

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

February 12, 2014

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:32 p.m. in the City Council Conference Room on the 12th day of February, 2014, 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 Holman, Jungman, Kovach, and Chairman Miller

ABSENT: None

OTHERS PRESENT: Councilmember Robert Castleberry, Ward Three
Councilmember Jim Griffith, Ward Six
Ms. Susan Connors, Planning and Community Development Director
Mr. Terry Floyd, Development Coordinator
Mr. Steve Lewis, City Manager
Ms. Leah Messner, Assistant City Attorney
Ms. Linda Price, Revitalization Manager
Ms. Syndi Runyon, Administrative Assistant IV

Item 1, being:

CONTINUED DISCUSSION REGARDING REGISTRATION OF VACANT/ABANDONED PROPERTIES.

Chairman Miller welcomed everyone to the Oversight Committee and explained that the Oversight Committee is a Council committee charged with reviewing existing ordinances based on requests from Staff, Councilmembers, or citizens and makes recommendations to Council on possible changes to the ordinances. She said tonight the Committee will be reviewing ordinances regarding registration of vacant and/or abandoned properties and three unrelated persons residing in a single family residence.

Ms. Susan Connors, Director of Planning and Community Development, said the Oversight Committee discussed registration of vacant/abandoned properties in December, 2013, and January, 2014. In the January meeting, Councilmembers requested Staff draft a vacant property registration ordinance for discussion tonight.

Ms. Connors said Staff has become aware of a proposed House Bill currently under consideration by the Oklahoma Legislature that would amend Title 11 of Oklahoma Statutes to provide a process for municipalities to declare vacant buildings as a public nuisance and take steps to abate such a nuisance.

Ms. Connors said the ordinance prepared by Staff would require registration with the City of Norman no later than thirty days after a neglected vacant building, or residential structure qualified as such under the draft ordinance. She said the ordinance also provides several options for ways to define a neglected vacant building or residential structure as follows:

- Unoccupied and unsecured;
- Unoccupied and unsecured by other than normal means;
- Unoccupied and an unsafe building or residential structure with suspected code violations as determined by a Code Enforcement Officer; and
- Unoccupied and an Enforcement Officer has issued an order to correct code violations

Ms. Connors said other proposed options for triggering registration include:

- Property has been the subject of three or more code violations in a twelve month period
- Property owner has been convicted of three or more code violations in a twelve month period

Item 1, continued:

Ms. Connors said there is a provision in the ordinance for property that has suffered fire or extreme weather damage being exempt for period of one hundred and eighty days after the fire or extreme weather event.

The registration process includes a description of the premise; name, address, and telephone number of the owner(s); name and address of any lien holder(s); name, address, and telephone number of a natural, local person who is authorized to act for the owner in cases of emergency; proof of insurance; and a neglected vacant building or residential structure plan. She said if the property owner intends for the property to remain vacant, the property owner must pay an annual registration fee and an additional annual fee will have to be paid until the property is demolished or rehabilitated. She said the fee has been left blank for Committee discussion.

The vacant building or residential structure plan must include one of three proposals for the property: 1) a demolition plan, 2) a plan for securing and maintaining the building in accordance with City of Norman standards, or 3) a rehabilitation plan with a timeline for re-occupancy. After the plan is approved, the City would file a notice of the plan in the County Clerk's records with the deed to the property. If a property owner fails to comply with the plan, the City may make repairs to the property to keep it in compliance and bill the owner for those repairs, revoke the plan, and fine the owner.

Ms. Connors said in addition to registration, the property owner must continue to maintain the property according to City Code standards that includes preventing leaks; keeping outside stairs in safe condition; painting; repairing broken windows; mowing the lawn; preventing garbage from accumulating on the property; maintaining structural integrity; and maintaining the property free of vermin or insects. If a property owner fails to comply with any of the conditions of the ordinance, that person may be subject to a fine of up to \$750 and/or up to sixty (60) days in jail.

Ms. Connors highlighted the fundamentals of House Bill No. 3241. She said if the Legislature approves the Bill, it will go into effect November 1, 2014. She said the Oversight Committee may want to consider delaying adoption of a vacant property registration ordinance to avoid running afoul of State law. Councilmember Kovach agreed and said the Bill could be amended several times before it is adopted and the Committee would be wasting their time adopting an ordinance before knowing whether the State adopts their Bill or not.

Chairman Miller asked Mr. Jeff Bryant, City Attorney, the chances of the Bill passing Legislature and Mr. Bryant said it would be hard to speculate on that since the Bill can change many times during the process. Chairman Miller said her initial thought was to delay action on the ordinance until the Legislature decides what they will do, but that could be a long time and one of the reasons the Committee is looking at the ordinance is to help citizens that are having an issue with vacant properties in their neighborhood.

