

COUNCIL STUDY SESSION MINUTES

November 20, 2012

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 Council Chambers on the 20th day of November, 2012, 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 Castleberry, Kovach, Gallagher, Griffith, Jungman, Lockett, and Mayor Rosenthal

ABSENT:

Councilmembers Spaulding and Williams

DISCUSSION REGARDING A PROPOSED ORDINANCE REGULATING FERTILIZER CONTAINING PHOSPHORUS.

Councilmember Kovach, Chair of the City Council Oversight Committee, said the Oversight Committee discussed an ordinance regulating fertilizers containing phosphorus and two different concepts emerged from that discussion. He said Staff was asked to provide two draft versions of the ordinance for Council to review. He said Lake Thunderbird has a high volume of phosphorus and nitrogen due to runoff that needs to be addressed. He said the Storm Water Master Plan (SWMP) recommends a statutory fertilizer reduction; however, Council can discuss which version of the ordinance should move forward after tonight's presentation.

Mr. Scott Sturtz, City Engineer, said the State standard for Chlorophyll-A is ten micrograms per liter (mgl) and according to a study done by Vieux and Associates in 2007, Lake Thunderbird was at 30.8 mgl. Mr. Vieux projected micrograms per liter would grow as high as 44 mgl or more if nothing is done and recommended best practices that include fertilizer reduction, constructed wetlands, and structural controls. An excess of phosphorus causes more algae leading to significant water quality problems including reduced spawning grounds and nursery habitats; fish kills; hypoxic/anoxic conditions; harmful algal blooms; and public health concerns related to impaired drinking water sources.

Mr. Sturtz said voluntary fertilizer reduction programs around the country have been reasonably effective, but in the case of Lake Thunderbird, that would only impact or reduce the phosphorus load by 4% and a mandatory program would reduce the load by 8%. He said in order to make an impact on phosphorus loading into the watershed a number of practices would need to be used.

Mr. Sturtz said the SWMP recommends the implementation of structural controls (primarily by developers) as well as nonstructural controls (developers and City) such as stream bank stabilization, creating regional detention basins, water sampling, street sweeping, public education, and fertilizer usage, targeting lawn care companies.

Mr. Sturtz said the Oversight Committee reviewed a draft ordinance in September 2012, and asked Staff to remove some of the components for further review at their next meeting and that is why there are two versions of the ordinance. He highlighted components of both versions. He said Version 1 is more comprehensive and the key components are as follows:

Manufactured Fertilizer Ordinance

Key Issues

- Phosphorus fertilizer application restrictions
- Annual distribution of a fertilizer pamphlet by Staff
- Point of sale provisions
- Penalties for violations
- Registration of commercial applicators

Phosphorus Fertilizer Application Exemptions

- Allowed during the first six months of new seed or sod
- Naturally occurring phosphate in natural or organic fertilizer products
- Lawn and turf areas that have been tested and lab results indicate low phosphorus
- Residential plantings (non-turf)
- Golf Courses
- Zoning A-1 and A-2 (Agricultural)
- Vegetable Gardens

Phosphorus Fertilizer Restrictions

- 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 removed.
- 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.

Mr. Sturtz highlighted commercial applicator registration as follows:

- Registration is through the Storm Water Engineer
- Application must include the products to be used with ratio of phosphorus
- Registration is \$25 per year
- Applicator will be required to provide the informational pamphlet to the owner or occupant at each address they apply fertilizer.
- Applicator must keep a log of all locations phosphorus fertilizer is applied
- City has the right to test the products used and request to review the applicators log book.

Mr. Sturtz said both versions require the City of Norman to prepare a pamphlet containing pertinent information about the ordinance and distribute it to commercial applicators and retailers. He said commercial retailers would be required to clearly mark fertilizer containing phosphorus and post a notice that its use is regulated by the City of Norman. All commercial applicators will be required to register with the City's Storm Water Engineer. Both versions also include a penalty section for any person found in violation would be subject to fines ranging from \$50 to \$750.

Mr. Sturtz said, current education consists of the Environmental Control Advisory Board (ECAB) distributing an educational pamphlet and the City of Norman placing information in the local newspaper, employee newsletter, and City's website. He said the public education proposed would include mailing an education pamphlet to all Norman addresses; placing information in utility bill mailings; educating commercial applicators during registration; working with retailers to place signs and informational pamphlets at fertilizer displays; engaging retailers to help in the educational process; placing public information spots on Channel 20, the radio, and/or in print media as well as

advertising on billboards, buses, bus stops, and other public locations. Mr. Sturtz said an active public education program is included in both versions and will require additional funding.

Mr. Sturtz said a draft ODEQ Watershed Plan Development is due to be completed this month with a finalized plan due in the spring of 2013. He said the plan will establish the allowable Total Maximum Daily Load (TMDL) for cities and ODEQ will expect communities to adhere to that. He said other Lake Thunderbird water quality solutions include monitoring septic tank installation and operation and putting more effort into Norman's Water Quality Monitoring Program.

