



City of Broken Arrow

Minutes City Council

City Hall
220 S 1st Street
Broken Arrow OK
74012

Mayor Craig Thurmond
Vice-Mayor Scott Eudey
Councilor Mike Lester
Councilor Johnnie Parks
Councilor Debra Wimpee

Tuesday, September 5, 2017

Time 6:30 p.m.

Council Chambers

1. Call to Order

Mayor Craig Thurmond called the meeting to order at approximately 6:30 p.m.

2. Invocation

Pastor Tim Pyles delivered the invocation.

3. Roll Call

Present: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond
Johnnie Parks arrived at 6:58 p.m.

4. Pledge of Allegiance to the Flag

Vice Mayor Scott Eudey led the Pledge of Allegiance to the Flag.

5. Consideration of Consent Agenda

Mayor Craig Thurmond stated Item C needed to be removed from the Consent Agenda. Vice-Mayor Eudey stated Item A also needed to be removed. He asked if there were any other items; there being none, he asked for a motion.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.

Move to approve Consent Agenda excluding Items A and C

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

- A. 17-1694 Approval of City Council Meeting Minutes of August 15, 2017
- B. 17-2634 Approval of and authorization to execute Resolution No. 966-Corrected, a Resolution confirming the supplementation and publication of the City of Broken Arrow's Code of Ordinances
- C. 17-2603 Approval of and authorization to execute Resolution No. 1051, a Resolution authorizing the acceptance of a General Warranty Deed for Parcel 2, which consists of 0.43 acres of permanent Right-of-Way for 23rd Street, Houston to Kenosha, in the Southeast Quarter of Section 12, Township 18 North, Range 14 East, approximately 794 feet north of the intersection of 23rd Street and Houston Street from Don C. Couch and Mary Hieronymus Couch, Husband and Wife, authorizing payment in the amount of \$25,000.00, and authorizing Staff to apply for reimbursement of 80 percent of the revised negotiated amount for the 23rd Street Widening from Houston to Kenosha Project (Project No. ST0914)
- D. 17-2635 Approval of and authorization to execute Resolution No. 1052, a Resolution confirming the supplementation and publication of the City of Broken Arrow's Code of Ordinances
- E. 17-2636 Approval of and authorization to execute Resolution No. 1053, a Resolution confirming the supplementation and publication of the City of Broken Arrow's Code of Ordinances
- F. 17-2637 Approval of and authorization to execute Resolution No. 1054, a Resolution confirming the supplementation and publication of the City of Broken Arrow's Code of Ordinances
- G. 17-2631 Approval of and authorization to ratify benefit renewal from Unum to provide long-term disability insurance to City employees
- H. 17-2630 Approval of and authorization to execute the First Amendment to Clinic Management Services Agreement with IMWell Health, L.L.C. to provide biometric screening services
- I. 17-2599 Notification of City Manager's, Assistant City Manager's, and Department Director's execution of Professional Consultant Agreements with a value less than \$25,000
- J. 17-2608 Approval of and authorization to execute Amendment No. 2 to Professional Consultant Agreement with Garver, LLC, for Design of Kenosha Street Widening from Date Avenue to Main Street (Project No. ST1409)
- K. 17-2522 Approval of and authorization to execute Amendment No. 3 to Professional Consultant Agreement with Garver, LLC, for Design of Washington Street Improvements from Garnett Road to Olive Avenue and Extended to Aspen Avenue (Project No. ST1616)

