

**CITY COUNCIL OVERSIGHT COMMITTEE MEETING
CONFERENCE ROOM – MUNICIPAL BUILDING
201 WEST GRAY
THURSDAY, FEBRUARY 13, 2020
4:00 P.M.**

- 1. Discussion related to Over-Occupancy of Single Family Homes**
- 2. Discussion regarding prevention of youth access to tobacco.**
- 3. Discussion regarding regulation of door-to-door commercial advertising.**

It is the policy of the City of Norman that no person or groups of persons shall on the grounds of race, color, religion, ancestry, national origin, age, place of birth, sex, sexual orientation, gender identity or expression, familial status, marital status, including marriage to a person of the same sex, disability, retaliation, or genetic information, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in employment activities or in all programs, services, or activities administered by the City, its recipients, sub-recipients, and contractors. In the event of any comments, complaints, modifications, accommodations, alternative formats, and auxiliary aids and services regarding accessibility or inclusion, please contact the ADA Technician at 405-366-5424, Relay Service: 711. To better serve you, five (5) business days' advance notice is preferred.

ITEM 1
OVER-OCCUPANY
OF SINGLE FAMILY
HOMES



office memorandum

Date: February 13, 2020
To: Oversight – Council Committee
From: Jane Hudson, Director of Planning & Community Development
Subject: Discussion Items for Possible Ordinance Amendments

Background

On December 12, 2019, staff discussed with the Oversight Committee possible methods to address the density concerns, over-development of the same housing model and incompatible developments occurring in the Center City Form Based Code (CCFBC) area, as well as what type of development was occurring in the Core Area of Norman. At the December 12th meeting, there were multiple topics of discussion and suggestions, staff presented some supporting information and compiled a list of the discussion topics for additional direction moving forward.

Discussion

The overall issue staff has been presented is the concern that the recent development in the Core Area (CCFBC area included) is simply not complying with the spirit of City ordinances – whether Chapter 22 - Zoning Ordinance - or the Center City Form Based Code. The community continues to express that the development we are getting is not what they envisioned with Form Based Code or Chapter 22 – Zoning Ordinance.

To reiterate, the goals or purpose of the CCFBC are as follows -

The Center City Form Based Code states:

103. Purposes

A. The goal of Norman Center City Vision Project and Plan was to reset the conversation and provide guidance for future development and redevelopment in Center City. This CCFBC is intended to implement the purpose and goals of that Plan by providing strong implementation tools for the Center City area.

B. The CCFBC shall be applied to new, infill development and redevelopment within the district both in order to achieve the vision set forth for the Center City and to provide a mechanism for implementing

the following specific goals, using both public and private sector investments:

1. Capitalize on public investment in existing infrastructure
2. Stabilize and strengthen mixed-use commercial centers and residential neighborhoods
3. Create a pedestrian-oriented and multi-modal district
4. Promote, create, and expand housing options
5. Ensure transit-supportive and transit-serviceable development
6. Ensure a complementary relationship with surrounding neighborhood

C. The creation of transit- and pedestrian-oriented development is dependent on three factors: density diversity of uses, and design. This Code places greatest emphasis on design or physical form, because of its importance in defining neighborhood and district character. All places evolve – density and uses can be expected for change over time as the area continue to grow and mature. (Copy attached as Exhibit A)

Similar to the concerns in the CCFBC area, occupancy numbers per unit, are increasing in the areas outside of the CCFBC, more specifically within the Core Area, we are seeing the number of occupants per unit increase and the new developments are simply not compatible with the existing development; i.e. we are seeing 6 to 8 bedroom and bathroom "single-family homes" being permitted. The units permitted are typically occupied by 6 to 8 unrelated renters.

The City has limits the number of people who can live in single family dwellings through its definition of "single family". (See "Three Unrelated Person Ordinance Restriction and Enforcement" attached as Exhibit B). The problem with this Ordinance is that because the primary enforcement mechanism is the filing of a criminal complaint in Municipal Court, the burden to establish proof of an occupancy violation typically falls on the neighbors who witness the violation to document the license plates and vehicles parking at the house for a 30-day period and then submit the records to the City for review.

Additional information provided by the Legal Department is attached as Exhibit C.

The Zoning Ordinance – Chapter 22 – defines family as follows (Copy attached as Exhibit D):

Family. A single family shall be comprised of one of the following:

1. 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
2. Three (3) unrelated persons living together in quasi-unit quarter; or
3. A group home as defined by Section 862, Title 60 of Oklahoma Statutes.

Additional discussion on the higher density units was geared toward the definition of a Boarding House, see below definition from the Zoning Ordinance. These units do not meet the current definition of a Boarding House because there is not an on-site manager and meals are not provided for the renters.

Boarding House. A residential building, other than a hotel, where, for compensation and by prearrangement for definite periods, on a monthly or longer basis, rooms and meals are provided to more than two (2) person who are not members of the resident manager's family.

The recognition that the specific type of development occurring in the CCFBC area as well as the Core Area, consisting of higher-density development is not diverse housing. The market renting/occupying these high-density developments are students. While this area of the community is built around the University of Oklahoma the community is still looking for additional housing options to bring diverse housing for young professionals, aging in place/senior housing and single occupant dwelling units. The development of the multi-room/rent by the room student housing model has flooded the market in this general area.

In addition, another issue to be addressed is the rental model is changing. The model has changed to single-family structures with 6 to 8 bedrooms with adjoining bathrooms locating in the traditional single-family neighborhoods – possibly those zoned R-1, Single Family Dwelling District.

Staff has seen a marked increase of higher density developments occurring outside of the Center City Form Based Code area. The community has expressed concern regarding the development they are witnessing in their neighborhoods – both in the Center City Form Based Code and the Core Area.

Density/Development Discussion Continued

How to properly regulate the future development?

Define what model we are dealing with in the community - Rooming House?

Rooming House. A business that rents out 4 individual rooms or more in the same building. They are sometimes called boarding houses lodging houses or single room occupancy units (SROs). Individual renters usually have their own separate room and their own agreement with the landlord/property owner.

Methods to Regulate – This is in order of importance.

- a. Overlay District
Central Norman Zoning Overlay District – Expand into the Core Area? (Exemption – Proof of Owner Occupied Special Use Not Required.) (Copy attached as Exhibit E)
- b. Neighborhood Plans
- c. Zoning District Amendments
- d. Land Use Plan Amendments

Lacking Compatibility – Use and Design

- a. Establish a Citizen Design Review Committee/Board (The establishment of a Design Review Committee has been on the top of the list for many in the community.)

Require Mixed Buildings

- a. To get the desired walkable community we have to get a different model than just residential – the community needs mixed-use buildings in this area of town. If we want vibrant walkable/pedestrian oriented development, we are going to have to require commercial.

Parking and Traffic

- a. Respecting that nobody wants to see the Core Area as a sea of parking – the fraternities and sororities are required to provide one parking space per sleeping accommodation. Is it possible for the model developed the same requirement for parking is needed?

Infrastructure Review Process

- a. For new developments, city staff will review the Johnson Study to see if the area can accommodate the intensity of development. (Johnson and Associates Center City Infrastructure Analysis <http://www.normanok.gov/sites/default/files/Features/JA%20Norman%20Center%20City%20Infrastructure%20Analysis%20FINAL%205-4-17.pdf>)

Notice to the community of future development

- a. Demolition Applications/CCFBC Applications – Community Notice (GIS is aware of this request and is currently working on a map that will be located on the website for those interested in future development.)

Annual Inspections

- a. Since the Legislature preempted cities from requiring landlord registration in 2014, the possibility of annual inspections has been discussed. Any requirement for annual inspections would have to be crafted carefully to ensure it is enforceable as to all properties, regardless of when built or occupied.

Minutes from the December 12, 2019 Council Committee Oversight meeting are attached as Exhibit F.

Staff presents this to the Committee for additional discussion and direction.

cc: Beth Muckala, Assistant City Attorney II
Kathryn Walker, City Attorney
Brenda Hall, City Clerk
Darrel Pyle, City Manager

Attachment A – Center City Form Based Code General Provisions
Attachment B – Three Unrelated Persons Ordinance
Attachment C – Legal Research
Attachment D – Definition of Family
Attachment E – CNZOD, Central Norman Zoning Overlay District
Attachment F – Minutes from December 12, 2019 Oversight Committee

Exhibit A

Part 1. General Provisions

101. Title

This Code is known as the Norman Center City Form-Based Code (CCFBC).

102. Applicability

- A. The CCFBC is in effect for that part of the City of Norman, Oklahoma, designated on the REGULATING PLAN in *Part 3. The Regulating Plan* as the Center City Form District (CC Form District).
- B. The area generally known as Campus Corner that is geographically located within the larger CC Form District boundaries, as designated on the REGULATING PLAN in *Part 3*, is excluded from the CC Form District, but may be added to the district in the future, by determination of the City Council.
- C. The process for developing or redeveloping within the CC Form District is delineated in *Part 2. Administration* and *Appendix A* of this Code.

103. Purposes

- A. The goal of *Norman Center City Vision Project and Plan* was to reset the conversation and provide guidance for future development and redevelopment in Center City.¹ This CCFBC is intended to implement the purpose and goals of that Plan by providing strong implementation tools for the Center City area.
- B. The CCFBC shall be applied to new, infill development, and redevelopment within the district both in order to achieve the vision set forth for the Center City and to provide a mechanism for implementing the following specific goals, using both public and private sector investments:
 - 1. Capitalize on public investment in existing infrastructure
 - 2. Stabilize and strengthen mixed-use commercial centers and residential neighborhoods
 - 3. Create a pedestrian-oriented and multi-modal district
 - 4. Promote, create, and expand housing options
 - 5. Ensure transit-supportive and transit-serviceable development
 - 6. Ensure a complementary relationship with surrounding neighborhoods
- C. The creation of transit- and pedestrian-oriented development is dependent on three factors: density, diversity of uses, and *design*. This Code places greatest emphasis on design, or physical form, because of its importance in defining neighborhood and district character. All places evolve—density and uses can be expected to change over time as the area continues to grow and mature.

¹ From the *Norman City Center Vision Summary Charrette Report*, May 2014.

Exhibit B

THREE UNRELATED PERSONS ORDINANCE RESTRICTION AND ENFORCEMENT

Over the past couple of years, complaints about over-occupancy in single family dwellings have risen steadily. As you may know, the City of Norman zoning ordinances limit single family dwellings to residents that are family members, either by blood, marriage or adoption, or not more than three unrelated persons living together and sharing the common areas like the kitchen and living areas. This includes apartments, condominiums, and town homes. This restriction has been part of the zoning ordinance since 1954 and over the years, the City has explored various avenues of enforcement to protect City residents from the issues that arise when multiple unrelated persons live in single family homes. Complaints generally revolve around traffic, noise, and parking.

The City of Norman Zoning Ordinance limits the number of people who can live in single family dwellings through its definition of "single family". Norman Code, 22 §450(38). "Single family" is defined 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 as defined by 60 O.S. §862.

Single Family Restriction Enforcement Process:

The other link on the webpage contains the

required forms.

- If you know of a single family dwelling in your neighborhood that has more than three unrelated people residing in it, call the City of Norman Code Compliance Division at (405) 366-5332 to begin the complaint process. Do not call the Police Department unless you have a complaint regarding noise, illegal parking, or other disturbance.
- Upon receipt of a complaint, staff will begin an investigation and a Code Compliance Officer will be assigned to process the complaint.
- The owner/property manager of the property in question will be contacted as part of the investigation. Identifiable tenants may be contacted as well.
- Correcting the situation within the given time frame will result in no citation being issued.

- If a citation is issued, correcting the situation will not relieve any of the parties of the potential fine (up to \$750 per day in violation).
- After being cited, the charged party will be required to set a court date with the Norman Municipal Court and appear in court to enter a plea and face possible sentencing of up to \$750 per day for each day in which the property is in violation.
- If the charged party pleads Not Guilty to the violation, any person who filed the complaint or witnessed pertinent evidence may receive a subpoena to testify as a witness for the City at trial.

Three Unrelated Persons Restriction FAQ's

- 1) Why does the City of Norman restrict the number of unrelated persons who may live in single family dwellings and how long has the restriction been on the books?**

ANSWER: Since 1954, the City of Norman has limited, via ordinances, occupancy in single family dwellings to families and no more than 3-unrelated persons. The City addresses occupancy to help ensure health and safety of residents, and to help protect the quality and character of neighborhoods. This ordinance helps to reduce traffic, noise, and parking problems that can occur when multiple unrelated people are dwelling in a single family home.

- 2) What about a house with two siblings and two additional roommates? Or two cousins and two additional roommates?**

ANSWER: Neither of these arrangements would be in violation. In the first scenario, the siblings would be related to each other. Because the siblings are related, there would not be more than three unrelated persons in the home. The same applies to the two cousins and two additional roommates scenario. Because the two brothers are related, there would not be more than three unrelated persons in the home.

- 3) What about a home with a married couple, their parents, and their children?**

ANSWER: This arrangement would not be in violation. The ordinance is limited to living arrangements with more than three unrelated people. In this example, all of these individuals would be related to each other by either blood or marriage.

- 4) Our ordinance prevents more than three unrelated persons living together in a "quasi-unit quarter." What is a quasi-unit quarter?**

ANSWER: A quasi-unit quarter is a unit of dwelling space that shares common living and kitchen facilities. This does not include sorority or fraternity houses, dormitories, or rooming or boarding houses but does include apartments (unless the apartment complex has obtained a zoning exception).

5) Is an ordinance like this legal?

ANSWER: Yes. The United States Supreme Court, in the case of *Village of Belle Terre v. Boraas*, determined that cities have the right to enact and enforce ordinances of this type.

6) How do I avoid being in violation of this residency limit?

ANSWER: Make sure you're complying with the law. If you have a family or do not live with more than three unrelated persons, then you're not in violation. If you want more than the limit in your dwelling unit, then you might want to look into the possibility of becoming a boarding house (a process that may involve rezoning).

7) I own and occupy my house. Do I still have to follow the residency restrictions?

ANSWER: Yes.

8) Does the residency limit apply to apartments? Modular homes? Duplexes?

ANSWER: Yes to all. The residency limits apply to all dwelling units within city limits. There are apartment complexes built *and approved* for 4 tenants. These complexes have a disclosure statement to reflect this occupancy limit.

9) What does the residency restriction enforcement process look like?

ANSWER: The City has Code Compliance Inspectors who are responsible for enforcing this code. They take complaints, notify owner/tenants of the complaint, conduct an investigation, compile evidence, and issue a citation if justified. The defendant could then go to court and the Judge determines if the evidence shows a violation has occurred. If so, they will impose a fine and give an order to come into compliance.

10) What should I do if I live next to a house that may be in violation?

ANSWER: First, notify the City of Norman Code Compliance Division. They can be reached at (405) 366-5332. Second, it's important that you pay attention to the number of cars and people at the home. If there are multiple cars parked at the house on a regular basis, note that. The more information you can provide to the Code Compliance Division, the easier it will be to stop the problem.

11) What if I live near a house that only has three-unrelated residents, but the occupants are loud or park their vehicles illegally?

ANSWER: Call the police. The Norman Police Department may be able to issue citations for disturbing the peace, parking violations, or for having a nuisance party. You can make a complaint by calling (405) 321-1444.

12) What if I have guests on most weekends? Will I be in violation even though these guests don't technically live with me?

ANSWER: It depends if those guests are occupants. The limit in single-family dwellings to three unrelated persons applies to occupants—not guests. Therefore, a frequent guest could actually be considered to be an occupant. If the City receives a complaint, there would be an investigation to see if there's reasonable suspicion of a violation of the residency limit.

13) Are group homes or homes for recovering drug addicts and alcoholics subject to this ordinance?

ANSWER: No. Group homes are regulated by Oklahoma state law. Group homes are homes for mentally disabled or challenged adults. Under state law, group homes are allowed to have up to 6 unrelated residents. Home for recovering drug addicts or alcoholics (commonly called "Oxford houses") are regulated under the federal Fair Housing Act ("FHA"). The FHA has priority over our Norman ordinance and allows multiple unrelated persons in a single one of these houses. They must still comply with maximum occupancy standards that take into account square footage, number of bedrooms, number of bathrooms, etc.

If you have any more questions, you may call the City's Code Compliance Division at (405) 366-5332.



City of Norman
 Planning and Community Development
 Code Compliance Division
 P. O. Box 370
 Norman, OK 73070
 405-366-5332

OFFICE USE – DATE RECEIVED: _____	CASE # _____
Phone Intake _____	Received By: _____

OVER-OCCUPANCY INVESTIGATION FORM
 Effective August 29, 2008
 Modified: April 26, 2019

This form is to be used after the City has been notified and completed the notification process to the property owner and/or occupants, yet still seems to be occupied in violation of the City's zoning provisions. Please contact the assigned inspector regarding the findings from the initial notice before spending the time completing this log in case it was determined that there was no violation (such as a family & all related, etc.). Information provided will become public record when the investigation finds there is a prosecutable violation. If the case goes to a hearing, the witness(es) will be subpoenaed to testify.

The information provided herein will be reviewed for all the required information and if complete, will be submitted to the City Attorney for approval. A prosecutable violation will be dependent upon your signature affixed and the ability to testify.

