



City of Broken Arrow

Minutes
City Council

City Hall
220 S 1st Street
Broken Arrow OK
74012

Mayor Craig Thurmond
Vice Mayor Richard Carter
Councilor Mike Lester
Councilor Johnnie Parks
Councilor Scott Eudey

Monday, November 7, 2016 Time 6:30 p.m. Council Chambers

1. Call to Order

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

2. Invocation

Pastor Tom Litteer delivered the invocation.

3. Roll Call

Present: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

4. Pledge of Allegiance to the Flag

Mayor Thurmond led the Pledge of Allegiance to the Flag.

5. Consideration of Consent Agenda

Mayor Thurmond inquired if there were any items to be removed from the Consent Agenda. There being none, he asked for a motion.

MOTION: A motion was made by Mike Lester, seconded by Richard Carter.

Move to approve the Consent Agenda as presented

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

- A. 16-1320 **Approval and authorization to execute a Promotional License Agreement allowing Tulsa IBF, LLC to host the 2016 Holiday Festival Event on City Property**
- B. 16-1368 **Approval and authorization to execute a Professional Services Agreement between the City of Broken Arrow and Brewster & De Angelis, P.L.L.C., Attorneys at Law**
- C. 16-1344 **Approval and authorization to execute a Professional Services Agreement for Building Plan Review and Building Inspections with the Institute for Building Technology and Safety (IBTS), in association with construction of the Shops at Broken Arrow, Phase 2, located in the Southwest Quarter (SW/4) of Section One (1), Township Eighteen (18) North, Range Fourteen (14) East, Tulsa County, State of Oklahoma (Project: Shops at Broken Arrow Phase II, Ulta, Ross, Michaels and Dollar Tree)**
- D. 16-1356 **Approval of bids received, award of the lowest responsible bid to Cherokee Pride Builders, and approval and authorization to execute a construction contract for Liberty Parkway Trail Retaining Wall Repair (Project No. 161713)**
- E. 16-1359 **Acceptance of a General Warranty Deed for a tract of land that is part of Lot One (1), Block One (1), Coach Port Addition, an addition to the City of Broken Arrow, Wagoner County, State of Oklahoma (Project No. 156020) and authorize payment in the amount of \$69,051.00**
- F. 16-1370 **Notification of Change Orders with a value of less than \$25,000 on Public contracts**
- G. 16-1351 **Acceptance of a Warranty Deed for Parcel 5, which consists of 0.16 acres of permanent right-of-way for 23rd Street, Houston to Kenosha, in the Northwest Quarter of the Northwest Quarter of Section 18, Township 18 North, Range 15 East, at the Southeast Corner of 23rd Street and Houston Street, from Don C. and Mary H. Couch and authorize payment in the amount of \$7,000.00, for the 23rd Street Widening from Houston to Kenosha Project (Project No. ST0914)**
- H. 16-1352 **Acceptance of Warranty Deeds for 0.77 acres of permanent right-of-way in Parcel 8 and 1.07 acres of permanent right-of-way in Parcel 15, located at the Southeast Corner of East College Street and North 23rd Street in the Southwest Quarter of Section 7, Township 18 North, Range 15 East, from Mullin Properties, LLC, and**

authorize payment in the amount of \$55,939.00, for the 23rd Street, Houston to Kenosha, Widening Project (Project No. ST0914)

I. 16-844 Approval of the Broken Arrow City Council Claims List for November 7, 2016

6. Consideration of Items Removed from Consent Agenda

There were no items removed from the Consent Agenda. No action was required or taken.

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

A. 16-1361

Consideration, discussion, and possible direction on the creation of a new Single-family Residential Zoning District, RS-4, Single-family Residential-4, with modifications to Section 2.1, Table 3.1-1, Section 3.2.A.2, Section 3.2.B.1, Section 3.2.B.2, Section 3.2.B.5, Section 3.3.C.2.b, Table 4.1-2, Section 4.1.E, and Section 5.9.J.4 of the Zoning Ordinance; along with modifications to Table 4.1, Section 4.1.2, and Section 4.1.3 of the Comprehensive Plan

Director of Development Services Michael Skates recalled that the item before them was tabled at the previous meeting. He related that his Department had been approached by a development group surveying opportunities for new single-family subdivisions with a 20-foot front building line. The current Zoning Ordinance recognized five active single-family districts and the developers were looking for an opportunity to include a new zoning district to be designated RS-4, that would allow a front setback of 20 feet, with no Planned Unit Development (PUD) involved, contrary to the present general practice of using one of the other districts. Mr. Skates explained that he and his staff had kept the new district as similar as possible to the RS-3. He directed the Council to the attachment on the last page of his hand-out which provided a comparison between the different districts. Referring to another comparison listed in their materials, he stated that looking across the metro area, about half of the cities they looked at had incorporated an RS-4. Edmond had a variation of RS-4, that included a smaller front building line on the public street, with setback. As discussed at the previous meeting, one of the considerations was that in utilizing a PUD, in some instances, 3,000 square feet per lot of green space was mandated to be set aside. Through the PUD process some subdivisions could accommodate that in their open space areas, floodplains, and topographically unbuildable areas. However, some subdivisions did not have the leeway to modify the PUD based on open space, which placed an undue hardship on the property owner and ultimately, on the City, taking into account the size of home, the sidewalk, driveway, and so on. The owner was further constrained if he wanted to add a pool, patio, deck, etc. The Council was referred to an item in the attachment listing the number of subdivisions built over the past three years, along with the number of PUDs, which was, relatively speaking, not high. The trend was to pull houses in, closer to the street, thereby creating a certain aesthetic from the vantage point of the street; however, that could result in less driveway space for vehicles.

