

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

October 11, 2018

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:02 p.m. in the City Council Conference Room on the 11th day of October, 2018, 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, Hickman, Holman, and Chairman Clark

ABSENT: Councilmember Carter

OTHER STAFF PRESENT: Mayor Lynne Miller
Councilmember Kate Bierman
Councilmember Sereta Wilson
Mr. Jeff Bryant, City Attorney
Mr. Terry Floyd, Development Coordinator
Ms. Shelby Jameson, Administrative Tech III
Ms. Annahlyse Meyer, Chief Communications Officer
Ms. Beth Muckala, Assistant City Attorney
Mr. Shawn O'Leary, Director of Public Works
Ms. Mary Rupp, Interim City Manager
Ms. Jeanne Snider, Assistant City Attorney
Ms. Kathryn Walker, Assistant City Attorney

Chairman Clark moved Item 2 before Item 1.

Item 2, being:

CONTINUED DISCUSSION REGARDING NEW CELLULAR TECHNOLOGY IN THE RIGHTS-OF-WAY.

Ms. Kathryn Walker, Assistant City Attorney, said this subject has already been discussed in the City Council Community Planning and Transportation Committee meetings. She said small cell will help provide 5G service that is placed on poles or buildings that reach a 1500 foot radius, increase the speed, and reduce dropped service in that area. The Oklahoma Municipal League with assistance from the City Attorney's Office put together a working group to develop legislation. The legislation was adopted and will be effective on November 1, 2018. She said on September 26, 2018, the Federal Communications Commission issued a ruling impacting how far state law can go related to Small Cells. She said the City will be receiving applications soon and it was important that both federal and state laws are followed. The ordinance proposes to amend Section 431.2 of the zoning ordinance that addresses communication towers. Small cells are allowed in any zoning category as long as the requirements of the zoning ordinance, building codes, and other regulations such as FAA regulations are met. She anticipated two types of installations are anticipated: adding to an existing pole or installing a new pole, replacement pole, or a modified pole. Each application can contain up to 25 proposed locations for the small cell facilities and each application will have an engineering analysis to make sure the poles can withstand the facility and the accompanying equipment and that it does not interfere with any facilities/signals on the pole. The fees under state law are limited to \$200 for the first 5 facilities on one application with \$100 for each additional facility on the same application. The FCC would like the City to have a higher cost (\$500 per

Item 2, continued:

pole) but because state law limits the City, \$200 is what will be allowed. She said that it would be \$350 per pole for each modified replacement or new pole. The height of the poles are addressed in the ordinance consistent with state law.

If it is put on an existing pole, the small cell facility cannot extend beyond 10 feet of the height of the pole; if it is a new or modified pole, it cannot be greater than ten feet above the height of the nearest pole within 500 feet in the same right of way or 50 feet above ground level. She said the City ordinance adds in some concealment criteria that state and federal law has approved as long as it applies to everyone. She said the City is requiring poles to blend in within the surrounding area as much as possible. If it is a decorative pole, the wires and other equipment need to be contained within the decorative pole. She said there is a spacing requirement of 500 feet. She said She said the City does not want companies to come in and keep putting up new poles; co-locations are encouraged. Staff would like to move forward to the Planning Commission in November since this is a zoning ordinance, and then bring it back to Council in December. Staff is currently drafting the application to meet the November 1st date. She said the ordinance contains a 65-75 day review period by the federal government

Councilmember Bill Hickman said he would like to add language to restrict access in alleyways; also changes should be made to address or add language regarding trees that are going to be planted in rights-of-way in the same vicinity of the poles to be installed.

Items submitted for the record

1. Memorandum dated October 4, 2018, from Kathryn L. Walker, Assistant City Attorney III, through Jeff Bryant, City Attorney, to Members of the City Council Oversight Committee
2. Section 432.2 of Chapter 22 of the City of Norman Code of Ordinances, Communication Facilities
3. Memorandum dated June 22, 2018, from Kathryn L. Walker, Assistant City Attorney III, through Jeff Bryant, City Attorney, to Members of the City Council Community Planning and Transportation Committee
4. Senate Bill 1388

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Item 1, being:

DISCUSSION REGARDING E-SCOOTER LICENSING AND PERMITTING.

