

## CITY COUNCIL STUDY SESSION MINUTES

July 16, 2019

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a study session at 5:30 p.m. in the Municipal Building Conference Room on the 16th day of July, 2019, 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 Bierman, Carter, Hickman, Petrone, Scanlon, Wilson, Mayor Clark

ABSENT: Councilmembers Holman and Scott

Item 1, being:

### DISCUSSION REGARDING POSSIBLE AMENDMENTS TO THE CIVIL RIGHTS ORDINANCE.

Ms. Kristina Bell, Assistant City Attorney, said Council adopted Resolution R-1516-65 on December 22, 2015, which provides that the City's prohibition of sex discrimination included in the City's personnel policies and Civil Rights Ordinance be interpreted and administered to guard against the use of assumptions and stereotypes associated with sexual orientation and gender identity. She said R-1516-65 applies to sex discrimination, employment, housing, and public accommodations.

Ms. Bell said members of the local Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) community, including the local advocacy group Norman United, requested the City add "sexual orientation" and "gender identity or expression" as specifically identified protected classes in the City's Civil Rights Ordinance. She said Staff worked with Mr. Don Holladay, a local civil rights attorney, and presented proposed ordinance amendments to the Norman Human Rights Commission (HRC) on January 28, 2019. After some modifications, the HRC unanimously recommended the proposed ordinance amendments be presented to the City Council Oversight Committee for review and consideration. The Oversight Committee reviewed the amendments and directed Staff to present the amendments to Council as a whole.

Ms. Bell said on August 19, 1986, Ordinance O-8687-2 was adopted prohibiting discrimination against citizens based on race, color, religion, ancestry, sex, national origin, age, place of birth, handicap, and familial status. She said substantive changes have not been made to the ordinance since May 14, 1996, at which time "familial status" was added as a protected class based on the recommendation of the United States Department of Housing and urban Development.

The proposed amendments include Norman United's initial request to add "sexual orientation" and "gender identity or expression" as separate protected classes as well as "marital status, including to a person of the same sex" in light of the Supreme Court's decision that the right to

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marry is a fundamental right and inherent liberty of the person and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, couples of the same sex may not be deprived of that right and liberty. The proposed amendments also simplify and modernize the ordinance as well as streamline the HRC complaint process.

Ms. Bell highlighted new definitions as follows:

- Gender identity or expression – the actual or perceived gender-related identity, appearance, expression, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth
- Sexual orientation – an individual’s actual or perceived heterosexuality, homosexuality, asexuality, or bisexuality

The HRC is an advisory board and the proposed amendments clarify their role as it relates to the receipt and resolution of complaints. The current ordinance allows the HRC to take testimony, issue subpoenas, and conduct a formal hearing; however, the reality is the HRC consists of citizen volunteers who do not necessarily have the training or financial resources to conduct such a formal adversarial hearing. The purpose of the complaint process is to find an amicable resolution that offers a real remedy to the aggrieved individual. The proposed amendments streamline the process by providing both the aggrieved individual (the Complainant) and the individual or entity against whom the complaint is made (the Respondent) an opportunity to receive notice, be heard, and be represented by legal counsel if they choose.

The proposed amendments provide an administrative review process that allows the HRC to review a complaint and any information provided by the Complainant or Respondent and make a written recommendation to the City Attorney’s Office for further and/or final action including, but not limited to, referral of the Complainant to other local, state, or federal entities; mediation of the matter between the involved parties; prosecution of the Respondent in Municipal Court; filing of injunctive relief in state or federal district court; or a determination that no further action should be taken. The complaint must be filed on a form approved by the HRC with the City Clerk’s Office within 90 days after the alleged act of discrimination or retaliation. The HRC will discuss the complaint at its next regularly scheduled or a special meeting that is at least 30 days after receipt of the complaint. The HRC will also provide and promote education and awareness of the rights provided in the Code to include submitting an annual report of complaints and their resolution to City Council; however, no report is required if no complaints are filed during a particular year.

Mayor Clark asked if HRC could meet monthly versus quarterly or as needed and Ms. Bell said all boards and commissions file a schedule of meetings each year with the City Clerk’s Office and the schedule is currently quarterly meetings; however, they can always hold a special meeting with 48 hours’ notice. She said HRC could discuss changing their meeting schedule at their next meeting.

Item 1, continued:

Councilmember Bierman suggested HRC file a schedule of meetings for monthly meetings and if they do not need to meet, they could simply cancel the meeting for that month.

