

## CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

October 10, 2012

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:30 p.m. in the City Council Conference Room on the 10th day of October, 2012, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Jungman, Lockett, Spaulding, and Chairman Kovach

ABSENT: Councilmember Castleberry

OTHERS PRESENT: Councilmember Roger Gallagher, Ward One  
Mayor Cindy Rosenthal  
Ms. Leslie Bohon Bothwell, interested citizen  
Ms. Cindy Cason, interested citizen  
Ms. Nancy Harrington, interested citizen  
Ms. Kay Holladay, interested citizen  
Mr. Stephen Tyler Holman, interested citizen  
Ms. Jill LeVan, interested citizen  
Ms. Amanda Nairn, Chair, Environmental Control  
Advisory Board, 1629 Wilderness Drive  
Reverend Henry Roberson, interested citizen  
Mr. Chris Ward, interested citizen

STAFF PRESENT: Ms. Courtney Bucklin, Legal Intern  
Mr. Keith Humphrey, Police Chief  
Mr. Rick Knighton, Assistant City Attorney  
Mr. Shawn O'Leary, Director of Public Works  
Ms. Debra Smith, Environmental Services Coordinator  
Mr. Scott Sturtz, City Engineer  
Ms. Karla Chapman, Administrative Assistant III

Item 1, being:

### BULLYING PREVENTION ACTIVITIES.

Mr. Keith Humphrey, Police Chief, said a community task force was formed in July consisting of members from Norman Police Department (NPD), Norman Public Schools, Xenia Institute, local churches, and other community stakeholders. One of the first issues of the task force was to develop a definition of bullying, exclusively for Norman that was all encompassing and easily understandable for all ages. The definition agreed upon was, "Bullying is repeated, intentional aggressive behavior. It involves an imbalance of power used to inflict emotional distress and or physical harm." He said a stakeholder symposium will be held November 1, 2012, 7:00 p.m. to 9:00 p.m. at Norman North High School, which will utilize facilitators and recorders to help identify issues relating to the manifestation of bullying in schools, communities, and workplace. The symposium will focus on two questions, 1) How does bullying manifest itself in schools, communities, and in the workplace and 2) What can we, acting as a community together, do to address the causes and consequences of that bullying behavior. Chairman Kovach asked if the public is invited to the symposium and Chief Humphrey said this meeting will just include the task force and stakeholders. He said a larger community wide forum will be held in the spring to include parents, students, and keynote speakers to discuss how to bring more awareness about bullying in the city of Norman. He said NPD wants to create a year round initiative to continue addressing bullying in the community.

Item 1, continued:

Mayor Rosenthal said the T.E.A.M. initiative was referenced earlier and asked Chief Humphrey to explain the acronym. Chief Humphrey said T.E.A.M. stands for Teaching, Educating, and Mentoring and is a program started by the Michigan State Police that allows police departments to partner with school districts and take certain curriculum into schools such as drugs, bullying, domestic abuse, etc. He said law enforcement is becoming very proactive and looking for long term solutions.

Chief Humphrey said NPD currently has anti-bullying curriculum for schools and the task force will determine if the program needs to be modified after the public forum in the spring. He said the Junior High curriculum is interactive where kids watch a video scenario then are asked questions about how they would handle those scenarios. He said NPD has received good feedback from the interactive lesson and NPD has presented the lesson in Oklahoma City schools and have been asked to present the curriculum in other cities.

Chairman Kovach asked if there are any numbers from Crossroads Youth and Family Services (Crossroads) on increased participation in their bullying program and Chief Humphrey said the school system has not had any cases this year and he has not checked with Crossroads; but he will do so and get the information to Council.

Councilmember Jungman asked if the City is trying to draft an ordinance or just develop a plan and Chairman Kovach said the direction of the previous Oversight Committee Chair was to move forward with the program and see how effective it was. He said the school system believes an ordinance would be helpful and he would like Chief Humphrey to get input from the task force and take that to the broader community in the spring.