Chairman Miller said, during the last Committee meeting Councilmembers were in agreement that registration would happen only if there were violations against a vacant property and not all vacant properties need to be registered. Ms. Messner said Staff wrote the draft the way they did in order to give the Committee options to discuss and ultimately decide what to recommend to Council. She asked if the Committee wanted three violations per year or three convictions per year to be the trigger for registration. She said it would be very rare to have three convictions against a property. Councilmember Castleberry asked if there has ever been a conviction and Ms. Messner said citations are issued, but before the final adjudication of that citation Staff seeks compliance. She said once compliance is met, the City can dismiss the citation so there is no conviction. Councilmember Kovach felt three convictions would be an excessively high bar and preferred three violations. Chairman Miller said violations alert the City to the fact that the property is not being maintained or is not secured. Councilmember Jungman asked if violations have to be well documented to stand up in court and Mr. Bryant said yes and the violations are well documented. He said the City gives the property owner plenty of time to comply and the City prefers not to file charges or convict property owners. He said the City tries very hard to gain compliance without taking property owners to court.

Item 1, continued:

Councilmember Kovach asked why the City is requiring proof of insurance. He said there are people who live on their property who do not have insurance and if the property owner wants to take that risk that is their choice, the ordinance should not address that. He would rather require the property owner secure or make repairs to their property rather than worry about whether or not they have insurance on the property. Chairman Miller said other cities require insurance and she would like to know the reason and Councilmember Holman agreed.

Councilmember Jungman asked if the City can create stricter laws than the State and Mr. Bryant said the safest route is to mirror State law.

Councilmember Castleberry asked if three violations could happen concurrently and Ms. Messner said **yes**. Councilmember Kovach said the City is not trying to address one person getting three violations concurrently, then fixing the problem so there are no longer violations to address. The City is trying to address those property owners who are habitually in violation and need to be constantly reminded.

Councilmember Kovach suggested the City follow the House Bill and if it dies on the House floor, the City can resurrect the ordinance and bring it forward. Councilmember Jungman agreed and said discussion on the ordinance can be postponed two to three months. Councilmember Castleberry said if there is no emergency, he agrees with Councilmember Kovach. Chairman Miller said there is no emergency and she is willing to wait to **see** what happens at the State level.

Councilmember Kovach recommended Staff move forward with making changes to the draft ordinance based on discussion tonight so it will be ready for review in case the Bill fails and Chairman Miller agreed.

Items submitted for the record

1. Memorandum dated February 7, 2014, from Susan Connors, Director of Planning and Community Development, and Leah Messner, Assistant City Attorney, to City Council Oversight Committee with attachments, Vacant Property Registration Ordinance; Exhibit A, Tuscaloosa Occupancy Ordinance; Exhibit B, Oxford Occupancy Regulations; and House Bill

Item 2, being:

DISCUSSION REGARDING ORDINANCE REQUIREMENTS ASSOCIATED TO THREE UNRELATED PERSONS RESIDING IN A SINGLE FAMILY RESIDENCE.

Chairman Miller said in the Oversight Committee meeting of January 2014, Mr. John Lungren, 1824 Atchison #4, wanted to discuss the ordinance regarding three unrelated persons living in a single family residence. She said the ordinance was discussed by the Community Planning and Transportation Committee (CPTC) in December 2013, and their recommendation was to make no changes to the ordinance. She asked Ms. Leah Messner, Assistant City Attorney, to meet with Mr. Lungren regarding his concerns and if no resolution was found she would check with Staff on whether or not the ordinance should be reviewed by the CPTC or Oversight Committee. Councilmembers Castleberry and Kovach felt the Oversight Committee should review the ordinance.

Ms. Connors highlighted information prepared for the CPTC's December meeting. She said Staff was asked to prepare a comparison among several cities regarding their regulations on three unrelated people living in a single family home. It was suggested Staff contact Tuscaloosa, Alabama, and Oxford, Mississippi, about how they conduct their process of compliance. Councilmember Jungman asked why these two cities were chosen for comparisons and Ms. Connors said they are university cities.

Item 2, continued:

Ms. Connors said the City of Norman Zoning Ordinance defines "Single Family" as an individual or two or more persons related by blood, marriage, or legal adoption living together as a single housekeeping unit in a dwelling unit, including foster children, domestic servants, and not more than two roomers OR three unrelated persons living together in a quasi-unit quarter OR a group home. She said this includes apartments, condominiums, and townhomes. Councilmember Castleberry asked if someone rented a two bedroom apartment, does that mean three unrelated people can live there.

