

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. IX.C.2.
3/12/2019

TO: Mayor and City Council

FROM: Kenneth Jordan, Municipal Counselor

RE: Resolution to be introduced and set for final hearing April 23, 2019, proposing amendments to the Charter of The City of Oklahoma City, calling a special election for voter approval of such amendments, setting the date of Tuesday, July 9, 2019, for the special election, and directing the City Clerk to publish notice of the proposed Charter amendments and the special election.
Councilman Shadid

Background Councilman Dr. Ed Shadid, Ward 2, asked the Municipal Counselor to prepare three amendments to the City Charter for consideration for introduction by Council at its March 12, 2019 meeting.

The amendments proposed by Councilman Shadid are summarized as follows:

CHARTER, ART. IV, § 8, CITY OFFICIAL CANNOT HOLD TWO OFFICES

Oklahoma City Charter Art. IV, § 8 currently prohibits any “person holding office or employment under the United States Government or the State of Oklahoma, notaries public excepted, or any other State or municipality,” from holding any “office or regular employment” with The City of Oklahoma City; but an exception is provided so that a Federal, County or State Advisory Board or Commission member may hold office or serve on a City board or commission.

Councilman Shadid’s proposed amendments to this section would delete the words “or employment” and “or regular employment,” and limit the Charter prohibition solely to prevent U.S. or State law public “officers” from holding City “office” (i.e., Council, City Manager, etc.) For example, under the Councilman’s amendments, a State Legislator still could not serve on the City Council, nor could an I-89 School Board member, or the Mayor of Midwest City; however, such persons could in theory become full-time City employees—assuming their positions would not present irreconcilable attendance issues with either their employment or service as Councilpersons. As another example, with this amendment, Council-Elect James Cooper, Ward 2, could serve as a full-time teacher for I-89 while also serving on the Oklahoma City Council. Under the current Charter, Council-Elect Cooper’s full time service with I-89 as a teacher-employee must cease before he takes office as a City Councilman on April 9, 2019, so as to not violate Art. IV, § 8.

The City’s current prohibition under Charter, Art. IV, § 8 is significantly broader than the State’s dual-office-holding prohibition found in Title 51, Section 6 of the Oklahoma Statutes, which prevents dual-office-holding by public officers or their “deputies” (with many exceptions to the State-law general rule). The State law prohibition obviously would encompass some employees of public agencies—i.e. the “employees” of public officers deemed to be “deputies” (this term is not defined in the statute). However, “deputies” would obviously not cover all “employees” of the

public entity. Council-Elect Cooper, for example, is not deemed to be a “deputy” of either the I-89 School Board (who are all public officers) or of the I-89 Superintendent (who is most likely also a public officer). Hence, the current State statute does not prevent Council-Elect Cooper’s concurrent service as a full-time I-89 teacher and an Oklahoma City Councilman (or a COTPA Trustee, a position he has held for a few years).

In summary, Councilman Shadid’s objective in proposing the changes to Charter Art. IV, § 8 is to narrow the City’s dual-position-holding prohibition and to bring it into closer alignment with State law. The change he proposes would, in fact, make the City’s prohibition narrower than State law; but even with the proposed amendment, it would still prohibit “officers” of other public entities from serving on the City Council, or as the City Manager, the Municipal Counselor, the City Auditor, or a Municipal Judge.

The proposed amendments to Art. IV, § 8 may be found at Exhibit “A,” Page 1, of the attached Resolution; and are summarized in the proposition/gist set forth as Exhibit “B,” Page 1, of said Resolution.

CHARTER, ART. IX, § 11, TIME LIMIT FOR FILING OF INITIATIVE PETITION WITH SIGNATURES WITH THE CITY CLERK

This amendment proposes to add a new Section 11 to Article IX of the Charter. It would expand the time for filing an original initiative petition, with signatures affixed, with the City clerk from 90 days to 150 days. This will allow citizens circulating Oklahoma City initiative petitions more time to collect signatures when they wish to propose enactment of a new or amended City ordinance or a new or amended Charter provision.

