



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 01/04/2022

REQUESTER:

PRESENTER: Kathryn Walker, City Attorney

ITEM TITLE: Continued Discussion Regarding Possible Amendments to Norman's Charter

BACKGROUND:

The Charter Review Commission ("CRC") was appointed in the Summer of 2019 to review specific items as requested by members of the City Council. The CRC met monthly, with the exception of several months missed due to COVID-19. Council held a Special Session on August 3, 2021 to hear the recommendations of the CRC and to decide whether to send each recommendation to the voters for their consideration. Council voted to send five of the recommendations to the voters. Recent discussions have targeted a possible June 28, 2022 election for these ballot measures. Charter amendments are adopted by ordinance. In order to meet the State's deadlines for a June 2022 election, Council will be required to vote on the ordinance on Second Reading no later than April 12, 2022.

At the Special Session on August 3, 2021, Council asked for further discussion on 5 of the recommendations related to term expiration, Council vacancies, utility rates, recall elections, and tax-increment financing. Council discussed these items during its conference on August 24, 2021 and reached consensus on sending the CRC recommendation related to term expiration and filling vacant Council positions forward to the voters and *not* sending any Charter amendments forward related to tax increment financing. Further information and discussion was requested for the CRC recommendations related to utility rates and recall elections. The information requested is provided below. Additionally, although the CRC made no recommendations for changes related to the reapportionment process, the recent test of the language recommended by the 2012 CRC and ultimately approved by the voters in 2013 has led to some discussion of possible Charter changes related to reapportionment. More information is provided below.

DISCUSSION:

Recall of Elective Officials

Consensus was reached among a majority of Councilmembers on most of the recommendations of the CRC related to the recall process. Council primarily focused on the number of petition signatures required in order to trigger a recall election. The Charter currently requires a petition

bearing the signatures, names and addresses of 25% of the registered voters qualified to vote for the officer whose recall is sought. Some Councilmembers felt the 25% threshold was appropriate; others were concerned the threshold was too high, especially when compared to the historic low voter turnout for municipal elections. Staff was asked to look at other Big 12 cities and cities within Oklahoma to compare signature requirements in other jurisdictions. Recall provisions could not be found in several of these jurisdictions so the comparable cities search was extended to future conference foes in the SEC. A chart is provided below for your information and discussion.

City/State	Number of Signatures
Norman, OK (current)	At least 25% of the registered voters for office for which recall is sought
Kansas (State law)	At least 40% of votes cast in the last general election for office for which recall is sought
Austin, TX	At least 10% of qualified voters for office for which recall is sought
College Station, TX	At least 40% of total number of votes cast at last general election for office for which recall is sought
Waco, TX	At least 30% of qualified voters for office for which recall is sought
Columbia, MO	At least 30% of votes cast at the last regular election for office for which recall is sought; provided, there must be at least 200 signatures for each ward and 500 for Mayor
Knoxville, TN	At least 30% of votes cast at the last regular election for office for which recall is sought.
Stillwater, OK	At least 25% of votes cast in last general City election (Note: Councilmembers are all elected at-large)
Edmond, OK	At least 35% of registered voters at the time of the last election for the office being sought for recall; at least 10% must sign the affidavit submitted with the petition initially.
Lawton, OK	At least 20% of total number of votes for Governor in the last gubernatorial election in the City or Ward for which recall is sought. A written statement must be provided with the petition before circulation that is signed by at least 100 registered voters of the City or Ward for which recall is sought.

Oklahoma City, OK	At least 35% of the qualified electors of the area for which the incumbent was elected as shown by County registration records at the time the petitions are filed with the Clerk.
Moore, OK	At least 35% of the registered qualified electors who voted in the last general municipal election.
Enid, OK	At least 30% of the votes cast at the last preceding election for the office for which recall is sought.

Utility Rates

The current CRC was asked to consider “adding language to Article XVI, Section 2 of the Charter requiring the City Council to consider a resolution calling for a vote of the electorate to increase utility rates under certain conditions, i.e. upon a finding of financial need after a review of the utility funds and their monetary sources by the Finance Director or upon the recommendation of an independent elected utilities board.” The purpose of this request was to ensure the City went to the voters for needed increases when dictated by financial need, rather than delaying the request, which often results in a larger rate increase. The CRC discussed a desire to create an expectation for annual utility elections while giving Council and Staff the flexibility to address the needs of each utility. Ultimately, the CRC recommended language that would require annual rate studies for each of the three utilities. The language would also require Council to submit a rate increase, presumably based on the rate study results, annually at the same election as the regular Council elections.

Council’s discussion regarding utility rates focused on examining ways to preserve the ability of voters to vote on more sizeable rate increases while allowing Council to adopt more modest increases as needed to ensure each utility is able to meet its needs on an annual basis. Previous CRC’s have discussed amending the Charter to empower Council to increase utility rates up to 3% annually without requiring a City-wide vote. Council requested information from other cities, namely Lawton, to determine what triggers for rate increases may have been adopted elsewhere.

The Council in Lawton adopted a resolution in 2002 giving policy direction to staff to consider the Consumer Price (CPI) Index in annually determining whether utility rates should be adjusted. The CPI represents changes in prices of all goods and services purchased for consumption by urban households. User fees, such as water and sewer service, as well as sales and excise taxes paid by the consumer are also included. (Source: U.S. Bureau of Labor Statistics). Indexes are available for major groups of consumer expenditures, like food and beverages, housing, transportation, etc., for items within each group and for special categories like services. One of these categories is water, sewer and trash collection services. From November 2020 to November 2021, the CPI for this category reflects an increase of 3.5 %.(Source: <https://www.bls.gov/news.release/cpi.t07.htm#cpipress7.f.4>). This particular index does not necessarily represent increases in costs for the operation of water, sewer and trash collection services; rather, it represents increases in what consumers are being charged for those services.

If the voters were to approve Charter language allowing Council to impose a maximum rate increase based on the CPI, rate increases adopted by Council would be limited by whatever the CPI is over a specified length of time. Any proposed increase greater than the CPI would still require voter approval.

Reapportionment

Article XX of the City of Norman's Charter sets out the reapportionment process. Currently, under Article XX a Reapportionment Ad Hoc Committee reviews and ensures that the wards are 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." 11 O.S. 20-101 requires that municipalities review wards and ward boundaries following the Census and change the boundaries or number of wards if necessary. Wards must be substantially equal in population. *Id.* When establishing ward boundaries, a municipality should try to avoid subdividing precincts established by a county election board. *Id.* New precinct boundaries are not established by each county election board until the State Legislature has completed the reapportionment process. Article V, Section 11A of the Oklahoma Constitution requires the Legislature to accomplish apportionment within ninety (90) legislative days after the convening of the first regular session of the Legislature following each Federal Decennial Census. The Oklahoma Constitution provides for the appointment of a Bipartisan Commission on Legislative Apportionment if the Legislature fails to act within the prescribed timeline. Under 11 O.S. 20-102, a change in the name, boundaries, or number of wards in a municipality may also be proposed at any time by: (1) a resolution of the municipal governing body; or (2) an initiative petition filed with the governing body of the municipality.

In 2013, the CRC suggested substantial restructuring of the reapportionment process. First, the CRC suggested that the standing Reapportionment Commission, which was made up of members with five year terms, be changed to the Reapportionment Ad Hoc Committee. The Reapportionment Ad Hoc Committee would be appointed and convened when: a) the City proposes to annex or de-annex property; b) during the last quarter of the calendar year prior to the release of the Census; or c) upon the unanimous recommendation of City Council. The CRC suggested striking the language requiring a mandatory meeting because the Reapportionment Commission members had concerns "that changing ward boundaries too frequently results in voter confusion." (2013 Art. XX Background Sheet). The 2013 Art. XX Background Sheet also cited concerns that a City Council initiated reapportionment could become political and was not necessary. The U.S. Supreme Court has stated that "[D]ecennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth." *Reynolds v. Sims*, 377 U.S. 533, 583 (1964).

Finally, the CRC suggested adjusting the deadlines for convening the Committee and providing a resolution to the City Council. The CRC suggested that in the case of proposed annexation or de-annexation, members of the Reapportionment Committee be appointed within ninety days of adoption of the proposal. Also, for purposes of reviewing the Census, the CRC suggested that members of the Reapportionment Committee be appointed six months prior to the Census year. Regarding the Committee's resolutions to retain or readjust the ward boundaries, the CRC

suggested that the Committee provide a resolution to City Council 180 days after the appointment of the Committee or after the issuance of the Census. This was an increase from the previous 90 day deadline. The CRC then suggested adding language to Section 5 allowing City Council to either “adopt the resolution without modification, reject the resolution, or adopt the resolution with such modification as the Council deems necessary.” The previous language only allowed council to either adopt or reject the resolution.

The City Council unanimously approved the 2013 CRC’s recommendations on July 17, 2014. Voters later adopted the language into the Charter. Because the 2014 language had not been tested yet, the 2019 CRC did not recommend any amendments.

Since the conclusion of the 2019 CRC’s consideration of this item, the City has had the opportunity to test the language from the 2014 amendments with the 2020 Census. The 2020 Census was delayed due to the COVID-19 pandemic, which certainly exaggerated some of the effects of the Charter timelines. In a typical year, the Census data would have been released by April 2021, and the Legislature likely, but not necessarily, would have completed the process by the end of the legislative session at the end of May 2021. After the Legislature completed the process in May or June (if a special session was necessary), the County Election Board would begin its process of adjusting precinct boundaries. The Committee, meanwhile, would have to have its work completed by October (6 months after the release of the data), regardless of whether the Election Board had completed its adjustment of the precinct boundaries.