Ms. Beth Muckala, Assistant City Attorney, said Bird Rides (Bird) had placed between 35-50 E-Scooter units in Norman on August 17, 2018, and that number steadily increased to over 100. She said she had provided information in Council' packet regarding the City of Austin, Texas, emergency rule issued by the Austin City Manager and a Dallas ordinance provided by the E-Scooter vendors. Oklahoma City (OKC) had received E-Scooters just before Norman and OKC moved quickly to adopt an emergency ordinance requiring a revocable license permit or impose a specific impoundment fee. She said the Norman City Code requires right-of-way permission as well. The City of Norman contacted E-Scooter vendors and requested voluntary removal of the E-Scooters and provided a draft of the revocable permit agreement to the vendors. She said Bird declined to voluntarily withdraw its E-Scooters; however, under our City code, it was felt that they were illegally in our right-of-way which led to the impoundment of some of the E-Scooters. She said approximately 200 E-Scooters had been impounded by either the City or privately, but there are still E-Scooters in the City according to the Bird Application.

Item 1, continued:

Mayor Lynne Miller asked if this policy included dockless vehicles. Ms. Muckala said that is one option but there are several layers; shared vehicles generally, docked vehicles, and dockless vehicles. Dockless vehicles are generally E-Scooters and bikes. Oklahoma City's long term system is a shared vehicle system meant to address all of those areas, but others, such as Austin's, were a dockless mobility and specific to dockless systems.

Mayor Miller said it seemed like the big problems are with dockless vehicles because they are left on the sidewalks, in streams and the road. Ms. Muckala said that moving forward on this issue; staff would be addressing some of the larger policies that was previously discussed in that context.

Ms. Muckala said Council has seen revocable permits before, usually regarding more permanent structures in the right-of-way, such as the patio area at Neighborhood Jam. She said there are already administrative policies in place for the sidewalk café or Food Truck vendors. She said these scooters are not permanent and also they are not being placed in the same distinct area for a certain amount of time. She said it is less predictable where they will end up. When they first provided the E-scooter vendors with an agreement, which were Bird and Lime, Lime indicated they were willing to move forward with the first agreement and Bird declined that agreement saying it was not consistent with their business model. Bird wanted the ability to respond in the short term to the market; they mentioned that they planned to evolve their business around the seasons and around the events in the area and also wanted mid-day restationing. They also said having to identify a particular address and location was not workable for that business model in the long term.

She said to avoid the possibility of two different agreements coming to Council, staff evaluated closely the suggestions made by Bird to our revocable license agreement which slowed the process down. She said the current draft incorporates a lot of suggestions made by City staff as well as Bird. She said one of the changes listed in Attachment F was removal of the need to specify where the vehicles would be placed; the vendor would be free to place scooters according to parking guidelines that are set forth in the agreement while allowing pedestrian access.

Councilmember Robert Castleberry asked if were looking at licensing nest locations or are we just going for the City? Ms. Muckala said the draft talks about nests or stationed locations; the reason why that is a step away from what we have done in the past with this issue is we always require underlying fee property owner permission. A lot of the City rights-of-way are owned by easement and not by fee, so there is an underlying private property owner that owns the fee. In similar situations such as public events whenever that fee owner property is going to be affected, we require that fee owner to sign off on the event before placement or before use by another private individual.

Chairman Clark said her understanding is that in this agreement, we would give them permission to put their business property on the private property of businesses or property owners throughout the City and put it on the property owners to file a complaint to get it removed.

Mr. Terry Floyd, Development Coordinator, said the companies they have spoken with have internal policies and have been able to respond within 2 hours in the event that there is an owner complaining, they can call the reporting number and a local presence from the E-Scooter company would remove them.

Councilmember Wilson said she is curious if we had a not so reasonable company move into the area that was not doing is required, what recourse is there?

Item 1, continued:

Ms. Muckala said they would have an allotted time after receiving the objection to remove it. If they do not remove it, the City would have the right to impound. She said she has located the City's ordinance within our code where the City could apply some fees regarding improper placement if the E-Scooters were impounded. She said another violation would fall under improper parking.

Councilmember Clark said her only concern that she has would be the blocking of sidewalks which could not necessarily be considered the company's fault because the E-Scooter does have a statement with it clearly explaining where to park when you are finished with the vehicle. She said if someone in a wheelchair comes down a sidewalk where an E-Scooter blocks access and they are unable to move it, they would have to make the complaint; that could then take up to 2 hours to wait for a representative to come and move the E-Scooter.

Councilmember Bierman asked how our proposed ordinances differ from Dallas which was presented to us as a model. Ms. Muckala said that we do not have a proposed ordinance yet but Dallas owns a lot of its right-of-way which is a big difference from Norman.

Mr. Floyd said that this license would give them the legal right to be in the right-of-way for now as we develop a more operational policy for licensing the E-Scooters which may or may not replace the agreement.

