

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

December 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 December, 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:	Councilmembers Castleberry, Jungman, Lockett, Spaulding, and Chairman Kovach
ABSENT:	None
OTHERS PRESENT:	Councilmember Jim Griffith, Ward Six Mayor Cindy Rosenthal Councilmember Chad Williams, Ward Eight Mr. Trey Bates, 3720 Timberidge Drive Mr. James Chappel, Oklahoma Gas and Electric Company (OG&E) Mr. Harold Heiple, 218 East Eufaula Ms. Joy Hampton, <u>The Norman Transcript</u> Ms. Amanda Nairn, Chair, Environmental Control Advisory Board Mr. John Woods, Director, Norman Chamber of Commerce
STAFF PRESENT:	Ms. Courtney Bucklin, Legal Intern Ms. Susan Connors, Director of Planning and Community Development Mr. Terry Floyd, Development Coordinator Mr. Jud Foster, Director of Parks and Recreation Mr. James Fullingim, Fire Chief Mr. Keith Humphrey, Police Chief Mr. Ken Komiske, Director of Utilities Mr. Steve Lewis, City Manager Ms. Leah Messner, Assistant City Attorney Mr. Aaron Milligan, Stormwater Pollution Specialist Mr. Shawn O'Leary, Director of Public Works Mr. Richard Schlechter, Storm Water Engineer Ms. Debra Smith, Environmental Services Coordinator Mr. Scott Sturtz, City Engineer Ms. Kathryn Walker, Assistant City Attorney Ms. Syndi Runyon, Administrative Assistant IV

Item 1, being:

FOLLOWUP DISCUSSION REGARDING THE PROPOSED ORDINANCE REGULATING THE APPLICATION AND STORAGE OF MANUFACTURED FERTILIZER.

In its meeting of October 10, 2012, the City Council Oversight Committee reviewed a draft ordinance regulating fertilizer containing phosphorous. A Study Session was held on November 20, 2012, and Mr. Scott Sturtz, City Engineer, presented two versions of the draft ordinance to Council. Both versions require public education; distribution of a pamphlet containing pertinent information about the

Item 1, continued:

ordinance to commercial applicators and retailers; fertilizer containing phosphorus be clearly marked by commercial retailers and notice posted that its use is regulated by the City of Norman; registration of commercial applicators with the City's Stormwater Engineer; and a penalty of \$50 to \$750 for violations.

Councilmember Gallagher expressed concern that an ordinance would be meaningless if the City of Norman did not coordinate plans with other cities that contribute to the runoff in Lake Thunderbird. Additional concerns were raised during the Study Session and Mayor Rosenthal suggested the Oversight Committee review a final draft of the ordinance including input received at the Study Session prior to going forward to a City Council meeting.

Mr. Sturtz said consensus seemed to favor Version 1 of the draft ordinance that included phosphorus fertilizer exemptions; phosphorus fertilizer restrictions; annual distribution of a fertilizer pamphlet by staff; point of sale provisions; penalties for violations; and registration of commercial applicators. He said exemptions were removed for flowerbeds, golf courses, agriculturally zones areas, and vegetable gardens. He said all commercial applicators will certify they are training all personnel applying manufactured fertilizer and a training log must be maintained. He said there was concern over whether the company applying the fertilizer or individual applicators; however, due to turnover in companies Staff felt the individual applicators should be responsible for training.

Mr. Sturtz said the applicator company, individual applicator, or both can be registered, but that would be Council's decision. He said the requirement for a log book is intended to track addresses where fertilizer containing phosphorus is applied and is not to be a log of all fertilizer usage. He said Ann Arbor, Michigan's ordinance requires an annual report due by December 15th including when, where, and how the fertilizer was applied as well soil tests showing phosphorus fertilizer was needed. He said the City could require the log book or annual report, but need some type of record to track phosphorus fertilizer usage.

