

CHARTER REVIEW COMMISSION
Municipal Building Multi-Purpose Room
201 West Gray
Norman, Oklahoma

Monday, December 2, 2019
5:30 p.m.

1. Call to Order and Roll Call
2. Consideration of approval of the Charter Review Commission meeting minutes of November 4, 2019.
3. Discussion regarding adding language to the Charter to establish a Resident or Community Bill of Rights.
4. Discussion regarding adding language to the Charter related to requiring a vote of the electorate for approval of a Tax Increment Finance District over \$5,000,000.
5. Miscellaneous Discussion.
6. Adjournment.

It is the policy of the City of Norman that no person or groups of persons shall on the grounds of race, color, religion, ancestry, national origin, age, place of birth, sex, sexual orientation, gender identity or expression, familial status, marital status, including marriage to a person of the same sex, disability, retaliation, or genetic information, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in employment activities or in all programs, services, or activities administered by the City, its recipients, sub-recipients, and contractors. In the event of any comments, complaints, modifications, accommodations, alternative formats, and auxiliary aids and services regarding accessibility or inclusion, please contact the ADA Technician at 405-366-5424, Relay Service: 711. To better serve you, five (5) business days' advance notice is preferred.

ITEM 2

MINUTES

CHARTER REVIEW COMMISSION MINUTES

November 4, 2019

The Charter Review Commission met at 5:34 p.m. in the Municipal Building Multi-Purpose Room on the 4th day of November 2019, 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. Call to Order and Roll Call.

PRESENT:

Mr. Trey Bates
Mr. Doug Cubberley, Vice-Chairman
Ms. Carol Dillingham
Mr. Jim Griffith
Mr. Greg Jungman
Mr. Kenneth McBride
Mr. Kevin Pipes
Mr. Richard Stawicki
Mr. Bob Thompson, Chairman
Mr. Bryan Vinyard
Ms. Shon Williamson-Jennings

ABSENT:

Ms. Aisha Ali
Mr. Jim Eller
Mr. Tom Hackelman

STAFF PRESENT:

Ms. Kathryn Walker, Interim City Attorney
Ms. Brenda Hall, City Clerk

Item 2. Consideration of approval of the Charter Review Commission meeting minutes of October 14, 2019.

Member Williamson-Jennings moved that the minutes be approved, which motion was duly seconded by Member Pipes, and the minutes were approved.

Items submitted for the record

1. Charter Revision Ad Hoc Committee minutes of October 14, 2019

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

Item 2, continued:

YEAS: Members Bates, Cubberley, Dillingham, Griffith, Jungman, McBride, Pipes, Stawicki, Vinyard, Williamson-Jennings, Chairman Thompson

NAYES: None

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

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Item 3. Continued discussion and possible action of Article II, Sections 2, 5, 6, and 14, of the City Charter to consider whether the term of office for Councilmembers and the Mayor should be changed from two years to three years.

Ms. Walker said during the last meeting, Member Bates requested this issue be revised in order for Staff to prepare language for three year terms for elected officials, with odd-number ward elections continuing to occur together in the same year, even-numbered ward election occurring the next year together, and the Mayoral election occurring every third year as a standalone election. She said Staff prepared a chart. She said to achieve this without affecting current terms, the language is drafted to begin in 2023 as follows:

	Current Term	New Term
Odd Wards	July 2, 2019 – July 7, 2021 July 7, 2021 – 2023	2023 – 2026 (Tuesday following election results)
Even Wards	July 3, 2019 – July 7, 2020 July 7, 2020 – July 5, 2020 July 5, 2022 – 2024	2024 – 2027 (Tuesday following election results)
Mayor	July 2, 2019 – July 5, 2022	July 5, 2022 – 2025 (Tuesday following election results)

Item 3, continued:

Member Bates said the current timing sometimes does not allow a sitting Councilmember to run for Mayor without losing their seat, whereas other Councilmembers can run without giving up their seat. He is trying to make it more equitable for all Councilmembers. He said almost all elections for higher offices occur on even years and changing the terms would allow for better time management if running for a higher office. He said the Mayor has a leadership role that is different from the rest of Council, but when it comes down to their ability to be involved and understand the issues there is really no difference in decision making power. He would not want to shorten the Mayor's term, but adding one extra year to the term of the Councilmembers will give them more time to be involved and understand the issues they are voting on.

Member Stawicki said the Mayor does a lot more City activities outside of Council meetings than other members of Council, which means they are only equal in terms of their vote on Council. He suggested creating nine (9) wards which would be one-third of the Council each year being elected each year and the Mayor would not vote at the Council meetings.

Member Pipes said if the Mayor does not vote then a big chunk of accountability is gone.

Member McBride said he supports three year terms for each member of Council including the Mayor and Member Pipes agreed.

Member Dillingham said she was not excited about three year terms because of the loss of engagement with the voters. She said the City is known for its engagement with voters and complacency may creep in with a three year term. She said it is critical to stay in touch with constituents because the demographics do change and it is Council's responsibility to understand what voters are thinking and it puts more pressure on the Councilmember to make sure they have ward meetings or other types of communication. She said face to face communication is important and the best way to do that is keeping Councilmembers engaged is to keep the two year terms.

Member Williamson-Jennings agreed and said two year terms keep representatives accountable and engaged with constituents wants from their representatives.

Councilmember Stawicki asked if any other cities separate Mayor and Council elections as Ms. Walker said she would research that for the Committee.