Councilman Parks commented that he had met with Mr. Skates that day, with reference to several questions he had brought up at the November 1st meeting. Mr. Skates and his staff did a good job in answering all his questions, he said. He still preferred the PUD in that it lent a measure of uniqueness to a subdivision, though it might make development and inspection more difficult. Nevertheless, it did afford them the opportunity of a trade-off with the development community, with regard to playground area or green area within a certain setback that might be desirable. Knowing they would be looking at the matter possibly within the next year or so, as the City reviewed all zoning items, he didn't have a problem with it. If you took two adjacent lots with the same model house on them, he didn't believe you could tell the difference. In summary, Councilman Parks said the concerns he had were answered by staff to his satisfaction, and they could move on to consider the item for approval, as far as he was concerned.

Councilman Eudey stated that he had had similar questions and meeting with Mr. Skates helped clarify the issues for him also. He wondered whether they were encouraging rear parking as an alternative for property owners. Mr. Skates replied that they had never discouraged rear parking and they had, in fact, incorporated it into a couple of subdivisions in the past. However, rear parking never took off anywhere other than in small, gated communities, which was not to say they couldn't do that utilizing the PUD process. Councilman Eudey said that essentially, the questions he had were answered to his satisfaction, and it was a good idea for them to move forward.

Councilman Lester added that in the end, the market and whether or not the consumer embraced a product was the determining factor. He observed that trends changed over time and he thought that frankly, what they were considering was coming sooner than they might wish. Councilman Parks interjected that he looked at several cities on his own, and Edmond and Norman had a similar ordinance, with the same setback. He checked out Frisco, Texas, and a town close to Kansas City, to discern how broad the market was, discovering that those towns had an RS-4 as well. The market would determine the direction, but for a young couple with children there would not be much of a yard. He would have liked to have seen a couple of subdivisions built according to the new district to see what it looked like, and to proceed from there. Councilman Eudey said he was reminded of his schooldays in Texas, where he saw communities that had availed themselves of it and it was attractive, if done correctly. The key was to do it correctly.

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

Move to direct staff to bring the item 16-1361 back to the Council for finalization

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

B. 16-1364

Presentation of the Associated Builders and Contractors, Inc. (ABC) Oklahoma Chapter 2016 Excellence in Construction Award to the City of Broken Arrow for the Stoney Creek Hospitality Hotel and Conference Center Earth Change Project by Tri-Star Construction, LLC

Assistant City Manager of Operations Ken Schwab said that it was an honor and privilege to present to them the Award – a statuette of a bird with outstretched wings – which he placed down on the podium beside him. He reported that on October 28th, Tri-Star Construction, contractor of the City’s Stoney Creek Hotel and Conference Center Earth Change Project, received an award at the state level, putting them also into contention at the national level with respect to the Associated Builders and Contractors’ 2016 Award of Excellence for construction. He observed that the project had really brought the Council’s vision home thought it took a long time to bring it to fruition. To get the project moving they had to quite literally, move mountains. He recalled that in January 2015, the City purchased the 15-acre site, and together with Stoney Creek Hospitality, they assembled the team of Architect Mike Hughes and Site Engineer Cowan Group Engineering. The team went to work immediately and by July 2015, the design for the Earth change was ready to go. In July also, the City, through Stoney Creek Hospitality, entered into contract with Tri-Star to move 180,000 cubic yards of dirt. Of that 180,000, 61,000 was rock and they were on a very tight schedule. In order to achieve that, with still some unknowns on moving that much dirt, the Cowan Group came up with a unique way of bidding on the project. There were three main items that were watched very carefully through construction: excavation of dirt placed on site, excavation of dirt hauled off site, and rock hauled off site. Tri-Star, through their own effort, entered into a couple of agreements with the nearby Walmart and then, Rolling Investments across the Creek to try to deposit the dirt as close as possible. When the selection process for the Award occurred, an independent agent deemed it the best project in a \$2 million to \$5 million site earthwork change in the State. Mr. Schwab, who was proud to have worked for both Cowan and the City, played two short photographic videos on the construction through the months, taken from various aerial vantage points by a drone. Mr. Schwab pointed out that Tri-Star did a wonderful job with respect to erosion control and siltation controlling that. Mr. Schwab called Mayor Thurmond forward to receive the Award, stating that Kevin McCarty of Stoney Creek Hospitality, Jeff Cowan and Russ Fischer of the Cowan Group were in attendance, along with Tanita White of Program Management Group (PMG). Regrettably, Mark Huff of Tri-Star was not able to be there. Mr. Schwab said that as a Vision 2025 project, PMG and the County deserved credit for a big part of the its success.

