

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

August 9, 2018

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:00 p.m. in the City Council Conference Room on the 9th day of August, 2018, 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:	Mayor Lynne Miller and Chairman Clark
ABSENT:	Councilmembers Carter, Castleberry, Hickman, and Holman
OTHER STAFF PRESENT:	Councilmember Bierman Mr. Terry Floyd, Development Coordinator Ms. Brenda Hall, City Clerk Ms. Shelby Jameson, Administrative Tech III Mr. Rick Knighton, Assistant City Attorney Mr. Phil Nelson Lieutenant Jeff Robertson, Police Department Ms. Jeanne Snider, Assistant City Attorney Major. David Teuscher, Police Department

Item 1, being:

DISCUSSION REGARDING THE CITY OF NORMAN NOISE ORDINANCE.

Ms. Jeanne Snider, Assistant City Attorney, mentioned that Lieutenant Jeff Robertson and Major Teuscher, Norman Police Department are going to step in on the enforcement segment of this discussion and Mr. Phil Nelson is here to help illiterate on sound discussion. She mentioned that she will provide a brief background on the Noise Ordinance.

She explains that there are prohibitions that include the use or maintenance of items or activities. The ordinance establishes on the maximum district noise levels. She said that there are limits on motor vehicle noise; however, there are exemptions for alerting people to emergencies, performance of emergency work or testing public safety equipment. There are also exemptions for organized school sporting events, public utilities, interstate railroads, railways, and aircraft.

The ordinance allows for the issuance of a noise variance permit, that Lieutenant Robertson will discuss. She said noise standards are often measured in decibels and they are generally employed to measure sound pressure. She mentioned that not every city she found used the decibel to measure, but the use of the decibel does provide some scientific evidence as to noise to set apart a person's sensory observation or personal impression. She said that our noise levels are broken up to L90, L10, and L1 and that they are statistical noise levels for sound level equaled or exceeded X% of the sample time. She said that an example would be L90 is level which exceeded the decibel level 90% of the time. She said that she and Mr. Rick Knighton, Assistant City Attorney and the Police Department, also met with Mr. Nelson, with the Department of Labor to discuss and understand noise levels. The ordinance states: It shall be a violation of this article for any person to operate or permit to be operated any stationary source of sound which either:

- (1) Creates a sound level greater than 15dB(A) above the ambient sound level (L90) within any land use district during any measurement period; or
- (2) Creates a ninetieth percentile sound level (L90), a tenth percentile sound level (L10) or a first percentile sound level (L1) for any measurement period which exceeds the limits set forth for the following receiving land use districts when measured at the boundary or at any point within the property affected by the noise.

She said the actual sound level without the loud noise, band, or the construction equipment, is the ambient sound level.

Mayor Miller asked question about (A). She said that the night they had a meeting about Hollywood Corners there were some things different about the bass sounds and the higher pitched sounds. She said that was one of the main issues because music has that bass sound that you typically hear over everything.

Mr. Nelson said that (A) and (C) is used because it mimics what we hear and it does not put as much emphasis on the lower frequencies and that (C) is used when (A) reaches a much higher level. So if someone was measuring a concert and it starts measuring 90dB, they would then switch to (C).

Ms. Snider said bass can travel through a mass and men and women hear differently as they age. Everyone's ears are different when processing different frequencies. She said "When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories. For the purpose of enforcing these provisions, a measurement period shall not be less than five (5) minutes nor more than fifteen (15) minutes.

She said that in Section 307, it states it is unlawful for anyone to make, continue, or cause to be made or continued any noise disturbance, but noise disturbance is defined as any sound which annoys, or disturbs or disturbs a reasonable person with normal sensitivities or which injures or endangers the comfort imposed health hearing to the safety of other persons. An example: if the sound source is at 75 and you go out 300 feet, the calculations make it 45 decibels at that location, 300 feet from that sound source. For every doubling of the feet, drop 6 decibels.

Councilmember Clark said to measure the stationary item; do you have to measure right in front of the item? Where are you measuring to get that initial measurement?

Ms. Snider said under the Hollywood Corners example the SPUD specified four areas to measure from. So there are four points on their property we can go to and say at this corner it was 75 or 60 and we would know if this house was 600 feet away, you could calculate it. The person saying it is loud could calculate what the decibels were at their house and can do it online.

