

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

May 14, 2014

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 6:00 p.m. in the City Council Multi-Purpose Room on the 14th day of May, 2014, 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: Councilmembers Holman, Jungman, Kovach, and Chairman Miller

ABSENT: None

OTHERS PRESENT: Mayor Cindy Rosenthal
Councilmember Castleberry, Ward 3
Councilmember Heiple, Ward 1
Mr. Jeff Bryant, City Attorney
Ms. Susan Connors, Planning and Community Development Director
Mr. Terry Floyd, Development Coordinator
Mr. James Fullingim, Fire Chief
Mr. Steve Lewis, City Manager
Ms. Leah Messner, Assistant City Attorney
Ms. Linda Price, Revitalization Manager
Mr. David Woods, Oil and Gas Inspector
Ms. Karla Chapman, Administrative Technician III

Item 1, being:

DISCUSSION REGARDING ORDINANCE REQUIREMENTS ASSOCIATED TO THREE UNRELATED PERSONS RESIDING IN A SINGLE-FAMILY RESIDENCE.

Ms. Susan Connors, Planning and Community Development Director, said at the January 8, 2014, Oversight Committee meeting, the Committee requested more discussion regarding the three (3) unrelated persons ordinance. She said Staff prepared a comparison among several cities regarding their regulations on three (3) unrelated persons living in a single-family home. Ms. Connors said it was suggested Staff research Tuscaloosa, Alabama, and Oxford, Mississippi, as to how they conduct their process of compliance and compare that to Norman's regulations and processes.

City of Norman Zoning Ordinance

Ms. Connors said the City of Norman zoning ordinance limits single-family dwellings to residents that are family members, either by blood, marriage or adoption, or not more than three (3) unrelated persons living together and sharing the common areas like the kitchen and living areas. She said this restriction has been part of the zoning ordinance since 1954, and since that time the City has limited, via ordinances, occupancy in single-family dwellings to families and no more than three (3) unrelated persons. Ms. Connors said the ordinance helps reduce traffic, noise, and parking problems that can occur when multiple unrelated persons are dwelling in a single-family home and the City addresses occupancy to help ensure health and safety of residents and to help protect the quality and character of neighborhoods. She said over the years, the City has explored various avenues of enforcement to protect City residents from issues that arise when multiple unrelated persons live in single family homes and complaints generally revolve around traffic, noise, and parking.

Ms. Connors said based on the definitions provided in our zoning ordinances, it would be a violation to have more than three (3) unrelated persons living together in a single-family dwelling in areas designated as R-1; however, in the past, the question has always been whether our ordinance is sufficient to prove violations of the restriction.

Item 1, continued:

Ms. Connors said in order to prove residents are in violation of the ordinance, the City would have to rely on the cooperation of the homeowners, utility bills, and other indicators of multiple unrelated persons living in a single-family residence. She said other cities have tried various approaches to prove violations which can range from requiring landlords to file statements that a certain property is rented to requiring annual inspections via the Planning Department to ensure the property is up to current code standards.

Ms. Connors highlighted how complaints are handled from beginning to end. She said Code Compliance officers work from 8:00 a.m. to 5:00 p.m. and violations such as three (3) unrelated persons, parking, and noise generally occur between the hours of 5:00 p.m. and 8:00 a.m. She also said Code Compliance officers are unable to access the Oklahoma Law Enforcement Telecommunications System (OLETS) that allows law enforcement officers to have access to information, including information about who owns a vehicle according to the tag number. For these reasons, the City asks neighboring homeowners to document the vehicles (make, model and tag number) that are at the house on a regular basis.

Ms. Connors highlighted and provided documentation regarding U.S. Supreme Court case, *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974); whereas, Belle Terre had an ordinance that restricted land use to one-family dwellings. The word “family” was defined as “one or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants...” The Village alleged that a property owner violated the restriction on land used for one-family dwellings by allowing six unrelated college students to live in his home at once. Ms. Connors said the U.S. Supreme Court recognized several issues and said this case has been upheld by the courts time and time again.

