

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

May 12, 2010

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:30 p.m. in the City Council Conference Room on the 12th day of May, 2010, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Atkins, Griffith, Kovach, and Chairman Dillingham

ABSENT: None

OTHERS PRESENT: Ms. Brenda Hall, City Clerk
Ms. Leah Messner, Assistant City Attorney
Ms. Syndi Runyon, Administrative Assistant IV

DISCUSSION REGARDING SOLICITOR/PEDDLER PERMITS.

Chairman Dillingham said Councilmembers receive complaints from citizens, usually in the summer season, regarding door-to-door soliciting. She said Ms. Leah Messner, Assistant City Attorney, has distributed a memo outlining information on solicitor/peddler ordinances from other cities, which indicates the City of Norman's ordinance needs to be adjusted to be more in line with other communities.

Ms. Messner said the ordinance was amended in March 1991, to its current status as the result of the Norman Chamber of Commerce lobbying Council to restrict the amount of time outdoor solicitors were allowed to sell and Council tried to balance the interests of local merchants with interests of door-to-door solicitors. She said Council limited the permit to three consecutive days per month, but an exception of 45 days could be granted by the City Manager. Historically, the City Manager has not granted many exceptions in order to avoid the perception of picking and choosing between vendors. She said exceptions are granted to an annual Christmas tree vendor and a vendor that sells plants, flowers, and pumpkins in the Sooner Mall parking lot in the summer and fall for a total of approximately 150 days per year. Ms. Messner said these exceptions have been made because the vendors are not door-to-door solicitors, have been selling in Norman for a number of years, and have been granted extensions by previous City Managers.

Ms. Messner said the Southwestern Book Company sends college students to various communities during the summer months to sell books and magazines door-to-door, but the City Manager has never granted them the extension and they always complain that Norman's ordinance is too restrictive and unconstitutional. Ms. Brenda Hall, City Clerk, said Southwestern has sold door-to-door for many years and when the ordinance was changed in 1991, they quit coming to Norman, but have returned in recent years with requests to allow longer selling periods.

Ms. Messner said, legally, this is protected commercial speech under the First Amendment and cited several cases with the most recent being an ordinance in Colorado where the City Council was choosing between vendors requesting permits by approving or denying those requests. She said the State Court ruled it was unconstitutional to pick and choose and everyone should be allowed to speak and follow regulations or no one is allowed to speak. Ms. Messner said in the case of door-to-door solicitors, letting no one speak is not really an option, but you can adopt time, place, and manner regulations. She said you can require a sales tax permit number, name, address, phone number, locations of sales, etc., and some of these requirements are already in the current ordinance. She said Lee Summit, Missouri, requires a bond and if the vendor does not submit an affidavit indicating sales tax has been remitted by the end of the permit period, the City retains the bond. Chairman Dillingham said she liked that requirement and Councilmembers agreed. Councilmember Griffith felt that sales tax revenues are not properly

remitted by vendors selling at special events in Norman and Ms. Hall said organizers of special events generally require vendors to have a sales tax permit number, but the Oklahoma Tax Commission (OTC) no longer issues temporary sales tax numbers to out of state vendors. She said OTC now allows out of state vendors to remit sales tax on a casual remittance basis, which is essentially an honor system. She said sales tax reports are remitted by the fifteenth day of the following month of sales. Councilmember Griffith felt a bond would insure that tax revenue is collected and Ms. Messer said the ordinance could require submission of an affidavit within so many days after the expiration of the permit stating sales taxes had been paid, similar to the Lee Summit ordinance. She said if that affidavit is not submitted, the City could keep the bond.

Chairman Dillingham said she did not want to follow Colorado's example by picking and choosing, but wanted to find a fair ordinance. She asked Ms. Messner if three days is too short and Ms. Messner said most of the other cities studied fell within a six month to one year range. She said the City of Moore had the least amount of days with sixty days and she would recommend sixty to ninety days, which would accommodate summer sellers.

