

## CITY COUNCIL CONFERENCE MINUTES

May 24, 2016

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:00 p.m. in the Municipal Building Conference Room on the 24th day of May, 2016, 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 Allison, Castleberry, Heiple, Holman, Jungman, Karjala, Lang, Miller, Mayor Rosenthal

ABSENT: None

Item 1, being:

### CONTINUED DISCUSSION REGARDING THE CREATION OF A STORM WASTER UTILITY.

Mayor Rosenthal said several Council meetings and public meetings have been held regarding a Storm Water Utility (SWU). When Council met in a Conference on May 19th, Councilmember Miller suggested several amendments and after much discussion, Staff was directed to draft additional changes that included clarifying language to allow the SWU rate to be presumptively billed to the holder of the City of Norman utility account; clarifying a definition of governmental agency to exclude the University of Oklahoma (OU); clarifying the appeals process; incorporating language to allow credits for best practices and low impact development (LID) practices; include language to provide for the City Manager to identify and prioritize capital improvement or enhanced maintenance projects; delay effective date for public schools and entities qualifying under 501(c)(3); and rate caps for schools, government entities, and non-profit agencies. She said tonight Council will review and address each of these proposals.

### UTILITY ACCOUNT BILLING

Ms. Kathryn Walker, Assistant City Attorney, said the SWU will be billed to the “responsible party,” which is defined as the person or entity responsible for paying the monthly storm water utility rate and shall presumptively be the same person or entity responsible for water, sewer, or trash service, as applicable. A person or entity other than the presumptive responsible party may be assessed and billed the SWU providing proper documentation to the City’s billing department.

Councilmember Karjala asked how multi-family units will be calculated and Ms. Walker said if each resident receives a utility bill, Staff will need to review the amount of impervious surface per parcel and divide that among number of residents. Councilmember Castleberry asked how a multi-unit parking lot would be allocated and Ms. Walker said a parking lot would probably be billed to the property owner. Councilmember Allison asked if that meant tenants would be billed if they had a meter and the property owner would be billed for common areas, such as the parking lot, sidewalks, pool area. etc. Mr. Jeff Bryant, City Attorney, said these are details that will need to be worked out, but the idea is to cross match the number of utility bill that are being mailed to a particular parcel and pro-rate the bill. For instance, if an apartment complex consisted of fifteen units with an impervious surface charge \$150 each resident would pay \$10. Ms. Walker said most apartment complexes have an all bills paid situation where the property owner is being billed and the property owner would in turn bill their residents through their lease agreement.

Councilmember Castleberry asked what happens if a bill is being sent to a corporation and the corporation does not pay the bill and Mr. Bryant said the City would use the same collection efforts it uses for every other utility rate under the Code, which is generally cut of service. If that is not effective, the City has the small claims court option.

UTILITY ACCOUNT BILLING, continued:

Councilmember Castleberry asked what happens if there is a piece of land with no utility service so there is no service to “cut off” and Mr. Bryant said Staff would research County records for the property owner and bill the property owner for any impervious surface. He said there is always the small claims option as well. Councilmember Castleberry asked what it would cost the City in time and money to take this to small claims court and Mr. Bryant said the court filing fee is \$100 or less and it would probably take one hour of Staff time.

Mayor Rosenthal said the reason new collection procedures are not being created since there are procedures already in place for other utilities that would be applicable for the SWU.

GOVERNMENT AGENCY DEFINITION

Ms. Walker said a governmental agency means an executive, legislative, or judicial agency, department, board, commission, authority, institution or instrumentality of the state, other than the University of Oklahoma (OU) or affiliated entities. She said language was created to tie into the rate caps to be applied to commercial and government agencies and ensure the cap will not be interpreted to apply to OU. Staff also added language that recognizes OU’s status as a Municipal Separate Storm Sewer System (MS4) entity that has to follow state and federal regulations to make sure they are managing their storm water. She said the City and OU will need to negotiate an agreement considering impervious surface that contributes to the storm water system and efforts toward their own MS4 permit.