8. Citizens’ Opportunity to Address the Council on General Topics Related to City Business or Services

General Tom Mancino (Retired), 4205 North Maple Place, said that he wished to give an update on the Military History Center. General Mancino reported that their illuminated sign finally arrived, and it arrived broken and had to be returned. A new sign would be up hopefully, within the next month. The month of August saw three events taking place. They sponsored the V-J Victory over Japan Day at the Military History Center instead of at the Veterans Center. On the same day, a Medal of Honor Walk for all Oklahoma Medal of Honor winners was initiated and Elaine Childers spoke. The third event was Military Trivia Night and the defending champions of which he and Councilman Parks were team members, were roundly beaten by ringers from the high school. Then, in the last week of October they completed a Civil War weekend in which Civil War re-enactors from the Union and Confederate side engaged, with the Confederates winning. General Mancino especially wished to address the Council on the event that would take place on the coming Sunday: their Salute to Veterans. They were fortunate to have the 77th Army Band and the First Methodist Choir providing the music and the best one hour’s entertainment for \$5. He invited the Mayor, Councilmen, and everyone in the audience to the Broken Arrow Performing Arts Center to hear them perform. He had provided a flyer and the first copy of the 54-page program for the Council. He was proud to announce that Arkansas Valley was a major sponsor of the event.

9. General Council Business

A. 16-1347

Presentation, review, discussion, consideration and possible action on the rate study analysis for the water, wastewater and stormwater public utilities and corresponding utility rate increases

City Manager Michael Spurgeon said that he was pleased to bring the item before the City Council again and that following his own comments, Mr. Schwab would give a brief presentation. There would be a discussion of the proposed utility rate increases after the presentation.

Mr. Spurgeon specified that a fact sheet regarding where they had been for the last three years with respect to the utility rate process. The fact sheet summarized well the actions

the Council had taken to get them to the point where they stood at present. He was asking them to take away two things by way of his reiteration of the discussion they had a month prior. The City Council engaged the reputable national firm of Black & Veatch to analyze the City's financial operations, its Capital Improvement Program needs, and the fund reserves. The second thing that Council was aware of, which he had learned in nearly a year and a half, was that there was a major need for reinvestment in all their utilities in order to meet current need of customers, as well as to accommodate the growth that they knew would occur, whether residential, commercial, or industrial. Mr. Spurgeon recalled that at a special meeting held on September 27th, the administration presented a report from Black & Veatch, which included results of the company's review of data from the City's Finance and Utilities Departments' expenses over the past several years. The company was provided information regarding the projects that the City would have to consider over the next seven to ten years to complete its reinvestment. After a lengthy discussion among members of the governing body, the administration was directed to finalize a rate model to bring back to the Council for consideration. At the September meeting the Council also considered that to complete the reinvestment would take about \$140 million. In order to maintain a stable rate well into the future, the rate model they would be seeing that night was packaged around their asking the voters by way of General Bond Obligations for roughly \$50 million sometime next year. It was felt that that was the more appropriate and cost effective way to go forward, as opposed to putting all of the burden in the rates because such an increase was a very serious matter given that they endeavored to keep rates affordable making sure, at the same time, that the City was operating efficiently.

Mr. Spurgeon noted that contained in the packet given to the Council, were about two dozen documents presenting essentially, two options. City staff had studied well over a year and the Council well over three years what it really took to operate Broken Arrow's utilities, taking in operational costs, day-to-day capital needs, and the long-term capital needs and the Debt service that went along with that. He was confident that what they were presenting that night was a rate model that would help sustain operations, while providing the debt service needed to fund the Capital Improvements Program (CIP).

Assistant City Manager of Operations, Mr. Kenny Schwab presented background information on the purpose and scope of the rate study, as presented in detail previously, at the September 27th City Council meeting. He pointed out that staff was in agreement with Council that the rates presented at that meeting needed to be fine-tuned. The goal became to level out the steep increase in utility rates proposed for the first year. Mr. Schwab stated that they took an adjusted approach, touching upon four main things that seemed to drive the rate increase which they presented in September. First, they had to modify the Emergency Reserve Fund balance policy which was currently at 180 days for water and wastewater and 120 for stormwater. An item addressing that was on the agenda of the Broken Arrow Municipal Authority (BAMA) meeting that night, where they were proposing something more in line with a 90-day policy. The second factor that they would have to adjust involved mitigation of the impact of the \$140 million Capital Improvement Program. As presented, they were actually trying to achieve about \$38 million the first year, \$36 million in the second, and then allow it to dwindle and level off. The third adjustment required that they incorporate a more realistic amortization schedule for the Debt service. In consulting with the Finance Department since his presentation at the September 27th meeting, they were able to get more information on where they stood with respect to current loans and the Debt service. The updated information allowed them to move one of the payments on the principal they needed to make in the present year to a future year. The fourth and last adjustment was to increase the programmed amount in a proposed General Obligation Bond program. Mr. Schwab recalled that in September, a programmed amount for the proposed General Obligation Bond of approximately \$27 million was presented. In discussion at that September 27th meeting, the Council directed staff to look at a \$50 million General Obligation Bond and consider what issuing of such a bond would do. Mr. Schwab displayed a revised CIP budget. The projection for fiscal year 2017 as highlighted in yellow, was \$28.2 million, in contrast with the \$38 million they thought they would have to promote. Thus, they succeeded in balancing out the figure by \$10 million. FY2018 would be between \$30.3 and \$30.4 million, and would mark the highest of the five years. Thereafter, it would drop down to about \$28 million to \$29 million. The first five bars on the five-year CIP bar chart displayed were more level, while the final two years/bars showed lesser sums reflecting more the planning horizon. In summary, they were looking at \$27 million to \$28 million CIP for the next five years, which helped change the rate model. With respect to Black & Veatch's rate analysis at the September meeting, he recalled that they talked extensively about revenue. He displayed a chart of the revenue generated and what they needed to generated through revenue. Water usage was charged at a rate of \$4 per thousand gallons, and customers within the City limits paid \$2.67 per thousand gallons for sanitary sewer. Those two, plus any penalties and fees collected, constituted revenue. Mr. Schwab indicated, as he had in September, that Scenario 1 posited a \$50 million General Obligation Bond for FY2018 spread over four years, since 2017 would already be over, achieving the 90 days of operations and maintenance (O&M), capital outlay, and debt service. Water would be at 9% for 2017, and then level off at 5.5% revenue for the next four years, which was way down from the 18% they were looking at in September. Sewer was at 14% for 2017, and