Councilmember Bierman said she had seen someone bring up the proposal of having a disk placed on the bottom of the kickstand so that these E-Scooters could be parked in the grass without falling over. Mr. Floyd said that definitely could be considered in the discussion and proposal between Council that would be required and part of the license agreement. Mayor Miller said her concern with that would be how much those disks could tear up the grass. She is glad we are talking about a temporary agreement first, because in the future, there could be other types of motorized vehicles introduced which could possibly create more changes.

Councilmember Wilson said that as a business owner, she likes the E-Scooters; she has spoken to other business owners and believes that they also enjoy the idea because it drives foot traffic to their business while providing a mode of transportation. She spoke to a representative from Bird and they have a traffic study/dashboard of movement of people.

Councilmember Hickman said this technology is part of why this business model has arrived here and is successful. He said there would be problems with trying to track down the owner and get permission in advance, especially if the property is a trust. He said a two hour response time is reasonable. Councilmember Clark said we are setting a precedent with this new form of transportation by asking the property owner to make the complaint.

Mr. Floyd said you could look at it from the standpoint of licensing; you have the bad actor clauses within the license. So if your company is irresponsible through the licensed year, it could be revoked or the next year's license could be denied for renewal.

Councilmember Bierman said the City could use census tract data to figure out where the underserved parts of the area are. She said she would like to make sure these mobility options do not just end up centrally located. It could be really helpful on the east side where CART service is a little more sporadic.

Item 1, continued:

Councilmember Castleberry asked if we suggest a that a business owner conduct business in a certain area, what if they do not want to do business in that area. Chairman Clark said she wondered the same. Councilmember Castleberry said they have the technology to do that, if they want to.

Councilmember Bierman asked how many businesses had complained about these being in front of their businesses. Ms. Muckala said the Police Department has been keeping track of calls; however, they do not have the identifiers (business or individual). At least one private business in Norman has impounded the E-Scooters so far but the specifics are not known.

Councilmember Castleberry said he would like to see us take a City wide approach to the license as opposed to the nest approach. He said they should have flexibility to operate where they want because we do not specifically tell Uber or other taxi companies where to operate. Councilmember Wilson agrees with Councilmember Castleberry. She said she likes the disruption of the norm and believes we should embrace this as openly and quickly as we can.

Chairman Clark said this agreement addresses the requirement of submitted an identifiable number and a phone number. While we are working on this other policy, she can make sure that her residents and property owners with concerns have a means of having it addressed promptly. Mr. Floyd said that most of the vendors have a local team or local contact that will take care of any issue that could arise.

Mayor Miller said she likes the term “pilot study” for this issue. It is a good way to gather information to allow Council to make a final decision. She asked how long are we going to be in this pilot study stage. Ms. Muckala said the ordinances that are adopted could be considered temporary and a pilot program of sorts to monitor this and learn more from the business and the City’s response to that business. The permits are fully revocable at all times and with violations of the agreement, are revocable within 5 days according to the current draft.

Mayor Miller said the permit allows 150 E-Scooters in the company’s fleet. She asked if there would be a limit on how many companies could be licensed. Mr. Floyd said there are six companies that have indicated interest. He said we could also reach out to these companies and ask how many E-Scooters are actually in cities around our size to use for future reference. Mayor Miller said that we might consider putting a limit on them for the first 3 years.

Ms. Muckala said the agreement allows for administrative increases and decreases of the fleet size on a monthly basis based on utilizations. If the E-Scooters are not being used as much at a certain time period, we should be able to decrease the fleet size. Right now, the fleet size is around 150.

Councilmember Castleberry said he is concerned because we could be looking at limiting the number of businesses in Norman when we do not regulate the number of hamburger shops, pizza shops, etc. He said he thinks we should let the market determine that, not the City. He also asked if we are going to regulate the chargers; each night, they are taking the E-Scooters off the street and charging them. He asked if we are going to adjust the charging side of it too as a revocable license or if it is just a using side of it. Ms. Muckala said that could be included in the agreement.

Councilmember Castleberry asked what model are we looking at as far as fees. He said utility companies pay to use our right-of-way and are we looking at a franchise agreement or a certain cost a day. Mr. Floyd said that with the fees, there is a chart included in the memo that show numbers move around drastically between cities.

Item 1, continued:

Ms. Muckala said that if we go to this city wide approach where we have owner objection rather than previous permission, we would probably be adding language about permanent 'no' locations where if someone says 'no' at one location, they should not have to do it again. She said they also discussed time to remove being 2 hours; we think the E-Scooter vendors are prepared for that. Also, they are aware of the impoundment and fees that could accompany that. She said that instead of having \$50.00 per nest with a certain number allowed at each nest, they would be able to choose a number at each nest based on need for each location and, of course, owner objection. If that occurs, there would be one large fee. It is basically a rental of a right-of-way space. She said based on the amount of space taken, the cost is \$300 per company per year. Councilmember Hickman said that he disagrees with that and believes a flat license fee such as \$500 or \$1,000 should be charged and add a per bike fee of \$50, for example. Let the business come forward and say how many they would like to have in the City and state the licensing fee for that and they can decide how many they really would like to put out in the market.