Ms. Messner said the current ordinance only allows a three day permit in a thirty day period, but there is an exception in the ordinance for games days that allow vendors to obtain a permit for each game day. Ms. Hall said those permits are restricted to game days only and those vendors pay \$150 for the first game and \$50 for the remaining games. She said the Norman ordinance allows soliciting for three consecutive days in a thirty day period and the first license is \$150. You can obtain a permit once a month for \$50 up to a year from the date the first license was issued then you begin the process over with the \$150 fee.

Councilmember Griffith said Edmond has time spans of a few days, a few weeks, or up to one year and asked Ms. Messner if she knew what criteria is used to determine the amount of time granted and Ms. Messner said she thought it was based on vendor needs, not to exceed one year. Councilmember Atkins felt the timeframes should be different for stationery vendors versus door-to-door vendors. Ms. Hall said the City receives numerous complaints regarding door-to-door solicitors and asked Council to consider the outcome of allowing a six month or annual permit that would give a vendor carte blanche to knock doors every day.

Councilmember Griffith said he likes Edmond's requirements, which allow ninety days maximum per year. He asked if the City had many requests for a lengthy permit and Ms. Hall said no because of the restrictive requirements. She said, to her knowledge, the City has never approved an extension for door-to-door sales because they are more problematic and citizens are more apprehensive about door-to-door solicitors. Councilmember Atkins asked if the City would face challenges granting longer periods of time to fixed location vendors opposed to door-to-door vendors. Ms. Messner said that would be possible as rule of thumb is to adopt a policy that would be the least restrictive to regulate and still meet the needs.

Councilmember Atkins said he would like to require the criminal history report like Oklahoma City and Ms. Hall agreed and said this would be especially good for door-to-door sales because individuals are approaching citizens at their homes.

Councilmembers discussed various scenarios such as 45 day maximum with bond and background check. Ms. Messner said 45 days is still shorter than other communities, but 45 to 60 days would cover any legal basis and requiring a bond and background check are a good basis for extending the selling periods. Chairman Dillingham felt it made vendors commit resources up front and Ms. Messner said the \$150 fee is also a deterrent to some vendors.

Ms. Hall suggested stationary vendors be able to get a 30 day or 60 day permit for a tiered price with submission of a tiered price bond. She felt the background checks were more important for the door-to-door solicitors and Councilmembers agreed. She said citizens call wanting to know if door-to-door vendors are licensed and if they are a legitimate company and requiring background checks and bonds might give citizens some peace of mind as to the legitimacy. Chairman Dillingham felt a background check, bond, and photo identification should be required for all door-to-door solicitors. Councilmembers also talked about requiring proof that sales tax is being remitted and, if not paid, what steps could be taken.

Councilmembers discussed having two types of permits, one for stationary and one for door-to-door as well as the amount of the bonds needed for each. Ms. Hall suggested Staff conduct additional research from other cities that require bonds and background checks to provide the Committee with additional options. Councilmembers said they want to charge an appropriate permit fee without losing revenue and Ms. Hall said Staff will research previous revenues for further review. Councilmember Atkins said the City could adjust the bond amount based on history of sales tax and if the vendor is tax delinquent, the City can deny future permits or cash in the bonds. Chairman Dillingham asked Staff to check if other cities distinguish different fees for the number of people being processed per permit.

Councilmembers agreed they wanted to remove the City Manager exception language because they felt it would not be needed if they expand the three day criteria. Chairman Dillingham said Staff will provide additional research and the Oversight Committee will have further discussion in their July 7th meeting.

Items submitted for the record

1. Memorandum dated May 4, 2010, from Leah Messner, Assistant City Attorney, through Jeff Bryant, City Attorney, to City Council Oversight Committee, Councilmember Atkins, Councilmember Dillingham, Councilmember Griffith, Councilmember Kovach

MISCELLANEOUS DISCUSSION.

None

The meeting adjourned at 6:33 p.m.