Councilmember Jungman said if three unrelated people live in a single unit if the area is zoned R-3 and Ms. Messner said only if the property is rezoned. Councilmember Castleberry asked how the public would know if property has been rezoned and three unrelated persons are allowed to live in one unit and Ms. Connors said there is really no way to know. She said the site development plan that goes with the rezoning project identifies the number of units and bedrooms so through that process multiple occupancy is allowed. She said the square footage of the bedrooms would limit the number of persons allowed to live in a unit. Assumptions are made, through the zoning process, that apartments house multiple persons.

Ms. Connors said, over the years, the City has explored various avenues of enforcement to protect residents from issues that arise with multiple unrelated persons living in single family homes. She said complaints generally revolve around traffic, noise, and parking.

Councilmember Jungman asked if there are exemptions in R-1 for four bedroom single family homes and Ms. Connors said there are no exemptions so three unrelated persons would not be allowed.

Ms. Connors said a Supreme Court Case, the Village of Belle Terre versus Bruce Boraas, identifies the City's ordinance as a legal ordinance. She said the Court found that a place where the yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. She said this case has been upheld in the courts time and again.

Councilmember Holman asked if the zoning definition of family includes marriages not recognized by the State of Oklahoma and Ms. Connors said no because it does not meet the definition of single family. Councilmember Kovach said the City should not be overly proud of the fact that the ordinance has not been changed since 1954 because a lot of things have changed since 1954. He said, for instance, his neighbors had taken in several international students and technically they were in violation of the ordinance.

Councilmember Castleberry asked what problems unrelated persons create that related persons do not create and Ms. Connors said the character of a family is different than the character of college students. She said students have a different pattern of life. Councilmember Kovach said the City needs to address specific problems such as noise, parking, bad neighbors, etc. He said the City could accept certain situations while still protecting neighborhoods. He said it is hard to stomach that a neighborhood can have an Oxford House that is not bound by this ordinance yet three unrelated persons who are perfectly good neighbors are restricted by the ordinance. Councilmember Castleberry agreed and asked why it is assumed four unrelated persons would make bad neighbors and what additional protection does this ordinance provide to neighborhoods that are not already provided by other ordinances such as noise, parking, etc.

Chairman Miller said the reason for the ordinance is to protect neighborhoods. She said Tuscaloosa and Oxford have the same or stricter ordinance and that is due to the makeup of those cities. She said the Committee can debate the legalities of the ordinance forever, but this is not the right time for that. She said the problem is traffic, parking, noise and as a landlord herself she knows there are problems whether the unrelated persons are young professionals or students. She said there will always be arguments that this group of four people are better than that group of four people, but there is an issue of groups of students causing problems in neighborhoods and has nothing to do with who is a good renter and who is not a good renter.

Item 2, continued:

Councilmember Griffith said the ordinance does not address who is responsible for ensuring that three unrelated persons do not rent a property and asked who *is* responsible. Ms. Messner said the ordinance is enforced on a complaint basis. She said notice is sent to the property owner regarding the possible violation and the City works with the property owner and tenants to bring the property into compliance if there is a violation. Councilmember Griffith asked if it is common practice for lease agreements to state that three unrelated people cannot rent the property and Ms. Messner said there is no law requiring a landlord to put that in their lease.

Councilmember Kovach said at the meeting in January a question was raised regarding the Fair Housing Act (FHA). He said there are a lot of questions landlords, property managers, and realtors cannot ask because of the FHA laws and asked Mr. Bryant to clarify what questions could be asked that would not be in violation of FHA laws. Mr. Bryant said the City is not charged with enforcing FHA laws, the City is charged with enforcing the ordinance and he believes those types of questions can be asked to ensure compliance to the ordinance. He said it is not unusual for different levels of government regulations to overlap.

Chairman Miller said as long as the City's ordinance is not challenged, it is the law for Norman. Councilmember Kovach felt the City needs to look at old ordinances if there seems to be a problem with them. He said the City should realistically tackle limiting parking, which is the number one complaint. He said the City already has a noise ordinance, nuisance house ordinance, and code enforcement requirements to address many different issues. He said another problem is locating the landlord so if the City were to make special exemptions for four and five bedroom homes, there would need to be a way to contact the owner and make that contact information readily available to Staff.

Councilmember Castleberry asked how often the ordinance is enforced and Ms. Connors said the ordinance is enforced regularly. Ms. Messer said the number one complaint is the number of cars at a residence that may be legally parked, but parked along the street making it hard to get up and down the street. Councilmember Jungman felt the ordinance is more of a prevention strategy than a one size fits all rule. He said the ordinance prevents Code Enforcement from chasing all the other elements of three unrelated persons such as noise, parking, etc., and thereby saves money. Councilmember Kovach said he understands this is a preventative ordinance, but it also prevents a lot of good people who are not bad neighbors from doing something because of a 1954 definition.

Councilmember Jungman said FHA laws prohibit discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and disability. He would like to know which one is being violated by the City's ordinance as he does not see a violation.

