

# CHARTER REVIEW COMMISSION

Municipal Building Conference Room  
201 West Gray  
Norman, Oklahoma

Thursday – November 7, 2013  
5:30 p.m.

1. Call to order and Roll Call
2. Consideration of approval of the Charter Review Commission minutes of September 5, 2013.
3. Continued discussion of Article XX to consider amending or updating the Reapportionment Commission process or procedure and possible action
4. Discussion of whether or not there should be a scheduled review of the Charter within the Charter itself and possible action.
5. Adjournment.

CHARTER REVIEW COMMISSION MINUTES

September 5, 2013

The Charter Review Commission met at 5:30 p.m. in the Municipal Building Conference Room on the 5th day of September, 2013, 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.

Item 1, being:

CALL TO ORDER AND ROLL CALL.

PRESENT:

Ms. Jane Abraham  
Mr. Doug Cubberley  
Mr. Hal Ezzell  
Mr. Harold Heiple, Chairman  
Ms. Samantha Kahoe  
Mr. Kenneth McBride  
Mr. Kevin Pipes  
Mr. Richard Stawicki

ABSENT:

Ms. Carol Dillingham  
Mr. Barry Roberts  
Mr. Bob Thompson

TARDY:

Mr. Thad Balkman  
Mr. Trey Bates

STAFF PRESENT:

Mr. Jeff Bryant, City Attorney  
Ms. Brenda Hall, City Clerk  
Ms. Kathryn Walker, Assistant City Attorney

Item 2, being:

CONSIDERATION OF APPROVAL OF THE CHARTER REVIEW COMMISSION MINUTES OF AUGUST 1, 2013.

Member McBride moved that the minutes be approved and the filing thereof be directed, which motion was August 1, 2013, seconded by Member Cubberley;

Items submitted for the record

1. Charter Revision Commission minutes of August 1, 2013

and the question being upon approval of the minutes and upon the subsequent directive, a vote was taken with the following result:

YEAS:

Members Abraham, Cubberley, Ezzell, Kahoe, McBride, Pipes, Stawicki, and Chairman Heiple

NAYES:

None

Chairman Heiple declared the motion carried and the minutes approved; and the filing thereof was directed.

Item 3, being:

CONTINUED DISCUSSION OF ARTICLE XX TO CONSIDER AMENDING OR UPDATING THE REAPPORTIONMENT COMMISSION PROCESS OR PROCEDURE.

Member Trey Bates arrived at 5:35 p.m. and Member Thad Balkman arrived at 5:36 p.m.

Chairman Heiple said in its meeting of August 1, 2013, the CRC made recommendations to eliminate a Reapportionment Commission that meets annually and create an Ad-hoc Committee that would meet every ten years prior to the census unless Council proposed to annex or de-annex property, during the last quarter of the calendar year prior to the release of the Federal Decennial Census and continuing through the release of the final Census, or upon the recommendation of City Council. The CRC also recommends that the nine member committee be appointed within 90 days of a proposed annexation or deannexation and six months prior to the year of the issuance of the Census. Other recommendations include the Reapportionment Committee issue of a resolution to establish and readjust the wards and their boundaries no later than 180 days after each Federal Decennial Census. The resolution would be submitted to Council who will, within 30 days, conduct a public hearing on the proposed resolution and adopt the resolution without modifications, reject the resolution, or adopt the resolution with such modification as the Council deems necessary. If any changes in ward boundaries are adopted by Council, such changes shall also be adopted by ordinance and codified in the City of Norman Code of Ordinances.

Member Cubberley asked is Staff has ever compared the decennial numbers to the City's projections to see if the City's projections are relatively accurate and Mr. Jeff Bryant, City Attorney, said he would check with Ms. Joyce Green, Geographical Information Systems (GIS) Services Manager, but felt that some type of analysis would have been done.