It may be useful to look to other municipalities to see how reapportionment is approached elsewhere. In Oklahoma City, there is a mandatory duty imposed on Council to redistrict when the Census shows that the population in any ward is greater than any other ward. Redistricting must be completed within one year of receipt of the census (Oklahoma City Charter, Article XI, Section 1). The timing in the OKC approach provides some flexibility to wait for the State to complete its redistricting process and the County to draw new precinct boundaries.

Like Norman, Tulsa has had the opportunity to implement new Charter language with the latest Census. Tulsa requires that an Election District Commission be appointed no later than July 1, 2021 and every 10 years thereafter (Tulsa Charter, Article VI, Section 10.1). Federal law, under normal circumstances, requires that the Census data be released in April the year following the collection of the data. Appointments no later than July 1, 2021 avoids the Committee availability issue outlined above. The Election District Commission is required to adopt and file an Election District Plan within 6 months of appointment and after a public hearing. City Council does not vote on the Plan; it becomes effective 30 days after it is filed with the City Clerk provided no judicial challenges are filed. This does not address the issue of timing the redistricting such that new election precinct boundaries are known.

Lawton appoints a Redistricting Commission every 10 years, beginning on July 1st. Upon the receipt of the Census results every 10th year, the Commission is required to, within a reasonable time, convene and approve a resolution readjusting the wards and their boundaries. At least 10 days before the adoption of the resolution, the Commission is required to hold a public hearing.

Once adopted, the Commission files the resolution with the City Clerk and the new boundaries go into effect. (Lawton Charter, Article C-6-2).

Appointing the Reapportionment Ad Hoc Committee months prior to the issuance of the data that the Committee needs to review can create issues with Committee member availability and result in a Committee that wasn't appointed by current elected officials. Additionally, the timelines in the Charter don't take into consideration the process the Legislature goes through to apportion districts, which is then followed by the county election board's process of drawing precinct lines after the release of census data. As stated previously, State law requires cities to try to avoid subdividing precincts, and the Charter timelines for reapportionment potentially advances the City's process ahead of the State's process even in a normal year, meaning the Committee is asked to draw ward boundaries without knowing where the new precinct boundaries are located. Rather than setting timelines based on dates we expect the data to be released, the Legislature to finish its apportionment process, and the Election Board adjusts its precinct boundaries, it may be a better practice to set the City's timelines based on events, such as the release of Census data to the City, issuance of revised precinct boundaries, etc.

Staff will be available for further discussion at the Study Session on January 4, 2021.

Possible Charter Amendments

Additional Discussion


Council Study Session

January 4, 2022



Background



- Council voted whether to send each recommendation of the CRC to a vote of the people on August 3, 2021
 - Additional discussion was had on 4 topics on August 24, 2021
 - Term Expiration – consensus reached to send forward
 - Appointment Process – consensus reached to send forward clarifying language and look at an adopted policy or ordinance for appointment selection process
 - Recall of Elective Officers - more discussion needed
 - Utility Rates – more discussion needed
 - Since August, the City has tested out the 2014 Reapportionment Charter provisions
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Article XIII, Recall of Elective Officials


Section 2, Current Charter Language:

- Sufficient petition is one that contains signatures, names, addresses of 25% of the registered voters eligible to vote for the official

Section 2, **Revised** Recommendation:

- A petition bearing the signatures, names and addresses of twenty-five per cent (25%) of the registered voters qualified to vote for the officer whose recall is sought, shall be necessary to initiate recall proceedings. The City Clerk shall maintain on file and for public use proper petition forms that are in substantial conformance with the form provided in State law for referendum petitions to initiate such proceedings.


During the August 24, 2021 meeting, Council asked Staff to look at comparable cities to compare signature count requirements.



City/State	Number of Signatures	72,618 registered voters in Norman (city-wide) 13,068 votes cast in last Mayoral election
Norman, OK (current)	At least 25% of the registered voters for office for which recall is sought	18,154 signatures
Kansas (State law)	At least 40% of votes cast in the last general election for office for which recall is sought	5,227 signatures
Austin, TX	At least 10% of qualified voters for office for which recall is sought	7,261 signatures
College Station, TX	At least 40% of total number of votes cast at last general election for office for which recall is sought	5,227 signatures
Waco, TX	At least 30% of qualified voters for office for which recall is sought	21,785 signatures
Columbia, MO	At least 30% of votes cast at the last regular election for office for which recall is sought; provided, there must be at least 200 signatures for each ward and 500 for Mayor	3,920 signatures
Knoxville, TN	At least 30% of votes cast at the last regular election for office for which recall is sought.	3,920 signatures
Stillwater, OK	At least 25% of votes cast in last general City election (Note: Councilmembers are all elected at-large)	3,267 signatures
Edmond, OK	At least 35% of registered voters at the time of the last election for the office being sought for recall; at least 10% must sign the affidavit submitted with the petition initially.	25,416 signatures, 7,261 signatures on the affidavit
Lawton, OK	At least 20% of total number of votes for Governor in the last gubernatorial election in the City or Ward for which recall is sought. A written statement must be provided with the petition before circulation that is signed by at least 100 registered voters of the City or Ward for which recall is sought.	Estimated # of votes in Norman in 2018 Governor's election – 45,975 9,195 signatures required, 100 signatures prior to circulation
Oklahoma City	At least 35% of the qualified electors of the area for which the incumbent was elected as shown by County registration records at the time the petitions are filed with the Clerk	25,416 signatures
Moore, OK	At least 35% of the registered qualified electors who voted in the last general municipal election.	4,573 signatures
Enid, OK	At least 30% of the votes cast at the last preceding election for the office for which recall is sought.	3,920 signatures



Article XVI, Section 2 – Municipally Owned Utilities


- Current Charter Language
 - Any increase in utility rates within the City's control must be submitted to the voters for approval or rejection
 - CRC Recommendation
 - Staff to provide rate study of each utility annually
 - Council shall submit rate increase for one or more utilities (based on rate study) at next Council election
 - Special elections allowed for unexpected needs
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Article XVI, Section 2 – Municipally Owned Utilities


- CRC Recommendation

~~Precedent to an increase in utility rates within the control of the City of Norman, such increase proposal must be submitted to the legal voters of the City for their approval or rejection at the next regular general election, or at a special election which might be called for said purpose. On an annual basis, Staff shall prepare and submit to the City Council a rate study for each of its utilities. Upon receipt of such rate studies, Council shall submit a rate increase for one or more of the utilities to the voters at the next election at which ward representatives or the Mayor will appear on the ballot. Should an unexpected need for an additional rate increase for any utility arise prior to the regular election on which such an increase would normally be scheduled as provided herein, then a special election may be called for such purpose. This section is self-executing and shall supersede all provisions in conflict therewith; legislation may be enacted to facilitate its operations but no ordinance shall limit or restrict the provisions thereof.~~






Article XVI, Section 2 – Municipally Owned Utilities

- Council expressed interest in exploring possibility of submitting a question to the voters that would allow Council to adopt modest increases, while preserving the right of the voters to vote for larger increases
 - 2013 CRC recommended language allowing Council to adopt annual rate increases up to 3% without a vote of the residents of Norman.
 - Some utilities use CPI
 - CPI represents changes in prices purchased by urban households, including user fees
 - Not necessarily representative of increases in operational costs
 - CPI for Water, Sewer and Trash Collection Services (Nov. 2020 – Nov. 2021) – 3.5%
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Article XX – Reapportionment

- Prior to 2014, there was a standing Reapportionment Commission that reviewed population data annually to determine whether wards should be adjusted.
 - After concerns were expressed about changing ward boundaries too often, the 2013 CRC recommended, and the voters approved in 2014, Charter amendments that created a Reapportionment Ad Hoc Committee that would be appointed in anticipation of the census.
 - The 2019 CRC did not recommend any changes to Article XX of the Charter because the new language had not been tested yet.
 - In practice, the language sets up timelines that may put the City's process of reapportionment ahead of the County's implementation of new precinct boundaries.
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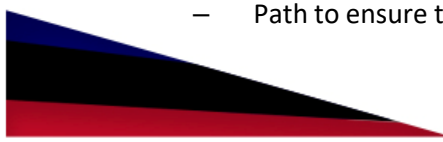
Article XX – Reapportionment

State Law

- Municipalities must review wards and ward boundaries following the Census and change the boundaries or number of wards if necessary. (11 O.S. 20-101)
 - When establishing ward boundaries, municipalities should try to avoid subdividing precincts established by the County election board. (11 O.S. 20-101)
 - State Timelines :
 1. The Legislature must accomplish apportionment within 90 legislative days after the start of the first regular session of the Legislature following the Census.
 2. Then, the County Commissioners must review their district boundaries and adjust if needed to equalize the population.
 3. Then, the County Election Board revises the precinct boundaries and makes the GIS data available. (Some lead time to build the GIS data and implement new boundaries)
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Article XX – Reapportionment Charter Provisions

- Reappointment Ad Hoc Committee shall meet to review and make recommendations on ward boundaries during the last quarter of the year prior to the release of the Census and continuing through the release of the final Census (Committee appointed 6 months prior to the year of the issuance of the Census)
 - 2020 – Census data is collected
 - April 2021 – Federal deadline for data to be disseminated (2020 Census data wasn't actually disseminated until August 2021)
 - County Election Board would typically be done by end of 2021, but due to the delays in the data, the new precincts will be officially released and implemented after the April 2022 elections.
 - Primary issues:
 - There is nothing for the Committee to review until the data is disseminated; Committee must complete its work no later than 180 days after release of the Census.
 - This potentially puts the City's process ahead of the State's – how can we try to avoid splitting precincts if the Committee does its work prior to the Election Board?
 - Suggestion:
 - Appoint the Committee within 60 days of release of Census data
 - Tie Committee deadline to Election Board precincts
 - Path to ensure the new precincts can be considered before we adopt new boundaries based on 2020 data
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Article XIII. Recall of Elective Officers

Background

For the first time in the City's history according to Staff research, multiple recall petitions were filed last summer against several Councilmembers and the Mayor. Although Article XIII, Recall of Elective Officers, has been in Norman's Charter for many years, these provisions hadn't really been tested. Now having utilized the provisions in the Charter in an actual recall scenario, Staff identified several things that could be changed to make the process clearer and better. Council amended the CRC's Resolution in November 2020 to add this section to the list of items they wanted the CRC to consider.

