



DATE: August 11, 2023
TO: Honorable Mayor and Councilmembers
FROM: Kathryn L. Walker, City Attorney
RE: Initiative Petition 2324-1

Background

The City Clerk received an initiative petition on August 7, 2022 from OG&E that if successful, would result in placing the question of granting a franchise to OG&E on the March 5, 2024 ballot. Since several of you were not on Council when the last initiative petitions were filed, I thought I'd provide you with some information about the review process and the impact of a successful petition. It should be noted that initiative petitions for franchise agreements are unique in some respects compared to other initiative petitions.

Discussion

The source for the initiative petition power is found in Article 5, Section 2 of the Oklahoma Constitution. Article 18, Section 4(a) of the Oklahoma Constitution specifically reserves the initiative power for municipal residents. The framers and adopters of the Oklahoma Constitution deemed certain aspects of the initiative power important enough to enumerate in the Constitution itself. Specifically, the framers and adopters of the Constitution specified that every initiative petition in the government of a municipality must be signed by a number of registered voters living in the municipality equal to twenty-five percent (25%) of the total number of votes cast at the *next preceding election*. OKLA. CONST. art. 18, §4(b) (*emphasis added*). The Constitution is the "bulwark to which all statutes must yield". *Draper v. State*, 1980 OK 117, ¶8; *Reherman v. Oklahoma Water Resources Bd.*, 1984 OK 12, ¶22. This means that any statutory provision conflicting with the Oklahoma Constitution is unenforceable. *In re Initiative Petition No. 366, State Question 689*, 2002 OK 21, ¶6.

The Constitution provides that laws must be enacted to prevent corruption in the making, procuring, and submitting of initiative and referendum petitions. OKLA. CONST. art. 5, §8. In response to this provision, the Legislature passed laws outlining the initiative process for state legislative issues (34 O.S. §2 et seq.) as well as for municipal issues (34 O.S. §2 et seq.; 11 O.S. §§15-101 through 15-110).¹ These laws provide steps in the initiative process that are designed to

¹ House Bill 3826, adopted in the 2020 legislative session, and effective Nov. 1, 2020, amended 34 O.S. §2 to require additional information from signers of initiative petitions, including first and last name, zip code, house number, and numerical month and day of birth. It also requires that signatures that cannot be verified with the Oklahoma State Election Board public voter registration records be stricken. Previously, only residence or post office address were required to accompany the name of the signer.

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prevent corruption as authorized in the Constitution. For example, 11 O.S. §15-103 and 34 O.S. §6 provide that all signatures to the petition must be verified. The verification described by § 6 does not indicate an action by the City Clerk; rather it sets forth the form of the verification statement that must be on each sheet of a petition and signed by the petition circulator.² 34 O.S. §6.1 sets forth the procedure the City Clerk must follow in counting the signatures to ensure the signatures are valid and proper.

Signed copies of the petition must be submitted to the Clerk within 90 days after the initial filing of the measure with the Clerk (May 8, 2022). 11 O.S. §15-103 Once signatures are timely filed, the City Clerk must make a physical count of the number of signatures on the petition. *Id.* at §6.1, 11 O.S. §15-104(A). In order for a petition to be valid, it must be signed a number of the registered voters residing in the municipality equal to at least 25% of the total number of votes cast at the most recent preceding general election.³ 11 O.S. §15-103. Because the petition was filed on February 7, 2022, prior to the 2022 Mayoral election, the most recent preceding general election on which the required number of signatures will be based is the 2019 mayoral election. Signatures on pages that do not contain the verification statement, signatures of nonresidents, signatures not attached to a copy of the petition, multiple signatures on a single signature line, signatures not on a signature line, duplicate signatures, signatures on a sheet not signed and sealed by a valid notary, and signatures that cannot be verified with the Election Board’s public voter registration records must be stricken. 34 O.S. §6.1. Signatures that aren’t required to be stricken under this section are presumptively valid. *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 501 P.2d 1089, 1093 (1972) (citing *In re Referendum Petition No. 71, State Question No. 206*, 65 P.2d. 985).