Tuscaloosa, Alabama (Home to the University of Alabama)

Ms. Connors said the City of Tuscaloosa has approximately 93,000 people in an area of 66 square miles and has an ordinance that restricts occupancy in different zoning districts between two (2) and five (5) persons per dwelling unit. She highlighted their restrictions as follows:

- The Historic District (HD) lies between the University District and downtown. Due to people buying property in the HD and converting these properties to student housing, the HD now has a limit of two (2) occupants. This has encouraged new home ownership in the HD, and it has become mainly an owner-occupied area;
- The University District (UD) was created to help with occupancy levels, among other issues, and allows no more than three (3) unrelated, which is the same occupancy limit for the entire city. If a property owner wants to maintain or convert to having five (5) occupants, they must redevelop the property which means that pre-existing homes that had been long ago converted to apartment units can no longer rent to more than three (3) occupants without redeveloping the property;
- One Zoning Inspector is charged with all enforcement issues regarding the Zoning Code and spends approximately one-third of his time solely on occupancy violations. The Zoning Inspector investigates, documents the vehicles on the property at all times, and, if necessary, contacts the residents of the property. The residents are asked to sign an affidavit concerning the number of residents and if other cars consistently at the property are determined to belong to non-residents they may be asked to provide documentation of their address such as a lease or a utility bill;
- The property owner is contacted and asked to produce a lease in order to verify there are only three (3) people listed on the lease and if the problem is not abated the officer can file charges on the tenants, the owner, or both. The ordinance states they may charge anyone who benefits from the over occupancy; and
- The Zoning Officer is able to run car tags to determine ownership of a vehicle and the City of Tuscaloosa has Code Officers in the Police Department who enforce all other complaints except the Zoning Ordinance.

Item 1, continued:

Oxford, Mississippi (Home to the University of Mississippi)

Ms. Connors said the City of Oxford has approximately 19,000 people in an area of 17 square miles and has an ordinance restricting occupancy to three (3) unrelated people in a dwelling unit. She said the City of Oxford defines “family” as follows: “One or more persons who are related by blood, adoption, marriage, or foster who are living together and occupying a single housekeeping unit with single culinary facilities, or a group of not more than three (3) persons living together by a joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost sharing basis. Any household employees residing on the premises shall not be considered as a separate family for purposes of this definition.” Ms. Connors highlighted the restrictions as follows:

- There are no special zoning districts that allow more than three (3) unrelated people to inhabit a dwelling unit;
- Oxford has one (1) Code Officer who is employed in the Police Department and can run car tags to determine ownership of a vehicle;
- Prima facie proof of occupancy of a dwelling unit by more than three (3) unrelated persons is established in any prosecution for violation of the code if it is shown that the same four (4) or more vehicles with registration to persons having different surnames or addresses were parked overnight at the dwelling unit a majority of nights in any 14-day period;
- It is a violation of their code for any owner, occupant, or lessee of any dwelling unit to permit or fail to prohibit the occupancy of such dwelling unit by more than three (3) unrelated persons;
- If the Code Enforcement officer determines there are more than three (3) unrelated persons residing in any dwelling unit, they contact the property owners and occupants by certified mail to request voluntary compliance; and
- If compliance is not achieved in a reasonable amount of time, a municipal court citation can be issued for each violation and each owner, occupant, or lessee of a single-family dwelling is subject to a fine not to exceed \$300.00 for each violation. Each day during which any violation continues constitutes a separate offense.

Vacant Property Registration

Ms. Connors said the Oversight Committee discussed registration of vacant/abandoned properties in December, 2013, and January, 2014, and requested Staff to draft a vacant property registration ordinance for discussion at the February 12, 2014, meeting.

Highlights of the February 12, 2014, Oversight Meeting:

- Staff had become aware of a proposed House Bill currently under consideration by the Oklahoma Legislature that would amend Title 11 of Oklahoma Statutes to provide a process for municipalities to declare vacant buildings as a public nuisance and take steps to abate such a nuisance. If the Legislature approves the Bill, it will go into effect November 1, 2014;
- The ordinance would require registration with the City of Norman no later than thirty (30) days after a neglected vacant building, or residential structure qualified as such under the draft ordinance.
- Ordinance provides several options for ways to define a neglected vacant building or residential structure as follows: unoccupied and unsecured; unoccupied and unsecured by other than normal means; unoccupied and an unsafe building or residential structure with suspected code violations as determined by a Code Enforcement Officer; and unoccupied and an Enforcement Officer has issued an order to correct code violations;
- Staff highlighted proposed options for triggering registration and provisions of the ordinance;
- Staff highlighted the registration process, vacant building or residential structure plan submittal process, and requirements that the property owner must continue to maintain the property according to City Code standards;
- If a property owner fails to comply with any of the conditions of the ordinance, that person may be subject to a fine of up to \$750.00 and/or up to sixty (60) days in jail;