- L. 17-2609 Approval of and authorization to execute Amendment No. 2 to Professional Consultant Agreement with Holloway, Updike, and Bellen, Inc. for Revising the Design of Albany Street Improvements from 9th Street to 23rd Street (Project No. SW1709)
- M. 17-2626 Approval of and authorization to execute Amendment No. 1 to Professional Consultant Agreement with Utley & Associates L.L.C., for providing additional topographic survey for design of the Eagle Creek Drainage Improvements (Project No. SW1604)
- N. 17-2650 Approval of and authorization to execute a First Amendment to Economic Development Agreement by and among the Broken Arrow Economic Development Authority, the City of Broken Arrow, Oklahoma, and Milestone Capital, L.L.C.
- O. 17-2601 Approval of and authorization to execute a Promotional License on City Property allowing the City of Broken Arrow and ArtsOK of Broken Arrow to host the 2017 Chalk It Up event
- P. 17-2538 Approval of and authorization to execute a Promotional License on City Property allowing Cox Communications to host the 2017 Cox Community Concert Event at the City's Chisholm Trail Park (Events Park)
- Q. 17-2600 Approval of and authorization to execute a Promotional License on City Property allowing Gateway Balloon Festival, L.L.C. to host the 2017 Gateway Balloon Festival at the City's Chisholm Trail Park (Events Park)
- R. 17-2596 Approval of and authorization to execute a Promotional License between Ice Challenge Enterprises, L.L.C. and the City of Broken Arrow for the installation and operation of an outdoor holiday ice rink at the Rose District Pavilion
- S. 17-2574 Approval of and authorization to purchase two (2) three-quarter ton pickup trucks from Bill Knight Ford pursuant to the Oklahoma statewide vehicle contract for the Streets and Stormwater Department
- T. 17-2613 Approval of and authorization to purchase one (1) one-ton crew cab, cab and chassis from Vance Country Ford, pursuant to the Oklahoma statewide vehicle contract, for the Streets Division
- U. 17-2624 Approval of and authorization to purchase structural firefighting protective ensembles from Northern Safety, specifically 21 coats and 28 pants for the Fire Department as previously bid
- V. 17-2614 Approval of bids received and award of the most advantageous bid to Premier Truck Group for the purchase of one dump truck for the Streets Division
- W. 17-2571 Approval of bids received and award of the most advantageous bid to Professional Turf for the purchase one (1) 16-foot rotary mower for the Parks and Recreation Department
- X. 17-2606 Award the lowest responsible bid to Ellsworth Construction, LLC, and approve and authorize execution of a construction contract for Rose District Mill and Overlay (Project No. ST1819)
- Y. 17-2598 Award the lowest responsible bid to Hoey Construction Company, and approve and authorize execution of a construction contract for Indian Springs Sports Complex Baseball and Soccer Improvements (Project No. 166028)
- Z. 17-2597 Approval of and authorization of Final Acceptance for the public improvements at CSD Enterprises located at 3054, 3056, 3058 North Aspen Avenue
- AA. 17-2632 Acceptance of a Utility Easement from BD Creekside Apartment Homes Phase I, LLC, (Tract 1) Lot 1, Block 1, Creekside Apartment Homes, on property located a quarter mile south of Omaha Street and west of Aspen Avenue, Tulsa County, State of Oklahoma, (Section 33, T19N, R14E) (Creekside Apartments Phase II)
- BB. 17-2633 Acceptance of a Utility Easement from BD Creekside Apartment Homes Phase II, LLC, (Tract 2) Lot 1, Block 1, Creekside Apartment Homes, on property located a quarter mile south of Omaha Street and west of Aspen Avenue, Tulsa County, State of Oklahoma, (Section 33, T19N, R14E) (Creekside Apartments Phase II)
- CC. 17-2639 Acceptance of a Utility Easement from BD Creekside Apartment Homes Phase II, LLC, Lot 2, Block 1, Creekside Apartment Homes, on property located a quarter mile south of Omaha Street and west of Aspen Avenue, Tulsa County, State of Oklahoma, (Section 33, T19N, R14E) (Creekside Apartments Phase II)
- DD. 16-1580 Approval of the Broken Arrow City Council Claims List for September 05, 2017

6. Consideration of Items Removed from Consent Agenda

Items A and C were tabled until the next meeting.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to table Item A until next meeting

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

MOTION: A motion was made by Mike Lester, seconded by Scott Eudey.

Move to table Item C until next meeting

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

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

A. 17-2627 Conduct a public hearing regarding the Police Department's application for the Edward Byrne Memorial Justice Assistance Grant (JAG), and authorization to submit the grant application

Acting Police Chief Brandon Berryhill stated this was an application for an Edward Byrne Memorial Justice Grant for \$13,123.00 which was a yearly recurring grant that was divided up for equipment, training, and special event overtime. Acting Chief Berryhill asked if there were questions. There were none.

Mayor Thurmond opened the public hearing, asking three times if anyone wished to discuss the item. There being no reply in the affirmative, Mayor Thurmond closed the public hearing.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.

Move to authorize the Edward Byrne Memorial Justice Assistance Grant application

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

B. 17-2653 Consideration, discussion, and possible approval of and authorization to execute a Proclamation declaring the month of September 2017 as National Senior Center Month in the City of Broken Arrow in recognition of the Broken Arrow Senior Center's contributions to the community

Vice Mayor Eudey stated this matter had been brought to his attention by the Senior Center. He reported September was nationally recognized as Senior's Month. He reported he had the privilege of serving on the Senior Board for the past six years and had come to know firsthand the contributions the Senior Center made to the Community of Broken Arrow through volunteers and staff. He stated he felt the month of September should be deemed National Senior Center Month in the City of Broken Arrow in recognition of the Broken Arrow Senior Center's contributions to the community and asked the Council to approve and execute the Proclamation.

Mayor Thurmond read the Proclamation: "Whereas older Americans are significant and vital members of our community, possessing wisdom and knowledge gained from a lifetime of experience that they use to help enrich and better the lives of younger generations, and whereas Broken Arrow Seniors Inc. acts a catalyst for mobilizing the creativity, energy, vitality, and commitment of the growing number of residents of Broken Arrow age 55 and older, and whereas through a wide array of programs, events, and activities, Broken Arrow Seniors Inc. acts to empower, enlighten, engage and enrich lives of older citizens of Broken Arrow and surrounding communities in pursuing avenues of healthy aging. Therefore, now I, Craig Thurmond Mayor of Broken Arrow, Oklahoma, do hereby proclaim September of 2017 as National Senior Center Month."

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to approve the Proclamation

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

Vice Mayor Eudey presented the Proclamation to the Senior Center Representative.

8. 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)

No citizens requested to speak.