The initiative petition process requires proponents of the petition to first file a copy of the petition with the City Clerk, which starts the running of the time limit for circulating the petition to collect signatures. The traditional time under both State law and the City Charter has been 90 days; however, Councilman Shadid’s amendment would expand the City’s time limit for circulation to 150 days. Title 11, Section 15-103 of the Oklahoma Statutes provides that municipalities may provide their own procedures for initiative petition, which makes this proposed Charter amendment legally possible.

The proposed amendments to Art. IX, § 11 may be found at Exhibit “A,” Page 2, of the attached Resolution; and are summarized in the proposition/gist set forth as Exhibit “B,” Page 2, of said Resolution.

CHARTER, ART. II, § 33, MAYOR AND COUNCIL SALARIES

The current salaries for the Mayor and Council are \$24,000 and \$12,000, respectively. Councilman Shadid’s amendments propose to change the salary amounts to one-half ($\frac{1}{2}$) of the Governor’s statutory salary for the Mayor and one-fourth ($\frac{1}{4}$) of the Governor’s statutory salary for each City Councilperson. The Councilman also proposes that such salaries, once effective, be adjusted by operation of law each January 1 following a calendar year in which the Oklahoma Legislature has changed the Governor’s statutory salary.

Note, however, that Oklahoma Constitution, Art. 23, § 10 prevents the salaries of the Mayor or any Councilmember from being raised right now. The specific prohibition in Art. 23, § 10 states in material part as follows:

§ 10. Change of salary during term - * * *.

Except wherein otherwise provided in this Constitution, in no case shall the salary or emoluments of any public official be changed after his election or appointment, or during his term of office, unless by operation of law enacted prior to such election or appointment; * * *
*. (Emphasis added.)

Based on this constitutional prohibition, no City elected officer salary change can be made effective during the current terms of the Mayor or Councilmembers, nor for new Council-Elect James Cooper, Ward 2, or Council-Elect JoBeth Hamon (the latter two being already elected to four-year terms of office). Accordingly, the effective date for the proposed salary changes would be set as follows: April 12, 2022, for the Mayor (the start of the next term for the Mayor); and April 11, 2023, for each Councilperson (a date falling during a future term for Wards 1, 3, 4, and 7, and at the start of the next term for Wards 2, 5, 6, and 8). Note that these effective dates will be valid if the proposed amendments are approved by voters on July 9, 2019 (and then later signed by the Governor, a legal requirement for Charter amendments), because the salary change will become effective by operation of law from amendments made before these future elections or terms of office.

The Governor's current statutory salary is \$147,000. If this statutory salary amount for the Governor does not change before the effective dates specified above, then the new salary for the Mayor on April 12, 2022, will be \$73,500; and the new salary for each Councilmember on April 21, 2023, will be \$36,750.

The proposed amendments to Art. IX, § 11 may be found at Exhibit "A," Pages 3-4, of the attached Resolution; and are summarized in the proposition/gist set forth as Exhibit "B," Page 3, of said Resolution.

Purpose If approved by Council, this Resolution would propose the three Charter amendments summarized above and would call a special election on such amendments for Tuesday, July 9, 2019. The Resolution would also direct certain publications by the City Clerk, which are required by law to give public notice of the proposed Charter amendments and the special election.

Note, due to the time constraints specified in State law regarding when publication of notice of proposed Charter amendments and the related election date must begin—within 20 days after the amendments are officially proposed by the municipal governing body—and when such publications must end—not more than 30 days from the date of the election on the amendments—it is necessary for the Council to merely "introduce" the attached Resolution at the March 12, 2019 Council meeting and set it for final consideration and possible adoption at the April 23, 2019 meeting. If there are additional questions about the time constraints on published notice of proposed Charter amendments, the Municipal Counselor can address them at the Council meeting.

Review Municipal Counselor's Office

Recommendation: Consider introducing and setting the Resolution for final hearing on April 23, 2019.

Attachment

