



City of Broken Arrow
AMENDED - Minutes
Special City Council Meeting

Mayor Craig Thurmond
Vice Mayor Scott Eudey
Council Member Johnnie Parks
Council Member Debra Wimpee
Council Member Christi Gillespie

Tuesday, January 19, 2021 6:00 PM Stoney Creek Hotel and Conference Center
200 West Albany Street
and
Broken Arrow Council Chambers
220 South 1st Street
Broken Arrow, OK

1. Call to Order

Mayor Craig Thurmond called the meeting to order at approximately 6:00 p.m.

2. Invocation

Pastor Rich Manganaro performed the invocation.

3. Roll Call

Present: 4 - Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond
Absent: 1 - Christi Gillespie

4. Pledge of Allegiance to the Flag

Mayor Thurmond led the Pledge of Allegiance to the Flag.

5. Consideration of Consent Agenda

Mayor Thurmond asked if there were any Items to be removed from the Consent Agenda; there were none.

MOTION: A motion was made by Scott Eudey, seconded by Debra Wimpee.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

- A. 21-4Approval of the City Council Meeting Minutes of January 5, 2021**
- B. 21-97Acceptance of Planning Commission meeting minutes of November 5, 2020**
- C. 21-98Acceptance Planning Commission meeting minutes of November 19, 2020**
- D. 21-99Acceptance Planning Commission meeting minutes of December 17, 2020**
- E. 21-133Approval of and authorization to execute Budget Amendment Number 23 for Fiscal Year 2021**
- F. 21-124Approval of and authorization to execute Resolution No. 1371, a Resolution of the Broken Arrow City Council canceling the regularly scheduled meeting of the Broken Arrow City Council, Broken Arrow Economic Development Authority and Broken Arrow Municipal Authority scheduled to be held at 220 South 1st Street, Broken Arrow, OK, 74012, on January 19, 2021, at 6:30 p.m. and ratify the setting of a special meeting of the Broken Arrow City Council, Broken Arrow Economic Development Authority and Broken Arrow Municipal Authority to be held on January 19, 2021 at 6:00 p.m. at Stoney Creek Hotel and Conference Center at 200 West Albany Street, Broken Arrow, OK, 74012, and at Broken Arrow City Hall, Council Chambers, at 220 South 1st Street, Broken Arrow, OK, 74012**
- G. 21-138Approval of and authorization to execute Amendment No. 1 to Agreement for Professional Consultant Services with Chase Fetters Hewitt - Architects for the Armed Forces Meeting Hall (Project No. 191718)**
- H. 21-137Approval of and authorization to execute Amendment No. 1 to Agreement for Professional Consultant Services with Chase Fetters Hewitt - Architects for the Senior Citizen's Activity Center (Project No. 191719)**
- I. 21-139Approval of and authorization to execute Amendment No. 2 to Agreement for Professional Consultant Services with Wallace Engineering - Structural Consultants, Inc. for Fire Station No. 2 Foundation Repair (Project No. 193509)**
- J. 20-1575Approval of and authorization to execute a Memorandum of Understanding between the City of Broken Arrow and Broken Arrow Senior's Center authorizing the City of Broken Arrow and Broken Arrow Senior's Center to work towards entering into a Parks and Recreation Use Agreement for the proposed Senior**

Citizen's Activity Center to be located at 1811 South Main Street, Broken Arrow, Oklahoma

- K. 21-113 Approval of and authorization to purchase one (1) Pierce rescue/fire apparatus from Conrad Fire Equipment, Inc. pursuant to the Houston-Galveston Area Council (HGACBuy) contract, using the "prepay" option, for the Fire Department
- L. 21-136 Approval of and authorization to execute Change Order #1 with Magnum Construction, Inc., for construction contract 191718; Armed Forces Meeting Hall
- M. 20-1528 Approval of and authorization to execute Change Order #1 with Timber Wolf Excavating, LLC on Construction Contract ST2034; Hillside Drive Retaining Wall Replacement
- N. 21-134 Approval of and authorization to execute Change Order #1 with Construction Enterprises, Inc. for construction contract 201801; Municipal Courtroom Renovation
- O. 21-129 Approval of PT20-112, conditional final plat, The Lakes at Rabbit Run, 35.51 acres, 100 Lots, A-1 to PUD-316A/RS-4, one-quarter mile south of New Orleans Street (101st Street), east of Olive Avenue (129th E. Avenue)
- P. 21-141 Ratification of the Claims List Check Register dated January 12, 2021

6. Consideration of Items Removed from Consent Agenda

There were no Items removed from the Consent Agenda; no action was taken or required.

7. 21-158 Consideration, discussion, and possible modification to Request to Appear Forms and Guidelines for City Council meetings and all other City Boards and Commissions meetings adopted by City Council on February 6, 2018, including potentially changing or waiving the requirement for speakers to list and state their address before addressing City Council, City Boards or Commissions

City Attorney Trevor Dennis reported on February 6, 2018, City Council adopted specific guidelines for when citizens wished to speak at City Council Meetings or other Board or Commission meetings. He stated there was no independent statutory or constitutional right to address this body; it was a creature of this body allowing public comment and adopting guidelines, and as such, this body had the ability to enforce or change the guidelines as it saw fit. He explained the current guidelines required the speaker to begin their statement with a name and address, in addition the form requests the speaker to list both the speaker's name and address. He stated he understood there were certain individuals who were interested in not having home addresses listed, and Staff was directed to place this as a discussion and potential action item on the Agenda regarding the current requirements. He stated the Mayor, as the presiding officer, had the ability to set the maximum time limits for posted agenda items and the ability to limit comments to general specific items.

Vice Mayor Scott Eudey indicated several citizens expressed a concern regarding presentation of a street address in an open forum. He stated he had requested an explanation regarding why a street address was required, and it was explained an address was requested to allow City Council to understand who was a resident or who had a business in Broken Arrow and what the speaker's vested interests were. He indicated he believed this could be accomplished without the speaker giving a street address. He stated he did not have any difficulty with the written form which required a street address; however, it might be helpful in encouraging participation and discussion to allow speakers to state their name and indicate whether they were residents and/or owned a business in Broken Arrow rather than verbally listing a street address. He indicated he felt this was sufficient as the speaker's address would be listed on the written form.

