

CITY COUNCIL CONFERENCE MINUTES

October 9, 2018

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:04 p.m. in the Municipal Building Conference Room on the 9th day of October, 2018, 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 48 hours prior to the beginning of the meeting.

PRESENT:

Councilmembers Bierman, Carter,
Castleberry, Clark, Hickman, Holman,
Scott, Wilson, Mayor Miller

ABSENT:

None

Item 1, being:

UPDATE FROM REPRESENTATIVES OF THE ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENT REGARDING THE CREATION OF REGIONAL TRANSPORTATION AUTHORITY.

Mayor Miller said since 2005, a sub-group task force of the Association of Central Oklahoma Governments (ACOG) have been discussing the possibility of creating a Regional Transportation Authority (RTA). This past year the cities has been working with Kathryn Holmes, Holmes Associates, L.L.C., who is helping the City prepare the documents to create the RTA. She said each of the cities involved have been asked to make presentations to their Councilmembers in preparation of adopting a resolution for a RTA. The cities represented on the task force include Oklahoma City, Edmond, Norman, Moore, Midwest City, and Del City; however, other cities can join if they are willing to pay their fair share. She introduced Mr. Mark Sweeney, Director of ACOG, and Mr. John Sharp, Deputy Director of ACOG.

Ms. Holmes said if the RTA is created within the next month there will be gap between the creation of the RTA and the time at which the RTA Board of Directors will go to the public seeking funding for the operation of the system. She said it is important to create the legal entity at this time because there is an assumption that the Burlington Northern Santa Fe (BNSF) Main Line Corridor will be available to the RTA for commuter rail and that assumption needs to be nailed down. One of the next steps will be discussions with BNSF about whether they will entertain access or sale a portion of the right-of-way to allow a commuter rail line to be installed. She said BNSF will be more willing to participate with a legal entity as opposed to a task force. She said previous transit studies need to be updated because they are very old and the numbers are old so before asking for public support those numbers need to be updated. She felt it would be important for the entity of the RTA to begin building institutional knowledge in order to make decisions regarding whether sales tax is needed and, if so, how much is needed for ongoing maintenance and operations.

Ms. Holmes said the appointment of the Board of Directors will be made by the member jurisdictions that created the RTA. Once the RTA is formed, the Mayor will make a nomination for Council approval of the Board Members. She said the name of the trust will be the Regional Transportation Authority of Central Oklahoma and the trust indenture will establish broad purposes for the RTA that is consistent with other transportation trusts in Oklahoma as well as legislation common to transit authorities in other regions. She said no new money will be required during the interim period of establishing Board Members and the trust indenture.

Item 1, continued:

Ms. Holmes said the Board of Directors will serve until the vote is taken for a dedicated funding source. She said once a funding source is in place, the terms of the Board of Directors will be staggered so that every two years there will be an opportunity for new board representation. She said the current term is four years and there are no term limits so directors can continue their service for an unlimited number of terms, but they must be re-nominated and confirmed by their municipality. She said the director cannot be an employee of a city, county, or public transportation operation nor can the director be a currently elected officer of the State or a political subdivision of the State. The director must be a bona fide resident of the municipality for one year prior to their appointment and for the duration of their appointment. The trust indenture will include regulations on powers and duties of the directors; duration of the trust; trust estate; annexation and withdrawal; conflict of interest provisions; financial provisions; amendments to trust indenture; termination of the trust; and acceptance of the trust. She said directors should act for the best interest of the region and not the best interest of its appointing authority and one way to do this is through voting protocols so a weighted vote will require a super majority (67%) of the member cities in order to pledge assets; approve a budget; make a major service change; determine tax rate to place on ballot; or calling for the governing bodies of the municipalities comprising the Authority to put a referendum on a ballot.

Mayor Miller said the task force has done a really good job of bringing information from a number of different cities that have created a trust indenture and it is very helpful to know what has worked and what has not worked.

Councilmember Wilson asked if there will be a provision for revoking a director if the municipality is not happy with that person and Ms. Holmes said cities can recall their own director. Councilmember Wilson asked if Council has any authority to give direction or advice to their director and Ms. Holmes said nothing is included in the trust indenture regarding that. Mayor Miller said each community will have their own rules regarding how they may interact with their director.

Councilmember Hickman said Section 7.6 of the draft trust indenture references utilizing the provisions of the Local Development Act (LDA) as related to financing of regional transportation projects and he assumes that is the provision that deals with Tax Increment Financing (TIF) so does that mean the RTA could potentially have the power to create a TIF in Norman or would that still be addressed by Council? Ms. Holmes said when the legislature passed the statute that authorizes the creation of the RTA it specifically authorizes the ability of the RTA to utilize the LDA so she simply brought that language forward. Ms. Holmes said she would need to research that further, but she believes, as a matter of law, that once the RTA is formed under that provision the RTA Board would have the ability to utilize the provisions of the LDA, which is provided in State law. Councilmember Hickman said he would like more clarifications on that language.