Residents do not have a right to recall their City elected officials by statute; rather, only a City's Charter can grant such a right. When dealing with a matter of local concern, courts typically give deference to cities. The City's provisions for recall are summarized below:

Section 1: An elected official is not eligible to be recalled until 6 months from the date of taking office.

Section 2: A petition for recall must contain signatures, names and addresses of 25% of the registered voters qualified to vote for the official proposed to be recalled.

The City Clerk provides the petition and circulators must return it to her within 30 days, not counting Sundays and legal holidays.

Separate petitions for separate elected officials

The top of each page of the petition must provide the reasons for recall.

The City Clerk has 30 days to review petitions and determine whether the signatures are valid and are those of registered voters eligible to vote for the official proposed to be recalled.

Section 3: City Clerk must publish a notice in the newspaper stating the name of the officer(s) whose recall is sought and the time limit for signing the petition. Notice is also mailed to the elected officer(s).

City Clerk must open her office during regular office hours or face possible prosecution.

Section 4: Once a petition is determined to have a sufficient number of signatures, the petition(s) must be presented to City Council, who shall call a recall election.

The only question on the ballot shall be the recall of the officer(s) affected.

In order to be successful, the total number of votes in favor of the recall must be a majority of the votes cast on the issue AND equal a majority of the votes cast in the most previous election for the office in question.

Section 5: Once an official is recalled, a vacancy is declared and filling for the unexpired term of the recalled officer(s). Council shall set filing dates for said election to commence 10 days after the date of the recall vote and lasting until 5 pm on the 11th day after the recall vote. The election to fill the vacancy shall be conducted in accordance with state election laws.

Section 6: Once an official is removed by recall, or if he/she resigned while recall proceedings were pending, the official cannot be appointed to any office within one year after such removal or resignation.

There are number of issues Staff identified for improvement while going through the recent recall process:

1. The petition form should be improved to provide more data points that will assist in matching voter signatures to voter registrations.
2. Thirty days is not enough time for the Clerk to review multiple petitions at the same time, and is likely not sufficient for a recall petition for the office of Mayor, simply because the signature threshold is much higher.
3. Elsewhere in the Charter, 5 votes are required for Council to take action. There should be a limit to the number of officials that can be recalled at one time. If 5 were to be recalled, there would not be enough officials left to call an election to replace the recalled officials.
4. Section 4 could be clarified that the question of recall should be the only *City* question on the ballot. In odd-numbered years in particular, election dates are already very limited by State law. An additional concern is the ability of Councilmembers who are the subject of recall to avoid recall simply by calling elections for other municipal issues on available dates.
5. The timing for declaring a vacancy and setting a filing period should be revised to match more closely to state law and to address the issue of whether an election is needed if the recall election occurs too closely to the regular election or the end of the term for the same seat. For example, in the most recent experience, odd-numbered ward representatives were already scheduled for the regular municipal election in February. If the recall election had been set on March 2, 2021 (the next available date and the only available date in March), then the election to fill the vacancy under state law could not have occurred until May 11, 2021 for a term that ends on July 6, 2021. If more than two candidates ran and no one garnered a majority of the vote, the earliest possible date for a runoff election would have been on July 13, 2021, after the term for which the official was being elected had expired.

While in the middle of a multiple day hearing of petition sufficiency in one of the local recall petitions on January 26, 2021, the Oklahoma Supreme Court issued its opinion in *In re: Petition to Recall Ward Three City Comm'r Ezzell*, 2021 OK 5. In the *Ezzell* case, the Supreme Court considered the extent to which other state statutory provisions may be applicable to local recall processes. The Court ultimately held that the same general procedure that applies to initiative and referendum should also control municipal recall elections.

State law related to initiative and referendum petitions are found in Title 34 of the Oklahoma Statutes. 34 O.S. §§1 and 2 sets forth the form for referendum and initiative petitions respectively. The form recently changed, effective November 1, 2020, to include more data points to assist with matching names on the petition with names in the voter registration database. The Charter currently doesn't set forth the form of the petition; it simply states that the petition form will be provided by the City Clerk. The form has already been updated to follow as closely as possible the referendum petition form provided by state statute because one of our goals was to include more data points to assist with matching signatures. The forms are put together in a pamphlet and include a warning related to fraudulent signatures, the gist of the proposition on the signature page, and an affidavit to be signed by each petition's circulator, all as required for initiative and referendum petitions under 34 O.S. §§3, 6. A copy of the form is attached for your reference.

34 O.S. §6.1 sets forth signatures that must be excluded from the total count by the Secretary of State when making a verification and count of the number of signatures on initiative and referendum petitions. Excluded signatures include:

1. All signatures on any sheet of any petition not verified by the circulator
2. All signatures of nonresidents
3. All signatures on a sheet that is not attached to a copy of the petition pamphlet
4. All multiple signatures on any printed signature line
5. All signatures not a printed signature line
6. Those signatures by a person who signs with any name other than his or her own, or signs more than once
7. All signatures of any sheet on which a notary has failed to sign, the seal of the notary is absent, the commission of the notary has expired or the expiration date is not on the signature sheet
8. Any signatures that cannot be verified by the Secretary of State with the Oklahoma State Election Board's public voter registration records. (Remember, the proscribed form states that at least 3 data points must be matched).

34 O.S. §17 requires publication of initiative and referendum measures not less than 5 business days before any election is held on such a measure, a copy of the ballot and an explanation of how to vote for or against the measure. This would be a simple requirement to implement for a recall petition. It would simply read: "On _____, 2021, voters of Ward ____/Norman will have an opportunity to vote on the following question: Should Councilmember/Mayor _____ be recalled? A yes vote means you would like he/she to be recalled and no longer serve in office and a no vote means you would like he/she to retain his/her office."

Areas of the Charter to Consider for Modification

Section 1 – Time of commencing proceedings

None

Section 2 – Filing of Petition; Validation of Signatures

Should we continue to require a statement of the reasons for which recall is sought at the top of each page of the petition?

Consider adding language that the petition provided by the Clerk shall be substantially similar to the form provided by State law for initiative and referendum petitions

Should the 30-day time period within which to return the petition be changed and/or should it continue to exclude Sundays and legal holidays?

The City's Clerk's inspection is required to be done in 30 days and makes no exclusions. Should more time be given if multiple petitions or for Mayoral recall? The Secretary of State's administrative rules for counting signatures includes the following process:

- Notify the proponent(s) of the specific date, time and location for the signature count
- Secretary of State trains counters
- Proponent(s) can provide an observer for the counting process
- Physical Count:
 - o Petitions are detached from signature sheets
 - o A physical count of the signatures is done
 - o Signature sheets are consecutively numbered
 - o Signature sheets and one (1) printed copy of the petition are bound in consecutively numbered volumes, which include a cover sheet showing the volume number, purported number of signature sheets, the series of numbers assigned to the signature sheets and the total number of signatures counted for that volume

NOTE: In this recent process, it appeared that we didn't receive the same information that the State is given as the database was much more tedious to search and in the format provided, only one person could use it at a time.

Clarify the information used to validate signatures to align with the data points in the new form, and with 34 O.S. §6.1 above.

Section 3 – Notice and publication

Consider adding a requirement to publish notice as set out above in line with 34 O.S. §17.

Section 4 – Calling election; votes required for recall

Consider clarifying that it must be the only City issue on the ballot

Consider limiting the number of officers that may be recalled at any one time (never more than 4) to avoid quorum issues

Consider ways to avoid a situation where Council can call elections on other issues to avoid a recall election

Section 5 – Election to fill vacancy created by recall

Update time frames to coincide with state law.

Consider whether language could be added to avoid a situation where the recall election and/or the election to fill the vacancy occurs after the recalled official's term would've ended anyway.

Section 6- Reappointment prohibited after removal.

None

The CRC discussed these issues at length at its meeting of April 19, 2021 and asked Staff to draft language that was responsive to the discussion. Changes to each section as discussed by the CRC is provided below, along with a summary of the discussion. The language below was adopted during its May 2021 meeting.

Recommended Language:

Section 1. - Time of commencing proceedings.

[The CRC discussed whether the limit on recall proceedings during the first 6 months of service is reasonable, and whether allowing a Councilmember to be recalled later in the term, when an election for the next term is already scheduled is prudent. Staff was directed to draft language that would allow an elected official to be removed via recall at any time after six months from the date of accession to six months prior to the end of the term, thus avoiding a potential situation where recall and regular municipal elections for the same office are happening in back to back months.]

The holder of any elective office, either by election or appointment to fill a vacancy, may be removed at any time during the time period beginning after six months from the date of his accession to said office and ending six months prior to the expiration of the current term of the elected official so subject to recall, by the registered voters qualified to vote for a successor to such incumbent, in the following manner:

Section 2. - Filing of petition; validation of signatures.