9. General Council Business

A. 17-2656 Update and discussion of Muskogee (Creek) Nation Allotment owned by Steve Bim Bruner located between the Creek Turnpike and Tucson Street, West of Olive Street in the City limits of Broken Arrow, Oklahoma, to include lawsuits filed involving this property and reported actions by the Muskogee (Creek) Nation

City Attorney Beth Anne Childs reported there were two lawsuits filed involving the Muskogee (Creek) Nation Allotment owned by Steve Bim Bruner located between the Creek Turnpike and Tucson Street, West of Olive Street in the City limits of Broken Arrow, Oklahoma. She stated the first was filed by the Kialegee Tribal Town and Redcreek Holdings, LLC against the Attorney General of the Muskogee Creek Nation, the Chief of Police of the Muskogee Lighthouse and a number of others which were involved in the circumstances which occurred last month. She reported Creek Nation had issued a press release on some occurrences at this particular piece of property and basically the Tribal Court had issued a search warrant and an arrest warrant for Mr. Bruner which was executed by Lighthouse. She reported the Lighthouse, pursuant to the warrants issued by the Tribal Courts, went in, seized the property, seized the gaming machines, arrested Mr. Bruner, and Mr. Bruner was charged criminally. As a result, she explained, Kialegee Tribal Town and Redcreek Holdings brought an action in the United States District Court for the Northern District of Oklahoma, located in Tulsa. She stated the action claimed that the Kialegee had dual jurisdiction of the

Allotment, the Muscogee Creek Nation had no authority to take the action it took, and asked for injunctive relief. She stated Judge Eagan dismissed the petition; Judge Eagan found there was no subject matter jurisdiction. She stated on 08/17/2017 the Kialegee Tribal Town filed an action in the United States District Court in Washington, DC for the District of Columbia appealing the denial of the gaming request by the National Indian Gaming Commission (NIGC) to game at the Allotment. She reported this was still in progress and summons had been issued. She stated it was interesting the Chairman of the NIGC, the United States Department of Interior, the Assistant Secretary for Indian Affairs, and Secretary of the Department of Interior as well as many others had been named in the summons. She reported the attorney who initially wrote the opinion in support of the denial of the request to game was now working for the Kialegee Tribal Town which was concerning. She stated she suspected there would be continued activity in Federal Court and an amended motion or new petition for relief may or may not be filed.

She stated the DC Circuit was fairly adept in handling appellate matters for denial of certain administrative actions and she suspected this would be concluded in short order. She stated the idea of becoming involved in an action had been discussed or the Council could await the resultant action. She reported she would have discussions with the City Manager regarding this, and this could be discussed in executive session. She stated she had visited with the Attorney for Kialegee Tribal Town and Redclay Holdings who advised a paper had been prepared which demonstrated how Tribal Town had joint jurisdiction over this particular parcel. She stated further complicating the situation was a 131 page Opinion issued by the 10th Circuit Court of Appeals on August 8. This Opinion reviewed a criminal matter where an individual was given the death penalty in State Court. The individual argued that the State of Oklahoma had no authority to prosecute him because this entire side of the State remained a reservation as Congress never disestablished it. She stated her thought was the justice who wrote the Opinion felt fairly confident in his position and the State Attorney General Office had filed a request for it to be heard en banc. She stated this would have far reaching implications for the City of Broken Arrow in terms of law enforcement, prosecution, weed lots, etc. She stated this would be discussed with the City Manager and it would be pinned to executive session. She stated she was unsure if Broken Arrow could intervene, but certainly needed to entertain filing an amicus brief. She reported the day after this was released legal reached out to the Oklahoma Association, Municipal Attorneys, Oklahoma District Attorneys, Council, and others in an attempt to bring attention to the situation. She stated Chuck Thompson, Executive Director of International Municipal Lawyers Association (IMLA), was notified and legal was in the process of obtaining a national firm to write an amicus. She stated as a member of IMLA Broken Arrow had the ability to enlist a national firm to write an amicus brief pro bono. She stated she would be happy to answer questions.

Councilor Lester asked how the situation would be impacted if the Kialegee Chief won his election seat in the Creek Council. Ms. Childs stated she did not know what the implications would be. She stated the 131 page Opinion was completely unanticipated. Vice Mayor Eudey stated he thought there was a case which had determined joint jurisdiction could not be held over a single piece of property. Ms. Childs stated previous rulings had determined this, but as there had been many new legal developments in the month of August she could not predict the outcome. She stated she hoped the DC Circuit would uphold the previous NIGC ruling. Vice Mayor Eudey stated he felt it was encouraging that Judge Eagan had taken it upon herself to make a ruling which meant Judge Eagan had a strong understanding of the Northern District case and he did not anticipate Washington DC District would have the same. He stated he felt Judge Eagan’s opinion was insightful, but it would ultimately depend upon the DC District’s opinion.

B. 17-2643 Consideration, discussion, and possible approval of and authorization to execute a Third Amendment to Economic Development Agreement by and among the Broken Arrow Economic Development Authority, the City of Broken Arrow, Oklahoma, and Stoney Creek Hospitality Corporation

Ms. Childs reported this was a third amendment to the Economic Development Agreement which had been executed by Mr. Jim Thompson who was the principle at the Stoney Creek Facility which was coming online. She stated Assistant City Manager Kenny Schwab had been working with Stoney Creek and Vision to make this a safer corridor for both traffic and pedestrians. She stated Mr. Schwab had requested Vision funding to complete the traffic study recommendations for the corridor. She reported there were modified left turn lanes into the main entrance which were unquestionably going to create a safer environment for drivers and pedestrians alike. She explained the original language indicated the parties would meet and confer once the traffic study was completed to determine what, if any, signalization or other improvements were going to be made. She stated she and Mr. Schwab had discussed memorializing this within the body of the agreement to avoid future questions and as Council had awarded the project to Magnum several months ago, and it was in progress, this was just a way to memorialize the process.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.
Move to approve the Third Amendment to the Economic Development Agreement and authorize its execution