Councilmember Wilson said the City could implement a percentage of revenue instead of a flat fee.

Chairman Clark said she supports a business license fee and per vehicle charge. She asked how much money have been spent on impounding the E-Scooters. Ms. Jeanne Snider, Assistant City Attorney, said the Police Department impounded the vehicles and all that could be counted as a cost was their labor. Councilmember Hickman agreed with Chairman Clark. He said Oklahoma City handled it in this way and the City of Norman should do the same thing.

Chairman Clark said she would like to add that the University of Oklahoma could do something different with this issue and we need to consider that also.

Ms. Muckala said she understood from tonight's discussion that the direction Council wanted was to shift to the model of owner objection versus owner permission. She said we will implement what changes Council thinks we need. She said that these discussions on these pending agreements have been ongoing between Bird and Lime. She said there are a few different changes they have suggested that would allow them to be more available for the underserved areas. She said there is a per vehicle, per E-Scooter, per day watch on the usage.

Chairman Clark said she would like to see some kind of event to provide informational and educational activities to residents to get community engagement on how to use the E-Scooters, where to park, etc. There is information on the App, but it would be a great community engagement tool. Mr. Floyd said that perhaps they could have a conference before a meeting to explain what changes were made on the agreement so it could stay on the consent docket.

Mayor Miller asked when these agreement would go forward for approval by Council. Mr. Floyd said the first meeting in November is likely. Ms. Muckala said as soon as we can finalize the agreement.

Councilmember Castleberry said he would like to add that Oklahoma City has seen a dramatic decrease in bike share because of E-Scooters.

Councilmember Hickman said something to consider for the future is to possibly change bike lanes to become more of a transportation lane to allow the E-Scooters to operate in those lanes.

Item 1, continued:

Mr. Floyd said E-Scooters and other modes of the new technology were developed in California in 2017 where many of the companies are based. In some cases, they operated without contacting the municipality at all and the cities had to figure out how to process the implementation of the mode of public transportation.

He said there are a number of factors and policy areas to be considered. General policies to consider would be reserving the right to revoke any permits that may be issued, prohibition of companies based on conduct, establishing operating zones, and duration of the permit. He said after the City establishes their first look at an operational license, they could change the term of the permit or not.

He said policies outlining certain regulations for E-Scooter companies is also something the Committee should consider. Oversight regulations include requirement of companies to remove vehicles within agreed-upon time frames (with penalties for non-compliance); establishment of protocols for use and removal during special events, emergencies, severe/winter weather, construction, etc.; requirement of companies to provide an keep a 24/7 local contact; and requirement to provide their staffing and operations plan for their operation.

Mr. Floyd said a parking policy could be implemented. He said some cities have unrestricted requirements and the E-Scooters are placed wherever they want. He said a second way to regulate parking is encouraged placement providing guidelines but limited enforcement where users/companies place scooters in the right-of-way; Geofencing (scooter operation controlled by GPS parameters); and locked on bike racks;

He said additional policy regulations outlining requirements for the companies to provide certain information to users operating E-Scooters within city limits could also be established as part of an annual license/permit. The regulations could include requirements to provide specific information to their users outlining their 1) privacy policies, 2) penalties, 3) terms of service, and 4) unexpected charges for service.

He said license/permitting requirements could also include standards for data distribution to the city and engagement with users. Policy considerations could include format, retention of the right to request reports, data, other information about system use; data privacy of the company, and data regarding how scooters are located via GPS.

Councilmember Bierman would like to see collision history reports on a monthly basis included in the ordinance and also a clause about data sharing with third parties with either an opt out or opt in to protect consumer privacy.

Mr. Floyd said that there are also some safety provisions that could be added to the permit requirements. They are 1) shutting off the E-Scooter if there is a mechanical issue to avoid a rider being injured, 2) setting a maximum speed, 3) standards for headlights/back lights; 4) identification numbers on scooters, and 5) inspection/maintenance records and standards.

Item 1, continued:

Councilmember Clark said it would be helpful for the next discussion if some ordinance language is put together so Council provide input.