Member Griffith and Member Jungman support two year terms for Councilmembers.

Member Cubberley said he supports three year terms because it takes time to build relationships and get things done. He said larger City issues can take over a year of Committee and/or Council discussion before making it to Council for a vote so an extra year can make a big difference. He said three years is really not that long and Councilmembers can always be responsive to constituents.

Item 3, continued:

Member Bates said there is an interesting dynamic in a Mayoral race that could potentially be heavily influenced by the fact that there are four wards up for election at the same time. He said by separating the Mayor and Council races it makes it very clear to the public what type of race will be taking place.

Chairman Thompson said issues the Council was working on when he was sworn in as a Councilmember were not the same issues candidates running for office were talking about in the ward races. He voted on issues Council had been discussing for a very long time that he was uneducated about. He said when Council turns over quickly it lacks consistency of knowledge. He said it takes time to get new Councilmembers “up to speed” and new Councilmembers may not agree with the direction current seated Councilmembers are going.

Member McBride moved that the proposal to change the term of office for Councilmembers and the Mayor from two to three years be approved, which motion was duly seconded by Member Cubberley,

Items submitted for the record

1. Proposed Article II, Section 2 – Mayor and Councilmember’s Term Expiration

and the question being upon approving the proposal to change the term of office for Councilmembers and the Mayor from two to three years a vote was taken with the following result:

YEAS: Members Bates, Cubberley, Griffith, McBride,
Pipes, Chairman Thompson

NAYES: Members Dillingham, Jungman, Stawicki,
Williamson-Jennings, Vinyard

Chairman Thompson declared the motion carried the proposal term of office for Councilmember and the Mayor from two to three years was approved.

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Item 4. Discussion of Article II, Section 11, to consider whether to allow partisan elections for municipal office.

Member Cubberley said City items are more issue focused than party focused.

Member Dillingham said it makes it so much easier to knock on a door, answer the phone, and answer an email when you are focusing on the issue and talking about the roads, water, stormwater, etc.

Member Pipes felt the City should stay status quo on this issue.

Item 4, continued:

Member McBride moved to decline the proposal to allow partisan elections for municipal office, which motion was duly seconded by Member Dillingham,

Items submitted for the record

1. Article II, Section 11 – Partisan Elections
2. Cities 101 - - Partisan and Non-Partisan Elections

and the question being upon declining the proposal to allow partisan elections for municipal office, a vote was taken with the following result:

YEAS:	Members Bates, Cubberley, Dillingham, Griffith, Jungman, McBride, Pipes, Stawicki, Vinyard, Williamson-Jennings, Chairman Thompson
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NAYES:	None
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Chairman Thompson declared the motion carried the proposal to allow partisan election for municipal office was declined.

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Item 5. Miscellaneous Discussion.

Ms. Brenda Hall, City Clerk, said future topics include Utility increases requiring a vote of the people; Residents Bill of Rights; revisit relationship between Norman Regional Hospital System and the City; and Tax Increment Finance District (TIF) requirement for a vote of the people if \$5 million or over; potential loopholes used to skirt the Open Meetings Act; review Council succession revisions; and review Executive Session restrictions and provide recommendations of appropriate limits of use.

Chairman Thompson asked member if the meetings should be limited to one item at a time and members felt several items could be discussed as long as there is consensus to move forward; however, larger issues might need more than one meeting.

Topics for the December meetings include the Citizen Bill of Rights and TIF.

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Item 6. ADJOURNMENT.

Chairman Thompson declared the meeting adjourned at 6:20 p.m.

ITEM 3

**RESIDENT OR COMMUNITY
BILL OF RIGHTS**

CHARTER REVIEW COMMISSION

Article ____, Section ____ – City of Norman Community Bill of Rights.

Background:

No past CRC has considered adding a Community Bill of Rights (“CBOR”) to the Charter. Resolution No. R-1819-66 called for the 2019 CRC to consider adding language to the Charter to establish a CBOR. Currently, no Oklahoma cities have a CBOR. Other cities across the United States have adopted or have tried to adopt CBOR ordinances or charter amendments. CBORs are declarations of community self-government often motivated by concerns related to fracking, pollution, water protection, ecological preservation, and sustainable energy.

The Community Environmental Legal Defense Fund (“CELDF”) indicates that CBORs often contain the following:

(1) A preamble, (2) a definitions section, (3) a section enumerating specific rights, (4) a section identifying and prohibiting the rights-violating activities, (5) an enforcement section, (6) a section preserving certain corporate powers, (7) a section voiding past permits that allowed the rights-violating activities, (8) a section calling for federal and state constitutional recognition and enforcement of the rights of community self-government, (9) a severability section, and (10) a repealer section that repeals prior local laws in conflict with the CBOR.

The CBORs cited in the attached chart largely conform to the CELDF’s suggested format except for minor deviations. CBORs differ greatly in their legislative measures. Some CBORs are simply declarations of local self-government and rights to a clean environment, while others ban activity outright and impose strict penalties.

Attached is a chart comparing three CBORs, which each employ different degrees of legislative measures to accomplish their goals. The Community Rights US group (www.communityrights.us) is a pro-community rights group with information related to similar efforts across the county. An article written about the community rights movement is also attached for your review.

