

## JOINT CITY COUNCIL AND OVERSIGHT COMMITTEE STUDY SESSION MINUTES

July 19, 2011

The City Council of the City of Norman, Cleveland County, State of Oklahoma, and the Oversight Committee met in Study Session meeting at 5:30 p.m. in the Municipal Building Conference Room on the 19th day of July, 2011, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Dillingham, Ezzell  
Gallagher, Griffith, Kovach, Lockett, Mayor  
Pro Tem Quinn,

ABSENT: Councilmember Spaulding and Mayor  
Rosenthal

### DISCUSSION REGARDING ORDINANCE NO. O-1011-5 AMENDING CHAPTER 2 REGARDING COUNCIL ETHICS.

Mayor Pro Tem Quinn said the proposed ethics Ordinance No. O-1112-5, was on the July 12, 2011 City Council agenda for First Reading. He said Council discussed and agreed the Oversight Committee would review the proposed ordinance, existing charter, and statutory provisions prior to the Second Reading and final Council consideration scheduled for July 26, 2011. Due to time constraints it was felt a joint meeting would be better and allow the full Council opportunity for input on the proposed ordinance prior to the July 26, 2011, Council meeting.

Ms. Kathryn Walker, Assistant City Attorney, said Ordinance No. O-1112-5 would incorporate the Ethics Policy into the Norman City Code, Section 2-103, Council ethics; as well as change some existing language in Section 2-103. She said Section 2-103(a)(2-3) currently provides that members of Council shall refrain from making decisions involving business associates, customers, clients, friends and competitors, and from using their influence to secure contracts, zoning, or other favorable municipal action for friends, customers, clients, immediate family members, or business associates. Section 2-103(a)(6) also requires that Council refrain from repeated and continued violations of Council rules.

Ms. Walker said the proposed ordinance would strike "friends" from Section 2-103(a)(2) and (a)(3) and strike the "repeated and continued" modifier from the prohibition of repeated and continued violations of Council ethics rules by Section 2-103(a)(6). She said Section 2-103(a)(7) adds new language about conflict of interest including the process for processing violations.

Ms. Walker said the amendment will also incorporate the Ethics Policy adopted by Council in April 2009, into the rest of Section 2-103 of the Code. The definitions of pecuniary interest in the Ethics Policy is expanded in the proposed ordinance to include the expectation of an employment consequence and to classify any ownership interest valued over \$20,000 as a de facto pecuniary interest. Appointed City Officials include any member of a board, commission, committee, or authority of the City who is appointed to such position by action of the Mayor and/or City Council and appointed City Official may not be full-time City of Norman employees.

The Ethics Policy, as incorporated into the proposed Ordinance, requires that alleged violations of the ethics code be reported by City Councilmembers to the Mayor, or the Mayor Pro Tem if the alleged violator is the Mayor. Appointed officials are required to report alleged violations to the Chairperson of their board, commission, or committee, who may then report such violation to the Mayor. If the alleged violator is the Chairperson, the reporting official is to report the allegation directly to the Mayor. The Ethics Policy, as

adopted, does not set forth a remedy should such an allegation be sustained and under the proposed additions in Ordinance No. O-1112-05, violations of the conflict of interest provisions by a Councilmember would be forwarded to Municipal Court with enforcement in accordance with Article XVII, Section 4 of the Charter.

Mayor Pro Tem Quinn asked whether there were any issue(s) regarding enforcement of the Ethics Policy and any conflict(s) with State law and the proposed ethics ordinance. Ms. Walker said the existing Charter provisions for Article X, Section 1, of the City Charter sets forth the procedure by which a member of an appointive board or commission created by Charter or ordinance may be removed, which states a member may be removed from position if five (5) or more Councilmembers approve a motion to remove at a regular Council meeting.

Ms. Walker said, Article XI, Section 3, of the Charter provides for removal of Mayor and Councilmembers and the language states the removal process is provided by State law.

