

## CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

August 21, 2014

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:10 p.m. in the City Council Multi-Purpose Room on the 21st day of August, 2014, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT:	Councilmembers Stephen Holman, Clint Williams, and Chairman Miller
ABSENT:	Councilmember Chad Williams
TARDY:	Councilmember Greg Jungman
OTHERS PRESENT:	Mayor Cindy Rosenthal Councilmember Greg Heiple, Ward 1 Mr. Jeff Bryant, City Attorney Ms. Susan Connors, Planning and Community Development Director Mr. Terry Floyd, Development Coordinator Ms. Joy Hampton, <u>The Norman Transcript</u> Mr. Steve Lewis, City Manager Ms. Leah Messner, Assistant City Attorney Ms. Linda Price, Revitalization Manager Ms. Syndi Runyon, Administrative Technician IV

Item 1, being:

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

Chairman Miller said the primary purpose of tonight's Oversight Committee meeting is to consider modification to the 1954 "Three Unrelated Persons Rule" (three person rule) included in the Zoning ordinance. She said the City Charter charges Council with protecting the health, safety, and welfare of the citizens of Norman. She said it is also part of Council's charge to protect the family quality of life in neighborhoods. She said when someone continues adding people to a single family residence there is a greater chance of problems with noise, traffic, parking, and litter. She said the three person rule was discussed in the Community Planning and Transportation Committee (CPTC) meeting in fall of 2013, and no action was taken. In January 2014, a citizen brought the subject up in the Oversight Committee's meeting during miscellaneous discussion asking the Committee to review the ordinance. She said the Committee agreed to discuss the three person rule and directed Staff to gather information from other cities, particularly university towns, and schedule the item on the next Oversight Committee agenda.

Chairman Miller said in the February and May, the Oversight Committee discussed potential options regarding the three person rule, heard from interested citizens, and discussed possible ways to improve the current situation. One of the options was to create a variance in order to make the ordinance more flexible for property owners with stipulations that would possibly make the rule a little stronger to give neighbors a more immediate recourse. She said other options included the possibility of a landlord registration, creating an overlay district, stronger code enforcement, or leaving the ordinance as is.

Ms. Susan Connors, Director of Planning and Community Development, said the three person rule ordinance prohibits more than three unrelated persons from living in a single family home or dwelling. She said the Oversight Committee recognized that the current ordinance poses enforcement issues due to Code Enforcement staffing levels and the tendency of parking, noise, and litter issues that occur on evenings and weekends. The Committee expressed interest in protecting the neighborhoods from noise, parking, and trash issues, but was also

Item 1, continued:

interested in exploring other enforcement tools that might encourage landlords to become more involved in preventing issues. The Committee asked Staff to meet with local landlords and their representatives to discuss possible options for solving the issues related to occupancies that exceed three unrelated persons. Staff met several times with Mr. Sean Rieger who represented a group of local landlords to draft language for some type of variance.

Ms. Connors said Staff and Mr. Rieger used the ordinance from Williamsburg, Virginia, as a template and based a draft ordinance on the idea of a conditional use permit as a means to allow an increase in occupancy in a single family home. The draft ordinance focuses on enhancing additional tools to deal with noise, parking, and trash issues often associated with occupancies in excess of three unrelated persons at a single family residence. The draft ordinance still maintains the "no more than three unrelated persons rule" as a standard for single family residential occupancy, but allows property owners to increase occupancy of their property to a number of unrelated persons equal to the number of bedrooms plus one occupant. A maximum of six unrelated persons would be allowed through a conditional use permit if certain criteria are met.

