

## CITY COUNCIL STUDY SESSION MINUTES

June 16, 2015

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a Study Session at 5:30 p.m. in the Municipal Building Conference Room on the 16th day of June, 2015, 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 24 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Allison, Castleberry, Heiple, Holman, Jungman, Lang, Miller, Williams, Mayor Rosenthal

ABSENT: None

Item 1, being:

### CONTINUED DISCUSSION REGARDING POTENTIAL REVISIONS TO THE CITY'S OIL AND GAS ORDINANCE.

Ms. Leah Messner, Assistant City Attorney, said the City Council Oversight Committee has been discussing amendments to the oil and gas ordinance since November 2013 and City Council discussed the draft ordinance in a Study Session in January and February 2015. In the Study Session on February 17, 2015, Council requested more information regarding insurance policy limits as well as appropriate limits for environmental/pollution coverage and general liability coverage. They also requested a modification of the proposed waiver procedure to mirror Oklahoma City's ordinance.

Ms. Messner said staff spoke with another insurance provider who recommended \$1 million in general liability coverage, \$1 million in pollution and seepage coverage, \$1 million in workers compensation coverage, and an umbrella policy. Pollution and seepage coverage, as opposed to pollution coverage, covers sudden spills and accidents as well as leaks that may go undetected for period of time.

Councilmember Castleberry asked if most oil and gas operators have umbrella coverage and Ms. Messner said the \$1 million coverage was pretty consistent across the board and environmental policies are also standard; however, the workers compensation coverage and umbrella policy limits seem to vary more. The \$2 million umbrella policy would require operators to have more insurance and some would already be over insured. She said staff is trying to find a middle ground of a good coverage limit that would provide enough coverage, but not be too onerous for operators that do not have that policy currently in effect.

Ms. Messner said staff modified the draft ordinance to incorporate Oklahoma City's process for granting waivers. When a well is permitted in Oklahoma City for multiple well bores the waiver covers all the well bores requested in the application; however, if additional well bores are requested at the same site after the initial application is approved, a new waiver is required.

Councilmember Jungman asked if the operator would be able to re-use the same permitted well bore years later without a new waiver and Ms. Messner said yes. Councilmember Jungman asked if it is common to re-use a well bore several years later and Mr. Jeff Bryant, City Attorney, said sometimes the operator will re-work the well or do maintenance on the well, but unless the well is plugged there is no need to drill again. Councilmember Jungman asked if, historically, operator's drill in existing bores or create new bores and Mr. Bryant said they use the same bore. Councilmember Jungman felt that because the same well bore can be used without acquiring a new waiver, the waiver is not meaningful and that concerned him. Councilmember Castleberry said if someone is allowed to bore five holes, the process used to do that is not a major deal, but if the waiver is granted for five bores and the operator later wants to add additional bores then they would have to come back and request a new waiver. Councilmember Jungman said if someone obtains a waiver and decides to re-bore in that site again 20 years later, how would that affect property owners who may not have owned that property when the waiver was approved. Mr. Bryant said the ordinance requires waivers be filed of record at the County so property owners are aware of the

waiver. Councilmember Miller said this is no different than a property owner selling their easement for a gas or oil line then someone purchasing that property 20 years later. She said as long as the purchaser has a way of knowing about the waiver before they purchase the property then the City has done due diligence. Mayor Rosenthal said the Geographical Information Systems (GIS) Division is updating the City's maps to show all existing and plugged wells in Norman so the public will have that information. She agrees with Councilmember Miller that the City can only do so much and the rest is up to the buyer to become aware.

Councilmember Castleberry said the City creates recoupment districts for road projects and asked if that information is available on properties so purchasers know there is a cost attached to the property and Mr. Bryant said yes, they are filed of record with the County. Councilmember Castleberry asked if the assessment districts are currently depicted on the GIS maps and Mr. Bryant said no they are not.

Ms. Messner said the Governor signed Senate Bill 809 on May 29, 2015, which goes into effect August 21, 2015. The bill allows cities to enact reasonable ordinances concerning road use, traffic, noise, and odors incidental to oil or gas operations within its boundaries provided those regulations are not inconsistent with the Oklahoma Corporation Commission (OCC) regulations. In addition, municipalities may establish reasonable setbacks and fencing requirements for oil and gas well sites to protect health, safety, and welfare of its citizens. Cities *may not* effectively prohibit or ban any oil or gas operations, including fracking. Ms. Messner said the draft ordinance is fairly consistent with OCC current regulations and in compliance with Senate Bill 809.

Councilmember Castleberry asked if the City's ordinance can be more restrictive as long as the City is addressing the issues of road use, noise, etc., and Mr. Bryant said there are a wide variety of opinions on what the language in Senate Bill 809 means. He said staff has tried to be very diligent about comparing OCC rules and regulations with the draft ordinance and, if litigated, the City's rules and regulations are "not inconsistent" with OCC regulations. He said some would argue that not inconsistent does not mean more restrictive while others would argue that not inconsistent does not mean less restrictive. He said there may be some areas OCC has chosen not to regulate at this time so there is good faith argument that if OCC has chosen not to regulate it then the City is not inconsistent. He said staff has had discussions with oil and gas representatives that operate in Norman regarding the language and how it might be interpreted and there are differences of opinion, but staff and the representatives were able to agree to work together to make sure the purposes of what OCC is trying to address and the purposes of what the City is trying to address are being achieved such as noise, odor, roads, clean water, health and safety issues, reasonable setbacks, etc. Representatives felt the proposed ordinance is not inconsistent with OCC regulations.