Chief Humphrey said the Parks and Recreation Department has been sending their employees to anti-bullying training, which is positive for the City.

Councilmember Gallagher said Norman's program is similar to other cities and asked if the thrust and impact is generated by the school systems or law enforcement. Chief Humphrey said a lot of people believe bullying is a school problem and Norman is one of the few cities to take an initiative to work as a community to bring awareness to the problem. He said bullying does not stop when the school day is over, it continues on the weekend at home on computers. He said a benchmark survey determined there was no program like this in any benchmark cities.

Councilmember Gallagher said the bullying definition establishes a pattern of repeated behavior and asked what type of disciplinary measures the school system is going to put in place. He said a lot of bullying is not purposely destructive, but is due to personality and not knowing better. He asked if the schools will pull in parents because parental influence, knowledge, and discipline will be a big factor. Chief Humphrey said schools have zero tolerance and once it has been determined a student is being bullied, the offending student as well as the victim are referred to Crossroads and their program mandates parental involvement. He said the Crossroads program was developed in partnership with Norman Public Schools specifically for Norman schools.

Councilmember Gallagher asked if the NPD is expecting Council to formally vote to accept the program or will they just work within the community and Chief Humphrey said Staff will do whatever Council requests, but the main focus is to work on awareness as a community. He said bullying happens in the workplace as well as schools and people have quit their jobs and become emotionally distressed because they do not know what to do. He felt community awareness is the key to stopping the behavior.

Item 1, continued:

Councilmember Lockett asked if anyone had researched how to help people not to be bullied and stand up for themselves. She felt this would help eliminate a lot of bullying. Chief Humphrey said T.E.A.M. Initiative looks at all facets of the problem and Norman's program will be an all inclusive program.

Chairman Kovach said, in a previous meeting, Sergeant Tim Smith reported on the "Talk About It" website and asked if there has been follow-up discussion regarding that with the school system and Chief Humphrey said it will probably be discussed in the symposium.

Ms. Kay Holliday, interested citizen, asked if the stakeholder list is available to the public and Chief Humphrey said the list is still being compiled by Dr. Joe Siano, Norman Public School System Administrator, and suggested she contact Dr. Siano's office. Ms. Holliday said she agrees bullying is a systemic problem and not a school problem.

Items submitted for the record

1. Memorandum dated October 1, 2012, from Steve Lewis, City Manager, to Members of the Oversight Committee: Chairman Kovach (Chair), Councilmember Castleberry, Councilmember Jungman, Councilmember Lockett, Councilmember Spaulding
2. Memorandum dated October 2, 2012, from Keith L. Humphrey, Chief of Police, to Steve Lewis, City Manager
3. City Council Oversight Committee minutes of March 7, 2012
4. Community Leadership Brainstorming Event, Target Date November 1, 2013

Item 2, being:

**PROPOSED ORDINANCE ON REGULATING FERTILIZER CONTAINING PHOSPHORUS.**

Mr. Shawn O'Leary, Director of Public Works, said in its meeting of September 5, 2012, the Oversight Committee requested an ordinance be drafted regarding fertilizer controls for review in its next meeting. He said Staff incorporated information from Ann Arbor, Michigan; St. Paul, Minnesota; State of New Jersey; and State of Florida. He said the draft ordinance has a two approaches 1) public education and 2) fertilizer control.

Mr. Scott Sturtz, City Engineer, said Staff used the term "fertilizer control" instead of placing a ban on phosphorus because people generally do not like to be told they cannot do something. He said Staff believes banning phosphorus is really not the answer so they tried to draft a comprehensive ordinance on fertilizer control. He said basic key issues in the proposed ordinance are as follows:

- Phosphorus fertilizer application will be allowed during the first growing season and with soil testing data indicating the soils are deficient in phosphorus
- A pamphlet will be produced by the City for educational purposes
- The sale of phosphorus containing fertilizers and the requirement that the pamphlets be made available at the point of sale
- Provisions for penalties for violations
- Requires commercial applicators to be registered with the City of Norman

Item 2, continued:

