CITY COUNCIL CONFERENCE MINUTES

April 8, 2014

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 8th day of April, 2014, 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 Castleberry, Griffith, Heiple, Holman, Jungman, Kovach, Miller, Williams, Mayor Rosenthal
ABSENT:	None

Item 1, being:

CHANGE ORDER NO. THREE TO CONTRACT NO. K-1213-88 WITH URBAN CONTRACTORS, L.L.C., INCREASING THE CONTRACT AMOUNT BY $341,590 FOR A TOTAL CONTRACT PRICE OF $3,274,832 FOR THE FYE 2011 SEWER MAINTENANCE PROJECT.

Mr. Charlie Thomas, Capital Projects Engineer, said recently the Sooner Mobile Home Park on Classen Boulevard at Constitution Street was approved for re-development as an apartment complex. The public sewer lines therein were constructed of vitrified clay pipe in the 1960s and are severely deteriorated due to the age and the large number of service connections for the many mobile homes in the park. Most of the homes have been removed which allows the City's contractor, Urban Contractors, L.L.C., to efficiently rehabilitate approximately 2,380 feet of sewer line. Also during the project construction, the Sewer Line Maintenance Division requested assistance to prevent potential failure of additional defective sewer lines that are not in the project area, which consists of 2,880 linear feet in the area bounded by Timberdell Road to the north, Pickard Avenue to the west, Lakewood Drive to the south, and Chautauqua Avenue to the east.

Mr. Thomas said Urban Contractors, L.L.C., agreed to replace the line and manholes for the work in both locations at the contract unit prices and the overall cost of sewer line replacement under this bid is approximately $72.00 per foot compared to the typical $100.00 per foot cost.

Mr. Thomas said Change Order No. Three to K-1213-88 will increase the contract amount by $341,590 from $2,933,242 to $3,274,832 and if approved, the cumulative increase for all change orders to the project will be $500,632 or about 18% of the original contract amount of $27,774,200.

Councilmember Castleberry asked if the funding will be coming out of a utility fund or the General Fund and Mr. Thomas said the funds are being transferred from the Sewer Fund, Project No. WW0200, Sewer Maintenance Project, FYE 2013, Construction 321-9338-432.61-01 that has accumulated some residuals from previous projects to Project No. WWW0064, Sewer Maintenance Project, FYE 2011, Construction 321-9338-432.61-01. Councilmember Kovach said he appreciates Staff doing the work at this time while also saving nearly 30% on the cost(s) and wondered whether there is sufficient fund balance to look at other projects that might also be done at this bid price. Mr. Thomas said a new annual project is about to go to bid and as soon as cost(s) are determined; other projects can/may be considered.

Change Order No. Three to Contract No. K-1213-88 is included on Council's regular meeting agenda later this evening.

Items submitted for the record

1. Text File No. K-1213-88 dated March 25, 2014, with map of Aspen Heights Development formerly Sooner Mobile Home Park and Sewer Maintenance Plan FY2011 Supplementary dated February 28, 2014
2. Change Order No. Three to Contract No. K-1213-88 with Change Order Detail and Detailed Cost Itemization

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Item 2, being:

DISCUSSION REGARDING ESTABLISHING BUFFER ZONES FOR DEMONSTRATORS NEAR PUBLIC SCHOOLS.

Mr. Jeff Bryant, City Attorney, said Staff met with representatives from Norman Public Schools on March 26, 2014, regarding the possibility of an ordinance establishing buffer zones for demonstrations near public schools.

On March 31, 2014, the City Manager received a letter from the Norman Public School District which pledged full support for a reasonable time, place, and manner regulation relating to demonstrators on public Rights-of-Way (ROW) near public schools.

Mr. Bryant said this issue really gets into an area of constitutional law and there are certainly some competing interests about free speech rights and right to demonstrate versus the rights the United States (U.S.) Supreme Court have identified as a right for school children to have a peaceful learning environment during school session(s). He said demonstrating, picketing, rallying, and leafleting are all expressive activities and are protected under the U.S. Constitution. Mr. Bryant said the U.S. Supreme Court has said that schools do have a substantial and/or compelling interest in preventing demonstrators/demonstrations that disrupts the school process and maintain a peaceful environment that is conductive to learning. On public streets, sidewalks, parks, etc., the State (in this instance the City) may enforce regulations of time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communications.

