

CHARTER REVIEW COMMISSION MINUTES

January 13, 2020

The Charter Review Commission met at 5:30 p.m. in the Municipal Building Multi-Purpose Room on the 13th day of January 2020, 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 (5:52)
Mr. Trey Bates
Mr. Doug Cubberley, Vice-Chairman
Mr. Jim Griffith
Mr. Greg Jungman
Mr. Kenneth McBride
Mr. Kevin Pipes
Mr. Bob Thompson, Chairman
Mr. Bryan Vinyard
Ms. Shon Williamson-Jennings (6:02)

ABSENT:

Ms. Carol Dillingham
Mr. Jim Eller
Mr. Tom Hackelman
Mr. Richard Stawicki

STAFF PRESENT:

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

Item 2, being:

CONSIDERATION OF APPROVAL OF THE CHARTER REVIEW COMMISSION MEETING MINUTES OF DECEMBER 2, 2019, AND THE CHARTER REVIEW COMMISSION PUBLIC HEARING MINUTES OF JANUARY 6, 2020.

Commissioner Pipes moved that the minutes be approved, which motion was duly seconded by Commissioner Griffith, and the minutes were approved.

Items submitted for the record

1. Charter Review Commission minutes of December 2, 2019
2. Charter Review Commission Public Hearing minutes of January 6, 2020

Item 2, continued:

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

YEAS: Commissioners Bates, Cubberley, Griffith, Jungman, McBride, Pipes, Vinyard, Chairman Thompson

NAYES: None

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

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Item 3, being:

DISCUSSION AND POSSIBLE ACTION REGARDING COMMENTS RECEIVED IN JANUARY 6, 2020, PUBLIC HEARING CONCERNING THE COMMISSION'S RECOMMENDATIONS TO DATE.

Vice-Chairman Cubberley said there were comments during the public hearing regarding term expirations and conflicts of interest on initiative or referendum petitions and asked Ms. Walker to explain her view of the comments. Ms. Walker said in Title XI of State Statutes there are statutes that apply generally to municipal referendum and initiative petitions and how an election comes into play when talking about the number of signatures needed on the petition. She said to determine the number of signatures needed, Staff has to go back to the most recent general municipal election, which in this case was the mayoral citywide election. She said it is also used in talking about when such an item would be placed on an election ballot and Title XI states "general election" or "special election"; however, under the Local Development Act (LDA) it states "general municipal election" and again that was the mayoral election. Vice-Chairman Cubberley asked if any recommendation by the Commission in regards to changing Councilmember terms would affect when an initiative or referendum petition would be brought forward to a City election and Ms. Walker said no. Vice-Chairman Cubberley said he had no desire to reconsider this item.

Commissioner Jungman said at the public hearing, five different people told him that changing Council terms from two years to three years was not desirable and he personally agrees.

After further discussion by the Commission, Chairman Thompson said there seems to be consensus not to reconsider changing the Charter Review Commission's recommendation to Council at this time. He said the Charter Review Commission can present recommendations to Council as well as the public comments regarding those recommendations and Commissioners agreed. He said Council will ultimately decide whether recommendations move forward or not.

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Item 4, being:

CONTINUED DISCUSSION AND POSSIBLE ACTION REGARDING ADDING LANGUAGE TO THE CHARTER TO ESTABLISH A RESIDENT OR COMMUNITY BILL OF RIGHTS.

Ms. Walker said at the last meeting, the Charter Review Commission suggested this item be discussed by a Citizen's Bill or Rights (CBOR) Committee appointed by Council because it is such a huge issue. She said she placed this item on the agenda for a vote by the Charter Review Commission.

Commissioner Jungman moved to take no action on this item, which motion was seconded by Commissioner McBride:

Items submitted for the record

1. Draft City of Norman Community Bill of Rights

and the question being upon taking no action on this item, a vote was taken with the following result:

YEAS: Commissioners Ali, Bates, Cubberley, Griffith, Jungman, McBride, Pipes, Vinyard, Chairman Thompson

NAYES: None

Chairman Thompson declared the motion carried and no action was taken on this item.

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Item 5, being:

CONTINUED DISCUSSION AND POSSIBLE ACTION REGARDING ADDING LANGUAGE TO THE CHARTER RELATED TO REQUIRING A VOTE OF THE ELECTORATE FOR APPROVAL OF A TAX INCREMENT FINANCE DISTRICT OVER \$5,000,000.

Ms. Walker said at the last meeting, Staff was asked to draft language for review. She said there was quite a diversity of opinion about whether or not a Tax Increment Finance (TIF) District should require a vote of the electorate as well as whether or not \$5 million would be the trigger threshold for requiring a vote of the electorate. She said some Commissioners expressed concern that a threshold would not stand the test of time and would essentially require all TIF's to be voted on by the electorate. Additional discussion centered on whether Council would be able to amend a TIF without an addition vote of the electorate.