#### Conditions Necessary For Conditional Use Permit

- Submission of floor plan, plot plan, parking plan
- Gross building floor area of 300 square feet of living space per person
- One parking space per bedroom (max of two on-street spaces may be counted toward requirement)
- Trash and recycling containers stored away from street
- Requirements of International Property Maintenance code must be met at all times

#### Inspections Necessary For Conditional Use Permit

- Minimum housing inspection shall be conducted before permit may be issued
- Ensure compliance with the following:
  - All systems are maintained and operational
  - Water heaters are operational and properly installed
  - Windows can open/close and lock
  - Walls are free from large holes
  - No evidence of insects or rodents
  - Bedrooms have egress windows, access from common hallway or space
  - Minimum ceiling height of seven feet
  - Electrical outlets and light switch cover plates are in place
  - Egress doors must be functional and locking
  - Working smoke alarms

Ms. Connors said to potentially streamline the process and lighten the inspection burden on Code Compliance; landlords may have the minimum housing inspection performed by a licensed third party inspection company of the owner's choice and at the owner's expense. The inspection report would be provided to the Planning Department; however, the Planning Department reserves the right to conduct an inspection if there appears to be any irregularity or error in the inspection report.

Mayor Rosenthal asked who licenses third party inspection companies and Mr. Jeff Bryant, City Attorney, said the State of Oklahoma.

Item 1, continued:

#### Notification Necessary For Conditional Use Permit

- Written notice shall be mailed to all property owners within a two hundred foot radius of exterior boundary of subject property
- Notice will contain a legal description, nature of permit requested, instructions for filing written protest
- If no protests are received within 30 days, permit may be administratively approved if all other requirements are met
- If a protest is received, permit will be scheduled for hearing by City Council and notice of hearing will be sent

Ms. Connors said if the Planning Director determines that all previously discussed requirements have been met, the Planning Director will issue a 30 day temporary conditional certificate of occupancy. The owner must then satisfy additional requirements as follows in order to obtain a permanent conditional use permit:

- Owner must provide contact information for owner and/or local agent (names, mailing addresses, email addresses, and telephone numbers)
- Owner shall distribute this contact information to tenants and property owners within a 200 foot notice area
- Owner must provide a pamphlet produced by the Planning Department outlining requirements of conditional use permit
- Owner must file affidavit asserting satisfaction of these requirements with Planning Department

#### Enforcement/Revocation Of Conditional Use Permit

Ms. Connors said a certificate of occupancy would be issued by the Planning Director when all required conditions have been met and would be in effect unless revoked. If three or more repeated, founded, and verified complaints on separate occasions occur within a within a 12 month span, the permit can be revoked. She said complaints may include excessive noise, litter, or other violations of City Code and state or federal law.

Ms. Connors said if it is proven that more than the permitted number of occupants are residing in a property, the property owner would be subject to fines ranging from \$50 to \$750 each day the violation exists. She said it is unlawful for any person to knowingly and willfully file a false complaint or false material information to the City. A person who commits such an action will be deemed guilty of a misdemeanor.

Ms. Connors said if the permit is revoked, the property owner will be given 30 days' notice and the property will not be eligible for another conditional use permit for one calendar year.

#### Comparison of Draft Ordinances

Mr. Bryant discussed the comparisons of the current ordinance to draft ordinances provided by Sean Rieger/City Staff and Councilmember Jungman. He highlighted the differences in the ordinances that include a baseline number of unrelated persons allowed; occupancy limits; parking; notification area/neighbor input; inspection requirements; number and type of complaints; action on complaints; filing of false complaints; causes of revocation; and reapplication after revocation.

#### Committee Discussion

Mayor Rosenthal said she could envision front porches and dining rooms being claimed as bedrooms in a floor plan as well as a variety of other ways to claim more bedroom space and wondered what protection a 1,600 square foot home would have to prevent it from becoming a five bedroom house. Ms. Connors said all bedrooms must

Item 1, continued:

have a proper egress window so rooms that do not have that cannot be claimed as a bedroom. She said a bedroom must also be accessible off of a common hallway so Staff could discriminate as to what rooms could be bedrooms on a floor plan. Mayor Rosenthal said, theoretically, a front porch could have an egress window and a common hallway. Mr. Bryant said the gross building area could prevent this. He said the current ordinance utilizes the International Property Maintenance Code (IPMC) that calculates the number of bedrooms allowed based on the number of people per square foot of the house and Rieger/Staff's ordinance is proposing 300 square feet per person for the entire building area while Councilmember Jungman's proposal is 500 square feet per person for the entire building area, either of which would restrict the number of bedrooms in a home.