Buffer Zones Near Public Schools

1. *Police Department of City of Chicago v. Mosley, 408 U.S. 92, 92 S. Ct. 2286, 33 l. Ed. 2d 212 (1972)*
2. *Grayned v. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33L. Ed 2d 222 (1972)*

- Each Case involved an ordinance that proscribed picketing within 150 feet of a school, but created an exception for peaceful picketing of a school involved in a labor dispute.
- The Court found that schools have a substantial interest in stopping picketing that disrupts school, *Mosley*, and a compelling interest in maintaining the peaceful environs of a school conducive to learning, *Grayned*, but invalidated each ordinance because they were not content neutral.
- A number of legal commentators have concluded that the ordinances at issue in *Mosley* and *Grayned* would have been upheld if they were content neutral – e.g., no picketing at all or all peaceful picketing.

Mr. Bryant said Staff has taken language from the above two Supreme Court cases and drafted proposed language similar to court tested provisions as follows:

- A person commits disorderly conduct when he knowingly:
  - ❖ Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session, one-half hour before the school is in session and one-half hour after the school has been concluded.
- Time, Place, and Manner Regulation
- Content –Neutral and apply to all demonstrators whether promoting church attendance, anti-abortion, or some other matter of public concern, etc.
- Narrowly Tailored to serve a Significant or Compelling Government Interest
- Leaves Open Ample Alternative Channels of Communication

Staff provided maps of Norman High School, Norman North High School, Longfellow Middle School, Alcott Middle School, Irving Middle School and Whittier Middle School depicting the buffer zones for demonstrators at each.

Councilmember Jungman asked about the 150 feet limit and Mr. Bryant said it was selected based on presidential value. Mr. Bryant said Staff looked at 100 feet which would place demonstrators off of school property but not off public ROWs, as well as 500 feet which was quite a bit further than what the Supreme Court cases addressed. He said

Item 2, continued:

Staff tailored tonight's presentation ordinance to what had been looked at by the Supreme Court and it would be up to Council to determine the appropriate distance. Mr. Bryant suggested Council not to go under 150 feet because of the Supreme Court cases above and also mentioned a Massachusetts Supreme Court case making its way through the system regarding an established 35 feet buffer zone around an abortion clinic. He said although there has not been a ruling made on it yet, the Court may be struggling with the fact that 35 feet is too great of a distance and it is not consistent with 150 feet cases from 1972. He said this constitutional law area is very much a balancing of interest and very much a "line drawing" by the U.S. Supreme Court to decide free speech rights which in this case a peaceful learning event.

Councilmember Williams asked whether there have been any other cases with schools that have been successful and Mr. Bryant said Staff has not found a case that ruled directly with a school. Councilmember Williams asked how this would affect property owners within the 150 feet area that may want to put a sign in their yard, i.e., invitation to church, campaign signs, etc., and Mr. Bryant said this is something that would need to be addressed; however, the law seems to indicate picketing as being more than one person.

Councilmember Kovach said a (usual) requirement of picketing is that they do not block sidewalks and/or keep moving and he has witnessed picketers rested in an area, not moving, for a considerable period of time. He asked Staff what was being done within the confounds of the ordinance to address this issue. Mr. Bryant said picketers cannot block the sidewalk, be physically abusive to passersby and law enforcement personnel can be called out to make certain requirements are enforced. Mr. Keith Humphrey, Norman Police Chief, said Norman Police Officers were on sight during the recent picketing at Norman North High School to ensure there were no confrontations and/or disruptions. He said Officers also ensured no sidewalks and/or roadways were blocked. Councilmember Kovach asked whether any similar ordinances required picketers to keep moving and Mr. Bryant said he did not think there was any ordinance language stating the picketers must keep moving, but Staff will research that issue. Chief Humphrey said picketers/demonstrators can stand on a sidewalk or in the roadway as long as someone can pass or get through. Councilmember Kovach said he was also concerned with picketer's/demonstrator's signage being so large that they impede sidewalk traffic and/or block the vehicle traffic site triangle.

Councilmember Miller felt other schools have had similar experiences such as the recent ones Norman has had and asked Staff if they were aware of any schools passing similar ordinances, whether challenged or not, that have worked for them. Mr. Bryant said he was not aware of any other cities that have passed similar ordinances.

Councilmember Castleberry asked if the proposed ordinance would cover elementary schools and Mr. Bryant said yes. Councilmember Castleberry asked what the penalty would be for disorderly conduct and Mr. Bryant said the fine can be up to $50 to $750 fine and/or up to 60 days in jail.