Member Cubberley said he was not comfortable giving City Council the power to appoint a Reapportionment Committee for anything other than annexing/deannexing or prior to the decennial census. He said there are no criteria established for when Council can direct a review of ward boundaries. Chairman Heiple asked if Member Cubberley would be more comfortable requiring a unanimous vote of Council to call for a review by the Reapportionment Committee and Mr. Bryant suggested the following language:

Section 2 – Appointment and Meetings of the Reapportionment Commission

- c. Upon the unanimous recommendation of the City Council to review population shifts within current ward boundaries based upon verifiable data sources that can be utilized to supplement Federal Decennial Census data.

Member McBride felt no further language was needed after “unanimous recommendation of the City Council.” Member Bates agreed and said it would be difficult to craft language to fit every scenario, but some mechanism for calling for a review is a good idea. A majority of the members felt “unanimous recommendation of the Council” would be acceptable language without adding the other parameters. Member Cubberley asked Staff to ensure language added to Section 3, Criteria for Ward Boundaries, makes it clear what criteria Council has to follow no matter what the reason for calling for the review. Chairman Heiple asked Staff to draft language for the CRC to review at the next meeting.

Members discussed the timeframe for the Reapportionment Committee to submit a resolution to Council regarding ward boundary changes and asked if recommended 180 days was too much time to review the census data and make a recommendation to Council. He asked if the “issuance” of the Decennial Census is date specific because that could affect the time needed for the review and Ms. Brenda Hall, City Clerk, said the issuance of the census is date specific.

Ms. Hall said another timing issue is that Council sets election dates, by Charter, in December for Spring elections and the filing dates are set by Charter specific to the second Monday, Tuesday, and Wednesday in January and those dates would need to be considered. She said if the Reapportionment Committee is not finished reviewing the ward boundaries by the filing dates there is a good chance a candidate may not know what ward they are filing for. Chairman Heiple asked if the CRC should ask Council for permission to review the Council's filing period timeline. Member Stawicki asked what would happen if someone filed for a Ward and just before the election, because of reapportionment, they were no longer in that Ward and Ms. Hall said she did not know, but once the filing period and the protest period is over the ballot is set so that person would be on the ballot for the Ward they filed for. She said it would be important for the Reapportionment Committee to be finished with their review before the filing period. Chairman Heiple wondered if language should be included that stated no ward boundaries could be changed between the filing period dates and election date, but members were concerned that boundaries could change after the election which could be just as detrimental to a candidate.

Items submitted for the record

1. Annotated version of Article XX. Reapportionment

Item 4, being:

DISCUSSION OF WHETHER OR NOT THERE SHOULD BE A SCHEDULED REVIEW OF THE CHARTER WITHIN THE CHARTER ITSELF AND POSSIBLE ACTION.

Chairman Heiple said there are currently no criteria for a regularly scheduled review of the Charter and asked Mr. Bryant what precipitated this topic. Mr. Bryant said when Member Dillingham was on Council, she felt a regularly scheduled review of the Charter, e.g., every ten years, would be beneficial in many ways. Chairman Heiple suggested this topic be discussed in October when Member Dillingham was present to express her thoughts on this subject

Member Cubberley said he would like to know how many review committee meetings have been held around election times over the past 20 years.

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Item 5, being:

ADJOURNMENT.

Chairman Heiple declared the meeting adjourned at 6:22 p.m.



DATE: October 30, 2013  
TO: Members of the Charter Review Commission  
THROUGH: Jeff H. Bryant, City Attorney *JHB*  
FROM: Kathryn L. Walker, Assistant City Attorney *KLW*  
RE: Materials for November 7, 2013 CRC Meeting

Reapportionment

At the September 5, 2013 meeting of the CRC, the Commission continued its discussion of potential amendments to Article XX of the Charter dealing with the Reapportionment Commission. The Commission reviewed draft language amendments based on feedback at the August CRC meeting and recommended additional changes. Staff has attached draft language representing the Commission's feedback.