Mayor Rosenthal asked the radius area of other City variance notifications and Ms. Connors said 350 feet. Mayor Rosenthal asked the logic of a 200 foot notice radius for a conditional use permit and Mr. Bryant said it was based on what neighbors would be the most impacted by trash, noise, parking, etc. Mayor Rosenthal did not see the logic of a 200 foot radius notice when all other variance notifications require 350 feet and Mr. Bryant said if Council wants 350 feet then the proposed notification area radius can be changed to reflect that. Councilmember Jungman asked if any variances are administratively approved and Ms. Connors said no, variances must be approved by the Board of Adjustment, but other variances do not have the criteria that have to be met through the conditional use permit prior to administrative approval.

Chairman Miller said after talking to a variety of citizens, the number one question asked is how does the variance help neighborhoods and not just make things more flexible for landlords? She said the ordinance was enacted to protect neighborhoods so how would this variance help the City do a better job of being fair to landlords and property owners. She said the City already has enforcement procedures and fines and how this variance would help Code Enforcement. Ms. Connors said the City would have a local name, address, and contact number for the property. She said it is often hard to track down property owners as many live out of State and the process of locating and notifying property owners can be very time consuming.

Chairman Miller asked if, under the proposed ordinance, the City would make more of an effort to find and prosecute violators and Mr. Bryant said people currently in violation of more than three unrelated persons that have not been found can still be searched out and prosecuted, which is generally a three to nine month process and must be proven beyond a reasonable doubt. He said the proposed ordinance places a different standard in the ordinance and gives landlords not currently following the three unrelated rule an opportunity to legitimize their practice, but only if they follow the rules of making sure the housing meets minimal housing standards. He said with the proposed variance, the City would have proper local contact information, make sure landlords distribute a pamphlet of information including contact information to neighbors within the required radius, etc. He said this gives neighbors and property owners a chance to deal with issues when they occur as opposed to going through a protracted code enforcement process.

Chairman Miller felt the Committee should review and discuss each piece of both ordinance proposals to decide which they preferred. Councilmember Jungman asked the purpose of reviewing the proposed ordinances piece by piece as there has been no foundation established that the three person rule needs to be changed. Chairman Miller said the Committee agreed at their last meeting to allow Staff and Mr. Rieger to work on a proposal, which they have spent a lot of time on and the Committee should at the very least review the proposal. Councilmember Jungman felt the Committee should not discuss the proposal just to be discussing it and asked what the foundation was to change the rule and Chairman Miller said to strengthen the ordinance and improve the process. Councilmember Jungman said enforcement is going a lot better than people understand and asked Ms. Connors how many cases are currently in violation that Code Enforcement can take action on due to the Utility Division having the contact information and Ms. Connors said there are currently ten active cases. Councilmember Jungman said no matter what rule the City has there will always be complaints that are slam dunks, some that will be gray, and some that will be obviously not true.

Item 1, continued:

Mayor Rosenthal said she had indicated a willingness to review the Williamsburg ordinance as a means to getting some type of landlord registration; however, the State of Oklahoma recently passed a law that does not allow cities to require landlord registration. She said the Rieger/Staff proposal is so far off the mark from the Williamsburg ordinance that she is not sure why the City is looking at the draft and she is not prepared to support it. She said the Williamsburg ordinance allows three to four persons in 2,000 square feet of living space and the City is proposing up to six persons in potentially 2,000 square feet of living space. She said the Williamsburg ordinance requires parking to be on-site while the City's proposal allows on-street parking. She said the Williamsburg ordinance is a bit more favorable to neighborhoods in terms of compliance and enforcement of nuisances such as parking violations, etc. She does not favor Councilmember Jungman's draft either. She said, clearly, public outcry and input is not supportive of the proposals, but is in favor of retaining the current ordinance no matter how flawed. She said the City should be reviewing the current ordinance to see if there are tweaks that can be made. She said current language could be construed as prejudicial or discriminatory against certain kinds of families and the draft proposal has language that corrects that. There is also proposed language that puts some teeth into penalties for violators.

