

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

September 7, 2011

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:30 p.m. in the City Council Conference Room on the 7th day of September, 2011, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Dillingham, Kovach, Spaulding, and Chairman Griffith

ABSENT: None

OTHERS PRESENT: Mr. Roger Gallagher, Ward One Councilmember
Ms. Linda Lockett, Ward Seven Councilmember
Mayor Cindy Rosenthal
Ms. Brenda Hall, City Clerk
Ms. Leah Messner, Assistant City Attorney
Ms. Syndi Runyon, Administrative Assistant IV
Mr. Bobby Cleveland, Interested citizen
Ms. Mary Francis, Enforcement Authority Member
Ms. Joy Hampton, Norman Transcript
Mr. Ty Hardiman, Enforcement Authority Co-Chair

DISCUSSION REGARDING POSSIBLE MODIFICATIONS TO CHAPTER 7.5, ELECTIONS.

Chairman Griffith said there has been previous discussions regarding removing the Monday filing requirement from Chapter 7.5 and asked Mr. Ty Hardiman, Co-Chair of the Enforcement Authority (the Authority), his opinion. Mr. Hardiman said the Authority, as a whole, believes the Monday filing requirement serves a purpose and there is merit in keeping the requirement. Chairman Griffith said he would rather call the report an additional report instead of supplemental report.

Mr. Hardiman said the Authority's task is to bring awareness to the voters of Norman as to who is financially supporting the City Council candidates. He said it is valuable for voters to know who is contributing to a campaign, but is also valuable for other candidates to know. He said, over the years, the Authority has changed elements of the ordinance to be in compliance with the State to make the report process easier to understand. He said while the Authority does not want the system to be too burdensome, they do feel it is important for disclosure purposes and ensure voters have access to the reports on the day of the election. He said a report is due on the Friday before an election, but due to an incident several years ago when a candidate raised a considerable amount of money over the weekend before the election and the money was not reported until the next filing deadline 40 days after the election, the Authority added the Monday reporting requirement. He said the Authority felt a Monday filing requirement would address similar incidents occurring in the future. Councilmember Dillingham felt that anyone wanting to evade reporting money, would simply not raise the funds until after the election.

Councilmember Kovach asked what position the Authority took on the Oversight Committee's recommendation that language be added to Chapter 7.5 § 7.5-22 stating, "Committees in support of opposition to a candidate are not required to submit campaign statements if less than \$500 was collected or spent prior to either filing deadline." Mr. Hardiman said Authority felt the \$500 figure is consistent with the State Political Subdivision Ethics Act and although it seems that what is good for a State level election would be good City elections, it does not work as well with a smaller number of voters and smaller amount of money raised. He felt the figure should be \$50 or \$100. Councilmember Kovach said a lot of the threshold discussion resulted from court cases, one of which was a Colorado case that talked about the level of burden placed on individuals. He said, ideally, the Authority is there to help the public become engaged in the election process as much as possible, but if the

process is burdensome for the people to be a part of that process then they may not be a part of that process. He said the reason the Oversight Committee decided on the \$500 threshold was to avoid a possible court challenge of the ordinance. He said the Oversight Committee wants to balance the freedom of speech with the right to know. He felt it burdensome if someone wanted to form a committee over the weekend that committee would have to come to the City Clerk's office by Monday at noon and if they work they may not be able to file by that deadline, so they would be in violation of the ordinance. He said, technically, without the \$500 threshold, if someone went to Target and bought a poster board and magic marker to make a sign to hold up on a street corner on Election Day, they have violated the ordinance. He said no one wants to tell citizens that they cannot spontaneously participate in an election without filing a report. Mayor Rosenthal asked if \$500 was the threshold for County elections as well as State and Ms. Brenda Hall, City Clerk, said it is the threshold for both.