Article XVIII, Section 4, of the City Charter referred to in the proposed ordinance as providing a remedy for conflicts of interest violation and Mayor Pro Tem Quinn asked Staff to speak about the proposed additions to the ordinance giving jurisdiction for removal based on conflict of interest to Municipal Court. Ms. Walker said the proposed additions would give jurisdiction for removal based on conflict of interest to Municipal Court; however, this appears to be contrary to the City Charter and State law. She said one of the benefits of limiting enforcement to the procedures outlined in State law is that it removes City employees, both prosecutors and judges from the adjudicative process. Furthermore, under the Rules of Professional Conduct applicable to lawyers, it is possible that participation in such action could create an impermissible conflict of interest, necessitating the need for special counsel and appointed Judge for matters related to ouster or removal of municipal officials.

Councilmember Kovach asked whether replacing "municipal court" with "district court" in proposed Section 2-103(a)(7)(c) would make the ordinance harmonious with the Charter and Ms. Walker said "municipal court" could be replaced with "district court", but felt it would be better to instead state that removal or ouster actions for other alleged ethical violations could be pursued under the avenues provided by State law. She said there is concurrent jurisdiction in some instances where it would not necessarily be District Court, but could be filed at the Supreme Court, and Councilmember Dillingham said it would also allow for additional changes to State law. Councilmember Ezzell asked if this change would create any inconsistency issue when State law is referenced since the current Charter provision references removal for *county officers* per State law. He asked Staff if it made more sense to reference the Charter provision regarding removal rather than referencing generically State law and Ms. Walker felt that would be a good idea as it would be clear reference to the proposed Ordinance. Councilmember Kovach requested Staff to draft such language that would be appropriate for the proposed amendment.

Councilmember Dillingham asked whether the possible causes for removal are specific enough or if the language "willful neglect" could be construed to be a violation of the proposed ordinance and Ms. Walker said Title 22 states one of the causes for removal is the willful neglect of duty, i.e., knowing there is a duty and knowingly refusing to honor such duty. Councilmember Kovach asked if the proposed amendment to Section 7(c), **Conflict of Interest**, is sufficiently clear for any violations of the Ethics Policy and potential removal would be because of conflict of interest violations as stated in the Charter. Ms. Walker said removal can be pursued for reasons other than conflict of interest, but if the goal of this proposed amendment is to limit conflict of interest under these provisions in the City's Ethic Policy, then she felt the language is sufficiently clear. Councilmember Kovach felt that is the intent of the proposed amendment and removal should only apply to pecuniary interest under the proposed amendment for "Conflict of Interest" as envisioned in the Charter.

Mayor Pro Tem Quinn asked if the proposed amendment included a definition for *organizational responsibility* and Ms. Leah Messner, Assistant City Attorney, said it is categorized under **Benefit, Detriment, or Employment Consequence (c)** "...a business or organization with which the official is associated...". She said the definition came from Oklahoma Ethics Commission language and was used because it had a body of interpretation the City could rely on when interpreting the Ethics Policy. Mayor Pro Tem Quinn asked if a definition for *personal relationship* was included in the proposed amendment and Ms. Messner said it is not. She said Staff would refer to Webster's Dictionary to interpret the meaning of the word in cases where there may not be a definition. Mayor Pro Tem Quinn said he was asking from a personal standpoint; since he is a realtor he has personal relationships with several people who go before Council on issues such as zoning, platting, etc., and based on the language of the proposed ordinance amendment would he need to abstain each time this or a similar issue was scheduled for Council consideration. Staff said it was a fairly broad definition and the language would apply to almost any Councilmember and Mayor Pro Tem Quinn stated that is precisely why he has a concern. Councilmember Kovach said he would support striking the verbiage "personal relationship" from Section 2-103(7)(a) from the proposed ordinance amendment.

Mayor Pro Tem Quinn asked Staff what exactly are the "Council rules" in Section 2-103(a)(6) i.e.; are they rules posted on a wall; are they "Robert's Rules"; or are they State law or Charter language. Ms. Walker said "Council rules" is language in the current ordinance and Staff felt it should be more clear. Councilmember Dillingham suggested striking "Council rules" and replacing it with "Violations of Section 2-103" and Council agreed.

