

CITY COUNCIL
BUSINESS AND COMMUNITY AFFAIRS COMMITTEE MINUTES

December 1, 2011

The City Council Business and Community Affairs Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 9:00 a.m. in the Conference Room on the 1st day of December, 2011, and notice and agenda of the meeting were posted in 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 Lockett, Quinn, Spaulding, and Chairman Ezzell

ABSENT: None

OTHERS PRESENT: Mr. Roger Gallagher, Ward One Councilmember
Ms. Cindy Rosenthal, Mayor
Mr. Harold Heiple, Attorney
Mr. Marc Nuttle, Economic Development Legal Counselor
Mr. Sean Rieger, Norman Builders Association
Mr. Tom Sherman, Contractor
Mr. Tony Tyler, Tyler Outdoor Advertising
Mr. Don Wood, Norman Economic Development Coalition
Mr. John Woods, Chamber of Commerce Director

STAFF PRESENT: Mr. Jeff Bryant, City Attorney
Mr. Bob Christian, Permit Manager
Ms. Susan Connors, Director of Planning and Community Development
Mr. Anthony Francisco, Director of Finance
Mr. Steve Lewis, City Manager
Mr. Doug Koscinski, Current Planning Manager
Mr. Shawn O'Leary, Director of Public Works
Mr. Wayne Stenis, Planner II
Ms. Kathryn Walker, Assistant City Attorney
Ms. Syndi Runyon, Administrative Technician IV

Chairman Ezzell stated with the Committee's concurrence, Item 2 would be discussed first.

Item 2, being:

REVIEW OF THE SIGN CODE ORDINANCE.

Ms. Susan Connors, Director of Planning and Community Development, said the Committee had discussed allowing off-premise electronic billboard signs and asked Staff to draft an amendment to Chapter 18 of the Code of Ordinances. Chapter 18 currently prohibits signs that have "visible mechanical movement" or signs that offer the "optical illusion of movement." She said these types of signs did not exist when the Sign Code was adopted in 1979. She said Staff had met with Mr. Bill Hickman, Attorney representing Lamar Outdoor Sign Company, who had requested Norman's Sign Code be amended to allow digital billboards, digital on-premise signs, and non-conforming signs.

Ms. Connors said issues that need to be addressed as part of an amended Sign Code include brightness, operation, dwell time, animation, message/content, and enforcement.

Brightness: Digital signs utilize light emitting diodes (LEDs) to power their displays and signs must be very bright to compensate for the ambient light level during the daylight hours, which can make them too bright at night adding to their perceived distraction to drivers. If high levels of nighttime luminance are chosen, there is a higher likelihood of negative impacts such as glare, light trespass, complaints of excessive distraction, etc.

Chairman Ezzell asked what other City's standards of brightness were and Mr. Koscinski said they are all different. He said the brightness can become a serious issue for residential areas near business districts and the traveling public. Chairman Ezzell said, theoretically, Norman could have different standards for on-premise and off-premise and Mr. Koscinski agreed. Mr. Koscinski said enforcement can be difficult because the luminance of the billboards is different than the lumens of a regular light bulb. Mayor Rosenthal said the City should match regulations for brightness of billboard as closely as possible with the City's lighting ordinance. Chairman Ezzell asked if technology allows for simple adjustment of brightness and Mr. Koscinski said yes, and that is why enforcement becomes a more critical issue because billboards can be remotely controlled and if the City receives a complaint they need to be able to measure the brightness so the City would need to purchase a Luminance Meter.

Operation: Specific language should be included in the code to require signs to automatically reduce light levels at night based on photometric cells rather than a time clock. Language should also specify that a "fail safe" device be installed that either extinguishes the sign or freezes the display in one position if a malfunction occurs so the sign can not flash uncontrollably.

Dwell Time: Dwell time is the amount of time an individual message is displayed. Industry representatives suggest between six to eight seconds with two seconds to transition between displays. The Oklahoma Department of Transportation (ODOT) regulations for interstate billboards allow an eight second dwell time with four seconds to transition to another display. Research indicates anything that distracts a driver for more than two seconds can cause an increase in accidents; however, it has not been determined that billboards cause any more distraction than talking or texting on cell phones while driving.

Chairman Ezzell felt that ODOT has adopted a more generous dwell time standard and the City should follow their regulations. He also wanted to follow state and federal regulations on the use of animation on billboards and felt they should be static and Councilmember Gallagher felt animation should be severely limited. Chairman Ezzell asked if the real issue on animation was electing to allow animation on-premise but not off-premise. Mr. Koscinski said if the City writes a code that allows animation for on-premise, but not off-premise the City could be opening itself to litigation in the future and the most conservative regulation would be allow static only for on-premise and off-premise

Animation: ODOT allows electronic digital signs based on the premise that they are not "animated," but simply a series of "static" sign messages. That interpretation stems from a federal memorandum issued in 1996 that reinforced the prohibition against animated movement, but was premised upon the concept that changeable messages that were fixed for a reasonable time period do not constitute a "moving" sign. ODOT prohibits actual animation, including scrolling, traveling, flashing, spinning, rotating, fading, dissolving, or any other moving effects.

Message/Content: Norman's code prohibits using signs that imitate or purport to be official traffic signs, but the has not attempted to regulate specific details of any commercial message. Current and upcoming digital technology would allow personalized messages to be broadcast to individual drivers based on license plate identification, facial recognition software, or Global Positioning System (GPS) location.

Chairman Ezzell said message and content was far enough out into the future that it could be discussed when that technology becomes available. Mr. Koscinski said the technology is already being developed and the one that concerns him the most is facial recognition technology.

Enforcement: Like other light related issues, measurements for compliance must occur at night and the technology needed to be accurate is expensive. The Illinois article suggests a luminance meter to be the most effective tool and the cost is approximately \$3,600.

Ms. Connors said Norman currently has 23 off-premise billboards located along I-35 and Mr. Hickman has requested that when signs are removed for a public project, the City should allow the sign to be converted to digital and moved to another location that is not zoned residential and has the distance requirements from residential properties.

Ms. Connors said Staff is asking the Committee for guidance on several topics which would become integral to the discussion of specific ordinance language including:

- As ODOT allows digital technology to be utilized for off-premise signs, should Norman's code be amended to specifically make provisions for such signs, with similar regulations as the State requirements?
- Should Norman's code be further broadened to allow individual businesses to utilize similar technology for their on-premise signs?
- The State prohibits "animation" for off-premise billboards. Does the Committee want to discuss the option for animation of on-premise signs if they can be suitably controlled to minimize impacts on the driving public and nearby residential uses?
- Does the Committee want to delegate the work of drafting actual ordinance language to a stakeholders group who can provide additional feedback with Staff's assistance?

Chairman Ezzell asked if non-conforming signs are the smaller pre-existing billboards located throughout the City and Mr. Doug Koscinski, Current Planning Manager, said yes, when Norman adopted the Sign Code in 1979, the City already had 20 or more billboards throughout the community. He said the City prohibited billboards along Highway 9, which is a scenic highway, but did allow them along major arterials. In 2001, due to some rather large billboards erected in the City that were perceived to be eye sores and/or nuisances, the code was amended to allow billboards only along the interstate. He said non-conforming signs cannot be replaced, expanded, or upgraded and Mr. Hickman would like the code changed so that if signs are removed for a public project, they can be relocated and upgraded to allow digital technology. Chairman Ezzell asked if Mr. Hickman indicated why he was limiting the request to the instance of a taking of a sign for a public project and Ms. Connors said it was because the sign would be non-conforming and the City does not currently allow relocation or upgrade of non-conforming signs. She said if the City allowed relocation of non-conforming signs, sign companies would start relocating signs throughout the City and she felt that Mr. Hickman was trying to be conscious of that. Chairman Ezzell said the non-conforming signs are smaller than highway billboards and asked if it would be possible to replace any relocated signs with larger signs. Ms. Connors said language would prohibit larger signs, but the Sign Code could be amended to allow digital upgrading.

Chairman Ezzell asked what an on-premise digital sign would look like and Ms. Connors said Sonic Restaurants use the digital signs in cities where they are allowed. She said the signs have some type of animation depicting products or specials. Councilmember Quinn said there has been a request from the School District to allow them to install animated signs in front of the some schools and Ms. Connors said the schools want to use scrolling message boards, which are classified as animated or movement signs currently prohibited.

Chairman Ezzell discussed broadening regulations to allow businesses to use similar technology for their on-premise signs. He said he wants businesses and commercial interests to have as much flexibility as is reasonable but he does not want Main Street to look like a Las Vegas strip. He asked how that would be controlled as far as size restriction, proximity to residential areas, brightness, etc., and Mr. Koscinski said that

would take more research. Ms. Connors said Tulsa, Oklahoma, has on-premise regulations and Staff would call the City of Tulsa to see how successful that has been.

Chairman Ezzell asked if language would cover conversion of existing on-premise signs and Ms. Connors said the City would not allow larger signs, but the sign face could be converted to digital.

Chairman Ezzell said he would like to move forward with the off-premise regulations and continue to investigate on-premise regulations. Chairman Ezzell said, as far as drafting the ordinance, he would like a collaborative drafting effort with people in the industry. Chairman Ezzell asked when a draft of off-premise regulations could be ready for a Study Session and Council agenda. Ms. Connors said discussions with the industry would take at least a month depending on their availability at this time of year. Mayor Rosenthal asked if the ordinance would have to be reviewed by the Planning Commission and Ms. Connors said yes, but it could be presented at a Study Session prior to Planning Commission review. Ms. Connors felt the ordinance could be ready for a Study Session in January 2012, and Mayor Rosenthal suggested inviting members of the Planning Commission to the Study Session.

Items submitted for record

1. Memorandum dated November 28, 2011, from Susan F. Connors, AICP, Director of Planning and Community Development, to Business and Community Affairs Committee, with Exhibit A, Chapter 18 of the Code of the City of Norman as amended through October 31, 2008; Exhibit B, Draft of Proposed Sign Ordinance Revision; Exhibit C, Article entitled, "Digital Billboards Today;" Exhibit D, Article entitled, "Digital Billboards, Distracted Drivers – Remember Burma Shave? Large electronic signs distract drivers in new ways", by Jerry Wachtel; Exhibit E, Article entitled, "Illinois Coalition for Responsible Outdoor Lighting – Digital Billboards: New Regulations for New Technology;" and Exhibit F, United States Sign Council – Model Code for Regulation of On-Premise Signs

Item 1, being:

CONTINUED DISCUSSION REGARDING THE CREATION OF A PUBLIC TRUST AUTHORITY TO FACILITATE ECONOMIC DEVELOPMENT AND OTHER ECONOMIC DEVELOPMENT TOOLS.

Mr. Jeff Bryant, City Attorney, said in August 2011, the Business and Community Affairs Committee (BCAC) discussed the creation of a public trust authority for economic development. In October 2011, the BCAC was presented with basic information on the formation of a public trust along with economic development tools. In November 2011, the BCAC was presented with a draft trust indenture for the Norman Economic Development Authority (EDA). At the time, issues were raised regarding language alternatives for a banking representative trustee, delegation of eminent domain to non-elected officials, and the Municipal governing body approving the eminent domain process.

Mr. Bryant suggested the banking representative trustee have strong ties to the banking industry with a minimum of 10 years experience in commercial transaction/lending, be employed as a bank officer, and/or be limited to Norman or Oklahoma banking experience. He said BCAC should also consider whether there would be conflict if the trustee's bank is involved in financial transactions with the EDA.

Mr. Bryant said there are existing safeguards for eminent domain issues. He said the trustees must be appointed by the governing body of the beneficiary, but there is no requirement that any of the trustees be elected officials and, by State law, public trusts are empowered to "acquire lands by use of eminent domain." He said the public trust can decide whether or not to acquire land for governmental use. He said it would be a policy issue to decide if acquiring the land would be a greater benefit to the project rather than the individual or property owner. He said it is not an easy decision, but can be remedied through the court process if the

property owner feels eminent domain process is not appropriate. He said another benefit of the court process is that both parties get protection on the value of the land being acquired. He said municipalities do not want to pay more than the value of the land and by the same token do not want the property owner to be paid less than the value of the land.

Mr. Bryant said the City recently obtained property on Robinson Street and none of the 53 parcels purchased were taken by eminent domain. Councilmember Spaulding asked if the dollar amount had been the deciding factor with property owners or if any had requested additional money. Mr. Bryant said, because the project was federally funded, relocation assistance could be provided and additional funds were distributed for relocation.

Mr. Bryant said the BCAC had discussed limiting the trustee's power of eminent domain by requiring approval by City Council. He said if there is debt financing involved in a project, the governing body must approve the debt financing. He said Council could add an eminent domain process in the trust indenture; however, it may negatively impact the EDA's ability to put together the project in a timely manner. He said it may also invite non-business related consideration to recommendations by the EDA.

Mr. Bryant introduced Mr. Marc Nuttle, Economic Development Legal Counselor, and said he is heavily involved in economic development trust authorities in Ardmore, Oklahoma. Mr. Nuttle said he has been exposed to public trusts around the country, not just Oklahoma. He said Ardmore is probably the most successful example in Oklahoma of how they manage and structure their authority under Oklahoma law. He said the primary reason for a public trust is cheap financing, but an overlooked effect of cheap financing is that municipalities can finance a larger sum of money from the same dedicated revenue stream, which affects the amount of money that can be raised.

Mr. Nuttle said the City of Norman needs to ensure the EDA is not a political entity. He said the board would be fatally flawed if it includes Councilmembers. He said board members are appointed by Council and should be trusted to do their job. He said the EDA will have a mission statement that is on track for making business decisions by qualified members. He said the board needs to be independent from Council. He said Ardmore has been successful because the authority is comprised of private sector people who have a capital background in finance such as accountants, lawyers, developers, etc., and is similar to a bank's board. He said, as far as eminent domain is concerned, it "usually" does not go to court because it is "usually" used on property that is undeveloped. He said Ardmore has not had trouble negotiating prices for land needed to be acquired for projects.

Chairman Ezzell asked if there has been successful deployment of consortium of public trusts such as working with the County to leverage opportunities with Cleveland County's existing industrial authority. Mr. Nuttle said he has not seen much in Oklahoma, but quite a bit on the east and west coasts.

Mr. Nuttle said Council needs to consider the EDA's mission statement and give the statement guidelines such as not supporting a project that does not generate jobs of a certain level or not support jobs without health benefits, etc. He said those businesses can request variances from City Council, but the City does not want an entity that will be opposed to the political process of the City Council. He said most trust authorities in Oklahoma are pretty general in their mission statements to create jobs and tax revenue.

Mr. Nuttle said the base of a public trust is all about secure, dedicated revenue streams. He said sometimes federal money can be used through the public trusts. Chairman Ezzell asked if Mr. Nuttle had seen anything in the Ardmore Trust agreement that he would change or modify and Mr. Nuttle said no, because it is very general and not a political entity. He said, in Ardmore, the development authority, City Manager, and City Council are all on the same page and the trust is similar to running a business. He said there are no disputes on east versus west, north versus south, and no one questions whether one part of town is getting more attention

than another part of town. He said the reason to keep the trust indenture general is to keep it on a business mission. He said you can bend economic rules, but you cannot distort them and City's have to compete for economic development. He said Ardmore is a single minded community on economic development and quality job creation. He said the more Council has to review the EDA actions, the less likely a deal will ever be done because developers have too many options with other cities and they will go to the point of least resistance.

Mayor Rosenthal asked how the Council can make sure there is no conflict with the Norman Economic Development Coalition (NEDC) or other entity and Mr. Nuttle said the EDA is a finance board and is not out chasing deals. He said it is more of a tool to help NEDC. Mr. Don Wood, Director of NEDC, agreed and said it is a tool the NEDC does not currently have and is a tool he can use to compete with other cities.

Mr. Bryant said Hitachi expanded through the Cleveland County's Trust Authority because Norman did not have a trust authority. Mr. Woods said developers go to the County authority because they are off the radar and if Norman makes their trust a Council trust authority, it will be on the radar and unworkable; however, if Norman makes the authority a private trust authority that is business oriented trying to put a deal together for the betterment of the community it will be very successful. Chairman Ezzell asked if that was because the County's trust authority is not political at all and Mr. Woods said yes. Councilmember Gallagher said if the City Council provides oversight of the EDA, how would Council avoid something politically motivated and asked if Mr. Nuttle if he has seen a similar problem and Mr. Nuttle said the problem is that it causes delays in the project. He said Council should have a mission statement that in five years Norman has the reputation of being able to get deals done. Mr. Anthony Francisco, Finance Director, said Council will have final authority on matters just like the Norman Municipal Authority, Norman Utilities Authority, and Norman Tax Increment Finance Authority so Council would have oversight. He said the overriding factor will be whether or not the project is a good business deal.

Chairman Ezzell said he would like to see a revised trust indenture that takes into account Mr. Nuttle's comments in regards to the governance of the trust and independence of the governing body.

Items submitted for record

1. PowerPoint presentation entitled, "Economic Development Trust, Business and Community Affairs Committee, dated December 1, 2011"

Item 3, being:

MISCELLANEOUS DISCUSSION.

None.

The meeting adjourned at 10:05 a.m.

ATTEST:

City Clerk

Mayor