



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 05/23/2023

**REQUESTER:** Brenda Hall, City Clerk

**PRESENTER:** Brenda Hall, City Clerk

**ITEM TITLE:** CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF A DECLARATION OF VACANCY IN WARD THREE UNDER ARTICLE II, SECTION 22, OF THE NORMAN CITY CHARTER.

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### **Background:**

On January 9, 2023, Kelly Lynn, Ward 3 Councilmember at that time, was sworn in as a Municipal Judge in Wewoka, Oklahoma. After learning of this new appointment, Staff advised Mr. Lynn that this appeared to violate the dual office holding prohibition in State law because both the municipal judge position and the position of City Councilmember have been deemed offices subject to the prohibition. More concerning was the longstanding position of the Oklahoma Supreme Court that when someone who holds an “office” accepts another “office”, he or she forfeits the first office held. This clearly had implications for Council actions and after sharing the information with Mr. Lynn and City Council, it was determined that the best course of action would be to file a Petition for Declaratory Judgment in Cleveland County District Court asking the Court to decide whether Mr. Lynn’s position as City Councilmember in Norman and Municipal Judge in Wewoka violated the dual office holding prohibition, and if it did, whether he forfeited his Council position when he was sworn in as a municipal court judge.

The action was filed on February 14, 2023. After briefing and oral arguments, Judge Leah Edwards issued her order on April 27, 2023, agreeing with the City on both points, meaning she held that the Ward 3 seat was vacated by operation of law on January 9, 2023. (See attached order dated April 27, 2023). Mr. Lynn requested that the Court stay the enforcement of its order pending an appeal, which would essentially allow him to continue to serve as Councilmember through the end of his term given typical Supreme Court appeal timelines. Judge Edwards denied his request on May 16, 2023. (See attached order dated May 16, 2023).

### **Discussion:**

Article II, Section 22 of the City’s Charter states that a vacancy in the office of a member of Council exists whenever the holder of the office:

- (a) Ceases to possess a qualification for office as prescribed by applicable law;
- (b) Dies;
- (c) Resigns;

- (d) Is removed from office by proceedings by a Court of competent jurisdiction; or
- (e) Is declared legally incompetent by a Court of competent jurisdiction; or
- (f) Ceases to reside in the ward for which he or she was elected to represent.

In order to ameliorate the potential harm to caused by the vacancy in Ward 3 recognized by Judge Edwards and to ensure that Ward 3 has representation through the remainder of the budget process and for other items on which Council needs to act, the vacancy existing by virtue of Judge Edward's order and pursuant to the City Charter should be filled as soon as possible.

**Recommendation:**

Staff recommends Council take two actions to fill the Ward 3 vacancy.

- 1) Vote to declare a vacancy under the Charter, and
- 2) Nominate Ward 3 Councilmember Elect Bree Montoya, Ward 3 Councilmember-Elect, to fill the vacancy in Ward 3 for the remainder of the current term.