Council Member Johnnie Parks agreed. He noted the Planning Commission had public hearings during which speakers were required to do the same, and he believed residents would be more comfortable participating if the verbal listing of an address were not required. He indicated he agreed this would be acceptable, especially understanding the speaker's address would be listed on the written form.

Council Member Wimpee agreed. Mayor Thurmond agreed.

Discussion ensued regarding restricting speakers at today's meeting to one item or allowing speakers to speak regarding multiple items if desired.

Vice Mayor Eudey noted there were several items on the Agenda regarding COVID, and he felt it might be best to encourage speakers only to address mask wearing/COVID during one of the Agenda items rather than redundantly speaking for each COVID item; however, if the City Council desired to allow citizens to speak on multiple items he would not object.

Council Member Wimpee indicated she expected this to be a long meeting, but as a restriction against speaking on more than one Agenda Item was not made public prior to tonight's meeting, she did not feel it would be appropriate to make the restriction.

Council Member Parks agreed. He stated citizens should be permitted to speak regarding as many Agenda Items as desired.

Mayor Thurmond stated citizens would be permitted to speak regarding as many Agenda Items as desired. He explained City Council Meetings required the same decorum as was required in the court of law. He indicated booing, cheering, clapping, or outbursts of any kind would not be tolerated. He explained individuals had differing opinions and all speakers should be respected. He stated individuals who did not display the proper decorum would be warned, and upon the third disruption would be removed from the chambers.

MOTION: A motion was made by Scott Eudey, seconded by Johnnie Parks.

Move to, for the purposes of this meeting, require speakers to provide an address on the written form, but only require a speaker's name and whether the speaker lived in or owned a business in the City of Broken Arrow prior to speaking

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

Council Member Parks noted he felt this modification could be extended to all meetings in the future; this could be discussed and addressed at a future meeting.

8. Public Hearings, Appeals, Presentations, Recognitions, Awards

A. 20-1276 Recognition of Summit Christian Academy Science, Technology, Engineering, Arts and Mathematics (STEAM) staff for recent accomplishments

Council Member Debra Wimpee reported Stephanie Bradley, Science, Technology, Engineering, Arts and Mathematics (STEAM) teacher at Summit Christian Academy, was recently named Oklahoma Flight Night Innovative Teacher of the Year. She stated the Tulsa Regional STEM Alliance, sponsored by Flight Night, were honored to award educators who were finding new ways to impact students. She noted two teams from Summit Christian were selected as Top 3 finalists to send innovative science experiments into space. She reported on December 6, 2020, science projects from the STEAM program were part of over 250 science investigations launched to the International Space Station from Cape Canaveral, FL. She noted this first commercially funded space station airlock would increase the capacity for external space research at the space station. She indicated City Council and Staff would like to recognize these important achievements by Summit Christian Academy's staff and students. She played a video of the launch.

Mr. Brian O' Hara commended the students. He indicated Congressman Hern had wished to be present to congratulate the students. He presented a Certificate of Special Congressional Recognition presented to Stephanie Bradley, STEAM Teacher at Summit Christian Academy, Oklahoma Flight Night Innovated Teacher of the Year, in recognition of outstanding and invaluable service to the community; signed by Congressman Kevin Hern. Commemorative photos were taken.

B. 21-144 Recognition of Seth Fenderson for his third-place finish for the Astronomical League's Horkheimer/O'Meara Journalism Award

Council Member Wimpee reported Seth Fenderson was a ten-year-old, 5th grader, from Legacy Christian Academy who received third place for the 2020 Horkheimer/O'Meara Journalism Award from the Astronomical League. She noted Seth was awarded \$250.00 for his essay entitled, 'Mars 2020 Rover'. She explained the Astronomical League was a 75-year-old organization which had a membership of 19,000 amateur and professional astronomers. She indicated the League's mission was: To promote the science of astronomy; To encourage and coordinate activities of amateur astronomical societies; To foster observational and computational work, and craftsmanship in the various fields of astronomy; To provide a medium for correlating amateur activities with professional research. She noted the League offered many special awards not just for service and outreach, but contributions to the science of astronomy. She indicated Peggy Walker, Astronomical League Science, Technology, Engineering, Arts, and Mathematics (STEAM) coordinator brought Seth to the attention of Councilor Debra Wimpee. She stated after working with Seth one-on-one, Ms. Walker recognized his exceptional aptitude and love for astronomy; Seth was active in astronomy with his father setting up and using Meade telescopes; he was a member of the Astronomy Club of Tulsa. She stated City Council and Staff would like to recognize Seth's important achievement. Commemorative photos were taken.

Council Member Wimpee stated NASA Administrator Jim Bridenstine had intended to be present to honor Seth Fenderson and the students from Summit Christian Academy but was unable to attend at the last minute.

C. 20-1516 Presentation of Citations of Congratulations by Oklahoma State Representatives OK State Representatives Dean Davis and T.J. Marti

Oklahoma State Representatives Dean Davis and T.J. Marti presented Citations of Congratulations to John Pulliam and Eden Patton for being recognized as Seniors of Significance by the Oklahoma State University Alumni Association. Representative Marti explained the Seniors of Significance Award recognized students who excelled in scholarship, leadership and service to campus and community and brought distinction to

OSU. He noted the 52 students represented the top one percent of the Class of 2021, including all five OSU undergraduate academic colleges. He read the Citation upon presentation. Commemorative photos were taken.

