

## CITY COUNCIL STUDY SESSION MINUTES

January 29, 2019

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 29th day of January, 2019, 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 Bierman, Castleberry, Clark, Hickman, Holman, Scott, Wilson, Mayor Miller

ABSENT: Councilmember Carter

Item 1, being:

### DISCUSSION REGARDING POSSIBLE AMENDMENTS TO THE ZONING ORDINANCE RELATIVE TO OUTDOOR LIVE ENTERTAINMENT.

Ms. Jane Hudson, Interim Director of Planning and Community Development, said in recent years, outdoor live music venues have become more prevalent at small venues, such as restaurants with outdoor patios and street cafés. She said music venues can be a nuisance to adjacent properties whether those properties are commercial or residential and many municipalities have struggled with how to regulate music venues and minimize impact on adjacent properties. She said Council has had the opportunity over the years to review, reject, or adopt several ordinances for varying live entertainment special use requests along Main Street and those that have been approved are for indoor live entertainment; no outdoor live entertainment venues have ever been granted.

Ms. Hudson said the Zoning Ordinance is cumulative in the commercial zoning districts, i.e., a use allowed *by right* in the C-1, Local Commercial District, is allowed in C-2, General Commercial District, and again in C-3, Intensive Commercial District. The majority of special uses in C-1 are also allowed by right in C-2 and C-3; however, live entertainment venues are not an allowed use or a special use and require a special use for a live entertainment venue zoning amendment in C-2 and C-3 zones.

In the January 10, 2019, City Council Oversight Committee meeting, the Councilmembers indicated they wanted Staff to prepare draft language to include outdoor live entertainment. Currently, if a business wants to have outdoor amplified entertainment over the allowed decibel levels they are required to apply for a Noise Variance Permit and follow the restrictions and guidelines set forth in the permit.

Ms. Hudson said Live Entertainment is defined in two places in the Zoning Ordinance and can be amended as follows:

ACCESSORY. **Indoor** Live Entertainment, when offered in conjunction with an otherwise unrelated legal commercial use, will be considered an accessory use when it constitutes no more than ten (10) percent of the gross monthly revenue of the establishment.

Item 1, continued:

LIVE ENTERTAINMENT VENUE. An establishment where a major component of the business includes live or electronically amplified music, dancing, or other entertainment, and which may impose an admission charge or cover charge to observe that entertainment, nightclubs, bars, and dance halls are typical uses within the category **and all activities are located within a fully enclosed building.** This category shall not include, in any manner, any Adult Entertainment Establishment.

These definitions do not address the outdoor component of live entertainment so changes to the definition for live entertainment should include clarification of indoor versus outdoor areas as well as include a definition of outdoor live entertainment.

Ms. Hudson said a new definition could be added as follows:

**OUTDOOR MUSIC VENUE/OUTDOOR ENTERTAINMENT.** A commercial venue or property where sound equipment is used to amplify sound that is not fully enclosed by permanent, solid walls and a roof.

Councilmember Holman asked if a “permanent solid wall” could include a window and Ms. Hudson said yes. Councilmember Holman asked if the proposed language changes anything for existing indoor live entertainment venues, such as The Deli, and Ms. Hudson said they were grandfathered in.

Councilmember Hickman said outdoor music venues have to comply with the Noise Ordinance so, technically, they are only allowed to have outdoor live entertainment seven times per year. Ms. Jeanne Snider, Assistant City Attorney, said outdoor live entertainment would not be in violation unless they exceed the allowed decibel level. She said noise is measured at the boundary or any point within the boundary affected by the noise and the Police Department can measure the decibel level.

Councilmember Bierman asked if it is appropriate to be working on outdoor live entertainment when Council knows there are flaws in the noise ordinance. Should Council be cracking this door open without knowing how the noise ordinance should look? She felt Council should address the noise ordinance flaws before allowing venues to have outdoor live entertainment.

