

CITY COUNCIL SPECIAL SESSION MINUTES

January 15, 2019

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in Special Session at 5:30 p.m. in the Municipal Building Conference Room on the 15th day of January, 2019, 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 24 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Bierman, Carter
(5:37 p.m.), Clark, Hickman, Holman,
Scott, Wilson, Mayor Pro-Tem
Castleberry

ABSENT: Mayor Miller

Item 1, being:

CONSIDERATION OF ADJOURNING INTO AN EXECUTIVE SESSION AS AUTHORIZED BY OKLAHOMA STATUTES, TITLE 25 §307(B)(3) IN ORDER TO DISCUSS THE ACQUISITION OF REAL PROPERTY FOR RECREATIONAL PURPOSES CURRENTLY OWNED BY THE OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES LOCATED IN THE VICINITY OF EAST ROBINSON STREET AND 12TH AVENUE N.E. AND EAST ROBINSON STREET AND 24TH AVENUE N.E.; AND PROPERTY CURRENTLY OWNED BY THE UNIVERSITY OF OKLAHOMA ALONG LEXINGTON AVENUE BETWEEN FLOOD AVENUE AND HALLEY AVENUE; AND AS AUTHORIZED BY OKLAHOMA STATUTES, TITLE 25, TITLE 25 §307(B)(4) TO DISCUSS POSSIBLE LITIGATION ASSOCIATED WITH THE UNIVERSITY NORTH PARK TAX INCREMENT FINANCE DISTRICT.

Councilmember Scott moved that the Special Session be adjourned out of and an Executive Session be convened into in order to discuss the acquisition of real property for recreational purposes currently owned by the Oklahoma Department of Mental Health and Substance Abuse Services located in the vicinity of East Robinson Street and 12th Avenue N.E. and East Robinson and 24th Avenue N.E.; and property currently owned by the University of Oklahoma along Lexington Avenue between Flood Avenue and Halley Avenue; and to discuss possible litigation associated with the University North Park Tax Increment Finance District, which motion was duly seconded by Councilmember Wilson; and the question being upon adjourning out of the Special Session and convening into an Executive Session in order to discuss the acquisition of real property for recreational purposes and possible litigation associated with the University North Park Tax Increment Finance District, a vote was taken with the following result:

YEAS: Councilmembers Bierman, Clark,
Hickman, Holman, Scott, Wilson,
Mayor Pro-Tem Castleberry

NAYES: None

The Mayor Pro-Tem declared the motion carried and the Special Session adjourned out of; and an Executive Session was convened into in order to discuss the acquisition of real property for recreational purposes currently owned by the Oklahoma Department of Mental Health and Substance Abuse Services located in the vicinity of East Robinson Street and 12th Avenue N.E. and East Robinson and 24th Avenue N.E.; and property currently owned by the University of Oklahoma along Lexington Avenue between Flood Avenue and Halley Avenue; and to discuss possible litigation associated with the University North Park Tax Increment Finance District.

The City Council convened into Executive Session at 5:32 p.m. Ms. Kathryn Walker, Interim City Attorney; Ms. Beth Muckala, Assistant City Attorney; and Ms. Mary Rupp, Interim City Manager, were in attendance at the Executive Session.

Item 1, continued:

Thereupon, Councilmember Hickman moved that the Special Session be reconvened, which motion was duly seconded by Councilmember Bierman; and the question being upon reconvening the Special Session, a vote was taken with the following result:

YEAS:	Councilmembers Bierman, Carter, Clark, Hickman, Holman, Scott, Wilson, Mayor Pro-Tem Castleberry
NAYES:	None

The Mayor Pro-Tem declared the motion carried and the Special Session was reconvened at 6:37 p.m.

The Mayor Pro-Tem said the acquisition of real property for recreational purposes currently owned by the Oklahoma Department of Mental Health and Substance Abuse Services located in the vicinity of East Robinson Street and 12th Avenue N.E. and East Robinson and 24th Avenue N.E.; property currently owned by the University of Oklahoma along Lexington Avenue between Flood Avenue and Halley Avenue; and possible litigation associated with the University North Park Tax Increment Finance District, were discussed in Executive Session. No action was taken and no votes were cast.

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Item 2, being:

DISCUSSION REGARDING PROJECT TIMELINES FOR THE SENIOR CENTER, MULTI-SPORT FACILITY, AND INDOOR AQUATIC FACILITY.

Mr. Jud Foster, Director of Parks and Recreation, said it makes sense to treat the Multi-Sport Facility and Indoor Aquatic Facility as one project since they are located in the same area and may share facilities such as a locker room, and treat the Senior Center as a separate project. He said Staff has been working for some time with the University of Oklahoma (OU) regarding land acquisition before proceeding with project implementation.