Councilmember Holman agreed with the Mayor about tweaking the current ordinance. He favors strengthening administrative procedures, but does not want a new ordinance.

Councilmember Clint Williams said he has received overwhelming opposition from many constituents concerning anything beyond three unrelated persons in a single home particularly in older neighborhoods that already have problems with parking on the street, problems with trash cans being blocked by cars in the street, etc. He said while he is not unsympathetic to landlords who are interested in creating something that might be perceived as working a little bit better, he does not think the draft is the right direction. He would be much more interested in looking at ways to bolster the enforcement from an administrative side to make sure people violating the current ordinance are identified. He suggested working with landlords in ways similar to the Community Oriented Policing Program that works to make apartment complexes safer. He said the City could work with landlords to identify ways to find more common ground.

Councilmember Jungman said fining violators each day they are in violation makes sense to him. He said there should be a fine each day the landlord chooses to be out of compliance with the law, which is fair so adding some manner of fines is perfectly reasonable. Mr. Bryant said the City currently has fines, but they are capped by Statute at \$750. Councilmember Jungman asked when fines are levied and Mr. Bryant said when there has been a charge that has been adjudicated through Municipal Court. Ms. Connors said if the violator voluntarily complies there is no charge or fine. Councilmember Jungman asked if the charges could be treated like parking tickets in that a person is given a citation and has to go to Municipal Court to get out of the fine. Mr. Bryant said even in a parking ticket scenario, the person is given due process and the chance to plead not guilty and go before the Judge to determine guilt or innocence. Councilmember Jungman said currently the burden is on the City to finish the process before a fine is levied whereas with a parking ticket the burden is on the vehicle owner to go through the process to get out of the ticket. Councilmember Jungman said putting the burden on the City instead of the property owner is not right. Mr. Bryant said voluntary registration, voluntary inspections, etc., would allow the City to deal with violators administratively versus through the Court system. Mayor Rosenthal said fines in the proposed draft are per day the violation is existing and asked if that is in the current ordinance language and Ms. Leah Messner, Assistant City Attorney, said yes; however, the Code Enforcement Officer would have to file a charge every day and the violations would be adjudicated as a whole in Court.

Councilmember Jungman asked if Code Enforcement Officers can write tickets and Ms. Messner said **yes**. Councilmember Jungman asked if Code Enforcement has ever written a ticket for this type of violation and Mr. Bryant said the City first has to gather enough evidence to make sure a case could be supported in Municipal Court. He said that process can take days of checking utility bills for property owners, visiting the property early in the morning to see how many cars are parked at the property, running license plates, etc. He said sometimes a Code Enforcement Officer can simply knock on the door and ask if there are more than three unrelated people

Item 1, continued:

living in the residence. He said there are a variety of ways Code Compliance Officers try to enforce violations. Councilmember Jungman asked who decides whether to write a ticket or not and Mr. Bryant said Code Enforcement works closely with the Legal Department to determine if there is enough evidence to justify a citation. Mr. Bryant said the standard is always "beyond a reasonable doubt."