then would level off to 7% for the following four consecutive years. Similarly, stormwater started at 15% and then decreased to 9%. It was agreed at the September 27th Council meeting, he recalled, they didn't want Broken Arrow's stormwater rate to be higher than Tulsa's and Scenario 1 kept them lower than Tulsa in that respect through 2020. In Scenario 2, they were looking at water revenue of 6.5% straight through 2021. Sewer would be 9.5% the first two years, and then 9% the last three. Stormwater percentages were left the same in both Scenarios.

One of questions that came up in September was what rates would look like alongside the good revenue projections listed in both Scenarios 1 and 2. They took Black & Veatch's data and broke it down for water and sewer, specifying the base rates and service rates for both. In Scenario 1, the utility rates for both would increase slightly, as shown by the first two columns of the chart prepared by staff. The third column represented the rate controlled by a customer through his usage, which affected his bill most. The next two columns over showed the incremental difference between each successive year's service rates, by cost and percentage. He noted that each year it would go down both cost- and percentage-wise. The far right column represented the cumulative numbers by cost and percentage, again. Mr. Schwab pointed out that with reference to water, there would be a 35% increase over the five years from the present date, while sewer would see a 54% increase over the five years. In Scenario 2, the base rate for both water and sewer stayed the same as in Scenario 1, with no change in that portion of the revenue calculation, however, the service utility rate would change for water and sewer. Overall, in regard to water over the five years, they were still looking at 37% cumulative change in Scenario 2 versus 35% in Scenario 1. With sewer, they were looking at 60.3% total cumulative in the five years, compared to 53.6% in Scenario 1. Mr. Schwab displayed a breakdown of what a typical water and sewer service utility bill would look like under both Scenarios for a family of three. The chart's blue column also represented Broken Arrow, side by side with a yellow column representing Tulsa. He reported that Tulsa had just changed their rates, effective November 1st, as he understood. The chart also listed stormwater, refuse (trash) service, Life Ride (EMS), and street light fees for Broken Arrow and Tulsa. Under Scenario 1, a typical usage of 7,000 gallons by the family would generate a bill of \$39.06 in Broken Arrow, as compared to \$33.02 in Tulsa, according to its rate. Looking at sanitary sewer however, Broken Arrow charged \$3.08 per 5,000, while Tulsa charged \$6.70, a difference of well over \$3. Tulsa's usage charge was much higher, and although the base rate was lower than in Broken Arrow, the family's bill in Tulsa would be just under \$40 as compared to \$23.60 in Broken Arrow. The total customer charges including the other services and fees mentioned, was \$90.38 for Broken Arrow and \$98.22 for Tulsa. With reference to Scenario 2, Mr. Schwab said he wished to point out that the typical bill totaled \$88.57 for Broken Arrow, with Tulsa's bill remaining the same.

Mr. Schwab concluded that although staff and administration agreed that Scenarios 1 and 2 were very similar, they believed Scenario 1 afforded certain benefits by allaying some uncertainties, getting some of the funding in immediately, and helping their status slightly, with regard to Emergency Reserve funds. As such, staff recommended Council consider Scenario 1.

Councilman Parks requested confirmation that Scenario 1 would be of help as far as the most needed projects on their list of priorities were concerned. Mr. Schwab replied in the affirmative, stating that the first couple of years were little higher in Scenario 1, which would serve to get revenue in a little quicker. Councilman Eudey observed that under either scenario, by the end of the five-year period, they would be at the 90-day Reserve Fund, having completed what was needed to keep them out of trouble. Mr. Schwab answered that either scenario generated the revenue they needed, bringing them to an Emergency Reserve Fund that was nearly equivalent. Councilman Eudey added that it was contingent upon the community being willing to address it by way of a bond issue, as he understood. Mr. Schwab said that that was correct. Councilman Lester remarked that as understood, at the end of the five years, they will have addressed all of the City's needs within the allotted \$140 million, though all of it may not be completed. Mr. Schwab confirmed that the all the projects identified in the CIP would be addressed to some degree, by the end of the five-year period. Councilman Lester added that from that point forward, at the end of the five years, they will have some kind of yearly plan for ongoing maintenance. Mr. Spurgeon said it was a good point and it was the one reason why they felt that there needed to be a discussion, and obviously, more discussion was in order on asking the voters to consider \$50 million for such projects. It left them with the capacity in relation to their rates because as soon as they started to get a couple of years into the projects, they would do exactly as Councilman Lester had described, looking for the next long-range plan for the relief lines and water lines, for possible expansion of their water treatment facility, etc. It was an ongoing endeavor to make sure the they were reinvesting in their infrastructure. He didn't see the growth ceasing any time soon, especially in light of the several thousand homes in the somewhere in the approval or construction phase, and they should stay ahead of that. Mr. Spurgeon stated that if the voters chose not to approve the bonds, then they would have to go back to the Council to request an increase in rates accordingly, to pay for the projects. He was hoping to demonstrate to citizens that it was more cost effective for all concerned to pay for the improvements through bonds, and that the improvements were not a matter of choice. Councilman Eudey noted that it was also