Mr. Sturtz said Staff has made an effort to contact commercial applicators and most of them do not use phosphorus fertilizers and those that do only use it when soil tests confirm a nutrient deficiency. He said some of the commercial applicators had heard an ordinance was being created and supported the ordinance, but were split on the registration requirement.

Mr. Sturtz said public education will be a huge part of getting information to homeowners that apply their own fertilizer. He said the City will mail out an educational pamphlet to all Norman addresses and place information in utility bills. He said other education will include educating commercial applicators at time of registration, engaging retailers to help in the education; placing information on the City's website, Channel 20, and local newspapers; and placing advertisement on billboards, busses, bus stops, and other public locations.

Mr. Sturtz said the State standard for Chlorophyll-A is ten micrograms per liter (mgl) and according to a study done by Vieux and Associates in 2007, Lake Thunderbird was at 30.8 mgl and micrograms per liter are projected to grow as high as 44 mgl or more if nothing is done. The Study recommended best practices that include fertilizer reduction, constructed wetlands, and structural controls. He said the Storm Water Master Plan (SWMP) recommends the implementation of structural controls (primarily by developers) as well as nonstructural controls (developers and City) such as stream bank stabilization, creating regional detention basins, water sampling, street sweeping, public education, and fertilizer usage targeting lawn care companies.

Mr. Sturtz said previously, Council requested information on constructive wetlands. He said Brookhaven Creek is a naturally occurring wetland in Norman and serves the purpose of what is expected of a wetland. He said constructive wetland benefits include a high degree of nutrient uptake and sediment removal, creates aquatic habitats, and can be designed for different size watersheds. He said constructed wetlands are a system that

Item 1, continued:

has shallow areas, deep areas, and pool areas with different types of wetland growth. He said the Corps of Engineers (COE) has a set definition that has to meet three criteria: 1) hydrology, 2) soils, and 3) plant life.

He said the City would supply the hydrology then plant the proper plant life to become a well-functioning wetlands and over time those soils will develop the characteristics of a wetland. He said estimated construction costs for wetlands are \$39,000 to \$82,000 per acre with maintenance costs of \$780 to \$1,640 per acre per year. Mr. Sturtz discussed possible future sites for wetlands that include Commerce Parkway and Little River Trails. He said Commerce Parkway is near Little River with a large detention pond on site and parkland is being dedicated to the City so this is a location the City would not have to purchase property to construct 1.27 acres of wetlands at a construction cost of \$63,500 with yearly maintenance of \$1,651. Little River Trails is directly on the Little River, has two detention ponds, and some areas are in the Water Quality Protection Zone (WQPC) so purchase of property may not be necessary to construct 1.93 acres of wetlands at a construction cost of \$96,500 with a yearly maintenance cost of \$2,509.

Chairman Kovach said a draft Oklahoma Department of Environmental Quality (ODEQ) Watershed Plan Development was completed regulating the allowable Total Maximum Daily Load (TMDL) for cities. He said ODEQ is considering a 35% reduction, which is significant in what the City will have to reduce currently as well as in the future. He said everything the City can do to comply in a cost efficient manner is going to be important and fertilizer control and wetlands are two ways to accomplish that. He said he liked the idea of looking for projects coming forward with mixed uses such as public dedications.

Councilmember Spaulding asked if the City is proposing that only commercial applicators that apply phosphorus based fertilizer register or all commercial applicators and Mr. Sturtz said all commercial applicators. Councilmember Castleberry asked the point of registering commercial applicators that do not use phosphorus fertilizer and Mr. Sturtz said to have the opportunity to get information to them. He said applicators will receive the educational pamphlets to distribute to customers. Chairman Kovach said all commercial applicators will register, but only applicators using phosphorus fertilizer will be required to keep a log book and Mr. Sturtz said that is correct, only locations where the phosphorus fertilizer is applied will need to be logged.

