

COUNCIL
COMMUNITY PLANNING AND TRANSPORTATION
COMMITTEE MINUTES

October 27, 2016

The City Council Community Planning and Transportation Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:30 p.m. in the Conference Room on the 27th day of October, 2016, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT:	Councilmember Allison, Clark, Hickman, Karjala, and Chairman Holman
ABSENT:	None
STAFF PRESENT:	Mayor Lynne Miller Ms. Susan Connors, Director of Planning and Community Development Sergeant James Fletcher, Police Department Ms. Jane Hudson, Principal Planner Mr. Keith Humphrey, Police Chief Captain Eric Lehenbauer, Police Department Ms. Leah Messner, Assistant City Attorney

Item 1, being:

CLEVELAND AREA RAPID TRANSIT (CART) RIDERSHIP REPORT INCLUDING SAFERIDE AND EXTENDED SERVICE FOR THE MONTHS OF OCTOBER, 2016.

Ms. Karleen Smith, Marketing Specialist for CART, highlighted CART Ridership Reports for September 2016, and said ridership has increased 7% from September 2015, and 7% year-to-date (July-September). She said CART attributes this increase to added service on Main Street, Alameda Street, route adjustments to the Research Center on Highway 9, and the three park and ride options located at Sooner Mall, Bethel Baptist Church, and Lloyd Noble Center. She felt that some of the ridership could be contributed to the millennial generation who tend to want modes of transportation other than cars. Chairman Holman said the increased frequency of buses (every thirty minutes) could be a factor as well because people see that as a reliable form of transportation.

Ms. Smith said CARTaccess transported 3,118 passengers, an increase of 10% over the same time last year; however, CART continues to encourage riders who are able to ride the fixed route free of charge to do so, and to use the park and ride locations.

Ms. Smith said CART will be adding a “trip planner” to their website that will help people navigate from Point A to Point B. Councilmember Holman asked if the CART app tracks buses in real time and Ms. Smith said yes.

CART participated in a New Employee Resource Fair on September 22, 2016, and answered questions about bus routes and distributed pens and rider guides. CART brought their trolley to the annual Touch-A-Truck Event at the Cleveland County Fairgrounds on September 24, 2016.

Ms. Smith said five proposals for a Bike Share Program are still being reviewed and CART should have more information next month. The Request for Proposal (RFP) required the vendor to begin with 10 to 15 stations with at least 50 bicycles and be able to expand to up to 23 stations and 100 bicycles. She said station locations will be identified by the successful vendor and approved by the University of Oklahoma (OU). She said for the first year or two the service will be free to students.

Item 1, continued:

Ms. Smith said Councilmember Clark participated in a “Read and Ride” event on October 22, 2016, where she read out loud to her children while riding the Alameda/East Norman route. Councilmember Clark said she enjoyed the experience and would be more than willing to do that twice a year in the spring and fall.

CART has been working with City Staff on placing bus stop signs on approximately 25 to 30 unmarked bus stops throughout the City and the new bus shelter has been installed on Main Street at 12th Avenue N.E.

Chairman Holman said he is concerned about the temporary bus stop at 24th Avenue S.W. at Lindsey Street because when the bus is on West Lindsey Street and turns onto 24th Avenue S.W. it immediately stops and drivers behind it try to go around, which is dangerous. Ms. Smith said this is a temporary location due to the construction on Lindsey Street, but CART will review that location. Chairman Holman suggested moving the stop further north and Councilmember Allison said that bus stop may be serving Lindsey Street and moving it further north on 24th Avenue S.W. could make people have to walk further so we want to make sure we are not impacting riders.

Ms. Smith said CART is forming a Special Transportation Advisory Committee which will address issues for fixed route and CARTaccess. This will give CART a chance to work with difference organizations in Norman that interface with people with disabilities and received feedback on improving the bus system overall.

Items submitted for the record

1. Cleveland Area Rapid Transit Ridership Totals for the Month of September 2016
2. Cleveland Area Rapid Transit Monthly Report for September 2016, with Attachment 1, CART. We Connect You Rider Survey, and Attachment 2, Photo of bus stop shelter located at Main Street and 12th Avenue N.E., and Attachment 3, Routes 10 - Main Street and 12 – Lindsey West Temporary Stop for 24-24th SW/Lindsey

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Item 2, being:

DISCUSSION REGARDING THE DEFINITION OF LIVE ENTERTAINMENT IN THE ZONING ORDINANCE.