Community Bill of Rights Comparison Table

City	Citation	Focus	Prohibitions	Penalties
Norman	N/A	N/A	N/A	N/A
Lafayette, CO	Chap. 43, Art. IV, Sec. 43-51	Lafayette’s CBOR is a declaration on climate concerns and local self-government. It reserves the right to defend the community’s rights to a healthy climate under Lafayette’s local powers.	Lafayette’s CBOR contains no bans on harmful corporate or governmental activity.	Lafayette’s CBOR contains no specific penalties.
Mendocino County, CA	Chapter 8.05 of Mendocino County Code	Mendocino County’s CBOR asserts rights to local self-government and interests in preserving clean water, air, and soil.	Mendocino County’s CBOR prohibits fracking, horizontal and directional drilling, and waste injection wells within the county.	Civil and criminal liability falls on all officers and directors of corporations engaged in fracking in Mendocino County, and people who operate fracking machinery in Mendocino County. Violation of the CBOR is a misdemeanor. Penalties include up to one year in county jail and up to a ten thousand dollar fine for each violation. Probation is not available for offenders.
Mansfield, OH	Art. I, Sec. 1.01-02 of Charter	Mansfield’s CBOR asserts rights to local self-government, clean air, enjoyment of home, and sustainable energy.	Mansfield’s charter amendment prohibits injection, deposit, storing, or transporting of waste water, frack water, and/or other similar material or by-products through the City of Mansfield without the City’s written consent.	Mansfield’s CBOR contains no specific penalties, but asserts right to redress in courts.

Text of Community Bills of Rights Cited in the Table Above

Lafayette, CO

ARTICLE IV. – Climate Bill of Rights.

Sec. 43-51. - In general.

(a) *Right to a healthy climate.* All residents and ecosystems of the city possess a right to a healthy climate and life sustaining resources, which shall include the right to be free from all activities within the city that interfere with that right, including the extraction of coal, oil, or gas, disposal of drilling waste contaminated drinking water, lethal carcinogens, toxic gases and other byproducts of industrial activity which threaten human physical and neurological systems.

(b) *Right to local, community self-government.* All residents of the city possess the right to a form of governance which recognizes that all power is inherent in the people of the city, and that all free governments are founded on the people's authority and consent. Laws adopted by the people of the city shall only be preempted or nullified if they interfere with rights secured by the state or federal constitution to the people of the city, or if they interfere with protections provided to the people or ecosystems of the city by state, federal, or international law.

(c) *Right to defend.* All residents of the city possess the right to defend this law. To secure this right, entities which violate the people's right to a healthy climate and sustainable ecosystem shall not be deemed to be "persons," nor possess any other legal rights, privileges, powers, or protections which would interfere with the enforcement of that right.

(d) *Right to defense.* All residents of the city possess the right to have the city government defend this law on the basis that a constitutional right of local, community self-government exists, that this law is an assertion of that right as it seeks to expand the rights of the people of the city, and that the doctrines of ceiling preemption, municipal subordinancy to state government, or corporate "rights" unconstitutionally violate the right of the residents of the city to local, community self-government.

Mendocino County, CA

CHAPTER 8.05.-Community Bill of Rights.

Sec. 8.05.010-Definitions

(a) "Corporations," for purposes of this Ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, other business entity, public benefit corporation, or limited liability company organized under the laws of any state of the United States or under the laws of any country.

(b) "Ecosystem" shall include, but not be limited to, wetlands, creeks, aquifers, and other water systems, forests, and meadows, as well as naturally occurring habitats that sustain humans, wildlife, flora and fauna, and other organisms.

Text of Community Bills of Rights Cited in the Table Above

(c) “Extraction” shall include the digging or drilling of a well for the purposes of exploring for, developing, or producing hydrocarbons.

(d) “Hydraulic fracturing” shall mean an activity in which water, propane, diesel, chemicals and a solid proppant or any other agent are pumped into a wellbore at a rate sufficient to increase the pressure downhole to a value in excess of the fracture gradient of the formation rock, causing the formation to crack, thus allowing the fracturing fluid to enter and extend the crack farther into the formation, forming passages through which hydrocarbons can flow.

(e) “Hydrocarbons” shall mean any of numerous organic compounds, including but not limited to methane, benzene, propane, petroleum and oil.

(f) “Infrastructure” shall include, but not be limited to, pipelines or other vehicles of conveyance of hydrocarbons, and any ponds or other containments used for wastewater, “frack” water, or other materials used during, or resulting from, the process of unconventional hydrocarbon extraction.

(g) “Natural Community” shall mean wildlife, flora, fauna, soil and air-dwelling and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a diverse matrix of organisms, within a natural ecosystem.

(h) “Unconventional Extraction of Hydrocarbons” shall include, but not be limited to, hydraulic fracturing, “fracking,” directional and horizontal drilling, and waste injection wells. The term shall also include, but not be limited to, extraction of water from any surface or subsurface source for use in these activities; depositing, disposal, storing, transporting and processing of waste water, produced water, frack water, flow-back, brine or other materials, chemicals or by-products used in, or resulting from, these activities; the construction and siting of any new infrastructure to support these activities, as well as application for, or issuance of, permits for engaging in these activities.

Sec. 8.05.020-Statements of Law — A Local Bill of Rights

(a) *Right to Community Self-Government.* All residents of Mendocino County possess the right to a form of governance where they live which recognizes that all power is inherent in the people and that all free governments are founded on the people’s consent. Use of the Mendocino County government by the sovereign people to make law and policy shall not be deemed, by any authority, to eliminate or reduce that self-governing authority.