Mayor Thurmond indicated Dr. Meehan had a limited amount of time; therefore, Item F would be discussed at this time. *At the direction of Mayor Thurmond Agenda Item F was taken out of order. The Minutes reflect the actual order of the proceedings.*

F. 21-160

Presentation by Dr. Jim Meehan regarding COVID-19 and mask mandates

Dr. Jim Meehan indicated he was pleased to be present in Broken Arrow where citizens were free to not wear a mask and were following the science of the situation. He stated today a presentation would be made by Dr. Kendrick who had “an unpublished, non-peer reviewed, low level observational retrospective study” which Dr. Kendrick would use to attempt to convince Broken Arrow to issue a mask mandate. He stated a 50-state analysis, and a 13-country analysis, have shown mask mandates have done nothing to stem the tide of coronavirus. He stated 100 years of science have demonstrated the same thing: respiratory viruses were not stopped by masks, and masks were not a good source control. He indicated he was surprised this debate continued after the two latest important studies which came out in the last six weeks. He indicated the first study was of the Danish population, conducted in a population of 6,000 test subjects, divided in half (3,000 wore masks and 3,000 did not wear masks). He noted during the 30 days of the study, the subjects were tested multiple times with antibody and PCR testing, and at the end of the study the infection rate was exactly the same within the two groups. He reported this study, the DANMASK-19 study, was published online for any interested parties. He stated this study confirmed masks were not an effective intervention for the spread of COVID. He reported shortly after, the largest study of asymptomatic spread was published from a study of over 10 million Chinese citizens. He indicated it was determined there was no asymptomatic spread of COVID. He stated this had been confirmed by studies in the U.S. published in JAMA and Lancet. He stated asymptomatic spread was not happening and wearing a mask was unsupported by scientific evidence. He stated there was an extremely low risk of spread in children; there were multiple studies throughout the world which showed spread of COVID in schools was an extremely rare event. He stated there was 100 years of data which illustrated mask wearing did not stop the spread of respiratory viruses. He stated there was new data which illustrated the same. He discussed a presentation made by another doctor in favor of mask wearing during which the doctor touched his mask many times negating the sterility of the mask; if a doctor could not avoid touching his mask, certainly most others, especially nonmedically trained persons, would do the same. He explained doctors only wore masks for a short period of time in hospital where masks were thrown away and fresh masks were worn daily; wearing a mask repeatedly day after day was basically creating a Petri dish of bacteria. He noted a study conducted in Germany showed masks worn for hours collected bacteria and fungi. He stated a mask collected pathogens in the air, from the seat of the car, from touching a cell phone, etc.; wearing a mask after it was contaminated caused an individual to breath in said collected pathogens which was extremely unhealthy. He reported he wrote a 47-page dissertation on the evidence he could find (he was a former editor of a medical journal) and published this online showing why masks were ineffective. He stated he used the best possible data for his report. He stated observational studies were not the level of evidence needed to derive policy and should not be used to make blanket statements and dictates for the population. He congratulated the City of Broken Arrow for its stance on medical freedom as medical freedom was under assault in the United States. He stated Tulsa and the surrounding citizens capitulated to anti-scientific policies. He challenged any doctor or scientist interested to debate this topic with himself. He discussed the phone calls he received from individuals suffering negative effects of mask wearing. He discussed the night terrors experienced by children caused by others wearing masks. He discussed medical disorders and medical emergencies caused by mask wearing. He stated the evidence clearly showed masks caused increased rates of various illness contraction and did not help to prevent the spread of COVID. He noted the cities with mask mandates understood the failure but could not admit to said failure. He stated cities with mask mandates tended to bully other cities into enforcing a mask mandate as well. He encouraged the citizens of Broken Arrow to stand for liberty and medical freedom. He stated he believed this was a trial to see how many citizens would comply with the violation of civil liberties. He stated he had no financial interest in this argument; this was only about public health. He discussed a sociology study which investigated whether individuals would blindly follow the instructions of authority figures even when the instructions defied instincts and morals; it was discovered 67% would. He stated lockdowns, mask policies, and so much of what the public has been told to believe had no basis in science. He explained low-level, observational, retrospective science was being used to validate these policies; however, this type of science was irrelevant. He encouraged the citizens of Broken Arrow to stand firm in freedom.

D. 21-145

Presentation and discussion regarding the COVID-19 Infection rate for Broken Arrow
Community Relations Liaison Mackenzie Jones reviewed statistics collected from the Oklahoma State Department of Health (OSDH) which showed infection rates in Broken Arrow and City of Tulsa. She noted the information she was reviewing would be available

on the Broken Arrow website tomorrow. She stated Broken Arrow had 802 new infections (728.8 per 100,000 residents); Tulsa had 2057 new infections (509.69 per 100,000 residents). She displayed and discussed a chart which illustrated infection rates since the imposition of Tulsa's mask mandate in graph form. She reported there were approximately 218 more cases per 100,000 residents in Broken Arrow as compared with Tulsa. She displayed and discussed hospitalization data from 7/12/2020 to today; Broken Arrow had higher hospitalization numbers; Tulsa had 35,338 cases and 328 deaths; Broken Arrow had 12,778 cases and 104 deaths (Broken Arrow had 94.44 deaths per 100,000 residents and Tulsa had 81.27 deaths per 100,000 residents). She displayed data regarding deaths, cases, and recoveries within Broken Arrow long term care facilities. She displayed and discussed the OSDH epidemiology report discussing mask mandate cities versus non mask mandate cities which revealed cities with mask mandates had 8% fewer cases of COVID.

Council Member Parks asked Ms. Jones to discuss the epidemiology report in more detail.

Ms. Jones explained the epidemiology chart. She stated as of January 12, 2021, there was an 8% lower average number of cases in cities with a mask mandate in place.

Vice Mayor Eudey asked for the definition of a "case." Ms. Jones stated "case" meant a positive COVID test. She explained if an individual tested positive three times for COVID, said individual would be counted as one case, not three cases.

Council Member Wimpee asked about false positive rates. Ms. Jones responded in the negative.

Council Member Wimpee asked about the percentage of change column. She commented the chart should read "no mandate" areas rather than "no mask" areas as many Broken Arrow citizens wore masks (80%-90% of the residents wore masks). Ms. Jones indicated she would share this feedback with OSDH. She discussed the percentage of change columns.

Council Member Wimpee asked if the 8% fewer cases in mask mandate cities as compared with non-mask mandate cities was reflective of all cities. Ms. Jones responded in the affirmative.

