

CHARTER REVIEW COMMISSION MINUTES

April 19, 2021

The Charter Review Commission met at 5:36 p.m. in a virtual meeting in the Municipal Building Council Chambers on the 19th day of April, 2021, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 24 hours prior to the beginning of the meeting.

CALL TO ORDER AND ROLL CALL.

PRESENT:

Ms. Aisha Ali (6:05 p.m.)
Mr. Trey Bates
Mr. Doug Cubberley, Vice-Chairman
Ms. Carol Dillingham (5:47 p.m.)
Mr. Jim Griffith
Mr. Tom Hackelman
Mr. Greg Jungman
Mr. Kenneth McBride
Mr. Kevin Pipes
Mr. Richard Stawicki
Mr. Bryan Vinyard
Ms. Shon Williamson-Jennings

ABSENT:

Mr. Jim Eller
Mr. Bob Thompson, Chairman

STAFF PRESENT:

Ms. Kathryn Walker, City Attorney
Ms. Brenda Hall, City Clerk

Item 2, being:

CONSIDERATION OF APPROVAL OF THE CHARTER REVIEW COMMISSION PUBLIC HEARING MINUTES OF OCTOBER 12, 2020, AND THE REGULAR MEETING MINUTES OF NOVEMBER 12, 2020.

Commissioner Jungman moved that the minutes be approved, which motion was duly seconded by Commissioner Stawicki;

Items submitted for the record

1. Charter Review Commission Public Hearing minutes of October 12, 2020, and Regular Meeting minutes of November 12, 2020

and the question being upon approval of the minutes and upon the subsequent directive, a vote was taken with the following result:

Item 2, continued:

YEAS: Commissioners Ali, Bates, Dillingham, Griffith, Hackelman, Jungman, McBride, Pipes, Stawicki, Vinyard, Williamson-Jennings, Vice-Chairman Cubberley

NAYES: None

Chairman Thompson declared the motion carried and the minutes approved; and the filing thereof was directed.

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Items 3, being:

DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE XIII, RECALL OF ELECTIVE OFFICERS TO PROVIDE A RECOMMENDATION ON WHETHER THE LANGUAGE SHOULD BE MODIFIED.

Ms. Kathryn Walker, City Attorney, said recall of elected officers is a process the City has had in the Charter for many years, but has never been tested. She said recall petitions have been filed in the past, but never with the volume of signatures or multiple elected official recalls that were filed with the City Clerk last fall. She and the City Clerk began making notes of what they thought needed to be changed in the process. She said the Supreme Court made a ruling on a recall in Enid, Oklahoma, that changed the game for everyone. She said cities do not have the right to recall elected officials unless that is provided for in their Charter.

Ms. Walker said under Norman's Charter, an elected official is not eligible to be recalled until they have served at least six months then a petition is filed with the City Clerk that includes signatures, names, and addresses of 25% of the eligible registered voters that are qualified to vote for the office proposed to be recalled. She said the Mayor election is citywide and will be a much larger number of voters. The City Clerk provides the petition to the petitioner and the petitioner has 30 days to circulate the petition that excludes Sundays and legal holidays. She said separate petitions for separate elected officials are required with a reason for the recall clearly listed in the heading of each petition page and once the petitions are filed with the City Clerk, the City Clerk has 30 days to review the petitions and determine whether the signatures are valid as registered voters eligible to vote for that office. The City Clerk publishes a notice in the local newspaper stating the name of the petitioner(s), the date petitions are due in her office, and the name of the official being recalled. This past fall, the City Clerk had to review multiple boxes of petition pages with thousands of signatures for several officials, including the Mayor. Once the petition is determined to have sufficient number of signatures, it is presented to City Council who shall call a recall election and the only question on the ballot will be the recall of the official. In order to be successful, the total number of votes to recall an official must be a majority of the votes at the recall election and at least a majority of votes at the previous election so the petitioner cannot capitalize on lower voter turnout.

Item 3, continued:

Ms. Walker said once the official is recalled, a vacancy is declared and filing for the unexpired term of the recalled official proceeds to take place in accordance with State election laws. Legal notice must be published no less than five days before any election is held that includes ballot language.

