

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

September 21, 2017

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 8:40 a.m. in the City Council Executive Conference Room on the 21st day of September, 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: Councilmember Castleberry and Chairman Allison

ABSENT: Councilmembers Holman and Karjala

OTHER STAFF PRESENT: Mayor Miller
Councilmember Bierman
Councilmember Hickman
Mr. Jeff Bryant, City Attorney
Ms. Claudia Deakins, Chief Communications Officer
Mr. Terry Floyd, Development Coordinator
Ms. Brenda Hall, City Clerk
Ms. Sara Kaplan, Retail Marketing Coordinator
Ms. Leah Messner, Assistant City Attorney
Ms. Regina Oliphant, Administrative Tech III
Mr. Noah Wolffe, City Intern for the Community Scholars Program

Item 1, being:

DISCUSSION REGARDING POSSIBLE AMENDMENTS TO THE CITY COUNCIL ETHICS ORDINANCE.

Chairman Allison said about two weeks ago Council discussed the Social Media Policy and now they are moving forward to talk about possible changes to the Ethics Ordinance. He asked Mr. Jeff Bryant, City Attorney, to give the history of the ordinance.

Mr. Jeff Bryant, City Attorney, said Council considered an Ethics Policy in 2009 and adopted the policy that is still in use today. He said Ms. Leah Messner, Assistant City Attorney, meets with new boards and commissions members or people appointed to committees to discuss the principles listed in this policy; commending Ms. Messner for her work in this process as she uses this policy as the template for guidance. He said when Council was working on the policy in 2009 which at that time had a violation section. He said this is interesting particularly in light of some of the violation language Council was talking about while discussing the Social Media Policy. He said Staff focused on what is really within the Council's purview to take "discipline" against another elected official. He said there is a strong interplay between the First Amendment Free Speech Rights and what Council's charge is as an elected official to represent their constituents that brings different points of view versus points of view that might be offensive to the majority of the body; however, Staff did not want the majority of the body trying to stifle what is normally expected or viewed as a healthy debate on a particular issue. He said regarding the Social Media Policy overview, the censure section is fairly short, and states "*at the discretion of a majority of the Council, a Councilmember may be censured for failure to comply with this Policy, and the term "censure" means an official reprimand or condemnation that interjects Council's voice into public discourse. Council may choose to discipline the offender with a progression of warnings that ultimately ends in a public censure.*" He said voters or Council as a whole, if it is a commission appointee, can consider the aspect of their performance during election or reappointment time, and obviously Council, under the Charter, can remove an appointee by majority vote or the electorate can remove their elected representative at the time of the election with the language

referencing such. He said shortly after adoption of the Policy with Resolution R-0809-123, Council later came back and created an amendment to the Ethics Ordinance. He provided an overview of how the Ethics Ordinance was amended after the adoption of the resolution and it is strikingly similar to the Policy Definitions on page two (2) through to the Role of the City Attorney on page five (5). He said much of the language is almost wholesale dropped into the City's Ethics Ordinance; stating this is some of the history of how the discussion in 2009 progressed to the adoption of the actual policy. He said the Committee debated the violation/discipline section and focused around censuring by a majority vote of Council, and after Council debated, they ultimately decided to not add the violations section in either the Policy or the Ordinance. He said we have come full circle on this item, but thought it might be helpful to see the history. Mayor Miller asked what their thinking was. Mr. Bryant said Ms. Carol Dillingham was on the Council then and he remembered Ms. Dillingham being a strong voice about First Amendment Rights, and the structure of this, in her opinion, seemed to discourage expression of minority views. He said in a public discourse situation, with elected officials, minority views are warranted, which is the whole essence of public discussion or public debate. He said if Council started representing their constituents or making comments not consistent with the majority, and think because they are doing so there might be some penalty or censure, it would have a chilling effect on public discourse.

Councilmember Castleberry asked when we talk free speech, is there a difference between a right to protest peacefully and a right to protest violently, e.g., signs posted vs. rocks being thrown. Mr. Bryant said absolutely. He said free speech is one thing and destruction of property or putting someone in imminent threat of danger or bodily harm is something totally different. Councilmember Castleberry asked about intimidation of another. Mr. Bryant said intimidation can be in the eyes of the beholder but certainly if someone is in front of your face and you think they may make contact with you, then that becomes assault; going beyond intimidation. Mr. Bryant said sometimes very strong words could be considered intimidation.

Councilmember Castleberry brought up different forms of harassment and bullying from someone in a position of power, and said he thinks councilmembers are viewed by the public as in a position of power. Ms. Messner stated when the work on this policy began in 2008 one of the emphasis' of the policy process was to create something that was a positive policy statement, one that citizens could read and be encouraged by, and a standard that all the councilmembers and board and committee members were going to uphold themselves to. She thinks the items Councilmember Castleberry has raised concerns about are included in the three sections which was another reason they did not include the violations section. Councilmember Castleberry said this is all fine and great to aspire, but without penalties or repercussions, there are no teeth to it. He said it is a nice mission statement, but would like to work toward something with some teeth to it.