Item 5, continued:

Ms. Walker highlighted proposed language as, “A tax increment finance district created by the City pursuant to Oklahoma law that pledges sales tax increments to fund project cost within the district, or any amendment thereto, shall only become effective after approval by a majority of the registered voters of the City in a general or special election.”

Commissioner Jungman clarified any pledge of sales tax would prompt a vote regardless of the amount and Ms. Walker said yes.

Chairman Thompson said he likes the language as well because it opens the possibility for small TIF’s that could be daisy chained to larger TIF’s to get around a public vote so this is a better approach.

Commissioner Griffith agreed and said because sales tax funds will be committed to a TIF the voter approval would not only support the TIF, but the amount of sales tax dedicated from the revenue stream created by the TIF could be a deterring factor on how the public votes. He said arguments would have to be made to convince the voter to approve a TIF and he supports the clarity of the language.

Commissioner Ali said she appreciates the clarity of the language when it comes to sales tax, but what about TIF’s that are not sales tax based? Ms. Walker said any TIF process would have to go through the Statutory Review Committee process as well as public hearings, etc. She said the City does not receive property tax so that would apply to any TIF requiring sales tax revenue. Commissioner Ali said most citizens and business owners do not understand the process so they feel they do not have a voice in the process.

Commissioner Griffith said he likes the language because it protects the City’s revenue stream and people will have a voice on how that revenue stream is diverted whether that is \$1 million or \$100 million.

Commissioner Bates said he understands the frustration the public has about the University North Park Tax Increment Finance (UNPTIF) District, and he was on the original committee that helped evaluate the UNPTIF. He said the frustration of where the UNPTIF is today compared to what it was envisioned to be is worthy of the feelings the public has about it. He said everyone has certain responsibilities even if mistakes are made. He said ultimately, it is City Council’s job to protect the City’s revenue stream and it is their job to determine what makes sense or what does not make sense for the City. He said at the very core, it is the financial responsibility of Council to make sure the City is on the right track. He said to strip away a tool that can be used right is an overreaction to a mistake that is perceived to have been made with the UNPTIF. He said the scrutiny given to the UNPTIF would be different today if a similar project were to come forward. He is against the idea that the public cannot trust their elected officials to make a good decision and if Council does make a mistake there are procedures to rectify that mistake. He said there is a TIF process and that process should not be destroyed because of what many perceive to be a mistake. He is opposed to changing that process because complicated issues tend to get whittled down into slogans during elections as opposed to the complicated negotiations and details that go into the TIF projects.

Item 5, continued:

Commissioner Vinyard agreed with Commissioner Bates and asked if the public is going to vote on everything in a general election. He said the City has elected officials chosen by the people in their ward to make these difficult decisions. He said a Councilmember may hear from ten really loud people that disagree with their decision, but that does not necessarily mean it is representative of the entire ward.

Commissioner Jungman said he does not feel like a public vote will harm a good project, i.e., was NORMAN FORWARD helped or hurt by a public vote? What he hears from his Councilmember is the City made commitments and promises that Council has to work really hard to be accountable for to meet those commitments and promises.

Chairman Thompson said his view is that the Charter Review Commission is recommending Council put the TIF in a category that already exists, i.e., General Obligation Bonds, sales tax increases, utility rates, etc. He said a public vote on TIF's does not mean the public does not trust Council, it just means the public recognizes TIF's are directly related through the revenue stream and since the public votes on whether or not to increase the revenue stream, it is not inappropriate to vote on how those funds are diverted.

Commissioner Ali said elected City officials are very engaged in their respective wards and show mutual respect in sharing work with their constituents. She said citizens in Norman support their elected leaders, which binds the community together and citizens follow along with their elected officials because they share their work. She said the fear of disagreement comes from the divided leadership when it comes to the UNPTIF and because of that division a vote would allow the public to say they agree with this side or that side and that would help with division in leadership.

Commissioner Pipes said he has reservations about moving forward with a recommendation until the UNP Referendum Petition has been resolved.

Commissioner McBride said, philosophically, he would hope the Charter Review Commission is not setting a pattern that everything Council messes up should require a vote of the people and sees that as no longer representative of democracy.

Commissioner Jungman moved to recommend the electorate vote on all sales tax increment finance districts, which motion was seconded by Commissioner Ali;

Items submitted for the record

1. Draft language for Voter Approval Required for Tax Increment Finance Districts over \$5,000,000

and the question being upon recommending the electorate vote on all sales tax increment finance districts, a vote was taken with the following result:

Item 5 continued:

YEAS: Commissioners Ali, Griffith, Jungman,
Williamson-Jennings, Chairman Thompson

NAYES: Commissioners Bates, McBride, Pipes,
Vinyard, Vice-Chairman Cubberley

Chairman Thompson declared the motion failed and recommending the electorate vote on all sales tax increment finance districts was not approved.

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Item 6, being:

DISCUSSION REGARDING REVIEWING POTENTIAL LOOPHOLES USED TO SKIRT THE OPEN MEETING ACT.