Councilmember Wilson was concerned about how Council could allow or deny outdoor live entertainment without being arbitrary. Ms. Kathryn Walker, Interim City Attorney, said the Zoning Ordinance outlines criteria used to evaluate a special use proposal that includes conformance of applicable regulations and standards; compatibility with existing or permitted uses on abutting sites; potentially unfavorable effects or impacts or other existing or permitted use on abutting sites; modifications to site plan that could increase compatibility or would mitigate potentially unfavorable impact; safety and convenience of vehicular and pedestrian traffic considering current land use; and any conditions applicable to approval are the minimum necessary to minimize potentially unfavorable impacts on nearby uses and to ensure compatibility of the proposed "Special Use" with existing or permitted uses in the surrounding area.

Item 1, continued:

Councilmember Clark said businesses such as Bison Witches, Opolis, and Penny Hill, have four walls, but also have one wall that can roll up like a garage door and wondered if they could be grandfathered in so they do not have to apply for special use. Councilmember Wilson said she supports the idea of grandfathering because existing businesses should be protected.

Councilmember Hickman is nervous about this proposal because Downtown Norman and Campus Corner have residential areas nearby and he receives complaints about noise all the time. If the City wants to give businesses more opportunities for outdoor music, he would rather discuss the Noise Ordinance and give more opportunities for noise variance permits. He said the odds of the venues keeping the music below the decibel level and enforcing that is just creating a battle between neighbors. He is concerned that businesses in close proximity to each other will just turn up their music to drown the other out and potentially cause more noise impacts.

Councilmember Bierman said Council should be considering changes to the Noise Ordinance in conjunction with this proposal because the properties in question are small and tightly packed.

Councilmember Holman said the Norman Police Department used to have a noise patrol unit that proactively enforced the Noise Ordinance, but now it is done on a complaint basis, which has neighbors telling on neighbors. Since Downtown Norman and Campus Corner are so compact, what changes need to be made to give police proactive power to patrol these areas? He said there is also a cost to small businesses having to apply for a special use so what burden is the City adding to small businesses?

Councilmember Scott asked what businesses want this change and what businesses are against the change. She asked if there is some type of argument or contentiousness between businesses in Downtown Norman and Campus Corner and Councilmember Hickman said there was an application from Puebla on Main Street for special use for outdoor music that caused some tension on Main Street and a lot of Main Street property owners protested that special use request.

Councilmember Hickman said when someone obtains a noise variance they are not required to give notice to surrounding property owners and believes there should be a provision in the Noise Ordinance requiring notification to property owners within a specific radius. Councilmember Bierman said she does not disagree there is a need for this provision, but wants to make sure Council addresses some of the concerns that will be brought up by the public, such as notification, decibel levels, etc.; however, notifications should exclude City, County, and State properties. She said the Noise Ordinance is not strong enough to allow outdoor live entertainment in C-3.

Councilmember Wilson suggested having a review board process if a certain number of noise complaints are received.

Councilmember Holman said during the Hollywood Corners discussion, Council was told by an expert that noise level measurements performed by the Police Department are outdated and may need to be changed.

Item 1, continued:

Mayor Miller suggested Staff review what can be changed in the Noise Ordinance and work this proposal and the Noise Ordinance as companion items.

Councilmember Bierman said she is okay with moving forward with the Zoning Ordinance amendments, while continuing to work on the Noise Ordinance and Councilmember Holman agreed.

Councilmember Castleberry said Council should move forward with this zoning proposal to have a definition and criteria in place and work on the Noise Ordinance later.

Mayor Miller said the proposal should go back to the Oversight Committee for further discussion since there seems to be more questions and concerns that need to be addressed before moving forward.

Councilmember Hickman said his biggest concern is the inclusion of C-3 properties. He believes there needs to be serious conversations with downtown and Campus Corner merchants.