Mr. Foster highlighted potential project timelines as land acquisition in 2019; design firm selection for projects in 2019; master planning in 2019; operational agreements in late 2019 or early 2020; NORMAN FORWARD Ad Hoc oversight meetings throughout entire process; facility design in 2019/2020; infrastructure construction in 2021; and construction of facilities to begin in 2021. Additional project considerations include site due diligence activities to include Phase I, Environmental Assessment of the site; solicitation of proposals for demolition of Optimist Gym facility/gym demolition; other site discovery and infrastructure planning activities; and traffic and drainage infrastructure costs, which is a separate budget cost in the NORMAN FORWARD program; project scope, timing and design of these improvements for the areas around the North Base site will be assessed as the Master Plan is developed and completed; infrastructure construction is anticipated to coincide with completion of facilities; discussions with operational partners Norman Public Schools (NPS), Norman Regional Health System (NRHS), YMCA, and Sooner Swim Club will be ongoing throughout the Master Plan and early facility design phases; operational agreement for the Indoor Multi-Sport Facility and Indoor Aquatic Center is anticipated to be complete prior to completion of the design of the Indoor Aquatic/Multi-Sport facilities; and Construction Manager at Risk (CMAR) Request for Proposal (RFP)/contractor selection could be timed to best coincide with facility design and expediency of construction timeline.

Councilmember Clark said during the master planning, she would like to see some focus on the public art as a plaza type concept. Mr. Foster said public art is planned to be in place on completion of the facilities and is a separately funded from project costs; however, Council will be kept updated on all aspects of the projects.

Councilmember Carter asked if one firm will oversee all three projects, and Mr. Foster said potentially, but certainly for the Indoor Multi-Sport Facility and Indoor Aquatic Center. Mr. Foster said the RFPs propose to have all three projects under one purview with Senior Center design experience being necessary.

Item 2, continued:

Councilmember Bierman asked why it would take a full year to design each of the facilities if there is already a Master Plan in place and Mr. Terry Floyd, Development Coordinator, said a year is not unusual when you think about the Ad Hoc group meetings, City Council updates and input, public input during the process, and the large scope of the projects.

Councilmember Hickman felt it would be of the utmost importance to have all roadway infrastructure in place before the facilities open to the public so there will be no ongoing construction and Mr. Shawn O'Leary, Director of Public Works, said roadway infrastructure is planned to be completed simultaneously.

Mayor Pro-Tem Castleberry asked the difference between a Project Manager and CMAR and Mr. Floyd said a CMAR allows the general contractor to be selected on a qualification basis versus taking the low bid and trying to figure out what may have been missed in the bid. This also allows different portions of the project to be bid as a separate package, i.e. grading plans, concrete work, which could be beneficial in speeding up the timelines. He said the City wants to select firms experienced with these types of facilities and believes the City can attract firms large enough to handle all three projects by employing a CMAR. Mr. Foster said there will be a very competitive bidding process throughout the projects so the CMAR will be at bid openings to ensure the best bid is chosen.

Mayor Pro-Tem Castleberry asked if local contractors can be given more consideration for the various components, i.e., concrete work, and Ms. Kathryn Walker, Interim City Attorney, said anytime the City competitively bids a project, the goal is to choose the lowest and best bid and the City would not want the desire to use local contractors outweigh the costs.

Councilmember Bierman said the City has been experiencing serious problems with the new Animal Welfare Facility, i.e., roof leaking, heat and air unit malfunctioning, etc., so she wants to be sure the City does not fall into some of these same traps with future projects. She said some issues were due to the subcontractors that were used and quality of work done so more responsible oversight of the projects needs to be built into the CMAR contract. She would prefer the City not use the contractors or subcontractors that were used for the Animal Welfare Facility on any of the NORMAN FORWARD projects. Ms. Walker said Staff has been working on evaluation criteria for the bids that will help limit the City's liability if the low bidder is not chosen and they want to challenge that. Councilmember Bierman suggested requiring longer warranty periods to help with problems that are not readily apparent in six months or one year. Councilmember Hickman said past performance of contractors should always be considered and checked out.

Councilmember Clark asked what will become of the current Senior Center and Mr. Foster said that will be a future discussion for Council. Councilmember Clark said she would like to have that conversation simultaneously with the construction of the new Senior Center.