E. 21-159

Presentation by Dr. David Kendrick regarding COVID-19 and mask mandates

Dr. David Kendrick reported he was a physician who practiced internal medicine and pediatrics, had a master's degree in Public Health, and was Board Certified in Medical Informatics (health care data). He provided an update on COVID-19 from a data set which was similar to, but separate from, the State Department of Health's data. He noted the State Department of Health received all COVID-19 lab results in the State of Oklahoma. He stated approximately 10 years ago a group of doctors, hospitals, tribes, universities, state agencies and others interested in improving the health of Oklahoma came together and created a non-profit organization called MyHealth which was a 501C3 (no profit motive). He explained MyHealth connected the health care organizations throughout the state to ensure medical records were available throughout the system to better ensure proper medical care for patients. He noted MyHealth won multiple national awards for its work. He stated MyHealth immediately began tracking COVID-19, creating reports, and sharing information with the State Health Department. He stated MyHealth had over 1,200 locations throughout the State of Oklahoma which securely stored the health care records of Oklahoma residents. He reported MyHealth served more than 100,000 patients in Oklahoma daily. He displayed a list of mask-wearing and COVID-19 studies taken from the Center for Disease Control's website which showed reductions in closely monitored situations of transmission of COVID-19. He discussed the DANMASK-19 study Dr. Meehan referred to noting the study only had 42 positive cases of COVID which was not a statistically significant number and as such was an underpowered study which could only be used as a directional indicator and certainly did not show masks were ineffective. He stated real science was comparing one impact of interventions in one population to the same interventions in another population. He stated actual data collected regarding residents of Oklahoma was the most relevant to those present, not data collected from overseas. He displayed data collected through the MyHealth system which included both positive and negative test results. He displayed maps of Oklahoma which illustrated the percentage of positive cases (cases equal the total number of individuals who tested positive for COVID, not the total number of positive tests) in each city in Oklahoma, number of positive cases per 100,000 residents, number of tests per 100,000 residents, and number of hospital admissions per 100,000 residents. He displayed and discussed a chart which illustrated positive cases in the State of Oklahoma over the past few months. He noted there was a spike in positive cases around January 2, 2021, but this number had steadily dropped since. He displayed a chart which tracked the age groups of positive case numbers. He displayed a chart which illustrated hospital admissions by bed type over time, and a chart which illustrated hospital admissions by age group. He displayed and discussed a chart which illustrated the case numbers in mask mandate communities versus non mask mandate communities. He stated according to MyHealth data the positivity rate in mask mandate communities was approximately 16%, while the positivity rate in non-

mask mandate communities was approximately 20%. He explained this indicated mask mandate communities had 4% lower absolute positivity. He displayed and discussed a chart which illustrated the case numbers in Broken Arrow versus Tulsa; Broken Arrow had a 23.3% positivity and Tulsa had 20.7% positivity; therefore, Tulsa had 2.6% lower absolute positivity. He noted it was rare for individuals to suffer death from COVID. He discussed death rates in mask mandate cities compared to non-mask mandate cities; mask mandate cities showed a total of 11,994 cases per 100,000 residents with 116 deaths while non mask mandate cities showed a total of 23,773 cases per 100,000 residents with 172 deaths. He explained this meant mask mandate cities had approximately 50% fewer case numbers and 33% fewer deaths.

Council Member Wimpee stated on October 10, 2020, 363 doctors were part of a study in Germany which studied 20,353 students. She noted the results from the parents who entered the data on a total of 25,930 children, showed the average wearing time of masks was 270 minutes per day, and impairments caused by wearing a mask were reported by 68% of the parents and included irritability, headaches, difficulty concentrating, less happiness, reluctance to go to school (kindergarten), hearing impaired learning, drowsiness, and fatigue. She asked if any similar study had been conducted in the U.S. She commented Broken Arrow schools had been in session, while Tulsa schools had not, for the majority of this school year. She noted this information should be taken into consideration.

Dr. Kendrick responded as a pediatrician he was a fan of children being in school. He noted his children were currently in school and daily wore a mask. He stated children were fairly malleable. He indicated he was unfamiliar with the study Council Member Wimpee was citing, but he felt the children he was responsible for had done just fine with masks. He asked if Broken Arrow students wore masks. Council Member Wimpee responded in the affirmative. He asked about the effects of mask wearing in students. Council Member Wimpee responded this was what she was asking Dr. Kendrick: had there been any studies conducted regarding the effects of mask wearing on students in school. Dr. Kendrick stated the students who wore masks in the schools he was advising were fine; there were no untoward effects or issues. He indicated no students were in the hospital or missing school due to masks; therefore, he believed there were no downsides to wearing a mask. He stated this was a cost-benefit analysis; the benefit of wearing a mask versus the cost of wearing a mask; the benefit outweighed the cost.

- G. 21-147 Presentation by City Attorney on Ordinance No. 3672, an ordinance of the City of Broken Arrow amending chapter 16 of the Code of Ordinances, City of Broken Arrow, Oklahoma, "offenses-miscellaneous," by adding a new section 16-33 entitled "face covering and social distancing during the covid-19 pandemic civil emergency"; providing definitions; mandating the use of face coverings with certain exceptions; providing an expiration date; providing for severability; repealing conflicting ordinances; and declaring an emergency and Resolution No. 1372, a Resolution regarding the use of masks and other protective measures to reduce community transmission of the COVID-19 virus and pledging support to those property owners and businesses who require the use of masks in the City of Broken Arrow**
- City Attorney Trevor Dennis reported he had an Ordinance and a Resolution to present; each being separate and distinct from the other. He stated Council Member Parks directed Staff to prepare Ordinance No. 3672 for City Council consideration. He explained, in short, Ordinance No. 3672 was a law which required under criminal penalty all persons located within public services areas, places of public accommodation, or educational institutions to wear a face covering when present therein. He stated this Ordinance was previewed in the sense it was attached to the Agenda. He stated notably the Ordinance was based upon Tulsa's and Jenks' ordinance; it defined a face covering as covering the nose and mouth; it required masks to be worn in any public setting where social distancing of 6 feet could not be maintained. He stated the Ordinance also included several categories of exemption: persons who fell under the U.S. Center for Disease Control guidance for those who should not wear masks due to a medical or mental health condition or developmental disability. He stated the CDC website noted those who should not wear masks included anyone who had trouble breathing, anyone unconscious or incapacitated or unable to remove the mask without assistance, and notes wearing a mask might be difficult for those with sensory, cognitive or behavioral issues; in addition, children under the age of 10 were exempt, restaurant patrons while eating or drinking, persons exercising in communal outdoor spaces as long as physical distances were maintained, persons undergoing dental or medical treatments, while swimming, or while engaging in athletic team activities where the level of exertion makes wearing a face covering impractical. He stated also exempt from the requirement were occupants in a personal vehicle, personal office, or similar private spaces when other persons were not present. He explained social distancing did not apply to those in the same household; individuals were not required to wear a mask when less than 6 feet away from someone within the same household. He stated similar to Tulsa and Jenks, the Broken Arrow Ordinance included a criminal enforcement provision including prosecution under criminal trespass, disturbing the peace, or disorderly conduct. He noted these criminal enforcements would be class B misdemeanors punishable potentially by a fine between \$75 dollars and

