

CITY COUNCIL CONFERENCE MINUTES

January 14, 2020

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 14th day of January, 2020, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT:	Councilmembers Bierman, Carter, Hall, Holman, Petrone, Scanlon, Scott, Wilson, Mayor Clark
ABSENT:	None

Item 1, being:

DISCUSSION REGARDING VEGETATIVE MANAGEMENT OF RIGHTS OF WAY.

Ms. Kathryn Walker, City Attorney, said in August 2017, Council voted on several amendments to the Oklahoma Gas and Electric (OG&E) Franchise Agreement (ordinance) that would grant OG&E the right to access the City's rights-of-way (ROW). The amendments proposed by Council would require OG&E to obtain Council approval before spraying chemicals for the purpose of killing trees or other vegetation, approval by the property owner prior to removal of trees of a certain size, and a notice to be posted five days in advance of trimming, removing, or mowing vegetation, shrubs, and smaller trees.

Ms. Walker said the Federal Power Act empowered the Federal Energy Regulatory Commission (FERC) to regulate the public utility industry transactions made in interstate commerce, primarily the sale of power from one utility to another. In 2005, after rolling blackouts impacted large areas of the United States and Canada, the Energy Policy Act was adopted to improve electric grid reliability. She said FERC's jurisdiction was expanded under this Act to all users, owners, and operators of bulk power systems, except facilities limited to local distribution facilities, which are usually governed by State agencies such as the Oklahoma Corporation Commission (OCC). The FERC oversees major transmission lines that could be impacted by a vegetation management ordinance.

The State Department of Agriculture governs pesticides and has a provision that cities cannot adopt or continue in effect any ordinance, rule, regulation, or statute regarding pesticide sale or use that is more stringent than state rules including registration; notification; posting; advertising and marketing; distribution; applicator training and certification; storage; transportation; disposal; disclosure of confidential information; or product composition. The State Department of Agriculture regulates pesticides and licenses pesticides specific to ROW maintenance and ground line treatment of utility poles.

The Oklahoma Corporation Commission (OCC) is granted general supervision over all public utilities and is empowered to set rates and promulgate rules affecting services, operation, management, and conducting business. The term “public utilities” includes rural electric cooperatives even if they have voted to exempt themselves from OCC regulation regarding rates. The OCC rules related to vegetation management are focused on distribution reliability. Each utility is required to have a reliability program that limits the frequency and duration of electric service interruptions, maintain acceptable electric service reliability levels, and sustain that program over time. The program must address all factors that impact the reliability of the distribution system including, but not limited to, the age, distribution, and location of equipment on each circuit; the number, density, and location of customers on each circuit; the location and density of trees on the system; an annual vegetation plan; and impacts of animals, winds, storms, ice, and automobile accidents on distribution system reliability.

Ms. Walker said Ordinance O-1819-33 adopts a local regulatory framework consistent with State and Federal law and only applies to vegetation management activities by utilities. She said Best Management Practices adopts the ANSI A300 standards (the generally accepted industry standards for tree care practices); pruning standards from ANSI A300 incorporated explicitly; chemical control methods; supervision of oversight of contractors; identification of employees; and vegetation clean-up from pruning/chemical control methods.

Ms. Walker said the Tree Board presented a draft ordinance to the Community Planning and Transportation Committee on May 24, 2018, focusing on street trees as opposed to trees on private property. Ordinance O-1819-34 developed by the Tree Board is not intended to supersede State law, utility easements, etc., but seeks to protect trees in the ROW from unnecessary removal by requiring permission from the City’s Forester. The ordinance’s process for altering a tree in the ROW includes requesting permission from the Forester who would grant permission if the alteration is needed to eliminate damage to buildings, foundations, utilities, pavement, or some other good reason. She said removal without approval would result in an administrative fine based on the size of the tree; however, the fine can be remediated with planting of replacement trees.