important for citizens to understand what failure to address the much-needed projects could result in, including problems of non-compliance with Environmental Protection Agency (EPA) and Oklahoma Department of Environmental Quality (ODEQ) regulations and problems calling for emergency remediation, as well.

Mr. Spurgeon commented that there were wants and needs and that Councilman Eudey was right. The challenge for them would be showing the citizens all of the projects and imparting to them their importance. The public education campaign would continue up until the time Council decided what date to hold the public vote, which he hoped to discuss right after the holidays. As they knew, the City only had three years left of bonds to sell for what he termed "quality of life" projects. The Council would have to decide on whether to approach those projects separately, with respect to voting, or together with the vote on General Obligation Bonds for the CIP. Personally, he thought it would be more appropriate to have the quality of life project funding vote stand alone, with two or three propositions tied to it, because in asking them for approval, it could mean an increase in their property taxes to foot the bill. There would definitely be an increase in their utility rates if they had to incorporate another \$50 million worth of debt.

Mayor Thurmond said that he thought they should get into that topic. He stated that there was an advantage to doing GO Bonds since they were tax deductible and had a sunset on private properties versus a utility rate increase, which could not be written off. Addressing Mr. Schwab, he requested an explanation and clarification on what they were going to do with, say, the sewer line. They had a concrete sewer line at the present time and he wondered what was the issue with sewer gases and the deterioration they were seeing. He wondered also, what they were planning to replace it with and what kind of longevity they could expect out of a replacement line. Mr. Schwab recalled that the early 1980s was when they really started putting in a lot of those trunk sewers. There was basically two type of materials prior to that: clay and concrete, which could be lined with steel or have a coating in it, as some of their pipes did. However, what happened with gases on the larger lines was that they would start venting off, eating manhole lids and rims. If the pipes cracked, they could actually begin to degrade and deteriorate the concrete pipe itself, which was exactly what they were seeing at the County Line trunk sewer. Fast forwarding 40+ years, one of the things they were seeing was more of a fiberglass pipe. Tulsa was starting to use them and the City of Broken Arrow had put in a fiberglass pipe under New Orleans Street. The life of a fiberglass pipe was longer than concrete's. It was something that they really wanted to go with regarding their trunk sewers, particularly the County Line, perhaps the Lynn Lane, and also Haikey Creek.

Councilman Lester commented that from an historical perspective on the topic of the Emergency Fund balance, they were going from 180 days back to 90 days. He asked whether they had ever had cause to utilize funding of a 180-day Emergency Fund balance. Mr. Schwab answered not to his knowledge, no, but he would let Director of Finance Tom Caldwell address that. Mr. Caldwell stated that they had never met the 180-day reserve balance. Councilman Eudey said that the better way to ask the question would perhaps, be, when had they had to use reserves. Mr. Caldwell replied that since they had never met the reserve balance they had always used what they were anticipating to be in the reserve balance. Councilman Lester said the point was that it wouldn't be extraordinary to go with 90 days going forward. Mr. Caldwell said in his opinion, no, reporting that the previous policy included items which really probably should not have been included as part of the reserve policy.

Mayor Thurmond asked if there were any further questions or comments. Mr. Spurgeon called for the Council to direct them to work with the Legal Department to put together appropriate legislation for their consideration at the next meeting.

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

Move to direct the Council to work with the Legal Department to put together appropriate legislation for their consideration at the next meeting.

The motion carried by the following vote:

Aye: 5 -

Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

B. 16-1299

Receipt and consideration of bids for and possible action awarding the sale of \$18,720,000 in principal amount of Series 2016D General Obligation Bonds to the most responsible bidder and authorization to execute all documents related thereto

Rick Smith of Municipal Finance Services, Inc. stated that they had actually some GO Bonds that day and passed out the summary of the bids received to the Council for consideration. As they were aware, the City Council set a date and time to receive bids on \$18,720 of GO Bonds. Three weeks before, the bonds were actually part of the 2014 election that approved by voters, which included several different propositions for various project purposes. The summary displayed on the screen showed that three bids were received from large investment banking and bond houses around the country: Citigroup Global Markets out of Dallas, Bank of America in New York, and Hutchison, Shockey, Erley & Company in Chicago comprised the three bidders. Mr. Smith informed them that the low bid received, in terms of a true cost or true interest rate, was submitted by Citigroup Global Markets at a rate of \$2.639891. The rate was actually about 25 basis points less than the rate they had gotten on a similar issue the previous year. He commended the Council for moving ahead on the matter, facilitating their sale at an attractive rate,

especially in light of the next's day elections, the impact and effects to which they would have been subject had they waited. It was a 20-year issue allowing them to keep the ad valorem tax levy, and the sinking fund levy to repay the bonds at a target level that the Council had adopted. He also wished to mention the good news that they had gone through a rating process with Moody's Investors Service, and based upon their review of the City's financial status, along with the City's economic and demographic characteristics, they affirmed an Aa3 credit rating, which was excellent. It was his recommendation that Council award the bond to Citigroup Global Markets, as presented. He added that there was an ordinance on the agenda to authorize issuance of the bonds.

