

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

June 11, 2014

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:30 p.m. in the City Council Multi-Purpose Room on the 11th day of June, 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:	Chairman Miller
ABSENT:	Councilmembers Holman, Jungman, and Kovach
OTHERS PRESENT:	Mayor Cindy Rosenthal Mr. Jud Foster, Director of Parks and Recreation Mr. Ken Komiske, Director of Utilities Mr. Steve Lewis, City Manager Ms. Leah Messner, Assistant City Attorney Ms. Syndi Runyon, Administrative Technician IV

Item 1, being:

CONTINUED DISCUSSION REGARDING SMOKING REGULATIONS ON MUNICIPAL PROPERTIES.

Chairman Miller said on March 12, 2014, the Oversight Committee discussed regulations on smoking on municipal properties and the Committee asked Staff to draft an ordinance, provide more clarification on whether or not there is a difference between e-cigarettes and vapor devices, and invite someone from Norman Regional Hospital (NRH) to attend a meeting to give their input.

Ms. Leah Messner, Assistant City Attorney, said the draft ordinance bans all types of smoking products on property owned or operated by the City of Norman. Draft language in Section 10-503(2) would read as follows:

All buildings, property, or public parks or any portions thereof owned or operated by this municipality shall be designated as nonsmoking meaning that no person shall smoke, use smokeless tobacco, other nicotine products, vapor of e-cigarettes or carry any lighted smoking instrument, excluding FDA-approved smoking cessation products.

Mayor Rosenthal asked if there are any smoking cessation products approved by the Federal Drug Administration (FDA) and Ms. Messner said yes, nicotine patches and gum. Ms. Messner said many people are using e-cigarettes as a cessation tool, but they are not FDA approved.

Ms. Messner said the draft ordinance has been amended to define vapor or electronic cigarettes and that definition is: “a battery-powered device which simulates tobacco smoking by producing a vapor that resembles smoke. It generally uses a heating element known as an atomizer that vaporizes a liquid solution. Solutions usually contain a mixture of propylene glycol, vegetable glycerin, nicotine, and flavorings, while others release a flavored vapor without nicotine.”

Mayor Rosenthal asked if the City’s definition is similar to the States definition and Ms. Messner said the States definition is different so that may be something the Committee wants the City to use. She said the State defines the term “vapor product” instead of the term “e-cigarette or vapor cigarette.” State language reads, “a vapor product shall mean non-combustible products that may or may not contain nicotine that employ a mechanical heating element, batter, electronic circuit or other mechanism regardless of shape or size that can be used to produce a vapor, a solution, or other form. Vapor products shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device.” Chairman Miller and Mayor Rosenthal said they want to mirror the State’s definition as is is broader and includes products with or without nicotine.

Item 1, continued:

Ms. Messer said in the March meeting, the Oversight Committee requested information about electronic and/or vapor cigarettes. She said within the last year, Oklahoma has enacted two measures regulating e-cigarettes. The first measure is an executive order by Governor Mary Fallin that bans vaping devices and e-cigarette use on State property that includes State owned and leased buildings and State vehicles, but it excludes Veterans Affairs residential facilities. The second measure is Senate Bill 1602 prohibits the sale of e-cigarettes to minors with business owners subject to \$100 to \$300 fines for violations. She said this makes Oklahoma one of 28 states to prohibit sales to minors.

Chairman Miller said the University of Oklahoma's (OU) regulations has a section regarding compliance and enforcement and asked if the City has an enforcement mechanism for smoking in parks, which is currently the only City properties where smoking is banned. Mr. Jud Foster, Director of Parks and Recreation, said violators can be cited and Ms. Messner said the fines range from \$10 to \$100. Mr. Foster said when someone is told they are not supposed to be smoking they usually put the cigarette or cigar out. He said there was incident where a person attending an event in Lions Park refused to put out their cigarette even when told by a Police Officer that it was not allowed so he was cited. Mayor Rosenthal said if the City puts in new signs or updates current signs at parks, the signs need to state that a violation is subject to fines of up to \$100 to get people's attention.