[The CRC expressed support for incorporating a reference to State law for petition form in response to the *Ezzell* case mentioned previously. Some members of the CRC expressed reservations about requiring a reason for recall on each petition; however, to the extent the *Ezzell* case requires that we follow state law as closely as possible, it would appear a gist of some kind would be required on each petition page. Some members expressed concern that the sufficiency of the gist could become a point of contention and result in otherwise valid petitions being thrown out, similar to initiative and referendum petitions. Staff has attempted to draft language that would comply with State law but provide a more standardized gist, particularly since the “gist” of a recall petition is less nuanced than many subjects of initiative and referendum petitions. The CRC also discussed whether 30 days is sufficient for the clerk to review petitions, particularly when multiple petitions are filed. While members recognized the need to review petitions expeditiously, they also recognized the challenge multiple petitions present in terms of time to review. It was suggested that Staff draft language that would allow no more than 30 days to review one petition for a ward representative, no more than 60 days to review a petition for the Mayor (simply because the signature threshold is much higher), and 90 days if multiple petitions were received. Because of the concerns expressed during the discussion about Section 1 related to potential recall elections occurring back to back with regular municipal elections for the same office, Staff was asked to run through several timing scenarios. A table is attached looking at a few different scenarios.]

A petition bearing the signatures, names and addresses of twenty-five per cent (25%) of the registered voters qualified to vote for the officer whose recall is sought, shall be necessary to initiate recall proceedings. The City Clerk shall maintain on file and for public use proper petition forms that are in substantial conformance with the form provided in State law for referendum petitions to initiate such proceedings.

At the top of each page of said petition(s) there shall be a ~~short-simple~~ statement of the ~~reasons for which recall is being sought.~~ gist of the recall proposition: “If successful, this petition will allow the voters to decide whether to recall [insert elected officer] prior to the expiration of his/her term, or allow he/she to continue to serve in office.”

The petition must be returned to the City Clerk within thirty (30) days, Sundays and legal holidays excepted, of its initiation in order to be valid. Failure to return the petition(s) within the proper time limits shall render them null and void.

Upon receipt of the petition(s), the City Clerk shall inspect said petition(s) to see that all the signatures are valid and that they are those of registered voters eligible to vote for the office from which the officer's removal is sought. Such inspection by the City Clerk shall be completed in a reasonable amount of time, not to exceed ~~not more than~~ thirty (30) days for one petition to recall a ward representative, sixty (60) days for a petition to recall the Mayor, and ninety (90) days if multiple petitions are undergoing inspection concurrently.

Recall Petition Timing Scenarios

Date Signed Petition Submitted to Clerk	Ward or Mayor	Minimum Number of Signatures Required	30 day review	60 day review	90 day review
August 14, 2020*	Ward 3	2,573	September 14, 2020	October 14, 2020	November 13, 2020
August 14, 2020*	Mayor	18,154	September 14, 2020	October 14, 2020	November 13, 2020
January 6, 2021**	Odd # Ward	2,100 (avg.)	February 5, 2021	March 7, 2021	April 6, 2021
February 7, 2021***	Even # Ward	2,400 (avg.)	March 9, 2021	April 8, 2021	May 8, 2021

* Actual petitions received in 2020.

** If a petition were filed 6 months prior to end of term.

*** First opportunity to file petition for new Councilmembers sworn in on July 7, 2020.

Available Election Dates	Filing Date Options	Notice to Election Board
November 3, 2020	8/24/20 – 8/26/20 8/31/20 – 9/2/20	August 19, 2020 (75 days because of State election)
February 9, 2021	12/14/20 – 12/16/20	December 10, 2020
April 6, 2021	2/8/21 – 2/10/21 2/15/21 – 2/17/21	February 4, 2021
September 14, 2021	7/19/21 – 7/21/21	July 15, 2021
November 9, 2021	9/13/21 – 9/15/21 9/20/21 – 9/22/21	September 9, 2021

Section 3. – Notice and publication.

[CRC members reviewed the current notice requirements in the Charter as well as notice requirements in 34 O.S. §17, which is arguably implicated in the *Ezzell* decision. Staff was asked to draft language that would reference state statute rather than mimic the statutory language to ensure the Charter provision doesn't have to be amended every time State law changes.]

The City Clerk shall cause to be published upon the filing of the said petition with the City Clerk's office, in some newspaper of general circulation in the City of Norman a notice to the voters, stating the name of the officer(s) whose recall is sought and the time limit within which said petition(s) must be signed. Further, the City Clerk shall cause to be mailed to the officer(s) whose recall is sought an official notice that the petition has been commenced and the time limit in which it must be completed. Such notice shall be by certified mail, return receipt requested, and the refusal of the officer(s) to accept delivery shall in no way affect the validity of the notice. Failure of the City Clerk to keep the City Clerk's office open during regular office hours, which failure prevents the proper filing of said petition(s), shall be adjudged a misdemeanor and upon conviction thereof the Clerk shall be punished by a fine of not less than ten dollars and not more than fifty dollars, and each day said City Clerk violates the provisions hereof shall constitute a separate and distinct offense. In the event such a failure on the part of the City Clerk occurs, petitioners may file the petition(s) with the City Manager.

In addition to publishing notice upon receipt of a petition, the City Clerk shall also publish notice in advance of any recall election in accordance with Title 34, Section 17 of the Oklahoma Statutes.

Section 4. – Calling election; votes required for recall.

[The CRC discussed the practical limits to scheduling an election where the question of recall is the only question on the ballot. There was consensus to remove this language. Additionally, the challenge posed by the potential for a successful recall election of 5 of the 9 Councilmembers was discussed. Article XI, Section 1 of the Charter requires the affirmative vote of five (5) members to adopt any motion, resolution or ordinance, or pass any measure, meaning a successful recall of five Councilmembers would result in an insufficient number of Councilmembers to take any action at all, including calling an election to replace the recalled Councilmembers. The CRC asked Staff to draft language that would provide for an exception to Article XI, Section 1 if more than four Councilmembers are recalled.]

Upon determination by the City Clerk that the petition(s) bear the signatures of the requisite number of registered voters, said petition(s) shall be presented by the City Clerk to the City Council which body shall, in accordance with state election laws, call a recall election.

~~The sole question in said election shall be the recall of the officer(s) affected.~~ The recall shall be adopted when the total number of votes in favor of the recall is a majority of all the votes cast on the issue and that majority equals a majority of all the votes cast in the most recent previous election for the particular office in question. Should more than four Councilmembers be recalled in the same recall election, then an affirmative vote of a majority of the remaining seated

Councilmembers shall be sufficient to take any action until the vacancies resulting from the recall are filled as set forth herein.

Section 5. – Election to fill vacancy created by recall.

In the event the recall is adopted, a vacancy shall be declared and an election shall be called for the next available election date in accordance with state election laws. ~~it shall be filled in the following manner for the unexpired term of the recalled officer(s): the City Council shall set filing for an election to fill the vacancy to commence ten (10) days after the date of the recall vote and last until 5:00 p.m. of the eleventh (11th) day after the recall election.~~ Qualification to be a candidate shall be as for a regular election as set out in Article II. ~~The election to fill the vacancy created by the recall shall be set in accordance with state election laws.~~ Election shall be by a plurality of the votes cast and shall be certified in the regular manner.

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.

*

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 there 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

CHARTER REVIEW COMMISSION MINUTES

May 17, 2021

The Charter Review Commission met at 5:41 p.m. in a virtual meeting in the Municipal Building Council Chambers on the 17th day of May, 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:

Mr. Trey Bates
Mr. Doug Cubberley, Vice-Chairman
Mr. Jim Eller
Mr. Tom Hackelman
Mr. Kenneth McBride
Mr. Richard Stawicki
Mr. Bryan Vinyard
Ms. Shon Williamson-Jennings
Mr. Bob Thompson, Chairman

ABSENT:

Ms. Aisha Ali
Ms. Carol Dillingham
Mr. Jim Griffith
Mr. Greg Jungman
Mr. Kevin Pipes

STAFF PRESENT:

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

Item 2 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 for the first time in the City's history, multiple recall petitions were filed last summer against several Councilmember and the Mayor. Although Article XIII, Recall of Elective Officers, has been in the Charter for many years, these provisions have not really been tested. Having utilized the provisions in the Charter in an actual recall scenario, Staff identified several things that could be changed to make the process clearer and better.

At the last Charter Review Commission (CRC) meeting, Commissioners discussed multiple items and whether or not to make recommendations to Council.

Item 2, continued:

Ms. Walker Highlighted items discussed with input from the CRC as follows:

Section 1 – Time of commencing proceedings

The CRC discussed whether the limit on recall proceedings during the first six months of service is reasonable, and whether allowing a Councilmember to be recalled later in the term when an election for the next term is already scheduled is prudent. Staff was directed to draft language that would allow an elected official to be removed via recall at any time after six months from the date of accession to six months prior to the end of the term, thus avoiding a potential situation where recall and regular municipal election for the same office are happening in back to back months. She said Staff drafted the following amended language:

The holder of any elective office, either by election or appointment to fill a vacancy, may be removed at any time during the time period beginning after six months from the date of his accession to said office and ending six months prior to the expiration of the current term of the elected official so subject to recall by the registered voters qualified to vote for a successor to such incumbent.

Section 2. – Filing a petition; validation of signatures

The CRC expressed support for incorporating a reference in State law for the petition form that requires a gist of the reason for the recall at the top of each petition page. The CRC also discussed whether 30 days is sufficient for the City Clerk to review petitions, particularly when multiple petitions are filed. While Commissioners recognized the need to review petitions expeditiously, they also recognized the challenge multiple petitions present in terms of time to review. It was suggested Staff draft language that would allow no more than 30 days to review one petition for a ward representative, no more than 60 days to review a petition for the Mayor (simply because the signature threshold is much higher), and 90 days if multiple petitions were received. Because of the concerns expressed during the discussion about Section 1 related to potential recall elections occurring back to back with regular municipal elections for the same office, Staff was asked to run through several timing scenarios. Staff drafted amended language as follows:

A petition bearing the signatures, names, and addresses of twenty-five percent (25%) of the registered voters qualified to vote for the officer whose recall is sought, shall be necessary to initiate recall proceedings. The City Clerk shall maintain on file for public use proper petition forms that are in substantial conformance with the form provided in State law for referendum petitions to initiate such proceedings.