Councilmember Spaulding asked if there is cost associated to registration and Mr. Sturtz said Staff proposed a \$25 fee. Councilmember Spaulding asked why the City would not just accept current State requirements and Mr. Sturtz said the City's requirements are above and beyond what the State requires. He said State requirements do not address application of fertilizer and does not address phosphorus at all and are geared more toward distribution and storage. Chairman Kovach asked what kind of burden the registration places on applicators and Mr. Sturtz said the applicator will fill out an application form and be given a copy of the ordinance and educational pamphlet. Chairman Kovach said registration is being used as an education point to ensure users understand the problem with phosphorus and nitrogen runoff into Lake Thunderbird.

Councilmember Spaulding asked about proposed enforcement and a projected time for measurement of improvement. Mr. Sturtz said Staff expects to see results within two years. He said as far as enforcement, Staff can request to review the log books or an annual report and can request a sample of fertilizer they apply to check for phosphorus/nitrogen. He said enforcement would be complaint based.

Councilmember Gallagher asked why charge \$25 to fill out an application form when \$10 or \$15 would suffice? He said some companies are small, one person businesses. Mr. Sturtz said Staff was trying to keep the number small so it would not be a burden on the business and the City could recover costs of reproducing educational materials. Mayor Rosenthal wanted to know the range of fees charged for other licensing in the City and Ms. Syndi Runyon, License Administrator for the City Clerk's Office, highlighted the various licenses and fees issued by her office. Mayor Rosenthal said in the range of fees, \$25 does not seem onerous.

Item 1, continued:

Councilmember Gallagher felt one man businesses will not register because they feel they will never be caught and there does not seem to be any type of serious enforcement being considered. Councilmember Lockett said a small business would rather pay \$25 than fill out an annual report.

Councilmember Castleberry said not many commercial applicators are using phosphorus so where is the phosphorus problem coming from and is the City really addressing the issue. He asked why agriculturally zoned areas are being exempted. Chairman Kovach said anyone with agricultural land is going to test their soil to know what they need so they already comply by testing their soil. Councilmember Castleberry said if the soil needs phosphorus, it can be applied so the City is not banning phosphorus and Chairman Kovach said correct, it is control not a ban. Mr. Sturtz said everyone can use phosphorous during the first six months of planting to get the root system started, but after that there is no positive affect on growth, or they can get a soil test done to prove they need phosphorus. He said soil testing done by Cleveland County shows the soil is typically two to three times the phosphorus levels. Councilmember Spaulding said there is a discrepancy in reports because he went to a deer management presentation held at the County and they indicated there was a deficiency in phosphorus, but the probability of discrepancy could be the difference between rural and urban areas.

Councilmember Williams asked if Staff had considered allowing companies that do not use phosphorous to forgo the registration and fee. He suggested simply handing out the educational material as a reward for not using phosphorus. Councilmember Spaulding said a lot of people do not want big government so why would a small business give the City all their information and pay them? He said if it was presented in an educational manner and not a requirement of registration that might make it more palatable. He said he is uncomfortable with registering. Chairman Kovach said not everyone will register even if it is free, but most commercial applicators want all businesses to follow the rules so the City needs to set a standard. He said it might be helpful to create a list of phosphorus free vendors as an incentive to participate and not require a log book or annual report as a reward for good behavior. Councilmember Lockett suggested distributing a "phosphorus free" emblem to those businesses to display on signs and advertising. Councilmember Spaulding thought that was a good idea and said the City approved something similar for the Crime Free Multi-Housing Program. Councilmember Castleberry said there will be situations where the company will have to apply phosphorus after soil testing so they would not be phosphorus free. He said if the goal is for companies not to use phosphorus then charge \$1,000 fee if they use phosphorus. Chairman Kovach said if someone owns a small business, nothing is more valuable than time so by avoiding logs by not using phosphorus is a huge incentive. Councilmember Jungman said when someone chooses to engage in the business of fertilizer application, they are directly affecting the water supply so the public has a right to require registration and following reasonable guidelines. He said the ordinance is a nice compromise because the solution that best protects Lake Thunderbird is much stronger. He said the \$25 is reasonable and providing emblem and marketing is a good idea. Ms. Joy Hampton, Norman Transcript, suggested the emblem have a green foot stating, "City of Norman Environmentally Compliant."

