



# CITY OF NORMAN, OK CITY COUNCIL STUDY SESSION

Municipal Building, Council Chambers, 201 West Gray, Norman, OK 73069  
Tuesday, July 19, 2022 at 5:30 PM

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## MINUTES

*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.*

### CALL TO ORDER

### ROLL CALL

#### PRESENT

Mayor Larry Heikkila  
Councilmember Ward 1 Brandi Studley  
Councilmember Ward 2 Lauren Schueler  
Councilmember Ward 4 Helen Grant  
Councilmember Ward 5 Rarchar Tortorello  
Councilmember Ward 6 Elizabeth Foreman  
Councilmember Ward 7 Stephen Holman

#### ABSENT

Councilmember Ward 3 Kelly Lynn  
Councilmember Ward 8 Matthew Peacock

### AGENDA ITEMS

1. ADMINISTERING THE OATH OF OFFICE TO AND SEATING OF COUNCILMEMBER-ELECT ELIZABETH FOREMAN, WARD 6.

Associate Judge Gail Blaylock of the Municipal Criminal Court administered the oath of office to Councilmember-Elect Elizabeth Foreman, Ward 6.

The new Councilmember was seated.

## 2. DISCUSSION REGARDING UTILITY FRANCHISE AGREEMENTS.

Ms. Kathryn Walker, City Attorney, said during a Council discussion on July 11, 2017, regarding the proposed renewal of the Oklahoma Gas and Electric Company (OG&E) franchise agreement, Staff was asked to provide additional information regarding franchises in general and the impact of this specific franchise on the provision of electricity in Norman.

A franchise is a right or privilege conferred by law to one or more parties to do some act which cannot be exercised by private individuals at their mere will and pleasure. A franchise allows the holder a right to occupy or burden the streets or public grounds and is required before a utility can use the streets, alleys, or public grounds to construct and operate its utility. More than one franchise can be granted for the same use and purpose.

Ms. Walker said when the framers were developing the Oklahoma Constitution they had the Constitutions of 45 states and the construction by the courts in those States of those Constitutions. Some delegates to the convention were from the Indian Territory while some were from the Oklahoma Territory and each territory dealt with utility franchises differently. The Oklahoma Territory states municipalities have the power to grant charters for up to 21 years in duration while municipalities in Indian Territory were empowered to contract, through its Mayor and Council, with any person or company to construct and operate water and gas systems, as well as construction of street railroads. Some States had laws that granted a perpetual franchise while reserving in the legislature the right to alter, amend, annul, revoke, or repeal any charter of corporations or franchises when the legislature determined it to be injurious to the citizenry. After reviewing franchise history, the Court said that from historical events and conditions existing about the time the framers of the Constitution assembled, prepared, and submitted a vote of the people for their ratification of the Constitution. The framers felt the surest way of securing franchises satisfactorily to the people was for the people to vote on such franchises.

The qualified voters of a municipal corporation can also bring the issue of granting a franchise forward for a vote through the initiative process. An initiative is an electoral process by which a percentage of voters can propose legislation and compel a vote by the electorate. It is one of the few methods of direct democracy in an otherwise representative system.

Ms. Walker said there is a number of utilities operating in Norman providing telephone service for granted statewide access to public rights-of-way (ROW) by the Oklahoma Constitution. As new technologies have developed, the Oklahoma Attorney General has opined that telephone companies do not need a separate municipal franchise to provide additional services, such as video programming, over its telephone lines thus the only municipal franchises currently in place are with OG&E, Oklahoma Electric Cooperative (OEC), and Oklahoma Natural Gas (ONG). Although there are two electric providers in Norman, their territories do not overlap.

Item 2, continued:

The ONG franchise was first granted by voters in 1949, was renewed in the 1970's, and again most recently in 1999. During the late 1990's, the State Legislature was considering deregulating utilities and the City was considering the possibility of buying out the natural gas franchises and becoming a natural gas provider in Norman. Ultimately, Ordinance O-9899-22 granting a franchise to ONG was submitted to voters and approved. ONG pays a franchise fee to the City equal to three percent of its gross receipts received from the distribution of natural gas.

Voters granted the current OEC franchise in 1996. Rural cooperatives have historically been treated differently by the Legislature than investor-owned electric utilities. Congress adopted the Rural Electrification Act in 1936 to provide low cost funds to expand access to electricity because of the high cost of serving rural areas. Oklahoma enacted the Rural Electric Cooperative Act in 1939, establishing a separate tax structure acknowledging the differences between rural electric cooperatives that are member owned versus corporations that are investor owned. Prior to the current franchise, OEC operated in Norman under an agreement that provided for an amount to be remitted to the City equal to two percent of the gross receipts from the sale of electricity plus payment of City sales tax of three percent for a total of five percent. In 1990, the Oklahoma Supreme Court ruled that rural electric cooperatives were exempt from collecting sales tax on the sale of electricity. Since OEC could no longer collect sales tax, the OEC franchise agreement adopted in 1996, included a franchise fee of five percent.