At the top of each page of said petition(s) there shall be a ~~short~~ simple statement of the ~~reasons for which recall is being sought~~ gist of the recall proposition: “If successful, this petition will allow the voters to decide whether to recall (insert elected officer) prior to the expiration of his/her term, or allow he/she to continue to serve in office.”

Item 2, continued:

Section 2. – Filing a petition; validation of signatures, continued:

The petition must be returned to the City Clerk within thirty (30) days, Sundays and legal holidays excepted, of its situation in order to be valid. Failure to return the petition(s) within the proper time limits shall render them null and void.

Upon receipt of the petition(s), the City Clerk shall inspect said petition(s) to see that all the signatures are valid and that they are registered voters for the office from which the officer's removal is sought. Such inspection by the City Clerk shall be completed in a reasonable amount of time, not to exceed ~~not more than~~ thirty days for one petition to recall a ward representative, sixty (60) days for a petition to recall the Mayor, and ninety (90) days if multiple petitions are undergoing inspection concurrently.

Section 3. – Notice and publication

The CRC reviewed the current notice requirements in the Charter as well as notice requirements in State law (34 O.S. § 17). Staff was asked to draft language that would reference State Statute rather than mimic the statutory language to ensure the Charter provision does not have to be amended every time State law changes.

The City Clerk shall cause to be published upon the filing of the said petition with the City Clerk's Office, in some newspaper of general circulation in the City of Norman a notice to voters, stating the name of the officer(s) whose recall is sought and the time limit within which said petition(s) must be signed. Staff drafted language as follows:

In addition to publishing notice of a petition, the City Clerk shall also publish notice in advance of any recall election in accordance with Title 34, Section 17, of the Oklahoma Statutes.

Section 4. – Calling election; votes required for recall

The CRC discussed the practical limits to scheduling an election where the question of recall is the only question on the ballot and there was consensus to remove this language. Additionally, the challenge posed by the potential for a successful recall election of five of the nine Councilmembers was discussed. Ms. Walker said Article XI, Section 1, of the Charter requires the affirmative vote of five members to adopt any motion, resolution, or ordinance, or pass any measure, meaning a successful recall of five Councilmembers would result in an insufficient number of Councilmembers to take any action at all, including calling an election to replace the recalled Councilmember. The CRC asked Staff to draft language that would provide for an exception if more than four Councilmembers are recalled at the same time so Staff prepared the following amended language:

Item 2, continued:

Section 4. – Calling election: votes required for recall, continued:

~~The sole question in said election shall be the recall of the officer(s) affected. The recall shall be adopted when the total number of votes in favor of the recall is a majority of all the votes cast on the issue and that majority equals a majority of all the votes cast in the most recent previous election for the particular office in question. Should more than four Councilmembers be recalled in the same recall election, then an affirmative vote of a majority of the remaining seated Councilmembers shall be sufficient to take action until the vacancies resulting from the recall are filed as set forth herein.~~

Section 5. – Election to fill vacancy created by recall

The CRC asked Staff to draft amended Charter language, which is as follows:

~~In the event the recall is adopted, a vacancy shall be declared and an election shall be called for the next available election date in accordance with state election laws it shall be filled in the following manner for the unexpired term of the recalled officers(s); the City Council shall set filing for an election to fill the vacancy to commence ten (10) days after the date of the recall vote and last until 5:00 p.m. of the eleventh (11th) day after the recall election. Qualification to be a candidate shall be as for a regular election as set out in Article II. The election to fill the vacancy created by the recall shall be set in accordance with state election laws. Election shall be by a plurality of the votes cast and shall be certified in the regular manner.~~

Section 6. – Reappointment prohibited after removal.

The CRC made no recommendation prohibiting Councilmembers from serving in office for one year after being recalled or resigning while recall proceedings are pending.

Commissioner Bates asked if the petition review timelines work as far as election dates and Ms. Walker said the 90-day review is where it becomes difficult working with dates the State allows elections to take place. Commissioner Eller asked if Ms. Hall could work with 60 days instead of 90 days and Ms. Hall said 60 days is reasonable as long as she is able to access the Cleveland County Election Board's database instead of a PDF document.

Items submitted for the record

1. Charter Review Commission – Article XIII. Recall of Elective Officers
2. Recall of Petition Timing Scenarios

Item 2, continued:

Commissioner Bates moved to amend language allowing up to sixty (60) days to review multiple petitions including Mayoral, which motion was duly seconded by Commissioner Hackelman;

Items submitted for the record

1. Charter Review Commission – Article XIII. Recall of Elective Officers
2. Recall Petition Timing Scenarios

and the question being upon recommending amending language to allow up to sixty (60) days to review multiple petition, including Mayoral, a vote was taken with the following result:

YEAS:	Commissioners Bates, Cubberley, Griffith, Jungman, Pipes, Stawicki, Vinyard, Williamson-Jennings, Chairman Thompson
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NAYES:	Commissioners Eller and McBride
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Chairman Thompson declared the motion carried and language was amended allowing up to sixty (60) days to review multiple petitions, including Mayoral.

Thereupon, Vice-Chairman Cubberley moved that amended language for votes required to recall mirror Article II, Section 1, of the State Statutes, be approved which motion was duly seconded by Commissioner Stawicki; and the question being upon approving the amended language for votes required for recall to mirror Article II, Section 1, of the State Statutes, a vote was taken with the following result:

YEAS:	Commissioners Bates, Cubberley, Eller, Hackelman, McBride, Stawicki, Vinyard, Williamson-Jennings, Chairman Thompson
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NAYES:	None
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Chairman Thompson declared the motion carried and amended language for votes required for recall language to mirror Article II, Section 1, of the State Statutes was approved.

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Article XVI. Municipally Owned Utilities.

Background

Article XVI, Section 2 of the City's Charter requires any increase in utility rates within the control of the City of Norman to be submitted to the legal voters of the City for their approval or rejection. This section was added to the Charter in the 1970's after Council adopted a utility rate to cover the cost of additional officers.

This Section has been considered on multiple occasions by prior CRC's. The 2005 CRC studied this provision and recommended that it be changed to authorize increases in utility rates of up to 3% per year without requiring an election. Under the 2005 CRC proposal, any increase greater than 3% would require voter approval. The City Council did not move this proposal forward for voter consideration at that time. In Resolution No. R-1112-109, the CRC was asked to "Review Article XVI, Section 2 to consider whether City Council should be empowered to increase utility rates not more than three percent (3%) annually without requiring a city wide vote." After extensive discussion, the CRC responded with a recommendation that Section 2 be stricken altogether. The minutes from those meetings are attached. Council ultimately disagreed and no amendments to this Section were submitted to the voters.

Section 5(j) of Resolution R-1819-66 (as amended) asks the current CRC to consider "adding language to Article XVI, Section 2 of the Charter requiring the City Council to consider a resolution calling for a vote of the electorate to increase City utility rates under certain conditions, i.e. upon a finding of financial need after a review of the utility funds and their monetary sources by the Finance Director or upon the recommendation of an independent elected utilities board." The language was suggested by then Councilmember Castleberry, as a way to ensure the City went to the voters for needed increases when dictated by financial need.

Ken Komiske, Director of Utilities, attended the August 2020 CRC meeting and provided historic information about how often and how much the City increases utility rates, particularly as compared to other cities without such a Charter provision. The CRC requested additional information relative to methodology in other cities, frequency of rate increases, and whether entities other than City Councils were empowered to implement rate increases. This information is provided below. A member proposed consideration of requiring a vote on one alternating utility rate every year to remove it from considerations related to Councilmember elections and to ensure a regular rate increase.

CRC further discussed this proposal at its September 2020 meeting and discussed a desire to create an expectation for annual utility elections while giving Council and Staff the flexibility to address the needs of each utility. The CRC voted to adopt the language set forth below unanimously.

Adopted Language:

Section 2. -

Precedent to an increase in utility rates within the control of the City of Norman, such increase proposal must be submitted to the legal voters of the City for their approval or rejection at the next regular general election, or at a special election which might be called for said purpose. On an annual basis, Staff shall prepare and submit to the City Council a rate study for each of its utilities.

Upon receipt of such rate studies, Council shall submit a rate increase for one or more of the utilities to the voters at the next election at which ward representatives or the Mayor will appear on the ballot. Should an unexpected need for an additional rate increase for any utility arise prior to the regular election on which such an increase would normally be scheduled as provided herein, then a special election may be called for such purpose. This section is self-executing and shall supersede all provisions in conflict therewith; legislation may be enacted to facilitate its operations but no ordinance shall limit or restrict the provisions thereof.

Item 4, continued:

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

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

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Item 5, being:

DISCUSSION REGARDING ARTICLE XVI, SECTION 2, OF THE CHARTER REQUIRING THE CITY COUNCIL TO CONSIDER A RESOLUTION CALLING FOR A VOTE OF ELECTORATE TO INCREASE CITY UTILITY RATES UNDER CERTAIN CIRCUMSTANCES, I.E., UPON A FINDING OF FINANCIAL NEED AFTER A REVIEW OF THE UTILITY FUNDS AND THEIR MONETARY SOURCES BY THE FINANCE DIRECTOR OR UPON THE RECOMMENDATION OF AN INDEPENDENT ELECTED UTILITIES BOARD.

Chairman Thompson introduced Mr. Ken Komiske, Director of Utilities, who will be making a presentation on Enterprise Funds and the need for a utility rate increase.