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

C. 17-2568 Consideration, discussion, and possible approval of and authorization to execute a Professional Services Agreement with sixPR, L.L.C. to conduct a citizen survey and manage the 2018 General Obligation Bond public education campaign

Communications Director Krista Flasch reported City Staff was preparing for a General Obligation Bond election in August 2018. She stated in order to maximize public input during the project selection process staff would be conducting a citizen survey to determine what projects the public was interested in pursuing. She stated in order to assist with the survey design and the subsequent public education campaign a Request for Proposal (RFP) was issued. She reported the best cost was presented by sixPR to assist over the course of 12 months with the survey design and education campaign. She recommended approving the agreement with sixPR to conduct a citizen survey and assist with public education on the 2018 GO Bond election. She asked if there were questions.

Vice Mayor Eudey asked about the source of the funding. City Manager Michael Spurgeon answered funding was through the General Budget.

MOTION: A motion was made by Mike Lester, seconded by Scott Eudey.

Move to approve and authorize execution of a Professional Services Agreement with sixPR, L.L.C. to conduct a citizen survey and manage the 2018 General Obligation Bond public education campaign

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

D. 17-2589 Consideration, discussion, and possible approval of SP-284 (Specific Use Permit for animal sales and services including an animal training school) and abrogation of BAZ-1704, My Sonrise Stables, 101.02 acres, A-1, one-quarter to one-half mile south of Jasper Street, east of Olive Avenue

Plan Development Manager Larry Curtis stated Specific Use Permit 284 was a request for a Specific Use Permit for animal sales and services including an animal training school. He reported, according to the application, My Sonrise Stables which operated on the property was a training, boarding, and riding facility for horses. He stated the property was zoned A1 agricultural and was unplatted. He explained commercial animal sales and services including animal training schools were not permitted unless granted through a Specific Use Permit. He stated a small portion of the property on the south side was located within the 100 year floodplain in accordance with the Arkansas River. He stated the property was designated as Level 2 in Greenway/Floodplain according to the comprehensive plan. He stated access to the property was from Garnett Road and there was a temporary turnaround located on the north end of the property which served Indianwood Avenue in the Bentley III addition. He reported the Planning Commission Meeting on August 10, 2017 concurred with staff and recommended approval by a vote of 3 to 0 for Specific Use Permit 284 subject to the right of way and utility easements being provided in accordance with subdivision regulations, as well as five other conditions recommended by staff per the staff report. In addition, he reported, the Planning Commission recommended that BAZ 1704 which was previously approved on the property be abrogated. He stated there were two nearby residents who spoke regarding the case, one of which asked for the distance of deposit and collection of manure to be increased from 200 feet to 400 feet and asked that the property be mowed more often; the other speaker expressed concerns about the safety of the metal fence which had been installed along the south property line. Mr. Curtis stated approval of SP 284, for the permit of sales and services including an animal training school, and abrogation of BAZ-1704, was recommended by the Planning Commission and staff. He asked if there were questions.

Councilor Lester asked if the fence issue was resolved. Mr. Curtis answered not yet, but he had been in communication with the property owner regarding the concerns raised. He explained the citizen was concerned the fence was not painted as preferred and was not capped. He stated he was in communication with the property owner to have the issues remedied. Councilor Lester asked if the issues were being fixed as a part of the PUD or as a recommendation. Mr. Curtis responded as a recommendation. He stated the fence issues had not been brought to the attention of staff until after the Planning Commission hearing. Vice Mayor Eudey asked how the manure question was being handled. Mr. Curtis stated City Ordinance indicated manure must be collected and maintained at least 200 feet away from residentially zoned property; therefore, it was recommended by staff report to the Planning Commission the property owner be notified and the Ordinance be enforced both with the Specific Use Permit and with the City Ordinances in place. Councilor Lester asked if the buildings on the property were within City limits. Mr. Curtis responded most of the buildings were within City limits, but a small outbuilding in the southern part of the property was located in Tulsa County. Councilor Lester asked if the buildings had been permitted prior to construction. Mr. Curtis replied the buildings were permitted prior to construction. He stated one of the Planning Commission's recommendations was no buildings, arenas or horses were to be located within 200 feet of residential zoned property which would provide an additional buffer. Vice Mayor Eudey asked if a recommendation became an obligation. Mr. Curtis stated if the Special Permit was approved the recommendations became requirements.