(b) *Right to Clean Water, Air and Soil.* All residents, natural communities and ecosystems in Mendocino County possess the right to water, air and soil that is untainted by toxins, carcinogens, particulates, nucleotides, and hydrocarbons introduced into the environment through the unconventional extraction of hydrocarbons.

(c) *Rights of Natural Communities and Ecosystems.* Natural communities and ecosystems possess rights to exist and flourish within Mendocino County without harm resulting from the unconventional extraction of hydrocarbons.

Text of Community Bills of Rights Cited in the Table Above

(d) *Right to be Free from Chemical Trespass.* All residents, natural communities and ecosystems in Mendocino County possess the right to be free from chemical trespass resulting from the unconventional extraction of hydrocarbons.

(e) *Rights as Self-Executing, Fundamental, and Unalienable.* All rights delineated and secured by this Ordinance are inherent, fundamental, and unalienable; and shall be self-executing and enforceable against both private and public actors.

Sec. 8.05.030--Statements of Law — Prohibitions Necessary to Secure the Bill of Rights

(a) It shall be unlawful for any government, corporation or natural person to engage in the unconventional extraction of hydrocarbons within Mendocino County.

(b) The prohibitions in section 3(a) of this Ordinance shall not apply to hydrocarbon extraction wells installed and operating in the County prior to the enactment of this Ordinance, only if the extraction process used for those wells prior to the enactment of this ordinance is not changed to a different extraction process after the enactment of this ordinance.

(c) Governments, corporations, and natural persons engaged in unconventional extraction of hydrocarbons, whether in Mendocino County or in a neighboring jurisdiction or offshore location; shall be strictly liable for all harms resulting from those activities caused to natural water sources, ecosystems, people and communities within Mendocino County.

(d) It shall be unlawful for any corporation, government or natural person to violate the rights recognized and secured by this Ordinance.

(e) No permit, license, privilege, charter, or other authority issued by any State, federal or international entity which would violate the prohibitions of this Ordinance or deprive any County resident of any rights secured by this Ordinance, the California Constitution, the United States Constitution, or other laws, shall be deemed valid within Mendocino County.

Sec. 8.05.040--Enforcement

(a) Any corporation, government or natural person that violates any prohibition established by this Ordinance shall be guilty of a misdemeanor. Those liable for a violation are each and every officer and director of any corporation that engages in fracking in Mendocino County, and each and every person who operates any fracking machinery in Mendocino County. Upon conviction the violator(s) shall be sentenced to one year in county jail and shall pay a fine of \$10,000 for each violation. Each time the pump is turned on, and each stroke of the pump shall be a separate violation, and violation of each section of this Ordinance shall count as a separate violation. Each day that fracking infrastructure equipment is staged or located in Mendocino County for more than 8 hours, whether or not that equipment is actually used for fracking, and each separate location in Mendocino County where such equipment is situated, is a separate violation. The court shall not authorize probation for any person convicted of any portion of this ordinance, under any circumstance.

(b) The County, or any resident of the County, may enforce the rights and prohibitions of this Ordinance through an action brought in any court possessing jurisdiction over activities

Text of Community Bills of Rights Cited in the Table Above

occurring within the County. In such an action, the County or the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any action brought by either a resident of the County or by the County to enforce or defend the rights of ecosystems or natural communities secured by this Ordinance shall bring that action in the name of the ecosystem or natural community in a court possessing jurisdiction over activities occurring within the County. Damages shall be measured by the cost of restoring the ecosystem or natural community to its state before the injury, and shall be paid to the County to be used exclusively for the full and complete restoration of the ecosystem or natural community.

Sec. 8.05.050-Enforcement Ñ People's Rights to Superior to Corporate Power

(a) Corporations which violate or seek to violate this Ordinance, or which are alleged to have violated this Ordinance, shall not be deemed to be "persons," nor possess any other legal rights, privileges, powers, or protections which would interfere with the rights or prohibitions enumerated by this Ordinance. "Rights, privileges, powers, or protections" shall include the power to assert state, federal or international preemptive laws in an attempt to overturn this Ordinance, and the power to assert that the people of this municipality lack the authority to adopt this Ordinance.

(b) All laws adopted by the legislature of the State of California, and rules adopted by any State agency, shall be the law of Mendocino County only to the extent that they do not violate the rights or prohibitions of this Ordinance.

Sec. . 8.05.060--Effective Date and Existing Permit holders

This Ordinance shall be effective immediately on the date of its enactment, at which point the Ordinance shall apply to any and all actions that would violate this Ordinance regardless of the date of any applicable permit.

Sec. 8.05.070--People's Right to Self-Government

Use of the courts or the legislature by any government, corporation or natural person to attempt to overturn the provisions of this Ordinance shall require the County to schedule community meetings focused on changes to County government that would secure the rights of the people to local self-government.

Sec. 8.05.080-California and Federal Constitutional Changes

Through the adoption of this Ordinance, the people of the County call for amendment of the California Constitution and the federal Constitution to recognize the right to local self-government free from governmental preemption and or nullification by corporate "rights" when local laws expand and are more protective of the rights of individuals, the community and nature.

Section. . 8.05.090 --Severability

The provisions of this Ordinance are severable. If any court decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision

Text of Community Bills of Rights Cited in the Table Above

shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance.