Chairman Allison asked if the violation section was part of the resolution packet or part of the actual Ethics Policy. Ms. Messner said it was part of the resolution and at one point the Committee wanted to look at what the violations section might look like; however, after drafting one, it never made it into the policy document. She said Staff took the section to one of the Planning and Community Development Committee meetings and presented the drafted language but again, the Committee chose to leave it out.

Councilmember Castleberry questioned the history of an elected City official *shall not use their office to endorse or oppose any candidate for office*, and said he would like to see that removed, as well as, asked when a person is considered a candidate. He asked if they are a candidate when they file or when they announce. He said he has been told they are not technically a candidate until they file, but would like some clarification. Mayor Miller said she thinks that having a conversation with someone and campaigning for someone are two different things. Councilmember Hickman said that is a problem because it says "*shall not use his office*" and the question becomes, "are they Councilmembers or the Mayor 24/7." He said Council needs clarification; although, he is cautious about endorsing for other City Council seats. Councilmember Castleberry said the question becomes "does that make it an ethics violation or simply a political choice?"

Councilmember Bierman said state legislators endorse other state legislators, City Councilmembers cannot. She assumes it is because Council races are non-partisan. Mayor Miller said that is exactly the reason, and regardless of how much they may like or not like one of the candidates, it is the voter's choice to choose. If a

Councilmember endorses one candidate and they do not win, the other candidate is now on the Council with them; creating conflict.

Chairman Allison asked if Committee members were seeking to word this in such a way to allow endorsement outside of the Council candidates. He said he would like to be allowed to support someone for school board if he chose to do so. Councilmember Hickman said he would also like to not have to worry about an endorsement of a candidate outside of Council and does not think that should be an ethical violation. He said he does think endorsing other Council seats are arguably not an ethics issue; however, maybe a relationship issue. He said he would like to think about that one more, still being cautious; tending to agree that endorsing a partisan race should be their personal choice and they should be able to do so without worry of an ethics violation. He said if a Councilmember chooses to endorse a party and his constituents do not approve of his endorsement, they have the right to vote him out in the next election.

Councilmember Castleberry said there needs to be a strong penalty or it needs to be removed; saying that is up to the individual Councilmember and a political decision they can make.

Councilmember Hickman said he thinks the unclear aspect of this is the word "office." He said another example would be "Could he attend a fundraiser for a candidate." Mr. Bryant said the way it has been interpreted in the past with a specific incident in mind, a Mayor identified herself as the Mayor on a fundraising flyer, focusing on the words "shall not use the office," raised a pretty serious concern, but as investigated it looked like it was not something done intentionally or willfully. Councilmember Castleberry asked if that is stated in the documents. Mr. Jeff Bryant said it is stated in Section 2-103 Council Ethics (a) (6). He said Council has asked about the history of this; however, it is difficult for them to give the history, and they may need to go back and review the minutes. He said he was on vacation when this was approved, and the legal department was not consulted in the drafting. He said they have done the best they can based on the language in the ordinance. He said this is a tough one for the department to administer as there is lots of grayness, overlapped with free speech concerns.

Councilmember Hickman asked what Tulsa and Oklahoma City have or other cities that have non-partisan seats. Mayor Miller said Tulsa is partisan seats. Councilmember Hickman said he thought that could definitely be a topic for follow-up discussion.

Chairman Allison said he thinks Council does need to be able to advocate for certain candidates at the state level that will support cities. However, he agrees in exercising caution with endorsing another Council candidate.

Councilmember Castleberry asked if Members thought it was bad politics or an ethical issue. He thinks it is a bad idea, creates conflict, but he does not think it is unethical. He said it is a political decision one way or another. He likened it to a candidate participating in a negative campaign. He said if a candidate chooses to go negative they have that right; however, he is not sure it rises to the level of being unethical. Mayor Miller said she is not sure if it is unethical or not, but she worries about the importance of being as non-partisan as possible. She said if she wants to support someone financially, she should be able to do so. Councilmember Castleberry said that is endorsement; however, if your spouse contributes that should not be a problem.

Chairman Allison said his observation from the discussion is that the committee would like to look at this topic further as far as support to those in races other than City Council. Councilmember Hickman approved of allowing Councilmembers to express an opinion on elected races other than City Council Elections and he is willing to have further discussion about the language surrounding a City Council race; involving consequences, "willful" or not, or whether to remove it completely. Councilmember Bierman said there will always be the standing question as to whether or not a Councilmember is in their official capacity or not, and Council should air on the side of being more permissive; referencing involvement with state level endorsement without using your title. She said they should not feel limited in how they can support another candidate, whether partisan or non-partisan, outside of the City Council race. Councilmember Hickman said as an attorney he supports candidates, e.g., the State Superintendent, because of his practice and his work

surrounding education law, and does not feel like he should be restricted in his profession or from supporting them.

Councilmember Castleberry asked when a person is considered a candidate. He said a City Councilmember is currently endorsing another person running for City Council and he would like to know when a person becomes a candidate. He said if it is when a person files for candidacy, then there is no violation, but if it is when a person declares they are a candidate, a violation exists. Mr. Bryant said that would be a good topic for the Council to discuss and give the Legal Department some direction regarding the results of the discussion; however, he will have to research for the answer of the precise time a person is considered a candidate.