PLEASE PRINT AND PROVIDE CLEAR AND COMPLETE INFORMATION BELOW

Subject Address: _____

Owner/Manager Name (if known): _____

Owner/Manager Address (if known): _____

Phone #: _____

Witness(es) Name(s) (print): _____

Witness(es) Address: _____

Phone #: _____

Witness(es) Observations: _____

Additional information (such as license plate logs, observation journals, occupants' names, other witness information):

Witness(es) Signature: _____ Date Signed: _____

Signature: _____ Date Signed: _____

Exhibit C

3-Unrelated Rule and "Family"-Based Zoning

A subject closely tied to issues with density diversity in housing is the City of Norman's "3-Unrelated" rule. Namely, the City of Norman's Zoning Ordinance employs terms such as "single-family" and "multi-family" and restricts occupancy of single dwellings (whether in single- or multi-family districts) to a single "family," which is defined in the Norman Zoning Ordinance as follows:

FAMILY. A single family shall be comprised of one of the following:

1. 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
2. Three (3) unrelated persons living together in a quasi-unit quarter; or
3. A group home as defined by Section 862, Title 60 of Oklahoma Statutes.

Norman City Code 22:450(38).

Dwelling limitations based on family relation are not uncommon in municipalities throughout the United States. Some municipalities incorporate these limitations through the definition of "family," as Norman has done. Others simply include such limitations on a district-by-district basis. The benefits of this alternate, district-by-district, approach are the ability to focus on particular neighborhood needs and avoid the risk of a global definition that may affect certain areas not in need of particular regulation.

Where municipalities have applied the limitation district-by-district, the most prevalent application has, by far, been found in single-family zoning districts. For example, applying an "unrelated" limitation in a single-family district, but not a multi-family district, could potentially have the effect of drawing violations away from less dense, and more vulnerable, areas of a city. Evanston, Illinois (home to Northwestern University) and Raleigh, North Carolina (home to North Carolina State University) both appear to enforce their "unrelated" limitations in strictly single-family districts.

Other cities have applied the rule beyond single-family, but still not to all, zoning districts. Athens, Georgia (home to the University of Georgia and Georgia Technical College) established a "two-unrelated" rule, but also

identified at least two zoning districts where more than two unrelated persons could reside in a dwelling unit. Additionally, the City excepts multi-family areas that were rezoned to single-family areas from application of its "two-unrelated" rule. Similarly, Gainesville, Florida (home to the University of Florida) applies its "three-unrelated" limitation only to certain zoning districts based upon density.

Regardless of the method of application, several of these, and other, cities appear to be experiencing significant challenges in enforcing their provisions. Evanston's ordinances include landlord fines and other "appropriate equitable action" such as eviction; but there is no indication of how these provision would stand up to legal scrutiny. Conversely, Athens passed comprehensive and strict enforcement provisions along with its zoning limitations, but were never able to implement the enforcement provisions due to a county court striking those provisions down. At this time, Athens appears to be enforcing its "unrelated" limitations on a complaint basis.

Gainesville's "unrelated" limitations were also passed with supporting enforcement provisions. Namely, Gainesville code established a "point" system monitoring landlord compliance. Landlord permits are required in Gainesville and gaining too many penalty "points" could potentially result in loss of permit. However, new reports indicate the citizens of Gainesville are frustrated with enforcement, indicating a practicality issue or even a legal vulnerability in the chosen process. For examples of relevant potential legal vulnerability to landlord permitting systems, in 2014, Oklahoma passed the "Protect Property Rights Act," which prevents cities from registering and pre-emptively inspecting rental properties.

Owner-Occupant Zoning Distinctions

A recent question arose among City Council regarding the potential to utilize owner-occupant distinctions in the City's Zoning Ordinance in order to respond to the rising issues with density diversity and low-income housing shortages. General research was conducted on this subject, which indicated that owner-occupant zoning distinctions are legally disfavored when they relate too much to the identity of the user and do not relate closely enough to the actual use of a property. Further, the legal treatment of such zoning distinctions is often affected by the scope of the distinction itself. In particular: the treatment of entire zoning district based upon a justified land-use policy will generally be legally favored over a variance/special use/special exception distinction applicable to a single property owner. Examples of land user distinctions, and the purposes for which municipalities have utilized them, include:

- (1) Zoning districts in which accessory dwelling units ("ADUs") may be rented separately of the principal residence only where the

principal residence is occupied by the property owner. One such district was upheld by the Utah Supreme Court in Provo City, where Brigham Young University is located. See *Anderson v. Provo City Corp.*, 108 P.3d 701 (Utah 2005). Additionally, the Town of Brookhaven, New York was permitted to enforce an owner-occupant rental requirement created to address an "economic plight of occupying homeowners and the obvious benefits which will accrue to the community . . ." *Kasper v. Town of Brookhaven*, 142 A.D.2d 213 (N.Y.S.2d 1988).

- (2) Zoning retirement districts restricted to elderly residents. The Town of Huntington, New York passed a zoning amendment that allowed a non-profit agency to create housing particularly tailored to use by the elderly. The amendment (and rezoning application) were both upheld by the Court of Appeals of New York based upon "surrounding circumstances and conditions," including a finding that the "town's elderly population was increasing at a substantially greater rate than anticipated and that there was considerable and justifiable community concern over lack of available specialized housing for the aged." *Maldini v. Ambro*, 36 N.E.2d 403, 405-06 (N.Y. 1975).

Nonetheless, such decisions are not without criticism from other courts, and various district-wide "no renter" policies have been struck down by other courts. Further, a variance/special use/special exception decision affecting a single-property owner that includes an owner-occupant distinction is generally subject to additional scrutiny. The Town of Fairfield, Connecticut allowed a zoning setback variance in an already-congested beach rental area based upon the owner's representation that they would occupy the dwelling subject to the setback variance. When the owner later wished to rent the dwelling and challenged the no-rental limitation, the limitation was overturned based upon the free alienability rights of a property owner as well as a safeguard against economic waste. The court also noted the disparity of treatment between the owner-applicant and its neighbors that were able to rent their properties. *Gangemi v. Zoning Bd. Of Appeals of Town of Fairfield*, 255 Conn. 143 (Conn. 2001).

Thus, legal treatment generally indicates that in *all* situations where zoning treatment may focus upon the *user* rather than the *use*, a municipality must consider community needs and surrounding circumstances, as well as identify a factually justifiable set of circumstances in which to apply user-based zoning distinctions or limitations.

(34) DWELLING, TWO FAMILY. A building designed to be occupied by not more than two (2) families.

(36) DWELLING UNIT. Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating. In quasi-unit quarters, accommodations for every three (3) persons shall be counted as a dwelling unit.



(38) FAMILY. A single family shall be comprised of one of the following:

1. 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
2. Three (3) unrelated persons living together in a quasi-unit quarter; or
3. A group home as defined by Section 862, Title 60 of Oklahoma Statutes. (O-9798-8)

(39) FAMILY DAY CARE HOME. A structure used as a residence in which the resident receives seven or fewer children under the age of 18 years (including the caregiver's own resident preschool children under the age of five) for part-time care apart from their parents, legal guardians or custodians, when such care is received for regular periods of time for compensation. (O-9596-19)

(40) FLOOR AREA. (For computing floor area ratio, livability space ratio, open space ratio, and recreation space ratio).* The total area, in square feet, of floor space within the outside dimensions of a building, including each floor level, halls, lobbies, stairways, elevator shafts, basements, covered exterior balconies, and covered open space not eligible for inclusion in covered open space, but not including any garage or carport.

(42) FLOOR AREA. (For computing off-street parking area loading requirements). The sum of the gross horizontal areas of the several floors of a building measured from the exterior faces of the walls or from the centerline of the walls separating two (2) buildings, but not including:

- (a) Attic or basement space providing headroom of less than seven (7) feet unless such space is used for human habitation or for retailing purposes in the case of a commercial use;
- (b) Uncovered steps, fire escapes, and open porches;
- (c) Required accessory off-street parking and loading spaces, enclosed or open.

(44) FLOOR AREA RATIO. In the RM-6 District and with respect to the large lot option in the RO District: The floor area on the lot divided by the land area.* In all other cases: The floor area on the lot divided by the lot area.

(46) FLOOR AREA RATIO, RESIDENTIAL.* Residential floor area on the lot divided by land area or lot area, as provided in the definition of floor area ratio.

(48) FLOOR AREA, RESIDENTIAL. Floor area used for residential purposes but not including area for common use of all occupants (in multi-family dwellings) or for commercial or other non-residential purposes such as garages or carports.

(49) FOOTCANDLE. One footcandle is equal to the amount of light generated by one candle shining on a surface one foot away. Footcandles can be measured both horizontally and vertically by a footcandle or light meter. (O-1011-44)

* *Minimum Property Standards for Multifamily Housing, Federal Housing Administration, November, 1963, shall be used as a guide to the interpretation of this term. (Appendix B) (Where the requirements in the above definition differ from those set forth in the Minimum Property Standards, the above definition shall apply.)*

SEC. 429.8 - CNZOD, CENTRAL NORMAN ZONING OVERLAY DISTRICT

(Established by Ord. No. O-1617-41 – June 27, 2017)

1. **Purpose.** The purpose of the Central Norman Zoning Overlay District (CNZOD) is to provide regulations to protect the unique and distinctive residential neighborhoods which contribute to the overall character and identity of Central Norman.
2. **Intent.** The purpose of this residential overlay district is as follows:
 - a. Protect and strengthen desirable and unique physical features, maintain integrity of the neighborhood, design characteristics, and recognize identity and charm;
 - b. Promote and provide for appropriate revitalization of the neighborhood;
 - c. Reduce conflict and prevent blighting caused by incompatible and insensitive development, and promote new compatible development;
 - d. Stabilize property values;
 - e. Provide residents and property owners with a planning tool for future development;
 - f. Promote and retain affordable housing stock;
 - g. Encourage housing that promotes aging in place;
 - h. Ensure harmonious, orderly and efficient growth and redevelopment of the city.
3. **General Provisions.** The application processing, procedures, submittal requirements, recording requirements and regulations of Chapters 19 and 22 of the City of Norman Code shall apply to all properties designated as lying within the Central Norman Zoning Overlay District.
4. **Boundary.** The general area of the Central Norman Zoning Overlay District is located north of Boyd Street, south of Robinson Street and situated between the railroad tracks and Porter Avenue; more particularly the CNZOD includes the residentially zoned lots in the Old Silk Stocking Neighborhood and the R-3 zoned lots included in the Miller Historic District and the R-3 lots to the south and west of the Miller Historic District; as shown on the attached map, Central Norman Zoning Overlay District Boundary. (Exhibit 1)
5. **Applicability.** The standards of this section shall apply to the following changes on properties defined in 4 above:
 - a. Any new construction of a residential structure on a vacant lot, which includes a bedroom count of four (4) or more.
 - b. Any new construction which adds to or alters an existing residential structure on a lot including any interior remodel which increases the bedroom count to five (5) or more.
 - c. Any demolition of an existing residential structure and reconstruction on a lot which includes a bedroom count of four (4) or more.
 - d. An addition/alteration of an existing structure that adds one (1) additional bedroom to the existing structure which increases the total bedroom count to four (4) or fewer is exempt from the requirements of Section 8.a and 9 below.
6. **Relationship to Underlying Zoning District.** The provisions of the Central Norman Zoning Overlay District are in addition to the requirements of the underlying zoning district for a subject property and supersede the zoning district requirements. If there are any disputes about which provision is the most restrictive, this determination will be made by the Director of Planning or a designee.
7. **Uses Permitted.** Uses permitted and as regulated by the underlying zoning district.

8. Special Use.

- a. All residential units having four (4) or more bedrooms per unit require approval from City Council of a Special Use Permit pursuant to special use permit procedures contained within Section 434.1 of this Chapter.
- b. Bedroom Defined: Bedroom means an enclosed space within a dwelling unit that is not a garage, foyer, kitchen, bathroom, dining area or living room, that has at least seventy square feet of floor area. Dens, studies or other rooms which are capable of being used for sleeping quarters that contain a closet, or to which a closet could be added, shall also be considered a bedroom.

10. Site Development for New Construction as Listed in Section 5.a, 5.b and 5.c Above.

a. Parking.

- (i) There shall be one (1) parking space per bedroom provided on-site for each unit with four (4) or more bedrooms. Standard parking space shall be 8 ½ x 19 or 9 x 18.
- (ii) Tandem parking is allowed on-site; tandem parking will allow for no more than two (2) parking spaces in depth.

b. Landscaping & Screening Requirements.

- (i) Landscaping Requirements: All off-street parking areas used for residential purposes in any zoning district within the CNZOD, having at least four (4) uncovered parking spaces and/or other vehicular use areas containing at least 600 square feet of open impervious area to be used as parking, the owners shall provide peripheral and street landscaping as required in Section 438.1 of the Zoning Ordinance.
- (ii) Screening Requirements: All off-street parking areas used for residential purposes in any zoning district within the CNZOD, having at least four (4) uncovered parking spaces and/or other vehicular use areas containing at least six-hundred (600) square feet of open impervious area to be used as parking, the owners shall screen from any abutting lot zoned or used for single-family purposes by a solid opaque fence at least six (6) feet in height.



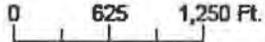
Exhibit '1'

□ Central Norman Zoning Overlay District Boundary



Map Produced by the City of Norman
Geographic Information System.
The City of Norman assumes no
responsibility for errors or omissions
in the information presented.

May 31, 2017



CITY COUNCIL OVERSIGHT COMMITTEE
December 12, 2019

Councilmember Bierman -- Today is Thursday, December 12, 4:00 p.m. It is the City Council Oversight Committee. We have one item on the agenda; it is discussion regarding potential extension of the CNZOD, Central Norman Zoning Overlay District, and other ways to approach or address density types and diverse housing in Norman. Jane?

Ms. Hudson – Good afternoon. I don't have a presentation or anything. This is just going to be a general discussion today.

Councilmember Bierman -- Do we have a copy of the CNZOD for those of us that don't?

Ms. Hudson – We can get you one in two seconds.

Councilmember Bierman -- That's fine. We can start talking; it would just be nice to have one available.

Ms. Hudson – So I guess I can start with the history of the CNZOD. Back in 2016, CPTC began the discussion on the possible regulatory measures for minimizing the higher density residential development impacts within the Core Area. This kind of went hand-in-hand with the downzoning that the Miller Historic District went through. This, essentially, covered the areas outside of the Miller Historic District that were not downzoned from R-3 to R-1. In addition to that, there was concern expressed by the residents within the Silk Stocking Neighborhood, which just is to the northeast up here, that the residents themselves had said that they were being approached by buyers looking to buy the lots and redevelop them, and they were just concerned that they were going to be looking at some of the higher densities coming into their neighborhoods. Through the CPTC we started evaluating and found that the Central Norman Zoning Overlay District, which required special use for more than 3 bedrooms. There was an allowance within the CNZOD that if you had more than 3 bedrooms at the time, you were allowed to keep those – I'm sorry, it's been a while since I've looked at this one – but if you were only adding one – all residential units having four or more bedrooms per unit require approval from City Council as special use, pursuant to special use procedures, and applies to interior renovation, additions/alterations adding bedrooms to existing structures having four or more bedrooms. So that was adopted just to help control some of the development that was in those districts. Moving forward, we had the Center City Form-Based Code was adopted. At the original adoption of the Center City Form-Based Code there were no limitations set for the number of bedrooms. The committee and the citizens involved in the Center City Form-Based Code were looking for increased density, increased housing options within the Center City Form-Based Code area. After the adoption of the Center City Form-Based Code, there was concern expressed by the community to staff that we were not getting the diverse housing that they had thought that they would be getting within the CCFBC so, as many of you know, we initiated the Admin Delay. The Ad Hoc Committee was established and additional regulations were added to the Center City Form-Based Code, which required in the pink specifically that if you were going to have more than three bedrooms, you had to go to Council and get

special use. That was added as part of Section 9, I believe, in the Center City Form-Based Code. However, I will say that a lot of the applications – I'm sorry, in any BFS in the Center City Form-Based Code a dwelling unit may contain four or more bedrooms upon approval of special use permit as follows – so it's within any of the building form standards. What we're still seeing is multiple bedroom units that are moving forward. The community is reaching out again with the concern that possibly we need to look at expanding the CNZOD into the Core Area, possibly look at the existing definition that we have within the Center City Form-Based Code of a bedroom, as well as the definition that we have in the Central Norman Zoning Overlay District. I'm not sure which direction that we should go at this point, to be very, very honest with you. We are struggling.

Councilmember Bierman – I've had a couple conversations with Jane and with Beth about this, because I feel like the problem is kind of two-fold. One is – if there is a way – I don't know if there is a way – but it seems like one is recognizing the problem as the applications are coming in. We have no way, once someone gets it across the desk, you know, they're kind of in the clear for whatever we decide to do after that. But then, also, I feel like, and I think Jane would agree, that Planning doesn't necessarily have the right tools at their disposal for once those applications come in and once they start the vetting process, realizing that, while they may be compliant with the letter of the ordinance, even if they're not being entirely genuine in how they're presenting the application, that maybe that's not – I mean, they're definitely not complying with the spirit of our ordinances in this way. So I don't think that there is going to be one silver bullet for this. I think this is going to have to be a slate of tools and restrictions and definition changes, and whatever else we can come up with, but I don't think anyone can deny we still have a problem and we still have – no matter what we put up there, we're playing whack-a-mole in terms of where this is happening, and there just seems to be some people hell-bent on building what they want to build, regardless of what our ordinances say or what Council's intent is. So I just wanted to kind of utilize this opportunity to kind of start this discussion, maybe Cloud source ideas with Councilmembers, with Jane and see if, over the next few months, we can figure out a way to address these issues more comprehensively. Councilmember Hall?