Mansfield, OH

Art. I, Sec. 1.03of Charter

Section 1.03. Bill of Rights

The rights of the citizens of the "home rule" municipality of the City of Mansfield and the corporate City of Mansfield are derived and flow directly by and from the Ohio Constitution and its "Bill of Rights ," and are secured by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. These rights include, but are not limited to, the Ohio Constitution's proclamation that:

"§ 1.01 Inalienable Rights (1851)

All men are, by nature, free and independent, and have certain inalienable rights , among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

and

"§ 1.16 Redress in courts (1851, amended 1912)

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

(As amended September 3, 1912.)"

and

"§ 1.19b Property rights in ground water, lakes, and other watercourses

[including but not limited to]

(E) Ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land shall not be held in trust by any governmental body. The state, and a political subdivision to the extent authorized by state law, may provide for the regulation of such waters. An owner of land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land."

and

Text of Community Bills of Rights Cited in the Table Above

"§ 1.02 Right to alter, reform, or abolish government, and repeal special privileges (1851)

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly."

IT IS FURTHER HEREBY PROCLAIMED BY THE HOME RULE MUNICIPALITY OF THE CITY OF MANSFIELD AND FOR THE PROTECTION OF ITSELF AND ITS CITIZENS AND FUTURE GENERATIONS, THAT EACH AND ALL SHALL POSSESS THE FOLLOWING INALIENABLE RIGHTS :

(A) *Right to Sustainable Water.* All residents, natural communities and ecosystems in the City of Mansfield possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

(B) *Right to Clean Air.* All residents, natural communities and ecosystems in the City of Mansfield possess a fundamental and inalienable right to breathe air untainted by toxins, carcinogens, particulates and other substances known to cause harm to health.

(C) *Right to Peaceful Enjoyment of Home.* Residents of the City of Mansfield possess a fundamental and inalienable right to the peaceful enjoyment of their homes, free from interference, intrusion, nuisances or impediments to access and occupation.

(D) *Right to a Sustainable Energy Future.* All residents in the City of Mansfield possess a right to a sustainable energy future, which includes, but is not limited to, the development, production, and use of energy from renewable fuel sources, including, but not limited to, water and air.

(E) *Right to Self-Government.* All residents of the City of Mansfield possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate or other entities and their directors and managers shall not enjoy special privileges or powers under the law which make municipal community majorities subordinate to them.

(F) *People as Sovereign.* The City of Mansfield shall be the governing authority responsible to, and governed by, the residents of the City. Use of the "City of Mansfield" municipal corporation by the sovereign people of the City to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and infeasible right to self-governance in the community where they reside.

(G) *Rights as Self-Executing.* All rights delineated and secured by this Charter shall be self-executing and these rights shall be enforceable against corporations and governmental entities.

Text of Community Bills of Rights Cited in the Table Above

(H) *Securing and Protecting Rights* . To further secure and protect the rights enumerated by the aforementioned Bill of Rights :

(1) It shall be unlawful for any person or corporation, or any director, officer, owner, or manager of a corporation or state government or any entity to use a corporation or state government or entity, to inject, deposit, store or transport waste water, "produced" water, "frack" water, brine or other materials, chemicals or by-products from the development of natural gas from shale formations, within, upon or through the land, air or waters of the City of Mansfield, without the written legislative consent of the City of Mansfield.

(2) No permit, license, privilege or charter issued by any State or state government agency, Commission or Board to any person or any corporation or state government or any entity operating under State laws, or any director, officer, owner, or manager of a corporation or state government or any entity operating under State laws, which would violate the prohibitions of this Charter provision or deprive any City resident(s), of any rights , privileges, or immunities secured by this Charter, the Ohio Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Mansfield, without the written legislative consent of the City of Mansfield.

(3) The provisions of this section are severable. If any court of competent jurisdiction decides that any sub-section, clause, sentence, part, or provision of this section is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sub-sections, clauses, sentences, parts, or provisions of this Bill of Rights and its prohibitions. The People of the City of Mansfield hereby declare that in the event of such a decision, and the determination that the court's ruling is legitimate, they would have enacted this amendment even without the sub-section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional. All inconsistent provisions of prior Ordinances and zoning Ordinances adopted at any time by the City of Mansfield are hereby held in abeyance, but shall take immediate effect in the event this Bill of Rights and its protective prohibitions are overturned, rejected, or held unlawful.

THE COLLEGES OF LAW BLOG



THE COMMUNITY RIGHTS MOVEMENT

 *By James Paulding*

 THE SANTA BARBARA & VENTURA COLLEGES OF LAW - TUE, JUL 18, 2017



James Paulding, attorney and graduate of the Colleges of Law's J.D. program, offers a discussion about the Community Rights Movement and its place among other movements spreading across America today.

How much power does a local government wield to ban activities it deems as harmful to the community?

This is precisely the struggle of the Community Rights movement. Initiated by the Community Environmental Legal Defense Fund (CELDF) in Pennsylvania in 1995, the movement seeks to shift more power to local governments to pass laws banning harmful activities. In representing over 200 local governments across the country, CELDF assists communities that want to ban threats to the local environment or economy such as fracking, factory farming, big-box stores, hazardous waste incinerators, and other perceived threats. And CELDF is fighting an uphill battle. One of the most challenging obstacles CELDF has encountered is that many of the local ordinances they have drafted for local governments have been deemed preempted by state or federal law. As CELDF explains in their online [Democracy School](#) outreach program, the preempting legislation passed at the state or federal level is often largely a result of successful lobbying efforts by industry and often as a reaction to local level ordinances and ensuing litigation. CELDF makes the argument that our current system of law prevents local environmental and economic sustainability.

