

CITY COUNCIL CONFERENCE MINUTES

December 19, 2017

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:35 p.m. in the Municipal Building Conference Room on the 19th day of December, 2017, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

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

ABSENT: Councilmembers Bierman and Karjala

Item 1, being:

DISCUSSION REGARDING THE CITY COUNCIL ETHICS POLICY.

Ms. Kristina Bell, Assistant City Attorney, said the Oversight Committee met in September and October 2017, to discuss concerns regarding the current City of Norman Conflicts of Interest Ordinance, e.g., when a person becomes a candidate for office and when a Councilmember can endorse a candidate for office. On October 9, 2017, the Oversight Committee specifically discussed removing the endorsement/opposition prohibition in Section 2-103(a)(7)(b); considering a provision to allow a majority of City Council to compel recusal when an elected official does not recuse voluntarily; and exploring whether to expand the definition of an “actual conflict” in Section 2-103(c)(1) to mandate recusal of all employees as opposed to the current language which only includes one who “holds a direct benefit, detriment, or employment consequence,” but otherwise leaves the decision to the discretion of the employee/elected official as to whether an employment consequence exists.

Endorsement/Opposition Prohibition of Section 2-103(a)(7)(b)

Section 2-103(a)(7)(b) provides that, “an elected City official shall not use his office to endorse or oppose any candidate for office” and the Oversight Committee requested Staff draft a proposed amendment to allow elected City Officials to endorse or oppose candidates for any office other than a City office. The Oversight Committee further discussed whether an elected official’s endorsement of, or opposition to, any candidate for office is actually a conflict of interest or an ethical violation as opposed to just being potentially politically problematic and recommended removal of this section in its entirety.

Councilmember Holman said he thinks the proposed amendment prohibiting endorsement or opposition of any candidate “for City office” should say “for City of Norman office.” He felt he should be allowed to endorse a candidate for City Council in Oklahoma City if he wants to and would like this language clarified.

Councilmember Hickman said he is concerned about bringing partisan politics into local non-partisan government. He said Oklahoma City has made a lot of progress because it is non-partisan whereas Tulsa has a Strong Mayor form of government and is very partisan. He also asked what would be considered endorsement, i.e., donating money, attending a fund raising event, etc.

Councilmember Holman said he could also see endorsing Mayoral candidates. He felt he should be able to go to the Mayor’s watch party or give her a donation if he wanted to.

Councilmember Castleberry supported the removal of the endorsement prohibition. He said it may have political ramifications for a Councilmember to endorse another candidate, but he did not believe it is unethical. Mayor Miller said since the Oversight Committee discussion, she agrees the endorsement provision should be changed. She agreed it could be a political issue for the candidate, but not an ethical issue. Councilmember Castleberry said most of the issues that have come up in the past dealt with this endorsement provision. He also raised the question about what constitutes endorsement, i.e., liking is following a candidate on Facebook considered an endorsement.

Councilmembers Wilson and Allison also agreed endorsement of candidates was not an ethical issue.

Majority Override Compelling Recusal

Section 2-103(7)(d)(1) prohibits an elected City official from participating in the discussion of, or voting on, any item in which the official has a pecuniary interest or an actual conflict. An actual conflict is defined as, “[a] set of circumstances wherein an elected City Official would be required to take an action or make a decision regarding a cause, proceeding, application or any other matter where he or she holds a direct benefit, detriment, or employment consequence.” If an elected City Official only has a “potential conflict” then he or she may engage both in the vote and discussion, but the potential conflict must be disclosed prior to participation. A potential conflict is defined as, “[a] set of circumstances wherein an elected City Official would be required to take an action or make a decision regarding a cause, proceeding, application or any other matter where he or she may have an indirect benefit, detriment, or employment consequence.”

Ms. Bell said the Oversight Committee discussed whether an elected City Official has an actual, potential, or no conflict is factually specific and should ultimately be made by the elected City Official after seeking advice and counsel from the City Attorney. A question was raised as to what happens if a majority of Council disagrees with the determination of the elected City Official and/or the opinion of the City Attorney. Can a majority of Council compel another member of Council to recuse when he or she refuses? Section 2-103(e) of the Code of Ordinances states that elected City Officials have a duty to report if another official is violating laws or ethics relating to the City of Norman in accordance with state law. The ordinance specifically provides that an elected City Official may consult with the City Attorney’s office if he or she believes another member has violated this policy; however, the current policy does not have a provision authorizing a majority of Council to compel recusal. Ms. Bell said the Oversight Committee felt that such a provision could potentially be used as a political tool to prevent certain members from voting on particular items; however, if Council would like add such a provision, it could be added.

Councilmember Holman said he too is concerned about the ability of five members of Council being able to force recusal of another Councilmember. He said that it might make sense if the City Attorney says there is a conflict and the Councilmember refuses to recuse, but otherwise he is worried about it being arbitrary. Councilmember Hickman said he also had concerns with this provision.

Mayor Miller said City Council faces a lot of public pressure and she finds it unlikely that a Councilmember would refuse to recuse if there was really a strong public push for recusal.