Councilmember Jungman the proposed language states within a school building; however, the maps are within the property lines and Mr. Bryant said Staff would change the language to reflect property line. Councilmember Kovach suggested Staff speak to Brady Henderson with American Civil Liberties Union (ACLU) because he believes there can be an ordinance crafted that protects free speech. His concern was how to craft the language and at what point that the 150 feet would begin. He said his main concern is that if Norman does adopt an ordinance, he does not want to give false hope to the community and have it struck down. Mayor Rosenthal agreed limiting ordinance language that will be even more narrowly tailored to emphasize ingress to egress to public school facilities and felt it was very much worth investigating as we move forward.

Councilmember Williams said he understands the need for a buffer ordinance and wants to protect the school children of Norman; however, he is concerned about taking rights away from parents as well as positive picketers and/or demonstrators. He felt the City needed to take time and determine if this is really what we want to do and to start crafting an ordinance quickly would be a mistake. Councilmember Williams said an ordinance needed to be crafted in such a way that it will be successful, but to date there has not been a successful ordinance. He said he is all for free speech but does not support what the recent picketers did. Mr. Bryant said Staff will certainly go at whatever pace Council desires and felt the Norman Public School District was not necessarily in a big hurry; however, they felt like it

Item 2, continued:

was very important to distance our deliberation on this issue a little bit from the recent event to make sure we focus on a regulation that is content control neutral rather than targeting any one particular group.

Councilmember Miller understands the need to be careful; however, this is a true problem in Norman so there needs to be something in place to protect the children. She felt just because there is cautiousness about the issue does not mean Council should stop investigating what might be able to be done as a community and Councilmember Heiple echoed the concern. Mayor Rosenthal agreed with Councilmembers Miller and Heiple and requested Staff bring back refinement(s) of the ordinance after talking with Brady Henderson with the ACLU.

Mayor Rosenthal said another issue that deeply concerns her is the fact that minors are filmed and/or photographed and their pictures are being placed on the internet without their consent or their parent's consent. She requested discussion as to whether or not the City can address this issue and, if not, how can an individual address this situation. Mr. Bryant said it is very difficult for the City to address this particular issue. He said there is an Oklahoma Statute that talks about getting consent, not only from minors but anyone, if their likeness is used for commercial purpose(s) and the question would be "is posting a picture on the internet a commercial purpose," and then "determining whether consent is really required." Mr. Bryant said in any event it is more of a private matter between the person in the picture that is being used and of those person(s) posting the picture and there is very little a City can do to enforce that particular regulation. He said certainly a distance of a 150 feet can lessen the ability of taking a photograph, i.e., cell phone photographs, etc., however, eliminating pictures from high resolution cameras may not be possible. Mr. Bryant said the City could possibly pursue action against the person taking the photograph, but will need to do more research on this topic. Mayor Rosenthal asked if the parent of the minor would be the party that would have to pursue private action and/or litigation against the alleged offender and Mr. Bryant said yes.

Councilmember Heiple said this issue sounds a lot like bullying and somewhere, sometime, a line will have to be drawn. He felt if the same bullying process that Chief Humphrey and Dr. Joseph Siano, Norman Public Schools Superintendent, used and applied <u>inside</u> the school(s) was used and applied <u>outside</u> the school(s), the City will have an answer.

Councilmember Griffith said it seems as though the demonstrators are making their presence known on public access roads trying to gaining more visibility and felt they are not going to picket soccer. He said one idea/option would be to limit their picketing to just across the street or whatever public ROW. Councilmember Griffith said those dimensions can vary or the same dimensions could apply to every school. He felt this option would not restrict positive demonstration; however, it could keep undesirable demonstrators from affecting school children.

Dr. Rich Randall, Senior Pastor, Northhaven Church, he said he is in full support of the buffer zones. He has done doctoral work on first amendment rights and believed the City would have a difficult time enforcing an ordinance regarding buffer zones. Dr. Randall said he has an issue with protestors videotaping minors without their consent while standing on public property and felt there has to be some law instituted that makes that illegal to be used in a commercial or in a profiteering way, regardless if monetary or not. He understands that the City cannot do anything under the current ordinances and statutes but it is wrong when the rights of the protestors outweigh the rights of the minors.

Dr. Randall said his son's image was captured by one of these protesting organizations and then placed on YouTube. He contacted YouTube citing civil law and his son's picture was removed; however, at the same time it does not prevent the protesting organization from using his son's picture anywhere else on private websites, etc.

Dr. Randall said he takes issue with the fact that he sends his children to state/government institutions and the City does not have an ordinance that can protect their privacy from outside organization(s). He asked for Council guidance on how to educate the citizens to change the system, whether by contacting our State Representatives, talking to our Councilmembers, etc.