MOTION: A motion was made by Scott Eudey, seconded by Richard Carter.

Move to award the sale of bonds to the lowest responsible bidder Citigroup Global Markets, Inc. for the sale of \$18,720,000 and General Obligation Bond Series 2016D, and authorize execution of all documents related thereto

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

C. 16-1340 Consideration, discussion, and possible approval and authorization to enter into a fuel card agreement with Wright Express Incorporated for point of sale fueling services

Lee Zirk, Director of General Services, recalled that in April 2015 the Council awarded a bid for point of sale fueling services, otherwise known as a fuel card to Kum and Go. He related that the service had been working out very well but they desired to expand service to other local fuel vendors in the community. Mr. Zirk stated that the National Joint Powers Alliance was a cooperative purchasing program offering competitively solicited purchasing contracts available for any government agency. Oklahoma Statute Title 74 authorized the City and BAMA to enter into such agreements with purchasing consortia such the National Joint Powers Alliance (NJPA). WEX Inc., formerly Wright Express, had a contract with NJPA for various fleet services, including Fleet Fueling Services. Mr. Zirk pointed out that under the WEX program, the normal set-up fee and the monthly charge for the card was waived. A 1% credit was issued for all retail purchases and the card was accepted nationwide. A contract was not required in the credit agreement. As such, staff recommended that Council approve and authorize establishment of a credit application with WEX, Inc., pursuant to the contract awarded by the NJPA.

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

Move to approve the submittal of a credit application for point of sale fueling services with WEX Inc. and authorize its execution

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

D. 16-1313 Consideration, discussion, and possible approval of rezoning request, BAZ-1964, Golzar Trust Property, 3.00 acres, R-1 to ON, south of Kenosha Street, one-half mile west of Olive Avenue

Mr. Skates explained that the item was a request to change the zoning designation on a 3-acre lot from R-1, single-family residential, to ON, office neighborhood. It was unplatted property consisting of two lots which had come before the Council twice before. In 2002 the Council denied BAZ-1422, a request to rezone the east parcel from R-1 to O-3, against the Planning Commission's recommendation to approve it. Subsequently in 2006, Council denied BAZ-1710, a request to rezone both parcels from R-1 to O-3, per the Planning Commission's recommendation. Mr. Skates informed the Council that the applicant associated with BAZ-1964 conducted a meeting with surrounding property owners on September 8th, and according to the applicant, the general concerns expressed by the property owners were addressed. The applicant's concerns had to do with business and building uses in connection with what would be built and what would be permitted. Their concerns included privacy, lighting, noise pollution, safety, drainage and increased traffic on Kenosha Street. Property values would also be lowered with the zoning change. Mr. Skates noted that the Planning Commission report and the fact sheet given to the Council listed what the ON district allowed, as far as types of usage. The uses allowed were compatible with neighborhoods and included places of assembly, child care centers, daycare centers, medical offices, financial institutions, art galleries, museums and anything related to office, business or professional use. They took on the same form as the surrounding residential housing, typically, and the two houses on the property could be remodeled or torn down and then a similar type of facility, limited to two story, could be built. The property was designated as Level 2 and ON was in accordance with the Comprehensive Plan. In their meeting of October 27th the Planning Commission recommended approval of BAZ-1964. Several people spoke in opposition to the request, being concerned primarily with what type of business would locate there. Mr. Skates reported that when staff met with the applicant, who wished to sell the property, they learned that the applicant did not have an intended user for the property, but wanted to go with the ON district and something that was compatible with the surrounding neighborhood. Mr. Skates stated that if the zoning change were approved for the property, staff would continue to work with the applicant or the buyer to assure that the concerns of

adjacent property owners were taken into account and the uses within the ON district were adhered to. As such, staff recommended approval of BAZ-1964, subject to the property being platted. In addition, the existing structures should be demolished or updated to commercial building code standards of ON use.

Councilman Lester inquired if there was no discussion about leveling the two structures and prohibiting two story office structures. He related that he had held a similar property and in meeting with neighbors, they came to a consensus that office use would be appropriate if limited to a single story only. Mr. Skated replied that staff had discussed that with the applicant, however, since they didn't have a buyer with a particular use in mind, they were just looking at changing the zoning. Such conversations pointed to the possibility of a PUD because the zoning code allowed two story buildings. Councilman Lester commented that from his perspective, the City was allowing them too much leeway that with regard to the zoning and he felt that part of his role was to protect the surrounding property owners. He wished to limit office buildings under ON to one story and limit use somewhat, as well. Mayor Thurmond replied that he didn't think they could decide on a conditional zoning, so the applicant's request would either have to be denied or approved, in accordance with existing zoning. The Mayor asked Mr. Skates if the property could meet the setback requirements for a PUD and it was concluded that further investigation was needed in order to determine that.

