

## CITY COUNCIL STUDY SESSION MINUTES

January 20, 2015

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a Study Session at 5:30 p.m. in the Municipal Building Conference Room on the 20th day of January, 2015, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray, and the Norman Public Library at 225 North Webster 24 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Allison, Castleberry, Heiple, Holman, Jungman, Lang, Miller, Williams, Mayor Rosenthal

ABSENT: None

ADMINISTERING THE OATH OF OFFICE TO AND SEATING OF COUNCILMEMBER-ELECT KYLE ALLISON, WARD 8.

Presiding Judge David Poarch administered the Oath of Office to Councilmember-elect Kyle Allison, Ward 8, of the City Council.

Thereupon, Councilmember Allison was formally seated.

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Item 2, being:

CONTINUED DISCUSSION REGARDING PROPOSED ORDINANCE TO INCREASE FEES; IMPROVE SAFETY AND STRENGTHEN ENVIRONMENTAL STANDARDS AND CONTROLS FOR OIL, GAS AND MINERAL PRODUCTION SITES.

Ms. Susan Connors, Director of Planning and Community Development, provided background and highlighted the Council Oversight Committee discussions regarding oil well site security as follows:

- November 13, 2013: Oversight Committee discussed oil well site security;
- December 2013: Staff prepared and distributed a report to the Committee regarding the City of Norman's well site safety policy at the Committee's request;
- May 14, 2014: Oil well site security and safety was placed on the Oversight Committee agenda for further discussion. Staff presented background information on the history of the City's oil well site security and fencing language in the current code and changes to the current code language regarding fencing, screening, and security were discussed as well. The Committee discussed and supported fencing around well sites and directed Staff to draft a revised Ordinance incorporating the requested changes as well as a phasing-in period requiring older well sites to comply. The Committee also requested Staff to gather information regarding the average cost for fencing around well sites, gather information from those in the affected industry, and bring back the information to a future Council Conference;
- June 5, 2014: Staff met with industry representatives to get feedback on the proposed changes to fencing and security for oil and gas wells;
- August 26, 2014: Full Council discussed oil and gas well fencing at the Council conference and requested Staff seek additional input from oil well operators and mineral interest owners;
- September 18, 2014: Oversight Committee discussed oil and gas regulations in the Lake Thunderbird Watershed. The Committee requested Staff to meet again with industry representatives to discuss ideas and gather their feedback as well as prepare additional information regarding the following:
  - ❖ Research insurance requirements for other cities;
  - ❖ Provide specific language on location distance from ground water;
  - ❖ Spill contingency plans with permit – may consider engineering solutions in Water Quality Protection Zone (WQPZ) if meeting additional requirements;
  - ❖ Look at entire floodplain, not just floodway;
  - ❖ Consider only steel containment for tank batteries;
  - ❖ Storage of chemicals in original containers;
  - ❖ Water diversion during the drilling process; and
  - ❖ Best practices for water protection.

Item 2, continued:

- October 23, 2014: Staff met with 13 companies and went page by page discussing the proposed amendments. The City of Norman's City Attorney's Office also received a Memorandum of Law from the legal representatives of Norman well operators which puts forth their view of municipal regulatory authority over the oil and gas industry. Staff from the Legal Department reviewed the Memorandum and provided a confidential memorandum to Council regarding that subject;
- November 13, 2014: Oversight Committee met and discussed proposed changes to the draft Ordinance. The Committee requested Staff to gather some additional information and make changes to the proposed Ordinance, primarily focusing on five areas to include: fencing, water testing, water quality protection zones; waivers; and insurance requirements; and
- December 18, 2014: Oversight Committee discussed proposed changes to the draft Ordinance and the Committee recommended moving the draft Ordinance forward to a Study Session on January 20, 2015.

### Permits Required

Re-entry permit fee has increased from \$1,000 to \$3,000 in order to be more consistent with other assessed fees. New application requirements include: statement for provision of water for drilling rig and operations; copy of Oklahoma Corporation Commission (OCC) land application permit for disposal site; signed surface owner's statement allowing drilling; maps and/or drawings showing means of diverting surface water; and statement regarding a Spill Prevention Control and Countermeasure Plan as required by the Environmental Protection Agency (EPA). Several requirements in Section (c) have been deleted because they already are provided with the OCC permit.