Councilmember Dillingham said interests of the State and Municipalities must be balanced in providing information to the public against a person's free speech right and felt it might be better to improve Norman's information dissemination techniques by getting the Friday reports onto the website, making sure they are posted on the City Hall doors, and are hand carried to The Norman Transcript eliminating the Monday report. She said she was more concerned about having balance in non-candidate committee's.

Councilmember Lockett said when she was running for the Ward Seven Council seat, she knocked doors and asked constituents what they thought of her contributors and they did not care who the contributors were. She felt \$500 was a fair amount. Ms. Hall said the \$500 minimum would apply only to committees supporting or opposing candidates, not the candidates. She said candidates will still report every dollar spent and contributed.

Councilmember Spaulding asked if a committee were not supporting or opposing a candidate, simply educating, would have to file a report and Ms. Hall said the ordinance is specific to supporting or opposing a candidate. Councilmember Kovach said if you are not doing either, you do not have to report and Ms. Hall said correct and reminded Councilmembers that the City does not regulate issue campaigns.

Mayor Rosenthal asked about multiple committees where the principles were the same people and one committee spent \$499 for yes to support, and another committee spent \$499 for maybe to support, how would that work with reporting and Ms. Hall said if the committee's expenditures fell below the established threshold, they would not have to file a report.

Ms. Hall said if anything such as a flyer or brochure were brought to the attention of the Authority or the City Clerk's Office, there would have to be contact made to determine whether or not they had to file a report. Councilmember Dillingham asked if committee's have to register whether they have to file a report or not and Ms. Hall said they are not required to register if they are below the threshold.

Mr. Hardiman said the Authority does now review reports from a first amendment or constitutional right aspect, but at what is best for the election itself and that is why he believes the Monday report and lower threshold contribute a value to the election.

Councilmember Kovach said, in regards to the Authority's annual report, he would like the Authority to include all reports as well as all relevant documents attached to the final report for a more comprehensive report. He said this would be beneficial to anyone researching past elections. He said Council does not want to see items that are beyond the purview of the Authority in the report. Mr. Hardiman suggested that in order to better reflect the desires of Council and be more useful for future research, the Authority place all information collected from the calendar year election period in a binder including minutes from all Enforcement Authority meetings, all reports filed, and all material submitted to the Authority for their review, but not necessarily be attached to the final report. Councilmember Spaulding agreed and said if an item is submitted and deemed a non-violation by the

Authority it should not be included in the final report. Mayor Rosenthal agreed and said the binder should be separate from the final report but accessible to the public and reflect the totality of the work by the Authority.

Mayor Rosenthal said electronic filing would help tremendously and Ms. Hall said the reports are required to be notarized so there would have to be a process in place to allow that piece to remain in the electronic process. She said she is not sure what the cost would be or how difficult it would be to put something in place, but it cannot be done with the unresolved notary issue. Mayor Rosenthal suggested removing the notary requirement and Ms. Hall said the State report must be notarized and those reports are filed with the City Clerk, not at the State. She said electronic filing has been on the back burner for awhile and it would be a matter of budgeting and timing.

Mayor Rosenthal asked if there were any court cases regarding registering a committee whether or not they file a report and Ms. Leah Messner, Assistant City Attorney, said she would have to research that. Councilmember Kovach asked if the City would have two thresholds, one being the \$500 and the other requiring registration and asked what the registration threshold would be. Councilmembers discussed requirements and Ms. Hall said it all comes back to education, which has been problematic in the past. She said the Authority has worked hard to educate on who has to file and when. She said there is difficulty in people forming committees without knowing they have to register that committee so if the City required every committee to register, the Authority and City Clerk would still be seeking those committees out to inform them they need to register. Councilmember Kovach suggested registering be done on a voluntary basis. Mayor Rosenthal said one person using their own money is not a committee, but if they solicit money from another individual, they are a committee. Councilmember Kovach said if you define a committee in that way, it means an individual can spend unlimited amount of money, not be a committee, and not have to register or file a report. Councilmembers Dillingham and Kovach asked what the State Ethics Commission defined a committee as and Ms. Hall said it is pretty broad. Mayor Rosenthal read Norman's definition of a committee, which states one person is a committee. Ms. Hall said the State definition states one or more persons may be a committee.