Ms. Messner said, currently, the FDA regulates electronic cigarettes marketed for therapeutic purposes, but this is only a small portion of the over 250 electronic cigarette brands currently on the market. The FDA is proposing rules for regulating e-cigarettes including prohibiting sales to minors and requiring producers to register with the agency and disclose manufacturing processes. The new FDA regulations would extend that ban to all 50 states. She said the content the FDA hopes to regulate are the chemicals used in the vaping process. There is little or no regulations on the chemicals being used for e-cigarettes and the common process of mixing chemicals occurs in the back of the e-cigarette stores. In addition, different e-cigarettes brands are engineered differently affecting the character and potential toxicity of the vapor.

Ms. Messner said along with this action by the FDA, an increasing number of cities and states are banning e-cigarette use in smoke-free places. She said Amtrak has banned their use on trains and the Navy banned them below decks in submarines. In September, the United States Department of Transportation proposed a ban aboard airplanes because of concerns about health risks from the vapors.

Chairman Miller asked Staff to further amend the draft ordinance for review of the entire Council at a Study Session or Conference.

Items submitted for the record

1. Memorandum dated June 5, 2014, from Lean Messner, Assistant City Attorney, through Jeff Harley Bryant, City Attorney, to City Council Oversight Committee
2. Draft copy of annotated ordinance
3. Draft copy of clean ordinance
4. Article from the Center for Tobacco Products, U.S. Food and Drug Administration, entitled, "Issue Snapshot on Deeming: Regulating Additional Tobacco Products"
5. University of Oklahoma (OU) Tobacco-Free Policy
6. Norman Public Schools Health/Safety/Child Nutrition Policy

Item 2, being:

DISCUSSION REGARDING THE TIMEFRAME FOR PLACEMENT OF ITEMS AT THE CURB PRIOR TO THE SPRING AND FALL CLEANUP COLLECTION EVENTS.

Mr. Ken Komiske, Director of Utilities, said each year, the City of Norman offers a spring and a fall cleanup for all residential customers. This service is offered to help customers properly dispose of larger bulky items that would not normally fit into the weekly polycart collections. Collected items can include lawn furniture, washers/dryers, bookcases, chairs/couches, and other bulky items. Items excluded include yard waste, construction debris, vehicles, and hazardous materials. He said customers can take bulk items to the Transfer Station at no charge during spring and fall cleanup.

Chairman Miller said tonight's discussion was generated by a number of complaints to Council about citizens placing items at the curb several weeks prior to the spring or fall cleanup pickup date and said this can be very unsightly. She said Code Enforcement does not address spring and fall cleanup issues.

Mayor Rosenthal asked about the difficulties of enforcing the placement of items at the curb more than one week prior to pickup and Mr. Ken Komiske, Director of Utilities, said the City has not really tried to educate customers on when to place items at the curb. He said a timeframe was addressed in the spring cleanup press release, but was not addressed in the bill stuffers that went out to each customer. Language in the press release reads, "Items should not be placed at the curb earlier than one week before schedule pick up date; this could result in a City of Norman code violation, and a fine can and will be issued to the violator."

Mr. Komiske said Code Enforcement does not address the spring and fall cleanup issues because when a violation occurs, Code Enforcement allows ten days for abatement of the nuisance so if the items are at the curb two weeks prior to pickup then the violation would be abated within a reasonable time.

Mr. Komiske said Section 21-201 of the City's Code addresses normal trash collection that uses polycarts which states, "Municipal solid waste containers, or polycarts, shall be placed within two (2) feet of the curb no earlier than 12:00 pm. The day prior to collection and shall be removed from the curbside, and placed at the house side no later than 12:00 p.m. the day following the collection." He said the City charges the customer \$10 on their next utility bill if the City has to move the trash container to house side. He said to tell customers the City will charge them \$10 to clean up their spring or fall cleanup items will not work because that would be a bargain and people would not remove the items. He said violations would need to be handled as a health violation through the Code Enforcement Division. Mayor Rosenthal said the problem with having Code Enforcement abate the violation is the ten day period customers are allowed to abate the violation themselves. She said it has already been stated that in most cases the pickup date arrives and the violation is abated before the Code Enforcement can take further action.

Mayor Rosenthal said throughout the core area of Norman there have been several polycarts at the curb for at least a month. She said a week after college ends those polycarts should be tagged, moved house side, and the owner charged the \$10 fee. She gave Mr. Komiske a list of the streets that still have polycarts at the curb. She said the City should routinely check areas where students have moved out of rental properties because the landlords are apparently not checking the properties.