Items submitted for the record

1. Memorandum dated January 11, 2019, from Jud Foster, Director of Parks and Recreation, and Terry Floyd, Development Coordinator, to Honorable Mayor and City Council, with Attachment A, PowerPoint presentation entitled, "City of Norman Potential Project Timeline for Senior Center, Indoor Aquatic Facility & Indoor Multi-Sport Facility," dated January 15, 2019

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Item 3, being:

DISCUSSION REGARDING VEGETATIVE MANAGEMENT IN THE CITY RIGHTS-OF-WAY.

Ms. Walker said in August 2017, Council voted on several amendments to the Oklahoma Gas and Electric (OG&E) Franchise Agreement that would grant OG&E the right to access the City's rights-of-way (ROW); however, the ordinance and amendments were not approved. The amendments proposed by Council would have required OG&E to obtain Council approval before spraying chemicals for the purpose of killing trees or other vegetation, approval by the property owner prior to removal of trees of a certain size, and a notice to be posted five days in advance of trimming, removing, or mowing vegetation, shrubs, and smaller trees. She said Staff has been working closely

Item 3, continued:

with OG&E and Oklahoma Electric Cooperative (OEC) to draft a Vegetative Management Ordinance that will be separate from the franchise agreements.

Ms. Walker said the Federal Power Act empowered the Federal Energy Regulatory Commission (FERC) to regulate the public utility industry transactions made in interstate commerce, primarily the sale of power from one utility to another. In 2005, after rolling blackouts impacted large areas of the United States and Canada, the Energy Policy Act was adopted to improve electric grid reliability. She said FERC's jurisdiction was expanded under this Act to all users, owners, and operators of bulk power systems, except facilities limited to local distribution facilities, which are usually governed by State agencies such as the Oklahoma Corporation Commission (OCC). The FERC oversees major transmission lines that could be impacted by a vegetation management ordinance.

The FERC, through the adoption of Reliability Standard FAC-003-04, requires that vegetation be managed to prevent encroachment into the Minimum Vegetation Clearance Distance of transmission lines. The minimum distance requirements vary from 1.1 feet to 14.3 feet based on the maximum system voltage and it is noted in the standards that prudent vegetation management practices dictate that substantially greater distances will be achieved at the time of vegetation management. She said vegetation inspections of transmission lines and vegetation work plans are required annually.

The OCC is granted general supervision over all public utilities and is empowered to set rates and promulgate rules affecting services, operation, management, and conduct of business. The term "public utilities" includes rural electric cooperatives even if they have voted to exempt themselves from OCC regulation regarding rates. Rules promulgated by the OCC prevail over City ordinances that materially affect rights and duties of franchised utilities where the activity under consideration affects the utility's duty to repair, maintain, or install its equipment. This is also true in rate setting or in regulation of day-to-day affairs of the utility.

Ms. Walker said OCC rules related to vegetation management are focused on distribution reliability. Each utility is required to have a reliability program that limits the frequency and duration of electric service interruptions, maintain acceptable electric service reliability levels, and sustain that program over time. The program must address all factors that impact the reliability of the distribution system including but not limited to age, distribution, and location of equipment on each circuit; the number, density, and location of customers on each circuit; the location and density of trees on the system; an annual vegetation plan; and impacts on distribution system reliability of animals, winds, storms, ice, and automobile accidents. She said OCC sets the timeline for notification of vegetation management activities and a utility is required to make a "reasonable attempt to contact the landowner, customer, or tenant at a minimum of 24 hours prior to beginning work on the area." Ms. Walker said the form of contact is not dictated by OCC so notification can be through written notice, telephone call, or in-person contact. If a property owner, customer, or tenant wants to be present when the work is done on his or her property, the utility is required to make a reasonable effort to accommodate such requests. In the case of an emergency repair, no notice is required.

Ms. Walker said the State Department of Agriculture governs pesticides with a provision that no City can adopt or continue in effect any ordinance, rule, regulation, or statute regarding pesticide sale or use that is more stringent than state rules including registration; notification; posting; advertising and marketing; distribution; applicator training and certification; storage; transportation; disposal; disclosure of confidential information; or product composition. The State Department of Agriculture regulates pesticides and licenses pesticides specific to right-of-way (ROW) maintenance and ground line treatment of utility poles.

Councilmember Hickman said Council has had conversations about hiring a Forester and asked when that position would be advertised and filled because that position would be the point of contact for the utility companies' vegetative maintenance plans. Ms. Mary Rupp, Interim City Manager, said Council has not authorized or appropriated funds for that position so it is basically in a holding pattern.

Councilmember Hickman asked what happened to Council's request to reprogram the Internal Auditor position to a Forester position and/or looking at the cost to add a Forester position. Mayor Pro-Tem Castleberry said the Finance Committee will be discussing that in its meeting on Thursday.

