



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.