Councilman Parks commented that he thought the best approach would be for the applicant to consider a PUD. Mr. Skates replied that staff talked about a PUD with the applicant and he didn't disagree, but the applicant was set on straight zoning at present because without a buyer, they didn't know what use the property would be put to.

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

Move to deny rezoning request BAZ-1964

The motion failed to carry by the following vote:

Aye: 2 - Johnnie Parks, Mike Lester
Nay: 2 - Richard Carter, Craig Thurmond
Abstain: 1 - Scott Eudey

City Attorney Beth Anne Wilkening stated that an abstention counted as a nay, and so the motion had failed to pass. Another motion was in order to decide on the item definitively.

MOTION: A motion was made by Richard Carter, seconded by Craig Thurmond.

Move to approve rezoning request BAZ-1964

The motion failed to carry by the following vote:

Aye: 2 - Richard Carter, Craig Thurmond
Nay: 2 - Johnnie Parks, Mike Lester
Abstain: 1 - Scott Eudey

Mayor Thurmond specified that the rezoning request had been denied.

E. 16-1369

Consideration, discussion, and possible approval of Resolution Number 956, a Resolution authorizing the City Attorney to file a Petition to Vacate a Utility Easement pursuant to 11 O.S. § 42-111 on property located on a tract of land lying in Government Lot 3 of Section 2, Township 18 North, Range 14 East, of the Indian Meridian, Tulsa County, Oklahoma, generally located one-quarter mile east of Elm Place and north of Albany Street; repealing all ordinances to the contrary; and declaring an emergency

Ms. Wilkening stated that there was an easement on the property being developed as the Stoney Creek Hotel and Conference Center. She recalled that at the last City Council meeting, Council adopted an ordinance closing the easement, however, the lender for Stoney Creek was requiring them to act in order to clear title on the property. Approval of the Resolution would enable them to move forward with filing an action in Tulsa County District Court to foreclose the City's right to re-open it.

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

Move to approve Resolution Number 956

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

F. 16-1367

Consideration, discussion, and possible approval of one voting delegate and one alternate voting delegate for the National League of Cities Annual Business Meeting held Saturday, November 19, 2016 in Pittsburgh, Pennsylvania

Assistant City Manager of Administration Russell Gale reported that as the Council was aware, several members of the City Council would be attending the National League of Cities conference the following week, in which a number of important business issues would be on the agenda. As at the 2015 conference, the City would have one designated voting member and one alternate serving at the upcoming conference. Council was called to select one voting delegate and one alternate voting delegate.

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

Move to choose Mayor Thurmond to be the designated voting member and Councilman Scott Eudey to be the alternate

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

10. Preview Ordinances

There were not preview ordinances. No action was required or taken.

11. Ordinances

A. 16-1300

Consideration, discussion, and possible adoption of Ordinance Number 3455, an ordinance providing for the issuance of \$18,720,000 General Obligation Bonds, Series 2016D by the City of Broken Arrow, Oklahoma, authorized at an election duly called and held for such purpose; prescribing form of bonds; providing for registration thereof; providing levy of an annual tax for the payment of principal and interest on the same; and fixing other details of the issue; and declaring an emergency

Ms. Wilkening explained that the Ordinance was in reference to issuance of the General Obligation Bonds, as previously discussed. With the bids being awarded, Bond Counsel Don Kiser was present, in the event that Council had any questions. It was recommended that Council adopt Ordinance Number 3455 and then approve the emergency clause by separate action.

MOTION: A motion was made by Richard Carter, seconded by Mike Lester.

Move to adopt Ordinance Number 3455

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

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

Move to approve the emergency clause for Ordinance Number 3455

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

B. 16-1341

Consideration, discussion, and possible adoption of Ordinance Number 3457, an ordinance closing a utility easement on property located in Part of Lot Two (2), Block One (1), Hillside Crossings, a subdivision in the City of Broken Arrow, Tulsa County, State of Oklahoma, generally located north of the Broken Arrow Expressway and west of 9th Street; specifically repealing Ordinance Number 3412; repealing all ordinances to the contrary; and declaring an emergency

Ms. Wilkening stated that the Ordinance was in connection with a prior closure of a utility easement, which contained a scrivener's error, with the wrong lot call out in the legal description. It was recommended that Council adopt the Ordinance and approve the emergency clause by separate motion.

MOTION: A motion was made by Johnnie Parks, seconded by Richard Carter.

