.

Chairman Allison said one point he does agree with, as it relates to City officials, is that he does get to vote for Mayor and should be able to participate; however, with other ward elections, he does not get to vote and no need for involvement.

Councilmember Castleberry said from a resident standpoint, who knows the people on City Council better than the other Councilmembers who work with them. He said they get asked by the public all the time about other candidates, but the policy limits the public's rights to be informed. He said it should be his decision to say whether he wants to be involved in an endorsement or not; being a political decision but not an issue of ethics.

Chairman Allison asked for the results of research with Oklahoma City and Tulsa. Ms. Messner said Tulsa and Oklahoma City's policies are very short. Councilmember Castleberry questioned why Norman should have more limitations than Oklahoma City or Tulsa. He feels it is not an ethics issue to oppose or endorse another candidate whether a municipal election or not.

Mayor Miller said she does not think it is unethical but problematic. Councilmember Castleberry and Chairman Allison concur.

Chairman Allison said this is a topic of discussion that will have to go to a Study Session or full Council because there are going to be some varied opinions; however, he does not see a problem with taking it out.

Councilmember Holman said he will never have an event where he will endorse another Councilmember seat and would never use his title in any endorsement. Councilmember Castleberry said people do not know that and always view them in their official position.

Chairman Allison said the optics is present, e.g., donor lists with spousal names listed.

Mayor Miller said before she ran for office she did not know people actually looked to see who everyone contributed to. Councilmember Castleberry said that is a huge thing.

Chairman Allison asked if a candidate does not know if he is going to file again but there is money in his campaign account, is the person still considered a candidate. Ms. Kathryn Walker, Assistant City

Attorney, said yes, with the acceptance of the funds it would be interpreted as such. Chairman Allison asked would the person be considered a candidate until the campaign fund account is closed. Ms. Kathryn Walker said Brenda Hall, City Clerk, does training on the reporting of funds, but yes, at that point a person is still a candidate.

Councilmember Castleberry said that if this section is removed, none of this would matter.

Chairman Allison said whether a person is a candidate affects other issues besides just the recommendation.

Councilmember Castleberry said he as a Councilmember is allowed to endorse whomever, then it would not matter when you become a candidate; clarifying issues surrounding if someone has accepted \$1000 or whether a report has been filed.

Mayor Miller said Tulsa and Oklahoma City's policies are very simple and she thinks in view of the fact this was reviewed in 2008, and the reason is because it is better to leave it as simple as possible due to ethics topics being hard come to a consensus. She said it is difficult to create a consequence for those items, better to keep the policy simple, eliminating any conflict of interest, and there are things more objective.

Councilmember Holman asked in Section 10-A, regarding the word primary election, does that go along with the proposed Charter amendments regarding the defining of a primary election. Ms. Kathryn Walker said yes, and part of the change in the upcoming Charter election.

Councilmember Castleberry said after going back and looking through the attached minutes from December 12, 2008, during the discussion Councilmember Cubberley asked if "employee" should be added after "associated" or is "associated" to be interpreted as an ownership for pecuniary interest only, and he said 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 re-zoning. He said they went through discussions regarding when one might have a pecuniary interest and then recuse, but if you have less than 5% interest in a business, the Councilmember would simply disclose. Councilmember Castleberry said there seems like there was a push to drop for employees and people working for organizations and he thinks one must disclose if they are working for any organization. He said if a person is in a position where they can have retribution by your employer even without owning more than 5% of the company, and if the organization is their only employment position, they have a 100% pecuniary interest in that job. Ms. Messner said they did talk about that, and Mayor Rosenthal would disclose for that reason often reading her prepared statement while doing so. She said it was decided to make it more fact specific recognizing if you are an employee, you probably should recuse; however, if someone is the administrative assistant and the item is a contract from a different department then maybe the position is to disclose but participate in the discussion. She said there was a decision not to draw the line of "if employed, then recuse", but to let individual Councilmembers discuss with the City Attorney if they should recuse or disclose and participate based on the facts. Councilmember Castleberry said his argument is that even though a person is an administrative assistant and there is a chance they could lose their job then there is a pecuniary interest present. Ms. Messner said based on the fact analysis, the Councilmember can come to the City Attorney if there is pressure received from the employer, and make a decision based on the facts. She said there is always to option to recuse but the Councilmember does not have to if they do not think there is an impact on their employment status.