During the meeting, Commission members discussed the timing of ward boundary changes with municipal elections and asked Staff to research the effect of changing ward boundaries after candidates have filed for election but prior to said election. The City's Charter states that candidates for City Council shall "reside in the ward from which they seek election, on the date of their filing" to be eligible for service on City Council. Norman Charter, Article II, Section 2. Although the Charter does not specifically address residency on the date of election, Article II, Section 22 explicitly states that ceasing to reside in the ward for which one is elected due to reapportionment *does not* create a vacancy in office. Based on the Charter language, it appears that a candidate would not cease to be eligible for ward specific representation if the reason the candidate no longer lives in the ward is due to reapportionment.

State law is more specific than the Charter. Title 11, Section 10-103 states the following:

The councilmembers shall be residents and registered voters of the city. The councilmembers from wards shall be actual residents of their respective wards at the time of their candidacy and election; but removal of a councilmember from one ward to another within the city after his election, or a change in ward boundaries, shall not disqualify him from completing the term for which he was elected.

Under the statutory provision, candidates for ward specific representation must be residents of their respective wards at the time of candidacy and election. As in the case of the City Charter, an elected official does not become disqualified if he or she ceases to live in the ward for which he was elected to represent due to reapportionment. Norman is a home-rule chartered city under Oklahoma law. "A city which adopts a home-rule charter under the provisions of Okl.Const. art. 18, § 3(a)

office memorandum

# CHARTER REVIEW COMMISSION

Thursday – October 3, 2013

Continued Discussion

## Article XX. Reapportionment

### Background:

Article XX of Norman’s Charter currently requires that there be a Reapportionment Commission whose purpose it is to review the ward boundaries in Norman to ensure that the population of each ward is equal, as nearly as practicable. Additionally, wards are to be 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.” The Reapportionment Commission is required to refer to City Council a resolution establishing and adjusting ward boundaries to comply with these requirements within ninety (90) days of the issuance of each Federal Decennial Census. The Reapportionment Commission can also recommend reapportionment at other times, such as when property is annexed by the City or when changes are necessitated by an increase, decrease or shift in the residence of the population of the City. The current Charter provision contemplates that the Reapportionment Commission should meet at least annually. In the past, Reapportionment Commissions have studied and then proposed changes in Ward boundaries more frequently than once every 10 years.

State law (11 O.S 20-101) requires that the municipal governing body review wards and ward boundaries as soon as practicable following each federal census to ensure the wards are formed of compact and contiguous territory and are substantially equal in population. Additionally, the municipal governing body, to the extent practicable, should avoid dividing precincts established by a county election board in establishing ward or council boundaries.

During the June CRC meeting, Commission members expressed concerns that changing ward boundaries too frequently results in voter confusion.

Federal case law has addressed the question of frequency for adjustment of legislative boundaries in a number of cases. In *Reynolds v. Sims*, 377 U.S. 533, 583 (1964), the U.S. Supreme Court stated that the “[D]ecennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth.” In a review of relevant federal case law, a law review article provided the following summary:

Where there is no evidence of a legislative body refusing to redistrict yet finds itself facing an election “on the cusp of [a] decennial census,” courts have generally been less apt to require either a redistricting before the election, or throwing out election results based on an old census and holding special elections, finding it more important to preserve district

stability. *French v. Boner*, 963 F. 2d 890, 891-92 (6th Cir. 1992). Courts have held that population shifts alone at the end of a ten-year census cycle do not create such an actionable claim. *Fairley v Forrest County*, 814 F. Supp. 1327 (S.D. Miss. 1993). In addition to preserving district stability, courts have found redistricting between censuses to be inherently inaccurate anyway, given that the data relied upon is necessarily from the last census, which may have been some years previous. See *Simkins v. Gressette*, 495 F. Supp. 1075 (D.S.C. 1980). However, where a state fails to redistrict because of political squabbling and not due to any rational state policy, or where an existing districting scheme is found to be discriminatory, courts have been willing to step in and order an immediate redistricting even when the result will be delay of upcoming elections or using data other than census data to form new districts. See *Farnum v. Burns*, 548 F. Supp. 769 (D.R.I. 1982).