Move to adopt Ordinance Number 3457

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

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

Move to approve the emergency clause for Ordinance Number 3457

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

C. 16-1366

Consideration, discussion, and possible adoption of Ordinance Number 3458, an ordinance amending the Broken Arrow Code of Ordinances, Chapter 7, Business Regulations and Licenses, Article V. Pawnbrokers, Section 7-89. - Pawnbroker defined, specifically defining terms as used in this Chapter; Section 7-92. - Reserved; specifically adding eligibility requirements to obtain a pawnshop license; amending Section 7-95. - Required information; material, specifically requiring fingerprints of the applicant to be submitted with the license application; Reserving Section 7-103. - Records required; amending Sec. 7-105. - Reports to police, specifically requiring pawnbrokers to report to the police department, within two days, any buy transaction or pawn transaction.; amending Section 7-106. - Inspections, specifically allowing an officer who has probable cause to believe property is stolen or embezzled to place a written hold on such property; amending Section 7-112. - Penalties, specifically defining the punishment for violating Sections regulating Pawnbrokers; adding regulations for Precious Metals and Gems, Section 7-152. - Definitions; Section 7-153. - State license, specifically requiring precious metal and gem dealers to maintain a valid State license; Section 7-154. - Records to be maintained, specifically requiring dealers to keep a record of any transaction involving the purchasing of any used item made or containing precious metals or gems; Section 7-155. - Certain goods to be kept by Dealer: Time and Procedure, specifically allowing an officer who has probable cause to believe property is stolen or embezzled to place a written hold on such property and requiring dealers to keep such metals and gems on hold for a period of ten days; Section 7-157. - Penalty, specifically defining the punishment that

may be imposed for violating Sections regulating Precious Metals and Gems; repealing all ordinances to the contrary and declaring an emergency

Ms. Wilkening stated that the Ordinance before them was had been considered by the Council on three separate, prior occasions. The Legal Department took it back to the Planning Commission to get their approval and it was substantially in the same form as before. It was recommended that Council adopt the Ordinance and approve the emergency clause.

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

Move to adopt Ordinance No. 3458

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

MOTION: A motion was made by Richard Carter, seconded by Johnnie Parks.

Move to approve the emergency clause for Ordinance No. 3458

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

12. Remarks and Inquiries by Governing Body Members

Councilman Lester called for all to get out and vote on Election Day. Mayor Thurmond agreed that it was very important that everyone get out and vote the next day.

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

Mr. Spurgeon thanked Councilman Lester and Mayor Thurmond for the reminder to vote on Election Day. It was a very important election on the national level to the state level.

Mr. Spurgeon reported that notice would be going out in the next day or two regarding the organizational meeting of the Citizen Recycling Committee. He anticipated that the first meeting would include a welcoming, to take place on Tuesday, November 29th. A total of 13 names recommended to serve were given to him by Council members, alongside a few volunteers with whom he had spoken, and Councilmen Parks and Eudey, who would be representing the governing body. In addition, there were a number of staff members who would be assisting, including Mr. Schwab, Mr. Gale, and Mr. Zirk, his designated facilitator whom he charged with helping shepherd everyone through the process as they got started. Mr. Spurgeon assured the Council that he would keep them up to date on the program.

Since they would not be meeting again until early December, Mr. Spurgeon said he wished to take the opportunity to wish the Mayor, each the Council member, all City employees and citizens of Broken Arrow a happy Thanksgiving.

At approximately 7:52 p.m. Mayor Thurmond entertained a motion to recess, in order to enter into the Broken Arrow Municipal Authority and the Broken Arrow Economic Development Authority meetings, prior to the Executive Session.

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

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

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

Mayor Thurmond reconvened the regular Council meeting at approximately 7:59 p.m. and entertained a motion for a brief recess prior to entering into Executive Session.

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

Move to recess prior to entering into the Executive Session

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

Mayor Thurmond reconvened the regular Council meeting at approximately 8:08 p.m. and asked for a motion to clear the room and enter into Executive Session.

MOTION: A motion was made by Mike Lester, seconded by Richard Carter.

Move to enter into the Executive Session

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

14. Executive Session

Executive Session for the purpose of confidential communications between the City Council, the City Manager, and the City Attorney, and possible action in open session on matters pertaining to the following:

1. Discussion of litigation and possible offers of settlement involving Frank Charon v. the City of Broken Arrow, et al., Tulsa County District Court Case Number:

CJ-2016-834, and taking appropriate action, including possible settlement in open session, all pursuant to 25 O.S. § 307(B)(4).

- 2. Discussion of claims and potential litigation and potential settlement of claims regarding public improvements and infrastructure, specifically the retaining wall on real property located on the North side of Tiger Hill (on the Southwest corner of Lynn Lane and Kenosha), and taking appropriate action, including authorization to settle and resolve the claims in open session under 25 O.S. § 307(B)(4).**
- 3. Discussing the purchase and appraisal of properties on 9th Street, between Elgin and Detroit, and taking appropriate action, including making offers of purchase in open session under 25 O.S. § 307(B)(3).**

At approximately 8:55 p.m., Mayor Thurmond reconvened the regular session of the City Council meeting and the room was opened to the public.

MOTION: A motion was made by Richard Carter, seconded by Mike Lester.

Move to find that the Executive Session was necessary to process the pending litigation and claims in the public interest

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

MOTION: A motion was made by Richard Carter, seconded by Mike Lester.

Move to authorize the City Attorney and the Assistant City Manager of Administration to participate in mediation regarding the retaining wall on Tiger Hill and to attempt to settle the claims in accordance with Council direction

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

MOTION: A motion was made by Richard Carter, seconded by Mike Lester.

Move to authorize the City Manager to attempt to resolve issues within his authority in accordance with direction given by the City Council with regard to the Frank Charon lawsuit

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

15. Adjournment

The meeting adjourned at approximately 8:56 p.m.

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

Move to adjourn

The motion carried by the following vote:

Aye: 5 - Scott Eudey, Johnnie Parks, Mike Lester, Richard Carter, Craig Thurmond

Attest:

Mayor

City Clerk