James Rusher, Attorney for Applicant Yonce, stated he was in attendance to answer questions. He stated the barn was originally built to shelter horses for the Yonce's daughter, but had been converted to commercial operation and held up to 24 horses. He reported it was a nice, good looking facility in the middle of the 80 acre tract within the City limits, not near the boundaries. He stated there had been issues with manure which was spread as a fertilizer on the property; there were no large piles of manure. He explained the Yonces agreed with staff recommendations for dedication, easements, and would do everything that had been requested. He stated the fence issue was not mentioned until last week, but he was looking into the situation. He stated it was unrelated to the Specific Permit

application as it was simply a fence that was currently surrounding the Yonce’s property. Councilor Lester stated if it was a problem for the neighborhood it could be remedied by making it inclusive with the application. Mr. Rusher stated there were issues with the caps on the fence; his client had been out of town when notification was received, but the issue was now being investigated. Development Services Director Michael Skates stated he was handling the fence as a code enforcement issue, noncompliance with City code, as there were sections of the fence which were not capped and very sharp. He explained there were fence portions which he felt were not completed by the fence contractor. He stated the south side of the fence on the west side of the property appeared to be finished, but the east side of the property looked incomplete. He explained there were areas where existing fencing had been damaged and the contractor was to fix the damage, but had not fixed it to date. He stated Mr. Rusher, representing Mr. Yonce, was to address and resolve the situation. Mr. Rusher stated it was his and the Yonce’s full intention to comply with City code. Vice Mayor Eudey asked if the entrance to the property was on Olive. Mr. Rusher replied in the affirmative.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to approve SP 284 and abrogate BAZ-1704, My Sonrise Stables, 101.02 acres, A-1, one-quarter to one-half mile south of Jasper Street, east of Olive Avenue, as recommended by the Planning Commission, subject to the recommendations referenced

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- E. 17-2638 **Consideration, discussion, and possible approval of Resolution No. 1043, a Resolution to place in Reserve Status, the section line of Section 35, Township 19 North, Range 14 East, one-eighth mile East of Elm Place, City of Broken Arrow, Tulsa County, Oklahoma more particularly described as a tract of land lying in the Southeast Quarter (SE1/4) of Section Thirty-Five (35), Township Nineteen (19) North, Range Fourteen (14) East of the Indian Meridian, City of Broken Arrow, Tulsa County, Oklahoma and further described as follows: the South 24.75 feet of the West 1248.00 feet of said SE1/4, the above description containing 0.71 acres more or less. Bearings are based on a grid bearing along the South line of the SW1/4 of Section 35, Township 19 North, Range 14 East (N88°42’33”E) based on the Oklahoma State Plane Coordinate System, North Zone, U.S. Survey Feet; and directing staff to file a Petition for Reserve Status with the Tulsa County Commissioners**

Ms. Childs stated the next four resolutions required separate votes. She stated legal requested City Council to adopt resolutions requesting a Section Line be placed in reserve status. She stated Creek Nation provided, in the early 1900s, all section line roads were to be used for public travel. She stated Oklahoma law indicated cities did not have the ability to close or foreclose section line roads. She stated the resolutions requested the Tulsa County Commissioner place the statutory right of way in reserve status. She explained this would facilitate further development and construction. She asked if there were any questions. There were none.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.

Move to approve Resolution No. 1043

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- F. 17-2645 **Consideration, discussion, and possible approval of Resolution No. 1044, a Resolution to place in Reserve Status, the section line of Section 2, Township 18 North, Range 14 East, generally located North of Albany Street, one-eighth mile East of Elm Place, City of Broken Arrow, Tulsa County, Oklahoma more particularly described as a tract of land lying in the Northeast Quarter (NE1/4) of Section Two (2), Township Eighteen (18) North, Range Fourteen (14) East of the Indian meridian, City of Broken Arrow, Tulsa County, Oklahoma and further described as follows: the North 24.75 feet of the West 1248.00 feet of said NE1/4, the above description containing 0.71 acres more or less. Bearings are based on a grid bearing along the North line of the NW1/4 of Section 2, Township 18 North, Range 14 East (N88°42’33”E) based on the Oklahoma State Plane Coordinate System, North Zone, U.S. Survey Feet; and directing staff to file a Petition for Reserve Status with the Tulsa County Commissioners**

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

Move to approve Resolution No. 1044 and authorize its execution

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- G. 17-2646 **Consideration, discussion, and possible approval of Resolution No. 1045, a Resolution to place in Reserve Status, the section line of Section 2, Township 18 North, Range 14 East, generally located North of Albany Street, one-eighth mile East of Elm place, City of Broken Arrow, Tulsa County, Oklahoma more particularly described as a tract of land lying in the Northwest Quarter (NW1/4) of Section Two (2), Township Eighteen (18) North, Range Fourteen (14) East of the Indian Meridian, city of Broken Arrow, Tulsa county, Oklahoma and further described as follows: commencing at the Northwest corner of said NW1/4; thence N88°42’33”E along the North line of said NW1/4 for a distance of 750.25 feet to the point of beginning; thence continuing N88°42’33”E along said North line for a distance of 361.95 feet ; thence S01°11’31”E for a distance of 24.75 feet to the North statutory right-of-way line of said NW1/4; thence S88°42’33”W along said North Right of way line and parallel to said North line of**

NW1/4 for a distance of 403.05 feet; thence N57°40'39"E for a distance of 48.01 feet to the point of beginning; the above description containing 0.22 acres more or less. Bearings are based on the Oklahoma State Plane Coordinate System, North Zone, U.S. Survey Feet; and directing staff to file a Petition for Reserve Status with the Tulsa County Commissioners

MOTION: A motion was made by Debra Wimpee, seconded by Johnnie Parks.