Mr. Komiske said language could be placed in an ordinance and/or stronger language could be included in the press release and bill stuffers. He said spring and fall cleanup language is currently not in the ordinance.

Mr. Komiske said there have been discussions in the past of doing away with spring and fall cleanup and offering customers a voucher system where they are allotted two vouchers per year for a bulk pickup. He said customers can schedule a pickup when it is convenient to them and this service would cost the City about the same amount as the current spring and fall cleanup. He said spring and fall cleanup costs approximately \$130,000 per session.

Item 2, continued:

Mr. Komiske said another issue is “millennium” employees. He said they have to be treated differently. He said in the old days, employees liked earning overtime and volunteered to work Saturdays, but now overtime has to be assigned because many of the younger employees do not want to work on Saturday. Chairman Miller asked if employees would have to work on Saturday if a voucher system was in place and Mr. Komiske said no, the City would have a full time crew working five days a week picking up bulk items. He said the City could be broken into quadrants with each quadrant having an assigned day of the week for bulk pickup.

Chairman Miller asked where language could be added to the Code and Ms. Messner said she would like to do some research on whether or not other cities have an ordinance or policy, their enforcement mechanism, what is the burden of proof, etc. She asked for instance, how the City could prove that someone did not just come along and dump a couch on someone’s curb and it was not the owner that put it at the curb. Ms. Messner was not sure Chapter 10 would be the best place for the language and thought it would probably need to go into Chapter 21, Utility Services. Mr. Komiske suggested the fine be higher than \$10. Mayor Rosenthal asked what the fine would be and Ms. Messner said Code Enforcement fines range from \$50 to \$750 and once the nuisance is abated there is a charge for the abatement. She said if the abatement fee is not paid, a lien is placed on the property. Mayor Rosenthal suggested adding language stating customers could be subject to an abatement assessment and a minimum fine of \$200, which would get their attention.

Ms. Messner said people drive through neighborhoods during spring and fall cleanup and take items left on the curb and Mr. Komiske felt that would be lost if the City went to the voucher system. He likes the idea of people recycling those items rather than the items going into a landfill and Mayor Rosenthal agreed. Mr. Komiske said employees are not allowed to take items during spring and fall cleanup. Chairman Miller and Mayor Rosenthal also liked the fact that spring and fall cleanup allows recycling opportunities so they would prefer educating the public and sending a stronger message in the bills and in press releases. Mayor Rosenthal said she also sympathizes with residents who have to look at mound of trash on the curb for weeks. On that note, she reported a mattress at 738 Lahoma that has been at the curb for several weeks.

Chairman Miller said she wants strong language regarding the timeframe and possible fines to be included in the billing notices for fall cleanup and Mr. Komiske said that would be done. Mr. Komiske asked if a draft ordinance and billing notice language should be brought back to the Committee for review and Chairman Miller said yes, the Committee would like to discuss this further in August before making recommendations to the full Council.

Items submitted for the record

1. Memorandum dated June 5, 2014, from Ken Komiske, Director of Utilities, to Steve Lewis, City Manager
2. Spring Clean Up Press Release dated March 25, 2014

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Item 3, being:

MISCELLANEOUS DISCUSSION.

Mayor Rosenthal reported tall weeds at 1031 West Brooks and said it appears the resident at 819 West Brooks is putting in a circular drive and asked Staff to make sure they had a permit.

Item 3, continued:

Miscellaneous Discussion, continued:

Chairman Miller said the Oversight Committee has been discussing abandoned houses, the three person rule, and oil well issues. She said the abandoned house issue was put on hold because the State was looking at passing a bill, which they have done. She said the Legal Department is reviewing the bill, but the bill does prohibit municipalities from requiring a registry of abandoned properties. She said the bill has criteria on what constitutes a nuisance regarding abandoned houses and property and the Oversight Committee will be reviewing that criteria at a future meeting. She said the three person rule is being discussed with interested parties and Ms. Messner said variance language is being prepared for the Committee's review. Chairman Miller said questions and issues raised by the Committee regarding oil wells are currently being researched by the Legal Department.

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ADJOURNMENT.

The meeting adjourned at 6:05 p.m.