Ms. Walker said she and Ms. Brenda Hall, City Clerk, discussed improving the petition form because matching names to the voter database is very difficult, i.e., the person signed the petition using a shortened version of their name, such as Bob instead of Robert, which is not what is registered with the Cleveland County Election Board. She said the database was very slow and the City Clerk's computer would sometimes shut down in the middle of a search so 30 days was not enough time to verify multiple officials recall petition signatures as well as ensuring they live in the Ward of the official being recalled.

Ms. Walker said five recall petitions were filed and asked what would happen if they had all been successful. She said the Charter requires five votes to do anything so how would the process work if there is not five Councilmembers to take action? Would the Governor have the authority to call an election in that situation, which would be a novel issue for the State.

Ms. Walker said the Charter currently states, "The sole question in said election shall be the recall of the official(s) affected" and Staff is suggesting language that states, "The only City issue on the ballot shall be the recall of the official(s) affected" because in some years, election dates are very limited and other entities may have questions on the ballot, which the City has no control over.

The timing for declaring the vacancy and setting the filing period needs to be revised to match more closely with State law. There are also concerns about calling a recall election when that seat is already up for re-election as well as timing of the election date when the recall occurs.

Ms. Walker said while the City was litigating a lawsuit on the recall petition for Ward Three, the Supreme Court ruled on the Enid, Oklahoma, case and ultimately stated the City of Norman should be following the same procedure in its case even if its Charter is different than Enid's.

After some review, Staff is proposing a new petition form that is much more like a Referendum Petition; however, the City will accept a Referendum Petition as well as an Initiative Petition in order to have flexibility. Ms. Walker said the State was having difficulty in matching signatures for some of their petitions so as of November 2020, cities and towns have to match at least three data points on petitions that includes providing a pamphlet, providing a warning related to fraudulent signatures, providing a gist of the proposition on each signature page, and the petition circulator must sign an affidavit. She said the days of leaving a petition on a counter for people to sign is gone because someone has to witness the signature now.

Should the City allow more than 30 days to gather signatures? Should the City exclude Sundays and legal holidays? Should more time be given to the City Clerk if multiple petitions for recall are filed at one time? Should some of the State rules be incorporated into the Charter? Should the City limit the number of recalls that can be on one ballot at any time? Should the City create language to avoid a situation where the recall election potentially happens after a person's term has ended?

Item 3, continued:

Vice-Chairman Cubberley suggested the Charter Review Commission (CRC) review each item brought forward by Staff individually and ask questions, make statements, or suggest recommendations.

Section I, Time of Commencing Proceedings

Ms. Walker said this item requires a Councilperson to be seated six months before a recall petition can be filed.

Commissioner Jungman said there is a logical window when a recall is appropriate and that is after a person is elected and before the next election so a person would only have to be in office for one meeting before being subjected to recall. He said the next election may be a more efficient means to get to a vote than a recall.

Commissioner Eller said that makes sense and language could be added to describe that window as far as how long they have been on the Council and no later than a certain number of days before an election to fill the seat.

Vice-Chairman Cubberley said, talking as a former Councilmember, it would be so easy for his election opponent to start circulating a petition after the first meeting so six to 18 months into the term would be more appropriate.

Commissioner Dillingham agreed and said a person should be allowed to serve long enough so their constituents to get to know them unless they have committed an unlawful act or malfeasance that would justify removal from office.

Commissioner Jungman suggested six months after the last election or six months before the next election.

Vice-Chairman Cubberley asked if a contingency could be added that in the event the seating does not change then the recall will be withdrawn or nullified because the voters have elected not to change the seating.

Commissioner Vinyard said to grant six months when a person can campaign on a multitude of different issues to garner votes then comes right in and votes directly opposite of those issues, that nullifies the will of the people in the original vote.

Commissioner Pipes asked if there had been recalls prior to the ones filed last year and Ms. Hall said there has not been a recall that has made it to a ballot in the 31 years she has worked for the City nor has there ever been one that included multiple seats.

Commissioner Jungman said there seems to be consensus on a short initial waiting period and a six month end of term waiting period.