Move to approve Resolution No. 1045 and authorize its execution

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- H. 17-2647** **Consideration, discussion, and possible approval of Resolution No. 1046, a Resolution to place in Reserve Status, the section line of Section 2, Township 18 North, Range 14 East, generally located North of Albany Street, one-eighth mile East of Elm Place, City of Broken Arrow, Tulsa County, Oklahoma more particularly described as a tract of land lying in the Northwest Quarter (NW1/4) of Section Two (2), Township Eighteen (18) North, Range Fourteen (14) East of the Indian Meridian, City of Broken Arrow, Tulsa County, Oklahoma and further described as follows: commencing at the Northwest Corner of said NW1/4; thence N88°42'33"E along the North line of said NW1/4 for a distance of 1112.21 feet to the point of beginning; thence continuing N88°42'33"E along said North line for a distance of 575.19 feet; thence S46°14'38"E for a distance of 34.97 feet to the North statutory right-of-way line of said NW1/4; thence S88°42'33"W along said North right-of-way line and parallel to said North line of NW1/4 for a distance of 599.94 feet; thence N01°11'31"W for a distance of 24.75 feet to the point of beginning; the above description containing 0.33 acres more or less. Bearings are based on a grid bearing along the North line of the NW1/4 of Section 2, Township 18 North, Range 14 East (N88°42'33"E) based on the Oklahoma State Plane Coordinate System, North Zone, U.S. Survey Feet; and directing staff to file a Petition for Reserve Status with the Tulsa County Commissioners**

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to approve Resolution No. 1046 and authorize its execution

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- I. 17-2648** **Consideration, discussion, and possible approval of Resolution No. 1050, a Resolution of the Council of the City of Broken Arrow, Oklahoma, establishing the Wireline Nine-One-One (911) Emergency Telephone Fee for Calendar Year 2018 at Five Percent (5%) pursuant to State Statute and Ordinance**
Ms. Childs stated this Resolution was an action State Statute required City Council take yearly. She explained the percentage needed to be established and changed yearly. She explained it did not cover cost and was recommended at 5%. She requested Council approve Resolution No. 1050 and authorize its execution.

MOTION: A motion was made by Johnnie Parks, seconded by Mike Lester.

Move to approve Resolution No. 1050 and authorize its execution

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- J. 17-2588** **Consideration, discussion, and possible approval of the reappointment of Lori Lewis to the Broken Arrow Convention and Visitors' Bureau (CVB) Board for a term beginning October 1, 2017 and expiring September 30, 2019**
Tourism Director Lori Hill stated Johnnie Parks' position on the CVB expires September 30, 2017 and Councilor Parks recommended the reappointment of Ms. Lori Lewis to the CVB with a term expiring September 30, 2019. She explained as part of the strategic plan of the Tourism Asset Inventory there was a recommendation to restructure the CVB to include members from the lodging, dining, retail, sports, attractions and City Council. She stated Ms. Lewis' position as Executive Director of the History Museum of Broken Arrow would fulfill the attractions position within the CVB. She stated staff was recommending reappointment of Lori Lewis to the CVB.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to approve the reappointment of Ms. Lori Lewis to the Broken Arrow Convention and Visitors' Bureau (CVB) Board for a term beginning October 1, 2017 and expiring September 30, 2019

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- K. 17-2640** **Consideration, discussion, and possible approval of the reappointment of Michelle Bergwall to the Broken Arrow Downtown Advisory Board**
Economic Development Coordinator Norman Stephens stated Michelle Bergwall was appointed to the Broken Arrow Downtown Advisory Board in 2013 and agreed to continue to serve on the Downtown Advisory Board if reappointed. He stated Ms. Bergwall was appointed by Vice Mayor Eudey and her term would end October 1, 2021.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to approve the reappointment of Michelle Bergwall to the Broken Arrow Downtown Advisory Board with term expiring October 1, 2021

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

L. 17-2641 Consideration, discussion, and possible approval of the reappointment of Kelly Rash to the Broken Arrow Downtown Advisory Board

Mr. Stephens stated Kelly Rash was appointed to the Broken Arrow Downtown Advisory Board in 2013 and agreed to continue to serve if reappointed. He stated she was appointed by Councilor Mike Lester and her term would end October 1, 2021.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.

Move to approve the reappointment of Kelly Rash to the Broken Arrow Downtown Advisory Board with term expiring October 1, 2021

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

10. Preview Ordinances

A. 17-2618 Consideration, discussion, and possible preview of an ordinance amending Chapter 6, BUILDINGS AND BUILDING REGULATIONS, Article III.5 INTERNATIONAL RESIDENTIAL CODE (IRC), Section 6-37 - Amendments, of the Broken Arrow Code; specifically requiring concrete and masonry foundation/stem walls to extend above the existing grade adjacent to the foundation at all points a minimum of twelve inches (12") and extend above the finished grade adjacent to the foundation at all points a minimum of six inches (6"); repealing all ordinances to the contrary

Ms. Childs reported the Oklahoma Uniform Building Code Commission had adopted the 2015 International Residential Code. She stated local municipalities were enabled to make modifications and on October 4, 2016 the City Council adopted the code with modifications. She stated recently staff received requests by local builders that the City review the amendment to the code requiring a 16 inch foundation wall. She reported staff did research by polling other cities and discovered Broken Arrow was the only city requiring a 16 inch foundation wall; most allowed for a 12 inch foundation wall, some a 10 inch and some made no minimum requirement. Therefore, she stated, staff recommended revision to allow concrete and masonry foundation/stem walls to extend above the existing grade adjacent to the foundation at all points a minimum of 12 inches, and at all points above the finished grade adjacent to the foundation at 6 inches. She explained this would still exceed the requirements of the 2015 International Residential Code and would bring the City more in line with surrounding jurisdictions. She requested the Council preview the Ordinance and set it for adoption at a future time. She stated Mr. Skates would answer any questions.