Councilmember Clark said we live in a city that is half urban, half rural where we are seeing a unique situation where this needs to be addressed and updated. She said that the language needs to be overhauled and she is excited for the discussion because Hollywood Corners would not be the last issue related to noise issues. Ms. Snider said urban is meeting rural and residential and we need to find a way to handle this when these different uses collide.

Councilmember Clark said she would like to see a comparison of citizens from urban and rural regardless of size.

Ms. Snider said our ordinance lacks the live outdoor entertainment component. She said levels in our Noise Ordinance are more for inside industrial type noise.

Councilmember Clark said she wished Councilmember Wilson was here because she was a strong advocate for the Agri-weddings and that is going to be the exact same issue all over again.

Ms. Snider said disturbing the peace, citations are often neighbor to neighbor, apartments, parties on a Friday night, parties in a backyard. However, all those citations filed by the Hollywood Corners neighbors is under disturbing the peace, playing or creating loud or unusual sounds.

Lt. Robertson demonstrated the decibel meter, sound pro device developed by 3M. As long as it is kept in calibration and inspected annually, it should work. There are no certifications, school, training, or school for operating the device. As long as the device is functioning correctly, the individual using the meter should be able to read the display and take the reading. He said it is very similar to officers using radar. So an officer has a radar device or they use to measure speed, that officer cannot get on the stand and tell you all the technical reasons the radar works, but they know how to work the device itself and how to annotate that in court. He said all he would have to do is power the device up, go to the button for calibration, put on the calibrator, power up the calibrator, and tell the device to calibrate.

Mayor Miller asked Lt. Robertson that is how you know if it is working right?

Lt. Robertson said reading within .02 on the meter, which is the +/- is within reason then you can go out and take your reading and be confident that it is reading correctly.

Councilmember Clark said some of the residents had concerns about how an officer will not understand what is going on and when they get another officer and they do not know what is going on which makes the residents have to explain all over again. She said this device should totally take that out of the equation?

Lt. Robertson said it removes any need for an officer to be formally trained or certified. As you know, decibels in general frequencies, weightings, and scales can be confusing because you do not exactly know how, when, where to take that reading from and apply it within the ordinance. He said that is something that has to be discussed with our officers. He said the Hollywood Corners SPUD with the four different locations authorized or approved to take the readings from, it is going to be pretty simple. He said he stood there for 10 minutes to take reading, and then it showed him the average, L90 framework to know whether or not they are in compliance.

Councilmember Clark asked if that solves the measuring dilemma in this specific instance. She said she hopes now that we all know how this works and that we can put in to ordinance for all these other instances that she assumes that will happen in the future. Ms. Snider said the ordinance states use districts are measured at the boundary or any point within the property affected by the noise", but the reading can be taken there and we can also take it at the sound source. With the applied math, then the decibels could be figured correctly, and we could know what the decibels would be at the complaining party's front door.

Lt. Robertson said as far as the enforcement aspect of it, ultimately it boils down to whether or not the person who is receiving that noise is reasonably being disturbed by it. He said he does not know if you can necessarily measure that by decibels all the time. He said the Police Department has gone out to take decibel readings and they are in compliance with the ordinance and they cannot write a

citation for that because a noise violation citation must be a misdemeanor done in the police presence.

Councilmember Clark asked how you factor in any noise disturbance along with the use district noise level. She said it seems like that would be something they could write a citation on in addition to disturbing the peace.

She said in Section 10-311 the noise disturbance is unlawful for any person to make, continue, or cause to be made any noise disturbance. She said that is the issue and that it is not defined, hence the constitutional issues. She said that there is a law in the books that we cannot enforce.

Ms. Snider said complaining witnesses can file a disturbing the peace citation.

Lt. Robertson said it is really not much different than citing for disturbing the peace because that is a citizen on citizen citation. Mr. Knighton said the issue goes back to the noise disturbance provision under Chapter 10. It is pretty much the same as disturbing the peace under Chapter 10 historically because of the issue with the decibel levels. He said we have historically used Chapter 10 because it is clearer and our office can handle it a lot better. Technically what I think Lt. Robertson is saying is the police officers cannot be the complaining witness, but the citizen has to be the complaining party. He said he thinks the reason for the alternative language in Chapter 10, is that somebody could be within those decibel levels, but still be disturbing someone's peace.

Ms. Snider said in the last fifteen to eighteen years we have had Hollywood Corners, the Railhead, Opolis and Pueblo, and when Pearls was on Ed Noble Parkway, one night that the people across I-35 said it was too loud. These types of complaints are not common that is why they have never had to worry about the decibel readings or upgrade the decibel level.