Mr. Komiske said Enterprise Funds are operated in a manner similar to private business enterprises, where the intent of the City is that the costs of providing goods or services to the general public is financed or recovered primarily through user charges. He said Enterprise Funds includes water, sanitation, and water reclamation.

Water Fund

Mr. Komiske said in May 1999, an inverted block rate was approved by voters that consisted of a higher rate structure for the highest users to encourage conservation; in March 2006, voters approved a water rate increase; in August 2010, voters denied a water rate increase; and in January 2015, voters approved a water rate increase at current levels to fund Water Treatment Plant (WTP) improvements and obtain 2 million gallons per day (MGD) of additional groundwater supply. He said a water rate increase will be desperately needed in FYE 21 to fund upcoming projects. He said the last increase in January 2015, and passed by a significant amount of voters. He said utilities are capital intensive and rate increases are not just for providing water to customers. He said the City really needs to have a rate increase every three years instead of waiting six to ten years. He said most cities change their utility rates annually or bi-annually.

Item 5, continued:

Water Fund, continued:

He highlighted water rates in comparable cities and said Norman has lower than average water rates than Lawrence, Kansas; Lubbock, Texas; Denton, Texas; Tulsa, Oklahoma; Broken Arrow, Oklahoma; Stillwater, Oklahoma; Bartlesville, Oklahoma; Lawton, Oklahoma; Oklahoma City, Oklahoma; Enid, Oklahoma; Edmond, Oklahoma; and Moore, Oklahoma.

Mr. Komiske said when the City waits five or more years before asking the public for an increase, Norman's water rate dramatically increases; however, if Norman could increase rates every three years, that increase would not look as dramatic. He said in 2021, the City will need an additional \$4 million from residential customers and this causes rate shock to customers. He said educating the public and letting them know exactly why a rate increase is needed and what the money will be spent on is very important in obtaining voter approval. He said if the City had been able to increase rates on a slow scale over the past six years, the City could have collected \$13 million and if the City had collected that revenue, the City would not need \$4 million now.

The City will have to meet a requirement of the Department of Environmental Quality (DEQ) to blend wells and if the City cannot do that, the City will have to chlorinate each of its 40 wells, which is a \$14 million project. Mr. Komiske said even if the City bonds that project, which it will, the City would still need \$1.7 million annually from customers to meet the mandated requirement.

Sanitation Fund

Mr. Komiske said in May 2004, voters approved a sanitation rate increase; in May 2007, voters approved curbside recycling; in August 2010, voters denied a sanitation rate increase; and in March 2011, voters approved a sanitation increase. He highlighted sanitation rates in comparable cities and said Norman has lower than average sanitation rates than Lawrence, Kansas; Lubbock, Texas; Denton, Texas; Stillwater, Oklahoma; Ponca City, Oklahoma; Lawton, Oklahoma; and Oklahoma City, Oklahoma.

Water Reclamation Fund

Mr. Komiske said in August 2001, voters approved a \$5 Sewer Maintenance Fee exclusive to maintenance; in August 2021, voters approved an Excise Tax for sewer connections; in June 2003, voters approved sewer funding for a Northside Wastewater Treatment Plant (WWTP) and a sewer rate for sludge handling; and in November 2013, voters approved a sewer rate increase. He highlighted water reclamation rates in comparable cities and said Norman has lower than average water reclamation rates than Lawrence, Kansas; Lubbock, Texas; Denton, Texas; Tulsa, Oklahoma; Ponca City, Oklahoma; Ardmore, Oklahoma; Broken Arrow, Oklahoma; Stillwater, Oklahoma; Bartlesville, Oklahoma; Oklahoma City, Oklahoma; Enid, Oklahoma; Edmond, Oklahoma; Moore, Oklahoma; and Midwest City, Oklahoma.

Item 5, continued:

Mr. Komiske said it costs approximately \$2.5 million per year to replace sewer lines, which is what the \$5 Sewer Maintenance Fee is used for as well as maintaining existing lines.

The City of Norman has the lower total utility rates than Lawrence, Kansas; Lubbock, Texas; Denton, Texas; Tulsa, Oklahoma; Ponca City, Oklahoma; Ardmore, Oklahoma; Broken Arrow, Oklahoma; Stillwater, Oklahoma; Bartlesville, Oklahoma; Lawton, Oklahoma; Oklahoma City, Oklahoma; Enid, Oklahoma; Edmond, Oklahoma; Moore, Oklahoma; and Midwest City, Oklahoma.

Commission Discussion

Commissioner Griffith said even before he served on Council, Norman's utilities crisis has always been an issue for him and one of the reasons he wanted to be on the CRC is to address this and do something positive. He said on an annual basis, what kind of percentage would be needed to raise rates incrementally as costs go up to minimize the sticker shock of unfunded mandates. Mr. Komiske said 4% per year over the last six years would have provided \$14 million, which is more money than the City would need at this point so 2 1/2% to 3% would be a good percentage. Commissioner Griffith said he was thinking 3% would be a good number to recommend to Council so Staff could deal with the cost of doing business and if another mandate comes from DEQ, that could go to a vote of the people as an unexpected expense.

Commissioner Dillingham said the last CRC wanted Council to address this issue with some type of parameter by which Council can raise the rates within a percentage based upon factors proven to Council. She said it is a real problem to get Council to pull the trigger to vote on this Charter change, but it needs to happen. She is so impressed with Mr. Komiske's ability to do his job year after year under these conditions and this needs to be the Commission that really goes after this change because it is too hard on Staff and too hard on citizens who do not really understand the issues.

Commissioner Pipes said, unfortunately, this issue has always been so political since it was restricted so many years ago and agrees it is time to get this done because Norman is the only City that requires a public vote to increase utility rates.

Commissioner Griffith said he would really like to see this happen because the City should not have to keep begging for money from the public just to keep providing essential services to the community. He said it is just common business sense to be able to minimally raise rates as costs to the City increase.

Commissioner Vinyard said if the CRC makes this recommendation and Council approves, will this money only be used for utility purposes and not be used in the General Fund for other purposes? Mr. Komiske said correct, Enterprise Funds are separate businesses and the funds cannot be mixed into any other funds. Commissioner Vinyard said that would be his only concern.

Item 5, continued:

Commissioner Williamson-Jennings said Mr. Komiske stated that other cities either annually or bi-annually increase utility rates incrementally so how do they do that? Is it within their Charter? Do they have a Utility Board? Mr. Komiske said some cities have a trustee board composed of a couple of Councilmembers and business leaders that review utility rates and make recommendations to Council for increases when needed. He said Oklahoma City raises their rates 2.8% to 4% every four years and send out mailers to customers letting them know what their new rates will be over the next four years.

Vice-Chairman Cumberley said Norman's problem is City Council because when the Mayor is up for election, he or she does not want the controversy of increasing utility rates during the campaign and Mayoral elections take place every three years. He said any recommendation to ask the public for the ability to increase rates without a vote of the people will never be approved by Council.

Commissioner Stawicki said before Enterprise Funds were created, Norman's City Council decided they needed money and raising utility rates was an easy way to obtain money so they basically doubled the cost of water resulting in the Charter requirement for a vote of the people to increase utility rates.

Commissioner Ali said she understands the public not wanting to give up the right to vote on utilities, but the City cannot afford to continue providing services with its current rates that may not change for several years. She said this needs to move forward for a Charter change, but is concerned about how that need can be communicated and stressed to Council in a way they will want to move forward with a Charter change.

Commissioner Dillingham said this is not a problem about whether or not the City should do this or not, it is the politics of this issue that is the problem. She said this needs to be a type of campaign with the voters to get the public to understand that voting for utilities is not something to be proud of, but is hurting the City and the public when services have to be cut or diminished.

Mr. Komiske said businesses should have a base meter charge that is higher than residential meters, but it is too cumbersome to explain all the nuances of that on a ballot. Commissioner Pipes said the length and clarity of ballot language is important and most people are not going to understand different rate structures and the complexities of those structures. He would support a recommendation for incremental rate increases with a capped method as well as a utilities board to make arguments to Council on the reasons for a rate increase.

Chairman Thompson said the community generally supports utility increases and, in his opinion, is cumbersome in regards to the operational side of the City, but in terms of overall benefits to the community it is actually superior.

Vice-Chairman Cumberley said the City should have a citizen board with a few Councilmembers and a majority of citizens to take that decision away from politicians. He said the task of deciding if a rate increase is warranted is up to the citizen board to make a recommendation to Council.

Item 5, continued:

Commissioner Stawicki said he tends to agree with Chairman Thompson.

Commissioner Ali said she would be more comfortable looking at comparable cities that have elected utility boards, what are some of the comparisons, what are the trends, etc. She is hesitant to remove the disconnect of the citizens by removing Councilmembers from deciding rate increases, but at the same time she feels there is some level of concern regarding the unknowns, i.e., State or Federal mandates, that could effect utilities. She said a utilities board makes sense, but disconnecting the electoral process is also worrisome.

Commissioner Vinyard said even if Norman creates a board with or without acting Councilmembers on the board someone has to nominate those people and within the community there is going to be perceived politics even in that action. He said the political equation will never go away in people's minds.

Commissioner McBride said Commissioner Ali makes a good point in reviewing comparable cities with utility boards appointed by City Council, but will discover that no other city requires a vote of the people in order to change their utility rates. He said there are probably good models to look at and to follow, but none will require a vote of the people. He said water quality is an extremely important issue and the amount of money it takes to maintain water quality is also extremely important. He believes the requirement for a vote of the people needs to be eliminated. While he is not prepared to suggest an alternative, he is prepared to say the City needs representatives that do what the people elect them to do.