Ms. Susan Connors, Director of Planning and Community Development, said on September 27, 2016, Council postponed an application for a Special Use for “Outdoor Live Entertainment Venue” from Puebla Restaurant on Main Street. Council requested the application be discussed by the Community Planning and Transportation Committee since the City has never had a request for this type of Special Use and Council wanted more information on the issue. The application was submitted to allow outdoor live entertainment on their outdoor patio located in downtown Norman adjacent to an alley. She said previous applications for live entertainment venues have not designated indoor versus outdoor; therefore, Staff has always processed the applications for indoor use. Council directed Staff to investigate the impacts of outdoor entertainment in the downtown area along Main Street as well as the possibility of changing existing ordinances.

Ms. Connors said in recent years, outdoor live music venues have become more prevalent at small venues, such as restaurants with outdoor patios, and street cafés. These music venues can consist of amplified or non-amplified music and acapella or instrumental music with a music decibel higher than allowed by the noise ordinance with noise extending beyond property boundaries. She said the music venues can be a nuisance to adjacent properties whether those properties are commercial or residential and many municipalities have struggled with how to regulate music venues and minimize impact on adjacent properties.

Item 2, continued:

The standard decibel level is 55 decibels and research indicates 55 decibels is equal to two people having a conversation at home and 60 decibels is comparable to a conversation that takes place between two people at a restaurant. Council has had the opportunity over the years to review, reject, or adopt several ordinances for varying live entertainment special use requests along Main Street and those that have been approved are for indoor live entertainment, but no outdoor live entertainment venues have ever been granted.

Ms. Connors said the Zoning Ordinance is cumulative in the commercial zoning districts, i.e., a use allowed *by right* in the C-1, Local Commercial District, is allowed in C-2, General Commercial District, and again in C-3, Intensive Commercial District. The majority of special uses in C-1 is also allowed by right in C-2 and C-3; however, live entertainment venues are not an allowed use or a special use in C-1; therefore, a request for special use for a live entertainment venue in C-2 and C-3 zones require consideration by Council. In C-1, a restaurant is an allowed use and by definition a restaurant can have live entertainment and/or dance floor as an accessory use as long as all such activity is fully within an enclosed building *and* provided the kitchen remains open with full food service whenever live entertainment is offered. This use then carries over as allowed uses in C-2 and C-3.

Ms. Connors said research shows the greater majority of cities do not allow outdoor live entertainment as an allowed use or a special use, amplified or acoustical, on patios whether they are adjacent to a residential area or not. The majority of cities also require “Noise Permits” for special events because the welfare, contentment, and feeling of well-being of citizens/residents are of great concern.

Several cities have additional restrictions on sound measured at the property line, i.e., one city requires a restaurant/bar that has live entertainment inside the building to not exceed 70 to 85 decibels at the property line. This was standard in the research when reviewing the impacts of noise on adjacent property owners, both commercial and residential. While many cities discuss the financial and artistic negative impacts of restrictive noise ordinances controlling the level of music allowed on a site, research shows the majority of municipalities continue to maintain strict ordinances to control or minimize impacts on adjacent businesses and residents.

Ms. Connors said the majority of ordinances reviewed are similar to what the City of Norman currently has in place to control noise nuisances. The majority of the cities researched also have the opportunity for residents and businesses to request a Noise Permit for the occasional music venue or festival, which Norman also has.

While the downtown area of Norman could be an ideal location for outdoor live entertainment, to allow a continuous venue for such live entertainment outdoors would be a disservice to the businesses and residents of Norman as a whole. If the Zoning Ordinance were amended to allow for outdoor live entertainment and is not limited to the downtown area, there will be more businesses requesting such special uses that will impact adjacent property owners. For example, Campus Corner is a very compact business district with residential scattered in close proximity and allowing outdoor live entertainment would create an opportunity for greater impact to the business sector and residential area in close proximity.