### Proposed Amendments

- **Section 13-1502: Bonds, etc.**: Amendment allows operator to provide a cash payment rather than a bond or letter of credit if the operator prefers to do so; (*done at operators request*)
- **Section 13-1502.1: Insurance**: Increase insurance limits for stripper wells from \$500,000 to \$1 million in pollution coverage; increase bodily injury limits to \$125,000 (in conformance with Oklahoma Tort Claims Act); endorsement requiring 30 days' notice of cancellation to Oil and Gas Inspector; and Inspector may seek termination of electric service to well site if insurance is cancelled; (*operators agree amendments were the best approach*)
- **Section 13-1503: Definitions**: Three new definitions are proposed to be added to include: 1) Plugged and abandoned: any well which has been plugged per OCC rules and regulations; 2) Producing Well: any well, hole or bore, of any depth, which is not plugged for the purpose of producing oil and gas or disposing of saltwater or any other by-product thereof; and 3) Surface Facilities: tank batteries, booster pumps or any other surface equipment used in the production of oil or gas or disposal of saltwater or any other by-product thereof, except the pumping units; (*definitions added at operator's request and Staff agreed*)
- **Section 13-1504: Casing and Section 13-1505: Closed Loop System**: Surface casing proposed to be required to be installed to a depth of 1,200 feet (now consistent with OCC requirements -previous requirement was 1,000 feet); and all circulating mud pits shall be exclusively of metal construction;
- **Section 13-1506: Earthen Ditches**: Before drilling operations commence, ditches shall be constructing around the drilling rig, sump pumps shall be installed, and all fluid from the sumps shall be pumped into steel containers for removal; (*requirement(s) are currently listed, but are now more detailed*)
- **Section 13-1507: Safety Standards**: Industry standard safety practices shall be used; all chemical and/or hazardous materials shall be stored to prevent leaks or spills; safety sheets for all products must be kept on site; containers shall be properly labeled; and chemicals shall be stored in original containers, raised from the ground, and protected from stormwater and weather elements;
- **Section 13-1508: Premises Maintained (Fencing)**: Construction Standards: six (6) foot chain link fence, with three (3) strands of barb wire on top, posts set in concrete, and #9 gauge tension wire at bottom, removable panels on front and side; fence is required when any new well is drilled around tanks and well head (can be fenced separately); no fence required during drilling if 24 hour onsite supervision is available; existing well must come into compliance with these requirements within one (1) year of ordinance adoption UNLESS: 1) well is located outside Current Urban Service Area, and 2) fencing requirement is waived in writing by property owners within 600 feet of well site; if a dwelling or business is constructed within 600 feet of unfenced well site, operator shall come into compliance with the ordinance within 60 days of notification UNLESS: 1) well is located outside Current Urban Service Area, and 2) fencing requirement is waived in writing by the property owners within 600 feet of the well site, if a property where an oil well is located changes designation to Current Urban Service Area, the well operator must fence within 60 days of written notification;

Item 2, continued:

- **Section 13-1509: Drilling location:** no oil and gas operations in areas designated as “Stream Planning Corridors;” no well within 600 feet of dwelling, church, business or school unless waived by the landowner; new language requires waivers to be filed in County property records and does not require subsequent waivers for additional well bores on currently permitted well site;
- **Section 13-1510: Water Testing:** water wells within one-fourth (1/4) mile of new oil or gas wells shall be tested for the following: bromide, chloride, total dissolved solids; methane, iron, manganese, arsenic, boron, and lithium; one test shall occur prior to drilling and three after completion (one every other year for five (5) years); testing is not required if the water well owner denies access to the water well; the Oil and Gas Inspector and the water well owner shall be notified forty-eight (48) hours in advance of testing; and test results shall be filed with the City upon completion;
- **Section 13-1512: Storage Tanks:** storage tanks are required to have steel or concrete containment wells; inside of the containment systems shall be lined with a minimum of 30 mil seamless liner; and all service lines shall be equipped with a pollution control container at the loading point;
- **Section 13-1514: Disposal Wells:** non-steel lines shall have a tracer wire installed and lines shall have signs at all property lines and private street crossings and water wells with one-fourth (1/4) mile of disposal wells are currently required to be tested annually; amended ordinance now requires same list of chemicals to be tested for as new oil or gas wells;
- **Section 13-1518: Signs and Section 13-1519: Plugging of Wells:** Signs are required to be posted at entrance to well site in accordance with (OCC) requirements; sign may not be smaller than two feet by two feet (2x2) and no larger than three feet by three feet (3x3); Minimum of two hundred (200) feet of cement shall be set at the end of the surface casing; at least one hundred (100) feet shall extend above the bottom of the surface casing and at least one hundred (100) feet shall extend below the bottom of the surface casing; and in addition, at least fifty (50) feet of cement shall be pumped extending from five (5) feet below the restored ground level elevation down into the well bore; and
- **Section 13-1522: Inspector:** Authority to issue an order to cease operation if there is a violation of any provisions of the ordinance.