Commissioner Bates said this issue has been discussed numerous times over the years, and there appears to be a lack of trust in elected officials to make good decisions as related to fiscal matters of the community, which they are trusted to do in almost every other way. He said previous City Council would not take this issue on when recommended by the CRC because it is such a political hot button. He believes in the concept of City Council or another Board making decisions on all rate structures without it being a political issue.

Chairman Thompson said the only way this Charter language will ever change is for a unanimous Council to be willing to risk their political seats. He said Council would need to be convinced the public would be willing to concede their right to vote on City utilities for any change to be made.

Commissioner Griffith said utilities are always under crisis management and the City has been very lucky to be able to continue to operate with the funding it has; however, it would be great if management of the utility rate could be increased on an incremental basis and decided on by City Council who are the voice of the people.

Chairman Thompson asked if Staff could research methodologies of other cities for the CRC to review and make a recommendation that might be convincing enough for them to advance these ideas.

Item 5, continued:

Commissioner Cubberley would like to know how many people vote on utility rate increases because he believes it would be minimal. He said if CRC is requesting more information then he would like to see that information.

Mr. Brenda Hall, City Clerk, said there have been eight failed elections since 1984, the last one being in 2010, and the total number of voters that voted in 2010 for the water rates was 9,078 and the number that voted for sanitation rates was 9,009. She said prior to that, the average vote has been around 9,000, except the sanitation and curbside recycling total was 5,800. She said there are currently a little over 72,000 registered voters.

Commissioner Cubberley said 20% of voters or less are determining the fate of any one utility election. Chairman Thompson said those same voters are involved in the City Council election process. Commissioner Williamson-Jennings said 100% of the public is paying the increasing utility rate.

Commissioner Cubberley said Staff only asks for an increase when there is dire need and the City starves its utilities to extract a very low utility rate, which is not good business. He said most of the time voters agree to the increase so why not allow the City to increase utility rates an incremental amount each year or every three years? He said the political will is not there to go to the voters each year so he would love to see a utility rate increase before the voters every three years, but that has not been popular with Council.

Chairman Thompson said a Charter recommendation could require an annual review or three-year review of each utility with a vote so that decision is taken out of the political realm.

Commissioner Ali said she would like to know what is costs to inform 100% of the users about an upcoming election topic that only has 10% representation at the polls. She said that money could be used on a more concrete process so the utility is not starved for an increase that will only carry the City through five years or less.

Commissioner Williamson-Jennings said it might be better to find out what the public has an appetite for before moving this issue forward.

Commissioner McBride said maybe the CRC should step back and talk about what might be possible because if it is impossible, the CRC does not really need to spend a lot of time on it. He thinks looking at other solutions that have worked in other communities is a great idea and suggested having a standard utility rate increase vote every two years.

Commissioner Dillingham said the middle ground might be having a Charter provision that requires that at least one Enterprise Fund increase election be held every three years perhaps along with the Mayoral election to have as many voters as possible participate and save money on election costs.

Item 5, continued:

Commissioner Pipes said once people get the right to vote on something they do not like for it to be taken away. He is not sure it is the CRC's job to figure out the politics before presenting a recommendation to Council. He said this is an issue that needs to be thoroughly discussed because this is about water and cities cannot run without water or sanitation or wastewater services. He would like to find more best practices of how to structure the mechanics of governmental decision making leading to an election or not to have an election.

Chairman Thompson said there seems to be consensus to bring this item back for further discussion with information requested by members. He would like to see the cost of elections and some type of language that would result in a required series of elections for utility rates.

Commissioner Griffith would like to see the process of how regional cities raise rates other than the usual comparison chart of cities provided today. Commissioner Williamson-Jennings agreed and suggested cities of comparable size to Norman that have successful rate structures. Ms. Walker said Staff can research benchmark cities with universities.

Items submitted for the record

1. Background on Article XVI. Municipally Owned Utilities.
2. Charter Review Commission minutes of May 2, 2013, and June 6, 2013
3. PowerPoint presentation entitled, "City of Norman Charter Review Committee Enterprise Funds," dated August 2020

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Item 6, being:

MISCELLANEOUS DISCUSSION.

Chairman Thompson said the CRC spent a lot of time discussing the need for an internal auditor, but Council hired that position prior to a recommendation from CRC. He felt that Council was too broad in their request on this issue and the CRC did not have the detailed information needed to make a recommendation. He spoke with the Mayor and his Ward Councilmember requesting the courtesy of a heads up going forward on items that not longer needed to be discussed by CRC due to Council acting upon the issue.

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Item 2, continued:

YEAS:

Commissioners Bates, Cubberley,
Dillingham, Eller, Griffith, Hackelman,
Jungman, McBride, 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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Item 3, being:

DISCUSSION REGARDING ARTICLE XVI, SECTION 2, OF THE CHARTER REQUIRING THE CITY COUNCIL TO CONSIDER A RESOLUTION CALLING FOR A VOTE OF ELECTORATE TO INCREASE CITY UTILITY RATES UNDER CERTAIN CIRCUMSTANCES, I.E., UPON A FINDING OF FINANCIAL NEED AFTER A REVIEW OF THE UTILITY FUNDS AND THEIR MONETARY SOURCES BY THE FINANCE DIRECTOR OR UPON THE RECOMMENDATION OF AN INDEPENDENT ELECTED UTILITIES BOARD.

Chairman Thompson said the Committee previously discussed requiring Council to review a utility each year and call an election under certain circumstances.

Ms. Kathryn Walker, City Attorney, said staff provided information requested by the Commission last month regarding how other cities operate and how frequently they increase rates. She said a number of them do it annually, but several do it every three years which fits in with the language she is presenting tonight.

Ms. Walker said the potential amendment would be adding language to Article XVI, Section 2, of the Charter stating precedent to an increase in utility rates within the control of the City of Norman, such increase proposal for each utility must be submitted on a rotating basis to the legal voters of the City for their approval or rejection at the ~~next~~ regular general election each year, or at a special election which might be called for said purpose. Should an unexpected need for an additional rate increase for any utility arise prior to the regular election on which such an increase would normally be scheduled as provided herein, then a special election may be called for such purpose. This section is self-executing and shall supersede all provisions in conflict therewith; legislation may be enacted to facilitate its operations but no ordinance shall limit or restrict the provisions thereof.

Commissioners Cubberley and Jungman asked for the definition of a general election and whether years where the Mayor is not up for election would the election for Council seats still be considered a regular general election. Ms. Walker answered in the affirmative. Commissioner Stawicki said to avoid any confusion the word "Norman" could be added in front of general election.

Item 3, being:

Ms. Walker said additional language could be added to say at the regular election in which ward or mayoral representatives are elected to make it a little clearer.

Commissioners discussed adding special election to the language as well to provide more flexibility.

Concerns were raised regarding rotating the utilities every year in the event one utility may have greater need and require votes two years in a row. Language would be changed to reflect that issue. Additionally, adding staff bring a rate study before Council each year to determine if the increase was needed.

Commissioner Dillingham moved that draft language for Article II, Section 1, be approved as follows:

~~Precedent to an increase in utility rates within the control of the City of Norman, such increase proposal must be submitted to the legal voters of the City for their approval or rejection at the next regular general election, or at a special election which might be called for said purpose. On an annual basis, Staff shall prepare and submit to the City Council a rate study for each of its utilities. Upon receipt of such rate studies, Council shall submit a rate increase for one or more of the utilities to the voters at the next election at which ward representatives or the Mayor will appear on the ballot. Should an unexpected need for an additional rate increase for any utility arise prior to the regular election on which such an increase would normally be scheduled as provided herein, then a special election may be called for such purpose.~~ This section is self-executing and shall supersede all provisions in conflict therewith; legislation may be enacted to facilitate its operations but no ordinance shall limit or restrict the provisions thereof.

which motion was duly seconded by Commissioner Griffith;

Items submitted for the record

1. Background on Article XVI. Municipally Owned Utilities.

and the question being upon approving draft language for Article XVI, Section 2, as stated above, a vote was taken with the following result:

YEAS:

Commissioners Ali, Bates, Cubberley,
Dillingham, Griffith, Hackelman,
Jungman, McBride, Stawicki, Vinyard,
Chairman Thompson

NAYES:

None

Chairman Thompson declared the motion carried and the draft language for Article XVI, Section 2, approved, as stated above.

Commissioner Eller left the meeting prior to the vote.

CITY COUNCIL STUDY SESSION MINUTES

January 4, 2022

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 Norman Central Library Redbud Room, Third Floor, 103 West Acres, on the 4th day of January, 2022, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray and the Norman Central Library located at 103 West Acres, 24 hours prior to the beginning of the meeting.

PRESENT:	Councilmembers Hall, Holman, Lynn, Peacock, Studley, Mayor Clark
TARDY:	Councilmember Tortorello (6:00 p.m.)
ABSENT:	Councilmembers Foreman and Schueler

Item 1, being:

CONTINUED DISCUSSION REGARDING POSSIBLE AMENDMENTS TO THE NORMAN CITY CHARTER.

Ms. Kathryn Walker, City Attorney, said the Charter Review Commission (CRC) was appointed in the summer of 2019, to review specific items as requested by members of City Council. The CRC met monthly, with the exception of several months missed due to the pandemic. A study session was held on August 3, 2021, to present CRC recommendations to Council and to decide whether or not to send each recommendation to voters. Council voted to send five of the recommendations to voters related to term expiration, Council vacancies, utility rates, recall elections, and tax increment financing. Council discussed these five items during a Conference on August 24, 2021, and reached consensus on sending the CRC recommendations' related to term expiration and filling vacant Council position forward to voters and *not* sending Charter amendments related to tax increment financing forward. Further discussion and information was requested for CRC recommendations related to utility rates and recall elections. Although the CRC made no recommendation for changes related to the reapportionment process, the recent test of the language recommended by the 2012 CRC and ultimately by the voters in 2013, has led to some discussion of possible Charter changes related to reapportionment.