Councilmember Hall – I would just like to add on top of what you just said – we also keep having reaction from our community that this is not what they envisioned, either with Form-Based Code or how we go about with – well, I'll just read from this. I feel that, as a community and as a City, that there is an interest in protecting the unique and distinctive residential neighborhoods which contribute to the overall character and identity of Central Norman. That doesn't mean that we can't – I mean we have a vision in Center City Form-Based Code that I'm just going to put out there. We are still struggling with trying to get the diverse housing types that the community has weighed in on, the Council has weighed in on. We have come back to this many times over the last couple of years and the down-zoning petitions that were done in 2016 were all in reaction to a single housing type, and we are still struggling with that, even though countless committees, charrettes, community involvement, Council actions of passing the recent amendment changes after four months of work with an ad hoc committee, and we are still not able to give our Planning Department the tools that they need to say this is not where we want to be headed as a community.

Councilmember Bierman – I think, just before you continue, Jane, I think I just want to put voice to this, because I think this is going to be part of whatever negative response might come out of this, is that this is not any attack on higher density housing.

Councilmember Hall – No. No.

Councilmember Bierman – This is recognizing the fact that the particular type of high-density housing that is continually being proposed is not diverse. It is aimed at one specific type of resident and it is not as flexible in its use as just a duplex or a triplex or a four-plex. I mean, this is housing that you will age out of basically once you're able to drink. And so that is not housing that provides any flexibility for this community, and so I just don't want anyone to think that this is an attack on higher density housing, because it's not. I think we all recognize that we need higher density housing, because we don't want to sprawl out, but we need that high-density housing to be appropriate for our community and be flexible in who can occupy it, and that's not what we're getting.

Councilmember Hall – And that also goes to – I've stated it publicly many, many times. I understand the balance that we need between preserving historic neighborhoods and the need for higher density housing. But that doesn't mean we cram as much as we can possibly cram on a historic lot in the middle of Norman that has unimproved alley problems, that has infrastructure problems, that has storm water problems, that has a lot of underlying infrastructure problems that if you're doubling the density of what used to be there, maybe we can handle that okay. But when we're tripling it or quadrupling it or lots of impervious surfaces – we are creating a public safety issue, too.

Councilmember Bierman – And pushing costs on the taxpayers.

Councilmember Hall – Yes.

__ -- Your Honor, I'm sure Councilmember Patrone's real estate background, the recognition that there are a couple of property owners who are looking for a design to maximize the return on investment in X square feet. And when you think of development on a larger scale, successful real estate owners have bought acreage and paid dollar per acre and sold acreage dollar per foot and they win. And here we're talking about developing high-density where you're not renting it per unit; you're renting per bedroom and there is a financial incentive to push that model because you can get more dollars per square foot with that model than you can any other model. And I don't know if there's a mechanism in the zoning ordinance that would – I don't know how you'd de-incentivize that design.

Councilmember Bierman – And that's what we're going to be talking about, hopefully.

__ -- I'm hoping there is a mechanism that will change the financial rewards for continuing to push that model over the counter in the Planning Department.

Councilmember Bierman – Councilmember Holman?

Councilmember Holman – It is difficult, too, because they're building these because of a demand. What I understand, many of these new ones are being leased before they're even finished. So they're not being built and sitting empty. They're being built – and I think 15 years ago we saw a boom in large student apartment complexes that were built not close enough to Campus to walk or bike, really. And so students were ...

__ -- Most of them are in my ward.

Councilmember Holman – Yes. Exactly. They're up and down Highway 77 and far east Norman. They were the four bedrooms and then the kitchen and livingroom are shared. Three stories, usually. That's just same model, and students would be forced to drive to Campus, buy the parking permit, and OU started buying up more houses around Campus and tearing them down and building parking lots – on the eastern half of the Campus, anywhere between the tracks and the stadium area. And I think students and younger folks have been wanting to say I don't want to drive that much anymore. I don't want to pay for a parking thing. So they're naturally wanting to locate in this area and these – fortunately, we have some builders that have more of a vision, I think, when it comes to design and how things should look and a longer-range vision than maybe just students, but I think it's just turned out in Norman we have some that don't and they have a cookie-cutter thing in their mind and they're going to try to maximize it. And they think, well, I bought this property and I have a right to ...

Councilmember Bierman – And what worries me is, as it relates to the University, what I have seen in the two other college towns that I have lived in – one that I grew up in and one that I went to school in – both had a plethora of non-university affiliated housing to pick from. And when the university started to see its bottom line eroding with room and board, they started inching up the requirements to live on campus. So first it was just freshmen, then it also included freshmen transfers, then freshmen, freshmen transfers and international students, at least for their first year. And now in Washington, D.C. it's all the way up to including sophomores. So for your first two years that you are at that university, you must live on campus. And, thankfully, D.C. is the kind of city that can kind of reallocate because the housing was – the apartments were more traditional. There were just some that were known as the American University apartments, because most students ended up renting there, but they were able to reabsorb that housing because it wasn't built for students. So it was easier to repurpose it. When you're building an 8-bedroom, 8-bathroom structure with one kitchen, the cost that you have to incur to make that into something usable – I don't know how that works. And that is what concerns me when I see OU making these moves, like with the Cross Center, when they are drastically changing course, it does worry me that they might see the benefit of expanding the range of students that they require to live on Campus because they capture all of that revenue.

Councilmember Holman -- I would anticipate that that's going to happen.

Councilmember Bierman – So to me that's another reason why it's really important that we address this, because I don't know how we repurpose these homes in Core Norman.

Councilmember Holman -- Well, and my concern, too, is that we've -- wherever we put in a boundary, that the next street over, that's what we're seeing.

Councilmember Hall -- That's what we're seeing now.

Councilmember Holman -- Near my house, on Chautauqua, on Classen -- that house last week and it's just right outside. On this map, that house looks like it's in the CNZOD.

Councilmember Bierman -- And that's why I say I don't think this is going to be just one fix. I think that talking about expanding the overlay district is only the first shot across the bow. It's saying we are serious. And you're going to start to see some changes.

Councilmember Holman -- And scraping the whole property off -- I don't know if there's anything that we can do about that. But that's an issue, like I understand it's easier to build on if you just scrape the whole property off, but, man, it really does destroy the whole -- you have like a missing tooth in the street now.

Councilmember Bierman -- Absolutely.

Councilmember Holman -- I also -- I'm not sure if this is the case or not, but it was kind of brought to Lee and I's attention when we toured one of these houses -- are rooms being considered bedrooms because they could have a closet added to them in the future?

Ms. Hudson -- Well, that's one of the things I was going to ask or talk about.

Councilmember Bierman -- This has been both a help in some cases, in some applications that have come forward, but it has definitely been a hindrance to other developers. So I think the cases that we having coming up right now are a good example of flexing that will actually help us achieve what we want, but it has definitely had a negative impact on some other developers and builders, and I totally get that.

Councilmember Holman -- I remember it being difficult to -- I remember in our first Center City committee we talked about bedrooms and I recall the Planning Director said we couldn't regulate the number of bedrooms, I think -- that it was something about some sort of discriminatory thing that we couldn't say there could only be -- I don't recall exactly.

Councilmember Bierman -- Do you want to go before Jane addresses that?

Councilmember Holman -- We could say the number of units, but we couldn't say bedrooms.

Ms. Hudson -- Well, I would probably look to Beth. I don't know that we could limit the number of bedrooms, unless we were saying that you have to get special use if you're going to have X number of bedrooms.

Councilmember Holman -- You can, but you have to ...

Ms. Hudson – The problem that we're running into is, while the definition of bedroom is in the CNZOD, definition of bedroom is in the Center City Form-Based Code, and then we also, of course, have the definition of bedroom in Chapter 22 – the ability for someone to turn an area into a bedroom can be done on weekend construction. While we permit an application that has an area that, you know, we might all look at and recognize that it could be used for a bedroom, it doesn't have a door. It doesn't have a cased opening that would allow someone to create a privacy by just putting a door up on the weekend, or something like that. But I do believe that they're also very easily transitioned into bedroom areas, and so then that does put them over the specific requirements within the CNZOD and within the Center City Form-Based Code, where they should be coming to you and asking for special use.

Councilmember Bierman – And some of the recent applications look a heck of a lot more like they're just a door and a thin wall between that and a bathroom away from creating a bedroom out of what is being claimed to be a dining room.

Councilmember Holman – I kind of feel like, though, that anybody that lives anywhere in Norman, if they can hire an architect and they have enough money, they can do anything. So I had concern about a family of four – so if any room is determined it could become a bedroom, then a livingroom counts as a bedroom, a dining room counts as a bedroom, a study counts as a bedroom. And so, when you add in actual two bedrooms, you're at five bedrooms now.

Councilmember Bierman – Right. One of the things that Jane and I had talked about is – not for single-family – so this would be aside from single-family – anything higher density than single-family – reserving the right for an additional inspection within a 12-month period. Because I'm less concerned about this happening in single-family homes. But, if you have a duplex special use that was recently turned down and then you come back and say, well, we just magically turned one of these into a dining room, the chances of that actually being used as a bedroom are pretty good. Right now we don't have any mechanism to hold builders or developers to what they have submitted plans for. And to me, especially – the reason why I left single-family out of it is because, to me, that's a public safety risk. I mean, if you have not built proper ingress and egress for the number of people that you anticipate living there, or you say that something is just an attic, but then all of a sudden you have two people living in there – what happens if there's a fire? I mean, we have – there are reasons why, when you're packing a lot of people into one frame of a building, that there is reason for the City to want to know if you are actually putting the number of people in there that you have said that you're going to put in there, because we have done all of our checks and balances and all of our inspections based on an occupancy number. And so if you're going to be going way beyond that, what do we have at our disposal to be able to protect the people who are living there and then the houses adjacent to them if something were to happen? Councilmember Patrone, you've had your hand up a couple of times, and I'm sorry.

Councilmember Patrone – Okay. So one of my comments – I have a few things I've written down here, but – is along that line on the fire codes. I think that what this sounds like to me is – and let me start by saying that owner-occupied is the word I think you're looking for, and that is completely different. An owner-occupied home could easily be

put on the application and they're attesting and signing to that – yes, I'm living here. And that's one of the questions I asked recently in a Council meeting is, is this a duplex where there's a whole lot of family members and the in-laws are on the other side? No, that wasn't the case. It was not owner-occupied. Okay, well, then let's go to the next round of what are we looking at? And to me what we're looking at – if you have more than three real bedrooms, and I agree with you on the fire safety – but we're really talking about a boarding house. So if we need to have something in our code that is talking about boarding houses and hotel/motel tax type thing that goes along with a boarding house, then that's something that we can handle here. If you want to have – to apply for a special type of zoning that is for a boarding house ...

Councilmember Bierman – If you're renting out by the room, does that make you a boarding house?

Councilmember Patrone – If you have more than three rooms and this is a lease situation, the tenant that's – you're not able to show us that you're building for a specific tenant that has several children – minor children with their parents living there, or a situation that would call for that type of more bedrooms, then you're running a boarding house and those have fire codes that go along with them. They have – we already have fraternities and sororities that have certain rules – standards that are not just for the City of Norman – they're state and federal at what you can build. This isn't something that's just a, well, let's move to the next street over or the next street over. This is citywide. If you're running a freaking boarding house, we need to talk about that.

__ -- And really I think the opportunity – the efforts have happened and we're struggling between two definitions of single-family/multi-family and our typical kind of multi-family thought, as Councilmember Holman pointed out – you know, we think of apartments. And none of these really meet the definition of apartment, but we know they're not single-family. So that opportunity to identify what the real definition – because it's a different animal than single-family or multi-family. And if there are a set of standards for what would qualify as a boarding house – and I never really contemplated the fraternity houses and sorority houses but, yeah, those aren't apartments by any stretch, but they are a separate animal. But we may be able to get there with a brand new set of rules for this new animal all on its own. So we've been, you know, round hole/square peg and banging on it since 2011 and we're still struggling.

Councilmember Hall – And I actually think that's a really good point and part of what the struggle has been, because, as someone who has been representing the community on this issue for the last few years, I think most people would just have a pretty – and have had a really strong reaction when we keep calling these duplexes and we keep saying we can't do anything about it. Well, yes, we can. And I think that is really the issue – is that we need to redefine what these are and quit trying to make them fit what we already have from a 1954 zoning definition.

Councilmember Bierman – What is our current definition of boarding house?

__ -- I'll bet it's a really old definition.

Ms. Hudson – We had actually talked about that several years ago. The definition of a boarding house – it's a residential building, other than a hotel, where, for compensation and by prearrangement for defined periods, on a monthly or longer basis, rooms and meals are provided to more than two persons who are not members of the resident manager's family.

Councilmember Bierman – Well, heck. I feel like striking meals out of that would fit the definition.

Ms. Hudson – And a resident manager.

Councilmember Patrone – That gives us the opportunity to understand how we want to zone these. Because we can't have the density be so high that it is a fire hazard, because it was not envisioned to be in the middle of a residential neighborhood.

Councilmember Bierman – Does four bedrooms require sprinkles? Or require it to be sprinkled.

Ms. Hudson – Yeah. We did that with the ...

Councilmember Patrone – There's another reason to encourage people to be less than genuine about how many people are actually going to be living there and how many bedrooms there actually are.

Mr. Pyle -- So there's a piece of software and it's called Blue something – Blue Wire?

Ms. Hudson – Blue Beam.

Mr. Pyle -- Blue Beam – that is the mechanism to allow us to receive electronic plans submittals to speed things up as part of the Management Partners program and everything. What that Blue Beam software also lets us do is the mobile data terminals in police cars and fire trucks. When you roll up to one of these brand new structures, you can say, oh, look, there's three bedrooms. And you're maybe in there looking for three people. Well, if they've turned it into five bedrooms, now I may not be looking for five, because my computer tells me the as-builts are ...

Councilmember Bierman – There are so many reasons why I think we need to be doing – reserving the right for an additional inspection. Because if you are avoiding a \$30,000 fire sprinkler system by calling a room a dining room and then you're just throwing up a door – and even not knocking down a thin built wall between that and the bathroom – even just having people go around the corner – we need to be able to hold people accountable to that. We need our police officers to know – I mean, obviously, you can't say for sure how many people are going to be there, because you might have a visitor, but if you are expecting an average of three people to be in a particular building and then you walk in and there's eight – I mean, multiple tools, but I feel like this is exactly what I was hoping would happen today.

One of the other things that Jane and I talked about was some sort of searchable database or a notification system that we could sign up for for new applications in a

certain area. You live in an area that's kind of hot for this and you want to be able to notified when an application comes in. Because I feel like that's one of the other things is the public is even more reactionary than we are, because the applications come in, we start seeing that there's problems, and then all of a sudden a home gets bulldozed and people are not knowing what's going on and we may not know what's going on. The only people who might know what's going on at this point are in the Planning Department. But if there is a way to loop the public in as early as humanly possible ...

Mr. Pyle – Jane, is the GIS – and this, you know, not that Jane knows all GIS – but ...

Councilmember Bierman – Jane knows everything. What are you talking about?

Mr. Pyle – If she doesn't know, she knows who knows. But in GIS, the ability for us to – well, we already have the maps. I wonder if we could set parameters when we enter in an application for something that's going to happen here that meets that criteria that it would generate, you know, a mailing list and say these people need to be notified or, even better, an email alert for those who are interested. You sign up for it – hey, I got an email; there's an application filed, where you don't have to open the mail. Maybe it shows up on your phone. GIS is a pretty powerful tool and may be worth us taking a peak to see how we could utilize that horsepower when somebody does a submittal and we enter it into all of our tracking software that it would go there, too.

Ms. Hudson – I think it would probably be better – I can ask and I'll do some research on it and everything, but I think it would be better if we had – you know, we go to the website – the City website and there's a location that you can go and you can see where we've got dots or something of most recent applications for a duplex or a triplex, or whatever we've deemed needs to be noted on there. As far as emailing, we're not linked up with the County information, so it would hard for us to mail anything out or email or anything like that. But if they could go to the City website and see what has been submitted.

Councilmember Bierman – I'm really thinking almost kind of like a Norman News kind of thing, where you could sign up for it and then – if you were someone who happens to be interested in applications for development, you could sign up for these alerts, and then every time a new application comes in, that would go out, and the public gets it – whoever is interested in that can decide whether or not that particular application holds any interest to them.

Mr. Pyle – Even if it was a notice to go to the website and look and ...

Councilmember Bierman – Oh, right. New application has been filed at such and such address. Click here to see it. Councilmember Hall had her hand up first, then Councilmember Patrone.

Councilmember Hall – Well, I was just going to comment, even in Center City – I mean the best we could accomplish for notification was a physical sign that's placed in the yard that means that if you're interested you literally have to drive around the neighborhood every single day to see if any sign has been put up.

