

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

September 12, 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 12th day of September, 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: Councilmember Lockett and Chairman Kovach

ABSENT: Councilmembers Castleberry and Jungman

OTHERS PRESENT: Councilmember Roger Gallagher, Ward One
Councilmember Jim Griffith, Ward Six
Mayor Cindy Rosenthal
Mr. Josh Calfy, 4405 Vincent Street
Ms. Crystal Calfy, 4405 Vincent Street
Ms. Sandra May, 1503 Avondale Drive
Ms. Amanda Nairn, Chair, Environmental Control
Advisory Board, 1629 Wilderness Drive
Ms. Joy Hampton, The Norman Transcript
Ms. Carol Ketchum, 1507 Avondale Drive
Mr. Andrew Kershen, 1214 Leslie lane
Ms. Catheryn Kershen, 1214 Leslie Lane
Ms. Vera Willey, 1424 Avondale Drive
Mr. Gabe Wingfield, 1355 Dorchester Drive

STAFF PRESENT: Ms. Susan Atkinson, Planner I
Ms. Susan Connors, Director of Planning and
Community Development
Mr. Greg Hall, Street Superintendent
Mr. Ken Komiske, Director of Utilities
Mr. Charlie Thomas, Capital Projects Engineer
Mr. Steve Lewis, City Manager
Ms. Leah Messner, Assistant City Attorney
Ms. Kathryn Walker, Assistant City Attorney
Mr. Aaron Milligan, Storm Water Pollution Specialist
Mr. Shawn O'Leary, Director of Public Works
Mr. Scott Sturtz, City Engineer
Ms. Syndi Runyon, Administrative Assistant IV

Item 1, being:

REGULATIONS REGARDING CHICKENS AND PYGMY GOATS IN URBAN AREAS.

City Council met in a Study Session on May 15, 2012, to discuss a proposed ordinance regulating chickens in urban areas. Councilmembers asked the Oversight Committee to continue its study and provide a definition for a chicken coop and run and asked them to include information on pygmy goats. Councilmembers also requested information on the location of enclosures in respect to waterways or creeks.

Item 1, continued:

Ms. Susan Connors, Director of Planning and Community Development, said the City of Norman does not ban raising chickens, but regulates the place and manner in which chickens can be kept inside the city limits. She said broadening the allowable place and manner would move Norman into a growing circle of American municipalities successfully regulating chicken keeping by recognizing that urban chickens are one of a number of strategies that communities can use to promote environmental sustainability.

Ms. Connors said the current City ordinance, adopted in 1975, allows chickens in any residential zoning category if setbacks of at least 100 feet from the nearest dwelling other than the owners and 25 feet from the nearest property line are met. She said these setbacks have effectively banned chickens in many of the dense urban dwelling areas where those distances cannot be met and there is a growing interest with citizens to allow chickens in urban areas.

Ms. Connors said opposition to allowing urban chickens include noise; odor; the potential spread of disease; hazards from chickens running loose; and the attraction of vermin and predators. Opponents also assert that chickens are not pets and are not appropriate in an urban environment. She said citizens interested in raising chickens want to produce food locally and three or four hens can produce one to two dozen eggs per week, which would meet the needs of an average family.

Ms. Connors said the intent of the proposed ordinance is to limit the number of chickens to four (4) hens with no roosters; require chicken enclosures be set five (5) feet from the property line and 25 feet from a neighboring structure; require a minimum size for coops and runs with requirements for sanitary and environmentally sound handling practices; and minimize nuisances to neighboring residents.

Councilmember Kovach said Councilmembers had expressed concerns regarding run-off from chicken waste and Ms. Connors said the Agricultural Extension Agent for the Cleveland County Cooperative Extension Agency said that four hens would not create enough chicken droppings to be a health hazard and chickens scratch their droppings into the ground creating compost in the area.