Ms. Connors said allowing music below a set decibel level is a great plan on paper; however, the average citizen does not know what 55 decibels or 75 decibels really equate to so the Norman Police Department (NPD) has to intervene between property owners that have concerns about the level of sound coming from an adjacent property. Residents and businesses located around music venues have a right to be protected from the impacts live music venues create. If changes are made to the ordinances to allow outdoor live music venues without looking at the aspects of development ordinances to establish guidelines for sound proofing (glass/windows/doors) and other protective measures for existing and new developments in the downtown area the City may be creating a new problem.

Item 2, continued:

Ms. Connors said the Zoning Ordinance lacks the ability to control or monitor some of the newer issues and uses established in Norman. The authors of the Zoning Ordinance did not foresee that they needed to account for protection of adjacent properties from live entertainment venues; however, there is enough ambiguity for some uses to occupy areas not initially intended for that use.

Ms. Connors said many cities that allow outdoor live entertainment venues have an established entertainment district where the live music is allowed during specified periods. Without the establishment of a defined Arts and Entertainment District, Staff sees no valid supporting evidence that changes need to be made to allow an option for outdoor live entertainment venues. Staff recommends that until an Arts and Entertainment District is established, an amendment to the Zoning Ordinance be processed to specifically state the restrictions for live entertainment venues as well as tighter restrictions on audible amplified music levels at the property line.

Live Entertainment is defined in two places in the Zoning Ordinance as follows:

ACCESSORY. Live Entertainment, when offered in conjunction with an otherwise unrelated legal commercial use, will be considered an accessory use when it constitutes no more than ten (10) percent of the gross monthly revenue of the establishment.

LIVE ENTERTAINMENT VENUE. An establishment where a major component of the business includes live or electronically amplified music, dancing, or other entertainment, and which may impose an admission charge or cover charge to observe that entertainment, nightclubs, bars, and dance halls are typical uses within the category. This category shall not include, in any manner, any Adult Entertainment Establishment.

Ms. Connors said changes to the definitions should include clarification of indoor versus outdoor areas allowing live entertainment as well as including a definition of “outdoor music venues” as follows:

ACCESSORY. Indoor Live Entertainment, when offered in conjunction with an otherwise unrelated legal commercial use, will be considered an accessory use when it constitutes no more than ten (10) percent of the gross monthly revenue of the establishment.

LIVE ENTERTAINMENT VENUE. An establishment where a major component of the business includes live or electronically amplified music, dancing, or other entertainment, and which may impose an admission charge or cover charge to observe that entertainment, nightclubs, bars, and dance halls are typical uses within the category **and all activities are located within a fully enclosed building**. This category shall not include, in any manner, any Adult Entertainment Establishment.

Ms. Connors said a new definition would be added as follows:

OUTDOOR MUSIC VENUE. A commercial venue or property where sound equipment is used to amplify sound that is not fully enclosed by permanent, solid walls and a roof.

Currently, if a business wants to have outdoor amplified entertainment over the allowed decibels they are required to apply for a Noise Variance Permit and follow the restrictions and guidelines set forth in the permit.

Ms. Connors said Article III of the Code of Ordinances outlines requirements for a Noise Permit through the Police Department. If a permit is granted, it will state all the conditions for which the permit was granted, including but not limited to, effective date(s), time of day, location, sound pressure level, or equipment limitations. Relief from the noise restrictions may be granted on good and sufficient evidence showing that

Item 2, continued:

additional time is needed for the applicant to alter or modify the activity or operation to comply; the activity, operation, or noise sources will be a temporary duration; and there are not reasonable alternatives available to the applicant for the event. Additional conditions or requirements may be required to minimize adverse effects on the community or surrounding neighborhood. A permit can be approved for a maximum of up to four consecutive days and no more than seven permits per location per year is currently allowed. Staff recommends that no changes be made to the noise permit at this time.

Ms. Connors said based on research, Staff recommends the following:

1. Amend the Zoning Ordinance to prohibit outdoor live entertainment venues as a Special Use and clarify definitions. Set specific guidelines for live entertainment and restrict to indoor only unless a noise permit is issued to allow for amplified live music, both indoors and outdoors.
2. Establish specific guidelines prohibiting live music on public rights-of-way/sidewalk cafes.
3. Establish additional opportunities for music festival allowances for amplified/live music.