Ms. Holmes said additional cities can join the RTA after it is created, but the new community must be adjacent to the existing boundary of the RTA. If a city decides to withdraw, on the day of withdrawal the Authority will cease to provide transportation in the withdrawn area and the financial obligations cease to accrue; however, that city would continue paying the amount they owed at the time of withdrawal until that amount is paid off. Also, on the effective date of the withdrawal, title to all the real estate and improvement located in that city would immediately vest in the RTA and the RTA can continue to use that real property or facilities to continued service for a period of 25 years or the duration of the Authority's remaining federal grant obligation. This protects the financial aspect, real estate, and improvements.

Item 1, continued:

Councilmember Hickman said there will be ongoing operating expenses and it is moderate to assume the RTA may not cash flow so if there is one less city sharing those operating expenses it is likely the operating costs to the remaining cities would have a higher cost burden. He said because of a higher cost burden would Norman have to increase its sales tax allocation and Ms. Holmes said it is hard to speculate on that, but any transit service into a community that opts out would be discontinued.

Councilmember Hickman said he does not see anything in the trust indenture regarding needing more money because budgets change or costs increase so how is that going to work if five years from now cities are over budget or a city leaves and there are more costs to the remaining cities? How would those additional funds be raised because he is concerned that the City of Norman's General Fund (GF) will be responsible for any shortages beyond what the RTA sales tax collects. Ms. Holmes said that is not contemplated because the RTA is a separate legal entity funded by sales tax, which is the common source of funding for transit around the country. Councilmember Hickman said what if costs are higher and not enough sales tax is being collected? Ms. Holmes said the transit system would be out of service or cities would go back to the voters for a sales tax increase. She said there is nothing in the trust indenture that contemplates any continuing obligations and all obligations to date have been satisfied, but there is enough funding to carry this work through the next three to five years without the need for additional funds. She said there is no consideration that the RTA will go back to the funding jurisdictions and ask for more funds and there is no legal obligation in the trust indenture for that. Mayor Miller said the RTA is a stand-alone organization that has the ability to do whatever is necessary to generate additional revenues, such as advertising or attracting more ridership.

Ms. Holmes said the next step will be placing a resolution on the Council's agenda for October 23rd. The goal is to have all the votes by the end of November to form the RTA and appoint board members. She said a workshop will be held to bring the Board of Directors up to date as well as explain remaining tasks.

Items submitted for the record

1. Summary of Issues RTA Draft Trust Indenture by Holmes & Associates, L.L.C.
2. Draft Regional Transportation Authority of Central Oklahoma Trust Agreement and Indenture

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Item 2, being:

DISCUSSION REGARDING DRAFT ORDINANCE AMENDMENTS RELATED TO MEDICAL MARIJUANA.

Ms. Beth Muckala, Assistant City Attorney, said State Question 788 passed with nearly 57% of the vote in the June 26th election. The Oklahoma Medical Marijuana Authority (OMMA) was established under the Oklahoma State Department of Health (OSDH), which is currently licensing adult and minor patients, caregivers, growers, processors, dispensaries, transporters, and researchers. She has been working with Ms. Jane Hudson, Interim Director of Planning and Community Development, regarding municipal regulations on licensing, zoning, code violations, and nuisances. She said business licensing is a very common component of the ordinance seen in-state and out-of-state nationwide. The provisions in the current draft are heavily based on State law and the fees are the same as those in state law with one variation for patients. Per State law a patient is licensed for two years at a cost of \$100, but the City's licenses are annual so Staff is proposing \$50 annually.

Item 2, continued:

Councilmember Bierman asked Staff's reasoning behind the City requiring a license for a patient and Ms. Muckala said patient licenses have been included in statewide as well as nationwide ordinances she has researched. She said this was discussed in the August 23, 2018, Community Planning and Transportation Committee (CPTC) meeting and brought forward as a possible way to cover the cost of licensing, but is just a suggestion at this point. The CPTC also discussed other license fees and the Committee did not want to make fees more onerous than State fees. Councilmember Bierman asked if the City requires licenses for other patients requiring Schedule 1 drugs and are there concerns regarding Health Insurance Portability and Accountability Act (HIPAA) violations. Ms. Muckala said the City will not be requesting information other than what would be required as part of the State submittal so that would not violate HIPAA and she is not aware of patient licensing requirements for other types of drugs. Councilmember Bierman is concerned about requiring a license for medical marijuana patients when the City does not license any other patients who use Schedule 1 drugs, which are many. Mayor Miller said she understands Councilmember Bierman's concerns, but it does cost the City time, labor, and supplies to issue licenses.