Councilmember Holman said there are no complaints if students are being good neighbors so many violations go unnoticed. Councilmember Kovach said more than three related persons can have the same issues as three unrelated persons and felt enforcing traffic issues would be a huge step in helping neighborhoods.

Chairman Miller said as the ordinance stands it is preventative, but cautioned there could be unintended consequences to changing the ordinance. Councilmember Jungman suggested leaving the ordinance as is or making specific areas of the City exempt similar to the Tuscaloosa ordinance.

Ms. Joy Hampton, The Norman Transcript, said if there are too many vehicles at a residence and the vehicles block a neighbors mailbox or polycart, what is the neighbors recourse and Ms. Messner said the City does not cite anyone for blocking a mailbox or polycart; however, the Sanitation Department does leave a warning note that the polycart will not be emptied in the future if it is blocked by a vehicle. Mr. Bryant said Staff would research that.

Item 2, continued:

Mr. Scott Foster, 3106 Walnut Road, said neighborhoods have the same problems whether people living in a home are related or unrelated except when they are related they are allowed to do certain things. He said if a neighbor does not like a property owner for any reason, they can use the City as a weapon against the property owner if there are more than three unrelated adults living on a property, but if a family lives on that property and the family members are being jerks there would be no recourse. He said the City has ordinances to deal with issues of noise, parking, party houses, and trash in yards, etc. Mr. Foster said FHA laws are federal laws that trump State and City laws. He said he cannot ask someone if they are related or married or his license could be revoked. He said the City's definition of "family" does not reflect the current societal view of family.

Mr. John Lungren said the City's ordinance is in violation of the FHA laws. He highlighted a list of words and phrases, through FHA, that cannot be used when advertising property for sale or rent. He said according to FHA laws you cannot ask people if they are married or single. Councilmember Jungman disagreed and said you can ask those questions, but he would defer to the Legal Staff on whether or not the City's ordinance is in violation of FHA laws. Mr. Bryant said Staff believes the ordinance is legal and not in violation of FHA laws, but can do more research. He said Staff will do whatever Council recommends, but this discussion is a replay of the discussion that took place ten years ago when the ordinance was created.

Mr. Lungren said he met with Ms. Messner and Ms. Kathryn Walker, Assistant City Attorney, and they role played various rental scenarios with him as the tenant and them as the landlord and their only response to each scenario was, "you have to follow the City of Norman ordinance." He said he intends to follow federal law because that is his livelihood. He felt the City should abolish the ordinance.

Mr. Marty Coltrane, 305 South Peters Avenue, said under the City's ordinance there can be no situation like the "Golden Girls." Councilmember Castleberry asked if the City puts realtors in the position of violating the ordinance and Mr. Coltrane said yes. Mr. Coltrane said the City has laws to address problems related to more than three unrelated persons living in a single family dwelling through the noise ordinance, party house ordinance, etc.

Councilmember Griffith said he can sympathize with realtors and property managers and suggested landlords place ordinance language in their leases for their own protection as well as make renters aware there is an ordinance.

Councilmember Kovach said there are houses in the City that can easily handle extra people, extra vehicles, etc., and whether there is a FHA issue or not, the City has a fairness issue because the City is knowingly disenfranchising certain segments of the community in order to prevent certain bad actors from doing things. He asked if Staff could look at those problems to see if there are other ways to get that same amount of neighborhood protection without disenfranchising anyone.

Chairman Miller said the Committee wants to look at the possibility of a variance or designating specific areas as exempt. Councilmember Jungman said he would rather see R-3 neighborhoods around campus that function as R-1 be rezoned to R-1. Ms. Connors said Staff would need to find out what percentage of people in that area would want that before moving forward with a petition for rezoning.

Councilmember Holman asked if the ordinance language could recognize marriages that are unrecognized by the State and Mr. Bryant said he would not recommend doing anything different from the State's definition of marriage.

Mr. Jonathan Fowler, 422 Park Drive, said the ordinance protects the character of the neighborhoods. He is concerned college kids could keep transitioning neighborhoods and pushing families out if the ordinance is abolished.

Item 2, continued:

Chairman Miller asked Staff to review possible modifications to the ordinance and whether or not the ordinance violates FHA laws and bring back for discussion in April.

Items submitted for the record

1. Memorandum dated February 6, 2014, from Susan Connors, Director of Planning and Community Development, to Oversight Committee
2. Supreme Court of the United States - Village of Belle Terre vs. Bruce Boraas
3. Miscellaneous articles and information regarding the Federal Housing Act and Advertising Within the Law provided by Mr. John Lungren

Item 3, being:

MISCELLANEOUS DISCUSSION.

None

ADJOURNMENT.

The meeting adjourned at 7:00 p.m.

ATTEST:



City Clerk



Mayor