Mayor Rosenthal asked Staff for clarification regarding Section 13-1508: Premises Maintained (Fencing), specifically, the language refers to all the property owners within 600 feet of the well site structure, not 600 feet within the property of the property owner of the well site itself, and Ms. Connors said yes, that the 600 feet would begin at the well site structure.

Ms. Connors distributed a service map reflecting the current urban service area for those well sites where fencing would be required without a waiver, as well as reflecting the future urban service area and rural areas. She clarified that until future developments (outside the current urban service area) become inside the current service area they would not be required to fence around well sites, if they can obtain a fencing waiver, i.e., development constructed in a future urban service area because of an adjacent/contiguous development would need to request to be placed inside the current urban service area. Ms. Connors stated the current urban service area is different and would have different requirements than the future current urban service area.

Councilmember Castleberry asked who would be responsible if the water test is negative and Mr. Jeff Bryant, City Attorney, said that instance would primarily be a civil matter; however, the City would notify Oklahoma Department of Environmental Quality (ODEQ). Mr. Bryant said if the incident reached a contamination level ODEQ would be the enforcement authority, not the City; however, if this were to occur the City could consider revoking the permit. Councilmember Lang asked what would happen to the individual well should a water well test find other contaminants, and Mr. Bryant said the City would notify the property owner; however, he is not sure what ODEQ/EPA guidelines would come into play. Ms. Connors said the City is basically requiring testing of the water well to determine whether or not well drilling has any effect on the water well or not. Councilmember Miller said if the City carries the burden of making certain the citizens know about negative water well testing etc., she felt it would be good to have clarification for the next and/or additional steps that would need to be taken, regardless if the incident is a civil matter and ODEQ the enforcement authority.

Item 2, continued:

Councilmember Miller asked if additional waivers for subsequent and/or multiple bores were retrospective and Mr. Bryant said the new ordinance will be prospective, not retrospective, with the exception of fencing requirements. Mr. Bryant said operators had some of the same concerns at one of the more recent Council Oversight Committee meetings; therefore, for clarification the ordinance language may need to be tweaked a little. He said one question in particular was whether the metal lined containment would apply to existing or current wells and as he understands the intention from the Oversight Committee was that requirement would be prospective. Mr. Bryant said likewise, regarding waivers, if an operator and landowner have a contractual arrangement regarding drilling wells then they will rest on that particular contractual agreement. Moving forward the intention of the ordinance is there would be one agreement for one site, but there could be multiple wells for one site. Councilmember Miller said it would be up to the landowner to be sure that is what they are agreeing to and Mr. Bryant said yes for the prior wells. He said going forward there is an ordinance provision/waiver stating if permission is given to the operator, the operator can drill multiple wells on the one 10-acre site and Ms. Connors said the waiver will then be filed at the County.

Councilmember Castleberry asked whether replacement of existing lines will have to comply with new requirements and Staff said yes, new lines (to include replacement) will need to comply. Councilmember Miller said diesel powered engines can be very loud and asked Staff for examples regarding an electric motor waiver. Ms. Connors said there are two (2) primary reasons an electric motor would be waived: 1) if there are no electric lines nearby, therefore no connection to electricity would be available to the motors at the oil well site, and 2) in cases where there is gas flaring, there is no collection line to sell the gas, and the gas is enough to run the motor of the well, i.e., if in a remote area and the flaring/diverting gas off of the well will operate the motor. Councilmember Miller asked what if someone lived close to a flaring well and Ms. Connors said in that case the area would not be considered remote.

Councilmember Miller asked about the Stream Planning Corridors, specifically, whether the map is sufficient or should the City have specific setbacks. Mr. Shawn O'Leary, Director of Public Works, said the City Geographical Information Systems (GIS) have created well defined mapped areas and can pinpoint the area within two (2) to three (3) feet of the Lake Thunderbird tributaries only, not the Canadian River. He said only Lake Thunderbird tributaries are considered because that is the domestic water source.