Council discussed whether Councilmembers should get warning(s), if they violated Council ethics. Councilmember Dillingham felt forgetting to abstain can at times be a simple oversight, i.e., if a Councilmember, who is also on a social services board, forgets to abstain when a social services grant is scheduled for Council consideration; and Councilmember Gallagher suggested each Councilmember get one warning, but anything after that would be considered a violation. Councilmember Ezzell said the first violation for a Councilmember may not be innocuous, such as Councilmember Dillingham described, and would not validate a warning, i.e., if a Councilmember voted to award a contract to a business partner instead of abstaining. Councilmember Kovach felt having all violations forwarded to a District Court Judge was a good idea because they would be a neutral arbitrator looking at each violation separately to determine if the violation is deliberate and/or enforceable. Ms. Walker said the State statute reads "...a willful violation or neglect of duty could be grounds for removal...", and in a case such as Councilmember Ezzell illustrated, the City Charter also provides that the contract would be void. Council agreed the word "willful" should be added before "Violations" in Section 2-103(a)(6) and Staff said this change would also be consistent with State law.

Mayor Pro Tem Quinn asked if the definition for *potential conflict* needed any changes and said felt the verbiage "indirect benefit" was vague. Councilmember Kovach said under potential conflict, an elected official would simply need to state the conflict, although the effect of the conflict is not certain and Council agreed no changes should be made.

Council discussed the Duty to Report section of the proposed ordinance, specifically how to report an alleged violation. Councilmember Dillingham felt it is appropriate for an elected official to give notice of an alleged violation to the Mayor or Mayor Pro Tem, but the actual reporting of the alleged violation should be given to the City Attorney. Ms. Walker said the proposed language does not actually result in an ouster action and suggested changing the verbiage to reflect "...Elected officials have a duty to report in accordance with State law or City Charter...", so it will recommence the ouster or removal process through the Attorney General or District Court. Councilmember Kovach asked Staff is there was any issue with the existing language where it refers to consulting with the City Attorney's Office and Ms. Walker said no, because it is the role of the City Attorney's Office to advise Council, just as long as it is not the role for the City Attorney's Office to report any

Council violation(s). Council requested Staff to delete second paragraph in its entirety and replace with the verbiage "Elected officials have a duty to report in accordance with State law".

Ms. Brenda Hall, City Clerk, said Staff prepared the draft ordinance amendments and submitted to Council for first reading just as it was received from the requestors. She said Staff will need to clean up and submit the ordinance according to the uniformed method and format in which they are typically submitted to MuniCode. Ms. Hall said the verbiage would include changes recommended tonight and requested authorization from Council as to whether or not Staff could make the modifications to the ordinance and Council agreed Staff could make the appropriate changes.

Ms. Hall said the original Ethics Policy was drafted to also include Boards and Commissions, but the heading for Section 2-103 reads Council ethics and she asked whether the proposed amendment would still be applied to Boards and Commissions in this manner. Councilmember Ezzell said the intent was to have the proposed amendment only apply to Council and the language in Resolution No. R-0809-123 would still apply to Boards and Commissions. Ms. Messner suggested deleting the definition for "*appointed city official*" and strike all references to "appointed officials" throughout the ordinance and Council agreed that would be an appropriate change.

The ordinance will be considered in its second and final reading on July 26, 2011.

Items submitted for the record

1. Memorandum dated July 14, 2011, from Ms. Brenda Hall, City Clerk, to Mayor and City Councilmembers
2. Proposed Draft Ordinance No. O-1112-5, amending Chapter 2, Section 2-103 Council Ethics
3. Memorandum dated July 14, 2011, from Ms. Brenda Hall, City Clerk, to Mayor and City Councilmembers
4. City Council Planning Committee Minutes dated September 12, 2008, October 24, 2008, November 14, 2008, December 12, 2008, February 13, 2009, and March 27, 2009
5. Memorandum dated July 15, 2011, from Ms. Kathryn L. Walker, Assistant City Attorney II, and Ms. Leah Messner, Assistant City Attorney I, through Mr. Jeff H. Bryant, City Attorney, to Honorable Mayor and Council Members

The meeting adjourned at 6:20 p.m.

ATTEST:

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City Clerk

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Mayor