Mr. Floyd said the timeline is we would craft a draft licensing agreement, send it off to the vendors, set up an agreement and then submit to it to Council for approval as soon as it is received. Once the agreement has been approved by Council, Staff will begin developing operational ordinances setting forth licensing regulations. He said the ordinance will be submitted to the Oversight Committee and when it is finalized, move forward for Council approval.

Items submitted for the record

1. Memo dated October 5, 2018, from Beth Muckala, Assistant City Attorney, through Jeff Bryant, City Attorney, to the Council Oversight Committee with Attachment A, Photograph of Bird E-Scooter; Attachment B, City of Austin, Texas, Rule R161-18.09 posted October 2, 2018, Director Rules for Deployment and Operation of Shared Small Vehicle Mobility Systems; Attachment C, Article X, Dallas, Texas, City Code, Dockless Vehicle Permit; Attachment D, Administrative Revocable Permit from the City of Oklahoma City with attached Letter of No Objection from property owner, photograph of nest location, and Certificate of Insurance; Attachment E, and Memorandum from James D. Couch, City Manager, City of Oklahoma City, to Mayor and City Council with attached Financial Impact Report, proposed ordinance, PowerPoint Presentation entitled "Purpose of the Share Vehicle Ordinance"; Attachment F, City of Norman Shared Vehicle Revocable Limited License and Agreement; and Attachment G, The City of Stillwater, Oklahoma Itinerant Merchant/Peddlers License Application
2. Memorandum dated October 5, 2018, from Terry Floyd, Development Coordinator, to City Council Oversight Committee with Attachment A, Fees and Pricing from National Association of City Transportation Officials (NACTO) Policy, 2018: Guidelines for the Regulation and Management of Shared Active Transportation; Attachment B, Small Vehicle Parking, (NACTO) Policy, 2018: Guidelines for the Regulation and Management of Shared Active Transportation
3. PowerPoint Presentation dated October 11, 2018, entitled "City of Norman E-Scooter Policy"

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Item 3, being:

INITIAL DISCUSSION REGARDING POSSIBLE REGULATIONS FOR THE USE OF PLASTIC BAGS.

Chairman Clark said that the plastic bag discussion has arrived as an issue needing to be discussed soon because Oklahoma Municipal League has informed her that this will more than likely than not, return to the legislature. Some issues that have been brought up on this subject so far are:

Item 3, continued:

- Fee vs. Ban
- 5 cents vs. 10 cents
- Does it apply to paper as well as plastic?
- Does it apply to food stores only or does it apply to all retail stores as well?
- What programs could be funded by this fee?
- Educational programs
- Free re-usable bags
- Help yourself centers
- Storm water Smart Home Grants
- What exemptions could be provided? Ex: dry cleaning bags, newspaper bags, and carryout bags
- What will we do for lower income residents?

She said she will provide information that she has researched for a future meeting and obtain more information on policies that would be helpful.

Councilmember Hickman said he does not think an overall ban is a viable option; the focus needs to be more on a fee.

Chairman Clark said she agrees with him at this point but it needs to be discussed and brought up again in a future meeting.

Items submitted for the record

1. Memo dated October 5, 2018, from Beth Muckala, Assistant City Attorney, through Jeff Bryant, City Attorney, to the Council Oversight Committee with Attachment A, Photograph of Bird E-Scooter; Attachment B, City of Austin, Texas, Rule R161-18.09 posted October 2, 2018, Director Rules for Deployment and Operation of Shared Small Vehicle Mobility Systems; Attachment C, Article X, Dallas, Texas, City Code, Dockless Vehicle Permit; Attachment D, Administrative Revocable Permit from the City of Oklahoma City with attached Letter of No Objection from property owner, photograph of nest location, and Certificate of Insurance; Attachment E, and Memorandum from James D. Couch, City Manager, City of Oklahoma City, to Mayor and City Council with attached Financial Impact Report, proposed ordinance, PowerPoint Presentation entitled "Purpose of the Share Vehicle Ordinance"; Attachment F, City of Norman Shared Vehicle Revocable Limited License and Agreement; and Attachment G, The City of Stillwater, Oklahoma Itinerant Merchant/Peddlers License Application

Item 3, continued:

Items submitted for the record , continued

2. Memorandum dated October 5, 2018, from Terry Floyd, Development Coordinator, to City Council Oversight Committee with Attachment A, Fees and Pricing from National Association of City Transportation Officials (NACTO) Policy, 2018: Guidelines for the Regulation and Management of Shared Active Transportation; Attachment B, Small Vehicle Parking, (NACTO) Policy, 2018: Guidelines for the Regulation and Management of Shared Active Transportation

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ADJOURNMENT:

The meeting adjourned at 5:15 p.m.

ATTEST:

City Clerk

Mayor