Items submitted for the record

1. Text File RPT-1819-53 dated January 25, 2019, by Jane Hudson and Jeanne Snider
2. Memorandum dated January 29, 2019, from Jane Hudson, Interim Director of Planning and Community Development, and Jeanne Snider, Assistant City Attorney, to City Council Study Session
3. Memorandum dated January 4, 2019, from Jane Hudson, Interim Director of Planning and Community Development, and Jeanne Snider, Assistant City Attorney, to City Council Oversight Committee
4. Staff report dated August 11, 2019, recommending approval
5. Pertinent excerpts of City Council minutes of September 27, 2016
6. Memorandum dated October 21, 2016, from Susan Connors, AICP, Director of Planning and Community Development, to Community Planning and Transportation Committee Members
7. Council Community Planning and Transportation Committee minutes dated October 27, 2016
8. Memorandum dated December 1, 2016, from Susan Connors, AICP, Director of Planning and Community Development, to Community Planning and Transportation Committee Members
9. Council Community Planning and Transportation Committee minutes dated October 27, 2016
10. Pertinent excerpts of City Council minutes of September 27, 2016
11. Staff report dated February 8, 2018, recommending approval
12. Pertinent excerpts of City Council minutes of June 12, 2018
13. Memorandum dated August 3, 2018, from Jeanne Snider, Assistant City Attorney, to City Council Oversight Committee, with Attachment 1, Article III. – Noise Control from City of Norman Code of Ordinances; Attachment 2, Noise Level Comparison Chart; Attachment 3, City of Norman Noise Variance Permit Application; and Attachment 4, Ordinance No. 20191-0502012 from the City of Fort Worth, Texas
14. City Council Oversight Committee minutes of August 9, 2018
15. Staff report dated November 8, 2018, recommending approval

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Item 2, being:

DISCUSSION REGARDING A TEMPORARY ADMINISTRATIVE DELAY FOR THE CENTER CITY STUDY AREA.

Ms. Hudson gave a brief overview of the Center City Form Based Code (CCFBC) process and said Council approved a Memorandum of Understanding (MOU) with the University of Oklahoma (OU) on January 14, 2014; approved a contract on February 11, 2014; held a Center City Vision “Kick-Off” meeting on March 26, 2014; held a Center City Design Charrette on May 12 through May 16, 2014; posted the Charrette Summary Report on the City’s website in July 2014; held numerous Steering Committee meetings over the next two years; and concluded the process with Council adoption on May 23, 2017.

During the Charrette meetings everyone agreed Center City is not the same as the rest of Norman and created a vision of promoting mixed-use development in key locations; increasing pedestrian and bicycle friendly character; creating a “park once” environment; providing a range of housing options; forming a connection between Downtown Norman and Campus Corner; and promoting small scale in-fill development. With this vision in mind and in order to provide a zoning tool to achieve a very particular type of development in Center City, Council created a Tax Increment Finance (TIF) District. To date, eleven projects have submitted an application for a Certificate of Compliance (COC) to the Center City Design Team, which is a prerequisite to issuance of a building permit within Center City. She said the various projects have brought to light concerns with implementation of CCFBC and the Center City vision including parking availability and public safety concerns; setback inconsistencies; lack of architectural guidance and a disconnect of function and form; development consistent with Center City’s vision for James Garner Avenue’s role as a “gateway” to Downtown Norman; and evaluation of incentives for development in line with the Center City vision plans for public infrastructure projects.

Ms. Hudson said the goal of the Norman Center City Vision Project and Plan was to reset the conversation and provide guidance for future development and redevelopment in the Center City area. The CCFBC is intended to implement the purpose and goals of that Plan by providing strong implementation tools for the Center City area. She said form based codes can offer a new way of thinking that includes creating vital centers supportive of businesses both big and small; neighborhoods and streets that are safe and attractive for walking and biking; preservation of community history; and protection of the environment. The Form Based Code (FBC) is a zoning tool and a different way to regulate development to achieve a specific type of place that shapes the physical form of communities. She said current zoning looks to prevent uses, such as factories, being next to houses and other compatible scales of development, but sometimes having walkability means building small food markets or dental offices near residential within walking distance.

The CCFBC is composed of a Regulating Plan that provides a public space master plan with specific information on development parameters for each parcel and shows how each lot relates to the street space and surrounding neighborhood. Building Form Standards require buildings to have windows and welcoming entries that contribute to life on the sidewalk and they require the placement of parking to the rear of buildings to ensure that it does not get between buildings and pedestrians. These standards require that buildings support and shape the public spaces in our City.

