

CHARTER REVIEW COMMISSION MINUTES

February 10, 2020

The Charter Review Commission met at 5:42 p.m. in the Municipal Building Multi-Purpose Room on the 10th day of February 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
Mr. Doug Cubberley, Vice-Chairman
Ms. Carol Dillingham
Mr. Tom Hackelman
Mr. Richard Stawicki
Mr. Bob Thompson, Chairman
Mr. Bryan Vinyard
Ms. Shon Williamson-Jennings (5:45)

ABSENT:

Mr. Trey Bates
Mr. Jim Eller
Mr. Jim Griffith
Mr. Greg Jungman
Mr. Kenneth McBride
Mr. Kevin Pipes

STAFF PRESENT:

Ms. Kathryn Walker, City Attorney
Ms. Brenda Hall, City Clerk
Ms. Joyce Green, Geographical
Information Systems (GIS) Manager

Item 2, being:

CONSIDERATION OF APPROVAL OF THE CHARTER REVIEW COMMISSION MEETING MINUTES OF JANUARY 13, 2020.

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

Items submitted for the record

1. Charter Review Commission minutes of January 13, 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, Cubberley, Dillingham,
Hackelman, Stawicki, 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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Discussion of Items 3 and 4 were combined.

Items 3 and 4, being:

CONTINUED DISCUSSION AND POSSIBLE ACTION REGARDING REVIEWING POTENTIAL LOOPHOLES USED TO SKIRT THE OPEN MEETING ACT.

CONTINUED DISCUSSION AND POSSIBLE ACTION REGARDING REVIEWING EXECUTIVE SESSION RESRICTIONS AND APPROPRIATE LIMITS OF USE VERSUS OVERLY EXPANSIVE SUCH THAT IT PROVIDES COVER TO SKIRT THE OPEN MEETING ACT.

Chairman Thompson said last month the Commission requested additional information and/or specific examples Council wanted them to consider on this topic. He spoke with Councilmember Petrone, who requested this be included in the review, and she shared her concerns regarding using an executive session for a threat of a lawsuit leaving Councilmembers unable to discuss the lawsuit with the public or decisions Council is trying to make regarding the lawsuit. Current Open Meeting Act language states an executive session can be held regarding confidential communications between a public body and its attorney regarding pending investigations, claims, or actions. He said Councilmember Petrone wondered what constitutes pending litigation, is it simply a threat or is it a formalized process that creates pending litigation? Her concern was that if someone does not like Council's decisions they can sue the City, which can then become something taken behind closed doors. He asked Ms. Walker to discuss when executive sessions become necessary and Ms. Walker said this particular section relies on the advice of the City Attorney. She said there is case law that talks about pending investigation, claims, or actions that include threatened litigation and the balancing of responsibility to be transparent with the public and responsibility of representing the City and that is the language Staff has relied upon for executive sessions. She said there is also attorney/client confidentiality communications that are not subject to the Open Records Act (ORA) and she felt it is better to have language on an agenda in order for the public to know what is being discussed rather than doing everything by confidential communication. She said in the case of the University North Park Tax Increment Finance (UNPTIF) District, the City did receive one or two letters of threatened litigation letters as well as a petition in support of litigation that outlined the causes of action. She said Staff took that to be a very serious threat that needed to be discussed in an executive session.

Items 3 and 4, continued:

Commissioner Vinyard asked if the process of entering into an executive session is based on information received by the City Attorney who then feels this is something to be presented to Council or is that determined by a majority of Council? Ms. Walker said the City Attorney decides if an item needs to be discussed in executive session prior to presentation to Council. She said Council has to vote to convene into executive session.

Commissioner Dillingham said Council voting to adjourn into executive session is an important point and one of the things she spends a lot of time on at the County level is trying to educate clients to make sure they understand that if they strongly feel that the subject is something they would rather air publicly then she will list the pros and cons of doing that. She said there are often pretty serious privacy issues involved when dealing with employment law or threatened litigation and attorneys do not want people to know their strategies so it can be very difficult to balance all those interests. She is hesitant to add something to the Charter that would take away the important flexibility necessary to protect all of the many interests or takes away the City Attorney's ability to protect the City.

Chairman Thompson suggested executive sessions pertaining to potential or pending litigation must be accompanied by a demand letter from the client's attorney or a demand letter from the claimant filing pro se (individual filing without an attorney) and verified by the City Attorney that litigation will be pro se.

Co-Chairman Cubberley said the Commission has to be careful about tying the hands of the City Attorney to be able to talk to their client who is the City Council. He said even litigation filed pro se does not stop a claimant from hiring or firing an attorney at any time during the process. He agreed with Commissioner Dillingham about protecting the City's interests. He asked what recent issues have required executive sessions and Ms. Walker said condemnations, workers comp cases, employee union issues, and UNPTIF.

Commissioner Williamson-Jennings asked if the City has criteria the City Attorney uses to determine if something is a legitimate threatened litigation and Ms. Walker said no, most cases are actual pending litigation or tort claims where the City knows there is going to be potential litigation. The other option is sending communications to Council that never becomes public and no one knows the items are being potentially discussed so she feels more transparent posting executive session on an agenda.