David J. A. Barga, [The Frequency of Redistricting in Nebraska and the Balance Between One Person, One Vote and Electoral Stability: How Often Is Too Often?](#), 82 Neb. L. Rev. 575, 593-94 (2003).

In talking with staff members that assist the Reapportionment Commission, other practical concerns have arisen in the reapportionment process that could be addressed through a Charter amendment. Article XX, Section 2 requires that the Commission meet on the second Monday of July of each year at 7:30pm. There have been occasions when a quorum of the Commission have not been available at the time set forth in the Charter.

Additionally, Section 3 requires the Commission to refer a resolution to the City Council establishing and readjusting ward boundaries within ninety (90) days of the issuance of the Federal Decennial Census. In Section 4, the Commission is required to hold a public hearing at least ten (10) days before the Commission votes on the resolution that will be forwarded to Council. There have been occasions when the public's input of its recommendation has warranted further study by the Commission. After additional study, if the resolution is changed, a second public hearing is required. This process is difficult to conclude within ninety (90) days.

The CRC met in July and discussed the changes proposed. The consensus of the CRC was to change the Reapportionment Commission to an *ad hoc* committee that would meet under three conditions – (1) proposed annexation or deannexation of property, (2) in response to the Federal Decennial Census, and (3) upon request of Council. With the *ad hoc* committee structure, it was felt that the language in Section 2 proscribing five year terms and instructions on how to deal with vacancies in office would no longer be necessary. The CRC also felt that lengthening the time frame set forth in Section 3 from 90 days to 180 days would address some of the practical concerns previous Reapportionment Commissions have faced regarding adequate review time. Finally, with the revised structure under which the Commission may review ward boundaries, the CRC felt the second paragraph in Section 6 was no longer applicable and should be stricken.

The CRC met again in August and discussed possible triggers for Council initiation of the reapportionment process. There were concerns that the initiation of the reapportionment process by Council could become political and may not be necessary given some of the language cited in the law review article above. Rather than setting forth criteria for Council initiation of reapportionment, the CRC settled on convening the Reapportionment Commission in three situations: (1) When the City proposes to annex or de-annex property, (2) in preparation for and during the release of the Federal Decennial Census, or (3) upon the unanimous recommendation by City Council. Additionally, the CRC requested that language be added to Section 3 to clarify that it is applicable to all situations where the Reapportionment Commission is appointed.

Amendments based on September 2013 CRC Discussion:

**Section 1. – Reapportionment Commission.**

There shall be a Reapportionment Commission, which shall consist of nine voting members appointed by the Council on nomination by the Mayor. All members of the Reapportionment Commission shall be registered voters of the City and shall hold no other office or position of employment in the City government.

**Section 2. – ~~Composition~~Appointment and Meetings of the Reapportionment Commission.**

The Reapportionment Commission shall meet to review and make recommendations on ward boundaries as follows:

- a. When the City proposes to annex or de-annex property; or
- b. During the last quarter of the calendar year prior to the release of the Federal Decennial Census and continuing through the release of the final Census; or
- c. Upon the unanimous recommendation of City Council.

In the case of proposed annexation or de-annexation, members of the Reapportionment Commission shall be appointed within ninety (90) days of adoption of any such proposal. For purposes of reviewing the Federal Decennial Census, members of the Reapportionment Commission shall be appointed six (6) months prior to the year of the issuance of such census. The Reapportionment Commission’s members shall be residents and registered voters of the City’s wards, (one at-large and one from each ward).