Councilmember Scott felt it appropriate to charge a license fee for commercial medical marijuana businesses, but not patients.

Councilmember Wilson asked if the City currently defers the costs of opioid overdoses, management, prescription theft, break-ins, etc., that occur in the opioid industry and Ms. Muckala said not in regards to licensing. Councilmember Wilson asked if other cities in Oklahoma charge patient fees and Ms. Muckala said Muskogee requires a "home growth" license.

Councilmember Holman said licensing dispensaries, growers, processors, etc., makes sense because there are administrative costs to that, but if the City did not license patients there would be no administrative costs. He said once a patient is issued a State medical marijuana card they are entered into a database that can be used to verify they are an actual patient and can legally possess the product. He does not think the City requires a permit for people who grow a garden in their backyard or grow any other plants so why require an individual to have a City license in order to grow medical marijuana in their backyard? He does not want Norman regulations to be more burdensome on patients than what State law requires so if cities are not required to have a patient license by State law then he would prefer the City not require a patient license, but would focus more on the commercial side of medical marijuana.

Ms. Muckala said commercial fees in the draft ordinance are the same as the fees charged by the State, which is \$2,500, but there is not a set standard in Oklahoma for what that amount should be for cities.

Ms. Muckala said written into the draft ordinance is a general requirement for appropriate security measures using precise language from State law that states, "Appropriate security measures to deter unauthorized access by non-license holders as well as to deter the theft or diversion of medical marijuana." She said particularly in respect to commercial enterprises, this language implicates a need for restricted access areas and other safety measures based on the particular type of operation. Councilmember Holman said State laws states "reasonable security measures" so what does reasonable mean? Ms. Muckala said she has not found an interpretation for that language, but the language is new and more specific parameters within State regulations have been removed and there is interest in what will go back into the statute during the next legislative session so Staff is hoping for clarification at that point. Councilmember Holman said dispensaries will be open in Norman before the next legislative session so it is important to define "reasonable security measures" and Ms. Muckala said from the City's perspective the location of the business will help determine what security measures would be needed.

Item 2, continued:

Councilmember Castleberry asked if pharmacies are required to have reasonable security for narcotics and Ms. Muckala said she is not aware of any City requirements. Councilmember Castleberry said he does not want more stringent security requirements for medical marijuana than any other prescription drug.

Councilmember Carter said there are State regulations on securing Schedule 1 drugs and as a veterinarian he has to have double locks on drug storage facilities and must keep a strict log of all drug purchases and distribution.

Councilmember Scott wanted to clarify the City's commercial license would be \$2,500 on top of the State's fee of \$2,500 and Ms. Muckala said yes. Councilmember Scott asked if it would be possible to have a reduced rate for disenfranchised businesses and Mayor Miller said if the City does that for one business there would be no viable reason not to do it for all businesses. Councilmember Holman said if the fee is annual, there is concern that businesses paying \$2,500 per year for a State and City license would be paying \$5,000 per year just to exist. He said out-of-state entities with lots of money could come into Norman making it difficult for local, small businesses to survive so he would like to have a lesser fee for the City.

Councilmember Carter said he is under the impression that Moore, Oklahoma, is promoting their city as being more favorable than State law, which gives them a competitive advantage over a Norman business. He would not want Norman's ordinance to be more onerous than its next door competitor. Ms. Muckala believes Moore set their fees administratively and asked if that is what Norman wants to do as well and Councilmember Scott said yes, but she would like to set a cap and allow the licensing office to decide on the fee. Ms. Brenda Hall, City Clerk, said fees should be consistent with the purpose of the business regardless of the size of the organization or whether it is a corporation or sole proprietor. Mayor Miller asked how much time it takes to issue a license and Ms. Hall said all City licenses expire March 31st of every year so additional licensing could be a little more burdensome, but if patient licenses are not required she does not believe commercial licenses would be too excessive or overly burdensome. Councilmember Carter felt administrative fees that adapt to the circumstance would be easier than a set fee. Ms. Hall suggested fees be set in the ordinance because all other City licenses are established by ordinance with fees included and she feels it would be difficult to administratively set these types of fees. Councilmember Hickman asked Staff to contact Moore regarding their administrative fee schedule. Ms. Muckala said she will do more research on Moore's ordinance, but the highest fee she has seen in other communities range from \$700 to \$1,500.