Item 3, continued:

Section I, Time of Commencing Proceedings, continued:

Commissioner Bates said the language suggests the recall process can begin at such time that would allow the process to be complete within six months of the time elected, is that correct? Ms. Walker said language states, “The holder of any elective office whether by election or appointment may be removed at any time after six months from the date of the succession of said office.” She said six months from the election is the time someone could start the filing of a recall petition.

Commissioner Pipes felt no changes are necessary because this request came from one Councilmember who just lost re-election and while that Councilmember is a nice person he does not see the need to change what has been working for years.

Commissioner Dillingham said recall should be extraordinary and rare and changing language could lead to a slippery slope of a constituent with enough friends bringing forth a recall petition just because he or she disagrees with any decision a Councilmember has made rather than something serious infraction.

Commissioner Vinyard disagreed and said the threshold to get someone recalled is high already so that is the check and balance already.

Commissioner Williamson-Jennings said if the Councilmember is doing due diligence and still working for the will of the people, there will be enough constituents that will not sign a recall petition. She cautiously agrees with six months after being seated or six months before an election.

Commissioner Ali said just about every issue the CRC has dealt with has been a “slippery slope” so creating a more streamlined process to ensure those involved have more consistency and standardization seems to be a reasonable recommendation.

Vice-Chairman Cubberley said he would like to see language prior to making a decision on whether or not to make a recommendation. He asked Ms. Walker to draft language for review and discussion.

Continue to Require Statement Language at the Top of Each Petition.

Commissioner Jungman said no and Commissioner Dillingham said yes. Commissioner Jungman said if yes, will it be a matter of if the reason is valid or invalid because if there is no standard for the reason then they could put anything they wanted on top of the page so there might as well be nothing.

Commissioner Dillingham said her yes is based on case law and the Attorney General opinions that specifically state that when you ask someone to sign a petition, it has to give a person of reasonable intelligence an idea of what the petition is requesting. An essential reason of some description is a critical piece of that.

Item 3, continued:

Continue to Require Statement Language at the Top of Each Petition, continued:

Ms. Walker said if following Title 44, there has to be a gist that generally describes the impact of the petition.

Commissioner Jungman said he is okay with a reason as long as the reason as long as there is not a standard on what makes a reason valid or invalid.

Vice-Chairman Cubberley said if he was signing a petition, he would want to see what it was about and not have to go back to page one to see what the petition is about.

Ms. Walker suggested a standardized petition would be helpful in this matter and Commissioner Jungman agreed.

Consider Adding Language that the Petition Should be Substantially Similar in Form as Provided by State Law.

Commissioner Jungman said a standardized form for a recall petition, not particularly a Referendum or Initiative Petition, it would solve this issue.

Commissioner Dillingham said the Supreme Court has told the City to do this so the City should do this and Commissioner Jungman agreed.

City Clerk Inspection Required to be Completed in 30 Days.

Vice-Chairman Cubberley said there are no exclusions, so should the City Clerk be allowed more time if multiple petitions or Mayoral recall are filed?

Commissioner Dillingham said yes and Commissioner Jungman asked Ms. Hall how much time would be needed. Ms. Hall said it varies, because 30 days for each petition filed is plenty of time for a couple of Ward petitions, but when a Ward petition is filed at the same time as a Mayoral petition, it takes more time. She had 30,000 signatures to verify in 30 days and it was a nightmare so there needs to be some type of exception.

Vice-Chairman Cubberley asked if the CRC could get rid of the 30-day requirement and allow reasonable time, which would require notifying the proponent of the specific date. Ms. Hall said her only concern with this is having the petitioner watching the procedure and did not want people shadowing her day and night, especially after hours and weekends which is when she worked on most of the verification. She does agree there needs to be more time whether that is tied to multiple petitions being filed or more time for the Mayoral.

Commissioner Jungman said here is a professional pressure to verify petitions signatures in a timely manner so the rule does not have to be precise, but there needs to be clarity on when the petition is considered valid or invalid.

Item 3, continued;

City Clerk Inspection Required to be Completed in 30 Days, continued:

Commissioner Pipes asked how long the State has to verify signatures on a general Initiative Petition and Ms. Walker said she was not able to find a time limit, but she can try to find an average for CRC's review. Commissioner Pipes said the State has more employees to review the signatures so City Staffing does have bearing.