Mr. Rieger said he and City Staff worked on a variance process for three months, working through many drafts as they sought compromise. He said he is struck by the movement to further criminalize and vilify the landlords. He said the City has a system that is not working and discussion has turned from working with landlords to making the penalties harsher and doing everything to make things worse. He said the only way to make any process work is to bring the landlords to the table to help. He said the City does not have the budget or resources to investigate violations at night and weekends when they mostly occur. He said a variance is a way to make things work and even though landlord registration is not legal, the City can obtain registration voluntarily with the help of landlords. He said this is a once in a lifetime opportunity for Council to get things they have wanted for a long time such as landlord registration, inspections of the property, basic housing standards, square footage requirements, notice to neighbors, etc. He said the further the City separates itself and pushes the landlords and property owners away, the further the City is getting from that goal and it will only get worse. He said property owners worked three months on a compromise and the response is to further criminalize and prosecute property owners so if that is the intent of the Council then so be it. He encouraged the Committee to recommend the draft ordinance to Council and seek further compromise through the draft. He felt Councilmember Jungman's proposal is too regressive.

Mayor Rosenthal said the Williamsburg draft Staff prepared allowed four unrelated persons, four bedrooms, 2,000 square feet, and on-site parking and asked Mr. Rieger what was wrong with that draft. Mr. Rieger felt it was too restrictive. Mayor Rosenthal said Mr. Rieger is asking the City to legalize certain kinds of structures that have been built and are being utilized clearly in violation of City ordinances yet he is saying the City is not compromising. She said the Williamsburg draft was a reasonable compromise and the proposal before the Committee today is a license to ruin single family neighborhoods. Mr. Rieger disagreed and said the proposal is for a revocable license to help make landlords a part of the process to help resolve problems. Councilmember Jungman said it is not criminalizing anything to ask people to comply with the law so that is not a fair characterization.

Mr. Steve Ellis, 633 Reed Avenue, said it sounds like Mr. Rieger's idea is that landlords will not compromise unless the City gives them something in return. He said it is unclear what the positive would be for the entire City of Norman changing the three unrelated rule as it is now understood. He said there have been Trojan horse arguments applied to the current ordinance such as untraditional families and enforcement issues. He said the City can change the enforcement of laws without horse trading with anyone. He said no one has said anything about why there should be more than three unrelated persons living in a single family home who do not have some type of serious connective relationship with each other. It might make someone money, but residential districts exist for homes not houses. He said it is helpful to have all people living in a residential unit bound together with ties that are more than economic. He said the three person rule preserves residential neighborhoods with a certain kind of character rather than turning them into rooming house neighborhoods, which is an important value and there is no reason to compromise on that value. He does believe there should be tweaks to the current language such as changing the definition of family, but the basic idea of the ordinance is fine and should not be changed over Trojan horse worries about family.

Chairman Miller said a majority of Councilmembers believe the best step is to leave the current ordinance as is. She said interested parties are too far apart on the proposals and she would like to see more compromise although she understands the fear of the neighborhoods. She also understands where the landlords are coming from as well, but the three unrelated persons ordinance has more to do with what impacts neighborhoods every single day on an hourly basis and the City needs to be sensitive to that so she will agree with her colleagues to put this discussion to rest.

Item 1, continued:

Councilmember Jungman and Chairman Miller thanked Staff and Mr. Rieger for their hard work on the proposed variance and for working in good faith.

Items submitted for the record

1. Memorandum dated August 15, 2014, from Susan F. Connors, AICP, Director, Planning and Community Development, and Leah Messner, Assistant City Attorney
2. Draft ordinance
3. Radius maps for 128 W. Linn St., 718 Jenkins Ave., and 729 DeBarr Ave.
4. Minimal Change Draft written by Stephen Ellis dated August 19, 2014
5. Letter dated August 18, 2014, from Rashawna Johnson, Post Office Box 6521
6. PowerPoint entitled, "Three Unrelated Persons Ordinance," City Council Oversight Committee, August 21, 2014
7. Comparison of Draft Ordinance
8. Revised Language for Third Party Inspections

Item 2, being:

MISCELLANEOUS DISCUSSION.

None

ADJOURNMENT.

The meeting adjourned at 6:15 p.m.

ATTEST:



City Clerk



Mayor