~~The terms of all nine (9) voting members shall be five (5) years, beginning on July 1. The members so appointed shall, at a regular meeting July of each year subsequent to July 1, 1977, meet and elect a presiding officer and such other officers as the Commission may deem necessary to its proper function.~~

~~Vacancies shall be filled by the City Council in the manner set out hereinafter for the unexpired terms.~~

**Section 3. – Criteria for Ward Boundaries.**

~~Subsequent to the issuance of each Federal Decennial Census and within ninety (90) No later than one hundred and eighty (180) days after the appointment of the Reapportionment Commission or after the issuance of the Federal Decennial Census when the Commission is appointed pursuant to Section 2(b) herein,~~ the Commission shall pass and refer to the City Council a resolution to establish and readjust the wards and their boundaries to comply with the requirements set out herein. Wards shall be formed so as to equalize, as nearly as practicable, the population of the several wards. In addition, each ward shall be 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. Ward lines shall not create artificial corridors which in effect separates voters from the ward to which they most naturally belong.

**Section 4. – Public hearing on proposed boundaries; votes required for passage.**

At least ten (10) days before voting on the resolution, the Reapportionment Commission shall hold a public hearing thereon. At least five (5) votes shall be required for passage of the resolution, and the vote on passage shall be by roll call and shall be entered in the minutes of the Commission. A map showing the wards and their boundaries shall be appended to the resolution.

**Section 5. – Council shall have final authority.**

The resolution shall then be referred to the eCity Council which shall, within thirty (30) days, conduct a public hearing on the proposed resolution and adopt the resolution without modification, reject the resolution, or adopt the resolution with such modification as the Council deems necessary, ~~the resolutions as an ordinance of the city. If any changes in ward boundaries are adopted by City Council, such changes shall also be adopted by ordinance and codified in the Code of the City of Norman.~~ In any alteration or amendment of the resolution as proposed by the Reapportionment Commission, the City Council shall use the same criteria for ward boundaries as hereinabove adopted for the use of the Reapportionment Commission.

Thereupon, the new wards and boundaries shall supersede the previous wards and boundaries for purposes of the next primary and general election, and for all other purposes on the day on which the terms of the Councilmembers elected that year begin.

**Section 6. – Annexed territory; reapportionment between census report.**

When territory is annexed to the City, the Reapportionment Commission, by resolution in the manner provided hereinabove, shall incorporate it into the adjacent ward or wards or shall readjust the wards and boundaries in the manner provided hereinabove, as it deems appropriate.

~~Further the Commission may, at other periods than those set out above, in the manner and upon the basis stated and provided for herein, alter the boundaries of the wards when an~~

~~increase, decrease, or shift in residence of the population of the City, or other substantial change in the criteria set out above.~~

**SCHEDULED REVIEW OF CHARTER** – Pertinent excerpts from City Council Conference discussion of December 13, 2011.

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Councilmember Kovach said the previous Charter Review processes really underscores why moving forward on an ordinance creating this discussion is important because so many issues/topics were brought forward, but then were dismissed behind the scenes over and over again. He felt the document that we base our government on should have as much public input as possible and be reviewed by a separate Commission.

Mayor Rosenthal said she also appreciated Staff's work and research for a very thorough Council packet on this topic, but she came to a very different conclusion after reviewing all the Charter review history. She stated there were over 20 Charter review meetings with a lot of public input and felt it was not correct to say the process was dismissed behind the scenes because Council took a public vote deciding to postpone the item indefinitely. Mayor Rosenthal felt most of the issues have been addressed, i.e., rainy day fund is now an ordinance, a review of the utilities is now being completed every year, etc., and she does not see the evidence to support a comprehensive review but would support a targeted review. Councilmembers Quinn and Griffith agreed a targeted review would be sufficient.

Councilmember Dillingham said an ordinance should be created stating the Charter will be looked at every 10 years, whether comprehensive or targeted. She said a Citizen Commission could be allowed to come up with a policy and procedure manual for how they as citizens want to be able to identify issues, bring forth citizens to discuss those issues, etc. Councilmember Dillingham said to do so would educate and involve more citizens in the Charter review process, but felt a comprehensive review was not needed at this time since a lot of the issues have been taken care of to date.