Mr. Sturtz said highlighted proposed phosphorus fertilizer application exemptions as follows:

- Allow application of phosphorus fertilizer during the first six months of new seed or sod
- Allow naturally occurring phosphate in natural and organic fertilizer products
- Allow phosphorus on lawn and turf areas that have been tested and lab results indicate low phosphorus
- Allow phosphorus application on residential plantings (non-turf); flowerbeds; golf courses; agriculturally zoned areas; and vegetable gardens

Mayor Rosenthal said agriculturally zoned areas are usually not big contributors of phosphorus and Mr. Sturtz said that is correct.

Mr. Sturtz said proposed phosphorus fertilizer application restrictions are as follows:

- Do not apply when it is raining, rain is predicted, or soils are saturated
- Do not apply on paved areas - excess fertilizer in these areas must be swept up and removed properly
- Do not store fertilizer uncontained on paved areas
- Do not apply within 25 feet of a water body
- Do not blow, sweep, dump, direct or place leaves, grass clippings, or any yard debris into any street, storm drain, ditch, creek, pond, or waterway

Chairman Kovach said at many large retail stores, large pallets of fertilizer are set on the ground and the bags get ripped open and asked how that will be addressed. Mr. Sturtz said that will be addressed at the point of sale. He said most distributors currently store their fertilizer in covered areas that do not drain directly into the storm sewers. Mayor Rosenthal asked where in the City's Code of Ordinances it states not to blow, sweep, dump, etc., and Mr. Sturtz said he did not know, but thought it may be in Code Enforcement section. Councilmember Gallagher said even though language is in the Code, nothing is done about violations and Mr. Sturtz said Staff has to witness a violation before they can do enforcement. He said Storm Water Staff carry pamphlets prepared by the Environmental Control Advisory Board (ECAB) to distribute if they see a violation by citizens or commercial landscaping companies.

Mayor Rosenthal said most fertilizer instructions say to water fertilizer into the soil or apply right before it rains. She felt it would be difficult to enforce the rule to not apply when raining or rain is predicted especially when people are purchasing a legal product and following recommended directions. Mr. Sturtz said the intent is to avoid applying fertilizer before or during heavy rains when there is a good chance the fertilizer will be washed out right away. He said that restriction probably needs to be clarified and discussed in more detail. Chairman Kovach said fertilizers he has purchased warns against applying before heavy rains because it will be washed away. Councilmember Spaulding said this would cause a huge enforcement issue for the City because who is going to determine when a big rain is expected? How many times have forecasters predicted heavy rains and the City received minimal or no rain? Councilmember Kovach felt it was more of a guideline and Mr. Sturtz agreed, and said it is more of an educational point than an enforcement point.

Mr. Sturtz said public information and education are important components of the proposed ordinance. He said the City will prepare a pamphlet containing pertinent information about the ordinance to be distributed to commercial applicators.

Item 2, continued:

Mr. Sturtz said for commercial sales, phosphorus containing fertilizers must be clearly marked and notice must be posted that their use is regulated by the City and commercial sellers must have information, such as the pamphlet, available to the public. He said anyone in violation of the ordinance would be subject to a fine ranging from \$50 to \$750.

Mr. Sturtz said commercial applicators would be required to register their business with the Storm Water Engineer. The registration fee will be \$25 annually and the application must include the products to be used with the ratio of phosphorus. The applicator will be required to provide the informational pamphlet to the owner or occupant at each address they apply fertilizer (for first application of the year) and keep a log of all locations phosphorus fertilizer was applied. He said the City will have the right to test the products used and request to review the applicator's logbook. Councilmember Gallagher asked if there was an estimate on the number of smaller businesses who do yard work and apply fertilizer, but are not commercial applicators. He asked if these businesses would have to register and pay the \$25 fee and Mr. O'Leary said the smaller businesses are the ones blowing grass clippings into the streets so the City would definitely try to reach out to them with information. Councilmember Gallagher said blowing grass clippings into the street, which then puts it into the storm sewer is a worse problem than fertilizer. Mr. Sturtz said Staff had discussed registering the smaller businesses, but because they may be difficult to identify, Staff decided to place regulations on commercial applicators.