Commissioner Dillingham said Cleveland County allows a "reasonable amount of time" for verification of County related election signatures. She believes the City could be allowed a reasonable amount of time based on the number of recall petitions and whether one is Mayoral provided not-to-exceed a specific number of days.

Commissioner Williamson-Jennings suggested 30 days for Ward recall petitions and 60 days for Mayoral recall petitions.

Commissioner Dillingham suggested 90 days for multiple recall petitions that includes Mayoral and Ms. Hall felt that would be sufficient.

Commissioner Vinyard said he has heard that a lot of time is needed due to how sloppily the forms are completed by people signing the petition and asked if signatures on a green bar similar to what is found in the Election Board files would make it easier to read and follow and Ms. Hall said it would make it easier. She said one of the items proposed for the new form is a State requirement for a birth date, which would be another key way to identify signatures faster.

Commissioner Pipes asked if City Clerks in other cities are required to verify petition signatures and Ms. Hall said in Stillwater, their County Election Board verified the signatures for the City, but was not sure the City of Norman would be able to convince the Cleveland County Election Board to do that work for the City. Commissioner Dillingham agreed and said the Cleveland County Election Board would not consider this a statutory duty, but may be willing to share a database. Vice-Chairman Cubberley said it would not hurt to ask for any help the County is willing to give.

Vice-Chairman Cubberley asked Ms. Walker to prepare language with flexibility for CRC's review and discussion.

Notice and Publication

Vice-Chairman Cubberley said this issue considers adding a requirement for published notice in line with State law and asked what State law requires. Ms. Walker said State law requires cities to publish any Initiative or Referendum measure not less than five business days before any election is held on the measure with a copy of the ballot and an explanation on how to vote for or against the measure.

Item 3, continued:

Notice and Publication, continued:

Vice-Chairman Cubberley said this seems to be a straightforward yes and Commissioner Dillingham agreed.

Commissioner Dillingham asked if the notice could be posted on the City's website to avoid the newspaper publication requirement and Ms. Hall said with The Norman Transcript changing to a three day a week paper with very low staffing, they have missed publications on more than one occasion and the City barely obtained the reprint in the paper in time on the last election. She said having the option of publishing on the website would be helpful.

Ms. Walker said language requires newspaper publication so not doing that could leave the City open to lawsuits. Commissioner Dillingham said this is one of those things where the legislature would have cross referenced the Open Meeting Act (OMA) where it states that if a city has a website they can post on notices on their website. She said most people generally search for a website and to not purchase a newspaper. Ms. Walker said she can draft language that states the notice will be published in conformance with State Statute in case legislation changes to recognize websites.

Calling Elections and Votes Required for Recall

Vice-Chairman said Council is asking the CRC to clarify that the recall question must be the only City issue on the ballot.

Commissioner Jungman asked if multiple persons can be on the recall ballot and Ms. Walker said the only question on the ballot can be the recall question. Ms. Hall said there can be multiple recalls on the same election day, but they have to be on separate ballots and there cannot be any other City question, such as General Obligation Bonds.

Ms. Walker said this item is simply clean-up to make it clear that no other City issue can be on the recall ballot, but that language can be stricken.

Commissioner Jungman said he did not see why the City would limit itself to recalls versus other issues.

Commissioner Dillingham said in order to stay consistent and because of limited election dates, the City needs to be allowed to have other issues on the ballot.

Item 3, continued:

Limiting Number of Officers That May Be Recalled At Any One Time

Vice-Chairman Cubberley said limiting the number of officer recalled to four at any one time could help with quorum issues.

Commission Jungman said it would be irrational to tell voters who they can and cannot recall and felt the solution would be to place language in the Charter that if states if five members of Council are recalled, there would have to be a majority of Councilmembers not recalled to meet the quorum.

Vice-Chairman Cubberley asked if that would be allowed under State law and Ms. Walker said yes, the Charter requires five votes no matter how many Councilmembers attend the meeting so language could be changed to state a majority of the remaining Councilmembers.