Ms. Walker said the direction for the Charter Review Commission is to review potential loopholes used to skirt the Open Meeting Act and provide a recommendation and to review executive session restrictions and provide recommendation on the appropriate limits of use versus overly expansive such that it provides cover to skirt Open Meeting Act. She said she does not have further clarification or examples, but combined the two items in the backup material to summarize what the Open Meeting Act requires.

Ms. Walker said although the Open Meeting Act only applies to groups meeting the definition of a “public body” in the Act, the City’s Charter and Code ensure other bodies also comply with the Open Meeting Act. The Charter currently provides that all meetings of the City Council, Boards, Commissions, Authorities, and Committees of the City be open to the public under such regulations as may be fixed by ordinance. It also recognizes the ability of the Council, Boards and Commissions to hold executive sessions in compliance with State law. In 2011, the City adopted Resolution R-1112-9 that requires all committees, sub-committees, and ad hoc committees be subject to the Open Meeting Act as well.

Commissioner Jungman asked if having a series of smaller meetings with Council violates the Open Meeting Act in the “walking quorum” sense. Ms. Walker said Oklahoma does not have a definition within the Open Meeting Act that talks about a walking quorum. She said that term is used in other states, but typically at the City of Norman, three Councilmembers would meet at one time; however, after questions were raised regarding the legality the City stopped having those types of meetings. She has had three to four Councilmembers attend a meeting when she thought she was meeting with only one, but the Legal Staff nor the City Manager have scheduled these types of meetings since the question was raised.

Item 6, continued:

Chairman Thompson said when he was on Council he contacted the Oklahoma Municipal League (OML) regarding three on three meetings the City conducts and their opinion was that as long as the information provided to one group was not shared with another group, it was not a violation of the Open Meeting Act. He said the three on three meetings he attended were not helpful because he did not know what other Councilmembers thought about the issue being discussed except for the three Councilmembers in the meeting and he could not ask non-attending Councilmembers about their thoughts on the issue. He said he had objected to the three on three meetings on a fairly regular basis while serving on Council.

Commissioner Jungman said he would like Staff to look at other states that have language on walking quorums to see what options are available. He was under the impression that Oklahoma Statutes barred walking quorums.

Ms. Walker said social media has made Opening Meeting Act regulations a challenge as well.

Chairman Thompson said the Charter Review Commission would like more clarification on what exactly Council is looking for on this issue.

Items submitted for the record

1. Information regarding potential loopholes used to skirt the Open Meetings Act dated January 10, 2020
2. Codification of Commitment to Open Meetings in Charters
3. Resolution R-1112-9

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Item 7, being:

DISCUSSION REGARDING REVIEWING EXECUTIVE SESSION RESTRICTIONS AND APPROPRIATE LIMITS OF USE VERUS OVERLY EXPANSIVE SUCH THAT IT PROVIDES COVER TO SKIRT THE OPEN MEETING ACT.

Ms. Walker said executive sessions are only permitted in certain circumstances and generally, for a municipality this includes discussing employment issues regarding a public officer or employees; discussing negotiations concerning employees; discussing purchase or appraisal of real property; confidential communications between a public body and its attorney regarding a claim or a pending investigation on litigation; or when discussing any matter where disclosure of information would violate state or federal law. Any vote or action on any item of business considered in an executive session must be taken in a public meeting with the vote of each Commissioner publicly cast and recorded. If a public body proposed an executive session, the agenda shall indicate that an executive session will be proposed; identify the items of business and purposes of the executive session, and state the provision of the Open Meeting Act authorizing the executive session.

Item 7, continued:

Commissioner Williamson-Jennings asked if the Councilmember(s) that asked for this issue to be discussed could attend the next Charter Review Commission meeting to provide clarification regarding what loopholes they are worried about. She said she would like to focus on issues that need to be reviewed, but as of today, this issue does not hold a lot of meaning to her.

Commissioner Jungman asked how many votes would it take to break the seal of an executive session and Ms. Walker said it would take a majority vote.

Commissioner Pipes said Legal Staff and the City Clerk do a good job of educating Councilmembers and Commissioners of Boards, Commissions, and Committees of the Open Meeting Act requirements when they are elected or appointed.

After further discussion, Chairman Thompson said there seems to be consensus to table this time until further clarification can be provided.

Items submitted for the record

1. Information regarding executive session restrictions

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Item 8, being:

MISCELLNEOUS DISCUSSION.

Chairman Thompson said at the next meeting the Charter Review Commission will revisit Council's concern regarding loopholes in the Open Meeting Act, but it is his opinion that Council should not expect the Commission to recommend changing the executive session process. He said the Commission will also be discussing the ward boundary process.

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Item 8, being:

Miscellaneous Discussion.

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Item 9, being:

ADJOURNMENT.

Chairman Thompson declared the meeting adjourned at 6:52 p.m.