Mayor Rosenthal said she had concerns about diseases carried by chickens and asked whether the Committee had discussed some of the issues found in documentation provided by Ms. Carol Ketchum, 1405 Avondale, such as not keeping chickens in a household with children under the age of five or persons with weakened immune systems. She asked if Staff had reviewed any ordinances that incorporated public health issues and Ms. Connors said no. Staff tried to address some of those issues by requiring an enclosed chicken coop and run to keep chickens from wandering in the yard or flying over the fence into neighboring properties. Chairman Kovach said the Committee had previously discussed health issues and Councilmember Griffith, former Oversight Committee Chairman, said the Committee had decided the small number of chickens proposed did not seem to pose a health issue. He said no one had raised any questions regarding health issues when the proposal to allow chickens in urban areas was first introduced. Ms. Connors said this type of information could be placed on the City's website and Channel 20 prior to the adoption of the ordinance as a way to make citizens aware of personal responsibilities of chicken ownership. Chairman Kovach said he would like to add information on chickens being a nuisance.

Councilmember Gallagher asked Staff to describe a chicken run and Ms. Connors said a run is defined as an enclosed area physically connected to the coop where chickens are able to walk or run about which may include feeding and watering devices. Councilmember Gallagher asked what the length of the run would be and Ms. Connors said eight (8) square feet per animal would be required.

Item 1, continued:

Ms. Connors said pygmy goats were small goats imported from European zoos in the 1950's and have gained popularity as pets over the years. She said they are adaptable to most climates, but do not like the rain and have to be kept warm in the winter so they require a draft proof, dry shelter. They need a fenced play area with items they can jump onto as well as a companion because if they get lonely they bleat constantly and try to run away. Some communities require a minimum of two. Pygmy goats require a fresh water source at all times or they will not drink. They grow to be the size of a large dog, approximately 16 to 23 inches tall, and can weigh up to 85 pounds. Male pygmy goats need to be neutered otherwise they emit a foul odor and are not suitable in an urban setting. Ms. Connors said goat manure can be added to compost piles or used directly as a fertilizer then tilled into the soil. She summarized potential regulations for allowing pygmy goats in an urban area.

Ms. Connors said setbacks for pygmy goats need to be discussed as well as the sanitation of pens and shelter. She said Mr. John Bowman, Animal Welfare Superintendent, indicated that goats are considered domestic animals so if they were dumped or abandoned, they would have to be kept in a pen by the City and sold at auction because they cannot be adopted due to State law. Mr. Bowman said it would be important for each goat to be "chipped" so their owners could be identified easily if they got out of their yard.

Councilmember Griffith asked if there will be a limit on the number of goats allowed other than the two minimum as suggested and Ms. Connors felt two should be the maximum allowed. She said some communities require a 20,000 square foot lot to keep goats, so that potentially eliminates them in urban areas.

Councilmember Gallagher asked how many people in Norman have pygmy goats and Ms. Connors said there are some goats in east Norman, but the City does not keep track of animals in agricultural districts.

Councilmember Gallagher asked what the setbacks for outbuildings in residential areas are and Ms. Connors said rear setback requirements are 20 feet and there are lots that just have a 20 foot rear setback and could not accommodate two goats and still have the needed play area. Councilmember Gallagher said a tall fence would be needed as well and he did not believe a wood panel fence would work.

Mayor Rosenthal said she did not see a demand to add goats to the discussion at this point. She said allowing chickens is about local food and being able to have food in backyards and goats do not fit into that category. She said she certainly does not want people raising pygmy goats for slaughter. She said if people want to raise goats, they can do that in agriculturally zoned districts and she would like to separate the two issues. She suggested moving forward with chickens and discussing pygmy goats another time and Councilmember Griffith agreed.

Councilmember Lockett said she would like to see the requirement that chickens be kept in runs be relaxed so when people are home, the chickens can run around the yard freely. Councilmember Griffith said he would not like to see free range chickens in neighborhoods. He asked if owning chickens would be a permitted process and Ms. Connors said no, not unless the coop is large enough to require a building permit, but a permitting process could be created. Councilmember Griffith felt that in order to get health information distributed to owners, a permitting or registration process would be needed.

Councilmember Gallagher said not all owners will provide a coop and run so it will be similar to dog owners not providing a dog house. He felt the City is asking for trouble by allowing chickens citywide. He said the City already is overtaxed with loose and barking dog complaints so Code Enforcement will need to hire more people to enforce chicken violations. He said he would like to limit chickens to a certain lot size.