\$750 dollars. He stated Ordinance No. 3672 had an expiration date of April 30, 2021, or by repeal, modification, or extension by City Council. He noted there were questions regarding the proposed ordinance and the Tulsa City-County Health Department (TCCHD), specifically whether TCCHD would have the right to enforce Broken Arrow's mask ordinance. He stated the answer was no; the Ordinance did not empower TCCHD to enforce the mask mandate. He noted there were questions regarding the right of the City Council to enact such an Ordinance; the State of Oklahoma has specifically authorized cities and towns to enact and enforce ordinances as deemed necessary for the protection of public health, not inconsistent with state law, under Title 11, Section 22-120. He noted this statutory authority was consistent with the 10th Amendment which gave police powers to the state and its localities in advancement and protection of public welfare (morals, health, safety, and prosperity). He stated it was within City Council's power to either accept or reject such an Ordinance.

He reviewed Resolution No. 1372 (included on the Agenda). He explained an Ordinance was a law while a Resolution was not law; a Resolution was a nonbinding motion which served as an encouragement. He reported Resolution No. 1372 was a recommendation by City Council to encourage residents and visitors to Broken Arrow to wear a mask in public, practice social distancing, and avoid group gatherings. He stated the Resolution also pledged the support of the Broken Arrow Police Department to property owners and businesses who required masks and pledged to provide assistance to businesses and property owners when an individual refused to comply with the mask requirement. He stated there were no criminal penalties associated with Resolution No. 1372.

Vice Mayor Eudey indicated several individuals sent him emails regarding the City spending substantial funds to engage in the drafting of these documents. He asked if any additional funds were spent to develop the Ordinance and Resolution outside of the normal scope of the work the City Attorney would complete on a daily basis. City Attorney Dennis responded in the negative. Vice Mayor Eudey stated aside from Staff time spent, there was no additional cost to the City for research and development. City Attorney Dennis concurred.

**9. Citizens' Opportunity to Address the Council on General Topics Related to City Business or Services
(No action may be taken on matters under this item)**

Mayor Thurmond noted several citizens signed up to speak.

Citizen Kelly Williams publicly spoke against the mask ordinance.

Citizen Laurie Biby publicly spoke in favor of the mask ordinance.

Citizen Robert Marsh publicly spoke against the mask ordinance.

Citizen Jill Norman publicly spoke in favor of the mask ordinance.

Citizen Misty James publicly spoke against the mask ordinance.

Citizen Aiden Dodd publicly spoke in favor of the mask ordinance.

Citizen Larry Williamson publicly spoke against the mask ordinance.

Citizen Gary Gerber publicly spoke in favor of the mask ordinance.

Citizen Larissa MacBeth publicly spoke against the mask ordinance.

Citizen Kayla Gannon publicly spoke in favor of the mask ordinance.

Citizen J.W. Berry publicly spoke against the mask ordinance.

Citizen Stacy Frisbie publicly spoke in favor of the mask ordinance.

Citizen Marla Taylor publicly spoke in favor of the mask ordinance.

Council Member Wimpee noted many were not wearing masks at tonight's meeting due to being able to be socially distant. She stated if someone was able to be socially distant a mask was not needed.

Citizen Nancy Remus publicly spoke in favor of the mask ordinance.

Citizen Carl Pfanstiel publicly spoke in favor of the mask ordinance.

Citizen Debra Smith publicly spoke against the mask ordinance.

Citizen Christen Frost publicly spoke against the mask ordinance.

Citizen Scott Pendleton publicly spoke against the mask ordinance.

Citizen Matthew Griffiths publicly spoke in favor of the mask ordinance.

Citizen Brian Dean publicly spoke against the mask ordinance.

Citizen Shannon Myers-Coan publicly spoke in favor of the mask ordinance.

Citizen Kevin Pilger publicly spoke in favor of the mask ordinance.

Citizen Jason Coan publicly spoke in favor of the mask ordinance.

Citizen Mona Kelly publicly spoke against the mask ordinance.

Citizen Judi Tuttle publicly spoke in favor of the mask ordinance.

Citizen Brent Watson publicly spoke against the mask ordinance.

Mayor Thurmond indicated there would be a five-minute break in the proceedings. ***There were technical audio/video difficulties during the next ten citizen speakers.***

Citizen Colton Hadrava publicly spoke against the mask ordinance.

Citizen Terri Schillaci publicly spoke against the mask ordinance.

Citizen Allen Conway publicly spoke against the mask ordinance.

Citizen Frank Schillaci publicly spoke against the mask ordinance.

Citizen Julie Kallenberger publicly spoke against the mask ordinance.

Citizen Shirleyanne Brown Johnson publicly spoke against the mask ordinance.

Citizen Kristen Hackler publicly spoke against the mask ordinance.

Citizen Todd Autry publicly spoke against the mask ordinance.

Citizen Laura Burkett publicly spoke against the mask ordinance.

Citizen Ronda Vuillemont-Smith publicly spoke against the mask ordinance.

Citizen David Lee publicly spoke against the mask ordinance.

Citizen Sarah Danai stated publicly spoke against the mask ordinance.

Citizen Angela Liter publicly spoke against the mask ordinance.

Citizen Magen Kuder publicly spoke against the mask ordinance.

Citizen Joshua Stenros publicly spoke against the mask ordinance.

Mayor Thurmond asked if Mr. Stenros wished to address Item 10B at this junction. Mr. Stenros responded in the affirmative.