Councilmember Griffith said an 8% reduction of phosphorus in Lake Thunderbird is an admirable goal and asked the estimated timeline of that happening if the ordinance is implemented. Mr. Sturtz said he was not certain, but information obtained from Ann Arbor, Michigan, reflects results of 17% to 20% reduction in the first few years and testing done by the State of Michigan indicated a 28% reduction. Mayor Rosenthal said Ann Arbor had a great deal of public education as well as constructing structural controls and asked if the data was solely attributed to their phosphorus ordinance or the entire program. Mr. Sturtz said in discussions with Ann Arbor, the major components of success were contributed to public education and the ordinance. He said Ann Arbor did not construct wetlands, detention ponds, or other structural controls immediately.

Councilmember Griffith said he is concerned about exempting agricultural areas, A-1 and A-2, because Norman has a large land mass with a lot of farmed land in the watershed. He suggested monitoring the quality of their soil as proposed for urban areas. He felt it would not be unreasonable to restrict golf courses use of phosphorus as well. Mr. Sturtz said the A-1 and A-2 areas that would be exempted did not seem to have a great deal of the types of crops where phosphorus would be applied, but Staff could add a requirement for soil testing if Council so desired.

Councilmember Kovach said ODEQ would be releasing a TMDL Study to the Environmental Protection Agency (EPA) mandating reductions. He said he understood that because ODEQ did not get to extend the study they are going to be more conservative in what is required to make sure Lake Thunderbird is made safe. He asked if that was correct and Mr. Sturtz said yes, ODEQ has indicated that.

Councilmember Kovach felt restrictions on fertilizers containing phosphorous would place the least amount of burden on the public and meet reductions sought so he would like to see Version 1 adopted.

Councilmember Kovach said he is favor of an aggressive educational program, but felt the City could save money on mailing pamphlets by removing addresses where residents are not likely to have gardens to fertilize, such as apartment complexes. He said citizens need to understand the condition of Lake Thunderbird and how important it is not to use fertilizers containing phosphorus.

Councilmember Kovach asked which version is most similar to the Ann Arbor ordinance and Mr. Sturtz said Version 1. Councilmember Kovach asked the estimated cost for wetland construction and Mr. Baxter Vieux, Vieux and Associates, said he did not have firm cost information, but costs would depend on the design of structural controls. He said sites need to be identified as well as the amount of runoff, amount of vegetation, etc., which would affect the design. He said a fertilizer ordinance will help eliminate dissolved phosphorus entering streams that lead into the Lake.

Councilmember Kovach asked Mr. Vieux to explain the importance of addressing the water quality issue and Mr. Vieux said the Oklahoma Conservation Commission (OCC) required a study of the watershed because Lake Thunderbird is listed by the State as an impaired water body. OCC wanted a model of what is going to happen in Lake Thunderbird as a result of non-point source pollution based on the amount of runoff, phosphorus, and sediment that goes into the Lake. He said it became clear during the study that impervious areas tend to contribute more phosphorus. He said historically, lakes that experience toxic algal blooms can shut down water supplies because the water can cause damage to the liver and brain. People and animals swimming in the lakes can also experience ill effects. Councilmember Kovach asked if the City should be as aggressive as possible in solving the

problem in Lake Thunderbird and Mr. Vieux said yes, because it will take more than one practice to solve the problem.

Councilmember Kovach asked how important this issue is to the Central Oklahoma Master Conservancy District (COMCD) and Mr. Vieux said it is extremely important and everyone is waiting on the ODEQ Watershed Plan so cities can proceed with actions to meet new regulations.

Mayor Rosenthal said it was her understanding some locations are better than others for wetland sites and sites further up in the watershed are probably more effective in terms of phosphorus removal than sites directly next to the Lake and asked Mr. Vieux to explain. Mr. Vieux said further down the watershed has a much larger volume of runoff and when the City gets a five or ten year storm, there may be such a large volume of runoff it would be difficult to control. He said costs of structural controls become much larger as well. He said the City needs to choose locations with sufficient storage volume for the amount of runoff coming to that location.

Councilmember Jungman asked if it is a fact that Version 1 of the ordinance would reduce more phosphorus than Version 2. Mr. Sturtz said he did not want to say that was a fact since voluntary compliance through education and commercial retailers could have a huge impact without enacting an ordinance.

Councilmember Castleberry asked how the ordinance will be enforced. Will Code Enforcement be driving around enforcing? Will citizens and landscaping companies be cited \$50 for blowing grass into street? How would requiring commercial landscaping companies to keep a log reduce the amount of phosphorus going into the Lake? Mr. Sturtz said the City basically wants to know how many places phosphorus is being applied and if it is necessary. He said Storm Water Inspectors who witness a lawn company or citizen blowing grass and debris into the street will provide them with an informational pamphlet that will tell them they cannot blow grass and debris into the streets. Councilmember Castleberry asked if that was an ordinance already and Mr. Shawn O'Leary, Director of Public Works, said it is an ordinance by reference to the engineering design criteria under the storm water section, but language is not as clear as the fertilizer ordinance would be.