Councilmember Bierman – And then pull and park and go up to the sign, because it's written in like hand-writing font.

Councilmember Hall – As far as I know currently, that is the notification process to the public.

Councilmember Bierman – And if we can do better than that and just notify anyone who is interested that there's a new application for a duplex at 209 Ridgelake Boulevard – my address – then they can go and see it and we can get the public involved earlier as well.

Councilmember Hall – This is slightly off-topic, but I just happened to meet the Director of Habitat for Humanity and the Restore at a Downtowners Association meeting today, and they have the ability and the interest of going in and harvesting pieces of old houses – the windows, the woodwork, all kinds of things – and this is something that there's also been community interest in for years that ties into the notification process. By the time there's actually a way to know that a demolition is coming, that opportunity has already been missed and they, I would think, are very interested in being connected to some more formalized process of, when we know these are coming, we can call them in and then figuring out how we can share those materials, sell those materials, get homeowners that are interested in getting those things. That's another piece of all this that we could be doing a much better job. If we're going to have to tear them down, let's reuse what we can.

Councilmember Bierman – Absolutely. I see Jane taking notes over there, so I think she's getting that down. Councilmember Patrone?

Councilmember Patrone – I would like to see if it's possible for us to research on boarding house codes elsewhere and what they require for ingress/egress, public health, fire safety – what do they do to keep from – other than just having the outlet with the kill switch, but like electric over-charging that causes house fires. What do we need to do to properly code these? Connection fees, because this isn't something that we have in our code currently. If they're going to be using that much water and sewer – you know, this is something that we need to be taking into account. That's more like three houses, not one, per side. Storm water management – if they're going to be building something that has that kind of high-density boarding house style occupancy, then they need to have a storm water management plan that is associated with that. Because you're right about resale. This is not something that you just throw on the MLS and someone is going to go check it out and buy. It doesn't work that way. This is something that we may be looking at five years from now saying what do we do when we have all these vacant – because it's not a fad anymore. When we have vacant boarding houses, what do we do at that point? So I think we do need to have a classification for what these are. One other thing I was going to say is that I agree with perhaps expanding the boundaries on the overlay, but I also think that before it even makes it to Council – once it's gone through Planning – I do agree giving Planning more tools to call a spade a spade – but also, you know, much like the historic district has – these things need to come before a citizen body that says, no, this is not in keeping with the design of the area or, yes, this is exactly what we're looking for and it gets our stamp of approval – Council, we love it. So that there is some way that we can have the density, the conformity, all of these things simultaneously. But

you just need to delineate what it is and it needs to go before a design board. I mean, it just does. We're not getting what we want. And the people that – there are many, many, many passionate people about this that would love to sit on that.

Councilmember Bierman – And I do think that all of this stuff is why I also circled back around to reserving the right to reinspect. Because what I don't – I feel like no matter what we put in place on the front end, if we don't put in place something on the back end to hold them accountable for what they actually end up building, then it's going to undermine a lot of what we do, because the developers were hell-bent on building what they want to build because they have a bottom line that they need to get to so they'll wiggle their way through it.

Councilmember Patrone – Sure. There's nothing that says that it can't have a cloud on title for doing that.

Councilmember Bierman – Now, there's an idea.

Mr. Pyle – I've not ever heard that come up, but that – you want to talk about the stick to deincentivize.

Councilmember Bierman – Say we are not messing around.

Mr. Pyle – That's a big stick.

Councilmember Bierman – Beth, can we do that?

Ms. Muckala – When you say cloud on the title, do you mean file something of record at the County?

Councilmember Patrone – Absolutely.

Mr. Pyle – That says what they built and would could be for sale at some point in the future is not what was approved.

Ms. Muckala – It has to be legally empowered by statute under Oklahoma law, so we couldn't create a right to file something of record and state index and then hold it against them. It wouldn't constitute legal notice, unless it was statutorily empowered.

Councilmember Bierman – Can we look to see if we are empowered?

Ms. Muckala – You mean like – yeah, if there is something – yeah, we can look and see.

Councilmember Patrone – So what it would be is that, basically, you applied for a three bedroom/three bathroom duplex, but what you really built was a boarding house. So, at that point, the title of what you're holding is not a three bedroom/three bath R-2 anymore. You're selling a boarding house.

Ms. Muckala – Did you want me to respond to that?

Councilmember Patrone – Coming up with an ordinance in our zoning – what it is that they built is not compliant. It is this other thing.

Ms. Muckala – That's going to be kind of more an executive enforcement power, where we're going to need to have evidence and be able to show that before we would want to take an action of record against their property. I'm sure there is a way to go through that, but actions like that would need to afford due process. So I can start with the state law and go through and see what other mechanisms have been used by others.

Councilmember Patrone – Or see what that process would look like to see if that's something that would be valuable to us in this effort. Maybe it's not; maybe the process is too long and too burdensome, requires too much staff time, not worth it, but maybe it is.

Mr. Pyle – And if boarding houses do provide for annual inspection, then that's a mechanism to see.

Ms. Hudson – Boarding – they do, because Code goes out and does hotel/motel, fraternity/sorority, and boarding houses.

Mr. Pyle – And future Air B&B.

Councilmember Bierman – That's right. Councilmember Holman, then Councilmember Hall.

Councilmember Holman – So are we – does that mean we can inspect any rental properties?

Ms. Hudson – No, no, no. This is just for what's been registered with the City as – I'm not sure how they're registered with the City Clerk's office, but like the Greek – I know Janita does Greeks, hotels, and boarding houses.

Ms. Muckala – Right, and it all comes down to constitutional rights and due process. If we have a good police power basis for requiring regular inspections under a licensing process, that's why you see what we already have in place. But as far as – we think these people are breaking the rules; we're going to go in – we need – that's a case of we need reasonable suspicion. So what we need to do is establish the underlying police power basis for that type of regulation and get something in place – a system – that gives people notice when they enter into the program what they're subject to.

Councilmember Holman – So if we were doing regular inspections of boarding houses or hotels and other things like that – I mean, some of the biggest complaints I've ever got from residents were from people that lived in old properties that aren't well-kept by slum lords, and outlets aren't up-to-date; plumbing is bad. And it's cheap, it's affordable, so there's a balance between what's cheap and affordable and what's livable and safe. I've had, in my time on Council, so many people that have approached me and said I have this slum lord and my only option is, well, move and I can't move, I'm disabled.

Councilmember Bierman – Any time people have approached me about that, Code has gone out and looked and actually – thankfully he has moved, but he lived in Emerald Greens for a long time and he was facing several hundred degree days and he has upper respiratory issues and his air conditioning wasn't working and they said they were not going to come out and fix it. And then they said, well, it'll be two weeks. He was like, I can't. He was like, I almost passed out today because it was so hot in my apartment. I called it in; they got Code out there and, of course, magically, they found room in their schedule to fix his air conditioner the next day.

Mr. Pyle – On the invitation of the occupant, we can get in.

Councilmember Bierman – That's key.

Councilmember Holman – To any rental? Because of the preemption law a few years about the landlord registration – what our powers actually were ...

Councilmember Bierman – If it's complaint based from the occupant.

Councilmember Holman – And I also pulled up the zoning map on the City website and it looks like that house on Classen is actually in the CNZOD. So I'm assuming that what they're rebuilding is probably a single-family house, similar to the houses across the street?

Ms. Hudson – No, actually, it's ...

Councilmember Holman – So they've torn it down before they're coming to us?

Councilmember Bierman – Please explain, Jane. Everyone is going to love this.

Ms. Hudson – So the house was on four lots – four 25' wide lots. Okay? You can – those four 25' wide lots can be divided into two 50' wide lots. They're 50 by 140; that gave them the 7,000 square feet. They're zoned R-3. We met with them some time back and explained to them that they were included within the CNZOD district and if they were building anything larger than the three bedrooms, then they had to go to Council for special use. It was several months ago, and we received the application last week or something like that, so they're on Lots 5 and 6, and on Lots 3 and 4. They're building a duplex and a duplex. Technically, there's four units out there, but there's ...

Councilmember Holman – Three bedrooms each?

Ms. Hudson – Sure.

Mr. Pyle – On paper.

Councilmember Holman – Similar to what we've told people we want them to do is more units and less bedrooms.

Councilmember Bierman – Yeah, well. Again, without being able to reinspect afterwards, we don't know if what they have submitted is actually going to be the number of occupants. Councilmember Hall?

Councilmember Hall – Yes. So – when they originally approached you, what did they want to build?

Ms. Hudson – I don't know.

Councilmember Hall – They wanted duplexes. How many bedrooms did they say they were intending to do at the time?

Ms. Hudson – More than three.

Councilmember Hall – Okay. They were intending to do more than three and then you explained tools that you have in your toolbox to the developer, and now they've come back with a plan and are compliant and are presenting you three bedrooms, but you are a trained city planner and you can look at documents and see that there is extra spaces that could potentially be something else.

Councilmember Bierman – We're audio recording. No one can see the look on Jane's face right now, but it speaks volumes.

Mr. Pyle – The only problem was the original 25' wide lots.

Councilmember Hall – And are they identical buildings?

Ms. Hudson – They are.

Councilmember Bierman – So, again, not a whole lot of tools in the toolbox.

Councilmember Holman – So when I get rich in a few years, or whatever, and I want to build a replica of the Adamm's Family House that has secret passages and stuff, am I going to get rejected because some people think I'm going to add bedrooms for students?

Councilmember Patrone – I think that secret passages are not secret passages, but probably divits in the wall that you just put a door on and it becomes a closet.

Councilmember Bierman – It's an alcove that we're not actually going to build the built-in china cabinet that most diningrooms have. We're just going to recess it and make it just wide enough for a door. Those kinds of things.

Councilmember Holman – It seems like any policy, there's just – we're just chasing ...

Councilmember Bierman – Jane, did you have – did you want a chance to look at any tools for you that we didn't talk about, because I really wanted to leave that side of it

with you. I don't think anyone would know better than you guys what tools you could have had to help with some of these things.

Ms. Hudson – Well, I will say, initially, when we started talking about this and we were getting the calls and concerns from the community and such, I had initially thought that expanding the CNZOD into the Core Area would be an ideal situation. But as Councilmember Holman pointed out, there's also the ability for applications coming in to appear to be three bedrooms and then they're converted at a later date. So I don't know that that's really the solution, because the follow-up to that is I'm really worried – I think that we have to be very careful what we do moving forward, because I don't want our actions to be the reason that this concern goes into single-family neighborhoods. You know, Councilmember Holman, you have the single-family home going behind you at eight bedrooms. I'm very worried ...

Councilmember Bierman – Doesn't that become a boarding house, at that point, if it's not going to be owner-occupied?

Ms. Hudson – Because it doesn't meet the definition of a boarding house.

Councilmember Bierman – Right now. But that's just what I'm – if we were able to change the definition of boarding house to also, maybe, address single family. Do you think that there could be a definition of boarding house that would help you with some of these problems, in addition to the CNZOD? Because, again, I'm thinking layer upon layer of tool for you.

Ms. Hudson – I think we need to do the research. I don't know. I mean, I really don't at this point.

Councilmember Patrone – I think it does need to be multi-pronged approach. I don't think there's one silver bullet.

Councilmember Bierman – How do you guys feel? Do you feel like these – I mean, we're just throwing things at the wall right now. Are any of them sticking for you?
Councilmember Hall?

Councilmember Hall – Well, I agree. I think there's not a simple fix. There's lot of different pieces of this. I definitely think it's way past time to think about how we're defining this particular type of housing unit, because we have come forth – what? – three or four times already trying to get a grip on one thing or another. That was actually one of my questions – the definitions for all of these things – are these created for our zoning code or are they standard definitions that we pull from something else? So, like, for example

...

Councilmember Bierman – Is there a national standard?

Councilmember Hall – The boarding house definition. Is that some sort of national standard, or is that something that we have created that we can change easily?

Ms. Hudson – I don't know. That's been in there for a very long time, because boarding houses are listed in the zoning districts as where they can be special use and stuff. 96-97 was one of the most recent changes or additions, just for example, in the RM-2 we have rooming and boarding house under 9697-6, and I can look at it and see what it was. The definition of bedroom – I believe that came from – was it when the duplex – it was before you got here, right?

Ms. Muckala – It was before me. I think it's origin is in the CNZOD. I don't know where it came from to get there, but from there it went to the sprinkler ordinance and then into the zoning ordinance.

Councilmember Hall – And it's in Center City Form-Based Code, because that was my understanding that a former – former CPTC Councilmembers and the Council – that that was a definition that was created in Norman. So I do like taking a look at that boarding house definition and seeing what we can do with that. I think – you know, I don't want to just discard the Central Norman Zoning Overlay District as an option. I think that's still worth considering in all of this. I do think if we're going to do that, that, you know, this was – when this was originally put forward – you know, this is an interesting thing, because if you look at the boundaries, you'll notice ...

Councilmember Bierman – You've got some weird little ones in there, too.

Councilmember Hall – Yes, and that was there for very specific reasons because of the zoning – there were – I mean, basically, the brief history is in response to Center City Form-Based Code, there was an acceptance on some folks within the community that is passionate about this – not everyone – that, okay, there is a balance between the need for high-density and redeveloping what could be considered a blighted area, but that just sort of motivated residents to create more protection around the perimeter of the project area for Form-Based Code to protect – give a layer of protection that wasn't already there by down-zoning, and that was requested by residents. So what's interesting about this one is that this really was in response to the same strategy of, okay, we're going to encourage achieving the vision of Center City Form-Based Code, which higher density is certainly an important piece of that, and multiple housing types is also a critical piece of that to be successful. And so then this was created. And what's interesting about this is it is allowed to do – you know, carve out these little areas and those were for a very specific reason. So, in contrast, for example, historic district overlay it all has to be adjacent. It all has to connect. You couldn't do it quite this way. But if we are going to pursue the zoning overlay as one of the tools, my recommendation would be that we use the technical definition for Core Norman, which there is one.

__ -- What is it?

Councilmember Hall – Let's see, Robinson to the north, Berry to the west, 12th to the east ...

Councilmember Holman – Imhoff on the south.

Councilmember Hall – So that is in our zoning ordinance. Right? So that is Core Norman. There literally is a technical definition for that, and that way you keep that consistent with what is already out there. So I also would love to address the idea of a design review board. That was fought for pretty passionately when Form-Based Code was put forward, and because of the nature of compromise, it got left out. It definitely was on our list of unfinished work with our ad hoc committee that we just spent four months working on.

Councilmember Bierman – Would you want that just for Center City, or would you want it for the entire CNZOD? Because otherwise you're whack-a-mole again.

Councilmember Hall – Yes, because here's the other remark I wanted to make about Center City that was a really positive step forward, and that is on the issue of storm water specifically. So we – because in Center City and because of the way the language was written, it was allowed to go up to 85% impervious surface coverage in one of the most fragile parts of our community that can't really support that over the long haul. And one of the, I think really positive step that we took was there still is a path to do that, but when you do that, because of the work of Scott Sturtz and Carrie Evenson, there are multiple pieces of best practices – if we allow you to do that, you have to do these things for us to approve that.

Councilmember Bierman – If I recall, wasn't it something like anything over 65% coverage you have to maintain the water runoff rate and volume at that 65% level? So your stormwater runoff cannot exceed 65%, or whatever the amount is that 65% coverage would generate.

Councilmember Hall – And there's actually multiple pieces to that, and you may recall the details better than I do, but at the time, we actually discussed as a committee that, in this particular – within Center City, we actually had the ability to address this when we seemed to not be able to do it as a community as we've taken it to a vote of the people. I would like to see us extend that, also, because we have multiple neighborhoods that are not in the Center City area, and, of course, they are limited to the 65% coverage, but they could also benefit from those types of restrictions. And it's the same thing. I mean, with stormwater they don't have tools to handle the fragile nature of our infrastructure in Core Norman, because we say on the one hand we're developing this policy – we want increased density, yet we are doing nothing to make that possible without having adverse effects on neighborhoods, and I have multiple examples of that that have happened in just the last few years outside of Center City Form-Based Code.

Kamala Jolly-Stewart – I live in First Courthouse Neighborhood, so I'm in this Core Norman area. In looking at this, and I've been paying a lot of attention because my neighborhood will, at some point, be impacted. I think it's real important that, rather than just focus on the problems which we have with these duplexes and these housing types that aren't attracting what we were hoping for, that we don't just think about the housing types, that we think about the residents that we're really trying to get in those housing types. And, in order to do that, we've got to focus on what attracts the kind of people we want to live in these areas. And I don't know from city planning and from retail – by making sure the City is focusing on strengthening these areas is going to have an impact on – which was the whole point of the Center City Form-Based Code from the beginning

- was to actually kind of transition into an area that would be vibrant and actually generate revenue and these kind of things. So in order to get people who are going to want to live in those areas - I don't know if there's a way to incentivize or possibly through some affordable housing initiatives to get single-family residents - you know, actually owner-occupied to increase the amount of that in the area. But I would really like for you all, as you're considering this zoning overlay, to focus on that, too. Because if we always focus on trying to avoid something or make something punitive - we're missing the goal. We really need to be doing positive proactive things to make sure that we make people want to live here. And especially with Gray Street, you know. We've got huge opportunities to possibly do something there. With Porter Corridor, we've got opportunities there. With the hospital. All of these areas around here. I think that we need to kind of broaden our lens through which we're looking. I just wanted to throw that out there.