Ms. Bell said the substantive anti-discrimination and anti-retaliation protections do not really change, but instead of having multiple separate sections for employment, housing, and public accommodations, the protections are combined in a shorter, simpler prohibition section proposed in Section 7-104. She said Section 7-105 outlines the same exceptions to the general prohibitions, which were in the current ordinance, but combines them into one new section with subsections for each category of employment, housing, and public accommodation.

Other definition amendments include Section 7-103(1) amending the definition of “age” consistent with Age Discrimination in Employment Act (ADEA) to “forty (40) years old or older” and Section 7-103(3) changed “handicapped person” to “disability” and amended the definition to be consistent with the Americans with Disability Act (ADA).

The current ordinance provides that an employer must have five (5) or more employees to fall under the purview of the ordinance. Ms. Bell said minimum employee number requirements are common in anti-discrimination laws, but most federal laws require a minimum of 15 or 20 employees. Citizen advocates, particularly those in the LGBTQ community, have expressed concern that some citizens working in Norman would not have protection if they work for smaller employers not governed by the provisions of the Equal Employment Opportunity Commission. The HRC has requested removal of the minimum employee number requirement.

The HRC also requested a definition and/or clarification of what is meant by the exclusion for “domestic service.” The definition of “employer” contained in Section 7-103(5) has proposed amendments excluding independent contractors (because they are not employees) and including an explanation that “employment of individuals in domestic service as private household workers” must be those “employed in a private home” and gives examples, such as nannies, housekeepers, and elder caregivers.

Councilmember Wilson said she is concerned about excluding domestic service from enforcement because that type of employment is in a private setting that would give someone a lot of opportunity for unsavory behaviors. Ms. Bell said domestic services was listed as an exception since the ordinance was first adopted in the 1980’s and HRC also shared this concern, but at a minimum, they wanted to include a definition so everyone would know what that regarded. Councilmember Wilson felt that some of the most vulnerable citizens would be at risk and would like to have extra protections for them. She said there is already a fear of reporting issues and if the City does not have robust ordinances that can back them up then the City will be overlooking an important part of its community. Councilmember Petrone agreed and said many times these individuals are limited in ways to address civil right violations. Councilmember Bierman agreed and said if the City can legally protect all citizens, then the City should do that if not pre-empted in some way. Councilmember Hickman said his mother is close to being in need of elder care, but

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sometimes she says things that could be considered racist. He is concerned about someone like his mother having a caregiver in a private home and saying something offensive to them, but not really meaning it to be offensive. He sees many examples of these issues happening in private settings, which could be very challenging to enforce. Councilmember Scanlon said he is hung up on the word “private” and although he empathizes with potential victims he wonders what other recourse they might have. He said if his home is not his castle, then what is it? If he has to answer to some City ordinance about what he does in his own home then it is really an invasion of his privacy. Councilmember Hickman said he was thinking about this from the individual, private household worker relationship versus a company relationship. He suggested a middle ground to clarify that if it is an individual private household worker then they are exempt, but if it the individual is working for a corporation then they will be expected to comply with the ordinance. Councilmember Carter said he agrees with Councilmember Wilson and does not like the exclusion.

Mayor Clark said it seems that a majority of Council supports removing the exclusion from the ordinance.

The HRC requested that discrimination publication prohibition in Section 7-104 specifically include electronic communication in light of new modern improvements, such as e-mail and social media.

Ms. Bell said Council will consider the proposed ordinance amendments for First Reading on August 13th and Second Reading on August 27th. She said if Council adopts the amended ordinance, the City would need to adopt a Resolution modifying its ADA Accessibility and Inclusion Statement to include the additional LGBTQ protections.

Ms. Bell said the Oversight Committee discussed providing training opportunities for both the HRC members and local businesses and employers. Section 7-102(8) charges the HRC with the duty to “institute and conduct educational and other programs to promote the equal rights of all persons” and to “promote understanding among all persons and groups.” She said the Oklahoma Attorney General’s Office will work with the HRC and businesses to research and discuss additional training opportunities. Mayor Clark suggested contacting the Office of Diversion Inclusivity at the University of Oklahoma (OU) who may be willing to host training or provide training for HRC members. She thanked the HRC for their hard work and said she will be working with the HRC Chair to create a subcommittee to develop a map to building an inclusive community.