Item 1, continued:

Ms. Connors said animal issues are usually regulated by Animal Welfare not Code Enforcement, so Animal Welfare would handle chicken complaints.

Mayor Rosenthal said no matter what Council decides, someone will not be happy and she supports the limit of four chickens, but would like to see some type of requirement for notification to neighbors when someone decides to raise chickens. She does not believe a new licensing process is needed, but some notice to neighbors would be appropriate. Councilmember Kovach said he is concerned about the legal aspect of requiring notice because there are some lots that currently meet setback requirements for chickens and no notice to neighbors is required of them. Ms. Kathryn Walker, Assistant City Attorney, said it would depend on the justification for providing notice particularly if it is a quantity or odor issue. She said notification requirements would need to be done by zoning district. Mayor Rosenthal suggested a registration process where owners can be instructed to notify neighbors as a courtesy as well as be given information on coops, runs, and health issues. Councilmember Lockett asked if other communities had difficulties keeping chickens and Ms. Connors said there was not much literature on problems with keeping chickens.

Ms. Carol Ketchum, 1507 Avondale Drive, said she had an issue with a neighbor wanting to keep chickens and it was quite a problem. She said there is substantial documentation that chickens carry diseases and should not be raised around small children or people with weakened immune systems. She said her husband has cancer and should not be around them and they cannot afford to move. She said people in her neighborhood are mainly renters and they will not keep their yards, coops or runs clean if allowed to have chickens. She said Norman wants to be "green," but how can it be green when there is waste run-off from chickens and goats.

Ms. Catheryn Kershen, 1214 Leslie Lane, said the ordinance should be designed to promote responsible chicken ownership which she believes is the goal. She said there are so many communities that allow chickens and there is evidence that more densely populated areas than Norman are not having problems. She said it seems as if people are getting worked up about things that have not come to fruition in real life. She said responsible chicken ownership coupled with the right for neighbors to call in a complaint would solve any issues raised tonight.

Ms. Sandra May, 1503 Avondale Drive, asked what would happen when renters who have chickens decide to move and leave the yards in a total mess? She said there are several air born diseases chickens carry as well as diseases carried in groundwater. She said she lives on a corner lot and all the drainage from rains flow to her yard, which means chicken and goat waste will come to her yard and that is something that needs to be considered. She said people with allergies, minimal lung capacity, cancer, immune suppression, etc., will be affected by the diseases associated with chickens. Councilmember Gallagher felt Ms. May made a good point about allergies and air born diseases.

Ms. Joy Hampton, Norman Transcript, said her experience with Code Enforcement is that it can take weeks before compliance is enforced and asked if Staff had called the cities that allow chickens to find out first hand whether there are problems. Chairman Kovach said there was a study presented by the University of Albuquerque and this ordinance is based on the best practices in 25 cities that are both larger and smaller than the City of Norman. He said the study looked at a variety of issues from nuisance complaints to health concern and that is the reason for limiting the number of chickens to four. He said the waste of four chickens is less than the waste of a medium size dog and the City allows up to four large dogs per residence. He said the City is not discussing a chicken factory with toxic waste running off into people's yards. He said he did not know if Staff had called any of those cities and Ms. Connors said they did not.

Item 1, continued:

Mayor Rosenthal asked if a complaint is given to Animal Welfare, how long does the citizen have to wait before action is taken? Ms. Walker said Animal Welfare does not follow the same procedures as Code Enforcement by giving property owner's notice of the violation and ten days to comply. She said Animal Welfare will usually respond the same day. Mayor Rosenthal said if someone has a dozen chickens and no coop, what is the remedy? Ms. Walker said, typically, if Animal Welfare finds more animals than is allowed they write the owner a citation and continue to monitor the residence until compliance is met. She said the Legal Department has rarely had to file court action to take animals. Ms. Hampton said that does not guarantee a remedy occurs on the same day. Chairman Kovach asked if language could be included in the ordinance to empower Animal Welfare to confiscate chickens or roosters immediately if there is a violation and Ms. Walker said Staff can research that. Chairman Kovach said the underlying concern he is hearing is there are irresponsible people in the world and neighbors should not have to wait for a long delayed process.