Mr. Tim Vermillion, Parks Forester, said he was approached by a representative from Oklahoma Electric Cooperative (OEC) who was planning vegetative management activities along Berry Road and, per the ordinance, he checked the trees and determined that most of the trees were unhealthy and would eventually fail. He assessed 17 trees OEC received permission from property owners to remove; however, there were fines assessed for five trees (\$50 per caliper-inch) totaling \$5,715. He said in lieu of the fine, OEC is going to purchase trees to replant on Berry Road, which he will oversee. He said trees along ROW’s need ten feet of clearance from electric lines and utility poles and need to be low statured so they do not interfere with power lines.

Councilmember Carter said many trees around Norman look similar to the examples Mr. Vermillion has presented, but he does not believe they are in imminent failure. He said many people were upset that the tree canopy on Berry Road was destroyed, which was the impetus behind the Tree Ordinance. He said it is incredibly disappointing to hear 17 more trees will be removed on Berry Road.

Councilmember Carter asked what recourse Council has to appeal Mr. Vermillion's decision because Council wants to have a say in what happens to trees in the ROW. He would recommend burying utility lines beginning on Berry Road. Ms. Walker said there is an appeal process in the ordinance, but it deals with owners who have been denied permission to remove trees from their property so it would not be applicable in this case. She said between State and Federal regulations, utility companies have a lot of authority to protect the reliability of their grid. Councilmember Carter said he would like to find common ground with OEC to slow this process down and allow Council to look at other options. Ms. Walker said there is also a real recognition of property owner rights that would be a legal concern.

Mr. Mark Baze, Urban Forester with the Oklahoma Department of Forestry, said he is tree risk assessment qualified and does not agree with Councilmember Carter's assessment that these trees are not failing and can be saved. He sees these trees as ticking time bombs because they have wounds that cannot be healed and will continue to decay and fail. His only hope is that no one is injured when that happens because it appears the City of Norman is preventing very qualified people from doing their job. He said there is an elevated risk with these trees that will only increase with time.

Councilmember Wilson thought there might be a grant available to bury power lines and Mr. Shawn O'Leary, Director of Public Works, said Councilmember Wilson may be thinking about the Hazard Mitigation Plan discussed last week. He said there may be grants available for flooding issues, but it is doubtful grants would be available to bury utility lines. Councilmember Wilson wondered if the City could create a moratorium and have OEC work in another part of the City until Council has been able to look at options for burying lines. Ms. Walker said the City cannot put a moratorium on a utility company's ability to manage their vegetation, but Staff can speak with them. In the meantime, Staff can obtain quotes on the cost of burying those lines for Council's review.

Mayor Clark said the public is now aware these trees are on the path of failing and there is no plausible deniability of that. She said the City created an ordinance and a Forester position to guide Council on how to handle these situations and the Forester has given his opinion. She understands Councilmember Carter's concerns about the trees, but her concern is the City's legal liability if something bad should happen due to Council stopping action on the trees that Council has been informed are not healthy and will fail.

Councilmember Petrone said she is concerned the removal of these trees can affect the entire area's property values.

Councilmember Wilson asked, within the ordinance, can the City require larger caliper trees to be planted to replace mature trees that are removed? Can the City outlaw the topping of trees? Ms. Walker said the City's ordinance generally prohibits the topping or rounding methods for a specific tree as deemed appropriate by a certified arborist or in consultation with the property owner.

Councilmember Bierman said the topping of the trees on Berry Road was shocking and they looked awful so she would like to eliminate topping of trees and put teeth to that in the ordinance. She said Council has not discussed the impact the removal of such large trees has on the environment, ecosystem, and stormwater. She said replacing large trees with small trees destroys habitats for animals, reduced the amount carbon pulled out of the atmosphere, and is doing nothing to contribute to a healthier climate. She would like to require larger trees be planted to replace mature trees being removed.

Mr. David Sitel, property owner on Berry Road, said he does not want his tree removed. He would prefer hiring a private company to trim the trees.

Councilmember Carter said he would like OEC to consider withdrawing their application and Mr. Vermillion said Staff will extend that request to OEC.

Mayor Clark said Council could potentially amend the ordinance to include eliminating topping and replacing large trees with two trees instead of one tree.

Items submitted for the record

1. PowerPoint presentation entitled, "Vegetative Management," City Council Conference, January 14, 2020

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The meeting was adjourned at 6:22 p.m.

ATTEST:

City Clerk

Mayor