Lt. Robertson demonstrated the noise meter.

Mr. Nelson said it also gives you the LEQ equivalent which is like an average; it takes the 5 minute measure.

Ms. Snider highlighted other cities in Oklahoma. Oklahoma City was the other City that used the L90 and L10 measurement.

Councilmember Clark asked if we took out the L90 and L10, what does that do for enforcement, does that mean if they get past a certain level it is game over.

Ms. Snider said she had previously discussed that with Mr. Nelson and Terry from Oklahoma Code Enforcement Association and that they both felt that the L90 gives you the best numbers and average which is 90% of the time. That is where people usually would find the best decibel reading. You do not necessarily have to have the L1, L10, or L90.

Councilmember Clark asked the difference with Oklahoma City providing more guidance regarding law enforcement.

Ms. Snider said Oklahoma City has violation procedures. They file the complaint in court and the enforcement officer would take steps similar to a police officer had. She said when she had first started here; the City had an enforcement officer who was the acting noise officer.

Ms. Snider said we are going to have to set out steps to take on the noise issues.

Lt. Robertson said their past practice as an agency in general on disturbing the peace calls, loud parties, loud music, whatever it may be, is go out and give them the opportunity to correct the problem. They would make face to face contact with them, explain to them what the problem is and ask them to correct it. If they go out a second time, they will typically issue them a citation, but those citations in the past have mostly been disturbing the peace citations. Most of the time, the citations have to be signed by the complaining party rather than the police. He said the Police Department had instances where the Legal Department has agreed to let officers be the agents, but most of that has been really big loud college parties that are a nuisance to the entire neighborhood. So if the police go out and find the party is completely out of control and unreasonable, then the officers can cite them for disturbing the peace, but that is not the favored practice or procedure. If the Police Department knows of a place that is a chronic problem, then they might suspend that procedure, and the first time they go out and the decibel reading is in violation, write a ticket.

Councilmember Clark said she is still getting emails from Hollywood Corner neighbors saying they are looking for a summer home away from home because it is that bad. She said she would like to see a noise ordinance that states that if there is regular outdoor live music, that the City will perform of regular check.

Lt. Robertson said officers have gone out unannounced and taken readings at Hollywood Corners and they have been in compliance. Other instances they had bands playing and were in compliance.

Ms. Snider said other cities have added noise conditions for live outdoor entertainment and she needs to explore that more.

Councilmember Clark said that is what she would like to explore.

Lt. Robertson said that since February 2017, 80 noise variances have been issued.

Councilmember Clark asked if they have to notify neighbors about the noise variance.

Lt. Robertson said they are not required to but if he talks to them directly, he always advises them to do so and a lot of them are diligent before they even call him.

Major Teuscher said they are revocable if they violate the parameters of the permit.

Councilmember Clark asked Ms. Snider about Stillwater's code. She said they prohibit loud music with limits for days and nights based on distance in residential areas.

She said to look at the Pueblo issue as well and would like to explore overlay districts.

Councilmember Clark would like to look at adding more live entertainment and that it would be helpful to look at the resident districts to see what Stillwater did with that.

Councilmember Clark said the other thing she would like to look into is how this is going to work with our agricultural weddings. She said she knows we get several variances so it may never be a problem, but do we need to create one for A-1 and A-2 and if we do, we need to create an exemption for all farm equipment between 5:00 a.m. and 9:00 p.m.

Councilmember Bierman said she gets really torn up about stuff like this. She said we will not be able to consistently make everyone happy. Jazz in June is obviously once a year, a well-established

event, a reasonable and considerate event, and it still bothered people. That kind of issue made her realize there are always going to be people complain. She said she has a lot of friends in Austin and there a lot of music venues there and they are saying this is something even the City of Austin has had to come to terms with. She thinks we can find the balance and are on the right track.

Mayor Miller said she is concerned about people who have set up shooting targets and go on for long periods of time. It is not fun, living next to people shooting off all of the time, all evening all Saturday

Councilmember Clark thanked staff for all of the work and research put into this issue. She said she thinks we have given staff enough direction to continue the research.

Items submitted for the record

1. Memo dated August 3, 2018, from Ms. Jeanne Snider, Assistant City Attorney, to the Council Oversight Committee
2. Current Noise Ordinance to the Council Oversight Committee
3. Power Point Presentation entitled City Council Oversight Committee, Noise Ordinance, dated August 9, 2018

ADJOURNMENT:

The meeting adjourned at 5:02 p.m.