Councilmember Gallagher said raising chickens should be limited to a certain lot size and require a permitting process by the City or he could not support the ordinance. Mayor Rosenthal asked Ms. Walker if there would be a problem with setbacks being no closer than ten or thirty feet to the property line and Ms. Walker said not if setbacks were rationally related to the issues Council is trying to address such as odor, waste, air born disease, etc. She said if setbacks address concerns about chickens being too close to neighbors then that would be an appropriate way to handle the issue. Councilmember Griffith said based on proposed requirements for the number of chickens, coop size, run size, etc., Council should look at making sure the lot meets the setback requirements. Ms. Connors said if permits were required, the City would do that.

Chairman Kovach asked the Committee's thoughts on adding permitting requirements to the ordinance. He said Council does not want to create a burdensome process for Staff or owners. Councilmember Lockett said she does not believe permitting is needed and violations should be handled on a complaint basis. She suggested if there are huge problems after six months, review the ordinance again.

Mayor Rosenthal asked about roosters and Chairman Kovach said roosters would not be allowed. He asked if people who currently have a rooster would be forced to give them up or would they be grandfathered in? Ms. Connors said that could be reviewed. Ms. Leah Messner, Assistant City Attorney, said currently if setback requirements are not met then people cannot have chickens or roosters.

Mayor Rosenthal suggested bringing the ordinance forward to the full Council since it has already been reviewed in a Study Session. She said although permitting may not be necessary, she did feel that Animal Welfare should provide owners with information on responsible chicken ownership and possible health issues; however, she believes requiring a permit will create a burden to Staff and a public responsibility that is not warranted.

Items submitted for the record

1. Memorandum dated September 12, 2012, from Susan F. Connors, AICP, Director of Planning and Community Development, to Chairman and Members of Council Oversight Committee, with Attachment A, Draft Ordinance
2. City Council Study Session minutes of May 15, 2012
3. Article on Health risks associated with raising chickens provided by Ms. Carol Ketchum
4. Department of Health and Human Services, Centers for Disease Control and Prevention – Psittacosis provided by Ms. Carol Ketchum, 1507 Avondale Drive

Items submitted for the record, continued

5. National Center for Infectious Diseases, Healthy Pets Healthy People articles - Cryptococcus Infection, Diseases from Farm Animals, and Salmonella Infection provided by Ms. Carol Ketchum
6. Centers for Disease Control and Prevention, Compendium of Measures to Prevent Disease Associated with Animals in Public Settings provided by Ms. Carol Ketchum
7. Article from the Associated Press entitled, "Salmonella Infections Rise with Popularity of Chicks," provided by Ms. Carol Ketchum

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Item 2, being:

NON-STRUCTURAL WATER QUALITY INTERVENTION STRATEGIES.

Mr. Shawn O'Leary, Director of Public Works, said Norman has 13 primary watersheds, two major watersheds, and 30 sub-primary watersheds. He said the focus tonight is on phosphorus control specifically around the Lake Thunderbird Watershed. He said phosphorus is a concern because it is a nutrient that increases the production of algae and Chlorophyll-A is a by-product of algae and is recognized as a drinking water issue. He said Chlorophyll-A levels in lake Thunderbird currently exceed water quality standards.

Mr. O'Leary said Norman makes up 51% of the Lake Thunderbird Watershed with the other 49% being Oklahoma City, Moore, and unincorporated Cleveland County so no matter what Norman does in terms of best practices, 49% is outside of Norman's control. He said a cooperative effort is needed from all of the municipalities to decrease the phosphorus load.

Councilmember Kovach said there are Total Maximum Daily Load (TMDL) numbers for the Canadian River and asked if phosphate is one of the TMDL totals and Mr. Ken Komiske, Director of Utilities, said no, but that is something that will be looked at in the near future. He said the TMDL numbers do include nitrogen.