Councilmember Bierman - Thank you. I appreciate that.

Councilmember Patrone - Can I just say one thing? I have to go. My daughter has a show choir at 5:45. I need to go home and get her hair done so I can get her to school. I was going to - my last comment was just, as far as the right to inspect, that could be part of the application, and we could also make it that they make it a requirement under the lease for fire safety reasons, so that we have that oversight sticks with the plan from the very beginning. If it's more than three bedrooms, or could potentially be easily retrofitted to be more than three bedrooms - if it looks like a duck, you know - and it's not owner-occupied, because you ask that from the beginning - Is this owner-occupied? No. Okay, well, then you're talking about a different animal. And until we get the boarding house thing figured out - they're the ones asking to build this. What do we want in this application? What do we want these people signing off on? And we put it in there.

Councilmember Bierman - I agree. I think we do a great job of getting the developers to build to plan, but then once we hand over that Certificate of Occupancy, that's kind of where our role ends, and I don't think that that should be the case. Because I feel like we have gotten to the point now where that's what developers expect. They expect that if they can just work the steps until they get that certificate, they're free and clear and then they can do whatever they want with it after that. And to me that's where the majority of the problem is, and I would much prefer to be able to kind of address that early on, and then have that follow-up period afterwards. Councilmember Holman?

Councilmember Holman - So as part of like Center City PUD, for example, as part of the PUD, could require in the PUD that it's annually inspected - is that something we could do, also, as a term of the PUD? As long as they agree to it.

Ms. Hudson - Yeah. I mean, they would have to agree to it. But I don't know that ...

Councilmember Holman - So we're able to enforce like landscaping requirements, right?

Ms. Hudson - Until the landscape bond is released, and then they can cut it down. Another thing we need to ...

Councilmember Bierman – Oh, great. Send me an email.

Councilmember Holman – We were able to address that with the Reserve, though, right? The apartment complex.

Ms. Hudson – Because it wasn't – right, their landscaping was – they had an approved landscape plan within their PUD. Correct.

Councilmember Holman – And they had to maintain it forever.

Ms. Hudson – PUDs, yes, stay active. It's not a special use that would expire.

Councilmember Holman – So if a Center City PUD one of the things we wanted to ask of them was, as a condition of our approval, you have to agree that this property is going to be inspected by the City every – on a regular basis.

Ms. Hudson – You could ask that.

Councilmember Holman – That would be legal, I guess, if they ...

Ms. Muckala – I'll want to look into that.

Councilmember Holman – I mean, I've struggled a little bit with this, because, well, for example, our last proposal that we denied – I really struggled with that one, because of the situation that I was in, being on a dead-end street, next to the railroad tracks. The structures that are currently on the property – we toured it; it was rough.

Ms. Hudson – So that was a different one. The one that you toured, that's the one that's coming straight forward to CoC. The one that you turned down was the adjacent property.

Councilmember Holman – We went and toured the McCullough property. So that property had an old house that had a basement. It was two stories. It's still there. And then it had two cinderblock buildings behind it that were built who knows when? 50s, 60s. I forget how many total.

Councilmember Hall – I think there were four units.

Councilmember Holman – Four units. So it was pretty high-density property, even though it wasn't a tall building or anything. And when we toured the finished product that had been done on Monnett, I could see – it made me think, okay, so it was a duplex – two sides. Each side had six bedrooms, but it was three stories, so you had one bedroom on the first floor, three on the second floor, and two on the third floor. And it made me think of like Chicago or New York City – like the row houses in Brooklyn and families live in those type of structure in big cities. If the property had a back yard, it would seem appropriate to me that a family would want to live there someday. And not every bedroom had its own bathroom. I think the third floor ones shared a bathroom. Two of the bedrooms on

the second floor shared a bathroom. So I could see that happening. Right now it'll be students; it's brand new, it's next to Campus. But it could turn into that potentially, maybe. And on that case on McCullough, I was thinking, yeah, end of a dead-end, railroad tracks. Is a family want to live right around here? We're trying to get density. So I've struggled with that. But I did go back to the part where we had said we're okay with units – we want less bedrooms because that three bedroom – but I could see a family of five – two parents and three kids and then those three kids become teenagers and they each want their own bedroom, and the dad wants an office. And then you're at five or six bedrooms. And looking at where density can happen, and this idea of Center City really came out of how can we connect Downtown and Campus Corner to each other better, so that people that live in between can easily walk to the other. Right now, there's empty parking lots at night that weren't well-lit at all, some kind of run down rental properties, some of which weren't occupied at all. And so the idea was how can we connect these two, that in 25 years from now we have a whole downtown area, and hopefully that can help slow down some of the sprawl if we're saying we've got other options. You don't have to just build multi-family apartment complexes or single-family homes in Norman. And it takes me back, too, because some of my favorite buildings in Norman – houses in Norman – are ones that were illegally altered over the years. So the house I used to live in on Dean's Row, it wasn't. It was an old sorority house from the 30s. The original Delta Gamma house, actually. And it had 14 bedrooms in it. It had 30 total rooms in it. So the basement had – well, when we moved into it, we ended up tearing down the walls in the basement and putting up supports so it would just be one big, open basement, but it had four bedrooms – what could be four bedrooms in the basement. And it was like a maze. The house was almost 7,000 square feet and two stories tall, plus the basement on the bottom. So, in all, there were 11 bedrooms on the second floor, three on the first floor, and then potentially four in the basement. And there were three bathrooms. The one in the basement did not work at all.

Councilmember Bierman – I can not imagine that was designed to handle that.

Councilmember Holman – The bathroom in the basement was just two toilets and sink that were side-by-side. They didn't work, either. The plumbing didn't work down there. So we had two bathrooms. That house had not been altered at all. It was still in it's shape – it looked the same as it would have when the sorority girls lived there. But there were several houses on that street that I had friends that lived in them that were, at one time, a big sorority or fraternity house, but then got chopped up into apartments illegally in the 50s, 60s, 70s era. And a lot of the affordable housing – low-income housing that we see in the Core Area that are – well, my house, for example, is a two-story Craftsman 20s style. It would have been a single-family home at one time, but at some point in the 50s or 60s the first floor was converted into a one-bedroom apartment. It has a studio – not enclosed room, but it could be a room if you put a curtain over it. And then the second floor, my apartment, has two bedrooms in it. But, originally, the house – my apartment would have been four bedrooms upstairs, so I have a kitchen, livingroom, and two bedrooms. So originally it would have been four bedrooms, the original kitchen on the first floor. So places like that that were – I don't know if that one was illegally altered whenever it was done, but non-conforming, I guess, is what it would be. But some of my favorite structures and places in Norman – some of the biggest sources of cheap, affordable housing, have come from structures that have been illegally altered, and I'm

thinking if somebody could design a square and say there's only going to be three bedrooms in it, but if that person had enough money and a good architect, they could come in and on the outer wall they could build a closet.

Mr. Pyle – Or use furniture.

Councilmember Holman – So this annual inspection thing is something I'm okay with. I'm not saying I want houses being built – being altered illegally and stuff, but that has added some character about how things developed the way they are and some of the structures and historic properties were really like.

Councilmember Bierman – I agree. My husband – the same thing with his apartment. He lived on Flood and Chautauqua, just north of Chautauqua on Flood. It's, again, like a Craftsman style, two-story home. There are two one-bedroom apartments on the bottom floor. Like you walk in and you can go left or right into an apartment, or upstairs and then left or right into an apartment. And he had a one-bedroom apartment, but he claimed that that was an upgrade because he used to live in the garage in the back that had been converted into an apartment that was so small, because they clearly raised the floor to be able to make it an apartment. He had this much room above his head where the ceiling was. He was like, I was willing to do it for \$400 a month. He was like, I was single; I didn't have anyone coming in here. So I understand that those exist. I would say, but for the grace of God that nothing awful happened in one of those structures.

Councilmember Holman – I would say that my house that I lived in on Dean's Row – 783 – it's still there. After we got kicked out of it by the Fire Marshall – a whole other story regarding that – but it sat vacant for six years and then a guy bought it and he didn't tear it down. He converted – he completely gutted the interior and converted the house into apartments – an upstairs apartment, four bedrooms, and a downstairs apartment, four bedrooms.

Mr. Pyle – Wow. In that case it went down in density.

Councilmember Bierman – Right. And I do see that being the case, if the future happens the way it looks like it probably will, and a lot of these mini-dorms end up sitting vacant. I mean, I think that there is a future for them. The question is how long are they going to sit vacant in the meantime? And, God forbid, we have any kind of market correction in the next few years that then kind of takes the – I see so many reasons why I'm glad that we're having this conversation now.

Councilmember Holman – I think the one we saw on McCullough – or Monnett – that one could be repurposed, I think, in the future. Get rid of the parking lot in the back and put a yard back there. But there's definitely others that have been built in Center City that I wouldn't foresee them – it would take a lot of work to repurpose the interior.

Councilmember Bierman – Councilmember Hall, did you have a ...

Councilmember Hall – Just a couple of other things I'm just going to randomly throw out there, as long as we're going down this path. And to play on your comment, Kamala, of

just looking at the entire Core Norman technical definition may be a little bit more holistically, because you mentioned, Jane, about one of the issues of what you're seeing as an unintended consequence of the Form-Based Code having certain steps and certain processes that have to be conformed with, and so we're seeing this migration to other projects and we know – we've mentioned a few of them – and the complete scraping of what – the lot on Classen that was a single-family home that just happened to be on what ended up being two separate lots for redevelopment. This is not new – I mean, this has been going on for the last couple years. There's multiple examples within the Core Area of single-family homes. We've already seen this model of multiple bedrooms being brought forward, and I actually asked earlier – you know, do we see other projects coming forward outside of Core Norman – of large mega-mansion type places – do they want seven bedroom homes or eight bedroom homes, and there really is no ...

Councilmember Bierman – Probably outside of the neighborhoods where they typically ...

Councilmember Hall – Yeah, history of that. So we know things about what the intended housing type is when we're seeing it in the Core Area. So I think we definitely have to take that under consideration. The other thing I was going to just mention, because I do think it's connected. We had the opportunity to meet with a consultant that's coming in to rewrite the Historic District Guidelines. It's just a very energizing conversation – the part that I got to participate in – and the thing that really got my attention, that I've been saying over and over and over again, is she was just surprised that we only had three historic districts – that we have so many historic neighborhoods and the development of historic neighborhoods in Core Norman, that she was really, really surprised that we didn't have more. And I can say the easy answer of why we don't, but that's the other piece of all of this. Just because it doesn't have a zoning overlay that protects it doesn't mean it's not worth protecting. So, for example, in the Chautauqua Historic District, we have ten blocks over 20 years – 25 years – that was resident-generated to protect, and according to the surveys that have been done twice, we should have 40 blocks in the Chautauqua Historic District. So that's another thing that I hope we consider when we're talking about this area of town. Just because we have a very limited – miniscule – percentage of our housing stock that's being protected by an overlay doesn't mean that we shouldn't consider having more, because this is what's happening. I mean, we have destroyed one historic neighborhood.

Councilmember Bierman – Councilmember Holman?

Councilmember Holman – Could we look into maybe getting Mary Madden to come back for just a follow-up maybe, see what's happened since and maybe give us some feedback.

__ – We actually sat in on a Webinar with her – we're not invited, but it was a webinar that we became aware of, and she discussed us.

Councilmember Bierman – Is it any good? I feel the difference between your two faces – I don't really know.

__ – She talked about why she thought it failed.

Ms. Hudson – And I will say the reason – we'll look for it. What she said was so many of the things that were originally in the document were pulled out, which caused – so many of the controlling – the regulatory items that were in the document were pulled and she said that ...

Mr. Pyle – It resulted in what we have.

Councilmember Bierman – Do you agree with that?

Ms. Hudson – I wasn't involved in the original document, so I can't ...

Councilmember Bierman – You don't know what was pulled out, necessarily?

Ms. Hudson – I don't.

Councilmember Holman – I can't recall any major recommendations they made that we didn't ...

Ms. Starr – Well, there was the pink neighborhood. That was one thing. Middle frontage that was pulled at the last minute.

Councilmember Bierman – Well, now even more reason to watch this, because I'm sure she describes a little bit.

Councilmember Hall – What about a design review board?

Councilmember Holman – Well, I remember she had said that would take probably about two years to put together, and they did give us some pretty good examples of how design review boards had failed in some really historic communities, like in Virginia and stuff, where they had attempted to apply design – historic design standards to like suburban development and it didn't come out well, or that they had instances of design review boards where people disagree on what good architecture is or what a good colored brick is.

Councilmember Bierman – Well, since we never have disagreement here in Norman, I'm sure it would be great.

Councilmember Holman – We haven't gone back to it, really, but we did identify that as something we wanted to do. But that was something that Mary Madden and them did say was this could probably take another two years and we want to get this policy in place, because we were – we really started the Center City thing because of redevelopment that was already taking place. And they were using the existing 1950s zoning and, for whatever reason, all these years nobody ever decided to use it that way.

Councilmember Bierman – All it takes is one.

Councilmember Holman – They found it and they started doing it and so we responded with the Center City thing and then talking about connection and all that stuff, but it really was a response to this development is already happening and we don't like the way it looks, and we don't have a way to fix the infrastructure in this area. So they were kind of like you need to get the policy passed and then work on a design review board, and we just haven't.

Ms. Hudson – So, if I can just follow up, one of the things – I don't think that's a bad idea, by any stretch, but I would just like to add that I think before we try to bring anybody else back in, I think that our internal staff – the departments – more specifically Public Works/Engineering – I think we need to get them involved in this discussion, because – following up on what Councilmember Hall said – Shawn O'Leary said it the other night at City Council. He has some genuine concerns with the Center City Form-Based Code area, where this increase in density – whether it's the diverse housing types, but just the bottom line, the increase in the density of this area – it really is not set to handle this increase in this density.

Councilmember Bierman – Have we not done enough to build protections in to have developers pick up some of that cost? I mean, we did a little bit with storm water, but was that even as far as we should have gone?

Ms. Hudson – But I think the key is looking at what historical runoff was for the area. And even though we're saying that if you're doing more than three bedrooms you have to get special use. There's the discussion about how we may or may not be able to enforce the bedroom definition, so we're ending up with more bedrooms in these places. But it's the fact that we had a small home with either on-street parking or maybe a small gravel driveway that's going from that to the 2 or 3-story – whether it's a single-family home or it's a duplex, it doesn't matter. It's just that we've gone to – and the smaller area that maybe was at 40% total coverage to the 65 or even more if they're getting the waiver to go over that. So I really think that we need to get Scott and Carrie involved in this again, and Mr. O'Leary as well. I am genuinely concerned that the infrastructure – the water, the sewer. I mean, I get that the alley is a concern. The streets are there. But the impacts for the water and sewer, for when you have 6 bedrooms/6 bathrooms, so you're looking at a duplex you have 12 bedrooms and 12 bathrooms.

Councilmember Bierman – Are they not upgrading the water meter? I don't know at what point a ¾ ...

Ms. Hudson – For the infrastructure that's getting it to the main line.

Councilmember Bierman – It's from the main line out. Okay. Councilmember Holman?

Councilmember Holman – This type of development or redevelopment happens in these same type of areas in every city of our size or bigger. All big cities were once the same size that we are and had a downtown that probably looked similar to ours, but it grew. Downtown Los Angeles, for perspective, would go from Porter all the way to West 24th Avenue – that's how big downtown Los Angeles is. It started off with a town square with

a little mission in the middle of it, which is still there if you ever go there. I wonder how they deal with that. I know the difficulty with us is the Center City TIF can't generate any funds until development happens that increases the property value. So it's like which one comes first?

Councilmember Bierman – Do you have any initial ideas of how you would address this if given a magic wand?

Ms. Hudson – That's what I was going to say. Aside from building review, I think that there should be the question of what is this block able to accommodate, in getting Utilities and Public Works involved in that review.

Councilmember Bierman – I just had an idea. What if we developed, not just a design – maybe in addition to design review, at some point in the future, an infrastructure review panel?

Mr. Pyle – And once it hits capacity, we're done. I mean, or there's a major upgrade to sewer, water.

Councilmember Bierman – Right. And I don't know exactly what their end goal is, but whether it's Scott and Carrie or Scott and Carrie and whoever else we want to pull in to actually have a meeting or a set of meetings, if we have to, to talk about the impact on the system and whether or not – maybe this is something we can come up with – either an additional assessment, kind of like a connection fee, or that's a board that can simply say, no, we can't do anything else on this block.

Mr. Pyle – No more sinks and toilets.

Councilmember Bierman – Unless – and, again, that kind of goes back into the ability to reassess these properties after they're built, because we do have that larger public safety and infrastructure problem, that if they say there's only going to be three people living there, but then they split the double large master bedroom in two and put a door on that diningroom, now all of a sudden they've got six people living there, and that's double the impact on the system that we expected that it was going to have, and that's a problem for everyone, because we all pay when there's a problem. So, again, I think this is going to be layer on top of layer on top of layer, but I think we also have to look at those specific committees or boards that can shine some light on these problems. So, just a thought.

Councilmember Hall – So the other piece is – I know we did that Johnson study that was an engineering study for Center City, and I can't remember – I'll have to go dig that out when I get home. But I'm not sure – they did a block-by-block survey of what the ...