Chairman Holman said Austin, Texas, has a well-known entertainment district that was established many years ago, but has recently seen an influx of high density residential units being built in the area and are beginning to experience issues with residences complaining about noise. He said Norman may never be the size of Austin, but this is something that should be addressed since Norman is looking at allowing more residential development in Downtown Norman. He would not like to see new residential development negatively impact long standing music venues or vice versa. Ms. Connors said Austin has a one day noise permit, a multi-day noise permit, and an outdoor music venue permit, but there is a very long process for permitting these. Many cities have Special Event applications that are required to be submitted at least 30 days prior to an event.

Councilmember Hickman said Staff has done a great job on research and asked if the definition for a Live Entertainment Venue should incorporate a noise decibel limit. He asked if most indoor music venues have a noise decibel limit and Ms. Connors said no. Councilmember Hickman asked if indoor venues could be as loud as they want and Ms. Leah Messner, Assistant City Attorney, said no one can violate the noise ordinance regardless of where the noise occurs.

Councilmember Hickman asked what would happen if a live music venue placed a speaker outside of the establishment so the music could be piped outside. He is assuming the speaker would not be allowed and Ms. Connors said that is correct. Councilmember Hickman said that may need to be clarified and suggested the following:

LIVE ENTERTAINMENT VENUE. An establishment where a major component of the business includes live or electronically amplified music, dancing, or other entertainment, and which may impose an admission charge or cover charge to observe that entertainment, nightclubs, bars, and dance halls are typical uses within the category **and all activities are located within a fully enclosed building, including any speakers.** This category shall not include, in any manner, any Adult Entertainment Establishment.

Councilmember Allison said there are restaurants that currently pipe music outdoors through speakers for customers outdoors and Ms. Messner said under the City's current noise ordinance that would be allowed as long as they are not exceeding the noise decibel level. Councilmember Hickman said piping stereo or radio music outdoors through a speaker can be as much of a problem as having a band outside, especially downtown and in Campus Corner. Ms. Messner said live entertainment venue music could not be piped outside, but lower decibel music from a radio or stereo system could be low enough to not violate the noise ordinance.

Item 2, continued:

Councilmember Allison said according to the noise chart, a rock band's decibel level is 110 so how can someone comply with the noise permit if the noise permit's decibel limit is 80 decibels? Ms. Messer said it depends on where the noise is measured from as the noise level directly in front of a guitar may be 110 decibels, but could be only 85 decibels if measured from the property line.

Councilmember Allison said some ordinances exempt stadiums and asked if Norman's ordinance has that exemptions and Ms. Connors said the stadium is located on State property and the City does not have jurisdiction over State property. Councilmember Karjala asked about Norman High School and Ms. Messner said that is also State property. Chairman Holman said Norman High School recently installed a new sound system in their stadium which is considerably louder than the old one. Councilmember Karjala said she has received numerous complaints about this and Ms. Messner said the schools are typically willing to work with the City so Staff could meet with them regarding the noise level projecting to adjacent properties. Captain Eric Lehenbauer, Norman Police Department, said Chapter 10, Section 308, of the Code of Ordinances lists exemptions to the noise ordinance and sporting events are an exemption.

Councilmember Hickman asked if the word "live" should be added to the Outdoor Music Venue definition to state "Live Outdoor Music Venue" and Ms. Connors said the language encompasses all sound whether it is live music or not and Staff only created the definition in case Council wanted to move in the direction of allowing special use for live entertainment venues.

Councilmember Allison said Staff's second recommendation is to establish specific guidelines prohibiting live music on public-rights-of-way/sidewalk cafes so that would prohibit someone with a guitar from playing outdoors in front of a restaurant or business and he does not necessarily want to do that. He said Second Friday Art Walk is an example of that taking place. He is also not completely in agreement to prohibit outdoor live entertainment venues as a special use because what if the City has someone that wants to build an amphitheater type music venue in Norman? He said the noise permit is only issued seven times per year per location so that would not work for that type of venue. He said Denver, Colorado has Fiddler on the Green, which is a large amphitheater type venue and Ms. Connors said that type of venue could fall under Planned Unit Development (PUD) zoning, but Staff will research Fiddler on the Green to see how it is operated.