Mr. O'Leary said the Storm Water Master Plan's (SWMP) primary goal is to protect Lake Thunderbird because Norman drinks its storm water, not that it makes the Canadian River Basin any less important because some community is drinking that water as well. Mr. O'Leary said key issues of the SWMP are stream planning corridors and additional buffer strips; structural and non-structural storm water quality controls; acquisition of drainage easements and rights-of-way; enhanced maintenance of creeks and detention facilities, and dam safety.

Mr. O'Leary said excess nitrogen and phosphorus lead 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. He said Lake Thunderbird is a phosphorus limited system.

Mr. O'Leary said the state standard for Chlorophyll-A is ten micrograms per liter and according to a study done by Vieux and Associates in 2007, Lake Thunderbird was at 30.8 micrograms per liter. Mr. Vieux projected micrograms per liter would grow as high as 44 micrograms per liter or more if nothing is done and recommended best practices that include fertilizer reduction, constructed wetlands, and structural controls are not implemented.

Item 2, continued:

Mr. O'Leary said proposed water quality solutions include continuing the 2025 density limitations in watershed; structural and nonstructural water quality controls; stream planning corridors; 15 foot buffer zones for areas in suburban residential and country residential areas; low impact development; educating the public on fertilizer use and control fertilizer overuse; monitoring septic tank installation and operation; managing Norman's MS4 Program; coordinating with the Oklahoma Department of Environmental Quality's (ODEQ) Watershed Plan Development (ongoing study); and continuing Norman's Water Quality Monitoring Program. He said Norman is applying these solutions to the Canadian River Basin as well.

Mr. O'Leary said structural controls and nonstructural controls can help in preventing further water quality degradation in Lake Thunderbird and the Canadian River. It is recommended that Norman provide 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. O'Leary highlighted the SWMP Action Plan that include 31 action items, eleven (11) of which are complete, twelve (12) are currently under way, and eight (8) cannot be done until funding is available.

Mr. O'Leary said a draft ODEQ Watershed Plan Development is due to be completed in November 2012, with a finalized plan sometime in the spring of 2013. He said the plan will establish the allowable TMDL for cities and ODEQ will expect communities to adhere to that.

Mr. O'Leary 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 will need to be used.

Mr. O'Leary said the Environmental Control Advisory Board (ECAB) has been active in looking into the reduction of phosphorus and conducted surveys in conjunction with Earth Day. He said survey results indicated citizens do not know if the fertilizer they use contains phosphorus, which indicates better public education is needed. He said fertilizer control can be accomplished through a voluntary cooperative effort with local retailers to stock fertilizer that does not contain phosphorus.

Mayor Rosenthal said there is a copy of an ordinance for Ann Arbor, Michigan and asked if Staff had reviewed other ordinances and Ms. Amanda Nairn, Chair of ECAB, said they had not reviewed many. She said Florida has a statewide policy that did not seem to do as much for water quality as one would hope. She said the City does not need to ban phosphorus, just control the use of it. She said none of the cities reviewed had banned phosphorus, but had placed specific rules on its use. She did not believe banning phosphorus is a reasonable option because it would be difficult to enforce. Chairman Kovach said the Ann Arbor ordinance has an allowance if soil tests prove phosphorus is needed. He said the biggest effect of a ban is that if your soil does not need phosphorus there is no reason to use it. He said a bag of fertilizer that contains phosphorus is the same price as a bag of fertilizer that does not contain phosphorous. He said most people will buy the cheapest fertilizer and if fertilizer with phosphorus is not available, they will not care as long as it makes their lawn green. He said the Vieux and Associates study showed spiking numbers in phosphate levels after a rain event because of storing fertilizer outside and having ripped bags. He said things like that can make a big difference in the amount of phosphorus going into the ground and waterways. He said a recommendation in the SWMP is to ban phosphate and the City has tried education for two years without measurable progress.