Councilor Parks asked if this would pose a problem with heating ducts under the floor. Mr. Skates replied originally the 16 inches allowed for the heating ducts in the 1980s and had never changed. He explained the 2015 code required a minimum of 4 inches and Broken Arrow would exceed this by 2 inches and 12 inches would still facilitate underground duct work if needed. He felt the code change would assist developers with cost reduction. Councilor Parks asked if the trend right now was to run duct work overhead. Mr. Skates replied in the affirmative.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to preview ordinance and set for final adoption

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

11. Ordinances

A. 17-2553 Consideration, discussion, and possible adoption of Ordinance No. 3492, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ 1942 and PUD 240, generally located north of the northeast corner of Kenosha Street and Olive Avenue, granting an RS-3 zoning classification be placed upon the tract along with PUD 240, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency

Ms. Beth Anne Childs stated this ordinance changed the zoning ordinance for each of these locations, she requested a separate motion adopting each of the 5 ordinances, and a separate emergency clause.

MOTION: A motion was made by Johnnie Parks, seconded by Mike Lester.

Move to adopt Ordinance No. 3492

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to approve the emergency clause

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- B. 17-2564 **Consideration, discussion, and possible adoption of Ordinance No. 3493, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ 1973, granting a DM zoning classification be placed upon the tracts, generally located on the northwest corner of First Street and Elgin Street, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency**
- MOTION: A motion was made by Mike Lester, seconded by Johnnie Parks.
Move to adopt Ordinance No. 3493
The motion carried by the following vote:
Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond
- MOTION: A motion was made by Mike Lester, seconded by Scott Eudey.
Move to approve the emergency clause
The motion carried by the following vote:
Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond
- C. 17-2556 **Consideration, discussion, and possible adoption of Ordinance No. 3494, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving PUD 236, granting PUD 236 zoning classification be placed upon the tracts, generally located on the southeast corner of the Broken Arrow Expressway and Elm Place, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency**
- MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.
Move to adopt Ordinance No. 3494
The motion carried by the following vote:
Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond
- MOTION: A motion was made by Johnnie Parks, seconded by Scott Eudey.
Move to approve the emergency clause
The motion carried by the following vote:
Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond
- D. 17-2567 **Consideration, discussion, and possible adoption of Ordinance No. 3495, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving PUD 255, granting PUD 255 zoning classification be placed upon the tracts, generally located one-half mile north of Houston Street, one-half mile west of 9th Street on the southeast corner of Main Street and Broadway, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency**
- MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.
Move to adopt Ordinance No. 3495
The motion carried by the following vote:
Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond
- MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.
Move to approve the emergency clause
The motion carried by the following vote:
Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond
- E. 17-2570 **Consideration, discussion, and possible adoption of Ordinance No. 3496, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ 1975 and PUD 214A, generally located on the northwest corner of Omaha Street and Evans Road, one-quarter mile west of the Creek Turnpike, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency**
- MOTION: A motion was made by Debra Wimpee, seconded by Johnnie Parks.
Move to adopt Ordinance No. 3496
The motion carried by the following vote:
Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond
- MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.
Move to approve the emergency clause
The motion carried by the following vote:
Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

12. Remarks and Inquiries by Governing Body Members

Mayor Thurmond asked if there were any remarks or inquiries.

Vice-Mayor Eudey thanked Beth Anne Childs and her staff for the work done with regard to Item 9A, the Bruner matter. Councilor Lester commended the two Broken Arrow emergency employees, Justin Williams and Jamie Ott, who assisted in Houston. He stated he felt it was a positive reflection on Broken Arrow as a City to send assistance to Houston. Mr. Spurgeon stated Jamie Ott was recently released and would be home soon, and Justin Williams returned over the weekend.

13. Remarks and updates by City Manager, including Recognition of Recent Accomplishments by Employees and Elected Officials

Mr. Spurgeon stated there were a number of events in September worthy of mention, first was a Gatesway Balloon Festival at the Broken Arrow Events Park on September 15, 16, and 17. He stated this was a wonderful event and he was excited to have it in Broken Arrow. He stated on September 22nd the 2017 Cox Communications Concert would be held with Josh Turner headlining. He reported it was a free concert and tickets could be obtained at any Cox Communications store, and Cox was requesting a nonperishable goods donation per ticket. He stated the concert would start at 7 o'clock and would run until 11 o'clock. He stated he wanted to publically acknowledge Broken Arrow's partnership with Cox Communications in providing the concert and showcasing Broken Arrow's Events Park. Councilor Wimpee stated she had noted attempts to sell tickets and advised the tickets were free. Mr. Spurgeon stated he would make a note of this and thanked Councilor Wimpee for the information.