Commissioner Stawicki and Co-Chairman Cubberley said they did not see any abuse of the use of executive session when they were on Council.

Commissioner Stawicki said he did have a problem with the three on three meetings that have been discontinued.

Commissioner Hackelman said the executive session tool is good, but over the past year and a half there has been public sentiment that issues are being discussed in executive session merely to keep information out of the public's eye. He said as long as there is a tangible reason for an executive session then he is okay with holding executive sessions.

Items 3 and 4, continued:

Chairman Thompson said there seems to be a preference to provide maximum transparency by placing the executive session on the agenda versus less transparency through attorney client privilege communications. He said Council has to vote on whether or not to adjourn into executive session so that puts the onus on Council.

Chairman Thompson said Councilmember Petrone suggested executive sessions be taped so new Councilmembers can get up to speed on the issues.

Ms. Brenda Hall, City Clerk, said materials and discussions in executive sessions are privileged information and cannot be shared. She said in all her years of attending training on the Open Meeting Act, taping executive sessions has never been recommended. She said once it has been recorded, it can be considered discoverable in court and can be used in litigation against the City.

Co-Chairman Cubberley said the City Attorney can meet with new Councilmembers to fill them in on the executive session items.

Commissioner Ali said there may be a lack of trust in the City Attorney providing information to the new Councilmember making the discussion feel less transparent and felt the UNPTIF executive session discussions seem to be overshadowing decisions in regards to the Charter amendment review.

Commissioner Dillingham said recording executive sessions is a slippery slope because there will be arguments as to whether or not the recordings are discoverable or if and when they become an open record.

Co-Chairman Cubberley said every new Councilmember feels left out to a certain extent on many issues just because they have not been involved in the discussions and that is just the nature of turnover.

Chairman Thompson said there seems to be consensus to take no action on recording executive sessions and members concurred.

Commissioner Dillingham said the Charter Review Commission unanimously supports maximum transparency; however, because the City has existing adequate checks and balances she felt there was no need to change language in the Charter.

Item 3 and 4, continued:

Co-Chairman Cubberley moved that no action be taken on this item, which motion was duly seconded by Commissioner Vinyard; and the question being upon taking no action on this item, a vote was taken with the following result:

YEAS: Commissioners Ali, Cubberley, Dillingham,
Hackelman, Stawicki, Vinyard, Williamson-
Jennings, Chairman Thompson

NAYES: None

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

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Item 5, being:

CONTINUED DISCUSSION REGARDING THE WARD BOUNDARY CREATION PROCESS.

Ms. Walker said the City used to have a Reapportionment Commission and one of changes of the last Charter Review Commission was to appoint an Ad Hoc Committee in certain situations only, such as annexation or de-annexation of property and during the last quarter of the calendar year prior to the release of the Census, or upon the unanimous recommendation of City Council.

Commissioner Vinyard left the meeting at 6:14 p.m.

Ms. Walker said criteria for the ward boundaries are set up by ordinance to be formed so as to equalize, as nearly as practicable, the population of the wards. In addition, each ward should be formed of compact contiguous territory with boundaries drawn to reflect and respond to communities of common interest, ethnic background, and physical boundaries to the extent reasonably possible. Ward lines shall not create artificial corridors which in effect separate voters from the ward to which they most naturally belong. She said the Ad Hoc Committee will meet after the 2020 Census to review ward boundaries.

Chairman Thompson asked if the Ad Hoc Committee is allowed to take into consideration voter participation in a ward and Ms. Walker said no, they can consider population, but not participation.

Co-Chairman Cubberley said when he was elected to Council in 2001 he represented a small piece of ward that changed boundaries three times over a ten year period. He said sometimes there is more growth in certain parts of the City and reviewing ward boundaries every ten years seems to be more practical.

Item 5, continued:

Commissioner Dillingham agreed and said a portion of her ward (Ward 4) went back and forth between Ward Four and Ward Eight over several years.

Chairman Thompson suggested discussion be postponed until the Charter Review Committee can determine Council's specific concerns about the ward boundary process.

Co-Chairman Cubberley moved to postpone this item until further notice, which motion was duly seconded by Commissioner Hackelman;

Items submitted for the record

1. Draft Charter Review Commission Article XX – Reapportionment.
2. Current Charter Provisions for Article XX – Reapportionment
3. Reapportionment/Ward Boundary Creation and Review Process

and the question being upon postponing this item until further notice, a vote was taken with the following result:

YEAS: Commissioners Ali, Cubberley, Dillingham, Stawicki, Williamson-Jennings, Chairman Thompson

NAYES: None

Chairman Thompson declared the motion carried and the item was postponed until further notice.

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Item 6, being:

MISCELLANEOUS DISCUSSION.

Ms. Hall said future items to be discussed includes the request from Norman Regional Health Systems to expand their board members, examining the relationship between NRHS and the City of Norman, and utility rates.

Commissioners asked if Councilmember Petrone could attend the next meeting to explain her concerns regarding items she requested to be reviewed.

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Item 7, being:

ADJOURNMENT.

Chairman Thompson declared the meeting adjourned at 6:55 p.m.