Councilmember Hickman said he struggles with two major aspects missing in the definition of *pecuniary interest*, employment, and non-profit or institutional. He asked if a Councilmember works for a non-monetized institution, this would not apply to them. He said if they work for the University of Oklahoma for example or Food & Shelter, they would never trigger a pecuniary interest. He said if a person has a pecuniary interest in the decision if a financial interest of that person will vary with the outcome of the decision, and asked how that is defined. He said if a Councilmember is an employee of an organization and the Council is taking action involving the Councilmember's respected employer, that person should not be voting on the particular item at hand. He said no matter the level of involvement with the organization, this becomes a direct conflict. Mayor Miller said she thinks it is the responsibility of the Councilmember to ask the Legal Department if they should recuse themselves. Councilmember Hickman understands why the Legal Department has done what they have done, but respectfully does not feel this is how this should be structured. He said Council granted a property easement to Oklahoma Gas & Electric (OG&E) and James Chappel, employee and the Norman area representative for OG&E, was allowed to vote. He said a Councilmember should not be voting on an item that their employer is involved in whether or not they will benefit financially.

Councilmember Hickman said a person has a pecuniary interest in a decision if a financial interest of that person will vary with the outcome of the decision or if the Councilmember or immediately family member is employed by the organization that may receive a benefit. Councilmember Bierman said they talk about businesses all the time and if their spouse works for a company wanting a zoning change or the company will relocate, it becomes a direct conflict. Chairman Allison said using that criterion a Councilmember who works for OU would not be able to vote on any item related to OU. He said if a Councilmember worked at the Physical Plant at OU should he not be allowed to vote on items related to the University North Park because it's connected to the OU Foundation? He asked where do they draw the line and still encourage involvement.

Councilmember Hickman said the policy surrounding pecuniary interest creates a hugely unfair and inappropriate inequity for Councilmembers who are small business owners due to owning more than five percent of their company and not being allowed to vote versus a Councilmember working for a large company making a huge salary being allowed to vote. Councilmember Castleberry said to recuse them from a vote on any particular item also does not allow for representation of the respected Ward.

Councilmember Hickman said he was told the difference with Mayor Rosenthal was that she was tenured so maybe we should add in some language. He asked if Councilmember Clint Williams was allowed to vote on items with regard to Mary Abbott House and Mr. Bryant said no, their advice to him was not to do so. Councilmember Hickman said he is not an owner at Mary Abbott, only an employee, helping his organization. He said if someone works for an organization, and if they are Councilmembers and a conflict arises, they should have to recuse. He said the integrity of the Council is more important than if someone has to recuse.

Councilmember Bierman asked if they are willing to distinguish between an adjunct professor at OU versus someone that runs a department or someone in senior management. She said once you get higher up into the

leadership levels at the University of Oklahoma it becomes much more concerning than with someone employed as a grounds keeper.

Councilmember Castleberry said when looking at ethics requirements, Council should look at how the public perceives the actions. He said the public can be outraged even with no ruling of an ethics violation, so Council should consider whether this is about self-regulating themselves or trying to display integrity of the Council.

Chairman Allison said his wife's position at the school is so far removed within Norman Public Schools, but asked under this scenario should he not vote on items that have anything to do with the school system or even the state level. Councilmember Castleberry said that is something to be disclosed; however, should be considered very indirect. Councilmember Hickman said he can see where a spouse could be disclosable, but if you are the person on Council, casting a vote that benefits the organization the Councilmember works for most people would find that a direct conflict.

Councilmember Castleberry said the tighter and clearer Council can make this policy the better. Councilmembers would know how to act or vote and the public would know as well. Councilmember Bierman said making the policy clearer for Council to know how to respond may not be ideal, but it will show the public Council did tighten the Ethics Ordinance.

Councilmember Castleberry said from a Councilmember standpoint they need to know before it comes to a vote. Councilmember Hickman added and before they engage in any discussion about the issue. Councilmember Castleberry said with regard to the Lindsey Street Widening Project he was not able to participate in any discussion or vote because he was a property owner adjacent to Lindsey. He knew about it and was fine with that; however, it is very important to know ahead of time and the Ethics Ordinance needs to be very clear on defining pecuniary interest.

Councilmember Hickman said the Committee has given Staff information regarding the definition of pecuniary interest and what the Committee would like to see as far as language changes. Mr. Bryant said it would be helpful to pull all the minutes when this was discussed before and when this previously went to Council. He said much of what was discussed today is identical to what Councilmembers previously discussed. He said it might be helpful to hear other perspectives.

Items submitted for the record

1. Ethics Policy adopted in 2009
2. Violations attachment as part of the Ethics Policy
3. Social Media Policy handout
4. Additional Violations handout
5. Ethics Ordinance

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ADJOURNMENT:

The meeting adjourned at 9:50 a.m.

ATTEST:

City Clerk

Mayor