Councilmember Bierman – And that could be the foundation.

Councilmember Hall – I'm just not sure how detailed it is. But they did go block by block and determined what the – I think almost what the cost would be per block. Do you remember that?

Councilmember Holman – Yeah.

Councilmember Hall – So probably time to pull that out, too.

Mr. Pyle – And when you think about – if they want to build, they get permission. And, oh, that one requires fire sprinklers, the demand on the water system – you know, your fire sprinkler goes off but there's not enough water – we've got four different people taking a shower next door and there's no water for your fire sprinkler.

Councilmember Holman – If I may, I recently was talking to Ken Komiske about stuff like that, and he told me that currently fire sprinkler systems in Norman – that there is no cost or we don't recoup the cost ...

Councilmember Bierman – There's no connection fee for that.

Councilmember Holman – That pressurized water being provided to your whole building. We were talking about connection fees. He's like, you know we've talked a lot about connection fees, but there's a whole lot of other fees that we're not even collecting that we could do, instead of jacking up the price for a connection for a new house, but there's all these other fees that we could look at that we're not even collecting, and he mentioned that one specifically. I was, like, wow. So we require all these new apartment buildings or duplexes to have pressurized water sprinklers but apparently we're not ...

Mr. Pyle – We give you the service for free.

Councilmember Bierman – Is it not even a can of worms? It's like a can of locusts. Open it up and you're swatting everything – worms just lay there but locusts are everywhere.

Councilmember Holman – That's one thing to look at, too. Are we able to regulate the number of bathrooms?

Ms. Starr – We tried to Google this, I swear, back in the early 2000s. I thought Stillwater did this thing ...

Councilmember Bierman – I imagine that Googling is a lot more effective now than it was in the early 2000s.

Ms. Starr – Like that same impact fee on bathrooms, but we couldn't find it.

Councilmember Holman – Well, if 12 bathrooms is a problem, we can say, well, you know, this block, the infrastructure and whatnot – you can get three bathrooms in that building. I doubt that 12 people are taking a shower at the same time or running all their sinks or toilets at the same time.

Councilmember Bierman – I'd say between 7 and 8 a.m., there's a very good chance that 12 people could be taking showers or flushing toilets at the same time.

Councilmember Hall – Well, I just want to make it a little bit more dramatic. I mean, like I said, we've got Center City and the unintended consequences of Center City is it's going into other places that are easier to move things forward and the lot on Trout – was that a single-family home that was there, or a little – what was there?

Ms. Hudson – It was an apartment house with a garage apartment, I think. I'd say apartment house. I'm sure it was probably a couple units inside that house.

Councilmember Hall – So how many people do you think live there?

Ms. Hudson – About four.

Councilmember Bierman – Maybe five.

Councilmember Hall – Five? And now there's going to be 21 and 21 bathrooms, and 14 parking places.

Councilmember Bierman – Do you think February would be enough time to kind of put together some options? I'm sorry. If it makes you feel any better, I wanted to say January.

Ms. Hudson – I think it will be fine. But can I just – so, Anais, my right arm over here – so just remind everybody that, in the Center City Form-Based Code, on page 1, Section 103, under A, B – oh, that's lovely. We now have no C. Here's a perfect example of stuff that was pulled out and things didn't get fixed. So we'll get that one fixed. It should be A, B and C – so clearly there was a C there at some point. Anyway, it lists out the six goals of what we wanted the Center City Form-Based Code to do. And then – I'm sorry, because this was one of the things that really, I felt, should stay in, but in C, what is D – design was italicized and underlined. And yet we're missing that.

Councilmember Bierman – Is that some kind of overarching standard that you can point to and say, well, yes, I understand that this – being able to use that if the actual letter of that code doesn't reflect it. Can you go to that overarching objective and say, yes, I understand that, according to the standard, you have complied with it, but this doesn't actually comply with our overarching theme in this. Does bold, italicized and underlined give you any kind of legal weight?

Ms. Hudson – I'm going to let Beth respond to that.

Ms. Muckala – What you would want are standards, parameters for applying architectural or design guidelines, and that's what we don't have right now. You have to give some notice of what they're going to be subject to. Otherwise, it would have a pretty strong ...

Councilmember Bierman – Okay. So is that something we can also look at, is flushing out some of these standards? Who is ready for another six month charrette?

Councilmember Holman – As an example, this is an historic photo, probably from Chicago, but that's kind of the vision and we have a few structures that kind of look like

that. They don't have a porch on them, but some of those ones we've seen on Apache and whatnot look like these old type of row house looking things. And I think I have a pretty good side-by – yeah, here we go. This is from last winter, so it looks dreary, but that is pre-Center City development that was happening, and that's post-Center City and I personally do like that side of the street.

Councilmember Bierman – Oh, God, really? I like the size and I like the width. That exterior is ...

Councilmember Holman – I do like that they're brought up close to the street.

Councilmember Bierman – I like that it was brought up close to the street. I actually don't mind the height so much. I just think that's ugly as sin. I do not want to walk past that every day.

Ms. Starr – Is that on Santa Fe? I'm sorry.

Councilmember Holman – That's on Apache. This is black and white, so I can't tell, but if that other picture were black and white, what is the major difference?

Councilmember Hall – What's on the inside.

Councilmember Bierman – The quality of the windows. I actually think the flow of the outside – it actually almost has movement to it, whereas it looks like you cut the face off that building in the other photo ...

Councilmember Holman – It doesn't have the – well, you have the little butt out part on some of them.

Councilmember Bierman – Oh, I guess I can't see that. It looked just flat to me.

Councilmember Holman – But there's at least been some closeness to it.

Councilmember Bierman – And, to me, the exterior – that's really not my issue. It's the fact that people are not being genuine in their applications. And it's more about what's happening inside the building than what it looks like on the outside. I do care about storm water and lot coverage and things like that, but in terms of how close it is to the road or what it looks like on the outside – that doesn't matter to me nearly as much as what's happening inside. Councilmember Hall?

Councilmember Hall – And that is just one of the primary issues. When you go back to the process that the community and the staff and the Council went through to develop the Center City Form-Based Code – gosh, this has happened in other hot topics of late. What the community expected to get out of that is not what is happening. And, to your point, on the positive note, this was supposed to be diverse, multi-generational experiment in urban walkable living that attracted multiple – seniors, young professionals, young families, graduate students. Multiple housing choices for people that wanted to live in an urban, walkable neighborhood. And even if we loved the way every single one

of these was developing on the outside, if you go inside, with the exception of two projects in the entire history of Center City Form-Based Code, they are all a single housing type, and multiple areas, multiple colors – that's all we have on the inside and that is a failure. That is a complete failure from the vision that the community expected to see.

Councilmember Bierman – I agree. Alright Jane, this will be easy, right?

Ms. Hudson – Well, I just – there's a lot of information here and I just ...

Councilmember Bierman – Even if you can just cherry-pick a couple that you think will be the most effective – even if you – if you get thunderstruck over Christmas break and you think of something that we hadn't talked about that's kind of more of an internal process – something that Planning staff can utilize as well – because I feel like that's the part that we didn't really discuss because, frankly, none of us really have as good of a sense of what goes on inside as you do – but maybe if we could pick two or three that you think would be the most effective that we can kind of systematically move through next spring – I think that would be a really great start. And then we can kind of continue this conversation and maybe sprinkle one or two of these ideas into Oversight agendas for the several months after that.

Councilmember Hall – And I just want to add my total support of that. If you have to prioritize what's coming first, my preference is for you to choose the things that give you the ability to say this does not work. So start there. Start what's going to help you day-to-day when you have these projects coming forward, when you know when you see them that this is not what is intended for the development in this part of town.

Councilmember Bierman – And if it would then be helpful for us to kind of pull some of this off of your agenda with, again, another charrette or another ad hoc committee – let's think of the ones that we can kind of pull off your plate so that we can kind of move those alongside whatever it is you think that we should move forward through this committee and through kind of our more formal process. And I do think that some point in the future I'd like to look at maybe ways to incentivize the kind of development that we want versus just punishing the ones we don't. I know we don't have a lot of money to throw around, but I think we've come up with something pretty good with the use tax rebate for visitable homes that kind of get us closer to that multi-generational age in and out of your – like you can live your whole life in a home that is designed that way. We're looking at maybe a use tax rebate for that, so it's not really like money that's coming out of City coffers – it's just less money that we're getting in from the use tax. There might be an opportunity there. So I definitely think that we – I think that Kamala had a great point that we need to look at incentivizing the kind of development we want, not just punishing or reacting to the kind of development we don't want. Councilmember Holman?

Councilmember Holman – It's already really cheap to build sprawl and that's why it happens. So I do get concerned about over-regulating and there's good concern and reasons why we need to, but if it's to a point where there's a lot of regulations to redevelop in the Center City and we don't have any kind of incentive for you to build what we want you to build, so it's a lot easier to say, well, I'll just go over to 24th Avenue or anywhere on the edge and I'll buy a cheap piece of greenfield and I'll build a

subdivision there that's high-density, sort of, depending on how many houses are there, but it takes up a lot of space. And we've been seeing – I don't think we're in the situation. We've seen some cities like Minneapolis and Seattle and San Francisco – those bigger cities that are having real housing crises and they're having to change all of their zoning policies so they can build housing faster. We're not in that situation, but trying to get it to where we can – I've never been under the impression that Center City could stop sprawl. It's not going to stop it, but having a place where there's an alternative and if we can find a way to incentivize a way where we get the type of development we need in this area and the type that we want, I think that's how we're going to do it. If we don't, I don't think we're going to get it. We're going to get what's being built or just more low-density sprawling type developments.

Councilmember Bierman – I agree. And what we have not touched on is how the double-edge sword of some of these policies – like the bedroom definitions – kind of inhibiting the developers that we know want to do it right and are not able to because of how we've structured things like our bedroom definition. But, again, on the flip side, it's also going to help us with some of these applications where we know that they're not being as genuine with their intent for the use of the property as we want them to be. So I don't know that there's an easy fix for it right now, but if we can kind of keep that in the back of our minds. Because, to me, that is also very discouraging when developers want to do it right and they do truly only have three bedrooms, and then they get dinged for it because the diningroom could be. So I see both sides of it. I mean, we have some that it's going to be useful for and some that's it's definitely harming.

Ms. Hudson – It's a model, too. It's a model that we're seeing over and over again.

Councilmember Bierman – I know. And I don't want it to come down to a subjective determination of your knowledge of that developer, because I know that that's been a factor for me, that I know this developer. I know what they do, and I know that they want to do it right versus this developer that I know has tried to skirt the process and I know is only trying to build what they want to build – rules be damned. I want there to be a clear path forward in our ordinances if at all possible because the subjective determination of who these developers are as people is untenable and unsustainable. It has to be a neutral process.

Councilmember Hall – As we discussed earlier, we can't seem to say no to the things that we don't want to see, and we're having a hard time saying yes to the things that we do want to see because of other barriers. So that does not make sense for a functioning Planning Department to not be able to correct that.

Councilmember Holman – I would say, too, if you seen them in Ward 1, actually, the Cottages. Those are these, but they're just a big complex of them in one spot, basically. Same thing over by the Walmart at Aspen Heights, I think it is. Those are cool looking little houses that look like they're oldish, but it's just a big whole bunch of them all in one spot and they're cookie cutter.

Councilmember Bierman – And, frankly, I don't know how sustainable those are going to be with this new trend for student housing and with, possibly, some changes to OU. I mean, those are so far-flung in terms of the boundaries of student housing.

Mr. Pyle – Those are almost tiny houses. It could be trend all on it's own.

Councilmember Bierman – If I was queen for a day – pedestrianize Main Street from the railroad tracks to Porter and we would have a tiny home neighborhood, probably on Griffin Campus.

Councilmember Holman – I want to see a subdivision of tiny homes.

Councilmember Bierman – I would love that. You're on notice, Jane. I'm going to want us to talk about that at some point.

Councilmember Holman – Maple Lane and Juniper Lane.

Councilmember Bierman – Alright. Do you feel like you have enough, Jane?

Ms. Hudson – I need to get with Legal and, again, other staff. I want them to be involved moving forward. I don't want this to get to even a first round of the committee discussion and have another department have comments that we find out aren't going to work.

Councilmember Holman – I wouldn't mind Mary Madden coming and telling us what we did wrong. Because many people currently involved in City of Norman government weren't here then. The whole Council, almost.

Councilmember Bierman – I almost actively avoided that issue.

Councilmember Holman – A whole new Council since we started that – except for me; I'm the only one left.

Ms. Hudson – I would like to hear, too – like I said, I wasn't involved in that. So it would be very interesting to me ...

Councilmember Bierman – And beneficial, I'm sure, because it would be helpful to know where to go in the future, based on kind of where we went and what you can pick up that was dropped. So I think it would be helpful for you to know that whole history as well.

Ms. Hudson – I know whenever we called her and visited with her when we first started the ad hoc committee, she was really surprised at the fact that in the blue – and correct me if I'm wrong when I say this, Beth – but when we had her on the phone we were talking to her about the townhouse developments and everything, and she – I don't know if she just couldn't grasp the fact that we weren't getting developers coming in and building the townhouse with the self-parking garage. She just – we're like we're getting the same model that we had before, and we're getting the large parking lots in the rear and the whole idea of the townhouse/small apartment was to get a townhouse and you had a single parking space underneath the building, and that's how they were

accommodating the parking and you didn't need to have the on-street parking. Am I getting close to what she was saying?

Ms. Muckala – Right. And it was more a disconnect between she couldn't comprehend the fact that the code used the way it was intended would have encouraged block development so people could use more of the area, utilize more, and thus kind of make more profit or utilization of it, and instead people were doing it piece by piece – not taking advantage of that.

Ms. Hudson – And that was not the intent – or that was not the vision. The vision was go from block to block and get the entire development. We've talked about that. That's why we've ended up ...

Councilmember Holman – Center City is not a preservation policy. And, yeah, it was a vision with multiple parcels be developed at once – even a whole block, maybe.

Mr. Pyle – One developer doing a big chunk, instead of one developer doing 14 of them all over the place.

Councilmember Holman – And that's part of the stuff we did change to help make it so you could connect them. It was required that there be a gap ...

Councilmember Hall – Well, and the difficulty of actually being able to develop in that fashion in this part of town. That's like multiple properties that have to be negotiated and purchased and not everybody is going to sell at the same time. We heard that over and over from multiple developers that have worked in the area. That's just not very realistic for this particular part of town.

Councilmember Holman – It would be nice to have her come back, though, and look and see what's happened. You know, with the pink thing, we took that out because it was kind of a compromise thing. We were trying to avoid a protest – significant protest of the property owners in that area. And because we were reducing, I guess, the rights they had under the existing zoning. So in order to get them not to protest, we agreed to make the pink part of the blue. I guess that wasn't as severe of a thing as we thought, because we just put it back to pink without much of a protest at all. But that was the – and it was a close vote on the committee back then. Jonathan Fowler and I went back and forth. We really struggled with taking that pink out. But I'd be interested to know what else we messed up on.

Councilmember Bierman – Jane, I would love February, but I would understand if it was March.

Ms. Hudson – I'll see what I can do.

Councilmember Bierman – And that's why I'm hoping maybe we can peel off – if you see that there are naturally a few things that an ad hoc committee could tackle and vet.

Councilmember Holman – Well, we said we'd come back. I think all the members of the committee said that they'd be willing to come back.

Councilmember Bierman – So I think we should consider that and even maybe gauge those committee members to see if they would be willing to expand their focus to the whole CNZOD area. Because what we're talking about is not going to be exclusive to Center City – it's going to have an impact on Center City and so I think it's important to have people who have gone through that whole process. But if we're looking at extending some of these policies to the whole CNZOD area – or extending CNZOD to the whole Core Norman area, and then having these policies overlay that, then I think that we should gauge them and see if they're interested in having that broader discussion. Because, if they are, I think that their input would be really valuable considering their Center City knowledge.

Councilmember Hall – I think they'd probably be. Everyone agree to continue to serve. So we just need to make it happen.

Councilmember Bierman – Oh, Bill, any comments? Alright. Meeting adjourned. Thank you.

ITEM 2
YOUTH ACCESS
TO TOBACCO

CITY OF NORMAN

Oversight Committee

Prevention of Youth Access to Tobacco

Anthony Purinton, Licensed Legal Intern

February 13, 2020





Current State Law

- Prevention of Youth Access to Tobacco Act
 - Added “vapor products” in 2014
 - Includes regulations on
 - Distribution, sale, and display
 - Furnishing and purchase
 - Possession
 - Limited authorization to municipalities
- 



Current Ordinance

- **Sec. 15-412. - Furnishing of tobacco products to minors; possession by minors.**
 - (a) Any person who shall furnish to any minor, by gift, sale, or otherwise, any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product shall be guilty of an offense; provided, however, that it shall not be unlawful for an employee under eighteen (18) years of age to handle such products when required in the performance of the employee's duties.
 - (b) It shall be an offense for any minor to be in possession of any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product.
 - (c) Any person convicted of violating any provisions in this section shall be punished by a fine of not more than one hundred dollars (\$100.00) for the first offense within a one-year period, and two hundred dollars (\$200.00) for a second or subsequent offense within a one-year period.
- 



Ordinance Revisions

- Changes the title to “Prevention of Youth Access to Tobacco and Vapor Products”
 - Definition
 - Several new subsections adding additional tobacco and vapor product regulations
 - Changes references to 15-412 in other areas of Section 15
- 



15-412(a) Definitions

- “Tobacco product” means any product that contains tobacco and is intended for human consumption;
 - “Vapor product” shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in 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 and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device. “Vapor products” do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.
- 



15-412(b) Furnishing

- Prohibits purchase by anyone (or for anyone) under 18
 - Provides for defenses available to anyone charged with violating the subsection
 - Charges the employees making the sale, not the owner
 - Process to notify DPS on nonpayment of fine – DL suspension
- 



15-412(c) Possession

- Prohibits simple possession
- Prohibits offering false IDs to purchase
- DL suspension if there is a failure to pay fine in 90 days





15-412(e)-(g); 15-506

- (e): Prohibits sale except in sealed package
 - (f): Prohibits display of products which are accessible to the public without assistance
 - (g): ABLE can request or require information on any enforcement
 - 15-506 updated to reflect new title for 15-412
- 

QUESTIONS?