Mr. Spurgeon stated the ice rink at the Holiday Festival Event would be returning thanks to the efforts of Scott Esmond. He stated the Holiday Festival Event in the Rose District would begin November 8 and run tentatively through January 31, 2018. He reported hours of operation would be in the afternoons and evenings, and on the weekends. He stated he was excited to bring the ice rink back to Broken Arrow. He expressed his desire that the weather would allow the ice rink to remain open the entirety of the festival.

Mr. Spurgeon stated the Council approved via the Consent Agenda a contract for street improvement to be done downtown in the Rose District. He stated the Council awarded the contract to Ellsworth construction in the amount of \$248,000.00 for the work. He stated the engineer's estimate was \$275,000.00. He explained this was being funded through the 2018 General Bond Obligation Fund. He stated the roadwork was to be done on the east-west streets running from Fort Worth to Commercial. He stated the plans and specifications to work on Ash from Fort Worth to the Chamber, and also First Street, were close to completion.

Mr. Spurgeon mentioned the two individuals deployed to Houston. He stated Justin Williams was assigned to the Task Force and Jamie Ott, the Emergency Management Coordinator, was called down to provide assistance to the operation. He felt it was outstanding. He stated there was a meeting about Broken Arrow Community Emergency Response Team (CERT) which was an integral part of emergency response, either manmade or natural. He stated he was in the process of ensuring BA CERT was complete and up to date.

Mr. Spurgeon stated the Chief of Police selection had been narrowed to five excellent candidates. He stated the week of September 18 the selection team would meet with the five candidates and two finalists would be selected. He stated there would be a Community Reception the following week above Main Street Tavern and the Council, Chamber Leadership and City School District Leadership would be invited to meet the finalists. He explained at that time how much further review was needed would be determined and the goal was to name a new Chief of Police by the end of October. He stated the Members of the Police Department, as well as Senior Leadership, would be invited to meet the finalists.

Mr. Spurgeon stated in October or November he would attend a meeting of the Downtown Advisory Board (DAB) and speak with the DAB regarding its accomplishments and possible new focuses. He explained the DAB had a broad scope which 10 years ago was needed; however, he felt it was time to transition to another role. He explained he had nothing in particular in mind yet, but felt it was important for this to be broached with the DAB and he would return to the Council with some recommendations.

Mr. Spurgeon stated at the invitation of the Mayor of Tulsa G.T. Bynum and the Superintendent of Tulsa Public Schools, he and Mayor Thurmond attended an education fund meeting. He stated Jenks and Tulsa, Union Public Schools, Broken Arrow Public Schools and private sector representatives were in attendance. He reported a working group would be assembled. He stated Mayor Bynum started an "Educational Cabinet" when he took office last December. He indicated it was wonderful to see cities coming together as a region to address educational issues. He stated Broken Arrow took the lead after the sales tax for education question 779 failed and he felt it was important to stay in front of the issue as it was critical to help the school districts. Mr. Spurgeon thanked the Council for the support for the Public Education Contract to assist public education and the survey for the next round of General Obligation Bonds. He reported staff was running a concurrent track with the survey on projects staff was aware of. He stated later in the month he would call for a meeting with the School District, the Chamber, the Economic Development Corporation (EDC), and Build a Better Broken Arrow to discuss preliminary projects. He stated he would provide Council Members with a copy of what preliminary projects would be discussed at the meeting. He stated he felt it was important to involve the school district and EDC/Chamber as potential for growth was investigated, where transportation bottlenecks were located, stormwater, and possible conflict between potential projects and school construction. He stated Council would receive the same packet as other attendees; however, nothing was final. He stated he expected conclusions made at the meeting would be brought to the Council for debate and approval.

At approximately Mayor 7:30 p.m. Thurmond entertained a motion to recess in order to enter into the Broken Arrow Municipal Authority, Broken Arrow Economic Development Authority meetings, and Broken Arrow Industrial Trust meetings.

Move to recess in order to enter into the Broken Arrow Municipal Authority, Broken Arrow Economic Development Authority, and Broken Arrow Industrial Trust meetings

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

At approximately 7:33 p.m. Mayor Thurmond reconvened the meeting and entertained a motion for a brief recess before entering into the Executive Session.

Move to recess before entering into the Executive Session

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

The Council returned to the room at approximately 7:34 p.m. Mayor Thurmond entertained a motion to enter into Executive Session.

Move to enter into the Executive Session

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

14. Executive Session

Executive Session for the purpose of confidential communications and discussing the employment of the City Manager, Michael L. Spurgeon, and his employment agreements, and specifically to permit the City Council to conduct the annual evaluation as provided for in the City Manager's Employment Agreement as amended, and taking appropriate action in open session regarding his employment and contract as allowed for under 25 O.S. § 307(B)(1).

In the opinion of the City Attorney, the Council is advised that that the Executive Session is necessary to protect the confidentiality of the employee evaluation as allowed by the Open Meeting Act. After the conclusion of the confidential portion of executive session, the Council will reconvene in open meeting, and the final decision, if any, will be put to a vote.

At approximately 8:04 p.m., Mayor Thurmond reconvened the regular session of the City Council meeting and the room was opened to the public.

Move to direct the City Attorney to draft a third amendment to the City Manager's Employment Agreement consistent with Council direction for consideration at a future Council Meeting

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

15. Adjournment

The meeting adjourned at approximately 8:05 p.m.

Move to adjourn

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

Attest:

Mayor

City Clerk