Item 1, continued:

Items submitted for the record

1. PowerPoint presentation entitled, "Chapter 7: Civil Rights Ordinance Amendments," City Council Study Session dated July 16, 2019
2. Memorandum dated July 12, 2019, from Kristina L. Bell, Assistant City Attorney, through Kathryn L. Walker, Interim City Attorney, to Mayor and Councilmembers, with Exhibit 1, Resolution R-1516-65; Exhibit 2, Chapter 7, Civil Rights; Exhibit 3, Legislatively notated copy of Section 7-101: Declaration of policy and objectives; Exhibit 4, Clean copy of Section 7-101: Declaration of policy and objectives; Exhibit 5, Norman Human Rights Commission Discrimination/Retaliation Complaint Form; Exhibit 6, Resolution R-1819-108; and Exhibit 7, Certificate of Nondiscrimination

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Item 2 being:

CONTINUED DISCUSSION REGARDING THE RENEWAL OF EXISTING SALES TAX CURRENTLY DEDICATED TO CLEVELAND COUNTY TO INCLUDING DISCUSSION ON PUBLIC TRANSIT, THE REGIONAL PARKING PLAN, AND OTHER FORMS OF ECONOMIC DEVELOPMENT.

Mr. Shawn O'Leary, Director of Public Works, said the Cleveland Area Rapid Transit (CART) System is operated by the University of Oklahoma (OU) and funded by a Federal Transportation Administration (FTA) grant, OU, City of Norman, State of Oklahoma, and Norman Regional Hospital. On August 28, 2018, OU notified the City of its desire to transfer the non-campus bus system to the City of Norman by the end of the 2019 fiscal year. He said City Council approved its annual funding for CART on October 23, 2018, and CART is managing operations within budget for the current fiscal year. CART will keep and operate four student population routes. He said the City will contract with Embark who operates the Oklahoma City Transit System and they are a Trust of the City of Oklahoma City.

Mr. O'Leary highlighted directives from Council that included designating the City as a grant recipient of FTA funds; completing transfer of service by July 1, 2019, to include federally funded assets; coordinating transfer with FTA (plan must be approved by FTA); making transition as smooth as possible; ensuring there are no gaps in service; and maintaining the same level of service currently being provided.

Council adopted a grant recipient resolution with FTA and approved an agreement with OU on June 25, 2019, who will continue to provide transit service in July of 2019. Under the agreement with OU, the City will pay OU \$70 per service hour or \$245,000 per month and OU will provide fleet maintenance. Mr. O'Leary said Council will review a contract with Embark on July 23, 2019, to provide transit services in Norman and Embark will be hiring staff to operate the transit systems,

Item 2, continued:

such as drivers, dispatchers, and supervisors. He said there are 18 positions for the fixed route system and 17 positions for the para-transit system.

On August 2, 2019, Embark will begin operating seven fixed routes and CART will continue to provide para-transit services through October 1, 2019, when Embark is scheduled to assume that service. The City will transition fleet maintenance responsibilities on October 1st that will include City mechanics and City tools. The City will lease a portion of the current CART facility from August 2 through December 31, 2019, to perform fleet maintenance and dispatching of transit services by Embark. In the summer or fall of 2019, Staff is hopeful FTA will transfer CART's reimbursement of federal funds to the City for a new transit facility and fleet upgrades (approximately \$3 million).

Mr. O'Leary said the City plans to hire an architect in the fall of 2019 to design a new transit facility in conjunction with the Emergency Vehicle Maintenance and Storage Facility. He said \$875,000 has been budgeted in FYE 20 for the Emergency Vehicle Maintenance and Storage Facility, but additional funds will be needed to expand the facility for transit needs. He said the new City of Norman Transit Facility is expected to open January 1, 2020, where all transit operations and maintenance will be located just south of the current Fleet Maintenance Facility.

The transit system fleet will consist of 27 vehicles (7 large buses and 18 small buses/vans) with an average life of 200,000 miles. Mr. O'Leary said 22 vehicles have reached the end of life and the cost for a new bus is \$550,000 with a 12-year useful life; however, there is no budget at this time for fleet replacement.

Operating costs are expected to be \$3.8 million per year that includes \$2 million from FTA, \$1.45 million from the City of Norman, and \$350,000 from other revenue sources. There is a projected deficit of \$314,500 per year. The City will pay Embark \$2.9 million annually to operate the fixed route and paratransit systems and maintenance costs are estimated to be \$900,000.

Mr. O'Leary highlighted the estimated budget as follows:

• City Subsidy	\$1,450,000
• FTA Funds	\$2,000,000
• State of Oklahoma	\$ 150,000
• Fare Box (including game day shuttle)	\$ 50,000
• Bus Advertising	\$ 100,000
• Norman Regional Hospital	<u>\$ 50,000</u>
TOTAL	\$3,800,000

Mr. O'Leary said \$1.3 million will be needed in capital funds for existing fleet upgrades that include new radios, new fare boxes, re-branding vehicles, and a 90-day implementation period. An additional \$1 million per year will be needed for a Fleet Replacement Program.