Mr. Stenros noted City Council did an excellent job reviewing the COVID statistics at every City Council Meeting. He noted the statistics were mostly subjective as there were arguments from scientists on both sides. He stated these statistics were not reaching enough residents in Broken Arrow. He recommended the production of a PSA campaign promoting healthy choices rather than approving a mandate or a resolution. He stated he believed a PSA would be more effective than a mandate or a resolution. He stated he respected those who were in favor of a mask mandate, and he respected those who were against. He asked City Council to strike down the mask mandate, as well as the resolution as he felt the resolution patronized both sides of the argument.

Mayor Thurmond stated online PSAs had been created regarding mask wearing, handwashing and social distancing, but perhaps a PSA aired on TV would be more effective.

Mr. Stenros stated a PSA empowered the people to make educated decisions while keeping the government from making the decisions for the people.

Citizen Lori Gracey publicly spoke against the mask ordinance.

10. General Council Business

- A. 21-148 **Consideration, discussion and possible approval of Ordinance No. 3672, an ordinance of the City of Broken Arrow amending chapter 16 of the Code of Ordinances, City of Broken Arrow, Oklahoma, “offenses-miscellaneous,” by adding a new section 16-33 entitled “face covering and social distancing during the covid-19 pandemic civil emergency”; providing definitions; mandating the use of face coverings with certain exceptions; providing an expiration date; providing for severability; repealing conflicting ordinances; and declaring an emergency**

City Attorney Trevor Dennis noted he discussed this Ordinance previously and as such would not repeat the details. He discussed a federal court case from the 5th Circuit on April 7, 2020; the federal courts, state courts and ultimately the supreme court were the final arbiters of what powers the government did have. He noted this court case summarized the limits of judicial review and police power indicating when faced with a society threatening epidemic a state may implement emergency measures which curtailed constitutional rights so long as the measures had at least some real or substantial relation to the public health crisis and were not beyond all question a plain, palpable invasion of rights. He stated the courts could ask whether the state’s emergency measures lacked basic exceptions for extreme cases and whether the measures were arbitrary and oppressive; however, courts could not second guess the wisdom or efficiency of the measures. He noted he was not aware of any federal, state, or U.S. Supreme Court decision which has found the mask mandates made in other cities unconstitutional. He asked if there were any questions.

Council Member Wimpee noted the ordinance included “educational institutions.” She stated the Schools governed themselves and were doing an excellent job with this. She asked why this was included in the ordinance.

City Attorney Dennis explained he was tasked with creating an ordinance which was consistent with the ordinances in Jenks and Tulsa which included requirements for educational institutions.

Council Member Parks asked if this pertained to public and private schools. City Attorney Dennis responded in the affirmative.

Council Member Wimpee noted she received emails from many private schools who did not wish for a mask mandate.

City Manager Michael Spurgeon indicated Council Member Gillespie was unable to be present this evening. He noted Council Member Gillespie asked for the following to be read: “I want to apologize to the Council for my inability to attend tonight. More importantly, I apologize to the citizens of BA who I represent. I feel I am letting you down at a time when we need more people to stand up for freedom. Due to COVID exposure and the fact that I am symptomatic, I could not attend tonight’s meeting. Unfortunately, I’m not allowed to attend via Zoom, so my only option is this email. Let me be clear. My stance on a mask mandate will not change. The mask mandate ordinance has many overreaching items. Even without those items I would be against a mandate, so I won’t get into the weeds. I am against a mandate. Regardless of the opinions on the efficiencies of a mask, a mandate is simply not enforceable. For many years I did education advocacy and spoke out against unfunded mandates. This would be an unfunded mandate on our police department. A mandate that is unenforceable, unfunded and utilizes a law already on the books: trespassing. When our Broken Arrow Police Department receives a trespassing call, they will always show up to enforce the law. Any business that requires a mask on their premises merely needs to ask a customer to abide by their rules. If a customer refuses, they can be asked to leave. If they won’t leave then a trespassing call can be made. This is the same procedure that will happen whether or not a mandate is in place. Next door to Broken Arrow, the City of Tulsa is encouraging citizens to snitch on their fellow citizens by reporting small businesses to the Tulsa County Health Department for perceived infractions. Some say this won’t happen, but we are already on the slippery slope of overreach by considering mandates like this one that is presented. Anyone who chooses to wear a mask should do so. I wear a mask at work and the effects of wearing a mask for 6 to 9 hours a day have definitely affected my health. I believe it is a virus that we all, more than likely, are going to get. For those who chose not to spend time with their elderly relatives, I respectfully disagree. The grandparents I have spoken to in the past Council Meetings will also disagree. If I had chosen to not visit my grandparents I would have missed out on precious moments with my granny and papa. He is the one who was exposed by a home health nurse in a mask but thankfully never caught COVID. He passed away peacefully at home on December 21, and I was with him the day he died. I will never regret visiting him that day, but I would have regrets if I had social distanced away from my own loved one. I would like to repeat, I am also against a resolution because it accomplishes nothing more than what we are already doing. A PR move for some Councilors to justify saying we did something, in fact we have been saying for months and months and months to wear a mask, social distance, wash your hands, and stay at home if you are sick. I heard something recently by C.L. Lewis that struck a chord with me: ‘Of all tyrannies, tyranny exercised for the good of its victims may be the most depressing. It may

be better to live under robber barons than omnipotent moral busybodies. The robber barons' cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience. They may be more likely to go to Heaven yet at the same time likelier to make a Hell of earth. This very kindness stings with intolerable insult. To be "cured" against one's will and cured of states which we may not regard as disease is to be put on a level of those who have not yet reached the age of reason or those who never will; to be classed with infants, imbeciles, and domestic animals.' I have never seen a time in my life when I could totally eliminate risk, and I hope I never do. God bless America where the Constitution still means something. We still are the land of the free."

Council Member Parks asked for comments from the Police Chief. He asked if the Resolution and/or the Ordinance could be enforced.

Police Chief Berryhill explained enforcement of the mask mandate would be call driven; the police would respond if a citizen called to report a trespassing violation.

Council Member Parks stated he believed enforcement of both the Resolution and the Ordinance would be call driven.

Police Chief Berryhill indicated he believed the Resolution was different. He asked City Attorney Dennis to comment.