Mayor Miller said an amphitheater venue would not work in Downtown Norman or in Campus Corner as it would need to be in a place with lots of space. Councilmember Hickman said if the definition for an outdoor music venue were in place then someone who wanted to build an amphitheater could include that definition in the PUD which would allow them to have amplified sound that is not fully enclosed. Ms. Connors said that is one way to look at it, but a PUD creates its own definition of uses; however, with the proposed definition everyone would know what an outdoor music venue is. Councilmember Hickman said if the ordinance is amended to include the definition, Staff could also amend the ordinance to allow outdoor music venues in C-2 or C-3 under a Special Use Permit. He said this would allow flexibility in C-2 and C-3.

Councilmember Clark said Hollywood Corners in Ward 6 has a full stage outdoors and they have more than seven music events each year and Ms. Messner said those are typically private parties and that location is agriculturally zoned. Chairman Holman asked if being agriculturally zoned is what allows that to take place and Ms. Messner said no, it is allowed because it is a private party and not open to the public.

Chairman Holman said if the applicant, Puebla, wanted to have a private party on their patio with live music would that be allowed? Ms. Connors said the decibel level would come into play because they are in close proximity to residential areas. Councilmember Clark asked if the noise ordinance would kick in for Hollywood Corners and Ms. Messner said yes, if someone complained.

Item 2, continued:

Councilmember Clark felt there will be more requests for these types of venues in the downtown area so Council needs to be mindful of that impact to future residential development. Councilmember Hickman agreed and said having multiple music venues along Main Street would negatively impact everyone and the current noise permit provides a 500 foot buffer, which should remain in place for any music venue. Councilmember Clark asked if noise permits are first come first serve and Captain Lehenbauer said basically yes. Councilmember Clark asked if a Special Event Permit supersedes the noise ordinance and Ms. Messner said no, but the City only enforces the noise ordinance if there is a complaint.

Mayor Miller said this discussion is trying to address an ongoing venue and that is the problem because when there is a special event, everyone knows what to expect and no one complains because they are aware it is temporary, not ongoing. Councilmember Allison said the City is basically discussing this because of one applicant and changing the ordinance for one applicant will cause issues. Councilmember Clark said the Committee is discussing this subject because Council perceives more people wanting to do this because of the way the downtown area will be developing. She said Council would have created a slippery slope if they had granted this application without looking at the process as a whole so the process needs to be clarified or the City will be dealing with these types of requests time and again.

Chairman Holman said everyone seems to generally support allowing outdoor music, but the City cannot allow any venue to have live entertainment on a continual basis. He felt that seven times a year for a noise permit was appropriate and Councilmember Clark said she would not oppose a once a month permit.

Councilmember Hickman asked what the standards are on whether or not a Special Use Permit should be granted and Ms. Messner said there is a paragraph in the Zoning Ordinance that talks about special uses, which are typically allowed upon Council review if they meet certain conditions, e.g., time of day, days of the week, location, etc. Ms. Connors said that criteria also include compatibility, impacts, safety and convenience, etc.

Councilmember Hickman suggested allowing a Special Use for Outdoor Live Entertainment in C-2 and C-3. He said this gives Council the flexibility to approve or deny the request on a case by case basis based on the criteria for granting a Special Use Permit. Ms. Joy Hampton, The Norman Transcript, said it sounds as if the Committee is talking about doing something opposite of what is being recommended by Staff. If someone requested a Special Use for Outdoor Live Entertainment, what would give Council the right to say no without being arbitrary and capricious? Councilmember Hickman said he asked about the standards for granting a Special Use Permit because Council can use that zoning criteria if someone applied for an outdoor music venue especially in close proximity to a residential area. He said if that use would negatively impact homes or businesses, Council could comfortably deny the request. He is just throwing that idea out for discussion because otherwise the City will be limiting itself on allowing outdoor music venues. Councilmember Allison said Norman needs to have regulations that allow outdoor live entertainment venues to grow with the City.

Ms. Marian Nunez, owner of Opolis Productions located at 113 North Crawford, said it is important to have flexibility for incoming businesses, but as Norman grows, more areas are going to develop residentially as well. She felt the concentration of residential and business would bring more restrictions as time goes on. She said the Police Department has not had anyone request more than seven noise permits per year and wondered how that would be monitored if the ordinance allowed 12 to 24 permits per year.

Mr. Andrew Harroz, representative for Puebla located at 305 East Main Street, said having a definition for an outdoor music venue is smart and he would like to see more than seven noise permits per year allowed. He said the Police Department can monitor how many permits are being applied for at one time, enforce the buffer zone, and issue or deny an application on a case by case basis. The reason Puebla applied for a Special Use Permit was because they felt that seven noise permits per year was very limiting and they would like to see that limit raised to 24; however, if Puebla needs to apply for a PUD then that is fine as well. He is excited at the prospect of being at the forefront of discussion on allowing outdoor live music venues in the City of Norman.

Item 2, continued:

Ms. Hampton asked if notification to surrounding property owners is given when a noise permit is issued and Captain Lehenbauer said no. Councilmember Hickman felt there should be notification to property owners when a noise permit application is received by the City. Mr. Steve Lewis, City Manager, said when notice letters are sent out to the public it is advising citizens of a public hearing where comments in support of or against an item can be made and that could be the presumption here if notices are sent regarding noise permits. Councilmember Karjala said notification is a simple practice that needs to take place.

Councilmember Hickman said an integral part of this discussion is noise and suggested this discussion be carried over into another meeting with a representative from the Police Department detailing the noise permit process. He said this needs to be an integrated solution, not just a zoning solution.

Councilmember Clark asked about the regulations for the Oklahoma City Zoo Amphitheatre because it is surrounded by residential neighborhoods and Ms. Messner said Staff will research other cities' noise permit process as well as zoning ordinances that allow outdoor entertainment to be presented at the next meeting. Councilmember Hickman suggested the City Clerk present information on the requirements for issuing Special Event Permits as well so Council can understand how these pieces all fit together because they do impact each other.

As clarification for Staff, Committee members asked for the following information to be presented at the next meeting:

- How are noise permits implemented and tracked
- How would outdoor music venues impact current and future residents in Downtown Norman
- How and when do noise levels supersede City ordinances, e.g. stadiums
- How can noise permits integrate with the zoning ordinance
- How can Special Event permits integrate with noise permits and zoning ordinance

Councilmember Karjala said Staff mentioned an Arts and Entertainment District as an overlay and asked how that would work. Ms. Connors said it would be an overlay to current zoning in which criteria would be created so anyone within the district would have to conform to that criteria in order to operate certain venues.

Ms. Connors said Staff did not find any City that allowed outdoor live entertainment on a continuing basis. Mayor Miller said during special events, such as the Norman Music Festival, people have expectations for what things are going to happen and they know it is temporary. She said Norman already has ways to provide for outdoor live music venues and she does not think Norman wants to allow a carte blanche permit for outdoor live music.

Councilmember Allison suggested allowing 12 noise permits per year with a clause that could allow additional permits depending on the circumstances for that request. The City needs to figure out a way to allow outdoor live entertainment to happen throughout Norman, not just in the downtown area because events take place in the parks and other areas of Norman. Ms. Messner said there is a clause in the noise ordinance that allows additional noise permits through an appeal to City Council.

Chairman Holman suggested this discussion be continued on Thursday, December 1st, since the next regularly scheduled CPTC meeting falls on Thanksgiving Day.

Item 2, continued:

Items submitted for the record

1. Memorandum dated October 21, 2016, from Susan Connors, Director of Planning and Community Development, to the Community Transportation and Planning Committee, with Exhibit A, Noise Level Chart; Exhibit B, Columbia, Missouri, Code of Ordinances, Article III – Noise; Exhibit C, City of Denton Noise and Odors Ordinance; Exhibit D, Manhattan, Kansas, Code of Ordinances, Article V – Offenses Against Public Peace; Exhibit E, Minnapolismn.gov – Sound Permit (Outdoor Amplified Sound Permit); Exhibit F, Austin, Texas, Code of Ordinances, Chapter 9-2. Noise and Amplified Sound; Exhibit G, City of Hastings, Minnesota, City Council Memorandum dated May 3, 2011, and Ordinance No. 2011 – an Ordinance of the City of Hastings Regulation Public Nuisances Affecting Peace and Safety; and Norman, Oklahoma, Code of Ordinances, Article III – Noise Control
2. Noise Variance Permit

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The meeting adjourned at 6:06 p.m.

ATTEST:

City Clerk

Mayor