The Community Rights movement seeks to elevate the environmental, social, and economic rights of the community over the rights of armchair quarterbacking legislators, who are too frequently in the pockets of industry. On CELDF's [website](#), they explain how "[Corporate Rights](#)," the [Rights of Nature](#), and [Community Rights](#) all intertwine to create the Community Rights movement. Essentially, CELDF argues that since corporations have personhood under the law, they have availed themselves of various constitutional law doctrines such as equal protection and due process to render local laws unconstitutional for discriminating against corporations. Based on a review of the depository of information on CELDF's [website](#), it becomes apparent that the myriad corporate victories on these grounds coupled with state and federal preemption creates quite a battleground for local governments across the United States. Noteworthy is the fact that communities attempting to ban threats are located in red and blue states—and many of the issues traverse the political two-party ideological divide.

What does it all mean?

The Community Rights movement represents a societal reevaluation point of our current system of law, which hopefully leads to a societal pivot point in the right direction. CELDF is certainly leading the charge. CELDF has recently started (at least within the last few years) advocating that local governments draft and implement a "Community Bill of Rights." An example is [Mendocino County, California's Community Bill of Rights Fracking and Water Use Initiative](#), which was approved by voters on the November 4, 2014 election ballot. This measure established the legal rights to: natural- and chemical-free communities and

ecosystems, a clean environment, and self-government by the people—without manipulation and overwhelming influence from corporations. As a means of attaining these rights, the initiative banned fracking and all related activity, imposing harsh criminal penalties for any violations. Some of the language in the measure is excerpted below:

(a) **Right to community self-government.** All residents of Mendocino County possess the right to a form of governance where they live, which recognizes that all power is inherent in the people and that all free governments are founded on the people's consent. Use of the Mendocino County government by the sovereign people to make law and policy shall not be deemed, by any authority, to eliminate or reduce that self-governing authority.

(b) **Right to clean water, air, and soil.** All residents, natural communities, and ecosystems in Mendocino County possess the right to water, air, and soil that is untainted by toxins, carcinogens, particulates, nucleotides, and hydrocarbons introduced into the environment through the unconventional extraction of hydrocarbons.

(c) **Rights of natural communities and ecosystems.** Natural communities and ecosystems possess rights to exist and flourish within Mendocino County without harm resulting from the unconventional extraction of hydrocarbons.

(d) **Right to be free from chemical trespass.** All residents, natural communities and ecosystems in Mendocino County possess the right to be free from chemical trespass resulting from the unconventional extraction of hydrocarbons.

(e) **Rights as self-executing, fundamental, and unalienable.** All rights delineated and secured by this ordinance are inherent, fundamental, and unalienable; and shall be self-executing and enforceable against both private and public actors.

From this language, my initial thoughts are:

- 1) awesome!
- 2) but this is doubtful constitutional
- 3) that's not a game changer for the Community Rights movement.

Likely Unconstitutional

The language in Mendocino County's Bill of Rights above is arguably unconstitutional because of the fact that local governments are merely subdivisions of the state and only wield that power, which has been granted to them by the state. This concept is known as Dillon's Rule, which was adopted by the U.S.

Supreme Court in *Hunter v. Pittsburgh*, 207 U.S. 161 (1907), a landmark case in establishing the supreme sovereignty of a state over its municipalities. Thus, unfortunately, "All residents of Mendocino County [do not] possess the right to a form of governance where they live which recognizes that all power is inherent in the people and that all free governments are founded on the people's consent." The form of governance available to the residents of Mendocino County is that form of governance authorized by the California State Constitution, which gives home rule "flexibility" to those cities that are charter cities and only over matters that are "municipal affairs," not matters of "statewide concern." If none of that made sense, it is because this is a complicated issue, which implicates the alternative theory to the Dillon's Rule.

In contrast to Dillon's Rule, the Cooley Doctrine (or the doctrine of "home rule") is founded on the theory of an inherent right to local self-determination. In a concurring opinion, Michigan Supreme Court Judge Thomas M. Cooley in 1871 stated, "Local government is a matter of absolute right; and the state cannot take it away." Home rule is not new. [Here's an article](#) on a Maui, Hawaii, ban on GMO crops that was struck down as unconstitutional on preemption grounds. Interestingly, infamous environmental activist and food rights author Vandana Shiva chose to call her tour in Hawaii on GMO crops the "[Home Rule Tour](#)." The objective of the tour was to "join community leaders from across Hawaii on Oahu and Maui to share stories from the frontlines of the global movement to empower community food systems. From Hawaii to India, these stories capture the importance of home rule in the future of food." According to Shiva at a [presentation she gave to residents of Mendocino County](#) in support of their local democracy efforts, "We forget that the term 'Home Rule' was the term used everywhere in the world to resist the empire."

However, as stated earlier, this is not law in the United States. Today, states are governed by the holding of *Hunter v. Pittsburgh*, which gives them the option to grant more authority to local government if they so desire. This interesting [read](#) provides a history of municipal home rule in California. Based on a review of case law on what constitutes a "municipal affair," it appears that a challenge to Mendocino's Bill of Rights may be an issue of first impression for California courts, but it is highly likely the courts would find that the language above implicates matters of "statewide concern" and would likely be preempted. But this is mere conjecture; please do not mistake this as legal advice.