Office memorandum

DATE: January 14, 2020
TO: City Council Oversight Committee
FROM: Anthony Purinton, Licensed Legal Intern;
Jeanne Snider, Assistant City Attorney
THROUGH: Kathryn Walker, City Attorney
SUBJECT: Vaping and Tobacco Ordinance Amendments

BACKGROUND:

Currently, the City has no prohibition on the vapor products for those under the age of 18. After State and Federal laws have been passed prohibiting the furnishing or use of vapor products for minors, City staff has been asked to review the current ordinances prohibiting the furnishing or use of tobacco products and include a similar ban on vapor products.

DISCUSSION:

State law

In 2014, the State passed Senate Bill 1602 which amended the Prevention of Youth Access to Tobacco Act and other laws concerning juvenile offenses to include prohibitions on vapor products for anyone under the age of 18. The amendments added the definition of “vapor Products” and incorporated the term into sections of State law which had previously only prohibited the furnishing or possession of tobacco products.

63 O.S. § 1-229.11 et seq., constitutes the Prevention of Youth Access to Tobacco Act. The Act contains multiple provisions regulating the distribution, display, and packaging of tobacco and vapor products, but only certain provisions have language authorizing municipalities to enact and enforce similar ordinances. One such provision is 63 O.S. § 1-229.13, which is similar to the City’s current ordinance in that it prohibits the furnishing of tobacco products for anyone under the age of 18. However, after SB 1602, the State’s prohibition extends to “any tobacco product or vapor product.” All Sections of the Act containing municipal enforcement authorization have been adopted in the proposed amendments, which can be found below.

The State law concerning the possession of tobacco and vapor products is found elsewhere in the State statutes. 10A O.S. § 2-8-224 makes it unlawful for any person under the age of 18 to “purchase, receive, or have in his or her possession a tobacco product, or vapor product.” Also prohibited is the unlawful use of a fraudulent proof of age to try and purchase either type of product. The statute explicitly incorporates the definition of “Vapor Product” found in the Prevention of Youth Access to Tobacco

Act and authorizes municipalities to enact and enforce ordinances concerning conduct under the Section. This State law has been incorporated into the proposed amendments, as seen below.

Federal Law

Recently, there has been an uptick in federal rulemaking and legislation on tobacco and vaping products that deserves mention. In December of last year, Congress passed legislation changing the Food, Drug, and Cosmetic Act, adding a prohibition on the sale of tobacco and vaping products to anyone under the age of 21. More recently, at the beginning of this year, the FDA decided to ban flavored e-cigarettes altogether, with an exception for tank-based vaping systems. Currently, without amendments to State law, the City would not be able to implement these federal changes. The State Act only authorizes municipalities to adopt ordinances that “shall be the same as provided for in this section.” However, there is proposed state legislation, Senate Bill 1423, which was introduced in January which would change the Prevention of Youth Access to Tobacco Act to include similar prohibition for anyone under the age of 21. If passed, the City would be able to similarly enact an ordinance reflecting such change.

Current Ordinance

The current language of 15-412 is outdated and requires revision to better comply with the State’s laws concerning Youth Access to Tobacco. The ordinance currently reads as follows:

Sec. 15-412. - Furnishing of tobacco products to minors; possession by minors.

- (a) Any person who shall furnish to any minor, by gift, sale, or otherwise, any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product shall be guilty of an offense; provided, however, that it shall not be unlawful for an employee under eighteen (18) years of age to handle such products when required in the performance of the employee's duties.
- (b) It shall be an offense for any minor to be in possession of any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product.
- (c) Any person convicted of violating any provisions in this section shall be punished by a fine of not more than one hundred dollars (\$100.00) for the first offense within a one-year period, and two hundred dollars (\$200.00) for a second or subsequent offense within a one-year period.

This language is no longer reflective of State law, and should be amended to include the State’s addition of vapor products; additional regulations concerning the distribution, display, and packaging of tobacco and vapor products; and specific fines amounts for each provision.

Ordinance Revision

Attached is a draft of an ordinance amending the City's current ordinance prohibiting the sale and possession of tobacco products by anyone under the age of 18. The amendment includes several subsections, which integrates current State law into the City's municipal code. Another Section under Chapter 15 is also amended, updating language that referenced Section 15-412.

The following Sections will be amended:

Section 15-412 contains several new subsections which track State law.

Section 15-412(a): Provides definitions pertaining to all of the subsections within 15-412.

Section 15-412(b): Prohibits the furnishing of tobacco or vapor products to anyone under the age of 18. The subsection also contains exceptions that would apply in certain circumstances. Penalties are also provided for, including the authority for the Municipal Court to report any failure to pay fines and fees resulting from violations of the Section to the Department of Public Safety ("DPS").

Section 15-412(c): Prohibits the purchase, possession, and receipt for anyone under the age of 18. The subsection also provides set fines for any violations of the subsection, including the authority to report a failure to pay fines to DPS.

Section 15-412(d): Prohibits the distribution of tobacco or vapor product samples to anyone under the age of 18 and provides the fines for any violations.

Section 15-412(e): Prohibits the sale of "cigarettes" except in original, sealed packaging and provides the fines for any violations.

Section 15-412(f): Prohibits the display or offer of tobacco or vapor products in a way accessible to the public without assistance from a clerk or owner and also provides the fines for any violations.

Section 15-412(g): Requires the City (in compliance with State law) to furnish any and all required information concerning convictions under this section.

Section 15-506 references the current title of 15-412, which would need to be amended to match 15-412's new language.

RECOMMENDATION:

The City of Norman should seek to amend the municipal code to reflect the inclusion of vapor products in the Prevention of Youth Access to Tobacco Act and other State law in order to make it a violation of the municipal code for anyone under the age of 18 to use or possess vapor products. Implementing a Youth Access to Tobacco section into the City's code can be achieved by incorporating State statutes in which municipalities have been given explicit authorization to enforce. Doing so

would allow the City to prosecute any charges filled under the new section in Municipal Court and would bring the City's code closer to current State Law and other municipalities' codes.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING AND RENAMING SECTION 15-412 OF ARTICLE IV, CHAPTER 15 OF THE CODE OF CITY OF NORMAN TO THE PREVENTION OF YOUTH ACCESS TO TOBACCO AND VAPOR PRODUCTS; PROVIDING DEFINITIONS FOR THE PURPOSES THEREOF; PROHIBITING THE FURNISHING OF TOBACCO AND VAPOR PRODUCTS TO ANYONE UNDER THE AGE OF EIGHTEEN, PROVIDING FINES AND COSTS FOR VIOLATIONS, AND PROVIDING EXCEPTIONS IN CERTAIN CIRCUMSTANCES; PROHIBITING THE POSSESSION OF TOBACCO AND VAPOR PRODUCTS BY ANYONE UNDER THE AGE OF EIGHTEEN, PROVIDING FINES AND COSTS FOR VIOLATIONS, PROVIDING FOR DPS NOTIFICATION OF FAILURE TO PAY SUCH FINES; PROHIBITING DISTRIBUTION OF TOBACCO AND VAPOR PRODUCT SAMPLES; PROHIBITING THE SALE OF TOBACCO EXCEPT FOR IN ORIGINAL PACKAGING; PROHIBITING THE DISPLAY OR SALE OF TOBACCO OR VAPOR PRODUCTS WHERE SELF-ACCESSIBLE BY ANYONE UNDER THE AGE OF EIGHTEEN; PROVIDING FOR NOTICE OF VIOLATIONS UNDER SECTION 15-412 TO THE ABLE COMMISSION; AMENDING SECTION 15-506 WHICH REFERENCED THE PREVIOUS VERSION OF SECTION 15-412; AND PROVIDING FOR THE SEVERABILITY THEREOF.

- §1. WHEREAS, in an effort to protect and enhance the safety of minors, the State of Oklahoma has prohibited the sale or possession of vapor products for anyone under the age of eighteen (18) years of age; and
- §2. WHEREAS, the City of Norman desires to support and enforce the State of Oklahoma's policy of protection and safety of minors by adopting Ordinance _____.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

* * *

- § 3. THAT Section 15-412 of Chapter 15 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

* * *

Sec. 15-412. — ~~Furnishing of tobacco products to minors; possession by minors.~~

- ~~(a) Any person who shall furnish to any minor, by gift, sale, or otherwise, any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product shall be guilty of an offense; provided, however, that it shall not be unlawful for an employee~~

~~under eighteen (18) years of age to handle such products when required in the performance of the employee's duties.~~

- ~~(b) It shall be an offense for any minor to be in possession of any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product.~~
- ~~(c) Any person convicted of violating any provisions in this section shall be punished by a fine of not more than one hundred dollars (\$100.00) for the first offense within a one year period, and two hundred dollars (\$200.00) for a second or subsequent offense within a one-year period.~~

Sec. 15-412. – Prevention of Youth Access to Tobacco and Vapor Products

- (a) Definitions. For the purposes of this section, the following definitions shall apply:

“Person” means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;

“Proof of age” means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;

“Sample” means a tobacco product or vapor product distributed to members of the public at no cost for the purpose of promoting the product;

“Sampling” means the distribution of samples to members of the public in a public place;

“Tobacco product” means any product that contains tobacco and is intended for human consumption;

“Transaction scan” means the process by which a seller checks, by means of a transaction scan device, the validity of a driver license or other government-issued photo identification;

“Transaction scan device” means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver license or other government-issued photo identification; and

“Vapor product” shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in 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 and any vapor cartridge or other container of a solution, that may or may not

contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device. "Vapor products" do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

(b) Furnishing of tobacco products or vapor products to persons under the age of eighteen (18).

(1) It shall be an offense for any person to sell, give or furnish in any manner any tobacco product or vapor product to another person who is under eighteen (18) years of age, or to purchase in any manner a tobacco product or vapor product on behalf of any such person. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.

(2) A person engaged in the sale or distribution of tobacco products or vapor products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under eighteen (18) years of age. If an individual engaged in the sale or distribution of tobacco products or vapor products has demanded proof of age from a prospective purchaser or recipient who is not under eighteen (18) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.

(3) Any person convicted of violating subsection (1) or (2) of this Section shall be punished by a fine of:

- i. not more than One Hundred Dollars (\$100.00) for the first offense,
- ii. not more than Two Hundred Dollars (\$200.00) for the second offense within a two-year period following the first offense,
- iii. not more than Three Hundred Dollars (\$300.00) for a third offense within a two-year period following the first offense.
- iv. not more than Three Hundred Dollars (\$300.00) for a fourth or subsequent offense within a two-year period following the first offense.

(4) Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought pursuant to this section. A person cited for violating this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of the violation if such person proves that:

- i. the individual who purchased or received the tobacco product or vapor product presented a driver license or other government-issued photo identification purporting to establish that such individual was eighteen (18) years of age or older, or

- ii. the person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if the person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

- (5) If the sale is made by an employee of the owner of a store at which tobacco products or vapor products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine.
 - (6) Upon failure of the employee to pay the administrative fine within ninety (90) days of the day of the assessment of such fine, the Clerk of the Municipal Court shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to the employee until proof of payment has been furnished to the Department of Public Safety.
- (c) Possession of tobacco products or vapor products by persons under the age of eighteen (18).
- (1) It shall be an offense for a person who is under eighteen (18) years of age to purchase, receive, or have in his or her possession a tobacco product, or vapor product, or to present or offer to any person any purported proof of age which is false or fraudulent, for the purpose of purchasing or receiving any tobacco product or vapor product. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.
 - (2) Any person convicted of violating subsection (1) of this sections shall be punished by a fine of:
 - i. Not to exceed One Hundred Dollars (\$100.00) for a first offense; and
 - ii. Not to exceed Two Hundred Dollars (\$200.00) for a second or subsequent offense within a one-year period following the first offense.
 - (3) Upon failure of the individual to pay the administrative fine within ninety (90) days of the day of the fine, the Clerk of the Municipal Court shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to the individual until proof of payment has been furnished to the Department of Public Safety.
- (d) Distribution of tobacco products or vapor products and product samples restricted

- (1) It shall be unlawful for any person or retailer to distribute tobacco products, vapor products or product samples to any person under eighteen (18) years of age.
 - (2) No person shall distribute tobacco products, vapor products or product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under eighteen (18) years of age.
 - (3) Any person convicted of violating subsections (1) or (2) of this section shall be punished by a fine of:
 - i. Not more than One Hundred Dollars (\$100.00) for the first offense;
 - ii. Not more than Two Hundred Dollars (\$200.00) for the second offense; and
 - iii. Not more than Three Hundred Dollars (\$300.00) for a third or subsequent offense.
 - (4) Upon failure of any person to pay an administrative fine within ninety (90) days of the assessment of the fine, the Clerk of the Municipal Court shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to the person until proof of payment has been furnished to the Department of Public Safety.
- (e) Sale of tobacco products except in original, sealed packages
- (1) It is unlawful for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer.
 - (2) Any person convicted of subsection (1) of this section shall be punished by a fine of not more than Two Hundred Dollars (\$200.00) for each offense.
- (f) Publicly accessible display or sale of tobacco or vapor products
- (1) It is unlawful for any person or retail store to display or offer for sale tobacco products or vapor products in any manner that allows public access to the tobacco products or vapor products without assistance from the person displaying the tobacco products or vapor products or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under eighteen (18) years of age.
 - (2) Any person convicted of violating subsection (1) of this section shall be punished by a fine of not more than Two Hundred Dollars (\$200.00) for each offense.
- (g) Notice of conviction to be provided to the ABLE Commission
- Any information or reports required or requested by the Oklahoma Alcoholic Beverages Enforcement (ABLE) Commission shall be provided by the Clerk of the

Municipal Court regarding the enforcement of any of violations found within this Section.

* * *

Sec. 15-506. Nuisance Party.

* * *

- (b) A social gathering shall be deemed to constitute a public nuisance when, by reason of the conduct of persons in attendance, it results in three (3) or more of the following violations of the Code of the City of Norman, Oklahoma, and which violations occur at the site of the social gathering or on neighboring public or private property:

* * *

- (3) Any of the following violations from Chapter 15 of the City Code:

* * *

- viii. 15-412 Prevention of Youth Access to Tobacco and Vapor Products.
~~Furnishing of tobacco products to minors; possession by minors.~~

- §5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

ADOPTED this _____ day
of _____, 2020.

NOT ADOPTED this _____ day
of _____, 2020.

Breea Clark, Mayor

Breea Clark, Mayor

ATTEST:

Brenda Hall, City Clerk

ITEM 3
DOOR-TO-DOOR
COMMERCIAL
ADVERTISING



office memorandum

DATE: November 8, 2019
TO: Kathryn Walker, City Attorney
FROM: Anthony Purinton, Licensed Legal Intern
SUBJECT: Regulation of Door-to-Door Commercial Advertising

BACKGROUND:

Given the high number of inquiries the City Attorney's office receives concerning potential ordinances regulating the distribution of commercial advertising, the City Attorney's Office has written several memos on the issue in response to these inquiries detailing the City's potential legal position, with periodic updates reflecting new developments in relevant legal precedent. The following memo provides additional research on recent decisions concerning municipal regulation of door-to-door commercial advertising.

DISCUSSION:

So far, three memos have been written by the City Attorney's office concerning this issue, the last of which was written in 2013. All three of these memos have been attached. In the 2013 memo, the recommendation of the City Attorney's Office included the suggestion that City Council consider an ordinance similar to the one adopted by the Jefferson/Louisville County Metro Government, which was found to be constitutional in *Courier-Journal, Inc. v. Louisville/Jefferson Cty. Metro Gov't*, 2009 WL 2982923 (W.D. Ky. Sept. 9, 2009). The previous recommendation noted, however, that the opinion was not precedential and couldn't be cited for its persuasive value in an Oklahoma court because it was an unpublished memorandum opinion in another jurisdiction. Since then, the Sixth Circuit Court of Appeals has recently upheld a similar ordinance in the same jurisdiction. *Lexington H-L Servs., Inc. v. Lexington-Fayette Urban Cty. Gov't*, 879 F.3d 224 (6th Cir. 2018). While this opinion still does not carry any precedential value in Oklahoma courts, the opinion's persuasive value would strengthen the City's position if it were to follow the 2013 recommendation and adopt a similar ordinance.