Item 1, continued:

- Staff said it would be hard to speculate the chances of the Bill passing Legislature; however, the Committee initially felt delaying action on the ordinance until the Legislature decides what they will do could mean a long wait time and one of the reasons the Committee is looking at the ordinance is to help citizens who are having issues with vacant properties in their neighborhood;
- The Committee agreed that registration would happen only if there were violations against a vacant property and not all vacant properties need to be registered;
- Staff said the Oversight Committee may want to consider delaying adoption of a vacant property registration ordinance to avoid conflict with State law. The Committee suggested Staff follow the House Bill and if it dies on the House Floor, the City can resurrect the ordinance and bring it forward, postponing this item for two (2) to three (3) months; and
- The Committee recommended Staff move forward with making changes to the draft ordinance based on the discussion so it will be ready for review in case the Bill fails.

Mr. Sean Rieger, Attorney, said he and Mr. Jeff Bryant, City Attorney, have received calls from property owners because they are very concerned about the proposed ordinance and felt a variance ordinance should be considered. He said he met recently with Mr. Bryant, and both felt their Staffs could work together for sixty (60) days to craft language that could strengthen the current three (3) unrelated persons ordinance to assist in resolving the reoccurring issues.

Chairman Miller said once people are in rental property it is, at times, not easy to get them out; meanwhile, the entire neighborhood can be disrupted because of noise, parking issues, etc. Councilmember Kovach asked Staff to frame the ordinance primarily around parking issues because there needs to be a mechanism to address/enforce on-street parking that will not be burdensome to neighbors and/or Staff. Councilmember Castleberry said citizen input is needed on this issue and felt more Compliance officers should be added to Staff. He said the City has an ordinance that is not working and he is open to options. Chairman Miller and Councilmember Kovach said they are open to options regarding making the three (3) unrelated ordinance stronger.

Mayor Rosenthal felt it is naïve to think that the City can enforce our way out of this problem and she has no interest in changing the three (3) unrelated persons ordinance; however, she felt Staff should meet with Mr. Rieger and draft an ordinance or a landlord registration to help with enforcement. She suggested Staff look at college towns that utilize landlord registration. Councilmember Jungman said registration may not be fair but is probably the solution. Councilmember Kovach agreed the three (3) unrelated should not go away, but is concerned an ordinance will be struck down because of unconstitutional right. Councilmember Holman said he is open to a variance process and/or a landlord registration without a fee or only a one-time fee. He said he is not ready to stop utilizing the three (3) unrelated persons ordinance but felt it could be better. Mayor Rosenthal said she is willing to look at a variance process as long as protection is in place for the neighbors/neighborhoods.

Ms. Jane Crumpley, 423 Elm Avenue, said she lives across the street from a five-bedroom house that is constantly in violation of the three (3) unrelated persons ordinance. She said the home is rental property and parking is always an issue, whether in the yard and/or yellow curb parking. Ms. Crumpley said she supports landlord registration because sometimes it is difficult for the neighbors to get tag numbers due to retaliation and/or trespassing. She felt Code officers should be funded through the Public Safety Sales Tax (PSST).

Mr. Arn Henderson, 1208 Barkley, said the City should look at neighborhood covenants because most are restricted and should assist with parking issues, etc. Mayor Rosenthal said newer neighborhoods/additions can and do have restricted covenants; however, the older neighborhoods/additions do not have restricted covenants.

Mr. John Lungren, 1824 Atchison #4, provided information on the Fair Housing Act and the U.S. Department of Housing and Urban Development (HUD) regarding new rules that advance ongoing efforts to prevent discrimination. He also provided a list of University towns in Oklahoma and the United States that he researched in reference to three (3) unrelated persons.