Mayor Rosenthal felt the definitions for applicator and commercial applicator needed to be better defined as there did not seem to be a clear distinction between them. She said a one person business could be considered a commercial applicator. Councilmember Kovach said if a person worked for Norman Regional Hospital and applied fertilizer to their grounds, would they be considered a commercial applicator and Mr. O'Leary said not according to the City's definitions. Mr. Sturtz said a State license is required for commercial applicators and Mayor Rosenthal asked if there is a fee associated with that license and Mr. Sturtz said he was not sure, but felt there would be a fee. He said if a person applies fertilizers or weed control for a fee, a license is required by the State, but if you are fertilizing your own property, it is not required. Councilmember Jungman felt the existing definitions were for everyone and he would like to preserve that fairness by stating that everyone that charges a fee is a commercial applicator. Councilmember Lockett said in dealing with individuals with a landscaping business with one or two lawns, the City does not want to be so restrictive that applicators would try to hide their activities. She said the City should encourage registration instead of trying to enforce a strict Code. Councilmember Kovach agreed and said part of that process would be the ease in getting registered. Councilmember Spaulding asked if the City would require the State license if there was a City permit process and Mr. O'Leary said part of the ordinance is having all other licenses and registration in order. Ms. Courtney Bucklin, Legal Intern, said the City is not requiring a license, just registration. Councilmember Spaulding asked the definition of registration and Mr. O'Leary said there is no definition as the registration process is just a way to get a list of applicators to further educate them.

Mayor Rosenthal said, in the ordinance, soil testing is the obligation of the homeowner, but does not address commercial applicators. She asked if commercial applicators would be responsible for ensuring the client had obtained a soil test prior to applying fertilizer. Mr. Sturtz said the burden would be on the commercial applicator because they must keep a log of all locations they have applied fertilizer. Mayor Rosenthal said the way the ordinance is written, it is the responsibility of the homeowner and Ms. Bucklin said responsibilities are addressed in Section 10-813. Mayor Rosenthal asked why similar language is in Section 10-805 and Ms. Bucklin said Staff tried to separate homeowner regulations from commercial applicators. Mayor Rosenthal asked if the sections could be combined and Mr. Sturtz said Staff would review that. He said the language is more of a policing effort because the City has the right to ask to see the soil test.

Item 2, continued:

Councilmember Gallagher asked who would be requesting to see a soil test because Code Enforcement cannot keep up with violations now and Mayor Rosenthal said that is a good point. She liked the public education process, but felt violations would be very difficult to enforce. Chairman Kovach said enforcement would be done on a complaint basis. Councilmember Spaulding said chasing people down on a complaint or demanding a soil sample seems pretty invasive and felt there would be a lot of problems with enforcement. He was not happy with the fines either. Councilmember Jungman said if a rule is reasonable then it is reasonable to enforce it, but if it is not reasonable, that is another question so is this rule reasonable? He said it is not reasonable for people to not comply with the law. Chairman Kovach said all violation fines are similar and most people are given a warning the first time. He said Staff will not go out to inspect people's lawns or chase down applicators, but violations can be checked based on a complaint. He said the real value is educating the public as to why the City has the rules.

Mr. Sturtz said ECAB currently distributes an informative pamphlet regarding phosphorus in fertilizers. He said the City has also placed information in local newspapers; however, it has been a passive educational program so far. He highlighted proposed ideas to increase public education that include mail outs to all Norman addresses; placing information with utility bill mailings; educating commercial applicators; working with retailers to place signs and informational pamphlets at fertilizer displays; engaging retailers to help in the education process; placing informational spots on local television stations, on the radio; or in newspapers; and advertising on billboards, busses, bus stops, or other public locations.