Mayor Rosenthal thought there had been discussion at the Oversight Committee about an educational component to commercial applicator registration, but she did not see that in either version of the ordinance. Mr. Sturtz said there are two ways to handle that. Go after the corporation loading materials on the truck and educate them from a corporate viewpoint or visit with each individual operator driving the truck that dispenses the fertilizer. He said when the applicator registers, there will be training at that time, but the question remains should it be done with the corporation or applicator? He said the ordinance could be amended to go either way.

Councilmember Gallagher asked if more intensified street sweeping in areas that have a lot of trees during the fall season is being done. Mr. O'Leary said the City targets certain developed areas of Norman all the time, but does not necessarily target those rich in trees and leaves during the fall season. He said there are not enough resources to sweep those residential areas more than once a year. He said the SWMP recommends a combination of best management practices and enhanced street sweeping is the most favored practice; however, it is costly to purchase more street sweepers and hire additional Staff.

Councilmember Gallagher asked if Staff had coordinated Norman's plans with other cities that contribute to runoff in Lake Thunderbird. He said the ordinance would not be meaningful without that cooperation. Mr. Sturtz said there is currently no direct coordination for this specific purpose, but Norman and other cities are part of the Central Oklahoma Storm Water Alliance (COSWA) and Staff did speak to a few of those cities at the last meeting. He said more collaboration will be done when the ODEQ report comes out, but he would be glad to contact those cities and begin the dialogue now. Councilmember Kovach said reaching out to the other cities would be helpful since Norman would be basically leading the way since they are the major water user from Lake Thunderbird.

Councilmember Gallagher asked for the cost to a homeowner wanting to test their soil and Mr. Sturtz said the Cleveland County Soil Extension office does soil testing and although he did not know the current cost, in the past it was \$10 per sample.

Councilmember Gallagher asked why the City cannot limit phosphorus and nutrients placed on golf courses since there are non-phosphorus fertilizers that work just as well. Mr. Sturtz said Staff visited with the University of Oklahoma (OU) Staff and Parks and Recreation Department Staff regarding phosphorus use, but said they do not typically use phosphorus. Councilmember Gallagher said if OU does not use phosphorus and they have one of the lushest golf courses around, then why have an exemption in the ordinance. He said there should also be consideration for residential plantings such as flower beds since phosphorus is not typically used. He would like to see some of those exemptions lifted.

Councilmember Gallagher said mail outs of the informational pamphlet is just a proposal at this time and suggested mailing information in utility bills to save money since the information would still reach most residents.

Councilmember Gallagher said he was concerned about the fines for violations. He said the City has an ordinance prohibiting sweeping or blowing grass into the street, but it is not enforced. He said he has never known anyone who has received a warning or citation and would like to know how many warnings have been issued in any given summer. He did not believe the City could reasonably enforce a fertilizer ordinance.

Councilmember Kovach said timing is important to allow retailers plenty of time to adapt to the new regulations since they often begin ordering spring merchandise in December and January.

Ms. Cindy Rogers, 633 Reed Avenue, said voluntary options are not aggressive enough. She asked if the City could tax phosphorus fertilizer and Ms. Kathryn Walker, Assistant City Attorney, said that is governed by State law and the City cannot tax particular products. Ms. Rogers asked if the City could require education courses about phosphorus handling and Ms. Walker said yes, that would be similar to how the City works with the Cleveland County Health Department to require all State food requirements are met before a business can get a City of Norman Food Service License. She said most City regulations are coordinated with County or State agencies to make sure requirements are being met for educational courses. Ms. Rogers asked if the City could offer soil testing to citizens during peak seasons so they will know whether or not they need phosphorus in their soil before purchasing fertilizer. Ms. Walker said yes, the City currently partners with groups to provide rain barrels as part of a public education process so that could be done for soil testing as well.

Ms. Mary Francis, 850C Cardinal Creek Condos, asked if Staff or Council had reviewed Ann Arbor, Michigan's phosphorus ordinance and Mayor Rosenthal said Ann Arbor's ordinance was the basis for the City of Norman Version 1 model. Ms. Francis asked what the penalties would be for violations of the City's ordinance and Ms. Walker said the penalty is proposed to be \$50 to \$750, which is similar to other City ordinances. She said the City would always propose education before citations are written.

Mr. Stephen Tyler Holman, 1030 South College, said he believes Version 1 would go farther in bringing a solution to water quality problems.

Mayor Rosenthal said suggestions have been made tonight that require additional drafting of the ordinance and suggested the Oversight Committee review a final amended draft before sending forward to Council.

Councilmember Gallagher asked the City Manager to consider additional street sweeping of tree-dense areas during the fall season.

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Items submitted for the record

1. PowerPoint Presentation entitled, “ Storm Water Master Plan, Manufactured Fertilizer Ordinance,”
City Council Study Session, November 20, 2012
2. Draft Norman Fertilizer Ordinance, Versions One and Two

The meeting adjourned at 6:40 p.m.

ATTEST:

City Clerk

Mayor