Mr. Bryant said these are unplatted areas and when looking at Stream Planning Corridors; the definition in Section 19-411(b) states "...the greater of 100 feet width measured from the top of the bank on either side of the stream, or a more-narrowed width if engineering standards are done (to make sure the water is filtered), which is a buffer in itself. Mayor Rosenthal referenced the suggestion by the Central Oklahoma Clean Water Coalition (COCWC) regarding the 660 foot setback and stated it is a little arbitrary given the fact the widths may vary. She felt the language would be better suited in Chapter 19 of the City Code.

Councilmember Miller asked about the qualifications and requirements for the Oil and Gas Inspector and Ms. Connors said an inspector must have a high school diploma; three (3) years' experience in oilfield production and drilling operations in order to obtain experience needed to inspect the work of others and identify defects or errors; must have a valid state drivers' license and satisfactory motor vehicle record; and knowledge of City codes as they relate to oil and gas drilling, etc. She said they work under general supervision and perform skilled inspection work with compliance of the City code governing oil and gas companies and review plats for compliance with regulations pertaining to oil and gas wells and pipelines. Councilmember Holman asked whether the public would have access to inspection dates on the City website and Ms. Connors said that information is currently not online; however, Staff can upload the information to the City website.

Councilmember Jungman stated page three (3) of the submitted suggestions regarding the Oil and Gas Ordinance amendments distributed by Mr. Steve Ellis and Mr. Casey Holcomb looks as if they are requesting the City add back a Section that was proposed to be deleted. Ms. Connors said Section (c) is duplicative because the applicant already provides the information to OCC; therefore, the proposed amendment requests the applicant submit a copy of the OCC permit to the City that already contains the required information. Mayor Rosenthal said she is concerned if the City were to add back/keep the language in Section (c); there would be a conflict if the OCC made changes to their permit requirement(s). She stated the OCC's permit requirement(s) would trump the City's permit requirement and Mr. Bryant said yes, that is correct.

Item 2, continued:

Councilmember Jungman said he is concerned with drilling waivers lasting forever and said the City should offer a sunset provision. He said if chemicals become more septic, how or what can the City do to help protect future owners should any changes occur? He felt the permanent waivers are short-sighted putting future residents in potentially odd situations. Mayor Rosenthal asked Staff if they researched sunset provision on waivers and Ms. Leah Messner, Assistant City Attorney, said their research did not find many cities that offered waivers. Ms. Messner said the ordinance amendment being proposed included the waiver procedure for the City of Fort Worth, Texas, which included recording the waiver at the County with property records and new/future owners would be aware of the waiver before purchasing the property. Councilmember Castleberry said most Congress sunset provisions are on tax laws and felt sunset provisions in this case are not appropriate. Mayor Rosenthal requested Staff research other cities that have waivers, as well as any sunset provisions. Councilmember Jungman asked whether the City could lessen what the waiver includes and/or narrow down what is being waived, i.e., waiving the right to drill with certain technology equipment, etc. Councilmember Holman said he would be supportive of some other options and Mayor Rosenthal felt more information was needed on sunset provisions.

Mayor Rosenthal said she supports the proposed amendment regarding a \$5 million pollution insurance requirement rather than the \$1 million. Councilmember Jungman said he supports the proposal as well and asked whether the \$5 million pollution insurance requirement would include stripper wells too and Staff said no, the requirement would exclude stripper wells.

Mayor Rosenthal requested Staff prepare a follow-up memorandum on suggestions submitted by Mr. Ellis and Mr. Holcomb, as well as the waiver issue.

Items submitted for the record

1. Memorandum dated January 12, 2015, from Susan Connors, Director of Planning and Community Development and Leah Messner, Assistant City Attorney, to Honorable Mayor and City Councilmembers with attached draft Ordinance of proposed Oil and Gas Amendments
2. Email dated January 20, 2015, from Stephen Ellis, to Councilmembers, Susan Connors, Steve Lewis, Casey Holcomb, Mary Francis, and Cynthia Rogers with attached Proposed Changes to the City Draft of Oil and Gas Ordinance Amendments, prepared for the Central Oklahoma Clean Water Coalition by Casey Holcomb and Stephen Ellis
3. Legislatively notated draft Ordinance amending Article XV, Sections 13-1501 through 13-1519 and Section 13-1522 of Chapter 13 of the Code of the City of Norman
4. PowerPoint presentation entitled, "Proposed Amendments to Oil and Gas Ordinance," dated January 20, 2015
5. Map of the City of Norman, Stream Planning Corridor, dated December 11, 2014

The meeting adjourned at 7:00 p.m.

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ATTEST:

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City Clerk

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Mayor