City Attorney Dennis stated currently, under the law, if a business called the police to report a trespassing violation, whether it was an individual who was refusing to wear a shirt or shoes or a face mask if required by the business, the business could contact the police department who would investigate. He stated the Ordinance did not provide for a specific penalty; it was procedurally set up so if a person refused to wear a face covering in the defined areas, said person could be subject to criminal trespass, disturbing the peace, or disorderly conduct.

Council Member Parks stated this would apply to either the Ordinance or the Resolution.

City Attorney Dennis stated the Resolution would not make any changes to the criminal code as it currently existed.

Council Member Parks indicated there was not much difference between the Ordinance and Resolution and the current state of City affairs.

City Attorney Dennis concurred.

Police Chief Berryhill concurred.

Council Member Wimpee noted this was already the case; a business owner could call the police to remove a patron who was not complying with store requirements (wearing a shirt, wearing a mask, wearing shoes, etc.). Chief Berryhill concurred.

Council Member Parks explained his point: approving the Resolution and/or Ordinance would make no change to how violations of mask wearing (trespassing) were handled by the police. He asked if the police department had the manpower to enforce a mask mandate or resolution.

Chief Berryhill indicated he did not know what the effect of a mask mandate or resolution would be; he could not know what would happen in the future.

Council Member Parks noted the City of Edmund had Code Enforcement to enforce the mask mandate. He stated, in response to the comment that City Council was under a lot of pressure regarding a mask mandate, he was not under any pressure. He indicated the only pressure he felt was due to the numbers of individuals who have gotten sick and died from COVID in the City of Broken Arrow. He explained these Broken Arrow numbers were compared to the City of Tulsa numbers. He stated there were 219 more COVID infections in Broken Arrow as compared with the City of Tulsa (per 100,000 residents). He stated there were five more individuals hospitalized in Broken Arrow as compared with Tulsa (per 100,000 residents). He stated 13 more individuals died from COVID in the City of Broken Arrow as compared with Tulsa (per 100,000 residents). He explained he asked for the Ordinance to be considered because he believed the City Council had a responsibility of protecting the public peace, health, order, morals, safety and promoting the general welfare of the City of Broken Arrow and its inhabitants. He stated the City Council had never looked at an ordinance before; an ordinance had been discussed, but not previewed. He stated the Resolution was the same resolution considered previously. He noted half of Oklahoma cities were under mandate, and COVID numbers dropped in these cities when the mandates were established. He stated he felt the Ordinance as it was currently would be difficult to enact in Broken Arrow. He stated he did not believe the ordinance would help much if enacted today. He stated he felt

the Resolution would help, however. He stated he believed the City Council had a responsibility to respond to the numbers of individuals who were catching COVID. He noted he was opposed to the mask mandate but would have been in favor of a mask mandate in July when this started. He noted since July, progress had been made, a vaccine was moving forward, and hopefully the COVID numbers would decrease as a result. He stated he believed City Council had a responsibility to continue to look at COVID numbers. He discussed the indictment of the past Michigan Governor and Staff members due to mishandling of the Flint, Michigan water system difficulties.

Vice Mayor Eudey stated the open meeting act would not allow the City Council to discuss this matter outside of a public forum; therefore, in order to discuss the COVID numbers the subject had to be included on the meeting agenda.

Mayor Thurmond stated the mandate (Ordinance) died due to lack of a motion.

B. 21-146 Consideration, discussion and possible approval of Resolution No. 1372, a Resolution regarding the use of masks and other protective measures to reduce community transmission of the COVID-19 virus and pledging support to those property owners and businesses who required the use of a mask in the City of Broken Arrow and possible consideration, discussion and direction to City staff to draft an ordinance mandating the use of masks and other protective measures in the City of Broken Arrow

City Attorney Dennis noted this was the second Item before City Council for consideration. He noted Council Member Parks asked Staff to prepare this Resolution which recommended and encouraged the wearing of a mask in public in the City of Broken Arrow. He noted it was not an ordinance, it was a resolution which encouraged individuals and businesses to do the following: wear masks in public, keep 6-feet of physical distance, and engage in handwashing to reduce the transmission of COVID-19, and pledged support from the Police Department for businesses.

Council Member Parks stated the Resolution indicated the City Council highly recommended the above suggestions. He noted he was worried about the closing of businesses due to the number of residents getting sick. He asked if there were any protections in the resolution for those who medically were unable to wear a mask.

City Attorney Dennis stated there was nothing in the resolution which changed criminal code or made a law; it was only a strongly worded statement encouraging and promoting the above listed behaviors. He noted there was nothing which would require an exemption due to the lack of criminal enforcement; there was nothing residents who could not wear masks would need to be protected from as this was not an ordinance.

Citizen David Oldham discussed Section 25-1402 of Oklahoma Statutes. He noted he believed this Resolution would tie Broken Arrow to the criminal acts of discrimination against those with valid exemptions who were being discriminated against by business owners. He stated this resolution would in essence put the City of Broken Arrow's stamp of approval on such behavior. He stated this discrimination against those not wearing masks was illegal. He noted business owners were legally required to treat everyone as equals. He stated this resolution would open the City to major violations, major civil complaints, and potential large damages against the City. He stated the police department did not need to be turned into "goons" for local businesses, many of whom were acting as agencies of the government due to being extorted by the ABLE Commission, Health Department, and other licensing boards. He proposed City Council instead protect individual rights.

Citizen Rhonda Vuillemont-Smith asked if Council Member Gillespie's letter against the Resolution and the Ordinance would be counted as "no" votes.

Mayor Thurmond explained Council Member Gillespie needed to be present for her vote to be counted. He noted the City Council Members were elected at large, meaning the City Council Members represented the entire City of Broken Arrow.

Ms. Vuillemont-Smith asked what would happen if the vote were a tie. Mayor Thurmond responded the item would not pass with a tie vote.