Voters granted the first OG&E franchise in 1923, and the most recent franchise was approved in 1993 and expired in 2018. Unlike electric cooperatives, investor owned utilities are not exempt from sales tax and in addition to remitting sales taxes; OG&E collects and remits a franchise fee that is equal to three percent of its gross revenues from the sale of electricity in Norman. Provisions of the franchise agreement require OG&E to defend and indemnify the City against all liability caused by the negligence of OG&E. Rates must be approved by the Oklahoma Corporation Commission (OCC) and OG&E provides free electricity for the City's operation of traffic signal lights and buildings operated for municipal purposes, provided it does not exceed one-half of one percent of the kilowatt-hours sold by OG&E to Norman customers during the preceding fiscal year. The franchise fee remitted to the City for the last fiscal year was \$2,808,327.47.

Public utilities, such as OG&E, fall under the jurisdiction of the OCC, which was created by the Oklahoma Constitution to supervise, regulate, and control all transportation and transmission companies doing business in Oklahoma. OCC regulates any changes in rates, the sale or disposal of jurisdictional facilities, extension of distribution lines, maintenance of plant, equipment and facilities, meter installations and replacement, utility resource plans, and numerous other operational issues.

Item 2, continued:

Council asked Staff to address any consequences of failing to renew a franchise. The Court addressed the expiration of a franchise granted to a water and electric provider in *Incorporated Town of Pittsburg v. Cochrane*, which determined that if, after a franchise ends, the utility continued to provide and the municipality accepts the services, an implied contract of indefinite duration arises and the utility would function as a “quasi public utility” subject to the terms of the former franchise and other applicable rules. Similarly, the City would not be absolved of its duties by termination of the franchise; however, either party can terminate an implied contract of indefinite duration after giving reasonable notice.

Could another electric provider serve Norman? Oklahoma law does not currently allow for competitive choice by customers for energy suppliers and favors a territorial approach to electric service. In 1971, the Legislature passed the Retail Electric Supplier Certified Territory Act that fixed boundaries of certified territories and prohibited retail electric suppliers, which includes both investor and cooperative corporations, from furnishing electric services in the certified territory of another. In order for another electric provider to serve those areas of Norman currently served by OG&E, OG&E would have to cease providing electric service to Norman.

Could the City operate an electric utility? Cities in Oklahoma are empowered to engage in any business or enterprise that may be engaged in by a person, firm, or corporation by virtue of a franchise. Edmond is the largest municipality in Oklahoma with its own electric utility, whose infrastructure was built at the same time as the water and sewer utilities infrastructure. In 1982, because of the rising wholesale electric rates, Edmond joined the Oklahoma Municipal Power Authority (OMPA). There are three general components of an electrical grid power system, generation, transmission, and distribution. OMPA generates the power and Edmond transmits it through 6,300 distribution transformers and nine substations then distributes the electricity through approximately 35,000 electric meters. Their service territory covers 90 square miles and includes approximately 617 miles of overhead and 657 miles of underground electric lines.

OMPA is a municipal joint-action agency created by statute as a result of advocacy by the Municipal Electric System of Oklahoma to provide adequate, reliable, and affordable electrical power supply to the municipality owned electric systems. If Norman were to create its own utility and join OMPA, it would have to acquire transmission and distribution facilities as well as Staff to support them. All electric utility rates would be subject to the provision in Norman’s Charter requiring voter approval. There is currently a moratorium in place restricting cities from using eminent domain to acquire such facilities and the moratorium will remain in place until electric restructuring enabling legislation is enacted and consumer choice of retail electric energy supplier is implemented.

Ms. Walker said Council discussed additional information regarding franchise agreements during their study session on July 18, 2017.

Item 2, continued:

Ms. Walker said in August 2018, Council discussed the OG&E franchise being sent to voters; however, Council voted on several amendments to the agreement including a provision that would require Council approval before OG&E sprayed chemicals for vegetative control, approval by the property owner prior to removal of trees of a certain size, and a posted notice five days in advance of vegetative maintenance. On September 25, 2017, OG&E, by letter, committed to work in good faith with the City to develop a vegetation management plan that would address chemical use, tree trimming, and tree removal for all companies and government entities operating within the City's right of ways. The ordinance was ultimately rescinded and Staff has been working with outside counsel to negotiate a new franchise agreement with OG&E. One of the recommendation from outside counsel was to draft provisions that could be applied to all utilities simultaneously. Staff has been working with representatives of OG&E and OEC to develop such an ordinance.