Councilmember Castleberry asked what OU’s MS4 permit requires of them and Mr. Shawn O’Leary, Director of Public Works, said OU does a lot of public education programs for students and faculty regarding utilities and they maintain pipelines, inlets, etc. Councilmember Castleberry asked if they are required to perform street sweeping and phosphorous control procedures for run-off and Mr. Greg Hall, Street Maintenance Superintendent, said OU has one street sweeper, but it is inadequate and is used mainly for sweeping sidewalks. Mr. O’Leary said OU has a pretty minimal program, but their permit is on hold just like the City’s, until they meet state mandates so part of the negotiations with the City can be about working together to meet the same goals.

Councilmember Castleberry asked if their storm water flows into Lake Thunderbird and Mr. O’Leary said some storm water does, but most of it predominately runs off into the Canadian River, Bishop Creek, and Imhoff Creek. Councilmember Castleberry asked if they OU has the same requirements for Total Maximum Daily Load (TMDL) as the City said since run-off is not going into a sensitive water source and Mr. O’Leary said absolutely, the MS4 Program encompasses all water systems. He said the City is currently working with the Oklahoma Department of Environmental Quality (ODEQ) on a Canadian River TMDL. He said the Lake Thunderbird TMDL is the first of many in the State of Oklahoma.

Councilmember Holman asked if OU’s permit impacts how they build their buildings and Mr. O’Leary said not really, but OU is ultra-sensitive to reducing run-off. Councilmember Holman said the OU Duck Pond is basically Bishop Creek, which is part of OU’s property, and asked if their permit impacts that portion of Bishop Creek. Mr. O’Leary said yes, Bishop Creek would be the focus of their permit as far as best management practices to prevent pollutants to Bishop Creek.

Councilmember Castleberry asked what legal authority does the City have to charge OU a storm water fee since OU has their own storm water permit. Would that be a jurisdiction issue? Mr. Bryant said it would be treated similarly to other utility fees charged to OU and Staff would meet with OU representatives to negotiate a fee that both parties agree is fair and approved by both governing bodies. The agreement would take into account duties the City could perform, such as street sweeping, for OU and if there is a value to that.

GOVERNMENT AGENCY DEFINITION, continued:

Councilmember Castleberry said OU is facing budget issues, but they always negotiate in good faith and he expects them to continue to negotiate in good faith; however, could they legally say, “the fee is too high, we are not paying it? We do not have \$150,000 per year to do that. We have our own permit and the City does not have jurisdiction over us.” Mr. Bryant said there is certainly an argument under Oklahoma law that OU is a separate sovereign entity not subject to municipal jurisdiction; however, there is also a body of case law developing in the Fifth Circuit Court focusing on storm water quality issues and it does seem to give a broader authority for municipalities implementing MS4 permits to impact not just the university, but also State and County facilities. Mayor Rosenthal said it would seem quite difficult for OU to raise that argument since they pay the Tulsa storm water fee. Councilmember Castleberry said they do not have a MS4 permit in Tulsa and Mayor Rosenthal said they pay the storm water fee based on the Equivalent Residential Unit (ERU) in Tulsa. Councilmember Castleberry felt OU’s argument would be that because they have a storm water permit in Norman, they should not have to pay the fee.

Councilmember Castleberry said speaking of sovereign entities, would there be a problem with tribal land and Mr. Bryant said Staff has not researched that specifically, but it would be a similar argument although tribal land is one further step removed in being a sovereign entity. Tribal sovereign entity comes from federal law as its base so if the federal courts are allowing entities that are implementing MS4 permits to have the broader jurisdictional authority then that would extend to this situation.

Ms. Walker said the City has negotiated contracts with OU on other municipal utilities where OU pays a portion of the utility rate so Staff would approach the SWU in the same way.