Employment of Actual Conflict

Ms. Bell said the current ordinance, includes language regarding a direct or indirect “employment consequence” as a potential basis for creating an actual or potential conflict and “employment consequence” itself is not a defined term but is determined by a fact specific inquiry into the elected City Official’s circumstance and how it relates to the specific agenda item at hand. The Oversight Committee’s concern was that simply being an employee of any organization with a pending item could result in the elected City Official facing pressure from his or her employer. Under the current ordinance, the elected City Official can consult with the City Attorney and based on the specific, factual analysis can make a determination on whether a conflict exists; however, a Councilmember can always make a decision to recuse if there is any pressure from the employer but does not necessarily have to recuse if he or she does not believe there is any potential impact on his or her employment status. She said if Council wanted to make employment status a *de facto* actual conflict, it could be accomplished by amending the definitions for “actual conflict” and “benefit or detriment.”

Mayor Miller said the Oversight Committee did not have consensus on a recommendation for employee conflict.

Councilmember Hickman asked why there is language in the Charter prohibiting employees or spouses of City Officials to enter into contracts with the City and Mr. Jeff Bryant, City Attorney, said the language clarifies there is a conflict of interest if an employee has five percent (5%) ownership interest. Councilmember Hickman felt if a Councilmembers works for a company that is receiving benefit by Council action then that is a conflict.

Councilmember Clark has concerns about making employment alone a *de facto* actual conflict since she is an employee of the University of Oklahoma, but does not believe that her employment in academic integrity would constitute a conflict in regards to many of the issues that Council might encounter in working with the University. Councilmember Clark said if this amendment were made, then the citizens of Ward 6 would never have a voice on any issue involving the University.

Mayor Miller noted that such an amendment would make it very difficult for employees of large employers, e.g., the University of Oklahoma, Norman Regional Health System, Norman Public Schools, and Johnson Controls, to serve on Council.

Councilmember Hickman noted that in the past a sitting Councilmember was allowed to vote on an item pertaining to his employer, OG&E, and he thought it created a perception problem for the public. He thought the current system is unfair to small businesses because as a small business owner, he would have to recuse from any City business dealing with his employer/his business whereas another Councilmember who worked for a large employer would not necessarily have to recuse.

Councilmember Castleberry said allowing employees to vote on issues relating to their employers could create the appearance of a conflict.

Councilmember Hickman said he also did not think that employment as an actual conflict should extend to the employment of a Councilmember’s spouse, only the Councilmember.

Councilmember Castleberry disagreed and said employment as an actual conflict should extend to the employment of the spouse and that the City should err on the side of being cautious and more stringent.

Councilmember Hickman asked if the fact that someone had a conflict but did not recuse could result in invalidating City Council action, if, for example, the action failed by one vote. Councilmember Hickman also asked about individual liability. City Attorney Jeff Bryant stated that any attempt to invalidate City Council action would have to be made through litigation. Mr. Bryant said if a Councilmember was sued individually, then that Councilmember would have immunity if he or she followed the City Attorney's advice and acted in reliance on that advice.

Councilmember Hickman stated that there could be disparities between big "for profit" employers and small employers or non-profit employers. The Mayor noted that the inquiry is very fact specific. Mr. Bryant stated that prior City Councils have discussed this same issue and decided as a policy matter to lean the other way and leave it as a fact specific determination for the employee/Councilmember to make in consultation with the City Attorney, especially when there was no financial benefit or detriment to the employee/Councilmember as would be the case in the examples of a secretary or an academic integrity employee at the university or other large employer.

Councilmember Castleberry was concerned that there are currently no ramifications for violating the Ethics Ordinance. Councilmember Holman said the penalty is the ballot box.

Mayor Miller stated there appears to be consensus to remove the endorsement prohibition language, but several Councilmembers have expressed concern with the majority override provision. She said the issue about employment as a conflict and distinctions between small and large businesses needed additional clarification and discussion.

Items submitted for the record

1. Memorandum dated December 14, 2017, from Jeff Harley Bryant, City Attorney, and Kristina Bell, Assistant City Attorney, to Mayor and Councilmembers
2. Norman Code of Ordinances Section 2-103. Council Ethics
3. City Council Oversight Committee agenda and minutes of October 19, 2017, with memorandum dated October 12, 2017, from Leah Messner Assistant City Attorney, to City Council Oversight Committee
4. Memorandum dated October 10, 2017, from Kristina L. Bell, Assistant City Attorney, to Jeff Harley Bryant, City Attorney, with Sections 10(A) and (B) of the City Charter
5. Option for Candidate Endorsement Provision
6. City Council Planning Committee minutes of September 12, October 24, and November 14, 2008
7. Pertinent excerpts from City Council Planning and Community Development Committee minutes of December 12, 2008
8. Pertinent excerpts from City Council Study Session minutes of January 6, 2009
9. Pertinent excerpts from Planning and Community Development Committee minutes of February 13, 2009
10. Joint City Council and Oversight Committee Study Session minutes of July 9, 2011

Items submitted for the record, continued

11. Chapter 6. Ethics Code from Tulsa, Oklahoma, Code of Ordinances
12. Oklahoma City, Oklahoma, Code of Ordinances regarding elected officials and candidate financial disclosures
13. City Council Oversight Committee minutes of September 21, 2017
14. PowerPoint presentation entitled, "City Council Ethics and Conflicts of Interest Ordinance," City Council Conference dated December 19, 2017

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The meeting was adjourned at 6:29 p.m.

ATTEST:

City Clerk

Mayor