Item 1, continued:

The Committee agreed City Staff and Sean Rieger's staff should work together to strengthen the current three (3) unrelated persons ordinance, research information on college and landlord registration, and bring it back to the July 9, 2014, Oversight Committee.

Items submitted for the record

1. Memorandum dated February 6, 2014, from Susan F. Connors, AICP, Director, Planning and Community Development, with attachment, Village of Belle Terre v. Boraas, 416 U.S. 1 (1974)
2. Memorandum dated February 7, 2014, from Susan Connors, Director of Planning and Community Development, and Leah Messner, Assistant City Attorney, to City Council Oversight Committee with attachments, Vacant Property Registration Ordinance; Exhibit A, Tuscaloosa Occupancy Ordinance; Exhibit B, Oxford Occupancy Regulations; and House Bill
3. HUD Issues - New LGBT Fair Housing Rules provided by Mr. John Lungren

Item 2, being:

DISCUSSION REGARDING OIL AND GAS APPLICATION, PERMIT, AND DRILLING PROCESSES PRIMARILY REGULATIONS FOR FENCING AND GAS FLARES.

Chairman Miller said at the November 13, 2013, Oversight Committee meeting the Committee discussed oil well site security and requested Staff to prepare information on Norman's well site safety policy. She said Staff was also asked to provide information on the gas flares that are located at oil well sites in the City.

Gas Flares

Natural gas is valuable and there are several reasons why it may be necessary to flare gas during drilling, production, and/or processing. Pure natural gas is mostly methane, a clean-burning fuel. However, methane is also a greenhouse gas (GHG) that, when released directly into the air, traps heat in the atmosphere. Because there are concerns about methane from oil and gas operations, the best option is capture gas from wells, compressors, and processing operations for use. However, in situations where capturing the gas is not possible, it is better from an air quality perspective to burn the gas through a flare system rather than vent it directly into the atmosphere.

The Oklahoma Corporation Commission requires oil and gas operators to obtain a permit for venting or flaring of gas if the amount of gas produced is over 50 MCG (1 MC F = 1000 cubic feet) per day; and if is over that amount, the operators must flare instead of vent. Burning is safer than venting because it eliminates the gas immediately from the air and flaring is required because of the potential for explosion and other environmental problems in larger quantities.

Mr. James Fullingim, Fire Chief, said when oil and gas companies are going to flare they will notify the City before beginning as well as when they end. Chairman Miller asked if there is any fire danger(s) associated with flaring and the recent drought and Chief Fullingim said no, that there have been no fires associated with flaring in Norman. He said oil well sites are heavily controlled, e.g., gravel around the site, etc.

Beginning in January, 2015, the U.S. Environmental Protection Agency (EPA) will require that well operators capture the gas which they term "green completions" to control air emissions. Until then, well operators are allowed to direct emissions to a combustion device (e.g., flare) as an alternative to green completions. Currently the City of Norman does not have a pipe system in place so the oil companies have to flare. In Oklahoma, these new rules will be enforced by Oklahoma Department of Environmental Quality (ODEQ).

The City does not have an ordinance that prohibits or regulates gas flares (open or enclosed) and Chairman Miller said Staff looked at a number of other cities regarding flaring. She said there are not a lot of guidelines on this issue since flaring is regulated by the state. Chairman Miller said the citizen(s) that initially reported the problems of flaring near their neighborhood have now been resolved and the oil company is no longer flaring at that particular well site.

Item 2, continued:

The Committee discussed and agreed the City will check and address issues regarding flaring if and/or when they should arise.

Ms. Susan Connors, Director, Planning and Community Development, said Ordinance No. O-8283-69 was approved in 1983, having a fence requirement in Section 13-1508(c) and current regulations were amended by Ordinance No. O-9394-43 in 1994 as follows:

“...Any person who completes any well as a producer shall enclose said well, together with its surface facilities, by a fence at least six (6) feet high and constructed of a material and in a manner so as to be impregnable to children and animals under ordinary or foreseeable circumstances; provided that, where the well site is greater than 600 feet from a dwelling or business structure, the Oil and Gas Inspector may waive the requirement or a fence or may designate the type of fence to be erected. Fences must be kept locked at all times when workers of the permittee are not present...”