APPEALS PROCESS

Ms. Walker said in its meeting of May 19th, Council asked for clarity on how an appeal process would work if someone wanted their rate calculated strictly on ERU’s rather than a simplified tiered rate structure. Staff reviewed the appeal language and made no changes because the language already covers that, as written. The language allows the City Manager to hear appeals from parties that want to establish a more exact fee assessment based on their actual impervious surface.

Councilmember Lang asked what the impact would be to the budget by making such an allowance and Mr. O’Leary thought it would have a minor impact.

CREDIT FOR BEST PRACTICES AND LOW IMPACT DEVELOPMENT (LID) PRACTICES

Ms. Walker said language was added to allow the City Manager, in accordance with policies adopted by City Council, to determine whether to grant credits against the SWU rate for entities that utilize low impact development (LID) strategies that have been shown to reduce the quantity and/or improve the quality of storm water runoff from their property.

Mayor Rosenthal said it looks like Staff drafted the language in a way that does not tie it back specifically to the LID Design Manual adopted by Council when the SWMP was adopted so could there be emerging practices that would be allowed? Ms. Walker said that is correct, Staff wanted to allow for flexibility in case future practices or technology emerged that are not in the LID Manual, but would improve the quality or quantity of water. She said the policies set forth by Council would be more specific about how those credits would be granted.

CREDIT FOR BEST PRACTICES AND LOW IMPACT DEVELOPMENT (LID) PRACTICES, continued:

Mayor Rosenthal felt during the period of implementation it would be better to reference to the existing LID Manual, at least for the interim, with other LID practices to be determined. She is thinking about the time period that might be required to develop a full policy and whether there should be a reference to LID policies that have already been specifically adopted by Council and then allow for others. Mr. Bryant said Staff will do whatever Council desires. He said Staff left the language fairly broad because Staff felt there had not been sufficient discussion about what those credit levels might be or how they might work so no credits would be implemented until that policy comes forward and is adopted by Council. Mayor Rosenthal agreed that that made sense.

Councilmember Karjala thought Council had agreed to allow credits to be handled by Staff, and LID policies already adopted could be credits for people developing in the future. Councilmember Allison agreed and said he thought the City Manager would have the ultimate decision. Ms. Walker said language is written for that under City Manager duties so they would not come to City Council, but Council would adopt the policy that guides Staff on what should be done. Councilmember Karjala thought there was a LID policy already in place and Ms. Walker said Council adopted an LID Manual in the context of the Water Quality Protection Zones (WQPZ) and that is what Council has discussed using to help guide the creation of this policy to give Staff an idea of what reduces water quantity or improves water quality.

Mayor Rosenthal said a policy determination Council would have to make is whether credits of 25%, 50%, or 100% would be given based on the best practice employed. The LID Manual contains engineering standards to help with design.

Ms. Walker said Staff also incorporated language to grant credits for public schools when such institutions are offering programs in education on best practices, conservation, etc.; however, no credit would be issued until a policy was adopted by Council.

Councilmember Allison said a lot of additional rules are being created that people are being asked to approve even though the rules are not set forth. How can we get voters to support something we really do not have the answer to in this first ordinance? Will we have the policy in time for the vote?

Councilmember Castleberry said Moore-Norman Technology and OU are public schools so is OU being overridden because it has been addressed in a previous section of the ordinance? Ms. Walker said a public school has been defined as "educational facilities primarily funded through public taxation providing instruction for students which may include Kindergarten through Twelfth Grade or vocational technology instruction."

Councilmember Miller said in the Norman Forward initiative the City did not have all the administrative practices defined in the ordinance, but moved forward for a vote. Mayor Rosenthal said the City is providing an option for schools to apply for allowance of a credit through an education program. Councilmember Allison said Council does not know what that credit will be. Councilmember Castleberry said schools are a key issue in his decision. Mayor Rosenthal said the language provides an option for schools to create programs that would allow them secure a credit against their SWU and Councilmember Allison has just suggested a credit up to and including 100% that could be added the language. Obviously Council will still have to decide what programs get credited, but she does not see how that can be done in advance of the vote.

Councilmember Holman said Oklahoma City, Edmond, Broken Arrow, Tulsa, and Lawton do not exempt or give credits to schools and non-profit agencies. Councilmember Castleberry felt that Oklahoma City is not a City whose example Norman should be following in any situation.

Councilmember Lang said the one area of Norman Forward that tends to cause the most heartburn right now is how to fund the Senior Citizens Center and whether or not it will be a stand-alone facility. That is the one thing the City did not have a clear idea about and he believes that is part of Councilmember Allison's concern. Going into the SWU, he would like to have a good idea of what the actual funding will be.

CREDIT FOR BEST PRACTICES AND LOW IMPACT DEVELOPMENT (LID) PRACTICES, continued:

Mayor Rosenthal said to keep in mind that the City cannot force Norman Public Schools (NPS) to put in programs to secure the credit and Councilmember Castleberry said Council could exempt schools and they would not need to do that.

Mayor Rosenthal said there seems to be consensus on adding language to allow up to 100% credit for public schools, but schools have to develop an educational program that accomplishes the goals for best practices regarding improving water quality and conservation resources in accordance with City policies. She said a large part of the MS4 permit requirement for the City is public education.

Councilmember Miller said she did not know what type of program the school systems would have time to implement that would earn them a \$100,000 credit for the year.

IDENTIFY AND PRIORITIZE CAPITAL IMPROVEMENT OR ENHANCED MAINTENANCE PROJECTS

Ms. Walker said language was added regarding a process for enhanced maintenance as well as capital projects that impact Home Owners Associations (HOAs). One of the City Manager's duties will be to identify and prioritize projects for capital improvements and enhanced maintenance as described in the Storm Water Master Plan (SWMP) and recommend such projects to City Council as funds allow.

Councilmember Castleberry asked if the order of the capital projects listed in the SWMP is the established order or if the projects can be ranked similarly to street maintenance projects. Mr. O'Leary said the SWU projects would be ranked based on certain criteria and brought to Council who will negotiate that ranking during the Capital Budget process so the list is basically a starting point for Council.

Mayor Rosenthal asked if it would be important to include language that actually references utilizing criteria for capital improvements and enhanced maintenance as described in the SWMP, otherwise everyone may assume that the projects listed are the only projects to be considered. She said we all know there have been new and additional projects that have come to the fore that are not in the SWMP and Councilmembers Karjala and Holman agreed. Mr. Bryant said amendment language could be changed to read, "Identify and prioritize projects for capital improvements and enhanced maintenance *utilizing criteria* as described in the Storm Water Master Plan and recommend such projects to City Council as funds allow."

Councilmember Allison said he lives in an area that has a HOA and if a project were to be done in his addition, the HOA would be expected to pay 50% of the costs so what happens in areas with no HOA? Will that money come from the SWU? Mayor Rosenthal said in previous discussions it was decided that just because someone is not a member of an HOA does not mean they will not have to share some of the costs. If the project affects three or four properties that benefit from the project, the property owners will be expected to share costs with the City. Councilmember Allison asked if that could be written into the language that there will be an assessment if there is no HOA to cost share and Mr. O'Leary said this is another area that needs policy discussion. Mr. Bryant said each benefited property would go through a statutory assessment process using guidelines from State law that requires notice and hearing.

Mayor Rosenthal said there is amendment language that states, "Recommend to the City Council a comprehensive storm water management program" and that language could be expanded to include some of the elements Council wants in the comprehensive storm water management program, such as cost sharing. She asked if Council wanted the language expanded and they concurred.

DELAY OF EFFECTIVE DATE

Ms. Walker said if the SWU vote passes, the effective date would be November 1, 2016, except for parcels owned by public schools or 501(c)(3) entities and they would be billed on the first day of July, 2017. She said this gives schools and non-profit agencies time to budget the new fees.

Councilmember Castleberry thought Council had talked about exempting schools and non-profits for one year then allowing Council to review and extend that for another year, but current language does not imply that. Mayor Rosenthal said Council is delaying implementation, not exempting, but as discussed last week, Council has the discretion to further delay implementation when reviewed again in 2017.