In *Lexington H-L Services*, the Sixth Circuit reversed a lower court's grant of a preliminary injunction against a city's ordinance that restricted delivery of unsolicited advertising materials to six specific locations:

- (1) on a porch, if one exists, nearest the front door;
- (2) securely attached to the front door;
- (3) through a mail slot, if one exists;
- (4) between an exterior front door, if one exists and is unlocked,

and an interior front door; (5) in a distribution box located on or adjacent to the premises, if permitted; or (6) personally with the owner, occupant, or lessee of the premises.

Id. at 227 (citing Lexington, Ky. Ordinance No. 25-2017 (March 2, 2017)). Applying an intermediate level of scrutiny to the city’s ordinance, the Sixth Circuit held that the plaintiff was unlikely to succeed on the merits of the case because the ordinance was an appropriate, content-neutral restriction on commercial speech that was narrowly tailored to substantial interests of the city while, at the same time, leaving open other methods of communication.¹ *Id.* at 229, 233.

The city advanced two substantial interests that the Court found persuasive. First, the Court recognized the city’s substantial interest in reducing visual blight caused by unsolicited commercial material which were “haphazardly” deposited on residents’ yards and driveways. *Id.* at 229–30. Importantly, the Court focused on the city’s account that millions of these materials were being distributed each year within city limits. *Id.* at 230. The city’s esthetic interests would be better achieved through the ordinance because the material would be placed in predictable, consistent locations and more likely to be picked up by residents. *Id.* Second, relying on data compiled by other cities adopting similar ordinances and council members’ reported observations noting that they have noticed these materials washing into sewers, the Court held that the city’s interest in reducing litter caused by the distribution of these materials would also be served by the means identified in the ordinance. *Id.*

Additionally, because there were still other alternative channels of communication open to the plaintiff to distribute written materials, the ordinance was able to survive intermediate scrutiny. *Id.* at 233. Not only did the Court find that the restrictions, which only targeted unsolicited materials, left open alternative channels to the plaintiff, the restrictions appeared to *increase* the chances that residents would actually receive the material because the material would have to be placed in predictable, secure locations. *Id.* Even though the plaintiff claimed that the ordinance’s requirements would place a harsh (and ultimately fatal) burden on their business and suggested cheaper alternative regulations, the Court did not strike down the ordinance. While the city was required to leave open inexpensive alternatives to distribute the communication, that requirement “must be balanced against the harms that can arise when cheap and efficient methods of circulating written materials are abused.” *Id.* at 235.

RECOMMENDATION:

Ultimately, the recommendation of the City Attorney’s Office remains largely unchanged. Yes, the City could pursue enacting an ordinance which regulates the

¹ In fact, the plaintiff was ultimately unsuccessful on the merits. A later Sixth Circuit opinion affirmed the lower court’s grant of summary judgment in favor of the city, summarily concluding that “the district court properly addressed, analyzed, and disposed of the issues.” *Lexington H-L Servs., Inc. v. Lexington-Fayette Urban Cty. Gov’t*, 920 F.3d 1126 (6th Cir. 2019), *aff’g*, 329 F. Supp. 3d 333 (E.D. Ky. 2018).

distribution of unsolicited written door-to-door commercial advertising, although the City would still be open to First Amendment litigation. While *Lexington H-L Services* provides the City with a potential course of action to help withstand a potential First Amendment challenge, the case is still only useful for its persuasive value and is not binding precedent in Oklahoma, which sits in the Tenth Circuit.

However, if the City were to seek to implement regulations such as the one in Jefferson/Louisville or Lexington-Fayette, the City should first conduct fact-finding to determine the effect of the distribution activity which would be regulated. Doing so would place the City in a more favorable position in the event that the regulations were challenged in litigation. Information such as the approximate number of total unsolicited written materials distributed in the City in a given year, whether the material makes its way to public property, and whether the materials tend to remain uncollected on sidewalks and driveways would help the City later withstand a First Amendment challenge alleging that the City does not have a substantial interest in regulating the activity.



office memorandum

TO: Honorable Mayor and Councilmembers
DATE: June 17, 2010
THROUGH: Jeff H. Bryant, City Attorney
FROM: Leah Messner, Assistant City Attorney
SUBJECT: Regulation of Door-to-Door Commercial Advertising

BACKGROUND:

Several Councilmembers have expressed an interest in whether the City of Norman could either regulate or ban the distribution of door-to-door commercial advertising, i.e. the Buyer's Edge, under the City's current littering ordinance or by adoption of an amended ordinance. A review of the pertinent case law follows discussing First Amendment protections afforded to commercial speech.

DISCUSSION:

The First Amendment to the United States Constitution guarantees freedom of speech. That guarantee applies not only to religious or political speech but to commercial speech as well. Commercial speech is protected so long as it concerns lawful activity (i.e. truthful advertising or advertisements for legal goods). *Central Hudson*, 447 U.S. 557. Courts across the country, as well as the United States Supreme Court, have overturned ordinances seeking to ban distribution of handbills, advertisements, circulars, and other literature door-to-door. In *Martin v. City of Struthers, Ohio*, the United States Supreme Court concluded that the First Amendment embraces the right to distribute literature and protects the right to receive it. 319 U.S. 141 (1943). The privilege may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from its streets. *Id.* However, under *Martin*, a community may regulate the time, place, and manner of distribution in order to protect the peace, good order, and comfort of its citizens. *Id.*

The City of Norman has an ordinance regulating littering. In City of Norman Code of Ordinances Chapter 15 § 15-111, litter is defined as "garbage, refuse, rubbish, dirt and all like material". In a similar case, the City of Laramie, Wyoming prosecuted Gerald Miller under the City of Laramie's littering ordinance for distributing a free newspaper door-to-door. *Gerald Miller v. City of Laramie*, 880 P.2d 594 (Wyoming Sup. Ct. 1994). Laramie's ordinance defined litter as any quantity of uncontainerized paper, metal, glass, plastic, animal feces, or miscellaneous solid waste which may be classed as trash, debris, rubbish, refuse, garbage, or junk. *Id.* at 596. The Wyoming Court found the ordinance to be unconstitutional because it failed to demonstrate that the restrictions imposed actually achieved the goal of reducing litter on Laramie's streets. *Id.* at 598. In addition, the Court questioned that the subject newspaper met the definition of litter contained within

the ordinance. *Id.* at 598. As with the ordinance from Laramie, it is questionable whether door-to-door commercial advertising could fall within the City of Norman's definition of litter as these items are unlikely to be considered refuse or rubbish by their distributors.

To amend the City of Norman's littering ordinance to include door-to-door commercial advertising, the amendment must be a valid time, place, and manner regulation. Regulating the time, place, and manner of this type of expression may prove difficult. To meet constitutional muster, such a regulation must be content-neutral, narrowly tailored to serve a significant government interest, and leave open alternative methods of communication. *Statesboro Publishing Company, Inc. v. City of Sylvania*, 516 S.E.2d 296 (Ga. Sup. Ct. 1999). In *Statesboro Publishing*, the Georgia Supreme Court overturned a municipal ordinance that banned the distribution of any handbill or printed or written material by placing it in the yard, walkway, driveway, or porch of any structure within the City of Sylvania. *Id.* at 297. While the Court found the ordinance to be content-neutral since it banned all handbills without differentiating between speakers, it was not narrowly tailored—meaning that it swept in too much protected speech without a compelling justification for doing so.

In addition, the United States Court of Appeals for the Third Circuit reviewed an ordinance regulating door-to-door commercial advertising and also found it lacking. *Ad World, Inc. v. Township of Doylestown*, 672 F.2d 1136 (3rd Cir. 1982). The Township of Doylestown adopted an ordinance that sought to ban the door-to-door distribution of commercial advertising materials because accumulation may tip off burglars that a given home is unoccupied. *Id.* at 1138. The ordinance exempted door-to-door distribution of religious, ideological, or political handbills or flyers. *Id.* at 1138. The Third Circuit did not accept Doylestown's rationale for the ordinance because, first, the exempted materials could lead to a similar accumulation at vacant properties, and, second, Doylestown could produce no evidence of an increase in burglaries. *Id.* at 1140-1141. For those reasons the ordinance was determined to be unconstitutional because it was not content-neutral nor did it serve a significant government interest. *Id.*

These last two cases discussed highlight the potential difficulty in drafting an ordinance amendment that would survive a First Amendment challenge. The Court in Georgia held that the ordinance swept in too many types of speech to be constitutional while the Third Circuit held that because the ordinance did not include all types of speech it was unconstitutional.

RECOMMENDATION:

Ordinances regulating door-to-door distribution of commercial advertising have been the subject of rough treatment by courts when upholding the free speech guarantees of the First Amendment. In light of this treatment, it is the opinion of the City Attorney's Office that pursuing an ordinance amendment restricting door-to-door distribution of commercial advertising would expose the City of Norman to First Amendment litigation.

However, Council may want to consider other approaches suggested in one of the above cases. Instead of an ordinance that seeks to ban distribution of these materials, citing the property

owner for failing to pick up their property is one option. Another option noted was developing regulations that would require the distributor to collect any unclaimed materials left in yards, on city streets, or on sidewalks. However, both these options present potential enforcement issues that would need to be thoroughly studied.



TO: Honorable Mayor and Councilmembers
DATE: August 5, 2010
THROUGH: Jeff H. Bryant, City Attorney
FROM: Leah Messner, Assistant City Attorney
SUBJECT: Regulation of Door-to-Door Commercial Advertising

BACKGROUND:

Councilmember Cubberley has asked for some additional information and research regarding the June 17, 2010 Memo addressing door-to-door distribution of commercial advertising.

DISCUSSION:

The cases presented in the first memo deal specifically with ordinances regulating distribution of advertising door-to-door. The following cases, decided by the Oklahoma Court of Criminal Appeals, deal with distribution of fliers, magazines, or handbills on sidewalks and street corners to passers-by. However, though dealing with a different form of speech, the cases use the same First Amendment analysis. In the first case, *Greiner v. City of Yale*, Mr. Greiner appealed his conviction for distributing fliers on the streets of Yale, Oklahoma. 139 P.2d 606 (Okla. Crim. App. 1943). The City of Yale had an ordinance against handing out handbills or advertising material along the sidewalks or streets of the city without first obtaining consent of the Yale City Council. *Id.* Using *Martin v. City of Struthers*, cited in the previous memo, as precedent, the Court of Criminal Appeals overturned Mr. Greiner's conviction by stating that the ordinance gives the City Council authority to pick and choose between speakers in violation of the protections of the First Amendment.

The second case, *Brown et al. v. City of Stillwater*, is an appeal of two convictions by Mr. and Mrs. Brown for violation of a City of Stillwater ordinance banning the display of any sign, emblem, or device which is insulting, profane, or abusive to citizens of Stillwater. 149 P.2d 509 (Okla. Crim. App. 1944). Mr. and Mrs. Brown, both Jehovah's Witnesses, offered magazines for sale on the streets of Stillwater that were official publication of Jehovah's Witnesses. *Id.* The defendants were prosecuted because citizens were disturbed by their presence and by the beliefs of the defendants (specifically a refusal to salute the United States flag). *Id.* The Court of Criminal Appeals overturned the convictions stating that the ordinance violated both the free speech and free exercise of religion clauses of the First Amendment. *Id.*

The First Amendment analysis used by the Court of Criminal Appeals in the above cases can be applied to the present issue. For example, an ordinance regulating distribution of some, but not

office memorandum

all, types of door-to-door distribution of handbills or fliers could also be found to be violative of the First Amendment because the ordinance treated speakers differently.

RECOMMENDATION:

After reviewing the above cases, it is the opinion of the City Attorney's Office that pursuing an ordinance amendment restricting door-to-door distribution of commercial advertising would expose the City of Norman to First Amendment litigation.

However, Council may want to consider another approach upheld by the Federal Court for the Western District of Kentucky. While a unique approach, the opinion by the Western District is an unpublished opinion—meaning that it does not carry any precedential weight in Kentucky nor can it be cited to an Oklahoma court for persuasive argument. At issue in *Courier-Journal, Inc. v. Louisville/Jefferson County Metro Government*, is an ordinance requiring that all unsolicited written materials be placed on the porch, inside the screen door, on the doorknob, or delivered personally to the resident. 2009 WL 2982923 (W.D.Ky. 2009). The ordinance was adopted to avoid the litter issues related to what the Court called the “fly and fling” method of distributing sales advertisements in plastic baggies to the yards of Louisville residents. *Id.* The Court upheld the Ordinance because it only regulated how the protected speech was to occur rather than a complete ban on speech or differing treatment of types of speakers. *Id.* For this reason, an Ordinance amendment of this type might be the least problematic to defend from Constitutional challenge.

xc: Steve Lewis, City Manager



TO: Steve Lewis, City Manager
DATE: May 8, 2013
THROUGH: Jeff H. Bryant, City Attorney
FROM: Leah Messner, Assistant City Attorney
SUBJECT: Regulation of Door-to-Door Commercial Advertising

BACKGROUND:

You have asked this office to address questions and concerns expressed to the City Manager through Councilmembers Kovach and Jungman regarding the distribution of commercial advertising, primarily the *Buyer's Edge*, and the effect that the advertising has on neighborhoods in their wards. The following memo provides updated research regarding door-to-door commercial advertising in response to your questions.

DISCUSSION:

During the summer of 2010, the City Attorney's Office wrote two memos, dated June 17th and August 5th, regarding the regulation of door-to-door commercial advertising. Those memos are attached. Those memos discuss relevant research on this topic including the Kentucky case as mentioned by Councilmember Jungman. Additional legal research has been performed to make sure no other cases on the subject have been reported and to make sure the prior cases cited have not been overturned.

All of the cases cited in the previous memos, except for *Statesboro Publishing Company, Inc. v. City of Sylvania*, are still the law of the land in their respective jurisdictions. *Statesboro* has not been overturned regarding its First Amendment jurisprudence. However, although not relevant to the issues raised in this memo, the Georgia Supreme Court in two more recent opinions, has disagreed with the interpretation of the Georgia Constitution in *Statesboro*. *Grady v. Unified Government of Athens-Clarke County*, 289 Ga. 726 (2011); *Great American Dream, Inc. v. DeKalb et al.*, 290 Ga. 749 (2012).

Courier-Journal, Inc. v. Louisville/Jefferson County Metro Government is a case from the Federal Court for the Western District of Kentucky. The opinion by the Western District is an unpublished opinion – meaning that it does not carry any precedential weight in Kentucky nor can it be cited to an Oklahoma court for persuasive argument.

At issue in *Courier-Journal, Inc. v. Louisville/Jefferson County Metro Government*, is an ordinance requiring that all unsolicited written materials be placed on the porch, inside

the screen door, on the doorknob, or delivered personally to the resident. 2009 WL 2982923 (D.Ky. 2009). The ordinance was adopted to avoid the litter issues related to what the Court

office memorandum

called the “fly and fling” method of distributing sales advertisements in plastic baggies to the yards of Louisville residents. *Id.*

The ordinance was challenged by the Courier-Journal who routinely distributed 340,000 green bags containing unsolicited written materials to non-subscribers. *Id.* According to the Courier-Journal, approximately thirty percent of the bags were delivered to or near front porches; fifteen percent were delivered to distribution boxes or tubes; sixteen percent were left outside of locked apartment buildings; and seventeen percent were left on driveways, yards, or in other locations. *Id.*

The seventeen percent of materials that were left in driveways and yards, according to the Jefferson/Louisville County Metro Government, contribute to visual blight and sewer and drainage backups. *Id.* In light of this legitimate governmental interest, the Court determined that the ordinance restricting where the materials could be delivered, was a permissible limitation because it regulated how this type of free speech could occur rather than preventing speech from occurring or treating different speakers differently. *Id.*

The City of Norman could pursue an ordinance patterned after the Louisville/Jefferson County case, but the case itself would have no precedential value in a case filed in our jurisdiction if the legality of the ordinance were litigated by the *Oklahoman*.

RECOMMENDATION:

After reviewing the previously cited cases, it is the opinion of the City Attorney’s Office that pursuing an ordinance amendment prohibiting door-to-door distribution of commercial advertising could be done, but it would likely expose the City of Norman to First Amendment litigation.

However, the City Council may want to consider an ordinance similar to Jefferson/Louisville County Metro Government’s ordinance. In doing so, enforcement issues should be considered. Violations would be tried in Municipal Court. A citation would be issued against the person distributing the materials rather than the company that produced them. Also, prosecution of such a violation would require a citizen, a police officer, or a code compliance officer to observe the violation (i.e. the impermissible mode of distribution, not simply returning home to find the materials in the driveway) in order to substantiate the citation.

Another option that could alleviate First Amendment concerns that City Council may want to consider is to develop an ordinance requiring the property owners to remove the materials from their property within a certain time after their distribution. However, this type of ordinance would also pose enforcement hurdles. A neighboring property owner, a police officer, or a code compliance officer would need to be able to testify to when the materials were distributed in order to prove the violation. Also, an ordinance of this type may need to identify a responsible party for the materials that are found in the streets and gutters.

City Manager Lewis
Door-to-Door Commercial Advertising
May 8, 2013
Page 3

The City Attorney's Office is available to discuss this issue further or to begin to develop an ordinance, of one of the types mentioned above, if it is Council's desire to do so.