3. Unconstitutionality not a game changer

Albeit likely unconstitutional, the tenacity and boldness demonstrated by Mendocino County and many other local governments that have passed these community "bill of rights" is just another indicator of a growing trend that the desires of the people are not being addressed by upper levels of government. In terms of trends, [Ballotpedia.org](#) tracks, among many things, preemption conflicts between state and local governments. Their [page on preemption conflicts](#) includes links to hot button preemption conflicts over

GMOs, labor and wages, fracking, firearms, sanctuary cities, and a host of other issues. The introduction on the page reads:

A tug-of-war between cities and state governments has developed behind the scenes of the 21st century's biggest policy debates. Interest groups advancing policy reforms, ranging from bans on fracking to higher minimum wages, have led local and state officials to tussle over appropriate responses. Mayors, city councils, and community activists are approving ordinances and initiatives on wages, gun regulation, and LGBT issues in order to fill gaps perceived in existing law. Governors and state legislators have pushed back against these local responses, citing their interests in creating uniform policies across all local governments in their states.

It seems that now more than ever things are "heating up." Perhaps the Community Rights movement has its place in the imminent next milestone of the American History revolutionary cycle. Or perhaps it is the catalyst that has yet to be mainstreamed. After all, the grassroots level is where positive change is actually occurring all over America today. I'm sold. Let's flood the courts with litigation. Let's force the judicial system to reevaluate our system of law and the rights of a community to protect its health, safety, and welfare. Mother nature knows the legislative and executive branches aren't doing it.

For those interested in advocating for Community Rights (maybe law students—by the way, CELDF was started by law students), I offer the following additional ammunition for the movement:

Why should cities and counties have so much power over land use affairs, yet be preempted when it comes to regulating other areas of health and safety such as banning GMO foods or fracking from their regions? The Tenth Amendment in the U.S. Constitution states that the federal government has only the powers specifically delegated to it by the Constitution while other powers are reserved to the states, or to the people. Included in a state's Tenth Amendment power is the state's "police power," which has been regarded as the power a state has to protect the health, safety, welfare, and good morals of its citizens. Interestingly, the scope and limits of this power have been broadly defined in terms of a state municipality's land use authority, specifically, to take land for public use under the Takings Clause of the Fifth Amendment (e.g., see the U.S. Supreme Court's 5-4 controversial holding in *Kelo v. City of New London*, which permitted a city to seize and demolish private homes through eminent domain, then turn the land over to developers to build something more lucrative, with justification that the takings of the particular properties at issue were "reasonably necessary" to achieve the City's intended public use). The courts have held a community's control over land use as "supreme" when it comes to economic development. But when it comes to protecting the environment and the people, it is a different standard?

Why can states give more rights to criminals and not communities? Finally, sound logic for why communities should be able to grant greater rights to their citizens than state or federal government

provides exists in the doctrines pertaining to Constitutional Criminal Procedure. For example, when it comes to criminal due process, the U.S. Supreme Court has interpreted the U.S. Constitution to permit states to give more rights to criminals than required by the U.S. Constitution. In essence, the Constitution sets the floor of rights available to criminal defendants, but states can grant them greater rights if they so choose. Why can't a local government grant its citizens more rights when it comes to protecting their health, safety, and welfare?

REQUEST INFO

OTHER NEWS

THE SANTA BARBARA & VENTURA COLLEGES OF LAW CELEBRATES HALF CENTURY OF LEGAL EDUCATION WITH GALA ON SEPT. 21

AUGUST 30, 2019

The 50th Anniversary Gala is set for Sept. 21 at Museum of Ventura County. The Hon. Colleen Toy White to be honored with the inaugural

THE SANTA BARBARA & VENTURA COLLEGES OF LAW TO HOST ENVIRONMENTAL PUBLIC FORUM, MAY 7

APRIL 29, 2019

FOR IMMEDIATE RELEASE Media Contact: Kryztofr Kaine Public Affairs Coordinator
kkaine@collegesoflaw.edu (805) 765-9729

SANTA BARBARA & VENTURA, Calif. – On May 7, 2019, The Santa

U.S. REP. JULIA BROWNLEY TO KEYNOTE THE SANTA BARBARA & VENTURA COLLEGES OF LAW'S 2019 COMMENCEMENT CEREMONY, MARCH 30

MARCH 22, 2019

SANTA BARBARA & VENTURA, Calif. – The Honorable Julia Brownley, member of the United States House of Representatives, will receive an honorary Doctor of Law

ITEM 4

**TAX INCREMENT
FINANCE DISTRICTS**

CHARTER REVIEW COMMISSION

Article ____, Section ____ – Voter Approval Required for Tax Increment Finance Districts over \$5,000,000.

Background:

No past CRC has considered requiring voter approval of any Tax Increment Finance (“TIF”) District. Resolution No. R-1819-66 called for the 2019 CRC to consider adding language to the Charter requiring a vote of the electorate for approval of a Tax Increment Finance District over \$5,000,000.

Cities are authorized to create TIF districts by the Local Development Act, which was adopted by the State Legislature in 1992. TIF Districts allow cities to use revenue growth generated in a district to fund certain improvements. Over the years, the City has created three TIF Districts – the Campus Corner TIF, the University North Park TIF, and the Center City TIF. The Campus Corner TIF authorized project costs in the amount of \$1.25 million for lighting, security systems, landscaping, sidewalks, etc. and was funded with growth in revenue from ad valorem and sales taxes. The University North Park TIF authorized project costs in the amount of \$54.725 million to fund costs associated with traffic and roadway improvements, economic development, Legacy Park, a conference center and cultural facility, and Lifestyle Center. It was funded with a portion of the growth in sales tax and ad valorem tax revenue generated within the district. Most recently, Council created the Center City TIF, which uses growth in ad valorem revenue to fund up to \$44.5 million in primarily public infrastructure improvements that make redevelopment more costly and more difficult.