Item 2, continued:

Ms. Valerie Lambert, parent of Norman High School Student, thanked Council for talking about this issue. She said her family, including her high school daughter, has exercised their first amendment rights to picket; however, she does not feel the need as a parent to picket high school students.

Council discussed and desired to move forward with an ordinance that is to be added as a new section to Chapter 15, Article V, Section 15-509. Staff will research the content neutral, time, place, and manner restriction and bring back to a future study session. Councilmember Williams and Castleberry requested public input before First Reading.

Items submitted for the record

1. Memorandum from Mr. Rickey J. Knighton II, Assistant City Attorney, and Ms. Jeanne M. Snider, Assistant City Attorney, to The Honorable Mayor and Councilmembers, dated April 3, 2014, with Attachment A, Letter from Dr. Joseph Siano, Superintendent, Norman Public Schools, to Mr. Steve Lewis, Norman City Manager, dated March 31, 2014
2. PowerPoint entitled "An Ordinance Establishing Buffer Zones for Demonstrators Near Public Schools, City of Norman, City Council Conference," dated April 8, 2014

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Item 3, being:

DISCUSSION REGARDING IMPLEMENTATION OF A MUNICIPAL COURT TECHNOLOGY FEE.

Ms. Rhonda Guerrero, Court Administrator, said Staff from Municipal Court and the City Attorney's Office presented a draft ordinance assessing a technology fee on municipal court convictions to the Finance Committee on March 19, 2014. After discussing the ordinance, the Finance Committee requested it be forwarded to full Council for further discussion.

Ms. Guerrero said over the years municipal court technology has evolved, but the software and/or licenses come at a cost. She said the Police and Legal Departments also incur technology costs associated with administration of the criminal justice system and for prosecution. Ms. Guerrero said the Statutory Authority that allows the municipalities to access a fee is found in Title 11 O.S. § 27-126 and was amended in 2009 to permit the governing body of a municipality to determine by ordinance the court costs and fees that may be charged and collected by the clerk of the court. She said currently court costs are $49.00, of which $19.00 of that is Council Law Enforcement Education and Training (CLEET) fee.

Ms. Guerrero said the City is proposing a Municipal Court Technology Fee of $25.00. She said it would be charged and collected on every citation except standing and parking and those that are voided, declined for prosecution, or dismissed without costs. She said the fee would assist with acquisition, operation, maintenance, repair, and replacement of data processing equipment related to the administration of the criminal justice system and the costs of prosecution. Ms. Guerrero said the District Court currently collects $25.00 upon conviction in criminal cases, i.e., 28 O.S. § 153(D); Midwest City collects $40.00, Enid collect $5.00, and McAlister collects $25.00.

Staff provided three options for Council consideration as follows:

Fee	Cases Disposed/Collected in 2013	Total Revenue
$ 5.00	20,103	$100,515
$ 25.00	20,103	$502,575
$ 40.00	20,103	$804,120

Item 3, continued:

Councilmember Griffith asked the annual costs for the recent technology the Municipal Court has employed and Mr. Rick Knighton, Assistant City Attorney, said that is a difficult question to answer because one of the limitations with the assessed fees by the court are that those fees have to be related to services that are being provided. Mr. Knighton said in this case the services that are being provided are really the costs of the administration of both the justice system and the costs of prosecution, which not only includes the Court but the Police Department and City Attorney's office as well. He said the technology being used with regards to that entire system includes all the Police Officer's laptops, Court and City Attorney personnel desktops, video arraignment equipment, and court related software and therefore that number is difficult to get a handle on. Mr. Knighton said municipal court's cost for technology last year was approximately $20,000, but he stressed the $25.00 fee is being proposed as a technology fee for the entire prosecution process.

Councilmember Williams asked for clarification as to which citations would be exempt and Ms. Guerrero said the standing, parking, and dismissed cases. He asked the current fee versus the proposed fee and Ms. Guerrero said an example is a current fee of $49.00 would go up to $74.00, if the proposal of $25.00 is approved.

Mayor Rosenthal said it was the Finance Committee's recommendation to support the $25.00 proposal and asked if Council would like to move forward. Council discussed and agreed to move forward with the implementation of a Municipal Court Technology Fee.

Items submitted for the record

1. Memorandum from Ms. Ronda Guerrero, Court Administrator, to The Honorable Mayor and Councilmembers, dated April 3, 2014
2. PowerPoint entitled "Implementation of a Municipal Court Technology Fee," City of Norman, Finance Committee, dated March 19, 2014

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The meeting adjourned at 6:20 p.m.

ATTEST:

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City Clerk Mayor