In 2005, the Federal Power Act empowered the Federal Energy Regulatory Commission (FERC) to regulate the public utility industry transactions made in interstate commerce, primarily the sale of power from one utility to another. After rolling blackouts impacted large areas of the United States and Canada, the Energy Policy Act was adopted to improve electric grid reliability. FERC's jurisdiction was expanded under this Act to all users, owners, and operators of bulk power system, except facilities limited to local distribution. The OCC is granted general supervision power over all public utilities under Oklahoma statutes, which includes vegetation management.

The OCC rules related to vegetation management are focused on distribution reliability and each utility is required to have a reliability program that limits the frequency and duration of electric service interruptions and maintain acceptable electric service reliability levels and to sustain it over time. At a minimum, utilities must perform vegetation management in a four-year cycle and all costs of removal of vegetation must be tracked by the utility. OCC defines vegetation management as "all activities associated with the trimming, removal, or control of plant materials in the proximity of energized electric utility conductors and equipment." Each utility is required to submit an annual vegetation management plan to OCC as part of its reliability program. OCC sets forth the timeline for notification of vegetation management activities, which requires the utility make a "reasonable attempt to contact the land owner, customer, or tenant at a minimum of 24 hours prior to beginning work in the area."

Ms. Walker said the proposed ordinance adopts the American National Standards Institute (ANSI) A300 standards and best management practices for tree maintenance. The ANSI A300 standards are the tree care industry standard of care in the United States and are developed by certified arborists. In addition to setting forth best management practices for pruning, the ordinance also codifies requirements found in Title 2 of the Oklahoma Statutes related to proper chemical control application. Finally, the ordinance imposes requirements for timely removal of debris resulting from vegetation management efforts.

The proposed ordinance is the result of months of collaboration between City Staff and OG&E and OEC Staff and Council received information at the January 15, 2019, study session for additional discussion.

Item 2, continued:

Mayor Heikkila asked if all franchise agreements are consistent and Ms. Walker said yes, the City is very conscious of having uniform agreements.

Councilmember Holman said Council had concerns in 2017, and asked if those concerns have been addressed and Ms. Walker said yes, the concerns were mainly about the downtown power grid and street light outages, which have vastly improved. She said OG&E is changing streetlights to Light Emitting Diodes (LED), which is improving street light outages.

Councilmember Holman said another issue was burying utility lines, which is the standard practice for new developments and Council wanted commitment from OG&E regarding long-term plans for addressing that in older neighborhoods. Ms. Walker said it is very expensive to bury lines in older developments and OG&E would have to dig under trees Council does not want to lose. She is not sure OCC would approve that cost for the whole system in Norman, but while that is outside of the franchise agreement Staff continues to discuss options with OG&E. She said OG&E is evaluating costs for burying lines in Downtown Norman as well as a few surrounding neighborhoods.

Mr. Darrel Pyle, City Manager, said creating an Underground Utility District (assessment district) could be one way to address burying lines in older neighborhoods, which would spread the cost throughout the neighborhood for a period of 25 years. If this model works, the City would be able to replicate it in other neighborhoods.

Mr. Shawn O'Leary, Director of Public Works, said burying electric utilities affects other utilities located in the ROW as well as trees, streetlights, sidewalks, amenities, etc. He said relocating utilities for road projects is at the expense of the utilities within the ROW via the franchise agreement.

Mr. Pyle said transformers go into either an underground vault or an above ground big green box and there are certain blocks in Downtown Norman that is solid building against building making it difficult to bury transformers. He said it is much easier to bury lines/transformers when there is new demand/projects for utility services, but OG&E seems to be willing to work collaboratively with Staff regarding their participation in burying electric lines.

Councilmember Holman there seems to be an opportunity to bury electric lines, from Constitution Street to Timberdell Road, during the Jenkins Avenue Improvements Project. He said as far as Downtown Norman, he knows of several occasions where electric lines have been ripped from the poles by large trucks, especially in alleyways, leaving many of the poles looking like they are ready to topple over.

Mayor Heikkila suggested Council discuss burying electric lines in a separate conversation than the franchise agreement.

Item 2, continued:

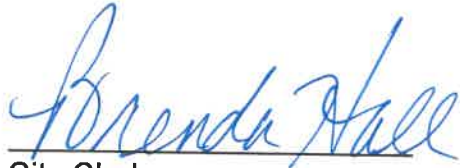
Items submitted for the record

1. Memorandum dated July 14, 2017, from Kathryn L. Walker, Assistant City Attorney III, through Jeff Bryant, City Attorney, to Honorable Mayor and Councilmembers
2. Memorandum dated January 11, 2019, from Kathryn L. Walker, Interim City Attorney, to Honorable Mayor and Councilmembers

## ADJOURNMENT

The meeting was adjourned at 6:41 p.m.

ATTEST:



City Clerk



Mayor