Councilmember Karjala said in last week's meeting a question was raised regarding the number of parcels in Norman that are owned by 501(c)(3)s and asked if Staff looked into that. Mr. Scott Sturtz, City Engineer, said Staff does not have that information by parcel, but does have information in the SWMP regarding the amount of impervious surface. Councilmember Karjala asked how delaying that fee would affect the City's budget and Mr. Sturtz said revenues would be approximately \$250,000 annually for non-profits and schools. Councilmember Castleberry said Staff has stated that even with full funding, SWU projects would not be shovel ready for at least one year.

Councilmember Heiple said Council has failed to come up with a simple plan and present a united front on the SWU. It is too important to get this right and what we need to be talking about is a package than can be voted on and accepted by the public that is simple and digestible without sticker shock. This current plan, while fair, gives galactic sticker shock not only to the business community, but several residents and he would submit that it is dead on arrival. Some neighborhoods are experiencing horrible flooding conditions and Summit Lakes has a monster of a problem with their dam. Council needs to come together on this issue.

Mayor Miller said this is a very complicated and complex process and Council's job is to work through all this, which is what Council is doing by going through this language. Council is also trying to incorporate what its constituents have asked to be addressed in the SWU. She understands this process is painful and not everyone agrees on everything, but Council can make this clearer to the public once they have agreed on the basic elements and rate structure of the SWU.

Mayor Rosenthal said it is always complicated to create any utility from the ground up, but Council has had an enormous amount of study and technical documentation about this process and this process is not going to get less complicated because of its technical nature.

Councilmember Castleberry said Council, as a group, has to decide at what level to fund the SWU. Are we talking about \$7.3 million, \$6.6 million, \$5.2 million, etc.? He said that will depend on what Council wants to accomplish i.e., required projects, unfunded mandates, enhanced maintenance, capital projects, etc. If you want to make this simple charge \$5 per month for residential and \$25 month for commercial and that rate structure would create \$5 million.

Mayor Rosenthal said the SWMP proposed projected a monthly average family bill of \$9.91 with a revenue requirement of \$9.6 million for the FYE 2014 to FYE 2019 timeframe. Council is currently talking about something much less than that with a \$7.3 million program that balances program requirements, enhanced maintenance, capital projects, etc., and that amount is what needs to be the goal.

Mayor Rosenthal said Council is clearly not going to come to a decision on the rate structure tonight so an option is to move to postpone the item tonight so Council can talk about the rate structure, but she would like closure on the proposed delay of the effective date, which can be renewed and extended by Council. Councilmember Castleberry said he is good extending the effective date because it is his intent as a Councilmember to vote to extend that every year as long as he sits on Council until the NPS budget is better.

Councilmember Holman wants to make sure NPS plans for the SWU because at some point when their budget allows, they should pay. Councilmembers agreed on delaying the effective date.

Mayor Rosenthal said Council can meet next Tuesday to continue discussion on the SWU and could also meet Thursday, if needed and Councilmembers preferred meeting Thursday, June 2nd since Tuesday is the day after the Memorial Day holiday and many people may be out of town. Mayor Rosenthal said a Special Meeting will be held Tuesday, June 7th, to consider approving the SWU to move forward for an August election.

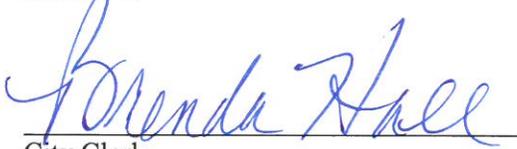
Items submitted for the record

1. Draft Ordinance O-1516-40
2. PowerPoint presentation entitled, "Option C – Modified Non-Residential Rate Proposal, Modified Single Family Utility Rates Per Month and Modified Non-Single Family Utility Rates Per Month"

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The meeting adjourned at 6:20 p.m.

ATTEST:

  
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City Clerk

  
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Mayor