Item 2, continued:

Ms. Hudson said CCFBC challenges include stormwater run-off issues; required build line (RBL) inconsistencies, including corner lots, irregular lots, and lots within the same frontages; a lack of architectural guidance and disconnect of function and form (plain buildings with no façade composition); possibility of losing connection between downtown, OU, and Campus Corner through the James Garner Avenue gateway; evaluation of incentive for development; parking impacts; missing variations of housing types; density; contradictions on side setbacks; missing pedestrian lighting; gaps in on-street parking; gaps in alley improvements; evaluation of residential on ground floor in Urban General; Staff and applicants review time and money; conflict in side lot setbacks; townhouse/small apartment frontage (single-family residential or stacked flats); and townhouse plats conflicts with subdivision regulations and Zoning Ordinance.

The missing middle type of development known as Neighborhood Middle Frontage is represented by traditional duplex, triplex, and courtyard bungalow residences with small front yard, side and rear yards along a tree line street. Structures are one and two stories in height with pitched roofs and front porches. Its use is to protect the character of existing single-family neighborhoods while allowing a more intense and compact neighborhood. Ms. Hudson said after the Regulating Plan was adopted, the neighborhood middle area changed from a 20 to 25 front yard setback to a 10 foot build line, which the developers feel is inappropriate and challenging on some properties.

Ms. Hudson said the Regulating Plan is a living document that, as conditions change, community priorities change, new issues arise, or assumptions prove to be inaccurate, can be updated or rewritten. She said a CCFBC living document review includes evaluating the impact of density; assessing if the vision is being met; evaluating impacts on public infrastructure; evaluating impacts on adjacent properties; evaluating for inconsistencies; and establishing a timeline for periodic review.

Ms. Hudson said Staff was requested to evaluate the status of the CCFBC's implementation and make recommendations for moving forward. Following Staff research and conclusions, and in light of the recent rapid increase of COC application submittals, Staff was further directed to prepare a resolution placing a six month administrative delay on permit issuance within Center City for Council's consideration in advance of the next COC application submittal deadline. She said an administrative delay is a temporary halt in the issuance of certain approvals and permit applications in a defined area for a defined period of time and is typically enacted in order to call a "time out" on rapid redevelopment to ensure future impacts are carefully studied.

Councilmember Hickman applauded Staff for being proactive and bringing this forward. He has heard the many concerns and absolutely supports this resolution.

Councilmember Bierman feels this is the appropriate time to move forward with a review of the regulations considering there are four new members of Council who were not on Council at the time this Plan was developed and adopted. She said now is the time to take a step back before demographics potentially change again and likes the idea of formalizing some type of periodic review so Council does not lose sight of this process in the future.

Mayor Miller said Norman is not alone in this as Stillwater, Oklahoma, has a FBC and is struggling with these same issues. She thinks Staff will want more expert technical support so Norman can get

Item 2, continued:

a better handle on problems because this is not just about Council or Staff, it is about the architects, engineers, developers, etc., and the City is not doing a good job of being clear about what the expectations and rules are.

Councilmember Castleberry asked what will happen with applications already submitted, what is the effective date on this? Will Council consider recalling the Center City Steering Committee to review the concerns and make recommendations for solutions? Ms. Hudson said applications submitted to date will move forward to the Development Review Team for processing. Mayor Miller said reconvening the Center City Steering Committee is a possibility as well as reconnecting with the consultants who helped form the CCFBC.

Councilmember Holman would like to see the Center City Steering Committee reconvened to address the specific concerns. He said the CCFBC TIF was created to pay for improvements to infrastructure so the area could handle an anticipated higher density population and a walkable connection between downtown and Campus Corner. He really wants this policy to succeed and supports the resolution.

Items submitted for the record

1. Memorandum dated January 29, 2019, from Jane Hudson, Interim Director of Planning and Community Development, to Mayor and City Council
2. PowerPoint presentation entitled, "Center City Form Based Code CCFBC – Resolution R-1819-75 – Administrative Delay – Center City Study Area," City Council Study Session dated January 29, 2019

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The meeting was adjourned at 6:48 p.m.

ATTEST:

  
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City Clerk

  
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Mayor