Item 2, continued:

Chairman Kovach felt a ban on phosphorous would place the least amount of burden on the public and meet reductions sought. He said would like the City to modify the Ann Arbor ordinance to meet Norman's situation. Councilmember Lockett agreed and said if the City wants to enact an ordinance in the spring, then major garden centers and other retailers should be notified as soon as possible. She said the City cannot enact an ordinance without giving them warning and Chairman Kovach agreed and said that is one of the reasons for fast tracking the ordinance. Councilmember Griffith said inventory considerations are probably looked at now for spring orders and Chairman Kovach asked Staff to contact some of the larger retailers to see when they ordered spring inventory and give them a heads up. Mr. O'Leary said Staff will contact the larger retail stores. He said many cities have been successful in reducing phosphates by going straight to the seller as most consumers do not have a clue what their soil content is or what phosphorus is.

Councilmember Lockett suggested retailers distribute educational information and hand out stickers or signs that say, "Green Norman" as a sort of perk for not using phosphorus. Ms. Nairn said most retailers would be happy to do this. She said when you tell someone they cannot do something it tends to incite hostility. She said one way to get the subject discussed in public is to teach people that a healthy, fertilized lawn is more environmentally friendly than a non-fertilized, unhealthy lawn because there is more runoff if you have a lot of weeds or soil instead of grass. She said the City should stress they are not telling people they cannot fertilize, just that fertilizer does not necessarily need to contain phosphorus.

Mr. O'Leary said Staff will research more ordinances and Chairman Kovach said he would like to know what types of restrictions might be on outside storage. Mayor Rosenthal said portions of the Ann Arbor ordinance are okay, but some portions are not appropriate for Norman so she would like to review more local ordinances. She said there is a big difference between statewide policies and municipal ordinances.

Mayor Rosenthal asked about the licensing portion of the ordinance and said she did not believe Norman currently licenses commercial businesses that apply fertilizer. She said she would like to know the number of commercial businesses that apply fertilizer and the Staff workload that would be generated through licensing. She said there are several, complicated layers of regulations so she would like to see how other communities have dealt with these subjects. Chairman Kovach said he would like to keep regulations as simple as possible. He said Councilmember Williams spoke to someone in the fertilizer application business and they have assured him they do have non-phosphorus based fertilizers available in liquid form. He said one idea to avoid licensing would be to use Councilmember Lockett's suggestion of distributing a "Green Norman" sticker or seal when consumers voluntarily bring in soil samples. He felt the City could avoid creating a huge new bureaucracy that no one really wants and education continues to be the key.

Chairman Kovach said he would like more information on wetlands. He said this is a big issue and he thought Central Oklahoma Master Conservancy District (COMCD) was doing some type of study along those lines and he would like to know more. Mr. O'Leary said Staff will follow up on that. He said Vieux and Associates may be doing some of those studies for the State of Oklahoma and Lake Thunderbird would be the perfect place for constructive wetlands.

Councilmember Gallagher suggested meeting with the cities that share Lake Thunderbird to try to correlate activities and find out how aggressive they are being. Mr. O'Leary said Staff can provide a summary of those cities practices at the next meeting. He said the outcome of the ODEQ Watershed Plan Development is going to dictate the impact to cities and, at that point, Staff can find out what the other communities are going to do. He said Oklahoma City leads the State in storm water run-off controls. Chairman Kovach said this is a regional problem that requires a regional solution so maybe a regional contribution into the wetlands would be possible.

Item 2, continued:

Chairman Kovach asked if a draft ordinance would be ready in three weeks to e-mail to Council and Mr. O'Leary said yes.

Items submitted for the record

1. Memorandum dated September 6, 2012, from Shawn O'Leary, Director of Public Works, and Scott Sturtz, City Engineer, to Council Oversight Committee with Norman Public Information; pertinent excerpts from the Storm Water Master Plan; Environmental Control Advisory Board Agenda of October 19, 2011; Water Testing Data; Draft Ordinance; and Urban Water Quality and Fertilizer Ordinances:
2. PowerPoint presentation entitled, "Storm Water Master Plan, Non-Structural Water Quality Intervention Strategies," City Council Oversight Committee, Wednesday, September 12, 2012
3. Storm Water Action Plan (by milestone)

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Item 3, being:

MISCELLANEOUS DISCUSSION.

None

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ADJOURNMENT.

The meeting adjourned at 6:45 p.m.

ATTEST:

City Clerk

Mayor