Recall Petition

Ms. Walker said consensus was reached among a majority of Council on a majority of the recommendations related to the recall process and Council primarily focused on the number of petition signatures required in order to trigger a recall election. The Charter currently requires a petition bearing the signatures, names and addresses of 25% of the registered voters qualified to vote for the officer whose recall is sought. Some Councilmembers felt the 25% threshold was appropriate while others were concerned the threshold was too high, especially when compared to the historic low voter turnout for municipal elections. Staff was asked to look at other Big 12 cities and cities within Oklahoma to compare signature requirements in other jurisdictions.

Recall Petition, continued:

Recall provisions could not be found in several of these jurisdictions so the comparable cities search was extended to future conference foes within the Southeast Conference.

Ms. Walker highlighted requirements for other cities and said Kansas (state) requires 40% of votes cast in the last general election for which recall is sought; Austin, Texas, requires 10% of qualified voters for office for which recall is sought; College Station, Texas, requires 40% of total number of votes cast at last general election for office for which recall is sought; Waco, Texas, requires 30% of qualified voters for office for which recall is sought; Columbia, Missouri, requires 30% of votes cast at the last regular election for office for which the recall is sought provided there must be at least 200 signatures for each ward and 500 signatures for Mayor; Knoxville, Tennessee, requires 30% of votes cast at the last regular election for office for which recall is sought; Stillwater, Oklahoma, requires 25% of votes cast in last general city election; Edmond, Oklahoma, requires 35% of registered voters at the time of the last election for office being sought for recall and at least 10% must sign the affidavit submitted with the petition; Lawton, Oklahoma, requires 20% of total number of votes for Governor in the last gubernatorial election in the city or ward for which the recall is sought and a written statement must be provided with the petition before circulation that is signed by at least 100 registered voters of the city or ward which recall is sought; Oklahoma City, Oklahoma, requires 35% of the qualified electors of the area for which the incumbent was elected as shown by County registration records at the time the petitions are filed; Moore, Oklahoma, requires 35% of the registered qualified electors who voted in the last general municipal election; and Enid, Oklahoma, required 30% of the votes cast at the last preceding election for the office for which recall is sought.

After further discussion by Council, it was the consensus to leave the percentage the as it is currently stated in the Charter.

Utility Rates

Ms. Walker said the current CRC was asked to consider “adding language to Article XVI, Section 2, of the Charter requiring Council to consider a resolution calling for a vote of the electorate to increase utility rates under certain conditions, i.e., upon finding a financial need after a review of the utility funds and their monetary sources by the Finance Director or upon the recommendation of an independent elected utilities board.” The purpose of the request was to ensure the City went to the voters for needed increases when dictated by financial need. The CRC discussed a desire to create an expectation for annual utility elections while giving Council the flexibility to address the needs of each utility. Ultimately, the CRC recommended language that would require annual rate studies for each of the three utilities. The language would also require Council to submit an annual rate increase, presumably based on the rate study results, at the same election as the regular Council elections.

Council’s discussion regarding utility rates focused on examining ways to preserve the ability of voters to vote on more sizeable rate increases while allowing Council to adopt more modest increases as needed to ensure each utility is able to meet its needs on an annual basis. Previous CRC’s have discussed amending the Charter to empower Council to increase utility rates up to three percent (3%) annually without a vote of the people. Council requested information from other states, namely Lawton, Oklahoma, to determine what triggers a rate increase.

Utility Rates, continued:

Ms. Walker said Lawton adopted a resolution in 2002, giving policy direction to Staff to consider the Consumer Price Index (CPI) in determining whether utility rates should be adjusted. The CPI represents changes in prices of all goods and services purchased for consumption by urban households. User fees, such as water and sewer service, as well as sales and excise taxes paid by the consumer are also included. She said if voters were to approve Charter language allowing Council to impose a maximum rate increase based on the CPI, rate increases adopted by Council would be limited by whatever the CPI is over a specified length of time. Any proposed increase greater than the CPI would still require a vote of the people.

Councilmembers discussed various percentages 3% and lower where Council would have the ability to increase the water rates without a vote of the people

Direction give to Staff was to draft language that provides for an annual increase of no more than 3%, only after presentation of a rate study and recommendation from a new board, the Utility Rate Commission (with ward specific appointments). Council wanted to specify would not take effect until 2023/2024 if water rate election were successful in April.

Reapportionment

Ms. Walker said Article XX of the Charter sets out the reapportionment process. Currently, the Charter requires the Reapportionment Ad Hoc Committee to review and ensure wards are 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.” State law requires that municipalities review wards and ward boundaries following the Census and change the boundaries or number of wards, if necessary. Wards must essentially be equal in population and a municipality should try to avoid subdividing precincts established by a County Election Board. New precinct boundaries are not established by each County Election Board until the State Legislature has completed the reapportionment process. The Oklahoma Constitution requires the Legislature to accomplish apportionment within 90 legislative days after the convening of the first regular session of the Legislature following each Federal Decennial Census. The Oklahoma Constitution provides for the apportionment of a Bipartisan Commission on Legislative Apportionment of the Legislature fails to act within the prescribed timeline. Under State law, a change in the name, boundaries, or number of wards in a municipality may also be proposed at any time by 1) a resolution of the municipal governing body or 2) an initiative petition filed with the governing body of the municipality.

In 2013, the CRC suggested substantial restructuring of the reapportionment process. First, the CRC suggested the standing Reapportionment Commission, which is made up of members with five year terms, be changed to the Reapportionment Ad Hoc Committee. The Reapportionment Ad Hoc Committee would be appointed and convened when the City proposes to annex or de-annex property, during the last quarter of the calendar year prior to the release of the Census, or upon unanimous recommendation by Council. The CRC also suggested changing the language requiring a mandatory meeting because Reapportionment Commission members had concerns “that changing ward boundaries too frequently results in voter confusion.” The 2013 CRC cited concerns that a City Council initiated reapportionment could become political and was not

Reapportionment, continued:

necessary. The United States Supreme Court has stated that “[D]ecennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth.”

The CRC also suggested adjusting the deadlines for convening the Committee and providing a resolution to Council so that in case of a proposed annexation or de-annexation, members of the Reapportionment Committee can be appointed within 90 days of adoption of the proposal. For purposes of reviewing the Census, the CRC suggested that members of the Reapportionment Committee be appointed six months prior to the Census year and provide a resolution within 180 days after the appointment of the Committee or after issuance of the Census. The CRC suggested language allowing Council to adopt the resolution without modification, reject the resolution, or adopt the resolution with such modification as Council deems necessary. Previous language only allowed Council to adopt or reject a resolution. City Council unanimously approved the 2013 CRC recommendations on July 17, 2014, and voters later adopted the language into the Charter.

Ms. Walker said since the conclusion of the 2019 CRC considerations, the City has had the opportunity to test the language from the 2014 amendments with the 2020 Census. The 2020 Census was delayed due to the pandemic, which certainly exaggerated some of the effects of the Charter timelines. In a typical year, the Census data would have been released by April 2021, and the Legislature would likely, but not necessarily, have completed the process by the end of the Legislative session in May 2021. After completion, the County Election Board would begin its process of adjusting precinct boundaries.

In researching other cities to determine how reapportionment is approached, Ms. Walker said Oklahoma City has a mandatory duty imposed on Council to redistrict when the Census shows the population in any ward is greater than any other ward and redistricting must be completed within one year of receipt of the Census. The timing in the Oklahoma City approach provides some flexibility to wait for the State to complete its redistricting process and the County to draw new precinct boundaries. Ms. Walker said Tulsa had the opportunity to implement new Charter language with the latest Census and requires that an Election District Commission be appointed no later than July 1, 2021, and every ten years thereafter. The Election District Commission is required to adopt and file an Election District Plan within six months of appointment and after a public hearing; however, Council does not vote on the Plan which becomes effective 30 days after it is filed with the City Clerk provided no judicial challenges are filed. She said this does not address the issue of timing that new election precinct boundaries are known. Lawton appoints a Redistricting Commission very ten years, beginning on July 1st upon receipt of the Census results. The Commission is required to, within a reasonable time, convene and approve a resolution readjusting wards and their boundaries. At least ten days before the adoption of the resolution, the Commission is required to hold a public hearing and once adopted, the Commission files the resolution with the City Clerk and the new boundaries go into effect.

Reapportionment, continued:

Ms. Walker said appointing the Reapportionment Ad Hoc committee months prior to the issuance of data the Committee needs to review can create issues with Committee member availability and result in a Committee that was not appointed by current elected officials. Additionally, the timelines in the Charter do not take into consideration the process the Legislature goes through to apportion districts, which is then followed by the County Election Board's process of drawing precinct lines after the release of Census data. She said, as stated previously, State law requires cities to try to avoid subdividing precincts and the Charter timeline for reapportionment potentially advances the City's process ahead of the State's process even in a normal year, which means the Committee is asked to draw ward boundaries without knowing where the new precinct boundaries are located. Rather than setting timelines based on dates the City expects data to be released, the Legislature to finish its apportionment process, and the Election Board to adjust its precinct boundaries, it may be a better practice to set the City's timelines based on events, such as the release of Census data to the City, issuance of revised precinct boundaries, etc.

Ms. Walker recommended Council appoint the committee within 60 days of release of Census data and tie the committee timeline to Election Board precincts determination.

Items submitted for the record

1. Memorandum dated January 4, 2022, from Kathryn Walker, City Attorney, to City Council

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The meeting was adjourned at 7:01 p.m.

ATTEST:

City Clerk

Mayor