Consider Ways to Avoid a Situation Where Council Can Call Elections on Other Issues To Avoid a Recall Election.

Ms. Walker said the previous item fixed this situation.

Election to Recall to Fill Vacancy Created by Recall.

Vice-Chairman Cubberley said this item relates to an election to fill vacancy created by recall and updates timeframes to coincide with State law. It also considers whether language could be added to avoid a situation where the recall election and/or election to fill the vacancy occurs after the recall officials term would have ended.

Vice-Chairman Cubberley asked about the State law timeframes and Ms. Walker said there is typically a three-day filing period for candidates and the City has to give 60-day notice to the Election Board and 75 days if it is a State or Federal election. Vice-Chairman Cubberley asked how that was different from the City's current timelines and Ms. Walker said the City only has a two-day filing period under the Charter and the Charter does not recognize there is a firm time period before calling an election.

Vice-Chairman Cubberley asked about avoiding a recall election after the term would have ended and Ms. Walker said the earlier discussion of waiting six months prior to or after an election before being recalled will take care of this issue.

Items submitted for the record

1. Charter Review Commission: Article XIII, Recall of Elective Officers
2. Current Charter language, Article XIII, Recall of Elective Officer
3. Draft petition

Item 4, being:

CONTINUED DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE XVII, SECTION 9, TO CONSIDER WHETHER TO REQUIRE BIENNIAL REVIEW OF THE CHARTER.

Commissioner Jungman did not feel a need to guide Council on this because they can call for a Charter review whenever they want.

Commissioner Williamson- Jennings said one of the reasons for having a Constitution or Charter is to have a guiding tool, but should not be a fiercely political tool. She does not believe the Charter should be changed every few years.

Commissioner Jungman said the City already has a requirement that the Charter be reviewed every ten years and felt that was appropriate.

Commissioner Pipes said if Council wants to the review the Charter then they should be able to do that.

Commissioner Dillingham did not see any reason to change the current requirement of every ten years.

Commissioner Ali said ten years is good and as-needed is available as well.

Commissioner McBride moved that no changes be recommended, which motion was duly seconded by Commissioner Jungman; and the question being upon no changes being recommended, a vote was taken with the following result:

YEAS:	Commissioners Ali, Bates, Dillingham, Griffith, Hackelman, Jungman, McBride, Pipes, Stawicki, Vinyard, Williamson-Jennings, Vice-Chairman Cubberley
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NAYES:	None
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Vice-Chairman Cubberley declared the motion carried and no changes were recommended.

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Item 5, being:

DISCUSSION AND POSSIBLE ACTION REGARDING ARTICLE II, SECTION 22, VACANCIES IN OFFICE.

Ms. Walker said she is bringing this back to request help because the CRC has already made a recommendation on part of this by wanting to incorporate the recent practice of using committees made up of members of the Ward where the vacancy has occurred to recommend selection of a person to fill the vacancy. She said over the past four years, this has come up more often than ever before. She said what has been happening is the person vacating their seat is serving a Ward that is already up for election in February so, for example, in Ward Five, Councilmember Wilson resigned in August because she moved out of her Ward. Her seat was already up for election in February. She said Council can call a Special Election to fill the seat for the remainder of the term, but the practice has been to appoint someone to serve the remainder of the term then they could file and campaign for that office if they wanted to continue to serve. She suggested recommending calling a Special Election within 60 days or appoint someone to serve the remainder of the term.

Ms. Walker said an easy fix would be changing language that states, "After any vacancy occurring on the Council shall be filled by a majority vote after an appointment recommendation of one candidate from a selection committee for a period extending ~~until the next regular Municipal election~~ for the remainder of the term." Commissioners stated they liked this language.

Vice-Chairman asked Ms. Walker to prepare language to be voted on at the next meeting.

Items submitted for the record

1. Charter Review Commission: Article II, Section 22, Filling Vacant Council Positions

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Item 6, being:

MISCELLNEOUS DISCUSSION.

Vice-Chairman Cubberley said the next meeting will be May 10, 2021.

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Item 7, being:

ADJOURNMENT.

The meeting was adjourned at 7:02 p.m.