Councilmember Castleberry said they talked about it being the Councilmembers responsibility to ask for recusal; however, there was a discussion whether Council should ask, and he feels Council should have the ability to request another Councilmember to recuse, if the majority of Council believes there is an existing conflict of interest.

Councilmember Holman asked if he can vote for a matter involving projects in the immediate area of the Friendly Market as General Manager, or would he have to recuse. Ms. Kathryn Walker, Assistant City Attorney, said you would have a pecuniary interest if you had ownership in the building.

Mayor Miller asked in regard to Council asking another Councilmember to recuse, would this happen prior to the meeting. Councilmember Castleberry said he thinks they must ask them to recuse as soon as the issue comes up because normally they recuse themselves from all discussions and not just the vote.

Chairman Allison said one of the challenges is that it could be used as a political tool and a way for other Councilmembers to find a reason why another Councilmember cannot vote on a particular item. Ms. Messner said you have to have a majority vote of the Council in order for the motion to stand. Councilmember Castleberry said he would like to add back in that Council can initiate a recusal because it gives more creditability to the position of Councilmember; therefore, airing on the side of transparency and disclosure and discussing these types of things when they arise.

Ms. Walker said the reason they did not draw the line in the sand is because it is a very fact specific inquiry.

Councilmember Castleberry said as it stands now there is no recourse for Councilmembers, and the Councilmember with the possible conflict of interest is the one to make the final decision. Mayor Miller asked if there has ever been a situation where someone has called with concerns that another Councilmember has a conflict of interest, and in talking to the other person, have they refused to recuse. Ms. Walker said no, they have had examples, e.g., a recommendation to disclose and participate in the vote or a recommendation they should recuse, but she cannot think of an instance where someone refused when counseled to recuse.

Chairman Allison asked if there is a consensus to remove the language regarding the endorsement section and the next thing would be a discussion on how to approach the conflict of interest and the recuse process.

Councilmember Castleberry asked or do they want to expand to “an employee” instead of just using actual conflict of interest. Mayor Miller said she thought this was discussed during the proposed amendment including the definition for *organizational responsibility*, (page 3 of July 2011 minutes). Councilmember Castleberry said it is categorized under Employment Consequence and asked if they decided not to do that. Ms. Walker said Employment Consequences is in the language now, but it is the fact specific inquiry and up to the Councilmember to determine whether or not they have an employment consequence.

Councilmember Castleberry said they have not talked about the consequence to the violation of the Ethics Policy. Chairman Allison said when they talked about the consequences for violations during the larger Council session involving social media there appeared to be no interest in adding the stronger language. Mayor Miller said there is language in the Ethics Policy regarding violations. Ms. Walker said there are State Law Provisions also and the Ethics Policy references such. She said the State Law does not cover all ethics violations in the state, and during a discussion in 2008 they

discussed whether or not they would handle it in Municipal Court or not; however, the Legal Department is not in the position of representing you and prosecuting you and outside counsel would have to be acquired.

Items submitted for the record

1. Memorandum dated October 12, 2017, from Ms. Leah Messner, Assistant City Attorney to the City Council Oversight Committee
2. Memorandum dated October 10, 2017, from Ms. Kristina Bell, Assistant City Attorney to Mr. Jeff Bryant, City Attorney
3. Proposed Language Amendment for Chapter 2, Section 2-103
4. City Council Planning Committee Minutes dated September 12, 2008, October 24, 2008, and November 14, 2008
5. City Council Planning and Community Development Committee Minutes dated December 12, 2008 and February 13, 2009
6. City Council Study Session Minutes dated January 6, 2009
7. Joint City Council and Oversight Committee Study Session Minutes dated July 19, 2011
8. Tulsa Code of Ordinances Ethics Code
9. Oklahoma City, OK Code of Ordinances Ethics Code

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ADJOURNMENT:

The meeting adjourned at 9:20 a.m.