Ms. Connors said there are currently 163 permitted wells within the Norman city limits; however, only 125 are actively pumping and 18 are inactive, 16 are saltwater injection, four (4) are saltwater supply and one (1) is a saltwater disposal. She said eight (8) wells are completely fenced with 6-foot chain-link or equal, seven (7) wells have 6-foot chain-link or equal fencing separately around the pumping unit and tanks, and various other wells have 6-foot chain-link or equal around only the well or the tanks. Ms. Connors said all well sites in Norman do have fencing, but not all have fences are six feet high because in some instances the height was waived due to their distance from dwellings or businesses. She said they do, however, meet the ordinance standards that were in effect at the time of drilling and each site is regularly inspected, some more frequently if they have any issues.

Ms. Connors said the subdivision ordinance requires that the fencing for an oil well must be shown on the preliminary plat in Section 19-303(U). She said Staff has recently updated information collected in 2009 regarding oil and gas well ordinance information from several Oklahoma cities and provided it to the Committee prior to tonight's meeting.

Ms. Connors said the regulations of the Norman Code could be amended to be more in line with other cities' regulations regarding fencing, screening, and security. The following recommendations include:

1. Require 6-foot tall chain-link fencing with three (3) strands of barbed wire at the top around the well and the tank batteries which are within 600 feet of any structure unless waived by the land owner;
2. Landscaping could be required to screen the well sites, but only when they are visible from a public street. Norman regulations do not allow the drilling of a well on platted property, so most wells are located on agricultural land;
3. Identify the well operator as the party responsible for maintaining the fencing;
4. Fencing shall not be required on drill sites during initial drilling, completion, or reworking operations as long as twenty-four (24) hour onsite 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
5. Amend the Code so that all existing wells would need to comply with the current fencing requirements with one year from the date of the approval of the amendment.

Councilmember Kovach asked how often oil well sites are inspected and Ms. Connors said two (2) to three (3) times per year. Ms. Connors said the Gas and Oil Inspector will contact the well operator if maintenance is needed at the well site and most generally, maintenance is not an issue with active wells. Councilmember Holman asked if the City keeps a log of well site inspections and Ms. Connors said the future process will be to keep better logs including well site inspections.

Mr. Mike Rainer, Developer, felt the older oil and gas well sites (classified as “grandfathered”) should not have a year to comply with the fencing requirement and the City should have more than just one oil and gas inspector that makes exceptions to fencing around oil and gas well sites.

Item 2, continued:

Mr. Rob Arrowood, Trinity Resources, said he is an oil and gas operator and the fencing requirements being proposed today are not feasible because the fence would have to be taken down each time an operator had to work on the well. Councilmember Castleberry asked why the fencing would not work as long as there was a gate with a lock for the operator and Mr. Arrowood said in order to get the proper equipment on site, the entire fencing would need to be removed. Mr. Arrowood said there are many times a well site is constructed before the land around it is platted and/or developed and, because of this, he felt the fencing maintenance should be on the developer rather than the operator.

The Committee discussed and supported fencing around well sites and directed Staff to add recommendations to the current ordinance. The Committee requested Staff research a requirement allowing a “phasing in” period for older, non-active well sites, as well as research the average cost for fencing around well sites. The Committee requested Staff bring back information to full Council at a future council conference.

Items submitted for the record

1. Memorandum dated May 8, 2014, from Susan Connors, AICP, Director, Planning and Community Development, to Oversight Committee Members with draft EPA Proposed Amendments to Air Regulations from the Oil and Natural Gas Industry
2. Memorandum dated May 8, 2014, from Susan Connors, AICP, Director, Planning and Community Development, to City Council Oversight Committee with attachments, Map of Active Wells in the City of Norman, dated December 5, 2013, and Oil and Gas Ordinance Information from Various Oklahoma Cities and Fort Worth, Texas
3. Memorandum dated May 8, 2014, from Susan Connors, AICP, Director, Planning and Community Development, to Oversight Committee Members

Item 3, being:

MISCELLANEOUS DISCUSSION.

None

ADJOURNMENT.

The meeting adjourned at 7:47 p.m.

ATTEST:

City Clerk

Mayor