Councilmember Lockett felt an ordinance is not necessary because future Councils should be able to choose to review the Charter when they feel it is needed. She said this Council's desire should not be imposed upon future Councils and Councilmember Griffith agreed. Councilmember Kovach referred to the pertinent excerpts of the Charter Review Committee minutes where the same topics kept coming back up. He felt that the *easy* issues were taken care of, but there are important issues that still need to be resolved. Councilmember Kovach felt it is always difficult for a politician to have a controversial issue on the ballot while running for office at the same time and every year half of the Council is up for election. He said Council has the opportunity to develop a mechanism, i.e., an ordinance, to minimize that very problem. Councilmember Kovach felt this would not be imposing his will on any future Council, but rather allowing the people to look at the founding document and decide whether or not to make any necessary changes at that time.

Councilmember Dillingham felt an ordinance would not impose this particular Council's will on future Council(s) anymore than any other ordinance, but would guarantee citizens an opportunity and voice to work with the Charter in any manner the Council deems appropriate.

CHARTER AMENDMENTS

DATE	AMENDMENTS	PROCESS
4-10-1902 Ordinance No. 1	Original Charter	Petition
07-15-45 Resolution	Adding requirements for City Officers (salaries) – Elections; City Manager; Purchasing Agent; Commission not to interfere with appointments, removals, removals, or administration; and appointing a Board of Hospital Management.	
04-05-55 Resolution	Adding Legislative Department (Council meeting times)	
04-02-57	Adding Board of Parks Commissioners	
10-11-60 Ord. 1257	Amending requirements for City Officers	
11-06-62 Ord. 2249	Amending purchasing requirements and ordinance requirements.	
03-17-70 Ord. 2249	Amending filing dates for Council candidates and the process for withdrawal of candidates	Council Committee
10-01-74 O-7475-13	Adding language about protecting human rights; amending provisions for elected officers; amending provisions under City Manager; adding provisions for City Controller, City Attorney, and Labor Relations; adding Planning Commission "home rule" provisions	Charter Committee <u>Appt. 1971</u> Harold Heiple, Chair Mrs. Dean Chiles Will Mattoon J. H. Patten Mrs. Ernest Trumble
11-18-75 O-7576-13	Adding provision for park land; amending filing dates for Council; and adding utility rates req. vote	Charter Committee <u>Appt. 1971</u>
03-17-81 O-8081-39	Amending Board of Parks; amending provisions for medical staff at hospital; increasing Council compensation; and adding deadline for Council candidate withdrawal	Charter Committee <u>Appt. 1980</u> Harold Heiple Del Bauman Pape Burton Bagby Million Collins Myers Maletz

CHARTER AMENDMENTS  
PAGE 2

DATE	AMENDMENTS	PROCESS
03-15-94 O-9394-22	Changing Council filing dates; vacancies in office; political activity by City employees; park land; nepotism – 33 propositions several of which were cleanup	Charter Committee <u>Appt. 1987</u> Buddy Pendarvis Harold Heiple Helen DeBolt Mike Devine Lexa Treps Diane Brown Osborne Reynolds Jorie Welch Larry Naifeh Recommendations not acted upon at that time – Council Governance Committee brought back those recommendations and added more
09-20-94 O-9394-42	Amending park land provisions – adding fee in lieu of donation	Council Committee
01-14-03 O-0203-11	Amending provisions for City elections – July swearing in date	Council Finance Committee
03-29-05 O-0405-32	Changing election dates to comply with new statute regulations	Charter Committee Appt. 2004 John Hancock, Co-Chair Harold Heiple, Co-Chair Jim Rankin Paula Roberts Barbara Schindler Joseph Siano Mike Wynn Jeff Bryant Mary Hatley
03-01-11 O-1011-32	Change residency requirements for Council candidates to comply state statutes; freeing up park land fee; & filing date for NRHA budget	Council Oversight Committee
11-08-11 O-1112-08	Change Council election dates to comply with state statute	Staff/Council