Vice Mayor Eudey agreed all City Council Members represented all residents of Broken Arrow. He explained while a City Council Member had to live in a ward to run for said ward, all citizens of Broken Arrow were able to vote for or against said City Council Member; therefore, all City Council Members represented all citizens of Broken Arrow. He noted Council Member Parks took the brunt of blame for discussion and consideration of mask mandates. He indicated as a lawyer and student of law, he personally conducted research regarding what the constitution said about this situation, and discovered the case of James Jacobs versus Massachusetts was currently the "law of the land" based upon a decision made by the Supreme Court in the early 1900's. He stated he disagreed with that decision and believed the Supreme Court was in error when it made the decision, but it was the

decision which currently stood. He explained the bottom line was the law granted cities the right to make a mandate. He noted he disagreed with this decision and believed the Supreme Court overstepped its authority. He commented the only pressure he felt was the pressure he placed upon himself. He noted upon review of his prior emails, Broken Arrow residents were relatively evenly split regarding the desire for a mask mandate. He noted most present this evening were against a mask mandate. He indicated he would never approve a mask mandate. He stated for those who were abused for not wearing a mask, he was terribly sorry; there was no excuse for that behavior. He stated he believed that when worn properly a mask did reduce the chances of spreading COVID. He noted he also believed in leading by example; therefore, he wore a mask. He noted the Resolution was worth considering as it had no force of law. He stated as of November 23, 2020, 56 Broken Arrow residents passed away related to COVID. He indicated he was not going to argue the semantics of whether these individuals died from COVID or a comorbidity; COVID impacted these individuals in one way or another. He stated it was worth taking a moment to consider 104 Broken Arrow citizens had died from COVID; this was a terrible thing. He stated this did not mean the City should shut down and residents should stop living. He noted COVID data and mask data was two sided. He indicated his wife, an R.N., opined those who could, should wear masks; however, she did not want anyone telling her she had to wear a mask. He stated if his wife, who worked for 28 years as an R.N., who worked side by side with immunocompromised patients for 25 years, stated those who could, should wear a mask, but was uncomfortable forcing an individual to wear a mask, he was willing to adopt this same posture. He stated his dentist's opinion was "some therapy is better than no therapy;" if wearing a mask reduced the chances of catching COVID even a little bit a mask should be worn. He stated his doctor's opinion was if you could wear a mask you should. He stated this Resolution stated the same: if you could wear a mask, you should; it did not say you had to wear a mask. He stated he heard many comments about the Resolution being overreach and tyranny, but the Resolution had no criminal penalties, it only stated if you can, please wear a mask.

Council Member Wimpee agreed to some extent; however, she believed the Resolution would not accomplish much. She stated the City already strongly encouraged mask wearing, social distancing, etc. She noted she made constant reminders on multiple social media sites. She stated even though this Resolution had no criminal penalties associated with it, she worried it would embolden citizens to call the police if an individual was not wearing a mask. She stated she did not want to have residents face continued emotional struggles. She asked why a positive PSA could not be released instead, encouraging residents to exercise personal responsibility by handwashing, immune system boosting, etc. She noted at every meeting the crowd grew asking to be permitted to make personal decisions regarding mask wearing. She noted when she was out in public it was rare when she saw individuals not wearing masks. She stated, according to the 2018 census data, 83% of Broken Arrow residents worked outside of the City and wore masks daily in these mask mandated cities, but still contracted COVID while at work. She noted Jenks passed a mandate in November, but Jenks case numbers were still rising. She stated she did not see any point in passing a Resolution which said "please wear a mask" as City Council was already asking residents to wear a mask.

Council Member Parks stated this was the same resolution he voted to approve in November. He noted while Jenks case numbers were increasing, so were Broken Arrow case numbers but at a higher rate. He stated he was just looking for some action which could be taken by the City Council to show leadership and possibly help. He noted he went shopping on Saturday and only about 40% of the local businesses had signs requiring masks. He stated he felt the Resolution would show the City was encouraging the use of masks and would show the public the Broken Arrow Police Department would be supportive if needed. He noted it was possible PSAs could do the same. He stated he believed the business community needed to understand the City would support local businesses. He indicated he was in favor of the Resolution and did not believe the Resolution would hurt in any way.

Mayor Thurmond noted he was not an anti-mask individual. He stated he wore a mask as he believed it was the right thing to do. He stated he also did not believe the Resolution would get one more person to wear a mask. He noted some businesses on Main Street did not have a mask requirement; however, Walgreens, Walmart, grocery stores, etc., all had mask mandates, and patrons wore a mask while in said stores. He stated he did not believe the Resolution would affect any change. He stated as it stood now, if a business owner called the police regarding a trespasser, the police would take care of the problem.

Council Member Wimpee stated if an individual was against a mandate it did not mean said individual was against a mask. She noted she wore a mask but was against the mandate. She stated it was wrong for individuals to be shamed or attacked in any way for not wearing a mask.

Council Member Parks indicated his emails were evenly split between those for and against a mandate. He stated he believe it was important to somehow show support of local businesses during this pandemic. He noted he received an email which threatened to sue him if he voted in favor of this which ended in "don't think you can try doing this because I have others who

report ADG, who did the overlay district for the Rose District, had been selected. He stated he hoped to have this project completed in the next six to eight months.

MOTION: A motion was made by Scott Eudey, seconded by Debra Wimpee.
Move to appoint and execute a contract with ADG, PC for an overlay district for New Orleans Square and to execute said contract in an amount not to exceed \$96,500.00
The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

11. Remarks and Inquiries by Governing Body Members

Mayor Thurmond reported what he believed would be the last White House COVID call was held this week.

Council Member Wimpee thanked City Manager Spurgeon and Staff for arranging this Special City Council Meeting. She thanked the speakers who attended. She thanked Lisa Ford who recently retired after 20 years with the Broken Arrow Police Department. She noted Lisa was one of the best community advocates for Broken Arrow; she had won many awards nationally and internationally for her programs and safety expertise. She stated she was proud to call Lisa a friend. She congratulated Lisa on her retirement.

12. Remarks and Updates by City Manager, including Recognition of Recent Accomplishments by Employees and Elected Officials

There were no remarks or updates by City Manager.

14. Executive Session

There was no Executive Session.

15. Adjournment

The meeting adjourned at approximately 11:01 p.m.

MOTION: A motion was made by Johnnie Parks, seconded by Scott Eudey.
Move to adjourn

The motion carried by the following vote:
Aye: 4 - Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

Mayor

City Clerk