Ms. Muckala said more research is needed on collecting sales tax for medical marijuana because State law has stated cities will receive no sales tax although some cities are looking into the possibility of charging a sale tax fee. She said this could affect the license fee if some type of sales tax is charged to businesses, which some cities have indicated they will pursue. Councilmember Holman said the 7% sales tax charged by the State will all go to the State and the CPTC discussed a 3% sales tax. Councilmember Hickman said he would like to put that 3% sales tax into the ordinance and if the City cannot collect sales tax that is fine, but he would rather have it in place than have to add it later. Mr. Jeff Bryant, City Attorney, said the Oklahoma Tax Commission (OTC) has stated that, if allowed, they will treat medical marijuana revenue as retail sales and whatever tax rate is in effect for retail sales will be the rate that will be assessed. He encouraged Council to wait for more formal information from OTC before moving forward because it could be more favorable than what is being proposed.

Item 2, continued:

Mayor Miller said there seems to be a consensus on not requiring a license for patients, researching comparable fees in surrounding metropolitan cities, and holding off on setting a sales tax rate until the City knows what steps the State will take.

Councilmember Bierman said there are out-of-state companies that will try very hard to set up business in Oklahoma and she would much rather see a local Oklahoma business succeed in Norman.

Chairman Hickman felt it was taking too long to pass an ordinance and medical marijuana businesses will be setting up shop with no regulations in place. What will happen with businesses setting up store fronts prior to regulations being in place? Mr. Bryant said because the draft ordinance has a mix of licensing and zoning, Staff is trying to place the draft ordinance on the Planning Commission agenda in November so it can then come to Council for First Reading at the end of November or first of December with Second Reading in December to have these regulations in place before January. Staff has not moved forward in approving anything the ordinance does not authorize and Staff will not move forward until they know where Council wants these businesses to be located. He said Staff would like to have the zoning piece in place as soon as possible and Staff has taken a conservative approach to zoning in the ordinance and asked Council to review that and give Staff some feedback as soon as possible.

Mayor Miller said if there are not a lot of concerns about the zoning piece, then Staff needs to move ahead with placing this on the Planning Commission agenda this week.

Ms. Jeanne Snider, Assistant City Attorney, highlighted amendments to penalties and definition and possession of marijuana. She said possession of marijuana will no longer carry the possibility of jail time. The definition of marijuana has been amended to prohibit possession of any plant from the genus cannabis avoiding the possibility of other species of cannabis to be lawfully possessed. She said marijuana shall not include industrial hemp that is possessed by a licensee or an agent of a licensee pursuant to the Oklahoma Industrial Hemp Agricultural Pilot Program. The Industrial Hemp Agricultural Pilot Program is intended for the purpose of crop research and will be exempt from the definition of marijuana and allow for possession of industrial hemp in accordance with State law. She said penalties have been amended to a maximum of \$400 per State law. She said it is unlawful for any person knowingly or intentionally to possess marijuana unless the person has in possession a current and valid permit issued by the State of Oklahoma for such possession.

Councilmember Scott asked if there was a way for persons who have previously been convicted and gone to jail for possession of marijuana to appeal that and Ms. Snider said there is basically no way to retro the new laws.

Councilmember Hickman would like to add a Special Use allowance for processors under Mixed Use Development (MUD) because that corresponds to having a dispensary at the location as well. He wondered why the City would not allow processors in C-1, Local Commercial District, C-2, General Commercial District, and C-3, Intensive Commercial District, through a Special Use Permit because he wants to ensure there are opportunities for dispensaries that may also want to do processing. He said a Special Use Permit would at least allow Council the option to review that and decide if the location is appropriate for those types of businesses.

Item 2, continued:

Items submitted for the record

1. Memorandum dated October 5, 2018, by Jane Hudson, Interim Planning and Community Development Director; Jeff Harley Bryant, City Attorney; and Beth Muckala, Assistant City Attorney, to Mayor and City Council, with Attachment 1, Adult Patient Application Information, Minor Patient Application Information, Temporary Patient Application Information, Caregiver Application Information, Business Application Information, and Researcher Application Information; Attachment 2, Oklahoma Statutes Citationized, Title 63. Public Health and Safety, Chapter 15 – Narcotic Drugs - Medical Marijuana; Attachment 3, Title 310. Oklahoma State Department of Health - Chapter 681. Medical Marijuana Control Program; Attachment 4, Title 310. Oklahoma State Department of Health, Chapter 681. Medical Marijuana Control Program, Subchapter 5. Commercial Establishments; Attachment 5, Draft Ordinance; and Attachment 6, City of Moore Ordinance No. 892(18)
2. Memorandum dated October 4, 2018, by Jeanne Snider, Assistant City Attorney, through Jeff H. Bryant, City Attorney, to Honorable Mayor and City Councilmembers with draft ordinance
3. PowerPoint presentation entitled, “Medical Marijuana,” City Council Conference dated October 9, 2018

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The meeting was adjourned at 6:30 p.m.

ATTEST:

City Clerk

Mayor