

## CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

January 10, 2019

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:01 p.m. in the City Council Conference Room on the 10th day of January, 2019, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT:	Councilmembers Carter and Holman Chairman Clark
ABSENT:	Councilmembers Castleberry and Hickman
OTHER STAFF PRESENT:	Mayor Lynne Miller Mr. Bob Christian, Permit Manager Mr. Terry Floyd, Development Coordinator Mr. Bryce Holland, Multimedia Specialist Ms. Jane Hudson, Interim Planning and Community Development Director Mr. Ken Komiske, Director of Utilities Lt. Jeff Robertson, Norman Police Department Ms. Jeanne Snider, Assistant City Attorney Mr. Scott Sturtz, City Engineer Ms. Mary Rupp, Interim City Manager Ms. Kathryn Walker, Assistant City Attorney Ms. Geri Wellborn, Utilities Manager Ms. Regina Oliphant, Administrative Tech. IV

Item 1, being:

### DISCUSSION REGARDING THE CITY OF NORMAN NOISE ORDINANCE.

Ms. Jeanne Snider, Assistant City Attorney, said in August of 2016 and during discussions regarding the outdoor live entertainment concerns on Main Street with Puebla and Opolis, the Planning Department had written two comprehensive memorandums and thought it would be best to give the history of the ordinance included in the handout. She said there was no activity during 2017 until they began discussions surrounding Hollywood Corners. Since then, Hollywood Corners was approved for outdoor live entertainment by use of the Simple Planned Unit Development (SPUD), Red Rock Canyon Grill (Red Rock) as an amendment to the University North Park Planned Unit Development (PUD), and another in the Center City with an amendment there as well. She said Special Use seems to be a good way to proceed for those businesses seeking to offer outdoor live music.

Chairman Clark asked Staff to describe the process of acquiring Special Use.

Ms. Jane Hudson, Interim Planning and Community Development Director, said Red Rock is located in the University North Park Development. She said the original PUD covered the whole development, but never addressed outdoor live entertainment. She said restaurants, where the kitchen remains open, are allowed to have live entertainment inside; however, if you want the entertainment outside it requires the request for Special Use.

Item 1, continued:

Chairman Clark said she had a question about “outside” and stated the definitions will need updating. For example, with Bison Witches, the back of the building opens up for live entertainment with only three solid walls, but Red Rock is a gazebo and clearly outdoors.

Ms. Hudson said Red Rock has defined their location for outdoor live music, which was one of the things requested of them before moving forward with their PUD. They actually gave the definition and the timeline that they would be providing the outdoor live entertainment. She said the process for Special Use or through a PUD proceeds as follows:

- Processed through pre-development possibly, depending on the area they are looking to re-zone
- Planning Commission for recommendation
- City Council consideration for adoption

She said Council has been given the opportunity to consider each application on its own merit as it comes forward. For example, with Red Rock there is no residential component around them other than across eight lanes of I-35 traffic. Red Rock had the agreement included that they would not conflict with anything going on in Legacy Park. Each application reviewed is on its own merit and the possible surrounding impact they would have.

Chairman Clark said Special Use, SPUD, PUD and C-3 have been recommended, but not C-2. C-3 may have some abutting residential areas, but C-2 is surrounded by residential.

Ms. Hudson said as far as C-3 zoning she would recommend the downtown area with some older outlying properties, e.g., the property where Wrights IGA was located on North Porter, zoned C-3. She said the C--3 area would be the downtown area and the Center City Form Based Code area.

Councilmember Holman said they have had discussions before about the downtown area and the fact that there are not a lot of residential areas currently, but they are hoping and anticipating that in the future there would be. He said other cities such as Austin, Texas, have had some conflict because of new residential area developments coming in and the complaints regarding established music venues being a nuisance to them. He asked how they might navigate this before it happens since downtown is mostly C-3. He said currently, there are concerns in the Campus Corner area as there is a new bar on Campus Corner located next to one of the only apartment buildings with the residents being very upset with the loud music and base noise coming from the establishment.

Ms. Snider said there is a balancing act with the businesses that want to have outdoor live music and the impact it can have on those already living there, as they need protection, too. She said this is an example as to why Staff is recommending Special Use so that City Council can consider everything individually and make the determination.

Chairman Clark said the Committee has talked about how there is only so much that can be handled through zoning and having to count on the noise ordinance and being more confident with the police having to step in. She said in the other instance, it was a quieter business that became a louder business. She said she hopes that if people want to take advantage of a loft on Main Street that those persons would be fully aware that this is where the loud music happens and not be upset during Music Fest.

Mayor Miller said she would like some clarification when they talk about Special Use, PUD and SPUD, and asked if Special Use would be used in the C-3 zoned areas.

Item 1, continued:

Ms. Hudson said yes, the use of PUD in the core area can be used as well if they needed to have additional allowances that C-3 would not allow. She said they could have outdoor live entertainment as a Special Use in the C-3 District and anyone can request PUD or SPUD if needed.

Councilmember Holman said Bison Witches is not an outdoor venue or a patio, but the back part of the building facing the alley has a garage door that opens up and allows the music to flow outdoors. He said it is similar to Opolis with a garage door as well.

Chairman Clark said this is why she would like to see staff clean up the definitions because technically without a wall they would be an outdoor venue; however, it can also be an indoor establishment if the door is down. Again, Chairman Clark requested the language that determines *outdoor* defined more evident because they already know there are instances where this conflict exists. Currently they have *outdoor music venue, outdoor entertainment, commercial venue or property not fully enclosed by permanent solid walls and a roof where the use of sound equipment to amplify sound*. She said what they are describing at Bison Witches or even Puebla qualifies as an outdoor establishment; however, does not compare to the gazebo at Red Rock.

Councilmember Holman said Opolis is enclosed and they do have a garage door facing the street that they used to open, but they do not anymore. He said Puebla has a covered patio in the back.

Chairman Clark said to clarify that when she suggested cleaning up the definition of outdoor, she meant she wants the establishments to obtain a Special Use if it is more than a door opening for the sound to escape versus a whole wall being open.

Councilmember Carter said they should be as liberal as possible and encourage live music.

Councilmember Holman said he often leaves the door open while working at The Deli, but not compared to a whole wall.

Ms. Hudson asked in that case, Special Use would be needed if the wall is removable. Chairman Clark said that is what seems reasonable and the City has a Council and community that support live music and do not want to eliminate it; however, this would ensure that Council is evaluating the ones that might be a noise disturbance to a local residence. She said to open a whole wall, the noise would be significantly worse than just the base noise.

Councilmember Holman asked if the Ordinance would address a business or venue that has speakers mounted on the outside the building; playing music loudly. He said there is one on Campus Corner that plays the music until approximately 11:00 p.m., nightly, and the music emanates throughout the whole district.

Mayor Miller said she thought they decided to use the noise ordinance in this case as neighbors complain instead of making them obtain Special Use for speakers.

Lt. Jeff Robertson, Norman Police Department, said they get complaints regarding several locations on Campus Corner from some of the surrounding residents and those establishments play music on speakers mounted outside the facility. He said for the Police Department this is simply a noise complaint, but it does not necessarily fit under the parameters of the definition for outdoor live music. He said it comes through a sound system, it is not live entertainment, and the Police Department would handle this situation just like any other noise complaint.

Item 1, continued:

Mayor Miller asked if establishments usually comply. Lt. Jeff Robertson said yes, and as far as he knows, they have not written any citations. He said occasionally the Police will receive a call from an area resident, go by and ask them to turn the volume down and they comply with the request.

Councilmember Holman asked if the police are proactively enforcing. Lt. Robertson said the police department has not had a noise officer in over a decade and that officer was the only time the Police would have proactively enforced the Noise Ordinance. Councilmember Holman said he does not see this as problematic all the time, but just when the noise is extremely loud.

Ms. Hudson said she wants to make sure she is clear on clearing up the definitions. She said Council is acknowledging that a venue such as Bison Witches should get a Special Use. Chairman Clark said if they play music in the area in the back of the establishment with the wall/garage door up, then it qualifies as outdoor live music because more music is escaping than would a door opening with live indoor music.

Ms. Snider said there are other establishments that have large doors that are available to open and wonders if the garage door falls under the fully enclosed by permits, solid walls and their roof.

Councilmember Carter asked what do other college towns do. Ms. Snider said they adjust to change just as the City of Norman does. Councilmember Carter said he goes to several venues and their doors are open, there is music playing and it is a fun atmosphere. He said that is what it is supposed to be like and if you do not like that, move away from the campus. Ms. Snider said they do not get many complaints. Councilmember Carter said he hates to see a bunch of rules if it is not necessary.

Councilmember Holman said there are two venues on Main Street that are very near one another, both wanting to have events with live music outdoors; creating a battle with one another.

Councilmember Carter said some of the streets in Fort Worth have every bar with a live band going on outdoors and the area is crowded with people. Ms. Snider said during her research she found that in locations such as College Station and Austin, they all still have the same issues, and you will find an article that reads nearby residents are unhappy. Councilmember Holman said he remembers it said that no cities including Austin allow outdoor live music, anytime, anywhere. Ms. Snider said Austin has a permitting process.

Councilmember Holman said there are some wanting the City to allow them to have unlimited outdoor music, anytime, anywhere. Chairman Clark said by creating an Outdoor Live Music permit or zoning process they can now put into Special Use zoning; reviewing the applicants while protecting others. Ms. Snider asked if the language includes Bison Witches and includes an open door. Chairman Clark said the one word that might help clean up the language is four, e.g., four permanent solid walls. Councilmember Carter said and not a garage door.

Ms. Snider wants to make it clear that Staff is not talking about by reaching out to Bison Witches to require them to go through a Special Use process. Chairman Clark asked if they would be grandfathered in. Councilmember Carter said it now sounds like staff wants to make this more restrictive than what it is now. Ms. Snider asked for clarification if they want to make the definition include those establishments, e.g., Bison Witches and Penny Hill if they have raise the garage door and have music inside that is allowed to filter outdoors. Councilmember Clark said she technically thinks this falls under that definition.

Item 1, continued:

Councilmember Holman asked staff what the cost of the Special Use Permit is, and how long will that permit last. Ms. Hudson said the permit goes with the property unless they go out of business for two years and then the new owner must apply for Special Use again and the cost is approximately \$400, as well as, another \$200 for an ownership list. Councilmember Holman asked if they must go through the Council process before approval. Ms. Snider said yes, that is correct.

Chairman Clark said she is not positive the businesses currently play music, but the ordinance would be in place if they decided to begin having outdoor live music events; requiring them to go through the process. Councilmember Holman said he knows that Bison Witches does have music and DJs at times in the back of the establishment and they raise the door as well; however, he has never heard any complaints. He asked does the Committee want the existing businesses in Norman to pay \$400 to comply with the requirements. Chairman Clark said if they do not, then they are back to the Puebla dilemma. She said she is ready to push this forward to Council and see what other Councilmembers think. She said the City should have a uniform policy that treats everyone fairly.

Chairman Clark said going back to Bison Witches, if they want to play loud music and keep the door shut there would not be an issue, but when they decide to open the door that is when it becomes an issue.

Councilmember Holman said he agrees to move forward to Council to see what the others think. Mayor Miller said the Oversight Committee is to a point where they need to send it on to Council and report what the staff recommends, and Chairman Clark and Councilmember Carter can express their concerns; hopefully, making a final decision. Chairman Clark agrees.

Chairman Clark asked if Councilmember Carter had anything else to contribute. He said they are on a different page and feels that the committee members are being too restrictive, but that they can further discuss the subject during the Council Meeting. The members confirmed they would now move forward to a Study Session with this discussion.

Item submitted for the record

1. Memorandum dated January 4, 2019, from Jeanne Snider, Assistant City Attorney, and Jane Hudson, Planning and Community Development, to the Council Oversight Committee with attachments

Item 2, being:

#### DISCUSSION REGARDING THE IMPLEMENTATION OF THE BACKFLOW PREVENTOR PROGRAM.

Ken Komiske, Director of Utilities, provided an overview of the *Backflow Prevention Program*. He discussed briefly about backflow prevention or cross-connection control and stated this whole issue surrounds the protection of the public water supply. He said whether someone is talking about the backflow prevention program and why it is necessary or backflow or cross-connection control, it is really all the same thing. He said backflow is the unwanted flow of water in the reverse direction from an unknown source into a potable water supply, e.g., when a commercial business would have higher pressure than the City's pressure. They take water from the City's distribution system and pump it up with pressure, e.g., a tall building needing to pump up with pressure in order for the water to reach the top floor of the building or another example would be a commercial business with heat exchanges such as big boilers or furnaces. The previous are examples of circumstances or situations that provide an avenue for the water to seep back into our water system and situations Staff want to avoid.

Item 2, continued:

Mr. Komiske said another situation to avoid would be back-siphon, defined as the occurrence of a vacuum (negative pressure) in a water system, which draws the water from an unknown source into a potable water supply.

Mr. Komiske said cities must protect themselves and provided a few examples of case histories of backflow or cross connection accidents that have happened and created problems for cities; examples of those real life instances are listed below and clearly show the importance of the prevention of such.

- Backflow at a beverage bottling plant;
- Backflow at a carwash;
- Backflow at a pest control facility, chemical plant or agricultural premise;
- Backflow at a fire protection system, premises with an auxiliary water system or one that the potable water system supplies the cooling system or heat exchange; or
- Backflow at a mortuary, dental office or hospital.

Mr. Komiske said the City of Norman has a first line of protection with Mr. Bob Christian, Permit Manager, and the Planning Department does a very good job of implementing these requirements up front. He said their division reviews plans, requires the builder to install the back flow preventer during construction before a Certificate of Occupancy (CO) is issued. However, once installed the City does not have an avenue to require ongoing inspections. He said the Oklahoma Department of Environmental Quality (ODEQ) regulations require the installation of back flow preventers. They do not allow a physical connection between a line carrying a public drinking supply and a line carrying water of an unknown questionable quality. ODEQ does not allow connections from any public water system (PWS) to any device or system that poses a health threat unless it is equipped with an air gap of at least six inches or two pipe diameters, whichever is larger, above the overflow or drain pipe. ODEQ does not allow a cross-connection between a public water system and any private water system. Section 5-204 of the International Plumbing Code (IPC) adopted in the City of Norman Code of Ordinances, states that the backflow prevention assemblies are critical components that protect the potable water systems from pollution or contamination sources. The IPC and the International Residential Code (IRC) require annual inspections be made of all backflow prevention assemblies to determine whether they are operable.

Mr. Komiske his desire is for the Utilities Department to have a staff member maintain a database for back flow preventer installments and testing results to assist in the protection of our PWS. The staff member would not be testing, but would be responsible for notifying businesses of the required inspection from a certified licensed back flow preventer tester.

Chairman Clark asked if the business would be effected for the day while being inspected. Mr. Komiske said the letter sent to them would recommend testing and if not done then depending on the severity of the circumstance, it may require them to install a back flow assembly.

Mr. Komiske said another piece that is not included in the Ordinance, but is part of the IPC, is how often it should be tested. He said essentially it would ensure that high hazard facilities, e.g., hospitals and mortuaries that have had histories of potential contamination of the water system are inspected and tested. Chairman Clark asked how many high hazard locations exist and Ms. Geri Wellborn, Utilities Manager, said there are approximately 100 locations.

Item 2, continued:

Councilmember Carter asked when they implemented the back flow preventer ordinance requiring installation for new construction. Ms. Wellborn said that the City has always required back flow prevention. Councilmember Carter asked how many places does staff think would not have one in place. Mr. Komiske said the likelihood of them not having one is slim. The piece that worries staff is some locations are larger buildings that contain room for multiple businesses, yet they received a CO because it included plumbing and sewer. He said one year it is a dress barn and the next year it is a restaurant with an industrial high-pressure dishwasher. He said nobody goes in to follow up on use and/or equipment.

Councilmember Carter asked if business owners putting in a restaurant without a back flow would be in violation. Mr. Komiske said yes. Councilmember Carter said the City would then require them to become compliant and Mr. Komiske said yes.

Councilmember Carter asked what does an inspector generally charge for this type of inspection. Mr. Komiske said the person, Mr. Christian, who could provide that information just left the meeting.

Mr. Komiske said they are in the beginning stages of this process and budgeted for an additional staff member for half a year; however, they currently have not hired anyone. They would like to get the process started to identify stakeholders, training workshops, prioritize needs and develop a program that meets the needs. Mr. Komiske said Ms. Wellborn has done an excellent job working with Mr. Christian and Mr. Matt Smith, Facilities Maintenance Supervisor, to check the City facilities to make sure the City is in compliance before requiring others to be in compliance. Councilmember Carter asked if the City is currently in compliance. Ms. Wellborn said there are facilities with non-functioning systems but Staff is getting them maintained.

Chairman Clark asked how long it took to test a system and Mr. Komiske said the test takes about forty-five minutes. He said there is only one person in the City of Norman that is a certified tester for back flow preventers. He would like to recommend the City reach out to plumbers and encourage them to acquire individual licensing for testing certifications and they do not have to be a licensed plumber to be a certified tester. Chairman Clark asked how many firefighters are certified. Mr. Komiske said no firefighters are certified but they could be and then have the ability to test the fire systems.

Councilmember Clark asked how much it costs to obtain the certification and Mr. Komiske said it is a \$500 test.

Councilmember Carter said the City could offer classes here so there are plenty of technicians available to provide the service. Mr. Komiske said that would be great and for those plumbers that have apprentices, this would be a great opportunity for additional business.

Chairman Clark asked if the City could facilitate the trainer for training and would there be a cost to the plumbers. Mr. Komiske said they would be required to pay a licensing fee. Councilmember Carter said the City of Norman could offer the class here and through the Moore Norman Technology Center. Mr. Komiske said this is a developing program and not sure what all will be involved. The City has the ability and means to hire a new staff member; however, that has not happened yet.

Item 2, continued:

Chairman Clark asked how long IPC has required this and how long has the City not been following this requirement. Mr. Komiske said it has probably been decades. Chairman Clark asked if the City of Norman would be the first in Oklahoma to have this program. Mr. Komiske said yes, but Tulsa is working toward developing their program.

Councilmember Carter asked if Mr. Komiske is looking for direction from Council since he was hesitant to hire the new staff member. Mr. Komiske said they need the direction to move forward to Council with the addition of the ordinance regarding the annual testing of back flow preventers.

Mayor Miller said regarding the Staff's willingness to offer a workshop, it is always a good idea to include the building community in advance, as it appears there is need for education. Mr. Komiske said a constituent of Mr. Sean Rieger, Attorney for Builders Association of South Central Oklahoma (BASCO), wrote that the back flow preventer inspection seems extremely burdensome to monitor and he could not imagine how the City would enforce it. Mr. Rieger had commented he thought the federal laws had changed also.

Mr. Komiske said he told Mr. Rieger he was not aware of the change in law but was willing to view the documents stating such. Mr. Komiske said the monitoring would be on the City's new staff member; requiring the businesses to return test results. Councilmember Carter said during public meetings where people are so adamantly opposed by something, once you have the opportunity to explain in a way as Mr. Komiske has done, they are more willing to accept the change.

Councilmember Carter said he is for this and the more communication the better. Chairman Clark asked if documentation will be returned to the City regarding testing results and Mr. Komiske said yes.

Chairman Clark asked if this needs to go to Study Session. Mr. Komiske said Staff could set up the public forums before bringing forth to Council in order to gather more information before our presentation to full Council. Mayor Miller agreed with that process. Mr. Komiske confirmed they are going to move forward discussing with area plumbers and the Chamber of Commerce, but are not going to hire a new staff member at this time.

Item submitted for the record

1. Power Point Presentation entitled Norman Utilities Authority City of Norman Backflow Prevention Program Protecting the Public Water Supply, dated January 8, 2019

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ADJOURNMENT:

The meeting adjourned at 4:59 p.m.