Item 3, continued:

Councilmember Carter asked the timeline for Council adoption of the Tree Ordinance, which also requires a Forester. Ms. Walker said Staff is planning to take the Tree Ordinance and Vegetative Management Ordinance to Council in February.

The draft ordinance requests utility companies submit their planned maintenance schedule, identify general areas scheduled for maintenance, identify a certified arborist to serve as contact person for any questions about vegetation maintenance activities, and identify any company the utility company intends to use for the planned maintenance work.

Councilmember Bierman said Council talked about requesting contractors used by the utility companies be identified to the City and felt it would be prudent for utility companies to make sure contractors have identifiable, visible information on their vehicles or persons for residents as well. Ms. Walker assured Council that language has been added to the ordinance.

Councilmember Carter said there seems to be a huge gap in communication between the public and utility companies when vegetative maintenance is taking place on private property. He said there is no competition among utility companies so there is no incentive for them to take care of the customer and there is a lack of direct, on the ground communication with homeowners when utility companies are working on properties. Ms. Walker said that is one of the reasons the City is requiring utility companies provide the name of their certified arborist so the City will have a contact person to pass onto the public.

Councilmember Hickman asked if the City will have the power to enforce the ordinance and Ms. Walker said there will probably need to be a civil enforcement procedure and there could be some pushback from utility companies and a lot of the City's requirements depend on cooperation from the utility companies.

Ms. Walker said Best Management Practices (BMP) are incorporated into the draft ordinance and include pruning; chemical control methods; supervision and oversight of contractors; and vegetation management clean-up. She said all pruning debris from vegetative management shall be cleaned up each day unless permission is given by the owner or resident to do otherwise. All brush, branches, or logs having a diameter of six inches or less shall be chipped and removed from the site. She said chemicals generally take a long time to work (up to 90 days) so a property owner can request the utility company to remove dead, woody vegetation treated on their property within 120 days following the utility's use of chemical control methods.

Items submitted for the record

1. Memorandum dated January 11, 2019, from Kathryn L. Walker, Interim City Attorney, to Honorable Mayor and Councilmembers
2. Draft ordinance
3. PowerPoint presentation entitled, "Vegetation Management in the Rights of Way," Study Session dated January 15, 2019

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Item 4, being:

DISCUSSION REGARDING RESIDENTIAL SECURITY LIGHTING.

Ms. Jane Hudson, Interim Planning and Community Development Director, said Staff was asked to review and propose outdoor lighting standards/requirements for residential areas where installation of security lights or flood lights occur and how those lights may be impacting adjacent residential properties with glare or spillover. She said there are currently no regulations for residential outdoor lighting.

Ms. Hudson said the Community Planning and Transportation Committee (CPTC) reviewed the ordinance on November 29, 2018, and requested it be reviewed by full Council. She said the proposed ordinance would require that outdoor lighting in residential areas be directed or shielded in

Item 4, continued:

such a way as to most feasibly minimize spillover across property boundaries upon request of any adjoining property owner or tenant. If a complaint is received from a neighbor that has light cast onto their property causing a nuisance, a Police Officer or Code Enforcement Officer will be dispatched to determine if a violation has occurred and corrective action is needed. She said there are violations and penalties for non-compliance as well as an appeal process.

Councilmember Hickman said the ordinance addresses several concerns from constituents about light pollution from neighbors and he is ready to move forward with the ordinance. He thanked Staff for their hard work on the ordinance.

Councilmember Clark said during the CPTC meeting she had expressed concerns about City parks located in residential neighborhoods casting light onto neighboring homeowners' property and wanted that addressed in the ordinance. Mr. Foster said current sports lighting technology is much more advanced and the spill and glare is far reduced. Councilmember Clark asked if Staff has assessed lights in neighborhood parks and Mr. Foster said some park lights have been shielded to reduce glare, but not all; however, if the Parks Department receives a complaint it will be addressed.

Items submitted for the record

1. Memorandum dated January 15, 2019, from Jane Hudson, Planning and Community Development, to Community Planning and Transportation Committee

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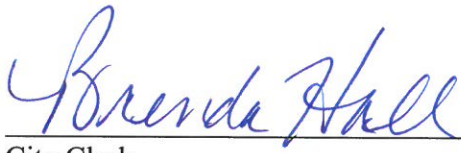
Item 5, being:

ADJOURNMENT

The Mayor Pro-Tem adjourned the meeting at 8:00 p.m.

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ATTEST:



City Clerk



Mayor