Councilmember Gallagher said there seems to be only a few commercial applicators so registration will be low. He said education material will be the key. Mr. Sturtz estimated there are between 25 and 30 applicators with 8 to 12 of those using phosphorus fertilizer. He said the City's goal is to decrease phosphorous use. Mayor Rosenthal said the public education efforts and point of sale is aimed at the individual homeowner.

Chairman Kovach said the City needs to work on incentives and Mayor Rosenthal agreed, but felt incentives should be a part of public education. He said based on ODEQ's TMDL draft report, the decision of reducing phosphorus might not be the City's to make and he would rather be in the driver's seat. He wants to bring the ordinance forward, as is, for First Reading. Councilmember Lockett said to start small with incentives instead of enforcement. Chairman Kovach said the City needs to begin discussion with cities that share Lake Thunderbird. He also wanted to move forward so businesses can be informed in a timely fashion prior to ordering spring

Item 1, continued:

inventory. Mr. Sturtz said he liked the idea of a “no log or report” requirement if the company is phosphorus free and an emblem or sticker be used instead. He felt it would be well received by the business community.

Councilmember Gallagher felt information placed in utility bills would be a better educational tool than spending \$42,000 to mail pamphlets to every Norman homeowner. He suggested placing an article in the local newspaper in the spring as well. Chairman Kovach agreed and said a video on how to fertilize properly would be a great educational tool as well.

Items submitted for the record

1. Draft ordinance
2. PowerPoint presentation entitled, "Storm Water Master Plan, Manufactured Fertilizer Ordinance," City Council Oversight Committee, dated Wednesday, December 12, 2012
3. Council Study Session minutes of November 20, 2012
4. Preliminary Draft of Lake Thunderbird Total Maximum Daily Load (TMDL) Report, Appendix E

Item 2, being:

DISCUSSION REGARDING THE COMMERCIAL LIGHTING ORDINANCE.

Ms. Leah Messner, Assistant City Attorney II, said Council adopted additional commercial lighting regulations in June 2011, which regulations are included in Chapter 22 of the Zoning Ordinance. She said modified regulation language regarding outdoor commercial lights has been submitted to the City Manager and that language is being brought forward for the Oversight Committee’s review.

Ms. Messner said prior to adoption of Ordinance No. O-1011-44, the City had two provisions in the Zoning Code that dealt with outdoor lighting that stated 1) any lighting installed should have minimal impact on abutting properties and all lights had to be shielded or oriented to the light source did not shine on or be visible from any abutting property or right-of-way and 2) lighting for off-street parking should be adequate and arranged to direct light away from any adjoining property in a residential district.

Ms. Messner said Ordinance No. O-1011-44 added provision regarding types of regulated and unregulated lighting; compliance and enforcement; fixture standards for pole mounted lights, wall packs, accent lighting, and canopy lighting; light output limits; and photometric plan requirements. The ordinance applies to all new outdoor lighting on sites zoned commercial, industrial, institutional, and multi-family.

Ms. Messner said lighting exempted in Ordinance No. O-1011-44 includes internally illuminated signs; temporary lighting; lighting for athletic fields; swimming pool lighting; lighting for emergency services; interior lighting; temporary holiday lighting; low-voltage landscape lighting; lighting that is not visible from adjacent properties (i.e. courtyard lighting); decorative lighting of public monuments or bridges; street lights; and lighting of historic properties.

Ms. Messner said Ordinance No. O-1011-44 includes two tables that the Planning Department uses to guide them when they receive a complaint. The ordinance contains a provision for an extension for hardship to be administratively granted to allow a property owner time to comply after a complaint is received. It also allows for an appeal to the Board of Adjustment and the Board has the power to grant an additional one year extension.