Mr. Sturtz said education can be accomplished without an ordinance and an active public education program can reach more people and help spread information. Councilmember Spaulding said he prefers public education to an ordinance. He said Staff says Norman's soil has enough phosphorous; however, he attended a meeting by the Oklahoma State Extension Service where they stated Norman's soil is lacking in phosphorus so the City needs to find out which is true. Mayor Rosenthal said since 2003, the Oklahoma Department Environmental Quality (ODEQ) has reported Lake Thunderbird has a high volume of phosphorus and nitrogen due to runoff. Councilmember Spaulding said he thought the major contributor to phosphorus in Lake Thunderbird came from leaves off trees near the lake shore and Mayor Rosenthal said leaves contain phosphorus, but it is runoff from lawns that is causing the higher levels of phosphorus. Councilmember Jungman suggested inviting an Extension Agent to a meeting. Mr. O'Leary said Staff will follow up on the issue with the Oklahoma State Extension Service and report to Council. He said the Lake Thunderbird Watershed Study is due out next month and that will affect action by the City.

Mayor Rosenthal said registration provides a link to the education process, but she is concerned about soil testing and sampling. Chairman Kovach said the City could provide a process similar to the State's food handling regulations where the applicators come in, watch an educational video, register, and pay the registration fee. He said the City could concentrate on commercial applicators and storage of fertilizer coupled with more aggressive public education. He said he liked the idea of contacting Lowe's or Home Depot to allow the City to have seminars in the spring. Ms. Amanda Nairn, Chair of ECAB, said ECAB has done some public education, but has not begun to scratch the service and public education on a larger scale is needed.

Chairman Kovach suggested a targeted ordinance that requires applicators to attend a class or take a test. He said Staff could speak to the larger retail stores about storing fertilizer outside in contained areas and distributing pamphlets to educate the public. Councilmember Spaulding said he is not comfortable with the registration process, but the rest is acceptable. Chairman Kovach suggested eliminating registration and

Item 2, continued:

requiring commercial applicators to attend a class and obtain a card to show this was done. Councilmember Spaulding said if they have a Commercial Applicator's License from the State then they have already gone through that. Chairman Kovach said those with a Commercial Applicator's License can be exempted. Mr. O'Leary said the purpose of the registration is to capture and educate commercial applicators so they will understand the issue regarding phosphorus, which is something the State does not regulate.

Councilmember Gallagher suggested door hangers be used as an educational tool. He said if Code Compliance Inspectors see someone blowing grass into the street they could stop, hand them a pamphlet, and talk to them. He said the newspaper should contribute a quarter or half page advertisement on a one time basis. Councilmember Lockett said quarter and half page advertisements are usually not read, but want ads are often the most frequently read portion of the newspaper so put the information there.

Councilmember Jungman said there seems to be agreement on public education, but somewhat of a divide on the remaining issues. He suggested sending the ordinance, as drafted, to Council and let Council make changes. Chairman Kovach suggested drafting an ordinance with his suggestions on a registration class and education of retailers at point of sale. He said Staff can present both versions of the ordinances to Council at a Study Session.

Mr. O'Leary said Staff would compile costs for educational materials and Chairman Kovach asked Staff to include costs for a five to ten minute educational video. Councilmember Gallagher felt placing the video on the City's website could be more cost efficient than mailing flyers.

Councilmember Spaulding said he does not receive a water bill and asked how often the City places informational material in utility mailouts and how much it costs. Chairman Kovach said an insert is included approximately twice a year. Mr. O'Leary said costs for mailing inserts in utility bills are approximately \$37,000.

Items submitted for the record

1. Memorandum dated October 4, 2012, from Shawn O'Leary, Director of Public Works, and Scott Sturtz, City Engineer, to Council Oversight Committee
2. Draft Ordinance
3. PowerPoint presentation entitled, "Storm Water Master Plan, Manufactured Fertilizer Ordinance," City Council Oversight Committee, Wednesday, October 10, 2012

Item 3, being:

MISCELLANEOUS DISCUSSION.

None

ADJOURNMENT.

The meeting adjourned at 6:57 p.m.

ATTEST: