

CITY COUNCIL CONFERENCE MINUTES

August 26, 2014

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:30 p.m. in the Municipal Building Conference Room on the 26th day of August, 2014, 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 Robert Castleberry, Greg Heiple, Stephen Holman, Jerry Lang, Lynne Miller, Chad Williams, Clint Williams, and Mayor Rosenthal

ABSENT:

Councilmember Greg Jungman

Item 1, being:

DISCUSSION REGARDING OIL AND GAS WELL SITE SECURITY AND FENCING.

Ms. Susan Connors, Director of Planning and Community Development, said at the November 13, 2013, Oversight Committee meeting, the Committee discussed oil well site security and requested Staff prepare information on the City of Norman's well site security standard which was distributed to City Council in December, 2013. Ms. Connors said Staff presented the information on the history of the City's oil well site security and fencing ordinance at the May 14, 2014, Oversight Committee and the Committee discussed, as well as, supported fencing around well sites. She said Staff was directed to draft a revised ordinance incorporating the requested changes and a phasing-in period requiring older well sites to comply. Staff was also directed to gather information regarding the average cost for fencing around well sites and get feedback from those in the affected industry.

REQUESTED ORDINANCE AMENDMENTS

- Require six (6) foot tall chain-link fencing with three (3) strands of barbed wire at the top around all wells and tank batteries;
- Require landscaping to screen well sites when visible from a public street;
- Identify the well operator as the party responsible for maintaining the fencing;
- Clarify that fencing shall not be required on drill sites during initial drilling, completion, or reworking operations as long as twenty-four (24) hour on-site supervision is provided. However, a secured entrance gate on the access road containing a lock (accessible to appropriate City Staff) shall be required, and all gates are to be kept locked when the Operator or his employees are not on the premises; and
- Require all existing wells to comply with the current fencing requirements within one (1) year from the date of the approval of the amendment.

AVERAGE FENCING COSTS

After consulting with several Operators, it is estimated that the average cost of fencing is \$25 to \$30 per linear foot with the average cost of fencing estimated at \$4,000 to \$5,000 for a pumping unit and \$8,000 to \$14,000 for a tank battery, depending on the size and number of gates needed. Older, existing wells may need additional earth work such as leveling uneven land or removing existing timber that would result in additional costs.

OPERATOR'S VIEWS ON PROPOSED AMENDMENTS

Staff met with oil and gas operators on June 5, 2014, to discuss the proposed amendments. Currently, there are 37 operators of oil and gas wells within the Norman City limits and Staff invited ten (10) operators to attend, and six (6) invitees whom Staff believed represented ownership of a majority of the wells in Norman attended the meeting. Those six operators include Veenker Resources; Finley Resources; Ettinger Engineering; Trinity Resources, Inc.; and C & L Oil and Gas Corporation.

OPERATOR'S VIEWS ON PROPOSED AMENDMENTS continued:

A summary of the operator's comments include:

- Generally, the operators are not in favor of changing the regulations on fencing for older wells, particularly since most of the wells in Norman are in rural areas;
- Operators were unanimous in their opinion that if a well exists and development follows, the developer should install the fence around the well and tank batteries. This is what has historically occurred in Norman and the proposed change reverses that practice;
- Operators indicated that fencing wells may be a financial burden for small operators whose wells do not produce at a high rate;
- Operators feel that the current regulations are adequate and stated that they are pro-active in the maintenance of their sites because this is their business and they bear the financial liability risk if wells are not properly maintained and/or secured;
- Operators noted that not all wells are the same, and lease agreements with property owners certainly vary. The operators felt that a one size fits all regulation is not appropriate;
- Operators stated that some property owners do not want fences on their land because it is farm land or grazing land and fences would reduce the amount of usable land for the property owner. In addition, cows often use chain-link fences as scratching posts which can knock the fence over and if the fences also have barbed wire the cows could be injured.
- Operators believe that if a property already has a locked gate at the road, it does not seem necessary to add fencing around the well pump and tank batteries; and
- Operators stated that if new regulations are enacted, it could take years to put them into effect because of the numerous lease agreements and obligations already included that would need to be amended; and did not feel all wells could be fenced within one year.

STAFF OBSERVATIONS

Ms. Connors said the proposed amendments clarify that the well pump and the tank batteries can be fenced separately and often there is separation between the two; therefore, disallowing separation could unnecessarily require a single large fenced area. She said at Oversight Committee meeting(s), there was discussion about whether the fencing requirements could be waived by the landowner in rural areas or under certain circumstances; however, it was the consensus of the Committee to remove the waiver.

The Committee requested language requiring landscaping when the well site is visible from a public street and Staff adapted language from Oklahoma City's ordinance. Ms. Connors noted Oklahoma City's ordinance allows well sites in platted areas whereas Norman's ordinance only permits well sites on unplatted land. She said since the wells are located in rural or agricultural areas, landscaping could be problematic as there may be limited or no access to irrigation, which could prohibit landscaping from surviving.

COMPLIANCE TIMELINE

Mr. Jeff Bryant, City Attorney, said an issue raised at the May 14, 2014, Oversight Committee was whether the City could legally require all oil wells currently within City limits to come into compliance with the amended ordinance within one (1) year. He said the City Attorney's Office was asked to analyze whether the City had the authority to impose a "phased-in" requirement, as opposed to "grandfathering" existing well sites.

Mr. Bryant said under its police powers, the City has the right to regulate oil and gas drilling and exploration within City limits in a manner that is consistent with State law. He said the proposed fencing amendments are within the City's power to enact legislation for the purpose of promoting the health, safety, and general welfare of the community. Section 13-1508 is part of the City's regulation of oil and gas drilling, and the proposed fencing amendments are logically connected to the City's legitimate interest in promoting the health, safety, and general

COMPLIANCE TIMELINE continued:

welfare of the community. As a reasonable regulation on the oil and gas industry in the public interest of promoting health, safety, and the general welfare, the regulation can be imposed even if an operator has made a business investment or has already been granted a permit under prior versions of the ordinance that did not include the proposed fencing requirements.

Mr. Bryant cited various case laws and said it is Staff's opinion that the City may enforce reasonable regulations that relate to health, safety, and welfare of the public under police power. He said these regulation amendments may be imposed upon the oil and gas industry against existing operators thirty (30) days after their adoption or immediately, if passed with an emergency clause. Mr. Bryant said although the proposed regulations are not affecting a lawful nonconforming use, Council may also follow the approach outlined in 11 O.S. § 44-107.1(A) by including within the ordinance a period of time in which existing wells can come into compliance with the new regulations.

COUNCIL COMMENTS

Councilmember Clint Williams asked whether there are rules as to when the oil and gas inspector may waive certain standards and is the six (6) foot fence height the standard in the industry. Ms. Connors said Staff found six (6) foot fences to be the industry standard for compliance and said only under specific rules in the current ordinance may the oil and gas inspector waive the 600 foot regulation. Councilmember Clint Williams asked if there had been any reports of accidents and/or trespassing on current sites. Ms. Connors said there have not been any reports of accidents; however, she did not know the answer about trespassing.

Councilmember Miller felt in rural areas the 600 feet rule is appropriate but is concerned with 600 feet still being close enough to attract children, teenagers, etc., once development occurs around the well sites. She wondered how and when 600 feet became the magic number. Mayor Rosenthal asked for more discussion regarding the 600 foot rule stating some unplatted property currently exists in urban Norman. She is also concerned whether 600 feet is an appropriate set-back and whether or not it should be waived. Ms. Connors said the new proposal does not allow waivers by the oil and gas inspector. She added in addition to being unplatted, a site has to be approximately ten (10) acres.

Councilmember Castleberry asked for the rationale of requiring barbed wire and wondered if the regulation would cause any consequences to the operators. Ms. Connors said the Oversight Committee recommended the three (3) barbed wire regulation. Councilmember Miller said the barbed wire regulation is fairly standard as it was included in other city ordinances. Mayor Rosenthal said the barbed wire requirement helps address the trespass issue as well. Councilmember Lang asked whether or not the three (3) strands of barbed wire will be installed above the six (6) foot chain link fence and Ms. Connors said the intent is for the barbed wire to be installed above the chain link fence. Councilmember Lang felt like that requirement should be clarified in the proposal and Mr. Bryant said Staff can make it more specific. Councilmember Lang felt like 600 feet is still close and wondered if a developer would have the option to place opaque and/or wood fencing for the site issues. Ms. Connors said there is concern that wood fencing can be a fire hazard around oil wells, but felt developers could construct fencing that would conceal the chain link/barbed wire fence and be more pleasing to the eye if they so desired. Councilmember Lang asked how much acreage would be taken from property owners in the rural areas who may have cattle and felt it could affect the negotiations between oil companies and property owners. Ms. Connors said Staff would need to research the amount of acreage stating the answer will vary depending on how many tank batteries are on the site as well as the overall size of the well site.

Councilmember Holman said his biggest concern is the current number of exposed well sites and equipment that do not have perimeter fencing. Ms. Connors said Norman has 165 well sites and less than 10 do not have fencing due to their (very) rural location and/or the age of the well site. Councilmember Castleberry said if only 10 current well sites do not have fencing and no accidents have been reported; what issue is Council trying to resolve. He asked whether cattle-guard fences are compliant with the current ordinance and Ms. Connors said each well site in Norman is fenced according to the standard in place at the time the well was drilled.

COUNCIL COMMENTS continued:

Councilmember Miller felt like Council has some of the responsibility to protect its citizens and Council sets the legislation. Mayor Rosenthal does not feel the 600 feet should be waived and felt the fencing requirements are not unreasonable; however, landscaping in rural areas is a little onerous.

Councilmember Castleberry asked whether a Council ordinance or the lease would trump and Mr. Bryant said if Council adopted an ordinance, the ordinance would trump.

Councilmember Miller said she does not have any issues with security improvements but giving the oil and gas inspector the flexibility to require landscaping may be difficult to implement. Mayor Rosenthal said landscaping could be a requirement for all those wells that are within 600 feet. Councilmember Miller said asked how Council would address any development of rural areas that are allowed waivers and Mr. Bryant said current platting ordinances require a fence to be installed once the property develops.

Councilmember Chad Williams asked whether or not the well sites located at University North Park (UNP) and on Highway 77 meet the City's current regulations. Ms. Linda Price, Revitalization Manager, said the wells met the standards that were in place at the time they were drilled. She said many of the properties in question were located outside the City limits and were annexed into the City limits after the wells were drilled.

Councilmember Castleberry felt the developer should be required to put up the fencing when it develops property around a well site.

Based on Council discussion, Mr. Bryant highlighted areas of Council consensus as follows:

- One year requirement to comply with fencing regulations;
- Landscaping requirements not as stringent; i.e., rural landscaping can be waived until property is developed;
- 600 feet with no discretionary waiver;
- Six (6) foot fence with three (3) stranded barbed wire to be located on top of fence; and
- Operators will be responsible to install and maintain fencing.

Councilmember Chad Williams asked if it would be appropriate to allow property owners and operators time to review the ordinance as amended to see if any of the proposals would create a bigger problem.

Items submitted for the record

1. Memorandum dated August 21, 2014, from Susan Connors, AICP, Director, Planning and Community Development Department, to Mayor and Council Members, with attachments Section 13-1508(C) of the City Code, annotated, and proposed Ordinance No. O-1415-7
2. PowerPoint presentation entitled, City Council "Oil and Gas Well Site Security and Fencing," dated August 26, 2014
3. Memorandum dated August 26, 2014, from Kristina L. Bell, Assistant City Attorney, through Jeff Harley Bryant, City Attorney, to the Honorable Mayor and Councilmembers

* * * * *

The meeting adjourned at 6:17 p.m.

ATTEST:

City Clerk

Mayor