Councilmember Spaulding asked what other cities have an Enforcement Authority and Ms. Hall said Norman is the only city in the State that has a local Enforcement Authority. She said at the time the Authority was appointed, the State did not have regulations for local elections, so everyone files State reports only. Councilmember Dillingham said Norman is an extraordinary community that cares a great deal about the election process and getting information to citizens. Councilmember Locket said e-mails, Twitter, and Facebook will be used more and more and they do not cost anything. Councilmember Gallagher asked if Staff had found any gross violations in cities that do not have an Enforcement Authority and Ms. Messner said Oklahoma City (OKC) has some issues, but no opinion was issued. She said attending OKC Councilmembers requested that an addition to the Subdivision Ethics Act requirement that would require a disclosure statement for the Municipal Elections be filed with the Clerk. She said she did research a couple of cities in Texas with similar Charter language as Tulsa and OKC and they follow State law.

Councilmember Locket said, in the past, when a candidate violated the ordinance there had been no punishment and Ms. Hall said if the Authority's ultimate goal is to garner the information for public disclosure and the information is submitted, even if it is filed late, there is no longer a violation. She said the Authority had recommended charges be filed against a candidate that refused to file a report years ago and those charges were filed for failure to comply with the ordinance.

Councilmember Kovach asked if reports can be required to be filed earlier than Friday at noon and Ms. Hall said, yes, but if someone does file early, she will accept the report and inform them that they will have to file another report if they accept or expend any money by the Friday noon deadline. She encourages them to wait until the

last minute to file in order to capture as much information as possible. She said the noon deadline was originally selected to meet media weekend deadlines.

Mr. Hardiman said the Enforcement Authority would like to change there name because it has a negative or aggressive connotation and does not adequately explain the Authority's duties. He said a suggestion is Norman Council Election Compliance Committee or Election Compliance Committee or Authority. Councilmember Kovach suggested Election Information Committee. Councilmember Gallagher suggested Norman Election Committee. Councilmember Locket said she would like more time for discussion on a name and not rush into the decision. He said another change recommended by the Authority is to strike language in Section 7.5.27(b) and (c) that reads, "and to punish the offenders." He said punishing people does not accomplish the goals of the Authority as the goals are best served when the voters have full disclosure before the election and that is why education and compliance is important. Chairman Griffith agreed and said the City Attorney or District Attorney's Offices would be the appropriate parties to handle any type of punishment.

Councilmember Kovach asked if the language requirements for the Enforcement Authority's final report to Council needed to be placed in the ordinance or could be done through policy and Ms. Hall said it could be a policy. She said the Authority is open to criteria being established if that is Council's desire.

The Oversight Committee agreed to remove the Monday reporting requirement, place a threshold of \$500 for requiring committee filing, striking language regarding punishing offenders, and changing the name of the Enforcement Authority. Councilmembers asked that these recommendations be submitted to the full Council at a Conference or Study Session.

Ms. Hall asked if the Oversight Committee wanted to change any of the duties of the Enforcement Authority and highlighted those duties. Councilmembers did not want to make any changes to the duties at this time. Councilmember Dillingham asked if Committee Members would like the Authority to work on voter turnout and participation and Councilmember Gallagher felt that no one could bring out voters except the candidates and Councilmember Dillingham agreed.

Items submitted for the record

1. Memorandum dated September 1, 2011, from Brenda Hall, City Clerk and Leah Messner, Assistant City Attorney, to City Council Oversight Committee, Councilmember Griffith, Councilmember Dillingham, Councilmember Kovach, and Councilmember Spaulding
2. City Council Oversight Committee minutes of May 4, 2011
3. Enforcement Authority Committee minutes of August 29, 2011

MISCELLANEOUS DISCUSSION. None

The meeting adjourned at 6:58 p.m.

ATTEST:

City Clerk

Mayor