Item 2, continued:

Mr. O'Leary said Embark wants to charge the same fees they charge in Oklahoma City to be consistent and a fixed route one-way fare is \$1.75 while CART's current fare is \$.75. He said the paratransit fares in Oklahoma City are \$3.50 (Zone 1), \$7.00 (Zone 2), and \$10.00 (Zone 3) while CART's current CARTaccess is \$1.50 per trip in all zones.

Mr. O'Leary said under the Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations, transit entities must "provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route." The measurements to destinations within the three-fourths of a mile corridor on each side of a fixed route is measured "as the crow flies" and does not vary based on driving distance.

The County sales tax for their new detention facility will terminate in March 2020 and the original proposition did not provide for continuing maintenance and operation of the facility because no one knew at that time what those costs would be; however, the County now has a better idea of what those costs are and has always considered coming back to the public to request a sales tax for the continued maintenance and operations of the facility. The amount voted on was a full one-quarter percent and the County would like to propose a perpetual one-eighth of a percent with a portion going towards maintenance and operations; a portion to be used on updating the Juvenile Detention Facility, and a portion to provide fund grants to rural County Fire Departments to help update and upgrade equipment, etc. The County felt the additional one-eighth percent could be requested by the City for municipal purposes to be determined by Council. Council discussed the sales tax in a Study Session on July 9th and felt the sales tax would be best used for transportation and transit needs. Mr. O'Leary said the sales revenue would be \$2.5 million per year and there is an anticipated cost of \$2.4 million per year for transit system operation and fleet replacement.

Mr. O'Leary said the Parking Strategic Plan adopted by Council on December 11, 2018, recommended establishing a Parking Authority governance structure and hiring a Parking Manager. The initial Staff cost for a Parking Manager and Administrative Assistance is projected to be \$200,000 per year and felt the sales tax, if approved, could be administered through the Parking Authority.

Mayor Clark said the City does not have the money to execute a Parking Strategic Plan with the Multi-Jurisdiction Parking Authority nor is there time to gain support for a vote using sales tax for the plan. She likes the idea of including some parking because of the idea of regional transportation and having regional transportation without parking will not be as effective as it needs to be.

Councilmember Bierman said the City needs \$2.4 million to operate the bus system and it seems fortuitous that the sales tax would bring in \$2.5 million. She said having that sales tax revenue could free up funds that could be redirected for parking needs in the future. She felt a sales tax election package for transit needs only would be easy to market and would garner public support because there is a need for public transportation. Mayor Clark was concerned there was not enough public interest in public transportation and felt that adding parking to the package would appeal to more people, but would require separate questions on the ballot.

Item 2, continued:

Councilmember Hickman suggested holding a Town Hall meeting for public input on what the public believes the sales tax could be used for in addition to transit. He would like the City to start purchasing land for future light rail stations because the City does not have the money to do that at this time. Mayor Clark said she is committed to fully funding public transportation, but does not want to open the door too far moving away from the obvious millions of dollars that will be needed for regional transportation. Councilmember Bierman said she supports public meetings, but she would like to use the sales tax for transit only. She would like to restore Saturday service, provide more bus routes, etc. Councilmember Carter said he would rather have one question on the ballot and keep it simple with transit only. He said there is a perceived need for public transportation that he believes people will vote for and Councilmember Petrone agreed.

Councilmember Hickman suggested preparing a resolution of intent to set aside \$500,000 for economic development if the sales tax passes and funds become available in the budget. He said the City could create a Norman Development Authority to purchase land for economic development opportunities.

Mayor Clark said it seems the consensus is to use the sales tax for transit only; however, she would like Staff to do some polling on that for more discussion.

Councilmember Hickman asked if Staff could speak with the County about contributing to transit since people use the bus system to get to the Courthouse and possibly their future Healthy Living Block proposed to be near the Courthouse.

Items submitted for the record

1. PowerPoint presentation entitled, "Cleveland County Sales Tax Renewal Potential Transportation Uses," Study Session dated July 16, 2019
2. Email dated July 16, 2019, from Maureen Hammond, Interim President and Chief Executive Officer (CEO) of Norman Economic Development Coalition

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The meeting was adjourned at 7:15 p.m.

ATTEST:

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City Clerk

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Mayor