Ms. Messner said staff added appeals language to the draft ordinance which would allow operators relief from the City's ordinance in the unusual occasion that the ordinance might operate to effectively ban drilling in a particular location. She said appeals will be heard by the Board of Adjustment for the following reasons:

- Appeal from the decision of the Oil and Gas Inspector or for relief from the requirements of Sections 13-1501 to 13-1522
- Appeal from a decision or interpretation of the Oil and Gas Inspector shall be made in compliance with Chapter 22, Section 441.2 to 441.6
- Appeal for relief from the requirements of Sections 13-1501 to 13-1522 as a request for variance – such variance shall be granted upon a finding that a literal interpretation of the provisions of the ordinance would effectively ban the applicant from accessing subsurface minerals

Ms. Messner said if the Board of Adjustment were to deny an appeal under Chapter 13, the appeal would go directly to District Court regarding compliance with Senate Bill 809.

Councilmember Miller felt the appeal process was fair and asked if language was drafted because staff was concerned about some of the watershed areas where setbacks would not allow drilling. Mr. Bryant said yes, an oil and gas representative gave an example of concern about some of the City's regulations that included stream planning corridors, setbacks, certificate of survey plats, un-platted property, etc. He said when you start laying these regulations on top of each other there are areas in Norman, particularly southeast areas, where drilling would be prohibited under the City's regulations and an appeal could help find a solution to that.

Mr. Bryant said the particular example regarded one owner who owned 40 acres with one residential structure and the prior owner had filed the certificate of survey plat so that certificate of survey plat prevented an oil well from being drilled on the property under current City regulations; however, the original owner owned the mineral rights, but with all the regulation overlays the owner had no way to access their minerals. Mr. Bryant said in a case like that, an appeal could be made to the Board of Adjustment that a literal application of the City's rules and regulations on oil and gas permits effectively banned drilling, but if the purposes of why those regulation were put in place could still be met and follow the literal application then perhaps there would be room for a variance. He said the Board of Adjustment would look at the application and help find a way for an exception while still satisfying what the ordinance is trying to protect.

Councilmember Jungman asked what, in that example, is preventing the drilling and Mr. Bryant said the certificate of survey plat. Councilmember Jungman asked if operators cannot drill on platted ground and Mr. Bryant said no, not under the current ordinance. Councilmember Jungman asked in that example the owner and mineral right owner are different people and Mr. Bryant said no, they are the same. Councilmember Jungman asked if the property owner could just take the plat away and Mr. Bryant said that could be an option, which is a District Court process requiring notice and vacation of the plat. Councilmember Jungman asked what would stop that process from being successful and Mr. Bryant said he was not sure without going through all the steps of the process, but it would be more costly to go that route as opposed to seeking a variance.

Councilmember Castleberry said a certificate of survey plat is a property right and in order to vacate the plat the property owner would have to give up their current property right and Mr. Bryant said that is true if the property owner owns all the property in the certificate of survey plat. Councilmember Castleberry said if the property owner and mineral owner were different the mineral owner could claim the City is not allowing access to their minerals. Mr. Bryant said if the oil and gas operator is not able to work out some type of lease arrangement with the property owner then they may argue that. Mr. Bryant said in a situation where the mineral owner is not the same as the surface owner the first step an oil and gas company takes is to contact the surface owner to try to work something out and if that cannot be done they move onto the mineral owner to try to work something out.

Mayor Rosenthal said it is important for the ordinance to have that appeal process.

Councilmember Miller said in Section 13-1513(c) regarding storage tanks language states, "No storage tank shall be located closer than one hundred (100) feet to a street or highway right-of-way, nor closer than six hundred (600) feet to a dwelling, business structure, church or school, unless the distance requirement is waived by the affected landowner." She asked if that meant the landowner could waive the 100 feet to a street or highway requirement and Mr. Bryant said no, the City or State owns the streets and highways so only the City or State could waive the 100 feet requirement.

Councilmember Castleberry said Section 13-1519 regarding plugging of wells states, "The City of Norman requires a minimum of two hundred (200) feet of cement to be set at the end of the surface casing. Of that two hundred (200) foot minimum, at least one hundred (100) feet shall extend above the bottom of the surface casing and at least one hundred (100) feet shall extend below the bottom of surface casing. In addition, at least fifty (50) feet of cement shall be pumped extending from five (5) feet below the restored ground level elevation down into the well bore." He asked if that meant two hundred fifty (250) feet of cement would actually be required and Mr. David Wood, Oil and Gas Inspector, said the surface casing is approximately twelve hundred (1,200) feet deep so when the operator plugs the well they will run thirteen hundred (1,300) feet of pipe into the bore then start

pumping enough volume of cement to be above a two hundred (200) foot plug that will be one hundred (100) feet into the surface pipe. After the cement has set, the operator will go in with a wire line and tag the top of the plug to make sure the plug is at least one hundred (100) feet in the surface pipe.

Mayor Rosenthal said the ordinance is ready for First Reading on June 23rd with Second Reading on July 14th.

Items submitted for the record

1. Memorandum dated June 15, 2015, from Susan Connors, Director of Planning and Community Development and Jeff Bryant, City Attorney, to Honorable Mayor and City Councilmembers
2. Draft Ordinance
3. Enacted Senate Bill No. 809 – Regulations of oil and gas activities
4. Oil and Gas Regulations Comparison Chart
5. PowerPoint presentation entitled, "Proposed Amendments to Oil and Gas Ordinance," Norman City Council, dated June 16, 2015

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The meeting adjourned at 6:10 p.m.

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ATTEST:

  
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City Clerk

  
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Mayor

