



TULSA CITY COUNCIL EQUALITY INDICATORS

JANUARY 15, 2020

THE CITY COUNCIL'S SCOPE OF AUTHORITY

INTRODUCTION:

When the City of Tulsa changed its government from a Board of Commissioners to a strong mayor-city council form of government, Tulsa's 1989 Amended Charter granted a preponderance of the City's executive authority to the Mayor. In contrast, Tulsa's City Council legislative authority and power to review and modify executive actions was limited. As a result, this presentation, while identifying the scope of authority which the Council might exercise also, by necessity, identifies limitations to that authority.

APPRAISALS, COMMENTS, AND RECOMMENDATIONS:

Charter Article II, Section 19 empowers the Council to "investigate the conduct of the city government and may make appraisals, comments, and recommendations to the Mayor on the efficiency, economy, and effectiveness of administrative practices, methods, systems, and controls." While this provision also grants the Council subpoena power to facilitate these investigations, the Council chose not to examine the City's Equality Indicators under this provision. Nonetheless, this provision clearly authorizes the Council to make recommendations to the Mayor on administrative practices exercised by the City's executive branch.

ENACTMENT OF ORDINANCES:

Title 11 Oklahoma Statutes, Section 1-102 defines an "Ordinance" as "a formal legislative act of a municipal governing body which has the force and effect of a continuing regulation and a permanent rule of conduct or government for the municipality." While Tulsa's Charter establishes a solid structure for Tulsa's government, it also provides that the enumerated powers shall not be exclusive and that all powers of the City of Tulsa, whether expressed or implied, shall be exercised as provided by this amended Charter, or if not provided herein, as provided by ordinance or resolution." (Charter Article I, Section 2.) Our Charter, Article I, Section 3(A) further provides that the City may "adopt and enforce all ordinances necessary or proper to protect the public peace, health, order, morals, and safety, and to promote the general welfare of the City..." Tulsa's Council thus has the exclusive authority to enact any ordinance, subject to the approval and veto powers of the Mayor.

Limitation: Ordinances approved by the Council may not invade the Charter and statutory authority of the Mayor. The Mayor's executive and administrative powers and duties are most notably detailed in Charter Article III, Section 1.4, subsections A-Q. The most pertinent of these provisions is Subsection 1.4(O), which mandates that the Mayor "[p]rovide, administer, maintain, and operate all police, fire protection, civil defense, and emergency services and functions."

BUDGETARY AUTHORITY:

Charter Article III, Section 1.4(C) declares that the Mayor shall be the chief executive and administrative officer of the city and shall annually submit to the Council an operating budget, a capital program, and a capital budget. Section 1.4(D) then requires the Mayor to expend funds in accordance with the adopted budgets of the City. Article II, Sections 7.1 and 7.2 authorize the Council, in its discretion, to adopt a budget or amendments and to "add, delete, increase, or decrease programs or amounts, except expenditures required by law."

Limitation: Legal Opinion No. 11-01 issued by City Attorney David Pauling on February 21, 2011 concluded that an annual budget or an amendment to a previously adopted budget must be initiated by the Mayor and submitted to the Council before the Council may act upon it. The exclusive authority and responsibility for submission of recommended amendments to a previously adopted budget is assigned to the Office of Mayor.



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AUTHORITY TO ESTABLISH A SCHEDULE OF PRE-SET FINES AND BONDS:

Title 11 Oklahoma Statutes, Section 28-114.1 of the State and Municipal Traffic Bail Bond Procedure Act provides that when a person is arrested by a law enforcement officer solely for a misdemeanor traffic violation, other than a parking or standing traffic violation, then the City may, by ordinance prescribe a bail bond schedule and provide for that bail to be used as payment of the fine and costs upon a plea of guilty or no contest. (In the absence of such an ordinance, the municipal court may adopt such a schedule.) The amount of bail shall not exceed the maximum fine and costs provided by ordinance for each offense.

Current Pre-Set Fine and Bail Bond Schedule: The City Council's current prescribed pre-set fine and bail bond schedule is codified in Title 37 Tulsa Revised Ordinances, Section 203. This schedule was last amended on February 28, 2018.

AUTHORITY TO ENACT MUNICIPAL COURT PROCEDURES GOVERNING PUNISHMENTS AND PENALTIES:

Under Oklahoma Constitution, Article 7, Section 1, municipal courts are subject to creation, abolition or alteration by the legislature and are limited in jurisdiction to criminal and traffic proceedings. The City of Tulsa has elected to operate a municipal criminal court of record. As to these court proceedings, the legislature requires that our courts abide by the Oklahoma Code of Criminal Procedure, the same as provided for the district courts in misdemeanor cases. Statutes pertaining to the criminal procedures followed by our municipal courts are too lengthy for discussion and analysis here. However, the Council may wish to engage its Legal Department to advise whether the City may enact by ordinance additional procedures for our courts to follow, consistent with state law, that might reduce the arrest and incarceration rates resulting from violations of Tulsa's ordinances. Of particular interest here would be compatibility with the arrest and court appearance procedures codified in Title 22 Oklahoma Statutes, Sections 171 through 211.1.

IMPLICATIONS OF THE OKLAHOMA FIRE AND POLICE ARBITRATION ACT (FPAA):

The Council should be conscious that any authority it might exercise could implicate provisions of the Oklahoma Fire and Police Arbitration Act, Title 11 Oklahoma Statutes, Article 51. The FPAA recognizes that police officers are prohibited from striking or engaging in any work stoppage or slowdown. As a conciliation, police officers are accorded the right:

- o to organize,
- o to be represented by a collective bargaining representative (the FOP), and
- o the right to bargain collectively concerning wages, hours and other terms and conditions of employment.

Under the FPAA, it is an "Unfair labor practice" (a "ULP") for the City to:

- o Refuse to bargain collectively with respect to wages, hours and other terms and conditions of employment.
- o This prohibits the City from unilaterally changing any conditions of employment for police officers, unless it is bargained for with the FOP or settled in binding interest arbitration.

The tenets of the FPAA are governed and enforced by a five (5) member Public Employees Relations Board (PERB), which is empowered to prevent any person, from engaging in any unfair labor practice (ULP). (This Board is similar to the National Labor Relations Board (the NLRB), except that the PERB's authority only pertains to municipal police officer and firefighter employees.) Should any authority exercised by the Council be perceived by the FOP to be an unbargained for, unilateral change in police officer working conditions, the FOP could file an Unfair Labor Practice charge against the City with the PERB. The PERB would then conduct a hearing, which could either find the City guilty of a ULP and order the City to "cease and desist" from that practice, or it could dismiss the case, finding that the City did not violate the FPAA.