Once the signatures are filed, the City Clerk is then required to publish in at least one newspaper of general circulation in Norman, a notice of the filing and the apparent sufficiency or insufficiency of the petition. 11 O.S. §15-104. The published notice must also state that any qualified elector of the municipality may file a protest to the petition or

² The verification form set forth in 34 O.S. §6 states: I, (circulator’s name), being first duly sworn, say: That I am at least eighteen (18) years old and that all signatures on the signature sheet were signed in my presence; I believe that each has stated his or her name, mailing address, and residence correctly, and that each signer is a legal voter of the State of Oklahoma and the city of Norman.

³ The phrase “general municipal election” is not defined in the Initiative Petition statutes; however, case law related to the initiative and referendum process provide clear direction. In *In re Initiative Petition No. 1, City of Drumright*, 298 P.2d 409, 413-414 (Okla. 1956) the Court examined both the provisions in Article XVIII, §4(b) of the Oklahoma Constitution (referring to “the next preceding election”) and in 11 O.S. §561 (referring to the “last general or special election”) of the Oklahoma Statutes and concluded that the “references therein to elections is to municipal elections and does not include such elections in the municipality wherein electors residing outside the city of town may vote”. *Id.* at 414. In *In re Initiative Petition No. 13 of Oklahoma City*, 369 P.2d 458, 459-460 (Okla. 1962), the Court distinguished “general municipal election” from “special election” when holding that the next preceding general municipal election on which to base the requisite number of signatures on an initiative petition was a general election and not a special election. *Neidy v. City of Chickasha*, 188 P.3d 128 (Okla. 2008) relied on the *Drumright* and *In re Initiative Petition No. 13* cases in holding that a “general municipal election” was not a special election, but rather, a regular Council election in which all citizens of the City were eligible to vote, and only citizens of the City were eligible to vote.

an objection to the signature count made by the City Clerk. *Id.* A protest to the petition or to the signature county must be filed in Cleveland County District Court within ten (10) days after publication. *Id.* The District Court is required to set a date, not less than ten (10) days after the protest is filed, to hear testimony and arguments for and against the sufficiency of the petition. *Id.* When considering the sufficiency of a petition, the Court will consider challenges to defect in form and in signature count. The rights of the initiative and referendum are precious, and the Court will act zealously to preserve them to the fullest measure of the spirit and letter of the law. *Terry v. Bishop*, 158 P.3d 1067, 1072 (2007). All doubt concerning the construction of pertinent constitutional and statutory provisions is resolved in favor of the initiative. *Id.* The acts of petition circulators are presumed to be legal and without fraud and a petition will not be declared invalid on the mere allegation that some signers may have been misled by statements of circulators relative to the effect of the proposed law. *In re Initiative Petition No. 347, State Question 639*, 813 P.2d 1019, 1033 (1991) *citing In re Initiative Petition No. 281, State Question No. 441*, 434 P.2d 941 (1967),

The parties submitting the initiative petition are also required to prepare and file a ballot title for the measure no later than the time the signed petitions are filed with the City Clerk. *Id.* at §15-105. The ballot title shall contain the gist of the proposition in language readily understood by persons not engaged in the practice of law. *Id.* The City Attorney's review of a petition as set forth in the statutes is limited to the ballot title. Once received, the City Attorney has three (3) days to review and determine whether the proposed ballot title meets the statutory requirements. *Id.* If the ballot is not in proper form, the City Attorney must prepare and file a proper ballot title within the three-day period. *Id.* Any qualified elector dissatisfied with the ballot title may appeal to Cleveland County District Court within ten (10) days after the ballot title is filed with the City Clerk. In this case, the proponent of the initiative petition opted to submit the ballot title with the petition. I have reviewed it and filed an alternative ballot title with the City Clerk pursuant to 11 O.S. §15-105(B).

Once a petition and ballot title are determined to be sufficient, and after any applicable appeal times and actions, Council is typically required to act on the petition to send it forward to the voters at a regular or special election. *Id.* at §15-109. However, franchise initiative petitions are unique in this respect. Article 18, §5(b) of the Oklahoma Constitution requires a franchise petition to be filed *with the chief executive officer* of the municipal corporation, in our case, the City Manager, who shall, within 10 days, call a *special* election for the proposed question of granting the franchise. If approved by the voters, the franchise will come to Council for approval at its next regular meeting after the election.

Staff will keep you updated as more information becomes available. Please let me know if you have any questions.