In order to create a TIF district under the Local Development Act, the area proposed for inclusion must first be eligible under the Act. Then a Project Plan must be developed which is required to be reviewed by a committee made up of representatives of the taxing jurisdictions and three community members. Once the review committee makes a recommendation on the Project Plan, the Planning Commission must review and make a recommendation. Finally, the City Council must hold two public hearings prior to adoption of the plan. The proposal before the CRC is to consider whether a vote of the public must also be required prior to creating a TIF district with authorized project costs exceeding \$5 million.

Proposed Language:

There is no proposed language at this time.

Tax Increment Finance District Approval Comparative Table

City	Voter Approval for Tax Increase Required	Voter Approval for TIF Districts Required	Other TIF Related Language in Code or Charter
Norman (Current)	Yes	No	N/A
Stillwater	Yes	No	N/A
Oklahoma City	Yes	No	<p>Chap. 52, Art. VII, § 52-261</p> <p>“Any ad valorem increment district created by the City [], or any amendment(s) to any such increment district, shall require the approval of a majority of the ad valorem taxing entities located within the boundaries of the [increment] district.”</p> <p>Chap. 38, Art. VII, Div. 1, § 38-488</p> <p>“It is the policy of the City that all future special sales tax documents, bond resolutions and Tax Increment Financing documents shall include a provision for one percent for art.”</p>
Edmond	Yes	No	N/A
Midwest City	Yes	No	N/A
Lawton	Yes	No	<p>Chap. 10, Art. 10-15 is Lawton’s Tax Increment Financing Ordinance. It outlines the policy behind Lawton’s TIF plan, creates TIF districts, and describes how taxes are apportioned, determined, and used.</p>

CHARTER REVIEW COMMISSION

December 2, 2019

Article II, Section 2 – Mayor and Councilmember’s Term Expiration.

Background:

Prior to 2003, the terms of the Mayor and Councilmembers expired “at the time fixed for the last regular meeting of the Council in April”. In 2003, voters approved the current language that sets the expiration of mayoral and councilmember terms on the first Tuesday of July.

A chart comparing Norman’s current term expiration date with other cities’ term expiration date was provided to the CRC at its August 12, 2019 meeting. The Committee discussed the potential for a lengthy period of time between election and officially seating the newly elected member and expressed a desire to reduce this time. The Committee liked the approach used in Stillwater, where seating newly elected officials is tied to the certification of the election results.

During the September meeting, the CRC reviewed proposed language and expressed concerns about the term of office not being exactly two years as set forth in the existing Charter language. Option 1 below has been modified to reflect a two-year cycle for Councilmember elections and a three-year cycle for Mayoral elections.

During the October meeting, Member Bates requested that this issue be revisited in order for Staff to prepare language for three year terms for all elected officials, with odd-number ward elections continuing to occur together in the same year, even-numbered ward elections occurring the next year year together, and the Mayoral election occurring every third year as a standalone election. To achieve this without affecting current terms, the language is drafted to begin in 2023 as shown on the chart below.

	Current Term	New Term
Odd Wards	July 2, 2019 – July 7, 2021 July 7, 2021 – 2023 (Tuesday following election results)	2023 – 2026 (Tuesday following election results)
Even Wards	July 3, 2018 - July 7, 2020 July 7, 2020 – July 5, 2022 July 5, 2022 – 2024 (Tuesday following election results)	2024 – 2027 (Tuesday following election results)

Mayor	July 2, 2019 – July 5, 2022	July 5, 2022 – 2025 (Tuesday following election results)
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On November 4, 2019, the CRC voted 6-5 to move forward with three year terms for all members of Council.

Language adopted by the CRC:

Section 2. - Term of office.

The term of Councilmembers shall be for a period of two years. Beginning with the 2023 elections, elections for Councilmembers shall occur every three years, with the odd-numbered ward elections occurring in 2023 and every three years thereafter, the even-numbered ward elections occurring in 2024 and every three years thereafter. The terms of Councilmembers chosen to represent Council wards two (2), four (4), six (6), and eight (8) shall ~~expire~~begin on the first Tuesday of July of the next even numbered year after their election. Beginning in 2024 and every third year thereafter, the terms of Councilmembers chosen to represent such wards shall begin at six-thirty in the evening (6:30pm) on the first Tuesday following certification of the election results by the election board secretary.

The term of Councilmembers chosen to represent Council wards one (1), three (3), five (5), and seven (7) shall ~~expire~~begin on the first Tuesday of July of the next odd numbered year after their election. Beginning in 2023 and every third year thereafter, the terms of Councilmembers chosen to represent such wards shall begin at six-thirty in the evening (6:30pm) on the first Tuesday following certification of the election results by the election board secretary.

Each elected officer shall continue to hold and to perform the duties of his office until his successor is elected and qualified, unless he is removed or forfeits his office under other provisions of this Charter.

~~The term of office of the Mayor elected at regular elections, Elections for Mayor shall be occur every three (3) years. The term of the Mayor shall ~~expire~~begin on the first Tuesday of July and each three (3) years thereafter. Beginning with the 2025 election, and every third year thereafter, the term of the Mayor shall begin at six-thirty in the evening (6:30pm) on the first Tuesday following certification of the election results by the election board secretary.~~