

## CITY COUNCIL STUDY SESSION MINUTES

January 6, 2009

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 6th day of January, 2009, 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 Butler, Cubberley, Dillingham, Ezzell, Griffith, Kovach, Thompson, Mayor Rosenthal

ABSENT: Councilmember Quinn

### DISCUSSION REGARDING CHANGE ORDER NO. FIVE TO CONTRACT NO. K-0607-23 WITH CENTRAL CONTRACTING SERVICES, INC., DECREASING THE CONTRACT AMOUNT BY \$8,602.35 FOR THE FYE 2007 CONCRETE PROJECTS AND FINAL ACCEPTANCE OF THE PROJECTS.

City Council, in its meeting of August 8, 2006, approved Contract No. K-0607-23 with Central Contracting Services, Inc., in the amount of \$441,079.50 for the FYE 2007 Concrete Projects as well as Change Order No. One decreasing the contract amount by \$11,971 to meet budget requirements. Change Order No. Two approved October 24, 2006, increased the contract amount by \$5,300 to add a traffic-calming circle at the intersection of Woodcreek Drive and Briarcreek in the Woodcreek Addition. Change Order No. Three approved December 12, 2006, increased the contract amount by \$45,547.53 to allow for concrete improvements related to the Security Improvements Project at the Water Treatment Plant. Change Order No. Four approved November 13, 2007, increased the contract amount by \$139,500 to allow the construction of top priority projects in the Lions Park neighborhood and sidewalk repairs at the Municipal Complex to correct hazardous locations and comply with Americans with Disabilities Act requirements. Mr. Bob Hanger, City Engineer, said this contract had taken longer because the contractor had been asked to work on other high priority City projects. He said the projects are all completed and the final change order decreases the contract amount by \$8,602.35. He said \$6,298.35 was left over from Lions Park and reduced the Lions Park Neighborhood Sidewalks Project by \$6,298.35 and the Driveway Repair Project by \$2,304. He said the Lions Park portion would be rolled over to FYE 2009 to be added with current funding before it is utilized. He said the Driveway Repair Program was exclusive to core area property owners and there had not been sufficient applications this year to use up the monies allocated for the program.

Councilmember Kovach asked Council to consider expanding this program to other areas of the city if the core area had been saturated. Mayor Rosenthal said the original intent of the program was for older neighborhoods to be able to repair their driveway approaches. She asked staff to look at the criteria for the program to possibly enlarge the area.

#### Items submitted for the record

1. Memorandum dated December 29, 2008, from Bob Hanger, City Engineer, to Honorable Mayor and Councilmembers
2. FYE 2007 Concrete Projects, Actual Work Completed
3. Change Order No. Five to Contract No. K-0607-23

#### Participants in discussion

1. Mr. Bob Hanger, City Engineer

### DISCUSSION REGARDING CHANGE ORDER NO. THREE TO CONTRACT NO. K-0708-107 WITH STORM RECONSTRUCTION SERVICES, INC., DECREASING THE CONTRACT AMOUNT BY \$420,031.40 FOR THE ICE STORM DEBRIS REMOVAL PROJECT AND FINAL ACCEPTANCE OF THE PROJECT.

The City of Norman experienced severe ice storm damage during the months of December 2007, and January 2008, and City Council, in a Special Session on December 21, 2007, authorized the City Manager to evaluate bids, select the lowest and best bidder, and execute the appropriate contract documents for the removal of the storm debris. Contract No. K-0708-107 was approved on December 28, 2007, in the amount of \$1,237,650.99 with Storm Reconstruction Services, Inc., (SRS) for clean up of 235,149 cubic yards of storm debris. Change Order No. One was approved by City Council on January 15, 2008,

which increased the amount of storm debris to be collected to 800,000 cubic yards and increased the contract amount by \$3,245,751.27. Change Order No. Two approved by City Council on September 9, 2008, modified the scope of work to add channel debris removal with no change in the contract amount. Change Order No. Three is a final change order and reduces the contact amount by \$420,031.40. He said the costs were favorable even after the City had to change course in the middle of the disposal process.

Mr. Bob Hanger, City Engineer, said during the cleanup period, the debris had originally been disposed of by burning, but due to environmental and safety issues, the process had been changed to grinding. This process cost \$205,000 more than was anticipated. He said 87% of the cleanup process was reimbursable and 100% was reimbursable for "Classified Roads." He said the total project cost was \$6,000,000 but after reimbursement, the City had expended \$619,000.

Councilmember Butler said it was important for our citizens to know how much the total costs were and how much the City had spent.

Items submitted for the record

1. Memorandum dated December 29, 2008, from Bob Hanger, City Engineer, to Honorable Mayor and Councilmembers
2. Change Order No. Three to Contract No. K-0708-107

Participants in discussion

1. Mr. Bob Hanger, City Engineer

**DISCUSSION REGARDING PROPOSED CITY OF NORMAN ETHICS POLICY FOR CITY COUNCIL AND APPOINTED MEMBERS OF ALL CITY BOARDS, COMMISSIONS, AND COMMITTEES.**

Councilmember Butler said the City Council Planning and Community Development Committee had been discussing the development of a City of Norman Ethics Policy for several months. She said the Committee had reviewed ethics policies from several others cities and Oklahoma Municipal League and used those sources to draft language for a City of Norman Ethics Policy. She said City Council and all members of City Boards and Commissions would use this policy.

Ms. Leah Bunney, Assistant City Attorney, said the Ethics Policy had been identified as a priority policy topic by City Council and throughout the development process the importance of public confidence in government has been stressed. The proposed policy is a consolidation of existing items in City Code, City Charter, and the Personnel Manual. She said the Planning and Community Development Committee met on September 12, October 24, November 14, and December 12, 2008, to discuss the proposed policy and, as a part of that process, examined polices from not only other Oklahoma cities, but cities in other states and policies outlined in the Oklahoma State Statutes. She said Article XVII of the City Charter prevents any officer or employee from being interested either directly or indirectly in any contract with the City of Norman and also applies to the spouse or any interest greater than 5 percent. Chapter 2, Section 2-103, of the City Code addresses the ethical conduct of City Councilmembers, the use of special knowledge, improper influence, and appointments to boards and commissions. Chapter 4, Section 4-105, of the City Code regulates who can be appointed. The proposed policy will apply to the Mayor, City Council, and appointed members of all boards, commissions, and committees. She said there is a separate statement in the proposed policy that applies to ad hoc committees. She provided a list of all boards, commissions, committees, and ad hoc committees and highlighted their method of origin either by City Charter, Code of Ordinances, or Council resolution. The list also highlighted those groups with Council representation and/or City staff representation.

She said one of the main issues was defining actual conflict versus potential conflict and the Committee defined "actual conflict" as an official having a pecuniary interest in or a direct reasonably foreseeable benefit from an action. A "potential conflict" is defined as an action with an indirect effect on a pecuniary interest or reasonably foreseeable benefit to an official. The reasonably foreseeable benefit includes a detriment to a business or organizational competitor of the official; business or organizational competitor of an immediate family member of an official, or business or organizational competitor of a business or entity with which the official or a member of the immediate family of the official is associated. The language for "reasonably foreseeable benefit" was taken from the State of Oklahoma Ethics Commission,

which is the agency that promulgates rules of ethical conduct and issues and issues opinions on ethical questions and potential violations.

She explained the policy would regulate conflict by officials not participating if there is an actual conflict. The official should disclose the actual conflict and not participate in the vote or discussion. Chapter 2, Section 2-108 of the City Code requires a City Councilmember to leave their chair. If an official has a potential conflict, the official may vote and discuss but must disclose potential conflict prior to consideration. The exceptions would be financial interests that are included within the class of citizen, such as property owners and if the majority of the remaining members decide the conflict is minimal. She said the policy also includes a discrimination statement, prohibits disclosure of confidential information, stipulates a duty to report, includes gifts to City Council/Board members, and outlines the role of the City Attorney by allowing him to answer questions about the policy and issue opinions. She said a separate document is attached to the Ethics Policy entitled "Pledge," which is an acknowledgment of the policy to be signed by all those the policy pertains to.

She said a separate policy for ad hoc committees was created due to the unique nature of the committees which serve solely as advisory committees and do not have decision-making authority. Ad hoc committees are created to encourage discussion among citizens and to achieve a special purpose. Often, committee members are selected because they are interested in or are affected by the matter under discussion and recusal would cripple the ability to complete the purpose. Ad hoc members would not be asked to follow the ethics policy regarding conflicts.

Councilmember Ezzell asked that clarification be made to the policy regarding the section on gifts where it states "...a gift under \$100 is permissible if given without the intent to influence but no amount is too small to be ethically questionable."

Mr. Bryant said by State law, if the employee has a 25% ownership interest; it was considered a conflict of interest while the City Charter lists a conflict of interest when an employee has 5% ownership interest. If you are just an employee receiving wages from the employer, it would not be considered an actual conflict. He discussed possible language changes with Council and will draft changes for Council's consideration. Councilmember Kovach said employment of the official could be listed as an actual conflict if an issue was brought forward by an employer of an official. He said it could have a negative effect on the employee if his/her employment was in danger by not supporting the employer. He said the distinction could be made with "at will" employees. Councilmember Dillingham said the Committee discussed the appearance of one's employment possibly benefitting from the action. An example was used regarding a University of Oklahoma employee being the official and the University being the entity wanting some type of action. She said the language could be amended for potential conflict by saying "a conflict with an indirect effect on a pecuniary interest or reasonably foreseeable benefit consequence or detriment to an official..." Councilmember Cubberley felt the policy should have language added to require the official to recuse themselves if they are employed by the entity making the request to alleviate any decision-making for the employee and to preserve the integrity of the process.

Councilmember Thompson said the policy had no consequences to Councilmembers if a conflict of interest did exist and the Councilmember did not recuse himself.

Councilmember Butler said the City Charter and City Code provide methods for removal. She said the policy did not have these types of provisions because the Committee was trying to keep from depriving officials from providing input and ward representation due to their employment situation.

Mr. Bryant said there are provisions in the Charter and State law that address removal of Councilmembers as well. He said Roberts Rules of Order addresses the issue of an official with a conflict of interest who does not raise the issue by allowing another Councilmember to bring it to the Chairperson's attention to be debated by Council. He said the language can be strengthened on Potential Conflict to address Councilmembers' concerns. He said the suggested changes will be made to the policy and submitted to the Planning and Community Development Committee.

Mayor Rosenthal said the policy was an important balancing act with different values and types of representation. She said the process is broadly opened to many types of people to participate. She said stronger language on potential conflict would result in process transparency and disclosure of all types of conflicts.

City Council Study Session Minutes

January 6, 2009

Page 4

Items submitted for the record

1. Memorandum dated January 2, 2009, from Leah Bunney, Assistant City Attorney, through Jeff Bryant, City Attorney, to Norman City Council
2. City of Norman Ethics Policy
3. Pledge to Follow Ethics Policy for Appointed and Elected City Officials
4. Board, Committees, Commissions, and Ad Hoc Committees list
5. City of Norman Board/Commissions/Committees application
6. City Council Planning Committee minutes of September 12, October 24, November 14, and December 12, 2008
7. PowerPoint presentation entitled, "Proposed Ethics Policy, City Council Study Session, dated January 6, 2009"

Participants in discussion

1. Ms. Leah Bunney, Assistant City Attorney
2. Mr. Jeff Bryant, City Attorney
3. Mr. Steve Lewis, City Manager

The meeting adjourned at 6:30 p.m.

ATTEST:

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City Clerk

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Mayor